

111TH CONGRESS
1ST SESSION

S. 1777

To facilitate the remediation of abandoned hardrock mines, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 2009

Mr. UDALL of Colorado introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To facilitate the remediation of abandoned hardrock mines, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Good Samaritan
5 Cleanup of Abandoned Hardrock Mines Act of 2009”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the Federal Government and State govern-
9 ments have encouraged hardrock mining in the

1 United States through a wide variety of laws, poli-
2 cies, and actions;

3 (2) mining operations produce metals and min-
4 erals that have important social benefits and values;

5 (3) many areas in the United States at which
6 historic mining operations took place are now the lo-
7 cations of inactive and abandoned mine sites;

8 (4) the mining activities that took place prior to
9 the enactment of modern environmental laws often
10 disturbed public and private land, and those disturb-
11 ances led to environmental pollution, including the
12 discharge of pollutants into surface water and
13 groundwater;

14 (5) many of the individuals and corporate own-
15 ers and operators of mines the actions of which
16 caused the pollution described in paragraph (4) are
17 no longer alive or in existence;

18 (6) many of the historic mining sites have pol-
19 luted the environment for more than a century and,
20 unless remedied, will continue to do so indefinitely;

21 (7) unabated discharges from inactive and
22 abandoned mines will continue to pollute surface
23 water, groundwater, and soils;

24 (8) many of the streams and water bodies im-
25 pacted by acid mine drainage are important re-

1 sources for fish and wildlife, recreation, drinking
2 water, agriculture, and other public purposes;

3 (9) some of the remaining owners and operators
4 of historic mine sites do not have adequate resources
5 to properly conduct the remediation of the mine sites
6 under applicable environmental laws;

7 (10) from time to time, States, individuals, and
8 companies are willing to remediate historic mine
9 sites for the public good as Good Samaritans, de-
10 spite the fact that those States, individuals, and
11 companies are not legally required to do so;

12 (11) Good Samaritan remediation activities
13 may—

14 (A) vary in size and complexity;

15 (B) reflect a myriad of methods by which
16 mine residue may be cleaned up; and

17 (C) include, among other activities—

18 (i) the removal, relocation, or manage-
19 ment of tailings or other waste piles;

20 (ii) passive or active water treatment;

21 and

22 (iii) runoff or runoff controls;

23 (12) the potential obligations, requirements,
24 and liabilities under the Federal Water Pollution
25 Control Act (33 U.S.C. 1251 et seq.) that may at-

1 tach to Good Samaritans as the result of the con-
2 duct by the Good Samaritans of remediation activi-
3 ties can dissuade potential Good Samaritans from
4 acting for the public good;

5 (13) it is in the interest of the United States,
6 the States, and local communities to remediate his-
7 toric mine sites—

8 (A) in appropriate circumstances and to
9 the maximum extent practicable; and

10 (B) so that the detrimental environmental
11 impacts of the historic mine sites are lessened
12 in the future; and

13 (14) if appropriate protections are provided to
14 Good Samaritans, Good Samaritans will have a
15 greater incentive to remediate historic mine sites for
16 the public good.

17 (b) PURPOSES.—The purposes of this Act are—

18 (1) to encourage the partial or complete remedi-
19 ation of inactive and abandoned mine sites for the
20 public good by individuals or entities that are not le-
21 gally responsible for the remediation;

22 (2) to allow any individual or entity not legally
23 responsible for environmental conditions relating to
24 an inactive or abandoned mine site—

1 (A) to make further progress toward the
2 goal of meeting water quality standards in all
3 water of the United States; and

4 (B) to improve other environmental media
5 affected by past mining activities at the inactive
6 or abandoned mine site without incurring any
7 obligation or liability with respect to the Fed-
8 eral Water Pollution Control Act (33 U.S.C.
9 1251 et seq.);

10 (3) to ensure that remediation activities per-
11 formed by Good Samaritans—

12 (A) result in actual and significant envi-
13 ronmental benefits; and

14 (B) are carried out—

15 (i) with the approval and agreement,
16 and at the discretion, of affected Federal,
17 State, and tribal authorities;

18 (ii) in a manner that enables the pub-
19 lic to conduct a review of, and submit com-
20 ments relating to, the remediation activi-
21 ties; and

22 (iii) in a manner that is beneficial to
23 the environment and each community af-
24 fected by the remediation activities; and

1 (4) to further the innovations of, and coopera-
2 tion among, the Federal Government, State and
3 tribal governments, private individuals, and corpora-
4 tions to accelerate efforts relating to conservation
5 and environmental restoration.

6 **SEC. 3. SCOPE.**

7 Nothing in this Act (or an amendment made by this
8 Act)—

9 (1) reduces any existing liability; or

10 (2) facilitates the conduct of any mining or
11 processing other than the conduct of any mining or
12 processing that is required for the remediation of
13 historic mine residue for the public good.

14 **SEC. 4. GOOD SAMARITAN DISCHARGE PERMITS.**

15 Section 402 of the Federal Water Pollution Control
16 Act (33 U.S.C. 1342) is amended by adding at the end
17 the following:

18 “(s) GOOD SAMARITAN DISCHARGE PERMITS.—

19 “(1) DEFINITIONS.—In this subsection:

20 “(A) COOPERATING PERSON.—

21 “(i) IN GENERAL.—The term ‘coopera-
22 ating person’ means any person that—

23 “(I) is a Good Samaritan;

1 “(II) assists a permittee in the
2 remediation of an inactive or aban-
3 doned mine site; and

4 “(III) is identified in a Good Sa-
5 maritan discharge permit issued
6 under paragraph (2).

7 “(ii) INCLUSION.—The term ‘cooper-
8 ating person’ includes the Federal Govern-
9 ment.

10 “(B) ELIGIBLE APPLICANT.—The term ‘el-
11 igible applicant’ means a person that—

12 “(i) is a Good Samaritan; and

13 “(ii) proposes a project, the purpose
14 of which is to remediate, in whole or in
15 part, actual or threatened pollution caused
16 by historic mine residue at an inactive or
17 abandoned mine site.

18 “(C) GOOD SAMARITAN.—The term ‘Good
19 Samaritan’ means a person that, with respect
20 to historic mine residue at an inactive or aban-
21 doned mine site—

22 “(i) had no role in the creation of the
23 historic mine residue;

1 “(ii) had no role in creating any envi-
2 ronmental pollution caused by the historic
3 mine residue; and

4 “(iii) is not liable under any Federal,
5 State, tribal, or local law for the remedi-
6 ation of the historic mine residue.

7 “(D) HISTORIC MINE RESIDUE.—

8 “(i) IN GENERAL.—The term ‘historic
9 mine residue’ means mine residue or any
10 condition resulting from activities at an in-
11 active or abandoned mine site prior to Oc-
12 tober 18, 1972, that—

13 “(I) causes or contributes to the
14 actual or threatened discharge of pol-
15 lutants from the inactive or aban-
16 doned mine site; or

17 “(II) otherwise pollutes the envi-
18 ronment.

19 “(ii) INCLUSIONS.—The term ‘historic
20 mine residue’ includes—

21 “(I) ores and minerals that—

22 “(aa) were mined during the
23 active operation of an inactive or
24 abandoned mine site; and

1 “(bb) contribute to acid
2 mine drainage or other environ-
3 mental pollution;

4 “(II) equipment (including mate-
5 rials in equipment);

6 “(III) any waste or material re-
7 sulting from any extraction,
8 beneficiation, or other processing ac-
9 tivity that occurred during the active
10 operation of an inactive or abandoned
11 mine site; and

12 “(IV) any acidic or otherwise pol-
13 luted flow in surface water or ground-
14 water that originates from an inactive
15 or abandoned mine site.

16 “(E) IDENTIFIABLE OWNER OR OPER-
17 ATOR.—The term ‘identifiable owner or oper-
18 ator’ means a person that is—

19 “(i) legally responsible under section
20 301 for a discharge that originates from
21 an inactive or abandoned mine site; and

22 “(ii) financially capable of complying
23 with each requirement described in this
24 section and section 301.

1 “(F) INACTIVE OR ABANDONED MINE
2 SITE.—

3 “(i) IN GENERAL.—The term ‘inactive
4 or abandoned mine site’ means a mine site
5 (including associated facilities) that—

6 “(I) is located in the United
7 States;

8 “(II) was used for the production
9 of a mineral other than coal;

10 “(III) has historic mine residue;
11 and

12 “(IV) is no longer actively mined
13 on the date on which an eligible appli-
14 cant submits to a permitting authority
15 a remediation plan relating to an ap-
16 plication for a Good Samaritan dis-
17 charge permit under paragraph (3)(B)
18 for the remediation of the mine site.

19 “(ii) EXCLUSIONS.—The term ‘inac-
20 tive or abandoned mine site’ does not in-
21 clude a mine site (including associated fa-
22 cilities) that is—

23 “(I) in a temporary shutdown;

24 “(II) included on the National
25 Priorities List developed by the Presi-

1 dent in accordance with section
2 105(a)(8)(B) of the Comprehensive
3 Environmental Response, Compensa-
4 tion, and Liability Act of 1980 (42
5 U.S.C. 9605(a)(8)(B)); or

6 “(III) the subject of an ongoing
7 or planned remedial action carried out
8 in accordance with the Comprehensive
9 Environmental Response, Compensa-
10 tion, and Liability Act of 1980 (42
11 U.S.C. 9601 et seq.).

12 “(G) INDIAN TRIBE.—The term ‘Indian
13 tribe’ has the meaning given the term in section
14 4 of the Indian Self-Determination and Edu-
15 cation Assistance Act (25 U.S.C. 450b).

16 “(H) PERMITTEE.—The term ‘permittee’
17 means a person that is issued a Good Samari-
18 tan discharge permit under this subsection.

19 “(I) PERMITTING AUTHORITY.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), the term ‘permitting
22 authority’ means the Administrator.

23 “(ii) EXCEPTION.—In the case of a
24 State or Indian tribe with an approved
25 permitting program under paragraph

1 (2)(B), the term ‘permitting authority’
2 means the head of the permitting program
3 of the State or Indian tribe.

4 “(J) PERSON.—The term ‘person’ in-
5 cludes—

6 “(i) an individual;

7 “(ii) a firm;

8 “(iii) a corporation;

9 “(iv) an association;

10 “(v) a partnership;

11 “(vi) a consortium;

12 “(vii) a joint venture;

13 “(viii) a commercial entity;

14 “(ix) a nonprofit organization;

15 “(x) the Federal Government;

16 “(xi) a State (including a political
17 subdivision of a State);

18 “(xii) an interstate entity;

19 “(xiii) a commission; and

20 “(xiv) an Indian tribe.

21 “(2) GOOD SAMARITAN DISCHARGE PERMITS.—

22 “(A) IN GENERAL.—A permitting author-
23 ity may issue a Good Samaritan discharge per-
24 mit to an eligible applicant in concurrence, if
25 applicable, with—

1 “(i) the State in which the proposed
2 inactive or abandoned mine site remedi-
3 ation project is located; or

4 “(ii) the Federal agency or Indian
5 tribe that owns or has jurisdiction over the
6 site at which the proposed inactive or
7 abandoned mine site remediation project is
8 located.

9 “(B) STATE OR TRIBAL PROGRAMS.—The
10 Administrator shall approve a State or tribal
11 program for the issuance of Good Samaritan
12 discharge permits if—

13 “(i) the State or Indian tribe has, as
14 of the date of enactment of this subsection,
15 authority to issue a permit under sub-
16 section (b); and

17 “(ii) the State or Indian tribe re-
18 quests such authority.

19 “(3) PERMIT PROCESS.—

20 “(A) SCOPE.—An eligible applicant may
21 apply for a Good Samaritan discharge permit to
22 conduct remediation activities at any inactive or
23 abandoned mine site from which there is, or
24 may be, a discharge or a threatened discharge

1 of pollutants into any water of the United
2 States.

3 “(B) REMEDIATION PLAN.—To apply for a
4 Good Samaritan discharge permit under sub-
5 paragraph (A), an eligible applicant shall sub-
6 mit to the permitting authority an application
7 that contains a remediation plan that, to the
8 extent known by the eligible applicant as of the
9 date on which the application is submitted, con-
10 tains—

11 “(i) an identification of—

12 “(I) the eligible applicant (includ-
13 ing any cooperating person) with re-
14 spect to the remediation plan;

15 “(II) the mine site that is the
16 subject of the remediation plan (in-
17 cluding such documentation as the
18 permitting authority determines to be
19 sufficient to demonstrate to the per-
20 mitting authority that the mine site is
21 an inactive or abandoned mine site);
22 and

23 “(III) each body of water of the
24 United States that is affected by ac-

1 tual or threatened discharges from the
2 inactive or abandoned mine site;

3 “(ii) a description of—

4 “(I) the baseline conditions of
5 each body of water described in clause
6 (i)(III) as of the date on which the el-
7 igible applicant submits the applica-
8 tion, including—

9 “(aa) the nature and extent
10 of any adverse impact on the
11 quality of each body of water
12 caused by the drainage of historic
13 mine residue or other discharges
14 from the inactive or abandoned
15 mine site; and

16 “(bb) as applicable, the level
17 of any pollutant in each body of
18 water that has resulted in an ad-
19 verse impact described in item
20 (aa);

21 “(II) the conditions of the inac-
22 tive or abandoned mine site that cause
23 adverse impacts to the quality of each
24 body of water described in clause
25 (i)(III);

1 “(III) the reasonable efforts
2 taken by the eligible applicant to iden-
3 tify identifiable owners or operators of
4 the inactive or abandoned mine site
5 that is the subject of the application;

6 “(IV) each remediation goal and
7 objective proposed by the eligible ap-
8 plicant, including—

9 “(aa) each pollutant to be
10 addressed by the remediation
11 plan; and

12 “(bb) each action that the
13 eligible applicant proposes to
14 take that, to the maximum extent
15 reasonable and practicable under
16 the circumstances, will assist in
17 the attainment of each applicable
18 water quality standard;

19 “(V) the practices (including a
20 schedule and estimated completion
21 date for the implementation of each
22 practice) that are proposed by the eli-
23 gible applicant to meet each remedi-
24 ation goal and objective described in
25 subclause (IV), including—

1 “(aa) in the case of a new
2 remediation project, the prelimi-
3 nary system design and construc-
4 tion, operation, and maintenance
5 plans relating to the new remedi-
6 ation project; and

7 “(bb) in the case of an exist-
8 ing remediation project, available
9 system design and construction,
10 operation, and maintenance plans
11 and any planned improvements
12 with respect to the existing reme-
13 diation project;

14 “(VI) any proposed recycling or
15 reprocessing of historic mine residue
16 to be conducted by the eligible appli-
17 cant (including a description of how
18 each proposed recycling or reprocess-
19 ing activity relates to the remediation
20 of an inactive or abandoned mine
21 site);

22 “(VII) the monitoring or other
23 forms of assessment that will be un-
24 dertaken by the eligible applicant to
25 evaluate the success of the practices

1 described in subclause (V) during and
2 after the implementation of the reme-
3 diation plan, with respect to the base-
4 line conditions;

5 “(VIII) each contingency plan
6 that is designed for responding to un-
7 planned adverse events (including the
8 practices to be implemented to achieve
9 each remediation goal and objective
10 described in subclause (IV));

11 “(IX) the legal authority of the
12 eligible applicant to enter, and con-
13 duct activities at, the inactive or
14 abandoned mine site that is the sub-
15 ject of the remediation plan; and

16 “(X) any public outreach activity
17 to be conducted by the eligible appli-
18 cant;

19 “(iii) an explanation of the manner by
20 which the practices described in clause
21 (ii)(V) are expected to achieve each reme-
22 diation goal and objective described in
23 clause (ii)(IV);

24 “(iv) a schedule for the periodic re-
25 porting by the eligible applicant with re-

1 spect to any progress in implementing the
2 remediation plan;

3 “(v) a budget for the remediation plan
4 that includes a description of each funding
5 source that will support the implementa-
6 tion of the remediation plan, including—

7 “(I) each practice described in
8 clause (ii)(VIII);

9 “(II) each action described in
10 clause (ii)(IV)(bb); and

11 “(III) each monitoring or other
12 appropriate activity described in
13 clause (ii)(VII); and

14 “(vi) any other additional information
15 requested by the Administrator to clarify
16 the remediation plan and each proposed
17 activity covered by the remediation plan.

18 “(C) CERTIFICATION OF PLAN.—An appli-
19 cation for a Good Samaritan discharge permit
20 submitted by an eligible applicant to a permit-
21 ting authority under subparagraph (B) shall be
22 signed and certified in a manner consistent with
23 section 122.22 of title 40, Code of Federal Reg-
24 ulations.

25 “(D) INVESTIGATIVE MEASURES.—

1 “(i) IN GENERAL.—A Good Samari-
2 tan discharge permit may include a pro-
3 gram of investigative measures to be com-
4 pleted prior to the remediation of the inac-
5 tive or abandoned mine site that is the
6 subject of the permit if the permitting au-
7 thority, upon the receipt of the application
8 of an eligible applicant for a Good Samari-
9 tan discharge permit, determines the pro-
10 gram of investigative measures to be ap-
11 propriate.

12 “(ii) PROGRAM REQUIREMENTS.—Any
13 water sampling included in the program of
14 investigative measures described in clause
15 (i) shall be conducted by an eligible appli-
16 cant in accordance with any applicable
17 method described in part 136 of title 40,
18 Code of Federal Regulations.

19 “(iii) REQUIREMENTS RELATING TO
20 SAMPLES.—In conducting a program of in-
21 vestigative measures described in clause
22 (i), an eligible applicant shall—

23 “(I) ensure that each sample col-
24 lected under the program is represent-
25 ative of the conditions present at the

1 inactive or abandoned mine site that
2 is the subject of the program; and

3 “(II) retain records of all sam-
4 pling events for a period of not less
5 than 3 years.

6 “(iv) INITIAL PLAN.—

7 “(I) IN GENERAL.—If an eligible
8 applicant proposes to conduct a pro-
9 gram of investigative measures, the el-
10 igible applicant shall submit to the
11 permitting authority a plan that con-
12 tains, to the extent known by the eli-
13 gible applicant as of the date on which
14 the eligible applicant submits the ap-
15 plication—

16 “(aa) each description re-
17 quired under subclauses (I), (II),
18 and (IV) through (VIII) of sub-
19 paragraph (B)(ii);

20 “(bb) the explanation re-
21 quired under subparagraph
22 (B)(iii);

23 “(cc) the schedule required
24 under subparagraph (B)(iv); and

1 “(dd) the budget required
2 under subparagraph (B)(v).

3 “(II) RESPONSIBILITY TO SUP-
4 PLEMENT DESCRIPTIONS.—An eligible
5 applicant that conducts a program of
6 investigative measures shall, based on
7 the results of the program, supple-
8 ment each item described in subclause
9 (I), as necessary.

10 “(v) REPORT OF RESULTS.—The re-
11 sults of the program of investigative meas-
12 ures shall be—

13 “(I) detailed in a report for the
14 permitting agency; and

15 “(II) made available by the appli-
16 cant to any member of the public that
17 requests the report.

18 “(vi) PERMIT MODIFICATION.—Based
19 upon the results of the investigative meas-
20 ures, a Good Samaritan discharge permit
21 may be modified pursuant to the permit
22 procedures described in this subsection.

23 “(vii) OPTION TO DECLINE REMEDI-
24 ATION.—A Good Samaritan discharge per-
25 mit may allow the permittee to decline to

1 undertake remediation based on the results
2 of the investigative sampling program, if—

3 “(I) the program of investigative
4 measures is authorized under this
5 subparagraph; and

6 “(II) the activities under the pro-
7 gram of investigative measures have
8 not resulted in surface water quality
9 conditions, taken as a whole, that are
10 worse than the baseline condition of
11 bodies of water described in subpara-
12 graph (B)(ii)(I).

13 “(E) REVIEW OF APPLICATION.—

14 “(i) INITIAL REVIEW.—The permit-
15 ting authority shall—

16 “(I) review each application sub-
17 mitted by an eligible applicant for a
18 Good Samaritan discharge permit;

19 “(II) provide to the public, with
20 respect to the Good Samaritan dis-
21 charge permit—

22 “(aa) notice and a reason-
23 able opportunity to comment;
24 and

25 “(bb) a public hearing;

1 “(III) if the Administrator is the
2 permitting authority, provide a copy
3 of the application to each affected
4 State, Indian tribe, and other Federal
5 agency; and

6 “(IV) determine whether the ap-
7 plication for the Good Samaritan dis-
8 charge permit meets each requirement
9 described in subparagraph (B).

10 “(ii) REQUIREMENTS NOT MET.—If
11 the permitting authority determines that
12 an application for a Good Samaritan dis-
13 charge permit does not meet each require-
14 ment described in subparagraph (B), the
15 permitting authority shall—

16 “(I) notify the eligible applicant
17 that the application is disapproved
18 and explain the reasons for the dis-
19 approval; and

20 “(II) allow the eligible applicant
21 to submit a revised application.

22 “(iii) REQUIREMENTS MET.—If the
23 permitting authority determines that an
24 application for a Good Samaritan dis-
25 charge permit meets each requirement de-

1 scribed in subparagraph (B), the permit-
2 ting authority shall notify the eligible ap-
3 plicant that the application is accepted.

4 “(F) PERMIT ISSUANCE.—After notice and
5 opportunity for public comment with respect to
6 a Good Samaritan discharge permit proposed
7 by a permitting authority to be issued under
8 this subsection (including any additional re-
9 quirement that the permitting authority deter-
10 mines would facilitate the implementation of
11 this subsection), the permitting authority may
12 issue a permit to an eligible applicant if—

13 “(i) the permitting authority deter-
14 mines that—

15 “(I) relative to the resources
16 identified by the eligible applicant for
17 funding the proposed remediation ac-
18 tivity, the eligible applicant has made
19 a reasonable effort to identify identifi-
20 able owners or operators under sub-
21 paragraph (B)(ii)(III);

22 “(II) no identifiable owner or op-
23 erator exists (except, with respect to
24 Federal land, where the only identifi-

1 able owner or operator is the Federal
2 Government);

3 “(III) taking into consideration
4 each funding source (including the
5 amount of each funding source) iden-
6 tified by the eligible applicant for the
7 proposed remediation activity in ac-
8 cordance with subparagraph (B)(v),
9 the remediation plan of the eligible
10 applicant demonstrates that the im-
11 plementation of the remediation plan
12 will—

13 “(aa) assist in the attain-
14 ment of applicable water quality
15 standards to the extent reason-
16 able and practicable under the
17 circumstances; and

18 “(bb) not result in water
19 quality that is worse than the
20 baseline water condition de-
21 scribed in subparagraph
22 (B)(ii)(I);

23 “(IV) the eligible applicant has
24 provided adequate evidence of finan-
25 cial resources that will enable the eli-

1 gible applicant to complete the pro-
2 posed project of the eligible applicant;
3 and

4 “(V) the proposed project of the
5 eligible applicant meets the require-
6 ments of this section;

7 “(ii) any Federal, State, or tribal land
8 management agency with jurisdiction over
9 any inactive or abandoned mine site that is
10 the subject of the proposed permit, or any
11 public trustee for natural resources af-
12 fected by historic mine residue associated
13 with any inactive or abandoned mine site
14 that is the subject of the proposed permit,
15 does not object to the issuance of the per-
16 mit; and

17 “(iii) if the Administrator is the per-
18 mitting authority, the affected State or In-
19 dian tribe concurs with the issuance of the
20 permit.

21 “(G) DEADLINE RELATING TO APPROVAL
22 OR DENIAL OF APPLICATION.—Not later than
23 180 days after the date of receipt by a permit-
24 ting authority of an application for a Good Sa-
25 maritan discharge permit that the permitting

1 authority determines to be complete, the per-
2 mitting authority shall—

3 “(i) issue to the eligible applicant a
4 Good Samaritan discharge permit; or

5 “(ii) deny the application of the eligi-
6 ble applicant for a Good Samaritan dis-
7 charge permit.

8 “(H) MODIFICATION OF PERMIT.—

9 “(i) APPROVAL AND DISAPPROVAL
10 PROCESS.—In accordance with clause (ii),
11 after the date of receipt by a permitting
12 authority of a written request by a per-
13 mittee to modify the Good Samaritan dis-
14 charge permit of the permittee, the permit-
15 ting authority shall approve or disapprove
16 the request for modification.

17 “(ii) PERMIT MODIFICATION.—A per-
18 mit modification that is approved by a per-
19 mitting authority under this subparagraph
20 shall be—

21 “(I) by agreement between the
22 permittee and the permitting author-
23 ity and, if the Administrator is the
24 permitting authority, the affected
25 State or Indian tribe;

1 “(II) subject to—
2 “(aa) a period of public no-
3 tice and comment; and
4 “(bb) a public hearing;
5 “(III) in compliance with each
6 standard described in subparagraph
7 (F)(i)(III); and
8 “(IV) immediately reflected in,
9 and applicable to, the Good Samaritan
10 discharge permit.

11 “(4) CONTENTS OF PERMITS.—

12 “(A) IN GENERAL.—A Good Samaritan
13 discharge permit shall—

14 “(i) contain—

15 “(I) a remediation plan approved
16 by the permitting authority; and

17 “(II) any additional requirement
18 that the permitting authority estab-
19 lishes by regulation under paragraph
20 (10); and

21 “(ii) provide for compliance with, and
22 implementation of, the remediation plan
23 and any additional requirement described
24 in clause (i)(II).

1 “(B) SCOPE.—A Good Samaritan dis-
2 charge permit shall authorize only those activi-
3 ties that are required for the remediation of
4 historic mine residue at an inactive or aban-
5 doned mine site, as determined by the permit-
6 ting authority.

7 “(C) REVIEW.—A Good Samaritan dis-
8 charge permit shall contain a schedule for re-
9 view, to be conducted by the permitting author-
10 ity, to determine compliance by the permittee
11 with each condition and limitation of the per-
12 mit.

13 “(5) EFFECT OF PERMIT COMPLIANCE.—

14 “(A) COMPLIANCE WITH ACT.—

15 “(i) IN GENERAL.—A Good Samari-
16 tan discharge permit issued under this
17 subsection shall authorize the permittee,
18 and any cooperating persons, to carry out
19 each activity described in the Good Samar-
20 itan discharge permit.

21 “(ii) COMPLIANCE WITH PERMIT.—
22 Compliance by the permittee, and any co-
23 operating persons, with respect to the
24 Good Samaritan discharge permit shall
25 constitute compliance with this Act.

1 “(B) SCOPE OF LIABILITY.—Except as
2 provided in paragraph (6), the issuance of a
3 Good Samaritan discharge permit to a per-
4 mittee relieves the permittee, and any cooper-
5 ating person, of each obligation and liability
6 under this Act.

7 “(6) FAILURE TO COMPLY.—If a permittee, or
8 any cooperating person fails to comply with any con-
9 dition or limitation of the permit, the permittee, or
10 cooperating person, shall be subject to liability only
11 under section 309.

12 “(7) TERMINATION OF PERMIT.—

13 “(A) IN GENERAL.—A permitting author-
14 ity shall terminate a Good Samaritan discharge
15 permit if—

16 “(i) the permittee successfully com-
17 pletes the implementation of the remedi-
18 ation plan; or

19 “(ii)(I) any discharge covered by the
20 Good Samaritan discharge permit becomes
21 subject to a permit issued for other devel-
22 opment that is not part of the implementa-
23 tion of the remediation plan;

24 “(II) the permittee seeking termi-
25 nation of coverage, and any cooperating

1 person with respect to the remediation
2 plan of the permittee, is not a participant
3 in the development; and

4 “(III) the permitting authority, upon
5 request of the permittee, agrees that the
6 permit should be terminated.

7 “(B) UNFORSEEN CIRCUMSTANCES.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the permitting author-
10 ity, in cooperation with the permittee, shall
11 seek to modify a Good Samaritan dis-
12 charge permit to take into account any
13 event or condition encountered by the per-
14 mittee if the event or condition encoun-
15 tered by the permittee—

16 “(I) significantly reduces the fea-
17 sibility, or significantly increases the
18 cost, of completing the remediation
19 project that is the subject of the Good
20 Samaritan discharge permit;

21 “(II) was not—

22 “(aa) contemplated by the
23 permittee; or

1 “(bb) taken into account in
2 the remediation plan of the per-
3 mittee; and

4 “(III) is beyond the control of
5 the permittee, as determined by the
6 permitting authority.

7 “(ii) EXCEPTION.—If a permittee de-
8 scribed in clause (i) does not agree to a
9 modification of the Good Samaritan dis-
10 charge permit of the permittee, or the per-
11 mitting authority determines that remedi-
12 ation activities conducted by the permittee
13 pursuant to the permit have resulted or
14 will result in surface water quality condi-
15 tions that, taken as a whole, are or will be
16 worse than the baseline water conditions
17 described in paragraph (3)(B)(ii)(I), the
18 permitting authority shall terminate the
19 permit.

20 “(C) NO ENFORCEMENT LIABILITY.—

21 “(i) DISCHARGES.—Subject to clause
22 (ii), and except as provided in clause (iii),
23 the permittee of a permit, or a cooperating
24 person with respect to the remediation
25 plan of the permittee, shall not be subject

1 to enforcement under any provision of this
2 Act for liability for any past, present, or
3 future discharges at or from the aban-
4 doned or inactive mining site that is the
5 subject of the permit.

6 “(ii) OTHER PARTIES.—Clause (i)
7 does not limit the liability of any person
8 that is not described in clause (i).

9 “(iii) VIOLATION OF PERMIT PRIOR
10 TO TERMINATION.—The discharge of liabil-
11 ity for a permittee of a permit, or a co-
12 operating person with respect to the reme-
13 diation plan of the permittee, under clause
14 (i) shall not apply with respect to any vio-
15 lation of the permit that occurs before the
16 date on which the permit is terminated.

17 “(8) LIMITATIONS.—

18 “(A) EMERGENCY POWERS.—Nothing in
19 this subsection limits the authority of the Ad-
20 ministrator to exercise any emergency power
21 under section 504 with respect to persons other
22 than a permittee and any cooperating persons.

23 “(B) PRIOR VIOLATIONS.—

24 “(i) ACTIONS AND RELIEF.—Except
25 as provided in clause (ii), with respect to

1 a violation of this subsection or section
2 301(a) committed by any person prior to
3 the issuance of a Good Samaritan dis-
4 charge permit under this subsection, the
5 issuance of the Good Samaritan discharge
6 permit does not preclude any enforcement
7 action under section 309.

8 “(ii) EXCEPTIONS.—

9 “(I) SCOPE OF PERMIT.—If a
10 Good Samaritan discharge permit cov-
11 ers remediation activities carried out
12 by the permittee on a date before the
13 issuance of the Good Samaritan dis-
14 charge permit, clause (i) shall not
15 apply to any action that is based on
16 any condition that results from the re-
17 mediation activities.

18 “(II) OTHER PARTIES.—A per-
19 mittee shall not be subject to any ac-
20 tion under sections 309 or 505 for
21 any violation committed by any other
22 party.

23 “(C) OBLIGATIONS OF STATES AND INDIAN
24 TRIBES.—Except as otherwise provided in this
25 section, nothing in this subsection limits any

1 obligation of a State or Indian tribe described
2 in section 303.

3 “(D) OTHER DEVELOPMENT.—

4 “(i) IN GENERAL.—Any development
5 of an inactive or abandoned mine site (in-
6 cluding any activity relating to mineral ex-
7 ploration, processing, beneficiation, or min-
8 ing), including development by a permittee
9 or any cooperating person, not authorized
10 in a permit issued by the permitting au-
11 thority under this subsection shall be sub-
12 ject to this Act.

13 “(ii) COMMINGLING OF DIS-
14 CHARGES.—The commingling of any other
15 discharge or water with any discharge or
16 water subject to a Good Samaritan dis-
17 charge permit issued under this subsection
18 shall not limit or reduce the liability of any
19 person associated with the water or dis-
20 charge that is not subject to the Good Sa-
21 maritan discharge permit.

22 “(E) RECOVERABLE VALUE.—A Good Sa-
23 maritan to whom a permit is issued may sell or
24 use materials recovered during the implementa-

1 tion of the plan only if the proceeds of any such
2 sale are used to defray the costs of—

3 “(i) remediation of the site addressed
4 in the permit; or

5 “(ii) voluntary remediation of any
6 other inactive or abandoned mine site cov-
7 ered by a permit issued under this section.

8 “(F) STATE CERTIFICATION.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in clause (ii), to the extent that this
11 subsection relates to water quality stand-
12 ards, certification under section 401 shall
13 not apply to any Good Samaritan dis-
14 charge permit issued under this subsection.

15 “(ii) EXCEPTION.—In any case in
16 which certification under section 401
17 would otherwise be required, no Good Sa-
18 maritan discharge permit shall be issued
19 by a permitting authority under this sub-
20 section without the concurrence of—

21 “(I) the State in which the site of
22 the discharge is located; or

23 “(II) the Indian tribe that owns
24 or has jurisdiction over the site on

1 which a remediation project is pro-
2 posed.

3 “(G) STATE AND TRIBAL RECLAMATION
4 PROGRAMS.—No State, Indian tribe, or other
5 person shall be required to obtain a Good Sa-
6 maritan discharge permit pursuant to this sub-
7 section for any discharge, including any dis-
8 charge associated with the remediation of an in-
9 active or abandoned mine site with respect to
10 the conduct of reclamation work under a State
11 or tribal abandoned mine reclamation plan ap-
12 proved under title IV of the Surface Mining
13 Control and Reclamation Act of 1977 (30
14 U.S.C. 1231 et seq.).

15 “(9) LIABILITY OF OTHER PARTIES.—Nothing
16 in this subsection (including any result caused by
17 any action taken by a permittee or a cooperating
18 person) limits the liability of any person other than
19 a permittee or a cooperating person under this Act
20 or any other law.

21 “(10) REGULATIONS.—

22 “(A) IN GENERAL.—Subject to subpara-
23 graph (B), not later than 1 year after the date
24 of enactment of this subsection, after providing
25 for public notice and an opportunity to com-

1 ment and a public hearing, the Administrator,
2 in consultation with the Secretary of the Inte-
3 rior and the Secretary of Agriculture, and ap-
4 propriate State, tribal, and local officials, shall
5 promulgate regulations to establish—

6 “(i) generally applicable requirements
7 for remediation plans described in para-
8 graph (3)(B); and

9 “(ii) any other requirement that the
10 Administrator determines to be necessary.

11 “(B) SPECIFIC REQUIREMENTS BEFORE
12 PROMULGATION OF REGULATIONS.—Before the
13 date on which the Administrator promulgates
14 regulations under subparagraph (A), a permit-
15 ting authority may establish, on a case-by-case
16 basis, specific requirements that the permitting
17 authority determines would facilitate the imple-
18 mentation of this subsection with respect to a
19 Good Samaritan discharge permit issued to a
20 permittee.

21 “(11) FUNDING.—

22 “(A) ELIGIBILITY FOR SECTION 319
23 GRANTS.—A permittee shall be eligible to apply
24 for a grant under section 319(h).

1 “(B) GRANTS.—Subject to the availability
2 of appropriated funds, the Administrator may
3 award to any permittee a grant to assist the
4 permittee in implementing a remediation plan
5 with respect to a Good Samaritan discharge
6 permit of the permittee.

7 “(12) REPORT TO CONGRESS.—

8 “(A) IN GENERAL.—Not later than 1 year
9 before the date of termination of the authority
10 of the permitting authority under paragraph
11 (13), the Administrator shall submit to Con-
12 gress a report describing the activities author-
13 ized by this subsection.

14 “(B) CONTENTS.—The report required
15 under subparagraph (A) shall contain, at a
16 minimum—

17 “(i) a description of—

18 “(I) each Good Samaritan dis-
19 charge permit issued under this sub-
20 section;

21 “(II) each permittee;

22 “(III) each inactive or abandoned
23 mine site addressed by a Good Samar-
24 itan discharge permit issued under
25 this subsection (including each body

1 of water and the baseline water qual-
2 ity of each body of water affected by
3 each inactive or abandoned mine site);

4 “(IV) the status of the implemen-
5 tation of each remediation plan associ-
6 ated with each Good Samaritan dis-
7 charge permit issued under this sub-
8 section (including specific progress
9 that each remediation activity con-
10 ducted by a permittee pursuant to
11 each Good Samaritan discharge per-
12 mit has made toward achieving the
13 goals and objectives of the remedi-
14 ation plan); and

15 “(V) each enforcement action
16 taken by the Administrator or applica-
17 ble State or Indian tribe concerning a
18 Good Samaritan discharge permit
19 issued under this subsection (includ-
20 ing the disposition of the action);

21 “(ii) a summary of each remediation
22 plan associated with a Good Samaritan
23 discharge permit issued under this sub-
24 section, including—

1 “(I) the goals and objectives of
2 the remediation plan;

3 “(II) the budget of the activities
4 conducted pursuant to the remedi-
5 ation plan; and

6 “(III) the practices to be em-
7 ployed by each permittee in accord-
8 ance with the remediation plan of the
9 permittee to reduce, control, mitigate,
10 or eliminate adverse impacts to the
11 quality of applicable bodies of water;
12 and

13 “(iii) any recommendations that may
14 be proposed by the Administrator to mod-
15 ify any law (including this subsection and
16 any regulation promulgated under para-
17 graph (10)) to facilitate the improvement
18 of water quality through the remediation of
19 inactive or abandoned mine sites.

20 “(13) TERMINATION OF AUTHORITY.—The au-
21 thority granted to the permitting authority under
22 this subsection to issue Good Samaritan discharge
23 permits terminates on the date that is 10 years after
24 the date of enactment of this subsection.

1 “(14) SEVERABILITY.—If any provision of this
2 subsection, or the application of any provision of this
3 subsection to any person or circumstance, is held in-
4 valid, the application of such provision to other per-
5 sons or circumstances, and the remainder of this
6 subsection, shall not be affected thereby.”.

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