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State of Utah
DEPARTMENT OF NATURAL RESOURCES

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August 17, 2016

Anna Krueger
U. S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue, NW
Washington, D. C. 20460

Subject: Comments Concerning Federalism and Proposed Rulemaking Under CERCLA 108(b)

Dear Ms. Krueger:

The State of Utah submits the following comments concerning the Environmental Protection Agency's (EPA's) proposed rule making under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Specifically, these comments are being submitted in response to the EPA's consultation concerning federalism.

The Interstate Mining Compact Commission (IMCC) has submitted separate comments which include a discussion of the Utah Minerals Regulatory Program's requirements under the Utah Mined Land Reclamation Act and associated rules. The State of Utah endorses IMCC's comments, some of which are reiterated below.

It is impossible to know precisely how any rule from the EPA might affect the Utah Minerals Regulatory Program because no draft has been issued, but various presentations from the EPA have raised concerns that the rules will overlap Utah's rules and will degrade the ability of the State to enforce its regulatory program. Regulation of mining activities can be best accomplished at the state level where inspectors can know and understand each individual mining operation.

The rules promulgated under the Utah Mined Land Reclamation Act have been effective in requiring mine operators to control deleterious materials (see definition below) and to reduce or eliminate adverse environmental effects from these materials. Additional regulation by the EPA is not necessary and would be a duplication of Utah's efforts.

Mining operations are defined under the Mined Land Reclamation Act as those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. Mining operations do not include secondary or off-site processing.

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Deleterious materials are defined as:

> . . . earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems (R647-1-106, Definitions).

Although the terms used in Utah's rules may differ from those used by the EPA, this definition is very broad and includes both materials that are uncovered by mining operations and any introduced materials used in mining or on-site primary processing. These materials must be handled in accordance with operational and reclamation standards.

The operational standards are:

> Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled (R647-2-107.4, R647-3-107.4, R647-4-107.4).

The reclamation standards are:

> Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled (R647-2-109.4, R647-3-109.4, R647-4-110.4).

In addition, large mines, those larger than 10 acres in unincorporated areas or larger than five acres in incorporated areas, must identify deleterious materials:

> The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including: . . . the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing (R647-4-106.2).

Thus, operators of large mines are required to identify deleterious materials, and all operators are required to handle and dispose of the materials to eliminate or control adverse environmental effects.

The State of Utah requires a reclamation surety to ensure that reclamation is completed. This financial assurance takes in all aspects of reclamation. It embraces traditional reclamation, such as demolition, regrading and revegetation, but it also includes cleanup, disposal, and treatment of deleterious materials, as discussed in the rules cited above, both after *and during* mining operations. For example, remediation of a spill of a deleterious material that occurred during mining operations would necessarily become part of reclamation if not properly cleaned up (as required) during operations.

The Utah Mined Land Reclamation Act and associated rules are administered by the Division of Oil, Gas and Mining; however, Oil, Gas and Mining routinely coordinates inspections, compliance actions and other regulatory activities with other federal and State agencies, including the Bureau of Land Management, the U. S. Forest Service, and the Divisions of Water Quality and Environmental Response and Remediation within the Utah Department of Environmental Quality. All of these entities are charged with protecting environmental resources, and the coordination allows sharing of expertise, knowledge and experience that can best be done on a level where personnel fully understand the specific mining operations.

Thank you for the opportunity to comment. Please feel free to contact me at 801-538-5334 or by email at johnbaza@utah.gov with questions about the Utah Minerals Regulatory Program.

Sincerely,

John R. Baza, P.E.
Director

PBB:eb
Enclosure:
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