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Groups Sue EPA for Letting Polluters Pass the Bill for Their Spills to the Public

Thirty years of delay and exorbitant costs borne by public are unacceptable

Washington, D.C. — Earthjustice on behalf of Idaho Conservation League, Earthworks, Sierra Club, Amigos Bravos, Great Basin Resource Watch, and Communities for a Better Environment filed suit against the Environmental Protection Agency for failing to issue key rules mandated by the Superfund Act (the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA).

The rules that EPA has failed to issue would help prevent major spills of hazardous substances. For example, the Freedom Industries chemical spill in West Virginia that left hundreds of thousands of people without safe drinking water due to leaks from aging, corroded tanks could have been avoided if EPA had put these rules in place long ago, as the law requires.

These rules would also make sure polluters pay to clean up their own messes, instead of skipping town and leaving the cost to the public. For example, cleanup efforts at the Bunker Hill Superfund site in Idaho have been ongoing for decades, and the cleanup has been repeatedly delayed because of lack of funding. The primary responsible party for the site, the Asarco mining company, declared bankruptcy and left the taxpayers to foot most of the cleanup bill, which is estimated to be around \$2 billion. The delayed cleanup means that nearby communities are exposed to high levels of lead and other pollutants, and the Center for Disease Control has measured lead blood levels in children that are above the acceptable maximum.

The groups' lawsuit charges that a 30-year delay in issuing legally required rules to ensure that parties responsible for hazardous substance pollution bear the cost of cleanup is an unreasonable delay.

Statements by groups in the lawsuit:

Said **Amanda Goodin, Earthjustice attorney:**

"The Superfund Act was written to protect the public from hazardous spills and pollution and to hold violators accountable. Thirty years later we see polluters gaming the system, declaring bankruptcy, opting out of their financial obligations, and skipping town on their messes. Residents are left with poisoned soil and water; taxpayers are stuck with a hefty cleanup bill. The EPA has neglected to act on a key part of the Superfund law for 30 years, and this lawsuit holds that it's past time for the accountability that we all were promised."

Said **Rachel Conn, Projects Director, Amigos Bravos:**

"If financial assurance requirements had been established when required by law, we would not now be faced with an \$800 million liability at the CMI Questa mine. It time for industries to be accountable for their own toxic mess. The public and the environment have paid the price for too long."

Said **Alan Septoff, communications director of Earthworks:**

"It's profoundly unfair that the American public must live with a growing number of severely contaminated mine sites, and bear the brunt of the industry's unfunded clean-up costs. A pile of GAO reports has made it clear that the EPA needs to develop regulations to hold these mining corporations accountable. They need to get it done."

Said **Andres Soto, Communities for a Better Environment:**

"My community in Richmond, California is already suffering from inadequate clean-up of a toxic chemical manufacturing site. We also have the Chevron refinery, which sent over 15,000 people to the hospital from a single event. Right next door to Chevron is General Chemical, and the list goes on. This community needs 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."

Said **John Robison, Public Lands Director of the Idaho Conservation League:**

"Pollution from abandoned mines can affect the water quality of the groundwater, springs, streams and rivers we all depend on. Many of these long-term problems and the exorbitant cleanup costs could have been avoided had companies been required to post a bond to pay for the full cleanup of mine waste and potential spills."

Said **Lisa Evans, senior administrative counsel, Earthjustice:**

"Across the nation, utilities close to bankruptcy operate toxic coal ash ponds that threaten catastrophic collapse and water contamination. The Superfund law intended that polluters pay the cost of coal ash cleanups. But EPA, by its inaction, has laid that intolerable burden on the nation's most vulnerable communities."

BACKGROUND INFO:

For 30 years, the Superfund law has required the EPA to develop rules ensuring that industries that handle hazardous substances secure insurance or other financial means to clean up any messes or accidents that release toxic chemicals. These rules are critical to ensuring that any hazardous spills are cleaned up as quickly and thoroughly as possible, and without drawing on public funds. These rules also play an important role in preventing hazardous pollution, because unsafe practices and equipment lead to higher insurance costs—so these risky industries have an incentive to adopt safer methods. But instead, since EPA has failed – over 30 years-- to issue these rules as required by law, polluters frequently leave hazardous spills untreated for years and leave taxpayers to cover the high cost of cleanup.

In 2009, as a result of an earlier lawsuit by Earthjustice, the EPA took steps toward setting these rules by identifying those industries that present the highest risk of dangerous and expensive hazardous releases — namely, hardrock mining, chemical manufacturing, petroleum and coal products manufacturing, and electric power generation, transmission, and distribution (coal-fired power plants) — but EPA still hasn't put any rules in place to make sure these dirty industries clean up their hazardous spills. Most facilities are not subject to any requirement to provide evidence of financial ability to clean up any spill,

accidental release or other contamination resulting from the generation or handling of hazardous substances.

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 messes 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.

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