

# BUSINESS MEETING

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## MEETING

OF THE

### COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

### UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

—————  
JANUARY 18, 2024  
—————

Printed for the use of the Committee on Environment and Public Works



Available via the World Wide Web: <http://www.govinfo.gov>

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U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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## **BUSINESS MEETING**

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**WEDNESDAY, JANUARY 18, 2024**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:32 a.m., in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the committee) presiding.

Present: Senators Carper, Capito, Cardin, Merkley, Markey, Stabenow, Kelly, Fetterman, Cramer, Lummis, Ricketts, Boozman.

### **OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. I call this business meeting to order. It is good to be with all of you today. We thank everyone for the work that they have done in anticipation of this markup, members and the staff as well.

Today we are going to be voting, as you know, on five pieces of legislation: the Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency Act of 2023, or PROVE IT Act; also the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023; the Reuben E. Lawson Federal Building Act of 2023; a bill to designate the United States Courthouse located at 500 West Pike Street in Clarksburg, West Virginia as the Irene M. Keeley United States Courthouse; and a bill to designate the Federal building located at 300 East Third Street in North Platte, Nebraska, as the Virginia Smith Federal Building.

Before we do this, though, I want to take a moment to briefly discuss these bills.

The first bill we will consider is better known as the PROVE IT Act. This bipartisan legislation was introduced by Senator Coons, my wingman from the First State, and by Senator Cramer, a respected member of our committee. It is also co-sponsored by a number of Democrat and Republican members of our committee.

The PROVE IT Act directs the Department of Energy to conduct a study that compares the climate impacts of making certain products in the United States with the climate impacts of making those same products in other countries.

As it turns out, because the United States is increasingly generating clean electricity and because many of our factories use modern methods and pollution controls, a lot of our domestic production has lower greenhouse gas emissions than the production in other countries. For example, if you make aluminum using electricity

from renewable energy, the process is going to be a lot cleaner than making aluminum using electricity generated by burning coal. We also see this with other products such as steel, cement and concrete.

In a world where many countries are trying to cut greenhouse gas emissions to slow climate change, having cleaner products can also give us a competitive trade advantage. For example, the European Union has adopted a so-called carbon border adjustment mechanism, which will soon place a tariff on imports of products that were produced with relatively high greenhouse gas emissions.

But what is missing is solid data on the average greenhouse gas emissions in different countries. The PROVE IT Act aims to fill that data gap and make that information publicly available. We expect this information to boost the competitiveness of U.S. manufacturing and help incentivize cleaner production in the United States and overseas so that this is a win-win for our climate and for our economy.

Next, we will consider the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023, a bipartisan bill authored by Senators Heinrich and Risch. To date, more than one-quarter of all Senators have signed on to this bill, evenly split between Democrats and Republicans.

The Good Samaritan Act, known to some as Good Sam, aims to eliminate a longstanding barrier to the cleanup of abandoned mine sites. Federal agencies have identified over 140,000 remnants of abandoned hard rock mines, of which more than 60 percent pose safety and environmental hazards. Fortunately, organizations that have no legal or financial ties to these abandoned mines, true good Samaritans, want to volunteer to clean up these sites.

However, such organizations have limited options to do so under current law, since they would have to assume undue liability to perform such cleanups. Good Sam creates a pilot program that would allow a limited number of clean-up efforts to move forward with conditional liability protections.

Projects that qualify under the program must meet stringent environmental protection and public health requirements. All projects must also undergo a NEPA review, and owners or operators of mines are not eligible for the program.

I want to thank our colleagues. I especially want to thank Senator Heinrich and Senator Risch for their efforts in crafting this legislation and working with our committee to improve it over the last two sessions. A number of members of our committee have co-sponsored this legislation and we thank you for your input to it.

Finally, we will vote on three bills naming buildings owned by the General Services Administration. We will vote on those bills en bloc.

The first of those three naming bills, sponsored by Senators Warner and Kaine of Virginia, would rename the Richard H. Poff Federal Building in Roanoke, Virginia, as the Reuben E. Lawson Federal Building. Mr. Lawson dedicated his life, as some of you may recall, his life and his career to fighting against segregation.

The second naming bill is sponsored by our Ranking Member, Senator Capito, along with Senator Manchin. This legislation would name the United States Courthouse located at 500 West

Pike Street in Clarksburg, West Virginia, as the Irene M. Keeley United States Courthouse, after the first woman appointed as a judge for the U.S. District Court in the Northern District of West Virginia.

Finally, we have a bill from Senator Ricketts and Senator Fisher to name the Federal Building located at 300 East Third Street in North Platte, Nebraska, as the Virginia Smith Federal Building after Virginia Smith, the first woman elected to Congress in the State of Nebraska.

With that, let me recognize the Ranking Member, Senator Capito, for any opening remarks she would like to make. We are happy to be with you today.

**OPENING STATEMENT OF HON. SHELLY MOORE CAPITO,  
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator CAPITO. Thank you, Chairman Carper, and thanks for holding our first business meeting of 2024.

I want to thank you and your staff for preparing the amendment in the nature of a substitute for S. 2781, the Good Samaritan Remediation Abandoned Hardrock Mines Act of 2023.

We had a productive hearing on this in 2022, on this very legislation which would, as the Chairman mentioned, establish a 7-year pilot program and permit 15 Good Samaritan remediation projects of abandoned mines on Federal, State, tribal and private lands. This commonsense program would provide the liability protection to good Samaritans that want to undertake important work to improve water quality. I support this bill.

Today, we will also be considering the three GSA naming bills, including one I am very proud to sponsor. S. 3570, which I introduced with Senator Manchin, would designate the Federal Courthouse on Pike Street in Clarksburg, West Virginia as the Irene M. Keeley United States Courthouse.

Judge Keeley earned her law degree from West Virginia University College of Law in 1980. President George H. W. Bush nominated her to the Federal bench in 1992, and she was confirmed by the Senate, get this, unanimously.

She went on to serve on the United States District Court of the Northern District of West Virginia for 30 years as the State's first female judge, including as chief judge for 7 years. Judge Keeley took senior status in 2017 and inactive status in 2022.

Designation of the Clarksburg Federal Courthouse in her honor is a fitting tribute for the decades of dedication and service to her State and Country, all while being a very inspiring role model to young women and even older women, like me, and lawyers across West Virginia.

Today, we also consider Senator Ricketts' legislation to designate the Federal Building in North Platte, Nebraska, after former Congresswoman Virginia Smith, as well as legislation to redesignate the Federal Courthouse in Roanoke, Virginia. I urge my colleagues to support all of these bills.

However, I must express my opposition to the final bill on today's agenda, S. 1863, the PROVE IT Act. The committee has a well-established record over the last several years of finding common ground on climate legislation. I am proud of our work. The Chair-

man and I have partnered to advance such bills as the Future Act, the USE IT Act, the Nuclear Energy Innovation and Modernization Act, and the Infrastructure and Investment in Jobs Act.

Now, we are working together to get the ADVANCE Act, which is our nuclear bill, signed into law. We have also collaborated on many non-climate environmental bills that will have benefits for ecosystem teams across this Country, such as the Chesapeake WILD Act and the America's Conservation Enhancement Act.

These are conservation initiatives and aspirations that we share. I know that the Chairman wants to extend these as we move through the rest of the year. I have the greatest respect for the bill's sponsors, but this bill does not set up a climate policy I am in support of.

Advocates have named different reasons for supporting this bill: study emissions on behalf of Europe; prepare for carbon tariffs; or a facilitated domestic carbon tax. All three of these rationales concern me.

The substitute amendment we are considering today directs the Department of Energy (DOE) to report to Congress on the average emissions of 22 industrial sectors and to compare them to those of other countries, from American allies to competitors, including China. It is vague on the authorities to be used by the department to conduct this review. It enables DOE to add additional categories at will and allows the agency to cite where and why they found a lack of data and to pressure companies to disclose.

While some have stated this effort is to align, and the Chairman alluded to this, with the European Union's (EU) or Carbon Border Adjustment Mechanism (CBAM), PROVE IT goes beyond the categories covered by the EU for reasons unexplained. I think decades of history proves that America should not follow Europe's environmental and trade policies which have left the continent reeling in the face of supply disruptions due to Russia, dealing with higher energy and living costs, and suffering a less vibrant and competitive economy than we have right here in the United States.

The argument that the bill is just a study also does not resonate with me. We have a number of repositories of greenhouse gas emissions data already being collected by the Federal Government, specifically the EPA, which we have jurisdiction over, such as the Greenhouse Gas Inventory and the Greenhouse Gas Reporting Rule, something belatedly acknowledged in the amendment that I believe Senator Cramer will be offering in the nature of a substitute later on today.

I already find the redundant number of sources we have to be confusing. Before we consider establishing yet another greenhouse gas data set for study to burden American industry and potentially confuse policymakers and the public, we need to better understand the ones we already have.

Even if we did that, I still have concerns with establishing a carbon intensity study, in large part, because of what I have lived through as the lead Republican opposing the EPW portions of the Inflation Reduction Act.

Even if we were to all agree that providing a study at this point is the only goal and not the imposition of a carbon tax, or tariff, we have seen through the Inflation Reduction Act how innocuous

data collection responsibilities can later be weaponized to implement damaging partisan policies, including taxes.

I will give you an example. Subpart W in the Methane Emissions Reduction Program, also known as MERP, is one such cautionary tale. Through the Inflation Reduction Act, Democrats transformed Subpart W from a reporting requirement to a hammer used to nail a tax on American oil and gas industry to be paid by the American consumers. The EPA was directed to update Subpart W, a reporting framework that has existed for over a decade, and then use it to set the tax.

I hear regularly from stakeholders now, even ones who did not oppose the MERP at the time of its enactment, who say the fee needs to be repealed because the EPA has now revised Subpart W and inflated the emissions reported under that program to impose an unjustified fee. All I keep thinking is, I tried to tell you that at the time.

I see the exact thing happening here with the study and reports generated by the PROVE IT Act. I noticed that the revised bill now includes a clarification that states that nothing in the PROVE IT Act itself directly authorizes new taxes or fees.

But that provision does not prevent Congress from imposing such a tax or tariff through future legislation, even in a partisan fashion, through the reconciliation process such as the IRA using the studies and reports developed by the PROVE IT Act. We saw how, once a reporting framework exists, Democrats used that framework to impose the MERP without running up against the Byrd Rule. Believe me, we fought hard with the parliamentarians and did not prevail. We also saw that prior savings clauses were overridden as part of the Byrd Rule and other reconciling provisions in the EPW title of the Inflation Reduction Act. My question is, savings clauses are ineffective.

I will offer a couple amendments to try to cure what I think are some of the worst issues with the legislation but fear that its initial premise, construction and significant potential costs for American households and businesses require me to oppose it.

Thank you, Mr. Chairman.

Senator CARPER. I thank you as well.

I see that a quorum is present, so let's go ahead and get started.

First, I want to call up S. 1863, the PROVE IT Act of 2023 and the Cramer amendment in the nature of a substitute to this legislation numbered Cramer 1. The amendment in the nature of a substitute makes several minor changes agreed to on a bipartisan basis with the bill's sponsors.

[The text of S. 1863 and Cramer Amendment 1 follows:]

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. CRAMER

Viz:

1 Strike all after the enacting clause and insert the following:  
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency  
5 Act of 2024” or the “PROVE IT Act of 2024”.

7 **SEC. 2. STUDY ON GREENHOUSE GAS EMISSIONS INTENSITY OF CERTAIN PRODUCTS PRODUCED IN THE UNITED STATES AND IN CERTAIN FOREIGN COUNTRIES.**

11 (a) DEFINITIONS.—In this section:

1 (1) APPROPRIATE COMMITTEES OF CON-  
2 GRESS.—The term “appropriate committees of Con-  
3 gress” means—

4 (A) the Committee on Environment and  
5 Public Works of the Senate;

6 (B) the Committee on Energy and Natural  
7 Resources of the Senate; and

8 (C) the Committee on Energy and Com-  
9 merce of the House of Representatives.

10 (2) AVERAGE PRODUCT EMISSIONS INTEN-  
11 SITY.—The term “average product emissions inten-  
12 sity” means the national average of the product  
13 emissions intensity of a category of covered products  
14 produced in, as applicable—

15 (A) the United States; or

16 (B) a covered country.

17 (3) CARBON DIOXIDE-EQUIVALENT; CO<sub>2</sub>-E.—  
18 The term “carbon dioxide-equivalent” or “CO<sub>2</sub>-e”  
19 means the number of metric tons of carbon dioxide  
20 emissions with the same global warming potential as  
21 one metric ton of another greenhouse gas.

22 (4) CATEGORY OF COVERED PRODUCTS.—

23 (A) IN GENERAL.—The term “category of  
24 covered products” means—

1 (i) a category described in any of  
2 clauses (i) through (xxii) of subparagraph  
3 (B), each of which consists of products  
4 covered by the headings or subheadings of  
5 the Harmonized Tariff Schedule of the  
6 United States described parenthetically in  
7 that clause; and

8 (ii) any other category of covered  
9 products, as determined by the Secretary,  
10 consisting of products covered by 1 or  
11 more headings or subheadings of the Har-  
12 monized Tariff Schedule of the United  
13 States.

14 (B) CATEGORIES DESCRIBED.—The cat-  
15 egories referred to in subparagraph (A)(i), con-  
16 sisting of products covered by the headings or  
17 subheadings of the Harmonized Tariff Schedule  
18 of the United States described parenthetically  
19 for each category, are the following:

20 (i) Aluminum (any of 7601 through  
21 7608).

22 (ii) Articles of aluminum (any of 7609  
23 through 7616).

24 (iii) Articles of cement (6810 or  
25 6811).

- 1 (iv) Articles of iron and steel (any of  
2 7307 through 7326).
- 3 (v) Articles of plastic (any of 3916  
4 through 3926).
- 5 (vi) Biofuels (2207.10, 2207.20, or  
6 3826).
- 7 (vii) Cement (2523 or 3824.5).
- 8 (viii) Crude oil (2709).
- 9 (ix) Fertilizer (2808, 2814, 2834.21,  
10 or any of 3101 through 3105).
- 11 (x) Glass (any of 7001 through 7020).
- 12 (xi) Hydrogen (2804.10).
- 13 (xii) Iron and steel (any of 7201  
14 through 7306).
- 15 (xiii) Lithium-ion batteries (8507.60).
- 16 (xiv) Natural gas (2711.11 or  
17 2711.21).
- 18 (xv) Petrochemicals (2901 or  
19 2711.14).
- 20 (xvi) Plastics (any of 3901 through  
21 3915).
- 22 (xvii) Pulp and paper (any of 4701  
23 through 4707 or 4801 through 4813).
- 24 (xviii) Refined strategic and critical  
25 minerals, including copper, cobalt, graph-

1           ite, lithium, manganese, and nickel  
 2           (2825.50, 2827.41, any of 7401 through  
 3           7404, 7406, 2822.00, 8105.20, 8105.30,  
 4           2504, 3801.10, 2836.91, 2825.20,  
 5           2820.10, 8111, 2825.40, any of 7501  
 6           through 7504, or 2833.24).

7           (xix) Refined petroleum products  
 8           (2710, 2712, 2713, 2714, 2715, 2902.20,  
 9           2902.30, or 2902.44).

10          (xx) Solar cells and panels (any of  
 11          8541.42 through 8541.43).

12          (xxi) Uranium (2612.10, 2844.10,  
 13          2844.20, or 2844.30).

14          (xxii) Wind turbines (8502.31).

15          (C) CLARIFICATION.—If, after the Sec-  
 16          retary begins the first study under subsection  
 17          (b), the headings or subheadings of the Har-  
 18          monized Tariff Schedule of the United States  
 19          are changed, or any products are added to or  
 20          removed from a heading or subheading, the  
 21          Secretary may continue, in that or any subse-  
 22          quent study, to study the applicable products as  
 23          if the applicable change had not occurred.

24          (5) COVERED COUNTRY.—The term “covered  
 25          country” means each of the following:

1 (A) A country that is a member of the  
2 Group of Seven.

3 (B) A country that is a signatory to a free  
4 trade agreement with the United States that is  
5 in effect as of the date on which the Secretary  
6 begins a study under subsection (b)(1).

7 (C) A foreign country of concern (as de-  
8 fined in section 9901 of the William M. (Mac)  
9 Thornberry National Defense Authorization Act  
10 for Fiscal Year 2021 (15 U.S.C. 4651)).

11 (D) A country that, in the determination  
12 of the Secretary, holds more than a de minimis  
13 share of the global market share, as measured  
14 by official trade statistics, of—

15 (i) 1 or more categories of covered  
16 products; or

17 (ii) upstream inputs for 1 or more  
18 categories of covered products.

19 (E) Any other country that the Secretary  
20 determines to be appropriate, including any  
21 country that the Secretary determines is a sig-  
22 nificant producer or exporter of at least 1 cat-  
23 egory of covered products.

24 (6) COVERED PRODUCT.—

1 (A) IN GENERAL.—The term “covered  
2 product” means a product covered by—

3 (i) any of the headings or subheadings  
4 of the Harmonized Tariff Schedule of the  
5 United States described parenthetically in  
6 subparagraph (B) of paragraph (4), sub-  
7 ject to subparagraph (C) of that para-  
8 graph; or

9 (ii) any other heading or subheading  
10 of the Harmonized Tariff Schedule of the  
11 United States included within a category  
12 of covered products determined by the Sec-  
13 retary in accordance with paragraph  
14 (4)(A)(ii).

15 (B) LIST OF COVERED PRODUCTS.—The  
16 Secretary shall maintain a list of covered prod-  
17 ucts that identifies the category of covered  
18 products associated with each covered product  
19 on the list.

20 (7) GREENHOUSE GAS.—The term “greenhouse  
21 gas” has the meaning given the term in section 901  
22 of the Energy Independence and Security Act of  
23 2007 (42 U.S.C. 17321).

24 (8) PRODUCT EMISSIONS INTENSITY.—

1 (A) IN GENERAL.—The term “product  
2 emissions intensity” means the quantity of  
3 greenhouse gases emitted to the atmosphere as  
4 a result of the extraction, production, pro-  
5 cessing, manufacture, assembly, and transport,  
6 as applicable, of 1 unit of a covered product, in-  
7 cluding the greenhouse gas emissions of an up-  
8 stream input that is incorporated into a down-  
9 stream covered product.

10 (B) UNITS OF MEASUREMENT.—The Sec-  
11 retary, in coordination with the Administrator  
12 of the Environmental Protection Agency, shall  
13 designate the units of measurement in which  
14 the product emissions intensity of a covered  
15 product shall be expressed, which may in-  
16 clude—

17 (i) metric tons of CO<sub>2</sub>-e per metric  
18 ton of a covered product;

19 (ii) metric tons of CO<sub>2</sub>-e per dollar  
20 value of a covered product; or

21 (iii) any other unit of measurement  
22 that the Secretary determines to be appro-  
23 priate.

24 (9) SECRETARY.—The term “Secretary” means  
25 the Secretary of Energy.

1 (b) STUDY.—

2 (1) IN GENERAL.—Not later than 2 years after  
3 the date of enactment of this Act, and not less fre-  
4 quently than once every 5 years thereafter, the Sec-  
5 retary, in coordination with the Secretary of Com-  
6 merce (including appropriate officials of the Bureau  
7 of the Census and the International Trade Adminis-  
8 tration), the Administrator of the Environmental  
9 Protection Agency, the United States Trade Rep-  
10 resentative, the Secretary of Homeland Security, the  
11 Secretary of State, the Secretary of Agriculture, and  
12 such other Federal officials as the Secretary deter-  
13 mines to be appropriate, shall conduct, and submit  
14 to the appropriate committees of Congress a report  
15 describing the results of, a study—

16 (A) to determine the average product emis-  
17 sions intensity of each category of covered prod-  
18 ucts produced in the United States;

19 (B) to identify gaps in product emissions  
20 intensity data for categories of covered products  
21 produced in the United States;

22 (C) subject to paragraph (3)(B), to deter-  
23 mine the average product emissions intensity of  
24 each category of covered products produced in  
25 each covered country, which may incorporate,

1 as the Secretary determines to be appropriate,  
2 findings from—

3 (i) the implementation of the meas-  
4 ures described in section ~~40416~~(a) of the  
5 Infrastructure Investment and Jobs Act  
6 (~~42~~ U.S.C. 18776(a));

7 (ii) the international energy data re-  
8 sources described in that section; and

9 (iii) other existing data sources, in-  
10 cluding—

11 (I) the Greenhouse Gas Report-  
12 ing Program of the Environmental  
13 Protection Agency;

14 (II) the Annual Integrated Eco-  
15 nomic Survey and the Economic Cen-  
16 sus of the Bureau of the Census;

17 (III) official trade statistics of  
18 the United States International Trade  
19 Commission; and

20 (IV) other relevant data sources,  
21 including those described in para-  
22 graphs (5) through (7);

23 (D) to identify any issues with verifying  
24 the average product emissions intensity data for

1 covered products produced in each covered  
2 country; and

3 (E) to determine the relative average prod-  
4 uct emissions intensity of each category of cov-  
5 ered products produced in the United States  
6 compared to the average product emissions in-  
7 tensity of each category of covered products  
8 produced in each covered country.

9 (2) PRIORITIZATION.—

10 (A) IN GENERAL.—Subject to subpara-  
11 graph (B), in conducting the study under para-  
12 graph (1), the Secretary shall complete all ele-  
13 ments of the study described in subparagraphs  
14 (A) through (E) of that paragraph within the  
15 applicable 2- or 5-year timeframe.

16 (B) PRIORITIZATION DUE TO DATA OR  
17 TIME CONSTRAINTS.—If completion of all ele-  
18 ments described in subparagraphs (A) through  
19 (E) of paragraph (1) with respect to a study  
20 under that paragraph is precluded by data or  
21 time constraints, the Secretary shall adhere to  
22 the applicable 2- or 5-year timeframe by  
23 prioritizing the study of—

1 (i) higher priority categories of cov-  
 2 ered products, as described in subpara-  
 3 graph (C); and

4 (ii) higher priority covered countries,  
 5 starting with those that are among the 5  
 6 largest global exporters or the 5 largest  
 7 sources of imports into the United States.

8 (C) ORDER OF PRIORITY DESCRIBED.—  
 9 The order of priority described in subparagraph  
 10 (B)(i) is as follows:

11 (i) First, categories of covered prod-  
 12 ucts subject to international border carbon  
 13 adjustment mechanisms, such as the Car-  
 14 bon Border Adjustment Mechanism of the  
 15 European Union, including the categories  
 16 of covered products described in each of—

17 (I) clause (i) of subsection  
 18 (a)(4)(B) (aluminum);

19 (II) clause (ii) of that subsection  
 20 (articles of aluminum);

21 (III) clause (iii) of that sub-  
 22 section (articles of cement);

23 (IV) clause (iv) of that subsection  
 24 (articles of iron and steel);

## 13

1 (V) clause (vii) of that subsection  
2 (cement);

3 (VI) clause (ix) of that sub-  
4 section (fertilizer);

5 (VII) clause (xi) of that sub-  
6 section (hydrogen); and

7 (VIII) clause (xii) of that sub-  
8 section (iron and steel).

9 (ii) Second, categories of covered  
10 products relating to other emissions-inten-  
11 sive, trade-exposed industries, including  
12 the categories of covered products de-  
13 scribed in each of—

14 (I) clause (v) of subsection  
15 (a)(4)(B) (articles of plastic);

16 (II) clause (x) of that subsection  
17 (glass);

18 (III) clause (xvi) of that sub-  
19 section (plastics); and

20 (IV) clause (xvii) of that sub-  
21 section (pulp and paper).

22 (iii) Third, categories of covered prod-  
23 ucts relating to fuels, including biofuels  
24 and uranium, or other energy materials,

14

1 including the categories of covered prod-  
 2 ucts described in each of—

3 (I) clause (vi) of subsection  
 4 (a)(4)(B) (biofuels);

5 (II) clause (viii) of that sub-  
 6 section (crude oil);

7 (III) clause (xiii) of that sub-  
 8 section (lithium-ion batteries);

9 (IV) clause (xiv) of that sub-  
 10 section (natural gas);

11 (V) clause (xv) of that subsection  
 12 (petrochemicals);

13 (VI) clause (xviii) of that sub-  
 14 section (refined strategic and critical  
 15 minerals);

16 (VII) clause (xix) of that sub-  
 17 section (refined petroleum products);

18 (VIII) clause (xx) of that sub-  
 19 section (solar cells and panels);

20 (IX) clause (xxi) of that sub-  
 21 section (uranium); and

22 (X) clause (xxii) of that sub-  
 23 section (wind turbines).

24 (D) FLEXIBILITY.—The Secretary may ac-  
 25 celerate the timeline for the collection and anal-

1           ysis of data relating to any category of covered  
2           products or any covered country if there is a  
3           reasonable justification for the utility of accel-  
4           erating the collection and analysis of that data,  
5           such as a new trade negotiation, a new market  
6           opportunity for the export of covered products  
7           from the United States, or another justification.

8           (3) REQUIREMENTS.—

9                   (A) IN GENERAL.—In the report submitted  
10           under paragraph (1), the Secretary shall in-  
11           clude—

12                           (i) a detailed, specific, and trans-  
13                           parent description of the methodology, de-  
14                           veloped in coordination with the Adminis-  
15                           trator of the Environmental Protection  
16                           Agency, used to determine the average  
17                           product emissions intensity of a category  
18                           of covered products under subparagraphs  
19                           (A) and (C) of that paragraph;

20                           (ii) a record of all sources of data  
21                           used to determine the average product  
22                           emissions intensity of a category of covered  
23                           products under subparagraphs (A) and (C)  
24                           of that paragraph; and

1 (iii) the heading or subheading of the  
 2 Harmonized Tariff Schedule of the United  
 3 States associated with each covered prod-  
 4 uct for which the average product emis-  
 5 sions intensity of a category of covered  
 6 products is determined under subpara-  
 7 graphs (A) and (C) of that paragraph.

8 (B) CERTAIN COVERED COUNTRIES.—In  
 9 carrying out subparagraph (C) of paragraph  
 10 (1), the Secretary may limit the study under  
 11 that paragraph to categories of covered prod-  
 12 ucts with respect to which the applicable cov-  
 13 ered country holds more than a de minimis  
 14 share of the global market share of that cat-  
 15 egory of covered products.

16 (C) REUSE OF END-OF-LIFE MATERIALS.—  
 17 In determining the average product emissions  
 18 intensity of a category of covered products  
 19 under subparagraphs (A) and (C) of paragraph  
 20 (1), the Secretary shall favorably consider the  
 21 reuse of end-of-life materials in place of virgin  
 22 raw materials.

23 (4) COORDINATION AMONG PRIMARY STUDY  
 24 PARTICIPANTS.—In carrying out paragraph (1), the  
 25 Secretary, the Secretary of Commerce, the Adminis-

1       trator of the Environmental Protection Agency, the  
2       United States Trade Representative, the Secretary  
3       of Homeland Security, the Secretary of State, and  
4       such other Federal officials as the Secretary deter-  
5       mines to be appropriate shall establish procedures to  
6       facilitate timely and efficient sharing of methodolo-  
7       gies, data, or other information and expertise for  
8       purposes of carrying out that paragraph, including,  
9       if appropriate, by designating appropriate individ-  
10      uals with appropriate qualifications to review any  
11      data shared.

12           (5) CONSULTATION AND COORDINATION WITH  
13      OTHERS.—In carrying out paragraph (1), the Sec-  
14      retary may consult and enter into agreements with  
15      institutions having relevant data or data collection  
16      or analysis capabilities, such as the National Lab-  
17      oratories, the National Institute of Standards and  
18      Technology, the National Academy of Sciences, the  
19      International Energy Agency, the Organisation for  
20      Economic Co-operation and Development, and rel-  
21      evant academic and non-governmental partners.

22           (6) CONSULTATION AND COORDINATION WITH  
23      INDUSTRY PARTNERS.—

1 (A) IN GENERAL.—In carrying out para-  
2 graph (1), the Secretary, in coordination with  
3 the Secretary of Commerce, shall—

4 (i) establish a process to receive data  
5 from industry partners on a voluntary  
6 basis, which the Secretary may incorporate  
7 at the discretion of the Secretary;

8 (ii) coordinate with existing industry  
9 emissions reporting mechanisms, to the ex-  
10 tent that the Secretary determines appro-  
11 priate; and

12 (iii) establish a process pursuant to  
13 which industry partners may request  
14 that—

15 (I) a product be included on the  
16 list of covered products maintained  
17 under subsection (a)(6)(B);

18 (II) a product be analyzed as a  
19 covered product in subsequent studies  
20 and reports under that paragraph;  
21 and

22 (III) certain data be treated as  
23 confidential business information, the  
24 disclosure of which may be limited  
25 with respect to—

1 (aa) the public database de-  
2 scribed in subsection (c); and

3 (bb) the report submitted  
4 under paragraph (1).

5 (B) LIMITATION.—Nothing in this para-  
6 graph affects how data may be treated pursu-  
7 ant to any other law or authority with respect  
8 to—

9 (i) the proprietary status of the data;  
10 or

11 (ii) any other protection from public  
12 disclosure.

13 (7) INTERNATIONAL COORDINATION.—

14 (A) IN GENERAL.—In carrying out para-  
15 graph (1), the Secretary, the Secretary of Com-  
16 merce, the Administrator of the Environmental  
17 Protection Agency, the United States Trade  
18 Representative, and the Secretary of State shall  
19 make every effort to coordinate with the govern-  
20 ments of covered countries—

21 (i) to inform the determination of av-  
22 erage emissions intensity values;

23 (ii) to advance common emissions ac-  
24 counting methodologies and data formats;  
25 and

1 (iii) to improve overall data avail-  
2 ability and quality.

3 (B) CONSULTATION.—In any case in which  
4 a covered country is credibly collaborating with  
5 the Secretary by supporting the collection, anal-  
6 ysis, or verification of data, the Secretary may  
7 give that covered country—

8 (i) a right to consultation with respect  
9 to the determination of the average prod-  
10 uct emissions intensity of 1 or more cat-  
11 egories of covered products produced in  
12 that covered country;

13 (ii) an opportunity to discuss chosen  
14 data; and

15 (iii) an opportunity to fill data gaps.

16 (8) DATA AVAILABILITY.—

17 (A) IN GENERAL.—In carrying out para-  
18 graph (1), the Secretary shall—

19 (i) take note of any instances in which  
20 there is not sufficient data to estimate with  
21 reasonable accuracy the average product  
22 emissions intensity of a category of covered  
23 products under subparagraph (A) or (C) of  
24 that paragraph;

1 (ii) include in the report submitted  
2 under that paragraph—

3 (I) a notation with respect to  
4 each instance noted under clause (i);  
5 and

6 (II) an explanation for that nota-  
7 tion;

8 (iii) identify any gaps in product  
9 emissions intensity data for covered prod-  
10 ucts or categories of covered products pro-  
11 duced in the United States; and

12 (iv) coordinate with the United States  
13 Trade Representative to assess the feasi-  
14 bility of implementing, within existing au-  
15 thority, a requirement for importers to  
16 provide data to fill any gaps in product  
17 emissions intensity data for covered prod-  
18 ucts or categories of covered products im-  
19 ported into the United States.

20 (B) REQUIREMENT.—For each instance  
21 noted under subparagraph (A)(i), the Secretary  
22 shall estimate with reasonable accuracy the av-  
23 erage product emissions intensity of the next  
24 highest aggregation of categories of covered  
25 products for which data are available.

1           (C) CONSIDERATIONS.—In determining  
2 whether there are sufficient data to estimate  
3 with reasonable accuracy the average product  
4 emissions intensity of a covered product or cat-  
5 egory of covered products under subparagraph  
6 (A)(i), the Secretary shall consider the following  
7 factors:

8           (i) The public availability of statistics  
9 on greenhouse gas emissions for particular  
10 industries from government sources and  
11 international organizations.

12           (ii) The public availability of data on  
13 the quantity and source of inputs, such as  
14 electricity, consumed by particular indus-  
15 tries.

16           (iii) The extent to which the data de-  
17 scribed in clauses (i) and (ii) cover a rep-  
18 resentative group of producers within an  
19 industry.

20           (iv) The transparency in the method  
21 used to collect, analyze, summarize, and  
22 publish the data described in clauses (i)  
23 and (ii).

1 (v) Whether there are other factors  
2 that may impact the accuracy of the data  
3 used.

4 (vi) The recency of the data used.

5 (c) PUBLIC DATABASE.—The Secretary shall estab-  
6 lish a public online database, or leverage an existing public  
7 online database, for—

8 (1) the average product emissions intensity data  
9 collected under subparagraphs (A) and (C) of sub-  
10 section (b)(1); and

11 (2) the relative average product emissions in-  
12 tensity of covered products determined under sub-  
13 paragraph (E) of that subsection.

14 (d) UPDATES.—Not less frequently than once every  
15 5 years, the Secretary shall update—

16 (1) the database established under subsection  
17 (c); and

18 (2) the list of covered products maintained  
19 under subsection (a)(6)(B).

20 (e) PRIORITIZATION OF UPDATES.—The Secretary  
21 shall prioritize updating data for categories of covered  
22 products for which data already exists in the database es-  
23 tablished under subsection (c), with the goal of adding  
24 data for additional categories of covered products and ad-  
25 ditional covered countries as available.

1 (f) CLARIFICATION.—Nothing in this Act provides  
2 any new authority to any Federal agency—

3 (1) to impose, collect, or enforce a greenhouse  
4 gas emissions tax, fee, duty, price, or charge; or

5 (2) to establish a new mandatory reporting re-  
6 quirement (including by regulation) with respect to  
7 the domestic production of any category of covered  
8 products.

Senator CARPER. As the Ranking Member and I have agreed, I now ask unanimous consent to use the amendment in the nature of a substitute as the base text for the purpose of the business meeting. Is there any objection?

[No audible response.]

Senator CARPER. Hearing no objection, the committee will use the Cramer substitute as the base text for the purpose of this committee's action on the (Providing Reliable, Objective, Verifiable Emissions Intensity & Transparency) PROVE IT Act. Does any Senator wish to offer an amendment to this legislation?

Before we do that, would you like to make some remarks?

Senator CRAMER. Yes, I would like to make some remarks on the amendment.

Senator CARPER. Please do. Go right ahead.

Senator CRAMER. Thank you, Mr. Chairman and Ranking Member, for having this markup today.

A lot has been said about the PROVE IT Act, but I want to clarify a few things as to what the PROVE IT Act does and importantly, what it does not do. We can make up all kinds of things that are possible that are not related to this, but PROVE IT does not authorize many of those things.

I was recently asked if PROVE IT would lead to EPA implementing the carbon tax. Now, if that was the bill, I would vote no, obviously. Thankfully, it is not the bill. There are a lot of things wrong with that supposition.

First of all, the EPA is not tasked with this study and neither this committee nor that agency handles tax policy. It is indicative of the noise that surrounds the actual substance of the legislation. I want to reiterate what is in the bill.

First, contrary to the Ranking Member's comments about this bill being a "road to a carbon tax," I want to read the actual text. We garnered, by the way, authorities which are not fuzzy and prohibitions which are clear as can be. "Nothing in this Act provides any new authority to any Federal agency to impose, collect or enforce a greenhouse gas emissions tax, fee, duty, price or charge." Right? So nothing empowers any agency to do any of these things.

If it were a tax, it would be in Chairman Carper's other committee, the Finance Committee, as I said earlier. I think it goes without saying that you would be hard pressed to find two States more opposed to a carbon tax than West Virginia and North Dakota, believe me. I have a long record of opposing a carbon tax.

So this insinuation that I would be pushing a tax on any of our manufacturers and producers is, well, it is laughable.

But even if you were trying to correlate PROVE IT to a carbon tax, I want to read something that supporters of a carbon tax have said about PROVE IT. They have said, "A domestic carbon fee would be applied on fuels when they enter the economy. The PROVE IT Act is an analysis of average product level emissions intensity data. This data is irrelevant in implementing a U.S. carbon fee." Those are advocates of a carbon fee.

I am starting to talk the people on the other side here out of this, I am afraid. I had better be careful.

[Laughter.]

Senator CRAMER. Similarly, there is support for some sort of carbon tariff to level the playing field for American workers while punishing polluting countries like China and Russia that undercut them.

But again, that is not today's bill. If it were, it would be in the Finance Committee. I find it concerning that some keep talking about carbon board adjustment as if it is theoretical. In fact, I think one of the things that the Ranking Member said is that some people say that PROVE IT is to accommodate the European Union's carbon tax. It is not to accommodate it; it is to defend against it.

The EU is already collecting data to implement their CBAM in 2026 and the United Kingdom has announced theirs will go into effect 1 year later. This is not theoretical; this is real. These are our closest allies preparing a tax, a tariff against products manufactured in the United States. Multiple American products will be charged a tariff based on math that the Europeans use. They are going to use it on us, not to help us.

PROVE IT is an opportunity to make sure we collect our own data rather than subject ourselves to whatever Europe hits us with. I do not want the steel, aluminum, hydrogen fertilizer producers that we represent to be hit by a European tariff without us having the data to rebut it.

The Department of Energy has a good record in this area. For example, this is a very specific and personal example. In 2019, when I got to know the French Ambassador really well, the French utility company, Engie, which is partially owned by the French government, canceled a contract for U.S. Liquefied Natural Gas (LNG) claiming it was dirty. Imagine that.

They had a large contract for United States liquid natural gas (LNG), but canceled it because they claimed it was dirty and instead, bought that gas from Russia, from Russia, 40 percent greater carbon intensity than our gas. Then of course, Vladimir Putin attacked Ukraine and Engie got religion and came to the realization they would rather have the clean stuff from the United States.

This is why Senator Coons and I tasked DOE with doing the study worked on by DOE and others to show that the United States has a distinct carbon advantage over our competitors. DOE should compile this data from existing sources, by the way. Nobody is being forced to provide new information. That is prohibited in the bill. DOE should compile this data to prove our American excellence.

Ultimately, this is about giving credit where credit is due. That is to the American workers who dutifully abide by the highest standards in the world. We need to make sure their compliance is not undercut by foreign competitors who have little to no environmental standards, never mind the equally egregious human and worker rights records of some of these players.

Finally, PROVE IT illustrates the high tax American businesses already pay in the form of compliance costs. That is why this bill has such broad support, because American businesses have made great strides at great cost in becoming the cleanest in the world. Their innovation and investments should be accounted for and we should use this data to make sure their interests are protected.

Mr. Chairman, sometimes people question why a Senator from North Dakota, an energy State like ours, would support PROVE IT. I get it. Some people like cheap stuff from China and are perfectly comfortable pretending there is nothing wrong with the communist regime abusing its citizens and environment to win an economic war with the United States.

But if the goal is to lessen global emissions, then the answer has to be to produce and manufacture more here in the United States of America, in the cleanest country. I will take Bakken and Alaskan North Slope crude any day over the dirtiest product coming out of Venezuela or Russia. The same goes for mining in Wyoming and Arizona and steel and aluminum production in Arkansas and West Virginia.

So let's put the data together to make sure we stand up for the workers and businesses that we represent. I urge a yes vote.

Thank you, Mr. Chairman.

Senator CARPER. Thank you for those comments. Thanks very much to you and your staff for all the work that you have done on this on this measure.

Does any Senator wish to offer an amendment to this legislation?

Senator CAPITO. I have an amendment at the desk.

Senator CARPER. Senator Capito, you are recognized.

Senator CAPITO. Thank you. This is Amendment No. 1.

First of all, I want to say to my friend from North Dakota, yes, I know you do not want a border tax. I get that. I mean, you do not want a carbon tax. I get that. If I inferred that in my statement, which I do not think I did, but if that is what you took away from it, I understand where you are on that.

You have emphasized time and again, collect our own data. Well, that is the purpose of this amendment. It addresses some of the concerns I have and I think it consolidates some of the emphasis that you put on yours.

It replaces the text of the bill with the direction to the EPA, which already has an inventory of U.S. greenhouse gas emissions and sinks, the six core categories that the PROVE IT Act contains. I add in the six core ones that are not currently being gathered by EPA to make it the same as what is in the PROVE IT Act. These categories are lithium ion batteries, hydrogen, uranium, critical minerals, solar panels and wind turbines.

The other materials covered in PROVE IT from oil and gas to cement to iron and steel to plastics to fertilizers are already addressed by the EPA in its annual inventory, which is now referenced in the amended underlying text.

The EPA is the agency charged with dealing with greenhouse gas emissions. It has published the annual inventory for years, presenting emission estimates dating back to 1990.

I may be skeptical about EPA's data collection and modeling, but I do think because of what has happened with Subpart W, but before we start layering on another bureaucracy through brand new efforts and bringing in new agencies like DOE, I think we need to already work with the ongoing data collection that goes on at EPA.

As I said, when I look at existing data sources, and I am not sure I am being clear here, but what I am saying let us take it out of DOE. This amendment takes it out of DOE, puts it in the existing

inventory that is very similar to what they are asking in the PROVE IT Act, adds in what is not already in the PROVE IT Act and that inventory would stand.

This inventory that is done at the EPA is done and was established to be in compliance with the United Nations Framework Convention on Climate Change and is compliant with international standards.

That is my amendment and I ask for support.

[The text of the amendment offered by Senator Capito follows:]

PAT24049 PTV

S.L.C.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed.

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mrs. CAPITO

Viz:

1 Strike all after the enacting clause and insert the following:  
2

3 **SECTION 1. UPDATE OF INVENTORY OF U.S. GREENHOUSE**  
4 **GAS EMISSIONS AND SINKS.**

5 (a) IN GENERAL.—Not later than 2 years after the  
6 date of enactment of this Act, the Administrator of the  
7 Environmental Protection Agency shall include in the annual  
8 Inventory of U.S. Greenhouse Gas Emissions and  
9 Sinks the following source categories:

10 (1) Lithium-ion batteries.  
11 (2) Hydrogen.

1 (3) Uranium.

2 (4) Critical minerals (as defined in section  
3 7002(a) the Energy Act of 2020 (30 U.S.C.  
4 1606(a))).

5 (5) Solar panels.

6 (6) Wind Turbines.

7 (b) PROHIBITION.—The Administrator of the Envi-  
8 ronmental Protection Agency may not carry out any regu-  
9 latory program using the data from any annual Inventory  
10 of U.S. Greenhouse Gas Emissions and Sinks or any re-  
11 lated report.

12 **SEC. 2. POINT OF ORDER AGAINST USING ANY INVENTORY**  
13 **REPORT TO SUPPORT A REVENUE MEASURE**  
14 **OR TARIFF IN A RECONCILIATION BILL.**

15 (a) POINT OF ORDER.—

16 (1) IN GENERAL.—In the Senate, it shall not be  
17 in order to consider a provision in a reconciliation  
18 bill reported under section 310 of the Congressional  
19 Budget Act of 1974 (2 U.S.C. 641) or an amend-  
20 ment thereto, an amendment between the Houses in  
21 relation thereto, or a conference report thereon that  
22 cites by reference, relies on, or otherwise uses any  
23 of the contents of any annual Inventory of U.S.  
24 Greenhouse Gas Emissions and Sinks or any related  
25 report to support or authorize—

1 (A) a revenue measure relating to a do-  
2 mestic tax or fee on the greenhouse gas emis-  
3 sions intensity of—

4 (i) any source category included in  
5 any annual Inventory of U.S. Greenhouse  
6 Gas Emissions and Sinks or a related re-  
7 port; or

8 (ii) any product within a source cat-  
9 egory described in clause (i); or

10 (B) a tariff on the greenhouse gas emis-  
11 sions intensity of any source category or prod-  
12 uct described in clause (i) or (ii) of subpara-  
13 graph (A).

14 (2) POINT OF ORDER SUSTAINED.—If a point  
15 of order is made by a Senator against a provision  
16 described in paragraph (1), and the point of order  
17 is sustained by the Chair, that provision shall be  
18 stricken from the measure and may not be offered  
19 as an amendment from the floor.

20 (b) FORM OF THE POINT OF ORDER.—A point of  
21 order under subsection (a)(1) may be raised by a Senator  
22 as provided in section 313(e) of the Congressional Budget  
23 Act of 1974 (2 U.S.C. 644(e)).

24 (c) CONFERENCE REPORTS.—When the Senate is  
25 considering a conference report on, or an amendment be-

4

1 tween the Houses in relation to, a reconciliation bill de-  
2 scribed in subsection (a)(1), upon a point of order being  
3 made by any Senator pursuant to that subsection, and  
4 such point of order being sustained, such material con-  
5 tained in such conference report or House amendment  
6 shall be stricken, and the Senate shall proceed to consider  
7 the question of whether the Senate shall recede from its  
8 amendment and concur with a further amendment, or con-  
9 cur in the House amendment with a further amendment,  
10 as the case may be, which further amendment shall consist  
11 of only that portion of the conference report or House  
12 amendment, as the case may be, not so stricken. Any such  
13 motion in the Senate shall be debatable. In any case in  
14 which such point of order is sustained against a conference  
15 report (or Senate amendment derived from such con-  
16 ference report by operation of this subsection), no further  
17 amendment shall be in order.

18 (d) SUPERMAJORITY WAIVER.—In the Senate, this  
19 section may be waived or suspended only by an affirmative  
20 vote of 60 Members, duly chose and sworn.

21 (e) PROHIBITION ON APPEALS.—It shall not be in  
22 order to appeal the ruling of the Chair on a point of order  
23 raised under this section.

Senator CARPER. Thank you for that.

Senator CAPITO. May I interject one other thing that my amendment does? I am sorry.

Senator CARPER. Sure.

Senator CAITO. My amendment also says that I have language in there that has a savings clause that does prevent the data's use for regulation and a budgetary point of order that would move it. If the data were to be used to put a carbon tax in, it would have to be at a 60 vote threshold rather than a 50 that is normal in a reconciliation measure.

Thank you.

Senator CARPER. Thank you.

I think our colleagues know I have great respect for our colleague from West Virginia. We work very hard every day to find consensus on all kinds of issues.

Today, I am afraid I am going to have to oppose her amendment. The amendment would replace the text of the PROVE IT Act with a bill that would block virtually any EPA regulation of greenhouse gas emissions. It would also establish a new point of order for the Senate floor prohibiting any revenue measure based on the greenhouse gas emissions associated with commodities or with products.

We know that the climate crisis is causing tremendous harm to our communities and our economy today and to our planet. It is getting worse and it is getting worse more quickly. The last thing Congress ought to be doing is blocking commonsense measures to reduce carbon pollution.

I would urge my colleagues to oppose this amendment.

Does any other Senator wish to speak on Senator Capito's first amendment? Anybody else?

[No audible response.]

Senator CARPER. Seeing no further speakers, the question is on approving the amendment. A roll call is requested. Is there a second?

Senator CARDIN. Second.

Senator CARPER. It has been moved and seconded. The CLERK will call the roll.

The CLERK. Mr. Boozman.

Senator BOOZMAN. No.

The CLERK. Mrs. Capito.

Senator CAPITO. Yes.

The CLERK. Mr. Cardin.

Senator CARDIN. No.

The CLERK. Mr. Cramer.

Senator CAPITO. No.

The CLERK. Mr. Fetterman.

Senator FETTERMAN. No.

The CLERK. Mr. Graham.

Senator CAPITO. No, by proxy.

The CLERK. Mr. Kelly.

Senator KELLY. No.

The CLERK. Ms. Lummis.

Senator LUMMIS. Aye.

The CLERK. Mr. Markey.

Senator MARKEY. No.

The CLERK. Mr. Merkley.

Senator MERKLEY. No.

The CLERK. Mr. Mullin.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Padilla.

Senator CARPER. No, by proxy.

The CLERK. Mr. Ricketts.

Senator RICKETTS. Yes.

The CLERK. Mr. Sanders.

Senator CARPER. No, by proxy.

The CLERK. Ms. Stabenow.

Senator STABENOW. No.

The CLERK. Mr. Sullivan.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Whitehouse.

Senator CARPER. No, by proxy.

The CLERK. Mr. Wicker.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Chairman.

Senator CARPER. No.

The CLERK. Mr. Chairman, can we get Mr. Mullin's vote once more, please?

Senator CAPITO. Mr. Mullin is yes, by proxy.

Senator CARPER. Is the CLERK prepared to report the roll call totals?

The CLERK. Yes, sir, the yeas 6, the nays are 13.

Senator CARPER. The amendment is not adopted.

Does any Senator wish to offer another amendment?

Senator CAPITO. I have another amendment.

Senator CARPER. Senator Capito, go ahead.

Senator CAPITO. Thank you. It is very simple. It goes to what my first, one of my concerns I had in my first amendment. I am going to try it again.

I expressed my concern about the PROVE IT Act being abused in a future reconciliation package to ram through a domestic carbon tax in a partisan reconciliation exercise.

The clarification in the revised bill I think is a bit insufficient. My amendment would raise a budgetary point of order against the use of PROVE IT as the basis for any revenue measure such as a CBAM or domestic carbon tax.

This point of order could only be waived by a vote of 60 or more Senators, not just a slim partisan majority. Any effort to use a bipartisan bill for such a purpose should require a robust bipartisan vote. I urge support.

[The text of the amendment offered by Senator Capito follows:]

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To establish a point of order against using a certain report to support a revenue measure or tariff in a reconciliation bill.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mrs. CAPITO

Viz:

- 1 At the end, add the following:
- 2 **SEC. 3. POINT OF ORDER AGAINST USING REPORT TO SUP-**
- 3 **PORT A REVENUE MEASURE OR TARIFF IN A**
- 4 **RECONCILIATION BILL.**
- 5 (a) POINT OF ORDER.—
- 6 (1) IN GENERAL.—In the Senate, it shall not be
- 7 in order to consider a provision in a reconciliation
- 8 bill reported under section 310 of the Congressional
- 9 Budget Act of 1974 (2 U.S.C. 641) or an amend-
- 10 ment thereto, an amendment between the Houses in

## 2

1 relation thereto, or a conference report thereon that  
2 cites by reference, relies on, or otherwise uses any  
3 of the contents of a report submitted under section  
4 2(b)(1) to support or authorize—

5 (A) a revenue measure relating to a do-  
6 mestic tax or fee on the greenhouse gas emis-  
7 sions intensity of—

8 (i) any category of covered products  
9 (as defined in section 2(a)); or

10 (ii) any product within a category of  
11 covered products (as so defined); or

12 (B) a tariff on the greenhouse gas emis-  
13 sions intensity of any product or category of  
14 covered products described in subparagraph  
15 (A).

16 (2) POINT OF ORDER SUSTAINED.—If a point  
17 of order is made by a Senator against a provision  
18 described in paragraph (1), and the point of order  
19 is sustained by the Chair, that provision shall be  
20 stricken from the measure and may not be offered  
21 as an amendment from the floor.

22 (b) FORM OF THE POINT OF ORDER.—A point of  
23 order under subsection (a)(1) may be raised by a Senator  
24 as provided in section 313(e) of the Congressional Budget  
25 Act of 1974 (2 U.S.C. 644(e)).

1 (c) CONFERENCE REPORTS.—When the Senate is  
2 considering a conference report on, or an amendment be-  
3 tween the Houses in relation to, a reconciliation bill de-  
4 scribed in subsection (a)(1), upon a point of order being  
5 made by any Senator pursuant to that subsection, and  
6 such point of order being sustained, such material con-  
7 tained in such conference report or House amendment  
8 shall be stricken, and the Senate shall proceed to consider  
9 the question of whether the Senate shall recede from its  
10 amendment and concur with a further amendment, or con-  
11 cur in the House amendment with a further amendment,  
12 as the case may be, which further amendment shall consist  
13 of only that portion of the conference report or House  
14 amendment, as the case may be, not so stricken. Any such  
15 motion in the Senate shall be debatable. In any case in  
16 which such point of order is sustained against a conference  
17 report (or Senate amendment derived from such con-  
18 ference report by operation of this subsection), no further  
19 amendment shall be in order.

20 (d) SUPERMAJORITY WAIVER.—In the Senate, this  
21 section may be waived or suspended only by an affirmative  
22 vote of 60 Members, duly chose and sworn.

23 (e) PROHIBITION ON APPEALS.—It shall not be in  
24 order to appeal the ruling of the Chair on a point of order  
25 raised under this section.

Senator CARPER. Again, I must regretfully oppose my valued colleague's amendment. Like the prior amendment, this amendment establishes a new point of order for the Senate floor that prohibits any revenue measure based on the greenhouse gas emissions associated with commodities or products.

I understand that some outside groups are claiming that the PROVE IT Act would lead to establishment of a carbon tax, but as we have heard, that is just not correct. The bill itself states that it does not provide any new authority for any type of fee on greenhouse gas emissions. This amendment is, I am afraid, a poison pill that would force me and many of my colleagues to vote against this bill if the amendments were adopted. I am going to vote no and ask my colleagues to do that as well.

Does any other Senator wish to comment on Senator Capito's second amendment?

Senator CRAMER. If I could, Mr. Chairman.

Senator CARPER. Senator Cramer?

Senator CRAMER. Mr. Chairman, just quickly.

I am going to support Senator Capito's second amendment because I frankly do not think it really changes a lot. It does clarify, it emphasizes perhaps the finer point that reconciliation should not be able to use this data. The fact of the matter is that the substitute amendment we are actually dealing with now already does that in the broader sense that it prohibits any agency from using any of this data for any type of a tax or regulation.

In my view, it is just a narrower emphasis on the specific issue of reconciliation, so I am supporting it.

Senator CARPER. All right. Thank you.

Are there other Senators wishing to comment on this amendment?

[No audible response.]

Senator CARPER. Hearing no further speakers, the question is on the amendment. A roll call vote has been requested. Is there a second?

Senator CARDIN. Second.

Senator CARPER. It has been moved and seconded. The Clerk will call the roll.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. Aye.

The CLERK. Mr. Cardin.

Senator CARDIN. No.

The CLERK. Mr. Cramer.

Senator CAPITO. Aye.

The CLERK. Mr. Fetterman?

Senator FETTERMAN. No.

The CLERK. Mr. Graham.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Kelly?

Senator KELLY. No.

The CLERK. Ms. Lummis.

Senator LUMMIS. Aye.

The CLERK. Mr. Markey?

Senator MARKEY. No.

The CLERK. Mr. Merkley.

Senator MERKLEY. No.

The CLERK. Mr. Mullin?

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Padilla.

Senator CARPER. No, by proxy.

The CLERK. Mr. Ricketts?

Senator RICKETTS. Aye.

The CLERK. Mr. Sanders.

Senator CARPER. No, by proxy.

The CLERK. Ms. Stabenow?

Senator STABENOW. No.

The CLERK. Mr. Sullivan.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Whitehouse?

Senator CARPER. No, by proxy.

The CLERK. Mr. Wicker.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Chairman?

Senator CARPER. No.

Is the Clerk ready to report the yeas and nays?

The CLERK. Yes, sir, Mr. Chairman, the yeas are 9, the nays are 10.

Senator CARPER. I understand the yeas are 9 and the nays are 10. In that case, the amendment is not adopted.

Does any Senator wish to offer another amendment to this legislation?

Senator RICKETTS. Yes, Mr. Chairman.

Senator CARPER. Senator Ricketts, go ahead.

Senator RICKETTS. I would like to call up Ricketts Amendment No. 1.

I have several concerns with this bill. Before I get into that, you know, Mr. Chairman, I really like being on this committee. One of the reasons I like being on this committee is that we get to talk about biofuels. That is what my amendment talks about.

First of all, I think, just in general, one of the things we ought to do in the legislative branch is be more prescriptive with the executive branch. As a former Governor, I know the executive branch will not do things unless the legislative branch specifically tells them what to do if they do not want to do it. Mr. Chairman, I suspect you recall the same sort of thing from being a former executive branch member.

So, one of the things I think we ought to be doing is again being more prescriptive. Of course, I do not have to explain to you all the dangers of using partial or unsound science as we walk through these processes.

What my amendment does is determine that the Department of Energy's own Argonne National Laboratory's Greenhouse Gases Regulated Emissions, Energy Use and Transportation, also known as the GREET Model, be used as the methodology when determining greenhouse gas emissions, specifically when talking about biofuels.

The GREET Model considers the entire life cycle of energy sources and transportation fuels, it accounts for emissions from production, distribution, and consumption, providing a more accurate representation of the different environmental impacts of different fuels.

GREET incorporates a wide range of data inputs, including energy consumption, emission factors and technological parameters. This comprehensive dataset ensures that the model captures the nuances of various transportation technologies and fuel sources.

GREET has gained acceptance across industries as a reliable tool for assessing the environmental performance of transportation fuels. Its adoption by both public and private entities enhances its status as a standard for emissions modeling.

GREET has undergone rigorous peer review processes and its methodologies have been validated through scientific studies. The model's credibility is strengthened by the involvement of experts in continuous refinement based upon feedback from the scientific community.

I urge the committee to support my amendment and look forward to working with you on this issue in the future. I would just say I think that this ought to be done not just for the transportation fuels, but every category that we have, we should come up with a specific model that we instruct the Department of Energy to use to calculate the emissions.

With that, thank you.

[The text of the amendment offered by Senator Ricketts follows:]

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To require the use of the GREET model for certain determinations of average product emissions intensity.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RICKETTS

Viz:

- 1 In section 2(b)(2), add at the end the following:
- 2 (D) USE OF GREET MODEL.—In deter-
- 3 mining the average product emissions intensity
- 4 of a covered product in a category described in
- 5 clause (vi), (viii), (xi), (xiv), or (xix) of sub-
- 6 section (a)(4)(B) for purposes of subparagraphs
- 7 (A) and (C) of paragraph (1), the Secretary
- 8 shall use the Greenhouse gases, Regulated
- 9 Emissions, and Energy use in Transportation
- 10 model (commonly referred to as the “GREET

2

1 model") developed by Argonne National Lab-  
2 oratory.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To delay the effective date until the status of the People's Republic of China in certain international organization is changed from developing nation to developed nation.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RICKETTS

Viz:

- 1 At the end of section 2, add the following:
- 2 (e) EFFECTIVE DATE.—The requirements of this sec-
- 3 tion shall take effect on the date on which the President
- 4 certifies to the appropriate committees of Congress that
- 5 each international organization of which the United States
- 6 and the People's Republic of China are both members, and
- 7 that has a mechanism for changing the status of a mem-
- 8 ber country from developing nation to developed nation,
- 9 has changed the status of the People's Republic of China
- 10 from developing nation to developed nation in accordance

- 1 with section 5413 of the National Defense Authorization
- 2 Act for Fiscal Year 2024 (Public Law 118-31).

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To delay the effective date until the status of the People's Republic of China in certain international organization is changed from developing nation to developed nation.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 1863**

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. RICKETTS

Viz:

- 1 At the end of section 2, add the following:
- 2 (e) EFFECTIVE DATE.—The requirements of this sec-
- 3 tion shall take effect on the date on which the President
- 4 certifies to the appropriate committees of Congress that
- 5 each international organization of which the United States
- 6 and the People's Republic of China are both members, and
- 7 that has a mechanism for changing the status of a mem-
- 8 ber country from developing nation to developed nation,
- 9 has changed the status of the People's Republic of China
- 10 from developing nation to developed nation in accordance

- 1 with section 5413 of the National Defense Authorization
- 2 Act for Fiscal Year 2024 (Public Law 118-31).

Senator CARPER. Thanks for your amendment.

I am going to oppose the amendment but I want to say you have been a valued member of this committee from day one and a faithful attendee. I appreciate that, and I know Senator Capito does as well.

I can not support you on this amendment but let me say, the PROVE IT Act directs DOE to gather data and develop robust estimates for the greenhouse gas intensities of the specified products. I understand that the GREET Model referred to in Senator Ricketts' amendment is a DOE model. Nothing in the underlying bill prevents DOE from using it, but I do not think we should require the Department of Energy to use a particular model by law here.

If we want to convince other nations to use our estimates, we need to make sure the estimation methodology is on an absolutely solid technical ground. I think Congress does that best by letting the technical experts make those decisions.

I am also concerned that specifying a particular model may undermine support for this bill among those who may not agree with that model. I am going to have to urge our colleagues to vote no on this amendment.

Does any other member wish to speak on Senator Ricketts' amendment?

[No audible response.]

Senator CARPER. There are no more speakers on this amendment. Let me say the question is on the amendment. A roll call vote has been requested. Is there a second?

Senator CARDIN. Second.

Senator CARPER. The Clerk will call the roll.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. Aye.

The CLERK. Mr. Cardin.

Senator CARDIN. No.

The CLERK. Mr. Cramer.

Senator CAPITO. Aye.

The CLERK. Mr. Fetterman.

Senator FETTERMAN. No.

The CLERK. Mr. Graham.

Senator CAPITO. No, by proxy.

The CLERK. Mr. Kelly.

Senator KELLY. No.

The CLERK. Ms. Lummis.

Senator LUMMIS. Aye.

The CLERK. Mr. Markey.

Senator MARKEY. No.

The CLERK. Mr. Merkley.

Senator MERKLEY. No.

The CLERK. Mr. Mullin.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Padilla.

Senator CARPER. No, by proxy.

The CLERK. Mr. Ricketts.

Senator RICKETTS. Aye.

The CLERK. Mr. Sanders.

Senator CARPER. No, by proxy.

The CLERK. Ms. Stabenow.

Senator STABENOW. Aye.

The CLERK. Mr. Sullivan.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Whitehouse.

Senator CARPER. No, by proxy.

The CLERK. Mr. Wicker.

Senator CAPITO. Yes, by proxy.

The CLERK. Mr. Chairman.

Senator CARPER. No.

The Clerk will report.

The CLERK. Mr. Chairman, the yeas are 9, the nays are 10.

Senator CARPER. The yeas are 9 and the nays are 10. The amendment is not adopted.

Does any Senator wish to offer another amendment to this legislation?

Senator RICKETTS. Yes, Mr. Chairman.

Senator CARPER. Senator Ricketts, please go ahead.

Senator RICKETTS. I would like to call up Ricketts Amendment No. 2.

I have concerns about the People's Republic of China (PRC) and their ability to take advantage of the system to avoid following their international commitments.

The PRC is not a developing nation. The PRC is the second largest economy in the world. Since 1992, the PRC's economy has grown by more than 1,000 percent and its emissions have more than quadrupled.

Yet, the PRC has and continues to strategize and act so that it can be treated as a developing country under international multilateral agreements, including the Montreal Protocol and the U.N. Convention on Climate Change.

We cannot allow the PRC to self-designate as a developing country to gain unfair special trade treatment that it does not deserve. The PRC needs to operate on the same level playing field if we are going to prove we can do it better than they can.

I look forward to working with you all in the future on this issue and wish to withdraw my amendment.

Senator CARPER. Thank you very, very much.

Are there other Senators wishing to speak?

[No audible response.]

Senator CARPER. Seeing no further speakers, the question is now on final passage.

I move that the committee favorably report S. 1863, the PROVE IT Act with the amendments in the nature of a substitute.

The Clerk will call the roll.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Aye.

The CLERK. Mrs. Capito.

Senator CAPITO. No.

The CLERK. Mr. Cardin.

Senator CARDIN. Aye.

The CLERK. Mr. Cramer.  
 Senator CRAMER. Aye.  
 The CLERK. Mr. Fetterman.  
 Senator FETTERMAN. Aye.  
 The CLERK. Mr. Graham.  
 Senator CAPITO. Yes, by proxy.  
 The CLERK. Mr. Kelly.  
 Senator KELLY. Aye.  
 The CLERK. Ms. Lummis.  
 Senator LUMMIS. Aye.  
 The CLERK. Mr. Markey.  
 Senator MARKEY. No.  
 The CLERK. Mr. Merkley.  
 Senator MERKLEY. Aye.  
 The CLERK. Mr. Mullin.  
 Senator CAPITO. No, by proxy.  
 The CLERK. Mr. Padilla.  
 Senator CARPER. Yes, by proxy.  
 The CLERK. Mr. Ricketts.  
 Senator RICKETTS. No.  
 The CLERK. Mr. Sanders.  
 Senator CARPER. Yes, by proxy.  
 The CLERK. Ms. Stabenow.  
 Senator STABENOW. Aye.  
 The CLERK. Mr. Sullivan.  
 Senator CAPITO. No, by proxy.  
 The CLERK. Mr. Whitehouse.  
 Senator CARPER. Yes, by proxy.  
 The CLERK. Mr. Wicker.  
 Senator CAPITO. No, by proxy.  
 The CLERK. Mr. Chairman.  
 Senator CARPER. I am going to vote yes.  
 Does anyone wish to change their vote?  
 Senator MARKEY. Mr. Chairman, I would like to change my vote  
 from no to aye.  
 Senator CARPER. Senator Markey changes from no to aye.  
 Does anyone else wish to change their vote? All right, the Clerk  
 will report.  
 The CLERK. Yes, sir, the yeas are 14, the nays are 5.  
 Senator CARPER. The yeas are 14 and nays are 5. The legislation  
 is favorably reported. I would note for the record that a quorum of  
 the committee is present. Thank you.  
 We will now consider S. 2781, the Good Samaritan Remediation  
 of Abandoned Hardrock Mines Act of 2023 and the Kelly Lummis  
 Amendment in the nature of a substitute to this legislation. The  
 amendment is in the nature of a substitute and incorporates technical  
 assistance from the EPA that has been agreed to on a bipartisan  
 basis with the bill's sponsors.  
 As the Ranking Member and I have agreed, I now ask unanimous  
 consent to use the amendment in the nature of a substitute  
 as the base text for the purposes of this business meeting. Is there  
 objection?  
 [No audible response.]

Senator CARPER. Hearing no objection, the committee will use the Kelly Lummis substitute as the base text for the purpose of the committee's action on the Good Samaritan Act.

[The text of S. 2781 and the amendment in the nature of a substitute follows:]

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**S. 2781**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Good Samaritan Reme-  
5 diation of Abandoned Hardrock Mines Act of 2024”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ABANDONED HARDROCK MINE SITE.**—

9 (A) **IN GENERAL.**—The term “abandoned  
10 hardrock mine site” means an abandoned or in-  
11 active hardrock mine site and any facility asso-

1           ciated with an abandoned or inactive hardrock  
2           mine site—

3                   (i) that was used for the production of  
4                   a mineral other than coal conducted on  
5                   Federal land under sections 2319 through  
6                   2352 of the Revised Statutes (commonly  
7                   known as the “Mining Law of 1872”; 30  
8                   U.S.C. 22 et seq.) or on non-Federal land;  
9                   and

10                   (ii) for which, based on information  
11                   supplied by the Good Samaritan after re-  
12                   view of publicly available data and after re-  
13                   view of other information in the possession  
14                   of the Administrator, the Administrator or,  
15                   in the case of a site on land owned by the  
16                   United States, the Federal land manage-  
17                   ment agency, determines that no respon-  
18                   sible owner or operator has been identi-  
19                   fied—

20                   (I) who is potentially liable for,  
21                   or has been required to perform or  
22                   pay for, environmental remediation  
23                   activities under applicable law; and

24                   (II) other than, in the case of a  
25                   mine site located on land owned by

1 the United States, a Federal land  
2 management agency that has not been  
3 involved in mining activity on that  
4 land, except that the approval of a  
5 plan of operations under the hardrock  
6 mining regulations of the applicable  
7 Federal land management agency  
8 shall not be considered involvement in  
9 the mining activity.

10 (B) INCLUSION.—The term “abandoned  
11 hardrock mine site” includes a hardrock mine  
12 site (including associated facilities) that was  
13 previously the subject of a completed response  
14 action under the Comprehensive Environmental  
15 Response, Compensation, and Liability Act of  
16 1980 (42 U.S.C. 9601 et seq.) or a similar  
17 Federal and State reclamation or cleanup pro-  
18 gram, including the remediation of mine-scarred  
19 land under the brownfields revitalization pro-  
20 gram under section 104(k) of that Act (42  
21 U.S.C. 9604(k)).

22 (C) EXCLUSIONS.—The term “abandoned  
23 hardrock mine site” does not include a mine  
24 site (including associated facilities)—

4

1 (i) in a temporary shutdown or ces-  
2 sation;

3 (ii) included on the National Priorities  
4 List developed by the President in accord-  
5 ance with section 105(a)(8)(B) of the  
6 Comprehensive Environmental Response,  
7 Compensation, and Liability Act of 1980  
8 (42 U.S.C. 9605(a)(8)(B)) or proposed for  
9 inclusion on that list;

10 (iii) that is the subject of a planned or  
11 ongoing response action under the Com-  
12 prehensive Environmental Response, Com-  
13 pensation, and Liability Act of 1980 (42  
14 U.S.C. 9601 et seq.) or a similar Federal  
15 and State reclamation or cleanup program;

16 (iv) that has a responsible owner or  
17 operator; or

18 (v) that actively mined or processed  
19 minerals after December 11, 1980.

20 (2) ADMINISTRATOR.—The term “Adminis-  
21 trator” means the Administrator of the Environ-  
22 mental Protection Agency.

23 (3) APPLICABLE WATER QUALITY STAND-  
24 ARDS.—The term “applicable water quality stand-  
25 ards” means the water quality standards promul-

1 gated by the Administrator or adopted by a State or  
2 Indian tribe and approved by the Administrator pur-  
3 suant to the Federal Water Pollution Control Act  
4 (33 U.S.C. 1251 et seq.).

5 (4) BASELINE CONDITIONS.—The term “base-  
6 line conditions” means the concentrations, locations,  
7 and releases of any hazardous substances, pollut-  
8 ants, or contaminants, as described in the Good Sa-  
9 maritan permit, present at an abandoned hardrock  
10 mine site prior to undertaking any action under this  
11 Act.

12 (5) COOPERATING PERSON.—

13 (A) IN GENERAL.—The term “cooperating  
14 person” means any person that is named by the  
15 Good Samaritan in the permit application as a  
16 cooperating entity.

17 (B) EXCLUSIONS.—The term “cooperating  
18 person” does not include—

19 (i) a responsible owner or operator  
20 with respect to the abandoned hardrock  
21 mine site described in the permit applica-  
22 tion;

23 (ii) a person that had a role in the  
24 creation of historic mine residue at the

\* 6

1 abandoned hardrock mine site described in  
 2 the permit application; or

3 (iii) a Federal agency.

4 (6) COVERED PERMIT.—The term “covered per-  
 5 mit” means—

6 (A) a Good Samaritan permit; and

7 (B) an investigative sampling permit.

8 (7) FEDERAL LAND MANAGEMENT AGENCY.—  
 9 The term “Federal land management agency”  
 10 means any Federal agency authorized by law or ex-  
 11 ecutive order to exercise jurisdiction, custody, or  
 12 control over land owned by the United States.

13 (8) GOOD SAMARITAN.—The term “Good Sa-  
 14 maritan” means a person that, with respect to his-  
 15 toric mine residue, as determined by the Adminis-  
 16 trator—

17 (A) is not a past or current owner or oper-  
 18 ator of—

19 (i) the abandoned hardrock mine site  
 20 at which the historic mine residue is lo-  
 21 cated; or

22 (ii) a portion of that abandoned  
 23 hardrock mine site;

24 (B) had no role in the creation of the his-  
 25 toric mine residue; and

1           (C) is not potentially liable under any Fed-  
2           eral, State, Tribal, or local law for the remedi-  
3           ation, treatment, or control of the historic mine  
4           residue.

5           (9) GOOD SAMARITAN PERMIT.—The term  
6           “Good Samaritan permit” means a permit granted  
7           by the Administrator under section 4(a)(1).

8           (10) HISTORIC MINE RESIDUE.—

9           (A) IN GENERAL.—The term “historic  
10           mine residue” means mine residue or any con-  
11           dition at an abandoned hardrock mine site re-  
12           sulting from hardrock mining activities.

13           (B) INCLUSIONS.—The term “historic  
14           mine residue” includes—

15           (i) previously mined ores and minerals  
16           other than coal that contribute to acid  
17           mine drainage or other pollution;

18           (ii) equipment (including materials in  
19           equipment);

20           (iii) any tailings facilities, heap leach  
21           piles, dump leach piles, waste rock, over-  
22           burden, slag piles, or other waste or mate-  
23           rial resulting from any extraction,  
24           beneficiation, or other processing activity

1 that occurred during the active operation  
2 of an abandoned hardrock mine site;

3 (iv) any acidic or otherwise polluted  
4 flow in surface water or groundwater that  
5 originates from, or is pooled and contained  
6 in, an inactive or abandoned hardrock  
7 mine site, such as underground workings,  
8 open pits, in-situ leaching operations,  
9 ponds, or impoundments;

10 (v) any hazardous substance (as de-  
11 fined in section 101 of the Comprehensive  
12 Environmental Response, Compensation,  
13 and Liability Act of 1980 (42 U.S.C.  
14 9601));

15 (vi) any pollutant or contaminant (as  
16 defined in section 101 of the Comprehen-  
17 sive Environmental Response, Compensa-  
18 tion, and Liability Act of 1980 (42 U.S.C.  
19 9601)); and

20 (vii) any pollutant (as defined in sec-  
21 tion 502 of the Federal Water Pollution  
22 Control Act (33 U.S.C. 1362)).

23 (11) INDIAN TRIBE.—The term “Indian tribe”  
24 has the meaning given the term in—

1 (A) section 518(h) of the Federal Water  
2 Pollution Control Act (33 U.S.C. 1377(h)); or

3 (B) section 101 of the Comprehensive En-  
4 vironmental Response, Compensation, and Li-  
5 ability Act of 1980 (42 U.S.C. 9601).

6 (12) INVESTIGATIVE SAMPLING PERMIT.—The  
7 term “investigative sampling permit” means a per-  
8 mit granted by the Administrator under section  
9 4(d)(1).

10 (13) PERSON.—The term “person” means any  
11 entity described in—

12 (A) section 502(5) of the Federal Water  
13 Pollution Control Act (33 U.S.C. 1362(5)); or

14 (B) section 101(21) of the Comprehensive  
15 Environmental Response, Compensation, and  
16 Liability Act of 1980 (42 U.S.C. 9601(21)).

17 (14) REMEDIATION.—

18 (A) IN GENERAL.—The term “remedi-  
19 ation” means any action taken to investigate,  
20 characterize, or cleanup, in whole or in part, a  
21 discharge, release, or threat of release of a haz-  
22 ardous substance, pollutant, or contaminant  
23 into the environment at or from an abandoned  
24 hardrock mine site, or to otherwise protect and  
25 improve human health and the environment.

1 (B) INCLUSION.—The term “remediation”  
2 includes any action to remove, treat, or contain  
3 historic mine residue to prevent, minimize, or  
4 reduce—

5 (i) the release or threat of release of  
6 a hazardous substance, pollutant, or con-  
7 taminant that would harm human health  
8 or the environment; or

9 (ii) a migration or discharge of a haz-  
10 ardous substance, pollutant, or contami-  
11 nant that would harm human health or the  
12 environment.

13 (C) EXCLUSION.—The term “remediation”  
14 does not include any action that requires plug-  
15 ging, opening, or otherwise altering the portal  
16 or adit of the abandoned hardrock mine site.

17 (15) RESERVATION.—The term “reservation”  
18 has the meaning given the term “Indian country” in  
19 section 1151 of title 18, United States Code.

20 (16) RESPONSIBLE OWNER OR OPERATOR.—  
21 The term “responsible owner or operator” means a  
22 person that is—

23 (A)(i) legally responsible under section 301  
24 of the Federal Water Pollution Control Act (33

1 U.S.C. 1311) for a discharge that originates  
2 from an abandoned hardrock mine site; and

3 (ii) financially able to comply with each re-  
4 quirement described in that section; or

5 (B)(i) a present or past owner or operator  
6 or other person that is liable with respect to a  
7 release or threat of release of a hazardous sub-  
8 stance, pollutant, or contaminant associated  
9 with the historic mine residue at or from an  
10 abandoned hardrock mine site under section  
11 104, 106, 107, or 113 of the Comprehensive  
12 Environmental Response, Compensation, and  
13 Liability Act of 1980 (42 U.S.C. 9604, 9606,  
14 9607, 9613); and

15 (ii) financially able to comply with each re-  
16 quirement described in those sections, as appli-  
17 cable.

18 **SEC. 3. SCOPE.**

19 Nothing in this Act—

20 (1) except as provided in section 4(n), reduces  
21 any existing liability under Federal, State, or local  
22 law;

23 (2) except as provided in section 4(n), releases  
24 any person from liability under Federal, State, or  
25 local law, except in compliance with this Act;

1           (3) authorizes the conduct of any mining or  
2     processing other than the conduct of any processing  
3     of previously mined ores, minerals, wastes, or other  
4     materials that is authorized by a Good Samaritan  
5     permit;

6           (4) imposes liability on the United States or a  
7     Federal land management agency pursuant to sec-  
8     tion 107 of the Comprehensive Environmental Re-  
9     sponse, Compensation, and Liability Act of 1980 (42  
10    U.S.C. 9607) or section 301 of the Federal Water  
11    Pollution Control Act (33 U.S.C. 1311); or

12          (5) relieves the United States or any Federal  
13    land management agency from any liability under  
14    section 107 of the Comprehensive Environmental  
15    Response, Compensation, and Liability Act of 1980  
16    (42 U.S.C. 9607) or section 301 of the Federal  
17    Water Pollution Control Act (33 U.S.C. 1311) that  
18    exists apart from any action undertaken pursuant to  
19    this Act.

20 **SEC. 4. ABANDONED HARDROCK MINE SITE GOOD SAMARI-**  
21 **TAN PILOT PROJECT AUTHORIZATION.**

22       (a) ESTABLISHMENT.—

23           (1) IN GENERAL.—The Administrator shall es-  
24    tablish a pilot program under which the Adminis-  
25    trator shall grant not more than 15 Good Samaritan

1 permits to carry out projects to remediate historic  
2 mine residue at any portions of abandoned hardrock  
3 mine sites in accordance with this Act.

4 (2) OVERSIGHT OF PERMITS.—The Adminis-  
5 trator may oversee the remediation project under  
6 paragraph (1), and any action taken by the applica-  
7 ble Good Samaritan or any cooperating person  
8 under the applicable Good Samaritan permit, for the  
9 duration of the Good Samaritan permit, as the Ad-  
10 ministrator determines to be necessary to review the  
11 status of the project.

12 (3) SUNSET.—

13 (A) IN GENERAL.—Except as provided in  
14 subparagraph (B), the pilot program described  
15 in paragraph (1) shall terminate on the date  
16 that is 7 years after the date of enactment of  
17 this Act.

18 (B) EXCEPTION.—Notwithstanding sub-  
19 paragraph (A), the Administrator may grant a  
20 Good Samaritan permit pursuant to this Act  
21 after the date identified in subparagraph (A) if  
22 the application for the Good Samaritan per-  
23 mit—

24 (i) was submitted not later than 180  
25 days before that date; and

1 (ii) was completed in accordance with  
 2 subsection (c) by not later than 7 years  
 3 after the date of enactment of this Act.

4 (C) EFFECT ON CERTAIN PERMITS.—Any  
 5 Good Samaritan permit granted by the deadline  
 6 prescribed in subparagraph (A) or (B), as ap-  
 7 plicable, that is in effect on the date that is 7  
 8 years after the date of enactment of this Act  
 9 shall remain in effect after that date in accord-  
 10 ance with—

- 11 (i) the terms and conditions of the
- 12 Good Samaritan permit; and
- 13 (ii) this Act.

14 (b) GOOD SAMARITAN PERMIT ELIGIBILITY.—

15 (1) IN GENERAL.—To be eligible to receive a  
 16 Good Samaritan permit to carry out a project to re-  
 17 mediate an abandoned hardrock mine site, a person  
 18 shall demonstrate that, as determined by the Admin-  
 19 istrator—

20 (A) the abandoned hardrock mine site that  
 21 is the subject of the application for a Good Sa-  
 22 maritan permit is located in the United States;

23 (B) the purpose of the proposed project is  
 24 the remediation at that abandoned hardrock  
 25 mine site of historic mine residue;

1 (C) the proposed activities are designed to  
2 result in the partial or complete remediation of  
3 historic mine residue at the abandoned  
4 hardrock mine site within the term of the Good  
5 Samaritan permit;

6 (D) the proposed project poses a low risk  
7 to the environment, as determined by the Ad-  
8 ministrator;

9 (E) to the satisfaction of the Adminis-  
10 trator, the person—

11 (i) possesses, or has the ability to se-  
12 cure, the financial and other resources nec-  
13 essary—

14 (I) to complete the permitted  
15 work, as determined by the Adminis-  
16 trator; and

17 (II) to address any contingencies  
18 identified in the Good Samaritan per-  
19 mit application described in subsection  
20 (e);

21 (ii) possesses the proper and appro-  
22 priate experience and capacity to complete  
23 the permitted work; and

24 (iii) will complete the permitted work;  
25 and

1 (F) the person is a Good Samaritan with  
2 respect to the historic mine residue proposed to  
3 be covered by the Good Samaritan permit.

4 (2) IDENTIFICATION OF ALL RESPONSIBLE  
5 OWNERS OR OPERATORS.—

6 (A) IN GENERAL.—A Good Samaritan  
7 shall make reasonable and diligent efforts to  
8 identify, from a review of publicly available in-  
9 formation in land records or on internet  
10 websites of Federal, State, and local regulatory  
11 authorities, all responsible owners or operators  
12 of an abandoned hardrock mine site proposed to  
13 be remediated by the Good Samaritan under  
14 this section.

15 (B) EXISTING RESPONSIBLE OWNER OR  
16 OPERATOR.—If the Administrator determines,  
17 based on information provided by a Good Sa-  
18 maritan or otherwise, that a responsible owner  
19 or operator exists for an abandoned hardrock  
20 mine site proposed to be remediated by the  
21 Good Samaritan, the Administrator shall deny  
22 the application for a Good Samaritan permit.

23 (c) APPLICATION FOR PERMITS.—To obtain a Good  
24 Samaritan permit, a person shall submit to the Adminis-  
25 trator an application, signed by the person and any co-

1 operating person, that provides, to the extent known or  
2 reasonably discoverable by the person on the date on which  
3 the application is submitted—

4 (1) a description of the abandoned hardrock  
5 mine site (including the boundaries of the aban-  
6 doned hardrock mine site) proposed to be covered by  
7 the Good Samaritan permit;

8 (2) a description of all parties proposed to be  
9 involved in the remediation project, including any co-  
10 operating person and each member of an applicable  
11 corporation, association, partnership, consortium,  
12 joint venture, commercial entity, or nonprofit asso-  
13 ciation;

14 (3) evidence that the person has or will acquire  
15 all legal rights or the authority necessary to enter  
16 the relevant abandoned hardrock mine site and per-  
17 form the remediation described in the application;

18 (4) a detailed description of the historic mine  
19 residue to be remediated;

20 (5) a detailed description of the expertise and  
21 experience of the person and the resources available  
22 to the person to successfully implement and com-  
23 plete the remediation plan under paragraph (7);

24 (6) to the satisfaction of the Administrator and  
25 subject to subsection (d), a description of the base-

1 line conditions caused by the historic mine residue to  
2 be remediated that includes—

3 (A) the nature and extent of any adverse  
4 impact on the water quality of any body of  
5 water caused by the drainage of historic mine  
6 residue or other discharges from the abandoned  
7 hardrock mine site;

8 (B) the flow rate and concentration of any  
9 drainage of historic mine residue or other dis-  
10 charge from the abandoned hardrock mine site  
11 in any body of water that has resulted in an ad-  
12 verse impact described in subparagraph (A);  
13 and

14 (C) any other release or threat of release  
15 of historic mine residue that has resulted in an  
16 adverse impact to human health or the environ-  
17 ment;

18 (7) subject to subsection (d), a remediation  
19 plan for the abandoned hardrock mine site that de-  
20 scribes—

21 (A) the nature and scope of the proposed  
22 remediation activities, including—

23 (i) any historic mine residue to be ad-  
24 dressed by the remediation plan; and

19

1 (ii) a description of the goals of the  
2 remediation including, if applicable, with  
3 respect to—

4 (I) the reduction or prevention of  
5 a release, threat of release, or dis-  
6 charge to surface waters; or

7 (II) other appropriate goals relat-  
8 ing to water or soil;

9 (B) each activity that the person proposes  
10 to take that is—

11 (i) designed to—

12 (I) improve or enhance water  
13 quality or site-specific soil or sediment  
14 quality relevant to the historic mine  
15 residue addressed by the remediation  
16 plan, including making measurable  
17 progress toward achieving applicable  
18 water quality standards; or

19 (II) otherwise protect human  
20 health and the environment (including  
21 through the prevention of a release,  
22 discharge, or threat of release to  
23 water, sediment, or soil); and

1 (ii) otherwise necessary to carry out  
2 an activity described in subclause (I) or  
3 (II) of clause (i);

4 (C) a plan describing the monitoring or  
5 other forms of assessment that will be under-  
6 taken by the person to evaluate the success of  
7 the activities described in subparagraph (A)  
8 during and after the remediation, with respect  
9 to the baseline conditions, as described in para-  
10 graph (6);

11 (D) to the satisfaction of the Adminis-  
12 trator, detailed engineering plans for the  
13 project;

14 (E) detailed plans for any proposed recy-  
15 cling or reprocessing of historic mine residue to  
16 be conducted by the person (including a de-  
17 scription of how all proposed recycling or re-  
18 processing activities contribute to the remedi-  
19 ation of the abandoned hardrock mine site);  
20 and

21 (F) identification of any proposed con-  
22 tractor that will perform any remediation activ-  
23 ity;

24 (8) subject to subsection (d), a schedule for the  
25 work to be carried out under the project, including

1 a schedule for periodic reporting by the person on  
2 the remediation of the abandoned hardrock mine  
3 site;

4 (9) a health and safety plan that is specifically  
5 designed for mining remediation work;

6 (10) a specific contingency plan that—

7 (A) includes provisions on response and  
8 notification to Federal, State, Tribal, and local  
9 authorities with jurisdiction over downstream  
10 waters that have the potential to be impacted  
11 by an unplanned release or discharge of haz-  
12 ardous substances, pollutants, or contaminants;  
13 and

14 (B) is designed to respond to unplanned  
15 adverse events (such as adverse weather events  
16 or a potential fluid release that may result from  
17 addressing pooled water or hydraulic pressure  
18 situations), including the sudden release of his-  
19 toric mine residue;

20 (11) subject to subsection (d), a project budget  
21 and description of financial resources that dem-  
22 onstrate that the permitted work, including any op-  
23 eration and maintenance, will be completed;

24 (12) subject to subsection (d), information dem-  
25 onstrating that the applicant has the financial re-

1 sources to carry out the remediation (including any  
 2 long-term monitoring that may be required by the  
 3 Good Samaritan permit) or the ability to secure an  
 4 appropriate third-party financial assurance, as deter-  
 5 mined by the Administrator, to ensure completion of  
 6 the permitted work, including any long-term oper-  
 7 ations and maintenance of remediation activities  
 8 that may be—

9 (A) proposed in the application for the  
 10 Good Samaritan permit; or

11 (B) required by the Administrator as a  
 12 condition of granting the permit;

13 (13) subject to subsection (d), a detailed plan  
 14 for any required operation and maintenance of any  
 15 remediation, including a timeline, if necessary;

16 (14) subject to subsection (d), a description of  
 17 any planned post-remediation monitoring, if nec-  
 18 essary; and

19 (15) subject to subsection (d), any other appro-  
 20 priate information, as determined by the Adminis-  
 21 trator or the applicant.

22 (d) INVESTIGATIVE SAMPLING.—

23 (1) INVESTIGATIVE SAMPLING PERMITS.—The  
 24 Administrator may grant an investigative sampling  
 25 permit for a period determined by the Administrator

1 to authorize a Good Samaritan to conduct investiga-  
 2 tive sampling of historic mine residue, soil, sediment,  
 3 or water to determine—

4 (A) baseline conditions; and

5 (B) whether the Good Samaritan—

6 (i) is willing to perform further reme-  
 7 diation to address the historic mine res-  
 8 idue; and

9 (ii) will proceed with a permit conver-  
 10 sion under subsection (e)(1).

11 (2) NUMBER OF PERMITS.—

12 (A) LIMITATION.— Subject to subpara-  
 13 graph (B), the Administrator may grant not  
 14 more than 15 investigative sampling permits.

15 (B) APPLICABILITY TO CONVERTED PER-  
 16 MITS.—An investigative sampling permit that is  
 17 not converted to a Good Samaritan permit pur-  
 18 suant to paragraph (5) may be eligible for  
 19 reissuance by the Administrator subject to the  
 20 overall total of not more than 15 investigative  
 21 sampling permits allowed at any 1 time de-  
 22 scribed in subparagraph (A).

23 (3) APPLICATION.—If a Good Samaritan pro-  
 24 poses to conduct investigative sampling, the Good  
 25 Samaritan shall submit to the Administrator an in-

1     investigative sampling permit application that con-  
2     tains, to the satisfaction of the Administrator—

3             (A) each description required under para-  
4     graphs (1), (2), and (5) of subsection (c);

5             (B) to the extent reasonably known to the  
6     applicant, any previously documented water  
7     quality data describing conditions at the aban-  
8     doned hardrock mine site;

9             (C) the evidence required under subsection  
10    (c)(3);

11            (D) each plan required under paragraphs  
12    (9) and (10) of subsection (c); and

13            (E) a detailed plan of the investigative  
14    sampling.

15    (4) REQUIREMENTS.—

16            (A) IN GENERAL.—If a person submits an  
17    application that proposes only investigative  
18    sampling of historic mine residue, soil, sedi-  
19    ment, or water that only includes the require-  
20    ments described in paragraph (1), the Adminis-  
21    trator may grant an investigative sampling per-  
22    mit that authorizes the person only to carry out  
23    the plan of investigative sampling of historic  
24    mine residue, soil, sediment, or water, as de-

1           scribed in the investigative sampling permit ap-  
2           plication under paragraph (3).

3           (B) REPROCESSING.—An investigative  
4           sampling permit—

5           (i) shall not authorize a Good Samari-  
6           tan or cooperating person to conduct any  
7           reprocessing of material; and

8           (ii) may authorize metallurgical test-  
9           ing of historic mine residue to determine  
10          whether reprocessing under subsection  
11          (f)(4)(B) is feasible.

12          (C) REQUIREMENTS RELATING TO SAM-  
13          PLES.—In conducting investigative sampling of  
14          historic mine residue, soil, sediment, or water,  
15          a Good Samaritan shall—

16          (i) collect samples that are representa-  
17          tive of the conditions present at the aban-  
18          doned hardrock mine site that is the sub-  
19          ject of the investigative sampling permit;  
20          and

21          (ii) retain publicly available records of  
22          all sampling events for a period of not less  
23          than 3 years.

24          (5) PERMIT CONVERSION.—Not later than 1  
25          year after the date on which the investigative sam-

1 pling under the investigative sampling permit con-  
2 cludes, a Good Samaritan to whom an investigative  
3 sampling permit is granted under paragraph (1)  
4 may apply to convert an investigative sampling per-  
5 mit into a Good Samaritan permit under subsection  
6 (e)(1).

7 (6) PERMIT NOT CONVERTED.—

8 (A) IN GENERAL.—Subject to subpara-  
9 graph (B)(ii)(I), a Good Samaritan who obtains  
10 an investigative sampling permit may decline—

11 (i) to apply to convert the investiga-  
12 tive sampling permit into a Good Samari-  
13 tan permit under paragraph (5); and

14 (ii) to undertake remediation activities  
15 on the site where investigative sampling  
16 was conducted on conclusion of investiga-  
17 tive sampling.

18 (B) EFFECT OF LACK OF CONVERSION.—

19 (i) IN GENERAL.—Notwithstanding a  
20 refusal by a Good Samaritan to convert an  
21 investigative sampling permit into a Good  
22 Samaritan permit under subparagraph (A),  
23 but subject to clause (ii), the provisions of  
24 paragraphs (1) through (4) of subsection  
25 (ii) shall continue to apply to the Good Sa-

1 maritan and any cooperating persons after  
2 the refusal to convert.

3 (ii) DEGRADATION OF SURFACE  
4 WATER QUALITY.—

5 (I) OPPORTUNITY TO COR-  
6 RECT.—If, before the date on which a  
7 Good Samaritan refuses to convert an  
8 investigative sampling permit under  
9 subparagraph (A), actions by the  
10 Good Samaritan or any cooperating  
11 person have caused conditions at the  
12 abandoned hardrock mine site to be  
13 measurably worse, as determined by  
14 the Administrator, when compared to  
15 conditions described pursuant to para-  
16 graph (3)(B), if applicable, the Ad-  
17 ministrator shall provide the Good Sa-  
18 maritan or cooperating person, as ap-  
19 plicable, the opportunity to return the  
20 conditions at the abandoned hardrock  
21 mine site to those conditions.

22 (II) EFFECT.—If, pursuant to  
23 subclause (I), the applicable Good Sa-  
24 maritan or cooperating person does  
25 not return the surface water quality

1 at the abandoned hardrock mine site  
 2 to conditions described pursuant to  
 3 paragraph (3)(B), if applicable, as de-  
 4 termined by the Administrator, clause  
 5 (i) shall not apply to the Good Samar-  
 6 itan or any cooperating persons.

7 (e) INVESTIGATIVE SAMPLING CONVERSION.—

8 (1) IN GENERAL.—A person to which an inves-  
 9 tigative sampling permit was granted may submit to  
 10 the Administrator an application in accordance with  
 11 paragraph (2) to convert the investigative sampling  
 12 permit into a Good Samaritan permit.

13 (2) APPLICATION.—

14 (A) INVESTIGATIVE SAMPLING.—An appli-  
 15 cation for the conversion of an investigative  
 16 sampling permit under paragraph (1) shall in-  
 17 clude any requirement described in subsection  
 18 (c) that was not included in full in the applica-  
 19 tion submitted under subsection (d)(3).

20 (B) PUBLIC NOTICE AND COMMENT.—An  
 21 application for permit conversion under this  
 22 paragraph shall be subject to—

23 (i) environmental review and public  
 24 comment procedures required by sub-  
 25 section (l); and

1 (ii) a public hearing, if requested.

2 (f) CONTENT OF PERMITS.—

3 (1) IN GENERAL.—A Good Samaritan permit  
4 shall contain—

5 (A) the information described in subsection  
6 (e), including any modification required by the  
7 Administrator;

8 (B)(i) a provision that states that the  
9 Good Samaritan is responsible for securing, for  
10 all activities authorized under the Good Samari-  
11 tan permit, all authorizations, licenses, and per-  
12 mits that are required under applicable law ex-  
13 cept for—

14 (I) section 301, 302, 306, 307, 402,  
15 or 404 of the Federal Water Pollution  
16 Control Act (33 U.S.C. 1311, 1312, 1316,  
17 1317, 1342, 1344); and

18 (II) authorizations, licenses, and per-  
19 mits that would not need to be obtained if  
20 the remediation was conducted pursuant to  
21 section 121 of the Comprehensive Environ-  
22 mental Response, Compensation, and Li-  
23 ability Act of 1980 (42 U.S.C. 9621); or

24 (ii) in the case of an abandoned hardrock  
25 mine site in a State that is authorized to imple-

1           ment State law pursuant to section 402 or 404  
2           of the Federal Water Pollution Control Act (33  
3           U.S.C. 1342, 1344) or on land of an Indian  
4           tribe that is authorized to implement Tribal law  
5           pursuant to that section, a provision that states  
6           that the Good Samaritan is responsible for se-  
7           curing, for all activities authorized under the  
8           Good Samaritan permit, all authorizations, li-  
9           censes, and permits that are required under ap-  
10          plicable law, except for—

11                   (I) the State or Tribal law, as applica-  
12                   ble; and

13                   (II) authorizations, licenses, and per-  
14                   mits that would not need to be obtained if  
15                   the remediation was conducted pursuant to  
16                   section 121 of the Comprehensive Environ-  
17                   mental Response, Compensation, and Li-  
18                   ability Act of 1980 (42 U.S.C. 9621);

19                   (C) specific public notification require-  
20                   ments, including the contact information for all  
21                   appropriate response centers in accordance with  
22                   subsection (o);

23                   (D) in the case of a project on land owned  
24                   by the United States, a notice that the Good  
25                   Samaritan permit serves as an agreement for

1 use and occupancy of Federal land that is en-  
2 forceable by the applicable Federal land man-  
3 agement agency; and

4 (E) any other terms and conditions deter-  
5 mined to be appropriate by the Administrator  
6 or the Federal land management agency, as ap-  
7 plicable.

8 (2) FORCE MAJEURE.—A Good Samaritan per-  
9 mit may include, at the request of the Good Samari-  
10 tan, a provision that a Good Samaritan may assert  
11 a claim of force majeure for any violation of the  
12 Good Samaritan permit caused solely by—

13 (A) an act of God;

14 (B) an act of war;

15 (C) negligence on the part of the United  
16 States;

17 (D) an act or omission of a third party, if  
18 the Good Samaritan—

19 (i) exercises due care with respect to  
20 the actions of the Good Samaritan under  
21 the Good Samaritan permit, as determined  
22 by the Administrator;

23 (ii) took precautions against foresee-  
24 able acts or omissions of the third party,  
25 as determined by the Administrator; and

- 1 (iii) uses reasonable efforts—
- 2 (I) to anticipate any potential
- 3 force majeure; and
- 4 (II) to address the effects of any
- 5 potential force majeure; or
- 6 (E) a public health emergency declared by
- 7 the Federal Government or a global govern-
- 8 ment, such as a pandemic or an epidemic.
- 9 (3) MONITORING.—
- 10 (A) IN GENERAL.—The Good Samaritan
- 11 shall take such actions as the Good Samaritan
- 12 permit requires to ensure appropriate baseline
- 13 conditions monitoring, monitoring during the
- 14 remediation project, and post-remediation moni-
- 15 toring of the environment under paragraphs (7)
- 16 and (14) of subsection (c).
- 17 (B) MULTIPARTY MONITORING.—The Ad-
- 18 ministrator may approve in a Good Samaritan
- 19 permit the monitoring by multiple cooperating
- 20 persons if, as determined by the Adminis-
- 21 trator—
- 22 (i) the multiparty monitoring will ef-
- 23 fectively accomplish the goals of this sec-
- 24 tion; and

1 (ii) the Good Samaritan remains re-  
 2 sponsible for compliance with the terms of  
 3 the Good Samaritan permit.

4 (4) OTHER DEVELOPMENT.—

5 (A) NO AUTHORIZATION OF MINING AC-  
 6 TIVITIES.—No mineral exploration, processing,  
 7 beneficiation, or mining shall be—

- 8 (i) authorized by this Act; or
  - 9 (ii) covered by any waiver of liability
- 10 provided by this Act from applicable law.

11 (B) REPROCESSING OF MATERIALS.—A  
 12 Good Samaritan may reprocess materials recov-  
 13 ered during the implementation of a remedi-  
 14 ation plan only if—

15 (i) the project under the Good Samar-  
 16 itan permit is on land owned by the United  
 17 States;

18 (ii) the applicable Federal land man-  
 19 agement agency has signed a decision doc-  
 20 ument under subsection (1)(2)(G) approv-  
 21 ing reprocessing as part of a remediation  
 22 plan;

23 (iii) the proceeds from the sale or use  
 24 of the materials are used—

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1 (I) to defray the costs of the re-  
2 mediation; and

3 (II) to the extent required by the  
4 Good Samaritan permit, to reimburse  
5 the Administrator or the head of a  
6 Federal land management agency for  
7 the purpose of carrying out this Act;

8 (iv) any remaining proceeds are de-  
9 posited into the appropriate Good Samari-  
10 tan Mine Remediation Fund established by  
11 section 5(a); and

12 (v) the materials only include historic  
13 mine residue.

14 (C) CONNECTION WITH OTHER ACTIVI-  
15 TIES.—The commingling or association of any  
16 other discharge of water or historic mine res-  
17 idue or any activity, project, or operation con-  
18 ducted on or after the date of enactment of this  
19 Act with any aspect of a project subject to a  
20 Good Samaritan permit shall not limit or re-  
21 duce the liability of any person associated with  
22 the other discharge of water or historic mine  
23 residue or activity, project, or operation.

24 (g) ADDITIONAL WORK.—A Good Samaritan permit  
25 may (subject to subsection (r)(5) in the case of a project

1 located on Federal land) allow the Good Samaritan to re-  
2 turn to the abandoned hardrock mine site after the com-  
3 pletion of the remediation to perform operations and  
4 maintenance or other work—

5 (1) to ensure the functionality of completed re-  
6 mediation activities at the abandoned hardrock mine  
7 site; or

8 (2) to protect public health and the environ-  
9 ment.

10 (h) TIMING.—Work authorized under a Good Samar-  
11 itan permit—

12 (1) shall commence, as applicable—

13 (A) not later than the date that is 18  
14 months after the date on which the Adminis-  
15 trator granted the Good Samaritan permit, un-  
16 less the Administrator grants an extension  
17 under subsection (r)(2)(A); or

18 (B) if the grant of the Good Samaritan  
19 permit is the subject of a petition for judicial  
20 review, not later than the date that is 18  
21 months after the date on which the judicial re-  
22 view, including any appeals, has concluded; and

23 (2) shall continue until completed, with tem-  
24 porary suspensions permitted during adverse weath-

1 er or other conditions specified in the Good Samaritan  
 2 tan permit.

3 (i) TRANSFER OF PERMITS.—A Good Samaritan per-  
 4 mit may be transferred to another person only if—

5 (1) the Administrator determines that the  
 6 transferee qualifies as a Good Samaritan;

7 (2) the transferee signs, and agrees to be bound  
 8 by the terms of, the permit;

9 (3) the Administrator includes in the trans-  
 10 ferred permit any additional conditions necessary to  
 11 meet the goals of this section; and

12 (4) in the case of a project under the Good Sa-  
 13 maritan permit on land owned by the United States,  
 14 the head of the applicable Federal land management  
 15 agency approves the transfer.

16 (j) ~~ROLE OF ADMINISTRATOR AND FEDERAL LAND~~  
 17 ~~MANAGEMENT AGENCIES.~~—In carrying out this section—

18 (1) the Administrator shall—

19 (A) consult with prospective applicants;

20 (B) convene, coordinate, and lead the ap-  
 21 plication review process;

22 (C) maintain all records relating to the  
 23 Good Samaritan permit and the permit process;

24 (D) in the case of a proposed project on  
 25 State, Tribal, or private land, provide an oppor-

1           tunity for cooperating persons and the public to  
2           participate in the Good Samaritan permit pro-  
3           cess, including—

4                   (i) carrying out environmental review  
5                   and public comment procedures pursuant  
6                   to subsection (I); and

7                   (ii) a public hearing, if requested; and  
8           (E) enforce and otherwise carry out this  
9           section; and

10          (2) the head of an applicable Federal land man-  
11          agement agency shall—

12                   (A) in the case of a proposed project on  
13                   land owned by the United States, provide an  
14                   opportunity for cooperating persons and the  
15                   public to participate in the Good Samaritan  
16                   permit process, including—

17                           (i) carrying out environmental review  
18                           and public comment procedures pursuant  
19                           to subsection (I); and

20                           (ii) a public hearing, if requested; and

21                   (B) in coordination with the Adminis-  
22                   trator, enforce Good Samaritan permits issued  
23                   under this section for projects on land owned by  
24                   the United States.

1 (k) STATE, LOCAL, AND TRIBAL GOVERNMENTS.—

2 As soon as practicable, but not later than 14 days after  
3 the date on which the Administrator receives an applica-  
4 tion for the remediation of an abandoned hardrock mine  
5 site under this section that, as determined by the Adminis-  
6 trator, is complete and meets all applicable requirements  
7 of subsection (c), the Administrator shall provide notice  
8 and a copy of the application to—

9 (1) each local government with jurisdiction over  
10 a drinking water utility, and each Indian tribe with  
11 reservation or off-reservation treaty rights to land or  
12 water, located downstream from or otherwise near a  
13 proposed remediation project that is reasonably an-  
14 ticipated to be impacted by the remediation project  
15 or a potential release of contaminants from the  
16 abandoned hardrock mine site, as determined by the  
17 Administrator;

18 (2) each Federal, State, and Tribal agency that  
19 may have an interest in the application; and

20 (3) in the case of an abandoned hardrock mine  
21 site that is located partially or entirely on land  
22 owned by the United States, the Federal land man-  
23 agement agency with jurisdiction over that land.

24 (l) ENVIRONMENTAL REVIEW AND PUBLIC COM-  
25 MENT.—

1           (1) IN GENERAL.—Before the issuance of a  
2           Good Samaritan permit to carry out a project for  
3           the remediation of an abandoned hardrock mine site,  
4           the Administrator shall ensure that environmental  
5           review and public comment procedures are carried  
6           out with respect to the proposed project.

7           (2) RELATION TO NEPA.—

8           (A) MAJOR FEDERAL ACTION.—Subject to  
9           subparagraph (F), the issuance or modification  
10          of a Good Samaritan permit by the Adminis-  
11          trator shall be considered a major Federal ac-  
12          tion for purposes of section 102 of the National  
13          Environmental Policy Act of 1969 (42 U.S.C.  
14          4332).

15          (B) LEAD AGENCY.—The lead agency for  
16          purposes of an environmental assessment and  
17          public comment under this subsection shall  
18          be—

19                 (i) in the case of a proposed project  
20                 on land owned by the United States that  
21                 is managed by only 1 Federal land man-  
22                 agement agency, the applicable Federal  
23                 land management agency;

1 (ii) in the case of a proposed project  
2 entirely on State, Tribal, or private land,  
3 the Administrator;

4 (iii) in the case of a proposed project  
5 partially on land owned by the United  
6 States and partially on State, Tribal, or  
7 private land, the applicable Federal land  
8 management agency; and

9 (iv) in the case of a proposed project  
10 on land owned by the United States that  
11 is managed by more than 1 Federal land  
12 management agency, the Federal land  
13 management agency selected by the Ad-  
14 ministrator to be the lead agency, after  
15 consultation with the applicable Federal  
16 land management agencies.

17 (C) COORDINATION.—To the maximum ex-  
18 tent practicable, the lead agency described in  
19 subparagraph (B) shall coordinate procedures  
20 under the National Environmental Policy Act of  
21 1969 (42 U.S.C. 4321 et seq.) with State, Trib-  
22 al, and Federal cooperating agencies, as appli-  
23 cable.

24 (D) COOPERATING AGENCY.—In the case  
25 of a proposed project on land owned by the

1 United States, the Administrator shall be a co-  
2 operating agency for purposes of an environ-  
3 mental assessment and public comment under  
4 this subsection.

5 (E) SINGLE NEPA DOCUMENT.—The lead  
6 agency described in subparagraph (B) may con-  
7 duct a single environmental assessment for—

8 (i) the issuance of a Good Samaritan  
9 permit;

10 (ii) any activities authorized by a  
11 Good Samaritan permit; and

12 (iii) any applicable permits required  
13 by the Secretary of the Interior or the Sec-  
14 retary of Agriculture.

15 (F) NO SIGNIFICANT IMPACT.—

16 (i) IN GENERAL.—A Good Samaritan  
17 permit may only be issued if, after an envi-  
18 ronmental assessment, the head of the lead  
19 agency issues a finding of no significant  
20 impact (as defined in section 111 of the  
21 National Environmental Policy Act of  
22 1969 (42 U.S.C. 4336e)).

23 (ii) SIGNIFICANT IMPACT.—If the  
24 head of the lead agency is unable to issue  
25 a finding of no significant impact (as so

1 defined), the head of the lead agency shall  
2 not issue a Good Samaritan permit for the  
3 proposed project.

4 (G) DECISION DOCUMENT.—An approval  
5 or denial of a Good Samaritan permit may be  
6 issued as a single decision document that is  
7 signed by—

8 (i) the Administrator; and

9 (ii) in the case of a project on land  
10 owned by the United States, the head of  
11 the applicable Federal land management  
12 agency.

13 (H) LIMITATION.—Nothing in this para-  
14 graph exempts the Secretary of Agriculture or  
15 the Secretary of the Interior, as applicable,  
16 from any other requirements of section 102 of  
17 the National Environmental Policy Act of 1969  
18 (42 U.S.C. 4332).

19 (m) PERMIT GRANT.—

20 (1) IN GENERAL.—The Administrator may  
21 grant a Good Samaritan permit to carry out a  
22 project for the remediation of an abandoned  
23 hardrock mine site only if—

24 (A) the Administrator determines that—

1 (i) the person seeking the permit is a  
2 Good Samaritan;

3 (ii) the application described in sub-  
4 section (c) is complete;

5 (iii) the project is designed to reme-  
6 diate historic mine residue at the aban-  
7 doned hardrock mine site to protect human  
8 health and the environment;

9 (iv) the proposed project is designed  
10 to meet all other goals, as determined by  
11 the Administrator, including any goals set  
12 forth in the application for the Good Sa-  
13 maritan permit that are accepted by the  
14 Administrator;

15 (v) the proposed activities, as com-  
16 pared to the baseline conditions described  
17 in the permit, will make measurable  
18 progress toward achieving—

19 (I) applicable water quality  
20 standards;

21 (II) improved soil quality;

22 (III) improved sediment quality;

23 (IV) other improved environ-  
24 mental or safety conditions; or

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1 (V) reductions in threats to soil,  
2 sediment, or water quality or other  
3 environmental or safety conditions;  
4 (vi) the applicant has—  
5 (I) demonstrated that the appli-  
6 cant has the proper and appropriate  
7 experience and capacity to complete  
8 the permitted work;  
9 (II) demonstrated that the appli-  
10 cant will complete the permitted work;  
11 (III) the financial and other re-  
12 sources to address any contingencies  
13 identified in the Good Samaritan per-  
14 mit application described in sub-  
15 sections (b) and (c);  
16 (IV) granted access and provided  
17 the authority to review the records of  
18 the applicant relevant to compliance  
19 with the requirements of the Good Sa-  
20 maritan permit; and  
21 (V) demonstrated, to the satisfac-  
22 tion of the Administrator, that—  
23 (aa) the applicant has, or  
24 has access to, the financial re-  
25 sources to complete the project

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described in the Good Samaritan permit application, including any long-term monitoring and operations and maintenance that the Administrator may require the applicant to perform in the Good Samaritan permit; or

(bb) the applicant has established a third-party financial assurance mechanism, such as a corporate guarantee from a parent or other corporate affiliate, letter of credit, trust, surety bond, or insurance to assure that funds are available to complete the permitted work, including for operations and maintenance and to address potential contingencies, that—

(AA) establishes the Administrator or the head of the Federal land management agency as the beneficiary of the third-party fi-

1                    nancial assurance mecha-  
2                    nism; and

3                    (BB) allows the Admin-  
4                    istrator to retain and use  
5                    the funds from the financial  
6                    assurance mechanism in the  
7                    event the Good Samaritan  
8                    does not complete the reme-  
9                    diation under the Good Sa-  
10                   maritan permit; and

11                   (vii) the project meets the require-  
12                   ments of this Act;

13                   (B) the State or Indian tribe with jurisdic-  
14                   tion over land on which the abandoned  
15                   hardrock mine site is located has been given an  
16                   opportunity to review and, if necessary, com-  
17                   ment on the grant of the Good Samaritan per-  
18                   mit;

19                   (C) in the case of a project proposed to be  
20                   carried out under the Good Samaritan permit  
21                   partially or entirely on land owned by the  
22                   United States, pursuant to subsection (I), the  
23                   head of the applicable Federal land manage-  
24                   ment agency has signed a decision document  
25                   approving the proposed project; and

1 (D) the Administrator or head of the Fed-  
2 eral land management agency, as applicable,  
3 has provided—

4 (i) environmental review and public  
5 comment procedures required by sub-  
6 section (1); and

7 (ii) a public hearing under that sub-  
8 section, if requested.

9 (2) DEADLINE.—

10 (A) IN GENERAL.—The Administrator  
11 shall grant or deny a Good Samaritan permit  
12 by not later than—

13 (i) the date that is 180 days after the  
14 date of receipt by the Administrator of an  
15 application for the Good Samaritan permit  
16 that, as determined by the Administrator,  
17 is complete and meets all applicable re-  
18 quirements of subsection (c); or

19 (ii) such later date as may be deter-  
20 mined by the Administrator with notifica-  
21 tion provided to the applicant.

22 (B) CONSTRUCTIVE DENIAL.—If the Ad-  
23 ministrator fails to grant or deny a Good Sa-  
24 maritan permit by the applicable deadline de-

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1           scribed in subparagraph (A), the application  
2           shall be considered to be denied.

3           (3) DISCRETIONARY ACTION.—The issuance of  
4           a permit by the Administrator and the approval of  
5           a project by the head of an applicable Federal land  
6           management agency shall be considered to be discre-  
7           tionary actions taken in the public interest.

8           (ii) EFFECT OF PERMITS.—

9           (1) IN GENERAL.—A Good Samaritan and any  
10          cooperating person undertaking remediation activi-  
11          ties identified in, carried out pursuant to, and in  
12          compliance with, a covered permit—

13               (A) shall be considered to be in compliance  
14               with all requirements (including permitting re-  
15               quirements) under the Federal Water Pollution  
16               Control Act (33 U.S.C. 1251 et seq.) (including  
17               any law or regulation implemented by a State  
18               or Indian tribe under section 402 or 404 of  
19               that Act (33 U.S.C. 1342, 1344)) and the Com-  
20               prehensive Environmental Response, Compeusa-  
21               tion, and Liability Act of 1980 (42 U.S.C. 9601  
22               et seq.) during the term of the covered permit,  
23               after the termination of the Good Samaritan  
24               permit, and after declining to convert an inves-

1           igative sampling permit into a Good Samaritan  
2           permit, as applicable;

3           (B) shall not be required to obtain a per-  
4           mit under, or to comply with, section 301, 302,  
5           306, 307, 402, or 404 of the Federal Water  
6           Pollution Control Act (33 U.S.C. 1311, 1312,  
7           1316, 1317, 1342, 1344), or any State or Trib-  
8           al standards or regulations approved by the Ad-  
9           ministrator under those sections of that Act,  
10          during the term of the covered permit, after the  
11          termination of the Good Samaritan permit, and  
12          after declining to convert an investigative sam-  
13          pling permit into a Good Samaritan permit, as  
14          applicable; and

15          (C) shall not be required to obtain any au-  
16          thorizations, licenses, or permits that would  
17          otherwise not need to be obtained if the remedi-  
18          ation was conducted pursuant to section 121 of  
19          the Comprehensive Environmental Response,  
20          Compensation, and Liability Act of 1980 (42  
21          U.S.C. 9621).

22          (2) UNAUTHORIZED ACTIVITIES.—

23          (A) IN GENERAL.—Any person (including  
24          a Good Samaritan or any cooperating person)  
25          that carries out any activity, including activities

1 relating to mineral exploration, processing,  
2 beneficiation, or mining, including development,  
3 that is not authorized by the applicable covered  
4 permit shall be subject to all applicable law.

5 (B) LIABILITY.—Any activity not author-  
6 ized by a covered permit, as determined by the  
7 Administrator, may be subject to liability and  
8 enforcement under all applicable law, includ-  
9 ing—

10 (i) the Federal Water Pollution Con-  
11 trol Act (33 U.S.C. 1251 et seq.); and

12 (ii) the Comprehensive Environmental  
13 Response, Compensation, and Liability Act  
14 of 1980 (42 U.S.C. 9601 et seq.).

15 (3) NO ENFORCEMENT OR LIABILITY FOR GOOD  
16 SAMARITANS.—

17 (A) IN GENERAL.—Subject to subpara-  
18 graphs (D) and (E), a Good Samaritan or co-  
19 operating person that is conducting a remedi-  
20 ation activity identified in, pursuant to, and in  
21 compliance with a covered permit shall not be  
22 subject to enforcement or liability described in  
23 subparagraph (B) for—

24 (i) any actions undertaken that are  
25 authorized by the covered permit; or

1 (ii) any past, present, or future re-  
2 leases, threats of releases, or discharges of  
3 hazardous substances, pollutants, or con-  
4 taminants at or from the abandoned  
5 hardrock mine site that is the subject of  
6 the covered permit (including any releases,  
7 threats of releases, or discharges that oc-  
8 curred prior to the grant of the covered  
9 permit).

10 (B) ENFORCEMENT OR LIABILITY DE-  
11 SCRIBED.—Enforcement or liability referred to  
12 in subparagraph (A) is enforcement, civil or  
13 criminal penalties, citizen suits and any liabil-  
14 ities for response costs, natural resource dam-  
15 age, or contribution under—

16 (i) the Federal Water Pollution Con-  
17 trol Act (33 U.S.C. 1251 et seq.) (includ-  
18 ing under any law or regulation adminis-  
19 tered by a State or Indian tribe under that  
20 Act); or

21 (ii) the Comprehensive Environmental  
22 Response, Compensation, and Liability Act  
23 of 1980 (42 U.S.C. 9601 et seq.).

24 (C) DURATION OF APPLICABILITY.—Sub-  
25 paragraph (A) shall apply during the term of

1 the covered permit, after the termination of the  
2 Good Samaritan permit, and after declining to  
3 convert an investigative sampling permit into a  
4 Good Samaritan permit, as applicable.

5 (D) OTHER PARTIES.—Nothing in sub-  
6 paragraph (A) limits the liability of any person  
7 that is not described in that subparagraph.

8 (E) DECLINE IN ENVIRONMENTAL CONDI-  
9 TIONS.—Notwithstanding subparagraph (A), if  
10 a Good Samaritan or cooperating person fails  
11 to comply with any term, condition, or limita-  
12 tion of a covered permit and that failure results  
13 in surface water quality or other environmental  
14 conditions that the Administrator determines  
15 are measurably worse than the baseline condi-  
16 tions as described in the permit (in the case of  
17 a Good Samaritan permit) or the conditions as  
18 described pursuant to subsection (d)(3)(B), if  
19 applicable (in the case of an investigative sam-  
20 pling permit), at the abandoned hardrock mine  
21 site, the Administrator shall—

22 (i) notify the Good Samaritan or co-  
23 operating person, as applicable, of the fail-  
24 ure to comply; and

1 (ii) require the Good Samaritan or the  
 2 cooperating person, as applicable, to un-  
 3 dertake reasonable measures, as deter-  
 4 mined by the Administrator, to return sur-  
 5 face water quality or other environmental  
 6 conditions to those conditions.

7 (F) FAILURE TO CORRECT.—Subpara-  
 8 graph (A) shall not apply to a Good Samaritan  
 9 or cooperating person that fails to take any ac-  
 10 tions required under subparagraph (E)(ii) with-  
 11 in a reasonable period of time, as established by  
 12 the Administrator.

13 (G) MINOR OR CORRECTED PERMIT VIOLA-  
 14 TIONS.—For purposes of this paragraph, the  
 15 failure to comply with a term, condition, or lim-  
 16 itation of a Good Samaritan permit or inves-  
 17 tigative sampling permit shall not be considered  
 18 a permit violation or noncompliance with that  
 19 permit if—

20 (i) that failure or noncompliance does  
 21 not result in a measurable adverse impact,  
 22 as determined by the Administrator, on  
 23 water quality or other environmental condi-  
 24 tions; or

1 (ii) the Good Samaritan or cooper-  
2 ating person complies with subparagraph  
3 (E)(ii).

4 (o) PUBLIC NOTIFICATION OF ADVERSE EVENT.—A  
5 Good Samaritan shall notify all appropriate Federal,  
6 State, Tribal, and local entities of any unplanned or pre-  
7 viously unknown release of historic mine residue caused  
8 by the actions of the Good Samaritan or any cooperating  
9 person in accordance with—

10 (1) section 103 of the Comprehensive Environ-  
11 mental Response, Compensation, and Liability Act  
12 of 1980 (42 U.S.C. 9603);

13 (2) section 304 of the Emergency Planning and  
14 Community Right-To-Know Act of 1986 (42 U.S.C.  
15 11004);

16 (3) the Federal Water Pollution Control Act  
17 (33 U.S.C. 1251 et seq.);

18 (4) any other applicable provision of Federal  
19 law; and

20 (5) any other applicable provision of State,  
21 Tribal, or local law.

22 (p) GRANT ELIGIBILITY.—A remediation project con-  
23 ducted under a Good Samaritan permit shall be eligible  
24 for funding pursuant to—

1 (1) section 319 of the Federal Water Pollution  
2 Control Act (33 U.S.C. 1329), for activities that are  
3 eligible for funding under that section; and

4 (2) section 104(k) of the Comprehensive Envi-  
5 ronmental Response, Compensation, and Liability  
6 Act of 1980 (42 U.S.C. 9604(k)), subject to the con-  
7 dition that the recipient of the funding is otherwise  
8 eligible under that section to receive a grant to as-  
9 sess or remediate contamination at the site covered  
10 by the Good Samaritan permit.

11 (q) EMERGENCY AUTHORITY AND LIABILITY.—

12 (1) EMERGENCY AUTHORITY.—Nothing in this  
13 section affects the authority of—

14 (A) the Administrator to take any respon-  
15 sive action authorized by law; or

16 (B) a Federal, State, Tribal, or local agen-  
17 cy to carry out any emergency authority, in-  
18 cluding an emergency authority provided under  
19 Federal, State, Tribal, or local law.

20 (2) LIABILITY.—Except as specifically provided  
21 in this Act, nothing in this Act, a Good Samaritan  
22 permit, or an investigative sampling permit limits  
23 the liability of any person (including a Good Samari-  
24 tan or any cooperating person) under any provision  
25 of law.

1 (r) TERMINATION OF GOOD SAMARITAN PERMIT.—

2 (1) IN GENERAL.—A Good Samaritan permit  
3 shall terminate, as applicable—

4 (A) on inspection and notice from the Ad-  
5 ministrator to the recipient of the Good Samar-  
6 itan permit that the permitted work has been  
7 completed in accordance with the terms of the  
8 Good Samaritan permit, as determined by the  
9 Administrator;

10 (B) if the Administrator terminates a per-  
11 mit under paragraph (4)(B); or

12 (C) except as provided in paragraph (2)—

13 (i) on the date that is 18 months after  
14 the date on which the Administrator grant-  
15 ed the Good Samaritan permit, if the per-  
16 mitted work has not commenced by that  
17 date; or

18 (ii) if the grant of the Good Samari-  
19 tan permit was the subject of a petition for  
20 judicial review, on the date that is 18  
21 months after the date on which the judicial  
22 review, including any appeals, has con-  
23 cluded, if the permitted work has not com-  
24 menced by that date.

25 (2) EXTENSION.—

1 (A) IN GENERAL.—If the Administrator is  
2 otherwise required to terminate a Good Samaritan  
3 permit under paragraph (1)(C), the Admin-  
4 istrator may grant an extension of the Good Sa-  
5 maritan permit.

6 (B) LIMITATION.—Any extension granted  
7 under subparagraph (A) shall be not more than  
8 180 days for each extension.

9 (3) EFFECT OF TERMINATION.—

10 (A) IN GENERAL.—Notwithstanding the  
11 termination of a Good Samaritan permit under  
12 paragraph (1), but subject to subparagraph  
13 (B), the provisions of paragraphs (1) through  
14 (4) of subsection (n) shall continue to apply to  
15 the Good Samaritan and any cooperating per-  
16 sons after the termination, including to any  
17 long-term operations and maintenance pursuant  
18 to the agreement under paragraph (5).

19 (B) DEGRADATION OF SURFACE WATER  
20 QUALITY.—

21 (i) OPPORTUNITY TO RETURN TO  
22 BASELINE CONDITIONS.—If, at the time  
23 that 1 or more of the conditions described  
24 in paragraph (1) are met but before the  
25 Good Samaritan permit is terminated, ac-

1 tions by the Good Samaritan or cooper-  
 2 ating person have caused surface water  
 3 quality at the abandoned hardrock mine  
 4 site to be measurably worse, as determined  
 5 by the Administrator, when compared to  
 6 baseline conditions described in the permit,  
 7 the Administrator shall, before terminating  
 8 the Good Samaritan permit, provide the  
 9 Good Samaritan or cooperating person, as  
 10 applicable, the opportunity to return sur-  
 11 face water quality to those baseline condi-  
 12 tions.

13 (ii) EFFECT.—If, pursuant to clause  
 14 (i), the applicable Good Samaritan or co-  
 15 operating person does not return the sur-  
 16 face water quality at the abandoned  
 17 hardrock mine site to the baseline condi-  
 18 tions described in the permit, as deter-  
 19 mined by the Administrator, subparagraph  
 20 (A) shall not apply to the Good Samaritan  
 21 or any cooperating persons.

22 (4) UNFORESEEN CIRCUMSTANCES.—

23 (A) IN GENERAL.—The recipient of a Good  
 24 Samaritan permit may seek to modify or termi-

1 nate the Good Samaritan permit to take into  
2 account any event or condition that—

3 (i) significantly reduces the feasibility  
4 or significantly increases the cost of com-  
5 pleting the remediation project that is the  
6 subject of the Good Samaritan permit;

7 (ii) was not—

8 (I) reasonably contemplated by  
9 the recipient of the Good Samaritan  
10 permit; or

11 (II) taken into account in the re-  
12 mediation plan of the recipient of the  
13 Good Samaritan permit; and

14 (iii) is beyond the control of the re-  
15 cipient of the Good Samaritan permit, as  
16 determined by the Administrator.

17 (B) TERMINATION.—The Administrator  
18 shall terminate a Good Samaritan permit if—

19 (i) the recipient of the Good Samari-  
20 tan permit seeks termination of the permit  
21 under subparagraph (A);

22 (ii) the factors described in subpara-  
23 graph (A) are satisfied; and

24 (iii) the Administrator determines  
25 that remediation activities conducted by

1 the Good Samaritan or cooperating person  
2 pursuant to the Good Samaritan permit  
3 may result in surface water quality condi-  
4 tions, or any other environmental condi-  
5 tions, that will be worse than the baseline  
6 conditions, as described in the Good Sa-  
7 maritan permit, as applicable.

8 (5) LONG-TERM OPERATIONS AND MAINTENANCE.—  
9 In the case of a project that involves long-  
10 term operations and maintenance at an abandoned  
11 hardrock mine site located on land owned by the  
12 United States, the project may be considered com-  
13 plete and the Administrator, in coordination with the  
14 applicable Federal land management agency, may  
15 terminate the Good Samaritan permit under this  
16 subsection if the applicable Good Samaritan has en-  
17 tered into an agreement with the applicable Federal  
18 land management agency or a cooperating person  
19 for the long-term operations and maintenance that  
20 includes sufficient funding for the long-term oper-  
21 ations and maintenance.

22 (s) REGULATIONS.—

23 (1) IN GENERAL.—Subject to paragraph (2),  
24 the Administrator, in consultation with the Sec-  
25 retary of the Interior and the Secretary of Agri-

1 culture, and appropriate State, Tribal, and local offi-  
 2 cials, may promulgate any regulations that the Ad-  
 3 ministrator determines to be necessary to carry out  
 4 this Act.

5 (2) GUIDANCE IF NO REGULATIONS PROMUL-  
 6 GATED.—

7 (A) IN GENERAL.—If the Administrator  
 8 does not initiate a regulatory process to promul-  
 9 gate regulations under paragraph (1) within  
 10 180 days after the date of enactment of this  
 11 Act, the Administrator, in consultation with the  
 12 Secretary of the Interior, the Secretary of En-  
 13 ergy, and appropriate State, Tribal, and local  
 14 officials, shall issue guidance establishing spe-  
 15 cific requirements that the Administrator deter-  
 16 mines would facilitate the implementation of  
 17 this section.

18 (B) PUBLIC COMMENTS.—Before finalizing  
 19 any guidance issued under subparagraph (A),  
 20 the Administrator shall hold a 30-day public  
 21 comment period.

22 **SEC. 5. SPECIAL ACCOUNTS.**

23 (a) ESTABLISHMENT.—There is established in the  
 24 Treasury of the United States a Good Samaritan Mine

1 Remediation Fund (referred to in this section as a  
2 “Fund”) for—

3 (1) each Federal land management agency that  
4 authorizes a Good Samaritan to conduct a project  
5 on Federal land under the jurisdiction of that Fed-  
6 eral land management agency under a Good Samari-  
7 tan permit; and

8 (2) the Environmental Protection Agency.

9 (b) DEPOSITS.—Each Fund shall consist of—

10 (1) amounts provided in appropriation Acts;

11 (2) any proceeds from reprocessing deposited  
12 under section 4(f)(4)(B)(iv);

13 (3) any financial assurance funds collected from  
14 an agreement described in section  
15 4(m)(1)(A)(vi)(V)(bb);

16 (4) any funds collected for long-term operations  
17 and maintenance under an agreement under section  
18 4(r)(5);

19 (5) any interest earned under an investment  
20 under subsection (c);

21 (6) any proceeds from the sale or redemption of  
22 investments held in the Fund; and

23 (7) any amounts donated to the Fund by any  
24 person.

1 (c) UNUSED FUNDS.—Amounts in each Fund not  
2 currently needed to carry out this Act shall be—

3 (1) maintained as readily available or on de-  
4 posit;

5 (2) invested in obligations of the United States  
6 or guaranteed by the United States; or

7 (3) invested in obligations, participations, or  
8 other instruments that are lawful investments for a  
9 fiduciary, a trust, or public funds.

10 (d) RETAIN AND USE AUTHORITY.—The Adminis-  
11 trator and each head of a Federal land management agen-  
12 cy, as appropriate, may, notwithstanding any other provi-  
13 sion of law, retain and use money deposited in the applica-  
14 ble Fund without fiscal year limitation for the purpose of  
15 carrying out this Act.

16 **SEC. 6. REPORT TO CONGRESS.**

17 (a) IN GENERAL.—Not later than 8 years after the  
18 date of enactment of this Act, the Administrator, in con-  
19 sultation with the heads of Federal land management  
20 agencies, shall submit to the Committee on Environment  
21 and Public Works of the Senate and the Committees on  
22 Transportation and Infrastructure, Energy and Com-  
23 merce, and Natural Resources of the House of Represent-  
24 atives a report evaluating the Good Samaritan pilot pro-  
25 gram under this Act.

- 1 (b) INCLUSIONS.—The report under subsection (a)  
2 shall include—
- 3 (1) a description of—
- 4 (A) the number, types, and objectives of  
5 Good Samaritan permits granted pursuant to  
6 this Act; and
- 7 (B) each remediation project authorized by  
8 those Good Samaritan permits;
- 9 (2) interim or final qualitative and quantitative  
10 data on the results achieved under the Good Samari-  
11 tan permits before the date of issuance of the report;
- 12 (3) a description of—
- 13 (A) any problems encountered in admin-  
14 istering this Act; and
- 15 (B) whether the problems have been or can  
16 be remedied by administrative action (including  
17 amendments to existing law);
- 18 (4) a description of progress made in achieving  
19 the purposes of this Act; and
- 20 (5) recommendations on whether the Good Sa-  
21 maritan pilot program under this Act should be con-  
22 tinued, including a description of any modifications  
23 (including amendments to existing law) required to  
24 continue administering this Act.

Senator CARPER. As no other amendments were filed, I move to report S. 2781, the Good Samaritan Act of 2023, with the amendment in the nature of a substitute. All in favor say aye.

[Chorus of ayes.]

Senator CARPER. All opposed, say nay.

[Chorus of noes.]

Senator CARPER. In the opinion of the Chair, the ayes have it. The legislation is favorably reported. I note for the record that a quorum of the committee is present.

Senator Cardin?

Senator CARDIN. I just wanted to briefly comment on the bill we just passed.

It provides for a pilot program for waivers to the Superfund rules and the Clean Water Act. I do not think we should do that lightly. I want to compliment Senators Heinrich and Risch for the compromises that they were able to get and the protections that they have in this bill. I applaud them for those efforts.

But I do want to raise the issue that whenever we look at any type of a waiver from the Superfund rules or the Clean Water Act, we need to be extremely careful. There are other alternatives that could have accomplished these same goals.

I am concerned that we have not explored those options as deeply as we should. For example, we could be looking at changes within the Superfund rules and Clean Water Act as it relates to reclamation activities and cleanup activities itself.

Second, in the Bipartisan Infrastructure Bill, we provided under Section 4704 authorization for funds for clean-up under the Abandoned Hardrock Mine Reclamation Authority. Unfortunately, that was authorized at \$3 billion. It is my understanding that our appropriators have recommended \$5 billion. That is a far cry from what we intended under the Bipartisan Infrastructure Bill in order to clean up these abandoned mines.

Last, we should be looking at the responsible parties. I know it is challenging, but they are the ones responsible for the clean-up.

I just really wanted to raise those cautionary tones. I did not oppose this being reported out by voice vote. As this legislation works its way forward, I think we have to be extremely cautious about waivers to the Superfund rules or the Clean Water Act.

Senator MARKEY. Mr. Chairman.

Senator CARPER. Senator Markey.

Senator MARKEY. I would like to associate myself with the remarks of the Senator.

Senator CARPER. All right. Anyone else?

[No audible response.]

Senator CARPER. All right. Now I am going to call up en bloc the following bills: S. 3412, the Reuben E. Lawson Federal Building Act of 2023; S. 3570, a bill to designate the United States Court house located at 500 West Pike Street in Clarksburg, West Virginia as the Irene M. Keeley United States Courthouse; and S. 3577, a bill to designate the Federal building located at 300 East Third Street in North Platte, Nebraska, as the Virginia Smith Federal Building.

[The text of the referenced naming bills follows:]

Calendar No. \_\_\_\_\_

118TH CONGRESS  
2D SESSION

# S. 3412

[Report No. 118-\_\_\_\_\_]

To redesignate the Richard H. Poff Federal Building located at 210 Franklin Road Southwest in Roanoke, Virginia, as the "Reuben E. Lawson Federal Building", and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2023

Mr. WARNER (for himself and Mr. KAINÉ) introduced the following bill which was read twice and referred to the Committee on Environment and Public Works

(legislative day, \_\_\_\_\_)

Reported by Mr. CARPER, without amendment

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## A BILL

To redesignate the Richard H. Poff Federal Building located at 210 Franklin Road Southwest in Roanoke, Virginia, as the "Reuben E. Lawson Federal Building", 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reuben E. Lawson  
3 Federal Building Act of 2023”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) Reuben E. Lawson dedicated his life and  
7 career to promoting the ideals of equality and inclu-  
8 sion as a lawyer for the Roanoke chapter of the Na-  
9 tional Association for the Advancement of Colored  
10 People (commonly known as the “NAACP”) who ac-  
11 tively worked to end segregation in Southwest Vir-  
12 ginia;

13 (2) arguing a number of significant cases in the  
14 Western District of Virginia, Reuben E. Lawson  
15 fought to ensure the enforcement of *Brown v. Board*  
16 of Education of Topeka, 347 U.S. 483 (1954), so  
17 that schools in the Roanoke region would be fully in-  
18 tegrated; and

19 (3) Southwest Virginians are indebted to Reu-  
20 ben E. Lawson for his important work in ending  
21 segregation, and it is fitting that he be remembered  
22 in the current home of the court in which he val-  
23 iantly fought.

24 **SEC. 3. REUBEN E. LAWSON FEDERAL BUILDING.**

25 (a) **REDESIGNATION.**—The Richard H. Poff Federal  
26 Building located at 210 Franklin Road Southwest in Roa-

1 noke, Virginia, shall be known and designated as the  
2 “Reuben E. Lawson Federal Building”.

3 (b) REFERENCES.—Any reference in a law, map, reg-  
4 ulation, document, paper, or other record of the United  
5 States to the Richard H. Poff Federal Building shall be  
6 deemed to be a reference to the “Reuben E. Lawson Fed-  
7 eral Building”.

Calendar No. \_\_\_\_\_

118<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 3570**

[Report No. 118-\_\_\_\_\_]

To designate the United States courthouse located at 500 West Pike Street in Clarksburg, West Virginia, as the "Irene M. Keeley United States Courthouse", and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2024

Mrs. CAPITO (for herself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

(legislative day, \_\_\_\_\_), \_\_\_\_\_

Reported by Mr. CARPER, without amendment

---

**A BILL**

To designate the United States courthouse located at 500 West Pike Street in Clarksburg, West Virginia, as the "Irene M. Keeley United States Courthouse", 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,*

1 **SECTION 1. IRENE M. KEELEY UNITED STATES COURT-**  
2 **HOUSE.**

3 (a) **DESIGNATION.**—The United States courthouse  
4 located at 500 West Pike Street in Clarksburg, West Vir-  
5 ginia, shall be known and designated as the “Irene M.  
6 Keeley United States Courthouse”.

7 (b) **REFERENCES.**—Any reference in a law, map, reg-  
8 ulation, document, paper, or other record of the United  
9 States to the United States courthouse referred to in sub-  
10 section (a) shall be deemed to be a reference to the “Irene  
11 M. Keeley United States Courthouse”.

Calendar No. \_\_\_\_\_

118TH CONGRESS  
2D SESSION

**S. 3577**

[Report No. 118-\_\_\_\_\_]

To designate the Federal building located at 300 E. 3rd Street in North Platte, Nebraska, as the "Virginia Smith Federal Building", and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 11, 2024

Mr. RICKETTS (for himself and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

(legislative day, \_\_\_\_\_), \_\_\_\_\_

Reported by Mr. CARPER, without amendment.

---

**A BILL**

To designate the Federal building located at 300 E. 3rd Street in North Platte, Nebraska, as the "Virginia Smith Federal Building", 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. VIRGINIA SMITH FEDERAL BUILDING.**

4 (a) DESIGNATION.—The Federal building located at  
5 300 E. 3rd Street in North Platte, Nebraska, shall be

1 known and designated as the “Virginia Smith Federal  
2 Building”.

3 (b) REFERENCES.—Any reference in a law, map, reg-  
4 ulation, document, paper, or other record of the United  
5 States to the Federal building referred to in subsection  
6 (a) shall be deemed to be a reference to the “Virginia  
7 Smith Federal Building”.

Senator CARPER. I move to favorably report these naming bills to the Senate. All in favor, say aye.

[Chorus of ayes.]

Senator CARPER. Opposed, say nay.

[No audible response.]

Senator CARPER. In the opinion of the Chair, the ayes have it. The legislation is favorably reported. I note for the record that a quorum of the committee is present.

Senator Capito, I think that concludes our business for today. I want to thank everybody for helping to get us through this. We were a little rusty but we closed strong. I thank everyone for your help and participation.

That concludes the committee's votes as part of today's business meeting. Again, we thank everyone. I will now recognize any member who would like to speak on any matter that we have voted on. Would anyone like to speak?

[No audible response.]

Senator CARPER. In closing, I want to thank our members for being here today and voting on these important bills.

For some final housekeeping, I would ask unanimous consent to submit for the record letters of support for legislation our committee approved today.

[The referenced information follows:]

101 NORTH CARSON STREET  
CARSON CITY, NEVADA 89701  
OFFICE: (775) 684-5670  
FAX NO.: (775) 684-5685



555 EAST WASHINGTON AVENUE, SUITE 5100  
LAS VEGAS, NEVADA 89101  
OFFICE: (702) 486-2500  
FAX NO.: (702) 486-2505

## Office of the Governor

January 10, 2024

The Honorable Thomas R. Carper  
Chairman  
U.S. Senate Committee on Environment and Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
Ranking Member  
U.S. Senate Committee on Environment and Public Works  
United States Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

**RE: Support for S 2781, *The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023***

Dear Chairman Carper and Ranking Member Capito:

We write to share the State of Nevada's support for The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023 (S. 2781).

Modern hardrock mining is fundamental to the domestic supply of critical minerals and plays a vital role in the economy of many rural regions across Nevada and the nation. Today's mining is highly regulated and well-bonded, while historic mining was unregulated and often left behind physically and environmentally hazardous sites. Legacy Abandoned Mine Lands (AML) hazards are found across the nation, but hardrock AML hazards are particularly numerous in the western states with an estimated 300,000 historic mining-related features dotting Nevada's landscape alone. Starting in the 1980s, federal and state regulations were enacted requiring new mines on federal land to be bonded to assure their complete reclamation, but remediation of hardrock AML hazards never received the necessary funding and support.

Hardrock AML reclamation is imperative to the health of Nevada communities, wildlife, and environmental quality. Inherent lack of funding and concerns about liability protections have always hindered the cleanup of hardrock AML. Multiple Good Samaritan bills have been introduced over the past 20+ years, but they have all failed to provide the necessary Good Samaritan protection allowing for remediation of AML hazards. It can also be vital in some instances for State agencies to have Good Samaritan protections to be able to complete AML projects. The additional complication of mixed land and mineral ownership and roles of multiple regulatory authorities have only added to the potential Good Samaritan AML problem.



The Honorable Thomas R. Carper  
The Honorable Shelley Moore Capito  
January 10, 2024  
RE: Support of S. 2781  
Page Two

The currently available methods to facilitate Good Samaritan projects, for example the Environmental Protection Agency's (EPA) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Administrative Orders on Consent (AOC) tool, are not enough to provide states or Good Samaritan groups adequate protection from liability for AML water treatment projects. The EPA's AOC tool can provide assurance that the EPA will not seek to impose liability on the state or Good Samaritan group for well-conducted projects, but they cannot provide the same assurance that a third-party group will not bring a lawsuit against the state or Good Samaritan group resulting in major, perpetual liability. Nevada State agencies and Good Samaritan groups need and deserve the stronger liability protection provided by S. 2781.

Section 40704 of the Infrastructure Investment and Jobs Act (IIJA), authorizes a new, comprehensive AML program to address hardrock AML. It was conceived as a \$3 billion, ten-year program implemented through states, tribes, and the federal government. An appropriation to fund this program was left out of the IIJA. Congress appropriated \$5 million in Fiscal Years 2022 and 2023 under the Energy Communities Revitalization Program (ECRP). It is estimated that \$50 billion in funding will be required to remediate the hardrock AML issues throughout the country. Without a significant funding increase or the guarantee of funding for more than one fiscal year at a time, the new program makes it difficult for AML programs to increase their work on the ground. By providing liability protections for Good Samaritan projects, state agencies will be able to leverage IIJA 40704 funding to accomplish more remediation projects with Good Samaritan partners.

S. 2781 is comprehensive legislation that meets many of the challenging requirements faced by would-be AML Good Samaritans. The bill would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. These projects will complement the limited federal and state resources and demonstrate the benefits and expertise that Good Samaritans bring to the table.

AML projects, including Good Samaritan projects, will not only provide environmental and physical safety benefits but also create jobs in rural and often disadvantaged communities. The implementation of this bill will supplement the existing funding and ensure money is efficiently applied to get work done on the ground in Nevada and other western states.

With the enormous hardrock AML task at hand, we respectfully urge the Committee's favorable consideration of S. 2781 to provide liability protection for Good Samaritans who are willing to improve the environment for all to benefit. Thank you for your consideration.

Sincerely,



Joe Lombardo  
Governor



## Interstate Mining Compact Commission

437-A Carlisle Drive, Herndon, VA 20170  
 Phone: 703/709-8654 Fax: 703/709-8655  
 Web Address: <http://imcc.isa.us> E-Mail: [tlclarke@imcc.isa.us](mailto:tlclarke@imcc.isa.us)

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EXECUTIVE DIRECTOR  
THOMAS L. CLARKE

January 12, 2024

The Honorable Thomas R. Carper  
Chairman  
U.S. Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member  
U.S. Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Support for S. 2781, The Good Samaritan Remediation of  
Abandoned Hardrock Mines Act of 2023

Dear Chairman Carper and Ranking Member Capito,

I understand the Environment and Public Works Committee will consider S. 2781, The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023, during a markup scheduled for Tuesday, January 16, 2024. I am attaching the Interstate Mining Compact Commission's (IMCC's) resolution in support of this legislation for your consideration. This resolution was adopted by unanimous vote of those present and voting during a special meeting of IMCC convened for this and other purposes on January 11, 2024. The IMCC is an interstate governmental organization of 26 member states with significant interests in mining and abandoned mine reclamation issues spanning every region of the country. As a government organization, IMCC is not a partisan organization. The governors of our member states, who are the Commissioners of IMCC, come from both major political parties.

Nearly two centuries of unregulated and under-regulated mining in America left behind a multitude of hazards to the public and the environment. Effectively addressing these hazards on abandoned mine lands (AML) is very important to our member states. A comprehensive approach to hardrock AML, involving both public and private funding for reclamation and remediation efforts, is very badly needed. Historically, an impediment to both state and private efforts to address hardrock AML has been fear of the liability imposed by our country's intentionally strict federal environmental laws. This legislation is a very important first step in freeing up state and private funding for this effort by protecting those who voluntarily come forward to address these hazards with their own funds adequate protection against that liability.

January 12, 2024  
Senator Carper, Chair  
Senator Capito, Ranking Member  
Senate Environment and Public Works Committee  
Page 2

The legislation is written to offer this protection on a limited number of remedial projects on a pilot basis to demonstrate that real environmental benefits will result and to inform future legislation that might extend Good Samaritan protections to additional projects. Removing fear of liability as an impediment to Good Samaritan remediation of mining's legacy hazards is an important step forward in effectively addressing our country's huge number of hardrock AML hazards. In addition, Congress also needs to fund the full scale hardrock AML program that Section 40704 of the Infrastructure Investment and Jobs Act (IIJA) intended to establish, but did not fund.

We appreciate the Environment and Public Works Committee's leadership on this issue and encourage the Committee to approve S. 2781.

If you or your staff would like to discuss this, please contact me at 703 709 8655 or [tclarke@imcc.isa.us](mailto:tclarke@imcc.isa.us).

Sincerely,



Thomas L. Clarke  
Executive Director



**BACKCOUNTRY  
HUNTERS & ANGLERS**

PO BOX 9257  
MISSOULA, MT 59807  
406-926-1908

January 17, 2024

The Honorable Tom Carper  
Chairman  
Senate Environment and Public Works  
Committee  
513 Hart Senate Office Building  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member  
Senate Environment and Public Works  
Committee  
170 Russell Senate Office Building  
Washington, DC 20510

Re: Senate Environment and Public Works Committee 1/18 Business Meeting to consider the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781)

Dear Chairman Carper and Ranking Member Capito:

On behalf of Backcountry Hunters & Anglers (BHA), the voice for our wild public lands, waters and wildlife, I write to express our support for the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781). BHA thanks you for your leadership in considering S. 2781 and we ask that the committee advance this critical bipartisan legislation to the full Senate. Once passed into law, S. 2781 would create a pilot program that allows qualified Good Samaritan entities to clean up abandoned hardrock mine sites without assuming future liability. In turn, this legislation would leverage the capacity of entities such as state agencies, local governments and nonprofits to reduce the legacy of pollution on our public lands and waters.

Hardrock mining and associated abandoned mines represent the largest source of pollution in the United States, with an estimated 40 percent of watersheds in the West contaminated by mine tailings and runoff. Thousands of abandoned mines across the West are leaching toxic metals such as arsenic and are the source of acid mine drainage that threatens our lands, waters and wildlife. Currently, Good Samaritan entities with no legal responsibility or connection to these abandoned mines, who want to volunteer to restore them and improve water quality as well as fish and wildlife habitat, would be liable for any future pollution from the site.

By permitting Good Samaritan projects that limit liability, we can address regulatory barriers that prevent interested entities from working to mitigate toxic mine sites. It is critical that we fill resource and capacity gaps by facilitating private investments that restore healthy fish and wildlife habitat for future generations to enjoy. The Department of the Interior's Interagency Working Group final report issued in September of 2023 recommended that *"Congress should enact Good Samaritan legislation to facilitate abandoned mine land remediation."* S. 2781 has a total of 26 evenly divided bipartisan sponsors and cosponsors, more than one quarter of the entire United States Senate.

 [WWW.BACKCOUNTRYHUNTERS.ORG](http://WWW.BACKCOUNTRYHUNTERS.ORG)  
 [ADMIN@BACKCOUNTRYHUNTERS.ORG](mailto:ADMIN@BACKCOUNTRYHUNTERS.ORG)

 725 W ALDER SUITE 11  
MISSOULA, MT 59802



**BACKCOUNTRY  
HUNTERS & ANGLERS**

PO BOX 9257  
MISSOULA, MT 59807  
406-926-1908

Once again, BHA urges the committee to advance the Good Samaritan Remediation of Abandoned Hardrock Mines Act which is supported by hunters and anglers who are invested as Good Samaritans to undertake reclamation, restoration and projects that ensure abandon mines are cleaned up. Further, we commend the bill sponsors and committee leadership for their commitment to tackling the legacy of pollution posed by abandoned hardrock mines on our public lands and waters. We look forward to working closely with you to advance our shared priorities into law to the benefit of hunters and anglers, as well as all Americans who rely on clean water and healthy watersheds.

Sincerely,

Kaden McArthur  
Government Relations Manager  
Backcountry Hunters & Anglers





January 18, 2024

The Honorable Thomas Carper  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

Dear Chairman Carper, Ranking Member Capito, and Members of the Committee:

We would like to thank the Committee on Environment and Public Works for providing the opportunity to express our views regarding the PROVE IT Act. A study to increase transparency on greenhouse gas emissions intensity for specific products may seem innocuous but it presents problems. In particular, we are writing to discuss the major methodological problems with measuring greenhouse gas emissions intensity, the extension the PROVE IT Act provides for executive overreach, and the costs that would be associated with any subsequent carbon tariff or tax.

Measuring embodied emissions is not straightforward and there is no standard methodology. Even calculating “domestic carbon emissions” is different from “embodied carbon emissions consumed domestically.”<sup>1</sup> The PROVE IT Act seeks to track emissions at the product-level.<sup>2</sup> However, there are a multitude of standards and frameworks that use different scopes, origins, and stages of production to measure embodied emissions. Further, emissions are not readily observable, so there are major difficulties and differences in methodology for calculating embodied emissions at the industry level, which are even worse at the product-level. Methodologies for emissions calculations are still in their infancy, thus any policy response based on such calculations is imprudent.

Additionally, important questions must be raised about how such a study and database would be used. The PROVE IT Act covers products based on their Harmonized Tariff Schedule classification, laying the groundwork not only for a carbon tariff but a domestic carbon tax.<sup>3</sup> The application of a carbon tariff requires a corresponding domestic carbon tax to be compliant with the World Trade Organization. Thus, arming lawmakers with an emissions database lays the groundwork for both a carbon tariff and domestic carbon tax.

The use of this study is dangerously vulnerable to political influence and ripe for favoritism. Giving unelected bureaucrats enormous power over Americans by providing executive agencies the authority to judge the data businesses submit will present opportunities for abuse, for example by making some imports look more carbon intensive than they are in reality.<sup>4</sup> While some policymakers wish for such a

<sup>1</sup> Michael Keen, Ian W.H. Parry, and James Roaf, “[Border Carbon Adjustments: Rationale, Design and Impact](#),” Working Paper no. 2021/239, International Monetary Fund, September 27, 2021, p. 4.

<sup>2</sup> Shuting Pomerleau, “[What is in the Prove It Act introduced by Senator Coons and Senator Cramer?](#),” Niskanen Center, June 9, 2023.

<sup>3</sup> Travis Fisher and Gabriella Beaumont-Smith, “[The Cassidy Carbon Tax Is Even Worse Than Advertised](#),” *Cato at Liberty* (blog), Cato Institute, November 13, 2023; and Gabriella Beaumont-Smith, “[Three Reasons to Be Very Skeptical of U.S. Carbon Tariffs](#),” *Cato at Liberty* (blog), Cato Institute, June 20, 2023.

<sup>4</sup> Not only is data scarce but the methodologies, which already not well established for aggregate emissions data, still need to be developed. Shuting Pomerleau, “[Administrative Costs of a Carbon Tax](#),” Niskanen Center, February

database to provide evidence against trading partners conducting similar studies, since there is no standard methodology for measuring greenhouse gas emissions and no forum to settle disputes about intensity, the most likely outcome would be a tit-for-tat trade war, particularly if a carbon tariff and tax follow.

Further, mandating businesses to calculate emissions will increase their costs and any resulting carbon tax or tariff will compound these costs. A carbon tax will impose even higher costs on consumers than gas taxes, which already disproportionately harm those in the lowest-income thresholds.<sup>5</sup> Further, recent trade policy demonstrates the very real costs imposed on Americans by tariffs—those imposed by President Trump in 2018 and maintained by President Biden have cost Americans over \$50 billion per year.<sup>6</sup> The International Trade Commission found in its analysis of Section 232 and Section 301 tariffs that the “[h]igher costs were in many cases initially absorbed by importers and retailers; however,... more and more of that additional cost burden associated with the tariffs [was] passed on to the prices paid by final consumers — American families.”<sup>7</sup>

Transparency should be a choice and many American businesses are voluntarily working towards providing information about the emissions associated with their products. Commanding American businesses to calculate emissions will only be at their expense, hurting small businesses and low-income consumers the most while doing nothing to mitigate climate change.

Sincerely,

Travis Fisher  
Director  
Energy And Environmental Policy Studies  
Cato Institute

Gabriella Beaumont-Smith  
Policy Analyst  
Herbert A. Stiefel Center for Trade Policy Studies  
Cato Institute

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2021; and International Energy Agency, *Emissions Measurement and Data Collection for a Net Zero Steel Industry* (France: International Energy Agency, 2023).

<sup>5</sup> Matthew Kotchen, “[Taxing Externalities: Revenue Vs. Welfare Gains With An Application To U.S. Carbon Taxes](#),” National Bureau of Economic Research Working Paper no. 30321, August 2022, p.19.

<sup>6</sup> Jacqueline Varas and Tom Lee, “[The Total Cost of U.S. Tariffs](#),” American Action Forum, May 10, 2022.

<sup>7</sup> U.S. International Trade Commission, “[Economic Impact of Section 232 and 301 Tariffs on U.S. Industries](#),” Publication no. 5405, May 2023, pp. 245–246.

January 16, 2024

Dear Members of Congress:

As the Senate Environment and Public Works Committee is reportedly going to mark-up the PROVE IT Act (S. 1863) this week, the undersigned organizations want to express strong opposition to carbon tariffs and the PROVE IT Act. This legislation is a gateway for a carbon tax on imported goods and a domestic carbon tax.

It is shocking that legislators would contemplate advancing policy that would increase taxes, drive up prices for American families, harm workers and those on fixed incomes, and punish energy use.

Yet this is precisely what a carbon tariff does. A carbon tariff is two taxes in one. First, a carbon tariff is a tax on imported goods, borne by American consumers, workers, and businesses. Once the structure for imposing a carbon tariff has been established, it can then be used to impose a domestic carbon tax.

To think that the government would develop the administrative infrastructure to impose a domestic carbon tax without following through is naïve, at best. If the United States were to impose a tax on imports based on their carbon intensity, then there would be an expectation that domestic goods would be subjected to a comparable tax-based scheme. In fact, a domestic carbon tax might be required to meet international trade obligations.

The PROVE IT Act is not a benign government measurement scheme that will exist for knowledge purposes. It would create a detailed carbon-emissions measuring system for *domestic* and foreign goods, putting into place exactly what is needed to implement a carbon tariff *and* a domestic carbon tax.

Some proponents assert that the PROVE IT Act will help respond to the European Union's (EU) carbon tax, otherwise identified as a carbon border adjustment mechanism. The United States should push back against the EU's extreme green policies and not, under any circumstances, accept their disastrous environmental and energy policies.

The EU's carbon border adjustment mechanism and carbon tariffs are a way to impose extraterritorial regulations. Recently, we have seen these types of regulations domestically, as American farmers know all too well. Some states have imposed barriers to selling goods, such as eggs and pork, based not on the nature of the goods but due to moral and ethical preferences on how food should be produced.

Just imagine foreign countries trying to impose their moral preferences on Americans by using tariffs as leverage over how the U.S. uses energy or how American farmers produce food. Carbon tariffs and the PROVE IT Act will help establish this precedent.

Maybe even worse than the imposition of all these new taxes is the purpose of the taxes. They are taxes to punish energy use. Since more than 80 percent of the world's energy comes from coal, natural gas, and oil, which produce carbon dioxide emissions, a carbon tariff is a tax on the energy that makes modern life possible.

It would make medical care, housing, communications, food, and transportation less affordable, especially for people who already struggle to pay their bills. It would have a disproportionate impact on the poor and hurt those on fixed incomes, the elderly, and local institutions like hospitals, libraries, and schools.

The PROVE IT Act and carbon tariffs are not just bad policy, but bad politics. After all, supporting new taxes and opposing affordable and reliable energy is a toxic concoction.

A new survey sponsored by the American Energy Alliance and the Committee to Unleash Prosperity found that most Americans opposed a carbon tariff on imported goods, with 63 percent of Republicans opposed.

This opposition to paying carbon or energy taxes becomes even clearer when respondents were asked what they are willing to pay each year to address climate change. The median response was just \$10, and 35 percent (including 17 percent of Democrats) said they are unwilling to pay anything. American Energy Alliance president Thomas Pyle captured the results very well:

The results reconfirm what we already knew: voters are not willing to pay any tax associated with carbon dioxide or energy – including a carbon dioxide or energy tax on imported goods. Those who believe in limited government and free energy markets continue to be allied with the vast majority of voters concerning the destructive and pointless nature of carbon dioxide taxes and on the fundamentals of the climate change issue.

As the markup of the PROVE IT Act approaches, there may be disingenuous gimmicks such as amending the bill to say it may not be used to impose a carbon tariff. Such a provision does not change the fact that the foundation would have been created to impose a carbon tariff and domestic carbon tax. Any new legislation could easily get rid of such a prohibition, and that is exactly what would happen.

The PROVE IT Act and other carbon tariffs efforts show a complete disregard for what matters to Americans. They want affordable, reliable energy to power their homes and lives, not government meddling that drives up their household bills. They don't want federal schemes that treat energy use as a sin.

We strongly urge legislators to oppose the PROVE IT Act and any other legislation dealing with carbon tariffs.

Sincerely,

Daren Bakst  
Director, Center for Energy and Environment  
Competitive Enterprise Institute

John Droz, Jr.  
Founder  
Alliance for Wise Energy Decisions (AWED)

Phil Kerpen  
President  
American Commitment

Kristen Walker  
Policy Analyst  
The American Consumer Institute

Thomas J. Pyle  
President  
American Energy Alliance

Jason Isaac  
CEO  
American Energy Institute

Margaret Byfield  
Executive Director  
American Stewards of Liberty

Richard Manning  
President  
Americans for Limited Government

Brent Gardner  
Chief Government Affairs Officer  
Americans for Prosperity

Grover Norquist  
President  
Americans for Tax Reform

David T. Stevenson  
Director, Center for Energy & Environment  
Caesar Rodney Institute

Ryan Ellis  
President  
Center for a Free Economy

Daniel Mitchell  
President  
Center for Freedom and Prosperity

Jeffrey Mazzella  
President  
Center for Individual Freedom

Isaac Orr  
Policy Fellow  
Center of the American Experiment

Craig Rucker  
President  
Committee for a Constructive Tomorrow  
(CFACT)

Elizabeth Stelle  
Director of Policy Analysis  
Commonwealth Foundation

Matthew Kandrach  
President  
Consumer Action for a Strong Economy

E. Calvin Beisner  
President  
Cornwall Alliance for the Stewardship of  
Creation

Dr. Steven J. Allen  
Vice Chairman  
The Conservative Caucus

Jerry R. Simmons  
President/CEO  
Domestic Energy Producers Alliance

Kristen A. Ullman  
President  
Eagle Forum

Craig Richardson  
President  
Energy & Environment Legal Institute (E&E  
Legal)

Adam Brandon  
President  
FreedomWorks

George Landrith  
President  
Frontiers of Freedom

Cameron Sholtz  
Executive Director  
Heartland Impact

James Taylor  
President  
The Heartland Institute

Ryan Walker  
Executive Vice President  
Heritage Action for America

Mario H. Lopez  
President  
Hispanic Leadership Fund

Tom Harris  
Executive Director  
International Climate Science Coalition

Annette Olson  
Chief Executive Officer  
The John K. MacIver Institute for Public Policy

Jon Sanders  
Director, Center for Food, Power, and Life  
John Locke Foundation

Seton Motley  
President  
Less Government

Bob Barr  
Chairman, Liberty Guard  
Member of Congress, 1995-2003

Brandon Arnold  
Executive Vice President  
National Taxpayers Union

Daniel C. Turner  
Founder & Executive Director  
Power The Future

Donna Jackson  
Director of Membership Development  
Project 21 Black Leadership Network

Paul Gessing  
President  
Rio Grande Foundation

Bette Grande  
CEO and President  
Roughrider Policy Center

The Viscount Monckton of Brenchley  
Deputy Director (Intelligence)  
Strategic Threat Assessment Group

David Williams  
President  
Taxpayers Protection Alliance

Derrick Max  
President  
Thomas Jefferson Institute for Public Policy

Ben Zycher  
Senior Fellow  
\*American Enterprise Institute

\*Affiliation is for identification purposes only.

Eastern PA Coalition for Abandoned Mine Reclamation



Robert "Bobby" E. Hughes  
EPCAMR Executive Director  
101 South Main Street  
Ashley, PA 18706  
Phone: (570) 371-3523  
[rhughes@epcamr.org](mailto:rhughes@epcamr.org)  
Website: [www.epcamr.org](http://www.epcamr.org)

January 17, 2024

The Honorable Chuck Schumer  
Majority Leader  
United States Senate

The Honorable Mitch McConnell  
Minority Leader  
United States Senate

The Honorable Hakeem Jeffries  
Minority Leader  
United States House of Representatives

The Honorable Mike Johnson  
Speaker  
United States House of Representatives

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, and Minority Leader Jeffries:

The Eastern PA Coalition for Abandoned Mine Reclamation (EPCAMR) is in support of Congress passing Good Samaritan legislation to facilitate abandoned mine cleanups.

With tens of thousands of polluting abandoned mine sites throughout the country with no party responsible for reclamation, there is a tremendous opportunity for cleanups to restore the productivity of these sites, not only improving the health of wetlands and downstream fisheries, but also regenerating wildlife habitat on de-vegetated abandoned mine lands. State agencies and private entities who have no legal responsibility or connection to these abandoned mines – true Good Samaritans – want to help tackle some of these cleanup projects. Unfortunately, under federal law, Good Samaritans are treated as if they are polluters themselves, posing significant liability risks that prevent projects from moving forward.

Our organization deals with these same issues in the Northern Appalachian Region of Pennsylvania's Anthracite and Bituminous Coalfields with our partners in reclamation, community watershed organizations, non-profits, Conservation Districts, and other conservation groups. On the State level, we do have the Environmental Good Samaritan Act (EGSA) that provides certain protections and immunities to landowners who propose reclamation projects. The Commonwealth of Pennsylvania does not possess sufficient resources to reclaim all abandoned mining and oil and gas lands and to abate all water pollution, therefore, the Commonwealth encourages reclamation by others. Landowners, citizens, watershed

associations, environmental organizations and, governmental entities who do not have a legal responsibility to reclaim abandoned lands or abate water pollution are interested in addressing these problems. Potential liabilities for personal injury, property damage, water pollution, and the continued operation, maintenance or repair of water pollution abatement facilities can hamper these efforts. The EGSA does not provide immunity for injury or damage resulting from acts or omissions which are reckless, grossly negligent or willful misconduct, other unlawful activities and has other exclusions that apply. Notice of these projects is also required.

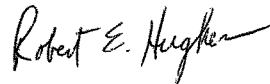
The greatest legal barrier to Good Samaritans stems from limitations within the federal Clean Water Act, which applies stringent regulatory standards for any cleanup that would improve water quality of abandoned mine discharges that constitute a point source under the Clean Water Act. Cost effective remediation techniques can greatly improve water quality at these sites, but meeting high Clean Water Act standards in many cases is not feasible. This strict regulatory framework exposes Good Samaritans to enforcement, fines, and third-party citizen lawsuits under both the Clean Water Act and CERCLA.

Consequently, instead of improving water quality at abandoned mine sites, these mines go on polluting the environment with no end in sight, degrading fish and wildlife habitat and drinking water sources. To address this conundrum, a bipartisan coalition of United States Senators have introduced the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023* (S. 2781). This legislation offers a practical solution by extending a targeted, conditional liability shield for qualified Good Samaritans to conduct cleanup projects at abandoned mine sites where there is no party to be held responsible for remediation.

S.2781 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, the bill specifies that mining activities are strictly prohibited. Lastly, in the unlikely event that a Good Samaritan causes an uncorrected worsening of water quality, liability protections would be voided.

By passing Good Samaritan legislation, abandoned mine remediation experts at state agencies, conservation groups and other qualified volunteers will be able to move forward with abandoned mine cleanups that otherwise will not happen, creating jobs, improved fish and wildlife habitat, and clean water along the way. We respectfully urge you to swiftly advance Good Samaritan legislation through committee and enact it into law so that those who want to help can be part of the solution cleaning up abandoned mines.

Sincerely,



Robert E. Hughes

Executive Director, Eastern PA Coalition for Abandoned Mine Reclamation (EPCAMR)

CC:

The Honorable Thomas Carper, Chair, Senate Environment and Public Works Committee  
The Honorable Shelley Moore Capito, Ranking Member, Senate Environment and Public Works Committee  
The Honorable Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee  
The Honorable Frank Pallone, Ranking Member, House Energy and Commerce Committee  
The Honorable Bruce Westerman, Chair, House Natural Resources Committee  
The Honorable Raúl Grijalva, Ranking Member, House Natural Resources Committee  
The Honorable Sam Graves, Chair, House Transportation and Infrastructure Committee  
The Honorable Rick Larsen, Ranking Member, House Transportation and Infrastructure Committee



## SHAMOKIN CREEK RESTORATION ALLIANCE

PO BOX 263  
MOUNT CARMEL, PA 17851

January 17, 2024

The Honorable Chuck Schumer  
Majority Leader  
United States Senate

The Honorable Mitch McConnell  
Minority Leader  
United States Senate

The Honorable Hakeem Jeffries  
Minority Leader  
United States House of Representatives

The Honorable Mike Johnson  
Speaker  
United States House of Representatives

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, and Minority Leader Jefferies:

The Shamokin Creek Restoration Alliance (SCRA) is in support of Congress passing Good Samaritan legislation to facilitate abandoned mine cleanups.

With tens of thousands of polluting abandoned mine sites throughout the country with no party responsible for reclamation, there is a tremendous opportunity for cleanups to restore the productivity of these sites, not only improving the health of wetlands and downstream fisheries, but also regenerating wildlife habitat on de-vegetated abandoned mine lands. State agencies and private entities who have no legal responsibility or connection to these abandoned mines – true Good Samaritans – want to help tackle some of these cleanup projects. Unfortunately, under federal law, Good Samaritans are treated as if they are polluters themselves, posing significant liability risks that prevent projects from moving forward.

Our organization deals with these same issues in the Northern Appalachian Region of Pennsylvania's Anthracite and Bituminous Coalfields with our partners in reclamation, community watershed organizations, non-profits, Conservation Districts, and other conservation groups. On the State level, we do have the Environmental Good Samaritan Act (EGSA) that provides certain protections and immunities to landowners who propose reclamation projects. The Commonwealth of Pennsylvania does not possess sufficient resources to reclaim all abandoned mining and oil and gas lands and to abate all water pollution, therefore, the Commonwealth encourages reclamation by others. Landowners, citizens, watershed associations, environmental organizations and, governmental entities who do not have a legal responsibility to reclaim abandoned lands or abate water pollution are interested in addressing these problems. Potential liabilities for personal injury, property damage, water pollution, and the continued operation, maintenance or repair of water pollution abatement facilities can hamper these efforts. The EGSA does not provide immunity for injury or damage resulting from acts or omissions which are reckless, grossly negligent or willful misconduct, other unlawful activities and has other exclusions that apply. Notice of these projects is also required.



[shamokincreek@gmail.com](mailto:shamokincreek@gmail.com)



[shamokincreek.org](http://shamokincreek.org)



[facebook.com/shamokincreek](https://facebook.com/shamokincreek)



## SHAMOKIN CREEK RESTORATION ALLIANCE

PO BOX 263  
MOUNT CARMEL, PA 17851

The greatest legal barrier to Good Samaritans stems from limitations within the federal Clean Water Act, which applies stringent regulatory standards for any cleanup that would improve water quality of abandoned mine discharges that constitute a point source under the Clean Water Act. Cost effective remediation techniques can greatly improve water quality at these sites, but meeting high Clean Water Act standards in many cases is not feasible. This strict regulatory framework exposes Good Samaritans to enforcement, fines, and third-party citizen lawsuits under both the Clean Water Act and CERCLA.

Consequently, instead of improving water quality at abandoned mine sites, these mines go on polluting the environment with no end in sight, degrading fish and wildlife habitat and drinking water sources. To address this conundrum, a bipartisan coalition of United States Senators have introduced the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023 (S. 2781)*. This legislation offers a practical solution by extending a targeted, conditional liability shield for qualified Good Samaritans to conduct cleanup projects at abandoned mine sites where there is no party to be held responsible for remediation.

S.2781 would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, the bill specifies that mining activities are strictly prohibited. Lastly, in the unlikely event that a Good Samaritan causes an uncorrected worsening of water quality, liability protections would be voided.

By passing Good Samaritan legislation, abandoned mine remediation experts at state agencies, conservation groups and other qualified volunteers will be able to move forward with abandoned mine cleanups that otherwise will not happen, creating jobs, improved fish and wildlife habitat, and clean water along the way. We respectfully urge you to swiftly advance Good Samaritan legislation through committee and enact it into law so that those who want to help can be part of the solution cleaning up abandoned mines.

Sincerely,

Stephen Motyka

Vice President

Shamokin Creek Restoration Alliance



[shamokincreek@gmail.com](mailto:shamokincreek@gmail.com)



[shamokincreek.org](http://shamokincreek.org)



[facebook.com/shamokincreek](https://facebook.com/shamokincreek)



**SHAMOKIN CREEK  
RESTORATION ALLIANCE**

PO BOX 263  
MOUNT CARMEL, PA 17851

CC:

- The Honorable Thomas Carper, Chair, Senate Environment and Public Works Committee
- The Honorable Shelley Moore Capito, Ranking Member, Senate Environment and Public Works Committee
- The Honorable Cathy McMorris Rodgers, Chair, House Energy and Commerce Committee
- The Honorable Frank Pallone, Ranking Member, House Energy and Commerce Committee
- The Honorable Bruce Westerman, Chair, House Natural Resources Committee
- The Honorable Raúl Grijalva, Ranking Member, House Natural Resources Committee
- The Honorable Sam Graves, Chair, House Transportation and Infrastructure Committee
- The Honorable Rick Larsen, Ranking Member, House Transportation and Infrastructure Committee



[shamokincreek@gmail.com](mailto:shamokincreek@gmail.com)



[shamokincreek.org](http://shamokincreek.org)



[facebook.com/shamokincreek](https://facebook.com/shamokincreek)



January 18, 2024

Thomas R. Carper  
Chair, Committee on Environment and Public Works  
United States Senate  
410 Dirksen Office Building  
Washington, DC 20510

Shelly Moore Capito  
Ranking Member, Committee on Environment and Public Works  
United States Senate  
456 Dirksen Office Building  
Washington, DC 20510

Re: S.2781, Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023

Chair Carper and Ranking Member Capito:

Thank you for including S.2781, the Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023, in today's business meeting. On behalf of ConservAmerica, a nonprofit dedicated to promoting commonsense, fiscally responsible, durable solutions to today's environment, conservation, and energy challenges, I write in support of this bipartisan bill.

Helping to reform, strengthen, and improve protections for our nation's natural resources ranks among ConservAmerica's highest priorities. Unfortunately, far too often, policies that were adopted to help remedy environmental challenges stand as a hindrance to pollution mitigation and remediation. Such is the case with abandoned hardrock mines in the U.S., where concerns about legal liabilities deter third parties from voluntarily pursuing environmental cleanup at legacy sites.

Mining has been conducted in the U.S. throughout its history and much of it occurred before the adoption of today's legal and regulatory framework, which is designed to protect human health and the environment. Consequently, many historic mining operations were abandoned without being reclaimed and/or without appropriate environmental safeguards in place. The Government Accountability Office (GAO) has identified as many as 140,000 abandoned hardrock mines on lands managed by federal agencies, including 22,500 that may pose environmental hazards.<sup>1</sup> Taxpayers pay for remediating the most toxic sites through the Comprehensive Environmental

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<sup>1</sup> <https://www.gao.gov/assets/gao-20-238.pdf>

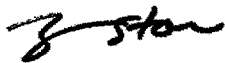
Response, Compensation and Liability Act's (CERCLA) Superfund program, but limited federal funding limits the program's impact.

Many third parties possess the initiative, resources, and technical ability to clean up watersheds and acid-mine drainage from these legacy mines, yet concerns about legal liabilities very often deter them from moving forward with these environmentally friendly projects. Commonly referred to as "Good Samaritans," these third parties were not responsible for the mine or the environmental damage, but the broad reach of the Clean Water Act and CERCLA makes them potentially responsible for the full breadth of liabilities associated with the mine site – well beyond what they hope to clean-up through voluntary actions. EPA has adopted a policy of using administrative tools to encourage Good Samaritan cleanups. However, as evidenced by the slow pace of remediation, these tools are limited and not capable of providing the same protections and incentives at the scale needed as federal legislation.

S.2781 creates a pilot permitting program that would enable not-for-profit cleanup efforts at orphaned mine sites by ensuring reasonable protections from legal liabilities. This will encourage states, local governments, nonprofits, landowners and corporations to move forward with projects to reduce pollution and improve water quality. Moreover, by enabling proof of concept, this pilot program will help provide a glidepath to enacting a permanent Good Samaritan program, which is needed to address the scale of the problem.

We applaud Senators Heinrich and Risch and their respective staffs for their work on this bill and we urge the Committee to move the bill to the full Senate for consideration.

Sincerely,



Todd Johnston  
Vice President

Copy: Senator Heinrich  
Senator Risch



American Exploration &  
Mining Association

16201 E. Indiana Ave., Suite 3280  
Spokane Valley, WA 99216  
(509)624-1158 - www.miningamerica.org

January 17, 2024

Chairman Tom Carper  
Senate Committee on  
Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

Ranking Member Shelley Moore Capito  
Senate Committee on  
Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

*(submitted via e-mail)*

**Re: *The Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781)***

Dear Chairman Carper and Ranking Member Capito:

The American Exploration & Mining Association (AEMA) would like to thank you for holding this markup of legislation to enhance the clean-up of historic, pre-regulation abandoned mines. We strongly support *The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023 (S. 2781)* and urge your support as well.

AEMA is a 129-year-old, 1,800-member national association representing the minerals industry with members residing in 46 U.S. states, seven Canadian provinces or territories, and 10 other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or employed by small businesses. AEMA has been a strong supporter of Good Samaritan legislation and has testified in support of such legislation before Senate and House committees.

In 2020, the Government Accountability Office completed an investigation finding that there are at least 140,000 abandoned hardrock mine features, of which 22,500 pose or may pose environmental hazards. There are also potentially more than 390,000 abandoned hardrock mine features on federal land not captured in federal databases. The vast majority of these are the result of pre-regulation practices, which are effectively eliminated by today's comprehensive suite of environmental laws and regulations applicable to the U.S. mining industry. Today, hardrock miners, conservation groups, state governments and others are ready to remedy many Abandoned Mine Lands (AMLs), but cannot do so due to liability concerns.

AEMA Letter of Support: S. 2781

Entities that have no legal or financial responsibility or connection to an abandoned mine – true Good Samaritans – want to volunteer to remediate many of these sites. Unfortunately, under the Clean Water Act (CWA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), liability for these sites would likely transfer to Good Samaritans, leaving them vulnerable to prosecution or litigation under the CWA or CERCLA, even though they did not create the pollution in the first place and have made successful improvements to water quality.

For 25 years, AEMA has patiently worked with Trout Unlimited, the National Mining Association and others to craft bipartisan, compromise legislation that strikes the right balance that this issue requires. The pilot program created by S. 2781 includes conditional liability relief for Good Samaritans, enabling AML cleanups to move forward while holding Good Samaritans accountable to the terms of the permits, enforceable by the EPA and federal land management agencies.

The broad coalition that helped negotiate and introduce S. 2781 is also reflected in the strong bipartisan support in the Senate. We commend the leadership of Senators Heinrich and Risch in introducing S. 2781, as well as the 24 other cosponsors for their support, seven of whom are members of this committee.

As you are no doubt aware, the Infrastructure Investment and Jobs Act (IIJA) included Section 40704, which established a new fund to expedite AML cleanups. However, without legislation like S. 2781, the CWA and CERCLA will remain as obstacles to full implementation of the IIJA by blocking Good Samaritans who have the desire, expertise, and financial resources to begin cleaning up many of these sites today.

In September 2023, the Biden-Harris administration's Interagency Working Group on Mining Laws, Regulations and Permitting (IWG) released a report titled "Recommendations to Improve Mining on Public Lands." AEMA engaged heavily with all the agencies who participated in gathering information for the report and submitted lengthy comments. While there are a number of recommendations in the report with which we do not agree, we strongly concur with the IWG's recommendation that "...Congress enact Good Samaritan legislation, limiting liability for non-responsible parties who seek to characterize, assess, and cleanup abandoned mine sites, subject to appropriate safeguards."<sup>1</sup> Although the administration has not explicitly endorsed S. 2781, all the ingredients they list for a successful Good Samaritan bill are included in the legislation before you today.

It is important to note that while we believe in the concepts contained in S. 2781, it is, after all, a pilot bill, authorizing just 15 projects, with a sunset of seven years. This is an opportunity to road test these concepts, to "walk before we run." After seven years, Congress will retain the authority to review the entire program, along with the ability to tweak, overhaul, expand, or let it expire – based on the results. S. 2781 offers a prudent, low-risk, scalable approach to a pressing problem.

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<sup>1</sup> Interagency Working Group on Mining Laws, Regulations and Permitting: Recommendations to Improve Mining on Public Lands: <https://www.doi.gov/media/document/mriwg-report-final-508-pdf> p.129

AEMA Letter of Support: S. 2781

For these and many more reasons, AEMA respectfully encourages the members of this committee to support S. 2781. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Mark D. Compton". The signature is written in a cursive style with a large, stylized "M" and "C".

Mark Compton  
Executive Director



January 10<sup>th</sup>, 2024

The Honorable Thomas R. Carper  
Chairman  
U.S. Senate Committee on Environment and  
Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
Ranking Member  
U.S. Senate Committee on Environment and  
Public Works  
United States Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Support for Senate Bill S.2781 *The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023*

Dear Chairman Carper and Ranking Member Capito:

The National Association of Abandoned Mine Land Programs (NAAML) supports the introduction of Senate Bill S.2781 *The Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023*. Historical mineral extraction unquestionably contributed significantly to the prosperity of our nation; however, our legacy mining inheritance also includes thousands of hazards to people and wildlife from legacy contaminants like mercury, arsenic, and acid mine drainage that pollute our water\*<sup>1</sup> and dangerous mine openings that pose physical dangers to people and wildlife nationwide.

Modern hardrock mining is fundamental to the domestic supply of critical minerals and plays a vital role in the economy of many rural regions across the Nation. Today's mining is highly regulated and well-bonded, as outlined in the recent Biden-Harris Administration's Interagency Working Group on Mining

Laws, Regulations, and Permitting\*\*2. Legacy Abandoned Mine Lands (AML) hazards are found across the nation but hardrock AML hazards are particularly numerous in the western states, with a known 633,181 historic hardrock mining-related features dotting the Nation\*\*3. There are typically no responsible parties left to be held accountable for these historic sites, but the state agencies that are charged with cleaning them up, and community and environmental groups with no connection to the sites that would like to help, known as “Good Samaritans”, are not able to do so because of liability concerns. Current law holds states and Good Samaritan groups liable for full costs of cleaning up remaining pollution if they do a project at these sites, even if they had no hand in creating the pollution, their work makes the site better, and cleaning up the site entirely is impractical or impossible.

A March 31, 2023, letter from Senator Martin Heinrich\*\*4 and others to the Senate Committee on Appropriations estimated it will take \$54 billion to clean up these sites in the United States. It could take nearly two centuries to fully address hardrock AML at the current funding rate. The Infrastructure Investment and Jobs Act (IIJA) authorized a national hardrock AML program (Sec. 40704) that would provide funding for AMD water treatment, but very little has been appropriated so far. With such limited funding, it would be very helpful to unlock the resources available from Good Samaritan groups that are currently sidelined by liability concerns. Even if a full-scale hardrock AML program is eventually funded, state agencies will be unable to use that funding to address AMD water pollution unless adequate Good Samaritan liability protections are put into place.

The currently available methods to facilitate Good Samaritan projects, for example EPA’s CERCLA Administrative Orders on Consent (AOC) tool, are not enough to provide states or Good Samaritan groups adequate protection from liability for AMD water treatment projects. EPA’s AOC tool can provide assurance that the EPA will not seek to impose liability on the state or Good Samaritan group for well-conducted projects, but they cannot provide the same assurance that a third-party group will not bring a lawsuit against the state or Good Samaritan group resulting in major, perpetual liability. State agencies and Good Samaritan groups need and deserve the stronger liability protection provided by S. 2781.

S.2781 is a comprehensive proposal that meets many of the challenging requirements faced by would-be AML Good Samaritans. The Bill would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups. The bill requires remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. These projects will complement the limited federal and state resources and demonstrate the benefits and expertise that Good Samaritans bring to the table.

The program to be established by this bill is a significant step in the right direction on an issue that has been delayed by disagreements over details in Congress for many years. The hope is that once the success of this program has been demonstrated, it could be made permanent and expanded as appropriate. NAAMLPLP needs a program like this to allow state agencies to do the water treatment work it is meant to do and to make the most of the funding and assistance available to do it.

With the enormous hardrock AML task at hand, we respectfully urge the Committee's favorable consideration of S. 2781 to provide the needed liability protection for Good Samaritans who are willing to improve the environment for all to benefit. Thank you for your consideration.

Sincerely,



Dustin Morin  
NAAML President  
Director, Mining and Reclamation Division  
Alabama Department of Labor  
Office: 205-582-5182  
[dustin.morin@labor.alabama.gov](mailto:dustin.morin@labor.alabama.gov)  
<https://naamlp.com>

CC: Don Newton  
Steve Fluke  
Tom Clarke  
Ryan Ellis

<sup>\*1</sup> <https://www.usgs.gov/special-topics/water-science-school/science/mining-and-water-quality>

<sup>\*2</sup> Biden-Harris Administration's Interagency Working Group on Mining Laws, Regulations, and Permitting, September 2023, Final Report, *Recommendations to Improve Mining on Public Lands*, Department of the Interior, Washington, DC

<sup>\*3</sup> Jeffrey L. Mauk, et al, 2023, *Building an inventory of abandoned mine features in the United States: Partnerships among the U.S. Geological Survey's USMIN project, and state, federal, and tribal agencies*: U.S. Geological Survey, Geology, Geophysics, and Geochemistry Science Center, P.O. Box 25046, MS 973, Denver, CO 80225 USA

<sup>\*4</sup> <https://www.warnock.senate.gov/wp-content/uploads/2023/05/FOTO-Program-letter.pdf>

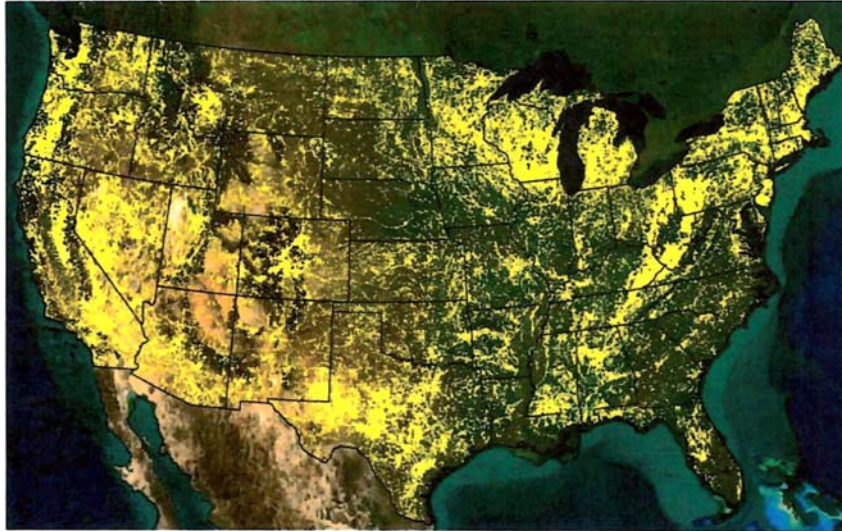


Image of the 719,121 mining related features form the USGS USMIN Database



January 17, 2024

Dear Senator:

The National Mining Association (NMA) and Trout Unlimited urge your support for the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2023 (S. 2781) being considered at the Senate Environment and Public Works (EPW) committee's markup on January 18. Advancing this Good Samaritan legislation supports our shared goals to clean up and remediate legacy hardrock abandoned mine lands (AML) and improve our nation's land and water resources, public health, and safety in places that continue to be experience the negative effects of legacy AMLs.

Historic mining in the United States, which pre-dates modern environmental laws and current reclamation standards, led to the creation of thousands of abandoned hardrock mine sites and features, some of which pose environmental risks to surrounding areas and communities. Many of these legacy sites are more than a century old with no financially viable owners, operators or responsible persons to remediate these sites.

To address legacy AMLs, conservation organizations, state agencies, and mining companies, who have no legal or financial responsibility or prior connection to these sites, need adequate liability protections to scale up voluntary cleanup efforts and invest the resources and expertise capable of completing critical remediation projects. Without liability protections, Good Samaritan volunteers with no prior responsibility for the mine site could be held financially liable for problems they did not create. Simply put, while the Clean Water Act and the Comprehensive Environmental Response, Compensation and Liability Act provide appropriate and comprehensive environmental and safety impacts for current projects, they unfortunately prevent the cleanup of legacy AMLs by treating those who want to improve these sites as if they were responsible for causing the damage in the first place.

S. 2781 creates a seven-year pilot program administered and permitted by the U.S. Environmental Protection Agency with narrowly tailored liability protections for Good Samaritan volunteers, such as conservation groups, state agencies, and mining companies with no existing legal responsibility or prior ownership. The bill requires that the initial 15 pilot projects allowed under the bill pose a low risk to the environment and result in improvements in soil and water quality, while also stipulating requirements for public involvement and environmental review. If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects to address harmful

abandoned mine waste. The legislation ensures safeguards are in place and specifies that mining activities are prohibited. Lastly, a "do no harm" provision stipulates that if a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be voided.

This bill is the culmination of years of extensive collaboration and input from conservation and environmental organizations, the mining industry, and state and local community stakeholders. The bill has received widespread support from state departments of environmental quality, National Association of Abandoned Mine Land Programs Tribal communities, county commissions, and outdoor recreation and conservation groups.

We are extremely thankful for the leadership of Senators Martin Heinrich (D-N.M.) and Jim Risch (R-Idaho), and their staff; the support from the bill's other 24 bipartisan cosponsors; and the bipartisan staff of the EPW committee who have worked diligently prepare the legislation for the committee's markup.

Communities impacted by AMLs should not have to wait any longer to implement meaningful cleanup efforts that benefit rural and Tribal communities, the health of fish and wildlife habitats, and our limited, precious water resources. We appreciate your continued leadership in addressing these issues and urge your support to advance the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act in the Senate for the benefit of future generations.

Sincerely,



Rich Nolan  
President and CEO  
National Mining Association



Chris Wood  
President and CEO  
Trout Unlimited



**WESTERN STATES WATER COUNCIL**

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: [www.westernstateswater.org](http://www.westernstateswater.org)

January 10, 2024

The Honorable Charles Schumer  
Senate Majority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Senate Minority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Tom Carper, Chair  
Environment and Public Works Committee  
United States Senate  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Shelley Moore Capito, Ranking Member  
Environment and Public Works Committee  
United States Senate  
410 Dirksen Senate Office Building  
Washington, DC 20510

RE: Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781)

Dear Senators,

Abandoned mines in the West pose various challenges, including adverse impacts to water quality, affecting our drinking water supplies, aquatic life, recreational uses, agriculture, and livestock. Despite efforts from federal and state agencies, and private partners, progress on this issue has been slow and expensive. The Western States Water Council (WSWC) supports your efforts to advance the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781). This bill builds on previous legislation introduced over the past couple of decades.

The WSWC is a bi-partisan government entity created by Western Governors in 1965, and represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

As noted in the attached WSWC Policy Position No. 477, Abandoned Hardrock Mine Cleanup, our member states are supportive of authorizing legislation and appropriations to address the various factors that hinder the ability of states, tribes, and federal agencies to address the monumental task of cleaning up abandoned hardrock mines including: (1) the absence of solvent responsible parties; (2) inadequate funding and resources at all levels of government; (3) the inability of interested third parties to act as voluntary Good Samaritans without incurring the risk of severe liability penalties; and (4) the backlog of inventory efforts to identify the location of and environmental hazards related to abandoned mines and properly prioritize the sites to maximize the benefits of remediation projects.

We appreciate the direction included in S. 2781 for EPA to consult with states and tribes in the development of remediation plan regulations, to coordinate with states and tribes on NEPA compliance, and

to provide notice to states and tribes of any permit applications and any unplanned releases of historic mine residue. States play a critical role in identifying appropriate sites and sponsors for Good Samaritan clean-ups and evaluating proposed remediation plans. Abandoned mine remediation efforts must comply with both federal and state laws (e.g. ground water quality requirements, and state-specific hardrock mining regulations) and state agencies are best placed to oversee and ensure project compliance with all requirements. Western states are eager to partner with federal agencies to ensure the success of the Good Samaritan program and to maximize the anticipated benefits.

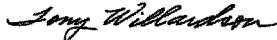
WSWC recommends that a formal consultation process with states be established as part of the EPA pilot program that ensures that state agencies have an opportunity to shape the program selection criteria and process for permit issuance and oversight. As co-regulators, consultation with states, and in some cases adjacent states, should not occur only at the end of the process.

States should also be protected from liability alongside federal agencies as noted in Section 3. Many western states are interested in leading the clean-up of abandoned mine sites, but need clear Good Samaritan liability protection to move forward with these projects. While EPA has provided helpful guiding principles and tools to reduce risks between prospective Good Samaritans and EPA, those tools do not bind third parties under the CERCLA statute.

Upon successful implementation of the pilot program, WSWC encourages Congress to include additional elements in a permanent Good Samaritan program. First, we suggest that Congress consider providing states that have existing Clean Water Act authority with the ability to administer Good Samaritan permits under a permanent program structure. A state-led permitting program, with oversight from EPA, follows the same model as other delegated federal environmental programs, and provides the best opportunity to achieve optimal environmental outcomes. Second, WSWC suggests that Congress consider allowing more flexibility with respect to maintenance commitments under a permanent program. Although WSWC appreciates the efforts to ensure that Good Samaritan permittees have the financial resources for the operation and maintenance of remediation activities, we caution that requiring applicants to commit to perpetual, long-term maintenance and operation could discourage projects that may otherwise have a measurable benefit and are supported or led by states. Flexibility could be appropriate for some projects and should be allowed subject to approval by the permitting authority. Third, we recommend a program that provides flexibility for states, when acting as a Good Samaritan, to implement creative approaches to finance remediation such as the use of Supplemental Environmental Project funds obtained through settlements of Clean Water Act violations.

Thank you for your leadership and dedicated work on this issue.

Sincerely,



Tony Willardson  
Executive Director

cc: Senate Environment and Public Works - Western Committee Members



**RESOLUTION  
of the  
WESTERN STATES WATER COUNCIL  
regarding  
Abandoned Hardrock Mine Cleanup**

**Deadwood, South Dakota  
September 16, 2021**

**WHEREAS**, the General Mining Act of 1872 allowed individuals to obtain exclusive rights to valuable hardrock mineral deposits on land belonging to the United States without requirements to reclaim the land until the 1970s; and

**WHEREAS**, hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper; and

**WHEREAS**, as part of this past, the West contains historically mined and abandoned hardrock mines on public and private land, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the needed cleanup and reclamation; and

**WHEREAS**, a recent report from the Government Accountability Office (GAO-20-238) found that the United States has at least 140,000 abandoned hardrock mine features on federal land of which 22,500 pose or may pose environmental hazards, including adverse effects to water quality; and

**WHEREAS**, most of these sites are in many western states with a significant portion located wholly or partially on public land managed by the U.S. Forest Service or the U.S. Bureau of Land Management; and

**WHEREAS**, significant hardrock mining has also occurred on tribal lands; and

**WHEREAS**, there could be more than 390,000 additional abandoned hardrock mine features on federal land that have not yet been characterized; and

**WHEREAS**, many of the abandoned hardrock mines are co-located on public and private land; therefore, consideration should be given to the private land component as well when assessing full mine site cleanup; and

**WHEREAS**, many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs that are used to identify state-specific priorities with respect to abandoned hardrock mining issues; and

**WHEREAS**, there are numerous economic, environmental, and social benefits from remediating and reclaiming lands and waters impaired by abandoned hardrock mines; and

**WHEREAS**, water quality impacts can be severe, with water quality conditions resulting in impacts to drinking water supplies, aquatic life, recreational uses, agriculture and livestock; and

**WHEREAS**, the U.S. Environmental Protection Agency (EPA) has identified developing alternative industrial development projects that are bonded for future cleanup on abandoned hardrock mine sites as an innovative solution to generate benefits and return abandoned mine lands to productivity while considering economic, environmental and social effects; and

**WHEREAS**, establishing a productive post-mining land use is an important safety and quality of life issue for states, especially where abandoned hardrock mine sites exist with encroaching development, have an increased prevalence of outdoor recreation opportunities such as off highway vehicle usage, or where the sites can meet the growing demand for renewable energy development and storage; and

**WHEREAS**, the cleanup of abandoned hardrock mines is hampered by two issues – (1) insufficient state and federal resources and (2) concerns about liability, compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site; and

**WHEREAS**, Bureau of Land Management officials estimated that with the agency’s current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database (GAO-20-238); and

**WHEREAS**, states, tribes, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility for the sites (referred to as Good Samaritans in this resolution) have engaged in or are interested in voluntary restoration work at abandoned hardrock mines; and

**WHEREAS**, Good Samaritans currently have potential liability for their voluntary cleanup under the Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) despite the fact that they did not previously operate or own the mine. Such Good Samaritans have expressed interest in voluntarily bearing the costs of the cleanup, and they could provide numerous benefits if they were able to remediate the abandoned mine, but are dissuaded by liability concerns; and

**WHEREAS**, liability concerns also prevent other active modern mining companies from re-mining or voluntarily cleaning up abandoned mines; and

**WHEREAS**, “Good Samaritan” bills have been introduced in Congress over the years to protect non-labile entities that are willing to voluntarily clean up these sites from legal liability under CERCLA and CWA; and

**WHEREAS**, in 2020 the EPA created a new office, the Office of Mountains, Deserts, and Plains, to promote Good Samaritan cleanup efforts and foster partnerships with states, tribes, local communities and other stakeholders to ensure more efficient cleanup of both Superfund and non-Superfund sites in the West, including abandoned mines; and

**WHEREAS**, in many western states, abandoned hardrock mine cleanup projects on public and private lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs if sufficient funding were available, and allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

**NOW, THEREFORE, BE IT RESOLVED**, that the Western States Water Council (WSWC) supports increased federal funding and workforce resources dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs, with a priority on those sites that are contributing to CWA 303(d) impaired waters or have been otherwise prioritized by states.

**BE IT FURTHER RESOLVED**, that increased federal funding appropriated by Congress should not be used to offset or otherwise reduce existing resources allocated to states to work on abandoned hardrock mine issues and should be delivered to state and federal agencies through a clear, transparent, and efficient manner that maximizes project implementation work at sites prioritized by states.

**BE IT FURTHER RESOLVED** that the WSWC supports a rapid and extensive inventory and characterization of environmental hazards and impacts, including water quality, caused by abandoned hardrock mines on federal, state, tribal, and private land across western states and working collaboratively with states and tribes, relying on their expertise to prioritize sites for cleanup.

**BE IT FURTHER RESOLVED** that the WSWC supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states' priority abandoned mine issues by helping states to leverage federal programs and enhance collaboration across federal agencies, states, regional, local, non-profit, and private partnerships to create an "all-hands" approach to finding creative solutions, including mining actions identified in EO 14017, for the cleanup of abandoned hardrock mine sites and to accelerate remedial efforts using the most advanced technology solutions.

**BE IT FURTHER RESOLVED** that the WSWC supports exploration of new ideas for moving projects forward, such as using Brownfields' Bona Fide Prospective Purchaser protections or other methods of promoting liability protections until such time that a Good Samaritan program can be established.

**BE IT FURTHER RESOLVED** that the WSWC supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability for the site and to include flexibility and mechanisms for States to implement creative approaches to remediation (e.g., use of Supplemental Environmental Projects obtained through settlements).

**BE IT FURTHER RESOLVED**, the WSWC supports legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

**BE IT FURTHER RESOLVED**, the WSWC calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans, while the federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental entities, and the mining industry) from improving conditions at abandoned mines.



January 16, 2024

The Honorable Tom Carper  
Chair  
Senate Environment & Public Works Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
Ranking Member  
Senate Environment & Public Works Committee  
United States Senate  
Washington, D.C. 20510

**RE: The Women's Mining Coalition Offers its Strong Support for the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024* (S.2781)**

Dear Chairman Carper and Ranking Member Moore Capito:

The Women's Mining Coalition (WMC) appreciates this opportunity to express our full support for the *Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024*, (S.2781). We are pleased that the Senate Environment & Public Works Committee (EPW) is holding this important business meeting and believe this important bill deserves the Committee's enthusiastic support.

For nearly three decades, WMC, working in conjunction with the U.S. mining industry, has advocated for bipartisan legislation to enable Abandoned Mine Lands (AML) reclamation by addressing the Clean Water Act and Superfund liability issues that are a serious barrier to third-party Good Samaritan AML cleanup efforts. Nearly all AML sites with environmental challenges were created decades before the enactment of the country's environmental protection statutory and regulatory framework. Consequently, finding a legislative solution to clean up these sites is imperative; S. 2781 is the necessary solution.

Based on WMC's three decades of expertise with AML policy issues, we have long recognized the legal impediments to voluntary cleanup of AMLs, especially those sites where there are complex surface water and groundwater contamination issues due to contact with mine waste and/or seepage from old mine workings. There is widespread agreement among policymakers and independent researchers regarding the need to enact Good Samaritan liability relief to address the AML problem. Groups like the National Academy of Sciences/National Research Council and the Western Governors' Association have repeatedly urged Congress to enact legislation that eliminates the liability exposure that currently discourages parties that have no previous involvement with a mine from undertaking voluntary reclamation and remediation activities.

Since 2021, Congress has enacted two laws whose successful implementation relies, in part, on removing the barriers to Good Samaritan AML remediation. First, Section 40704 of the Infrastructure

*The Women's Mining Coalition is a non-profit organization advocating for today's modern mining industry, which is essential to our Nation*



Investment and Jobs Act of 2021 (also known as the Bipartisan Infrastructure Law) established a new abandoned hardrock mine reclamation fund to jumpstart abandoned mine cleanups. Yet liability issues provide a significant barrier to public-private partnerships in this new program. By passing Good Samaritan legislation, Congress can begin to remove these barriers, which will fully capitalize on the Section 40704 AML reclamation funding provision and maximize the value of the public's investment in AML remediation.

Second, the Inflation Reduction Act of 2022 ties tax credits for EVs to ambitious domestic critical mineral production percentages that must be achieved to qualify a vehicle and its battery for the credit. By 2027, the minimum domestic critical minerals percentage escalates to 80 percent. Producing critical minerals from AML sources is one way to increase the domestic critical mineral supply chain to help satisfy the IRA's EV tax credit qualification criteria.

More recently, in September 2023, the Interagency Working Group (IWG), under the Department of the Interior's leadership, published its report entitled "Recommendations to Improve Mining on Public Lands" that explicitly recommends that Congress enact Good Samaritan AML remediation legislation. The IWG report includes statements from several entities that specifically endorse S. 3571, the 2022 predecessor to S. 2781.

The WMC thus strongly supports S.2781 and applauds Senators Risch and Heinrich for their vision and leadership in introducing this important bill. We also appreciate the many bipartisan co-sponsors of S. 2781 and respectfully ask all EPW committee members to support S. 2781.

Sincerely,



Emily Hendrickson  
President

*The Women's Mining Coalition is a non-profit organization advocating for today's modern mining industry, which is essential to our Nation*



Senator CARPER. I also ask unanimous consent that the staff have authority to make technical and conforming changes to the legislation approved today.

Thank you, everyone, for your participation. With that, this business meeting is adjourned. Thank you all.

[Whereupon, at 11:24 a.m., the business meeting was adjourned.]

