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## **Court Orders Environmental Protection Agency to Finalize Rules so Polluters Pay for Their Own Toxic Messes**

*After decades of delay “financial assurance” regs will prevent polluters from leaving staggering cleanup cost to the public*

**WASHINGTON D.C.** — The U.S. Court of Appeals for the District of Columbia Circuit today [ordered](#) the Environmental Protection Agency to stop letting polluters off the financial hook for contamination they caused. The judges directed the EPA to finalize long-awaited “financial assurance” regulations that will first apply to metal (hard rock) mining and other industries.

The case was brought by Earthjustice, a national nonprofit environmental law firm, on behalf of Amigos Bravos, Idaho Conservation League, Earthworks, Sierra Club, Great Basin Resource Watch, and Communities for a Better Environment.

The conservation groups asked the federal judges to force the EPA to put into effect so-called financial assurance regulations as required by the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA. The rules were required to have been initiated in 1983 but have languished for decades.

“Neighbors living with toxic contamination in their backyards have waited more than thirty years for this day,” said **Earthjustice attorney Amanda Goodin**. “Today’s court ruling is clear-- we will no longer see polluters cheating the system, evading their financial obligations, and skipping town on their toxic messes, leaving taxpayers stuck with hefty cleanup bills.”

The court recognized that, “[I]t is a common practice for operators [of sites that produce hazardous substances] to avoid paying environmental liabilities by declaring bankruptcy or otherwise sheltering assets,” and that financial assurance rules would prevent these polluters from skipping town on their toxic messes.

**Background:** CERCLA is the nation’s law for the cleanup of hazardous substances. Commonly known as the “Superfund” law, it established a major regime to pay for effective cleanups of toxic waste sites. One provision of this law—section 108(b)—required EPA to ensure that companies that could potentially create future toxic sites remain financially capable of cleanup. These “financial assurance” rules were intended to prevent the common problem of companies creating toxic sites and then declaring bankruptcy, leaving taxpayers to foot the bill for cleanup and often causing the cleanup of dangerous sites to be delayed for years.

In 1980, Congress directed the EPA to take the first step in the issuance of these rules by 1983. EPA did nothing until a court ruling in 2009 (brought by many of the same groups) ordered them to start. But the effort immediately languished again, leading to the second lawsuit. Today's court decision puts an end to this decades-long pattern of delay with a binding schedule on EPA to complete the rules, which have been vigorously opposed by industry.

Extensive government-sponsored research and analysis has shown that financial assurance requirements reduce the risks of major spills of hazardous substances. These rules also play an important role in preventing hazardous pollution, because unsafe practices and equipment lead to higher insurance costs—so when financial assurance rules are in place, these risky industries have an incentive to adopt safer methods.

EPA has estimated that one in four Americans lives within three miles of a hazardous waste site. The cost of cleaning up even a single site is high—for example, according to a 2005 report, it will cost \$140 million, on average, to clean up each of the 142 largest Superfund sites, for a total of almost \$20 billion. The parties responsible for these disasters often evade costs: Cleanups at 60 so-called “mega-sites” are already being funded either wholly or partly by public funds. Because the Superfund tax expired 15 years ago, the funds available for cleaning up toxic sites has been dramatically reduced. It is thus critical that financial assurance rules guarantee that funds are available for cleanup.

**Rachel Conn, Projects Director of Amigos Bravos:** “The judges agreed — mining companies must clean up their act. The public and the environment have paid the price for too long. If financial assurance requirements had been established when required by law, we would not now be faced with millions of dollars of liability from abandoned mines like the Gold King Mine that has impacted the San Juan River in New Mexico and Colorado.

**Jennifer Krill, Executive Director of Earthworks:** “This victory paves the way for the closure of loopholes that made it far too easy for polluters to skip-out on costly cleanups. This decision is a win for the millions of families that live near polluted industrial sites, and the American taxpayers who have footed the cleanup bill all too often.”

**Andres Soto, Communities for a Better Environment:** “This important court victory will push polluters, who have long been gaming the system, to finally deal with their own toxic messes in a responsible way. Communities need rules requiring facilities that handle hazardous materials to have money at all times to address their impacts on the human beings and environment they put at risk.”

**John Robison, Public Lands Director of the Idaho Conservation League:** “Idaho's rivers are the lifeblood of our communities. This court order is a much-needed step in preventing future toxic messes that could threaten our clean water and quality of life. In addition, requiring companies to post a “damage deposit” or bond helps incentivize smarter and cleaner operations that save everyone money in the long run. It's much better to keep our rivers clean than to try to clean them up after they have been polluted.”

**Lisa Evans, senior administrative counsel, Earthjustice:** “Decades of EPA inaction has laid the intolerable burden of toxic cleanup on the nation's most vulnerable communities. Today's court decision fixes this inequity by closing loopholes that will force irresponsible companies to set

aside money to clean up the messes they make—a lesson we learn in kindergarten—and act responsibly.

**John Hadder, Director of Great Basin Resource Watch:** “We will all benefit from stronger protections brought by this important court victory. This win comes at a time when residents living near the abandoned Anaconda Copper Mine in Yerington, Nevada are on bottled water, and enduring a stalled clean-up due to lack of funding. The likely long-term toxification of the groundwater could have been arrested had the industry been required to bond for potential clean-up.”

**Nick Jimenez, Associate Attorney, Sierra Club:** “This is good news for the environment, citizens who live near mining and other hazardous sites, and our bank accounts. A final rule on financial assurances will take us one step closer to responsible mining practices and the health and environmental benefits they entail.”

The decision: <http://earthjustice.org/sites/default/files/files/ICL%20decision.pdf>