

January 7, 2014

The Honorable Fred Upton
2183 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Upton:

The undersigned organizations strongly support Title I of H.R. 2279, the “Reducing Excessive Deadline Obligations Act of 2013,” and urge the immediate consideration of the bill on the floor of the U.S. House of Representatives. Title I includes critical amendments to Section 108(b) and 114(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that will protect American businesses from unnecessary, costly, and duplicative financial responsibility requirements. The amendments are needed to protect the global competitiveness of industries that power the U.S. economy, deliver affordable energy, manufacture and supply critical products, and provide high-paying jobs.

EPA is poised to issue a series of rules that would impose unprecedented and burdensome financial responsibility requirements on a suite of industries under CERCLA Section 108(b). Contrary to the requirements of CERCLA, EPA intends to move forward without making the requisite finding that the targeted industries actually pose a risk of becoming future Superfund sites that would require expenditure of public funds for cleanup costs. Instead, EPA:

- Mischaracterizes data regarding legacy Superfund sites, and relies on vague, anecdotal and irrelevant information that exaggerates the risks posed by currently operating facilities in our industries;
- Ignores that our industries operate under a comprehensive framework of state and federal environmental laws and regulations designed to prevent releases of hazardous substances or to control them at levels that are protective of the environment and human health; and
- Neglects to assess existing federal and state laws imposing financial assurance requirements on a variety of industries and the role of those requirements in protecting the American taxpayer from funding future Superfund sites.

Title I of H.R. 2279 makes several needed improvements to CERCLA 108(b) and 114(d) to ensure that EPA’s rulemaking does not continue down this arbitrary and costly path. First, it clarifies that EPA has the discretion to decide whether to even issue these rules. Second, it would force EPA to do the job it should have done before subjectively identifying industry sectors for future rulemaking by completing a more scrupulous analysis of the issues involved before issuing a proposed rule. Specifically, the title requires the agency to factually support its determination that certain types of facilities are high risk, to assess thoroughly existing state and federal requirements related to financial responsibility, to provide explicit findings as to why these requirements are not sufficient to cover potential CERCLA response costs of currently operating facilities, and to analyze the capacity of the financial and credit markets to take on any additional requirements before imposing them. By interjecting this critical analytical requirement into the statute, Congress prevents the agency from moving forward with an

arbitrary financial responsibility regulatory program and compels the agency to recognize real world environmental and financial scenarios.

Second, Title I of H.R. 2279 appropriately limits any CERCLA financial assurance program to a gap-filling regulatory exercise that respects the effectiveness of existing federal and state financial assurance programs. For over three decades, EPA has not exercised the authority that Congress gave it to impose financial responsibility requirements. During that time, other federal and state financial responsibility regulatory programs have emerged – where they are actually necessary – to address hazardous substance releases or the activities that prevent the release of such substances at a facility. Many, and in some cases all of the facilities, in our industry sectors are already subject to robust financial assurance requirements under these federal and state laws. In these cases, CERCLA 108(b) financial assurance requirements would not only duplicate other successful federal financial assurance programs, but also potentially preempt mature state financial assurance programs. To prevent such an outcome, Title I of H.R. 2279 would amend CERCLA 114(d) and only allow EPA to use its CERCLA 108(b) authority where existing federal and state programs are insufficient to cover likely CERCLA response costs at currently operating facilities. This limitation not only addresses concerns raised by industry, but also several western states, the Western Governors Association, and the Association of State and Territorial Solid Waste Management Officials.

We thank you for your leadership on this issue and for moving the bill swiftly through your committee. Title I of H.R. 2279 provides a sensible solution to the obsolescent statutory provisions on financial responsibility enacted over thirty years ago in CERCLA. Without these improvements, EPA will move forward with an unnecessary and unwise rulemaking that will dramatically impact the competitiveness of critical U.S. industries and remove capital from more productive uses in our economy. Therefore, we urge immediate consideration of H.R. 2279 on the floor of the U.S. House of Representatives.

Sincerely,

American Chemistry Council
American Coke & Coal Chemicals Institute
American Iron and Steel Institute
American Petroleum Institute
National Association of Manufacturers
National Mining Association
American Exploration and Mining Association
Oregon Women in Timber
Society of Chemical Manufacturers and Affiliates
The Fertilizer Institute
Utility Solid Waste Activities Group

CC: The Honorable John Boehner
The Honorable Eric Cantor