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Balancing natural resource demands and long-term

liability: A different look at CERCLA Financial Assurance and Clean Water Act



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Today's talk

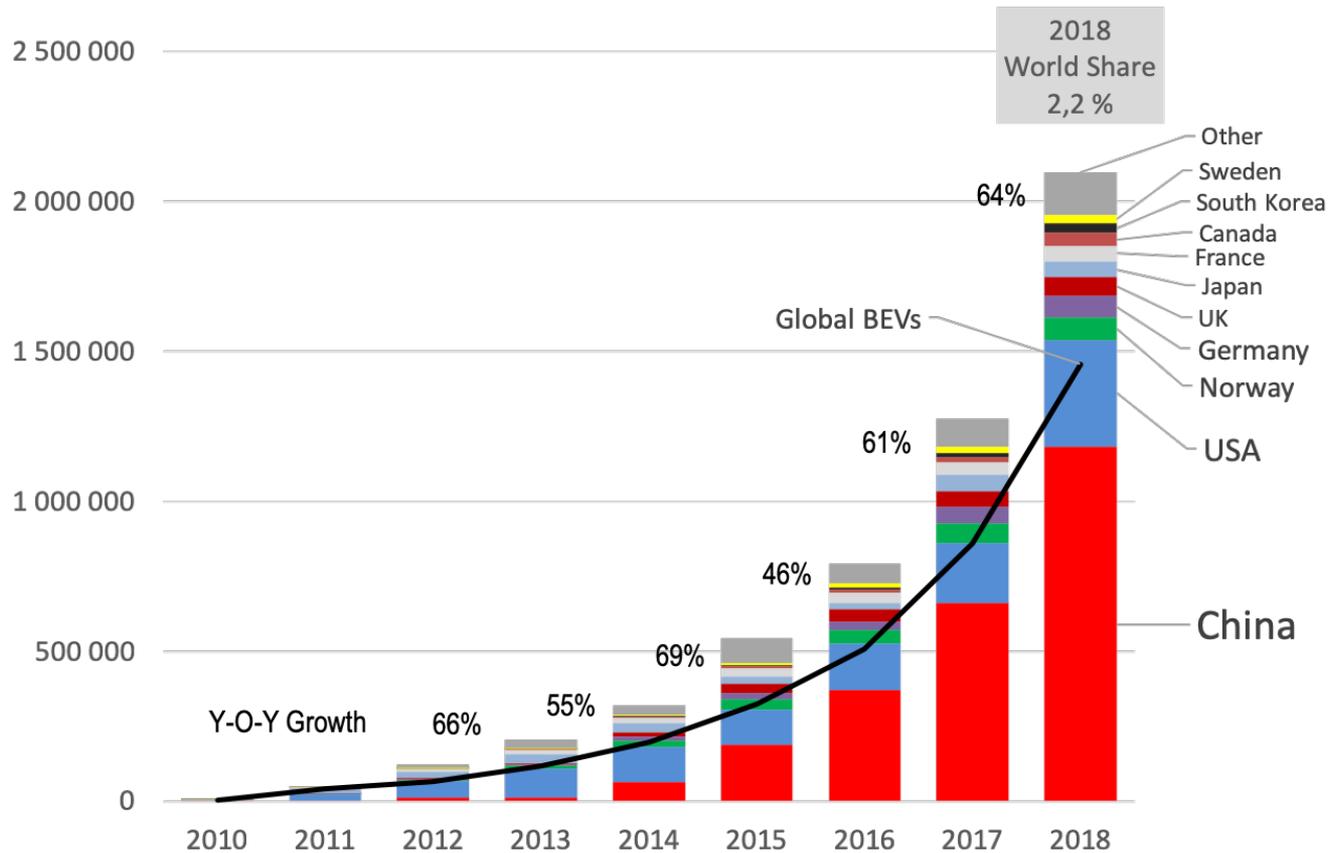
- 1 Consumerism vs. Environmentalism
- 2 White Knight Regulations
- 3 Critical cases
- 4 The Crystal Ball and Recommendations

Safe and Sustainable Consumerism

- Clean water is taken for granted in the U.S.
- Sustainability of natural resources is a growing concern
- Mine related disasters haunt the industry
- Widespread groundwater contamination is hard to ignore (e.g., lead, PFAS)



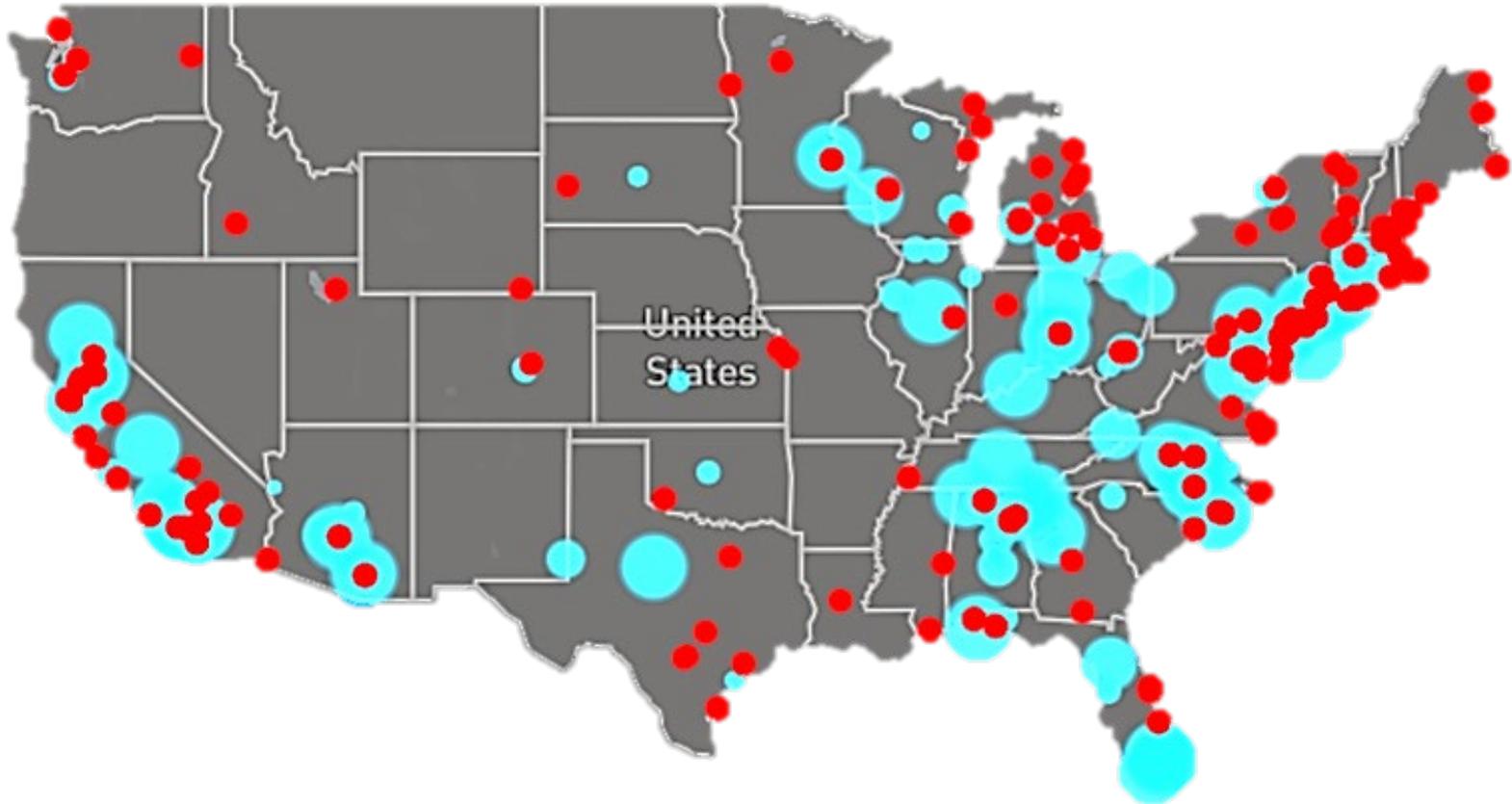
The EV Environmental Bellwether



Adapted from Irie, R. *Global EV Sales for 2018 – Final Results* <http://www.ev-volumes.com/country/total-world-plug-in-vehicle-volumes/> [Accessed 04 May 2019].



Fluorinated Chemicals in Tap Water, Industrial and Military Sites



Adapted from EWG Science Team. 2018. *Removing Toxic Chemicals From Your Home's Tap Water*. Available at: <https://www.ewg.org/news-and-analysis/2018/09/removing-toxic-fluorinated-chemicals-your-home-s-tap-water>. [Accessed 24 January 2019].

Mineral Extraction Dilemma

- Naturally occurring minerals are a necessity to life and society
- Extraction of minerals creates environmental hazards
- Historical management of underground workings, waste rock piles, pit lakes, and tailings impoundments have been problematic

Animas River Post-Gold King Release



USEPA (2017). Analysis of the Transport and Fate of Metals Released from the Gold King Mine in the Animas and San Juan Rivers. Washington, DC: U.S. Environmental Protection Agency.

Regulation to the Rescue?

- CERCLA 108(b) Financial Assurance
- Clean Water Act
- Prop 112, Colorado (rejected)
- I 186, Montana (rejected)



Governance Implications to Sustainability and Resiliency

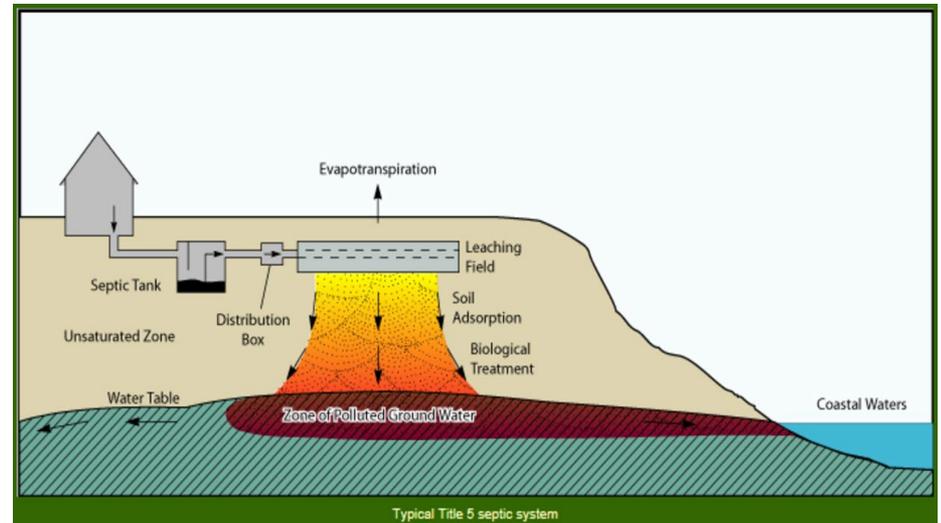
- Corporate Governance guiding principles
- SEC disclosures
 - Regulation S-K item 101(c)(1)(xii) expressly requires disclosure regarding certain costs of complying with environmental laws.



Recent Trends In Activism

Applying Old Laws In New Ways?

- CERCLA 108(b)
- Regulation of Discharges to Ground Water
 - Hawai'i Wildlife Fund v. County of Maui (9th Circuit)
 - Upstate Forever v. Kinder Morgan Energy Partners, L.P. (4th Circuit)
 - Tennessee Clean Water Network v. TVA (6th Circuit)

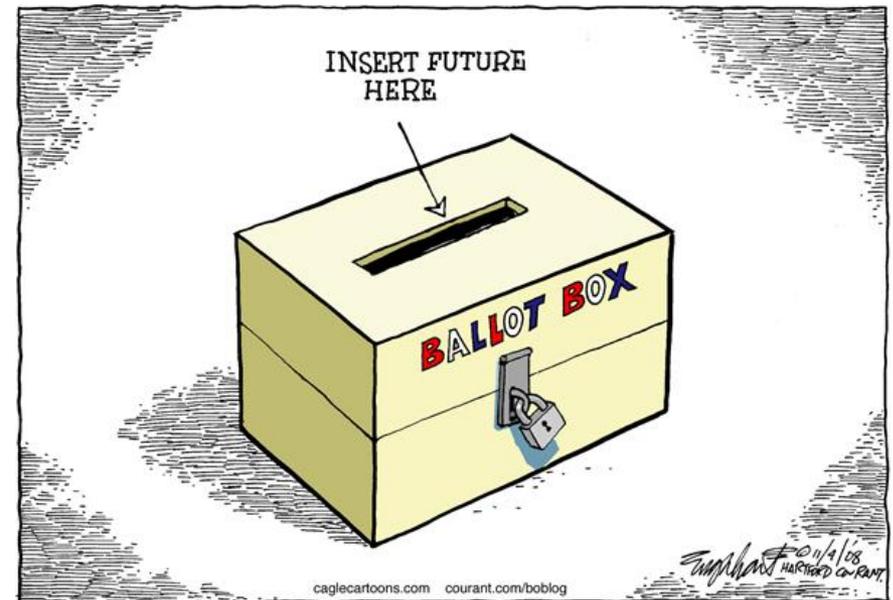


Adapted from Mass.gov *Smart Growth/Smart Energy Toolkit Modules-Wastewater Alternatives* at <https://www.mass.gov/service-details/smart-growth-smart-energy-toolkit-modules-wastewater-alternatives> [Accessed 27 April 2019].

Recent Trends In Activism

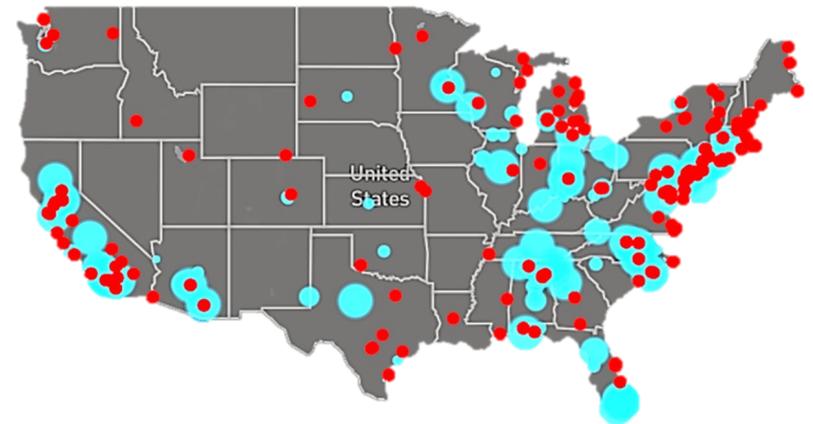
Direct Democracy (Ballot Initiatives)

- Colorado's Proposition 112
 - Proposed extensive siting restrictions on oil and gas well locations
- Montana's I 186
 - Proposed prohibition on reclamation plans requiring perpetual treatment to protect water quality



Implications For The Mining Industry

- CERCLA 108(b)
- Groundwater Conduit Theory
- Ballot Initiatives
- PFAS
- Common Thread: All of These Create Uncertainty Regarding Reclamation Requirements



Mining Industry's Dilemma

- Providing Commercially Necessary Materials
- Inherently Environmentally Invasive
- Historic Practices Color Perception
- NGO's Control of the Narrative



A New Paradigm To Move Forward

A Different Narrative

- The Campaigns Against Prop 112 and I 186
- Appeal to the Consumer
- Address the History of the Mining Industry
- Advance sustainability and resiliency



Thank you



Contact

If you would like more information regarding this presentation, or are interested in evaluating a site strategy, please contact us at:

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