

108TH CONGRESS
1ST SESSION

S. 1660

To improve water quality on abandoned and inactive mine land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2003

Mr. CAMPBELL (for himself, Mr. DOMENICI, Mr. ALLARD, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To improve water quality on abandoned and inactive mine land, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Good Samaritan Aban-
5 doned and Inactive Mine Remediation Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the Federal Government has encouraged,
9 through various laws and policies, the development

1 of gold, silver, and other minerals, especially in the
2 West;

3 (2) development of the resources referred to in
4 paragraph (1) has—

5 (A) helped create a strong economy; and

6 (B) provided strategic materials to achieve
7 maximum production of the metals that were
8 essential to victory in World War I and World
9 War II;

10 (3) during World War I and World War II, the
11 Federal Government actively encouraged mining and
12 milling operations, including the design and place-
13 ment of mine tailings and waste rock piles, prac-
14 tices—

15 (A) that were not governed by any Federal
16 or State environmental laws during that period;

17 (B) the impact of which on the environ-
18 ment and public health were unknown; and

19 (C) that since that period, have been—

20 (i) found to be harmful to the environ-
21 ment; and

22 (ii) made illegal;

23 (4) the result of the practices is a legacy of
24 abandoned and inactive mine sites, many of which
25 are on Federal land, that—

1 (A) have been unreclaimed or, based on ex-
 2 isting environmental standards, inadequately re-
 3 claimed; and

4 (B) continue to pose environmental and
 5 safety hazards;

6 (5) the cleanup of the abandoned and inactive
 7 mine sites is hampered primarily by concerns about
 8 the potential liability associated with the cleanup.

9 (b) PURPOSE.—The purpose of this Act is to facili-
 10 tate the cleanup of abandoned and inactive mine sites by
 11 limiting the potential liability of persons cleaning up the
 12 sites.

13 **SEC. 3. ABANDONED AND INACTIVE MINE REMEDIATION**
 14 **PERMITS.**

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

18 “(r) ABANDONED AND INACTIVE MINE REMEDI-
 19 ATION PERMITS.—

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

21 “(A) ABANDONED OR INACTIVE MINE
 22 LAND.—

23 “(i) IN GENERAL.—The term ‘aban-
 24 doned or inactive mine land’ means land—

1 “(I) that was actively mined for
2 noncoal resources;

3 “(II) that is not—

4 “(aa) being actively mined
5 for noncoal resources; or

6 “(bb) subject to a temporary
7 shutdown; and

8 “(III) with respect to which there
9 is no identifiable or economically via-
10 ble owner or operator of record for
11 the mine or mine facilities.

12 “(ii) EXCLUSIONS.—The term ‘aban-
13 doned or inactive mine land’ does not in-
14 clude—

15 “(I) a site listed on the National
16 Priorities List under the Comprehen-
17 sive Environmental Response, Com-
18 pensation, and Liability Act of 1980
19 (42 U.S.C. 9601 et seq.); or

20 “(II) a brownfield site (as de-
21 fined in section 101 of that Act (42
22 U.S.C. 9601).

23 “(B) PERMIT.—The term ‘permit’ means
24 an abandoned or inactive mine remediation per-
25 mit described in paragraph (2).

1 “(C) PERMITTING AGENT.—The term ‘per-
2 mitting agent’ means—

3 “(i) the Administrator; or

4 “(ii) the head of a State program that
5 is authorized by the Administrator to issue
6 and administer permits under this sub-
7 section.

8 “(D) REMEDIATING PARTY.—

9 “(i) IN GENERAL.—The term ‘remedi-
10 ating party’ means any of the following
11 persons or entities that carries out the re-
12 mediation of an abandoned or inactive
13 mine land:

14 “(I)(aa) The United States, a
15 State, a political subdivision of a
16 State, or an Indian tribe; or

17 “(bb) any officer, employee, or
18 contractor of the United States, a
19 State, a political subdivision of a
20 State, or an Indian tribe.

21 “(II) A corporation.

22 “(III) Any person or entity act-
23 ing in cooperation with the permittee
24 with respect to the abandoned or inac-
25 tive mine land.

1 “(ii) EXCLUSIONS.—The term ‘reme-
2 diating party’ does not include a person or
3 entity described in clause (i) that, with re-
4 spect to the abandoned or inactive mine
5 land that is being remediated, has been de-
6 termined to be legally responsible or in ma-
7 terial noncompliance with section 301(a).

8 “(E) UNANTICIPATED EVENT OR CONDI-
9 TION.—The term ‘unanticipated event or condi-
10 tion’ means an event or condition that was not
11 contemplated by the permit.

12 “(2) IN GENERAL.—The permitting agent may
13 issue an abandoned or inactive mine remediation
14 permit for the conduct of remediation activities on
15 abandoned or inactive mine land from which there is
16 or may be a discharge of pollutants to bodies of
17 water of the United States.

18 “(3) APPLICATION FOR PERMIT.—

19 “(A) COMPONENTS.—

20 “(i) IN GENERAL.—To be eligible to
21 receive a permit under this subsection, the
22 remediating party shall submit to the per-
23 mitting agent an application that includes
24 a remediation plan that—

25 “(I) identifies—

1 “(aa) the remediating party;

2 “(bb) any agents or contrac-

3 tors of the remediating party;

4 and

5 “(cc) any persons cooper-

6 ating with the remediating party

7 with respect to the remediation

8 plan;

9 “(II) describes the reasonable ef-

10 fforts of the remediating party to iden-

11 tify current owners, lessees, and

12 claimants of the abandoned or inactive

13 mine land addressed by the remedi-

14 ation plan;

15 “(III) certifies that the remedi-

16 ating party qualifies as a remediating

17 party under paragraph (1)(D);

18 “(IV) identifies that the site ad-

19 dressed by the plan is—

20 “(aa) abandoned or inactive

21 mine land; and

22 “(bb) eligible for a permit

23 under this Act;

1 “(V) identifies the bodies of
2 water of the United States affected by
3 the abandoned or inactive mine land;

4 “(VI) describes the baseline con-
5 dition of the bodies of water identified
6 under subclause (V), in accordance
7 with requirements established by the
8 permitting authority, as of the date of
9 the permit application (including any
10 conditions that make numeric moni-
11 toring of a baseline preexisting dis-
12 charge physically or economically in-
13 feasible);

14 “(VII) describes the physical con-
15 ditions at the site that are causing or
16 believed to be causing adverse water
17 quality impacts;

18 “(VIII) describes the goals and
19 objectives of remediation, including
20 the pollutant or pollutants to be ad-
21 dressed by the remediation plan;

22 “(IX)(aa) describes the practices
23 that are proposed to reduce, control,
24 mitigate, or eliminate the impacts of
25 adverse water quality, including the

1 preliminary system design and con-
2 struction, operation, and maintenance
3 plans; and

4 “(bb) includes a schedule and es-
5 timated completion date of the prac-
6 tices;

7 “(X) applies site-specific best
8 available technology, using best pro-
9 fessional judgment, to explain how the
10 practices described in subclause (IX)
11 are expected to improve the quality of
12 the bodies of water identified under
13 subclause (V);

14 “(XI) describes—

15 “(aa) site-specific moni-
16 toring or other forms of assess-
17 ment to be used to evaluate the
18 success of the practices during
19 and after implementation of the
20 remediation plan in improving
21 the quality of the water identified
22 under subclause (V); and

23 “(bb) the duration of the
24 monitoring or assessment;

1 “(XII)(aa) describes any extrac-
2 tion, processing, or removal of min-
3 erals for remediation or commercial
4 sale; and

5 “(bb) states that 100 percent of
6 the net profits generated through the
7 use or commercial sale of minerals
8 under item (aa) that will be—

9 “(AA) used for future reme-
10 diation; or

11 “(BB) deposited in a des-
12 ignated remediation fund;

13 “(XIII) provides a schedule for
14 periodic reporting on progress in im-
15 plementing the remediation plan; and

16 “(XIV)(aa) provides a budget for
17 the remediation plan; and

18 “(bb) identifies any potential
19 funding sources for carrying out the
20 remediation plan.

21 “(ii) CERTIFICATION BY CORPORA-
22 TION.—

23 “(I) IN GENERAL.—In addition
24 to the requirements under clause (i),
25 an application submitted by a cor-

1 poration shall include a certification
2 in accordance with paragraph
3 (1)(D)(ii) that, based on the knowl-
4 edge and belief of the officers and di-
5 rectors of the corporation, neither the
6 corporation nor any wholly owned
7 subsidiary of the corporation is legally
8 responsible for or in material non-
9 compliance with section 301(a) or an
10 equivalent State law for the site pro-
11 posed to be remediated.

12 “(II) LIMITATION.—If at any
13 time the permitting agent determines
14 that the certification under subclause
15 (I) is incorrect, the corporation—

16 “(aa) shall not be entitled to
17 the protection under this sub-
18 section; and

19 “(bb) shall be subject to li-
20 ability under this section or sec-
21 tion 301, 302, or 402.

22 “(B) APPROVAL OR DISAPPROVAL OF AP-
23 PLICATION.—

24 “(i) IN GENERAL.—Not later than
25 120 days after the date of receipt of an ap-

1 plication under subparagraph (A), the per-
2 mitting agent shall approve or disapprove
3 the application.

4 “(ii) PUBLIC PARTICIPATION.—Before
5 approving or disapproving an application
6 under clause (i), the permitting agent shall
7 provide to the public—

8 “(I) notice of the application; and

9 “(II) an opportunity for public
10 comment on the application.

11 “(iii) APPROVAL.—The permitting
12 agent shall approve an application under
13 clause (i) and issue a permit to the remedi-
14 ating party if the permitting agent deter-
15 mines that—

16 “(I) the remediating party has
17 made a reasonable effort (relative to
18 the resources available to the remedi-
19 ating party for the proposed remedi-
20 ation activity) to identify persons
21 under subparagraph (A)(i)(II);

22 “(II) the implementation of the
23 remediation plan would improve the
24 quality of the water identified under
25 subparagraph (A)(i)(V); and

1 “(III) any Indian tribe with ju-
 2 risdiction over the abandoned or inae-
 3 tive mine land subject to the permit
 4 consents to the issuance of the permit.

5 “(iv) ACTION FOLLOWING DIS-
 6 APPROVAL.—

7 “(I) REVISION.—If the permit-
 8 ting agent disapproves an application
 9 under clause (i), the permitting agent
 10 shall—

11 “(aa) notify the applicant of
 12 the reasons for disapproval; and

13 “(bb) allow the applicant 30
 14 days in which to submit a revised
 15 application.

16 “(II) DEADLINE FOR REVI-
 17 SION.—Not later than 30 days after
 18 the date on which a revision is sub-
 19 mitted under subclause (I)(bb), the
 20 permitting agent shall approve or dis-
 21 approve the revision.

22 “(4) CONTENTS OF PERMIT.—

23 “(A) IN GENERAL.—A permit shall—

1 “(i) provide for compliance with and
2 implementation of the remediation plan;
3 and

4 “(ii) establish a schedule for review by
5 the permitting agent of compliance with
6 and implementation of the remediation
7 plan.

8 “(B) LIMITATION.—A permit shall not—

9 “(i) require the remediating party to
10 comply with any other subsection or sec-
11 tion 301, 302, or 402; or

12 “(ii) except in a case in which the net
13 profits (as stated under paragraph
14 (3)(A)(i)(XII)(bb)) generated through such
15 use or sale of minerals are used for present
16 or future remediation activities, authorize
17 any discharge associated with the extrac-
18 tion, processing, or removal of minerals for
19 commercial use or sale.

20 “(5) MODIFICATION OF PERMIT.—

21 “(A) IN GENERAL.—Not later than 90
22 days after the date of receipt of a written re-
23 quest by a permittee to modify a permit, the
24 permitting agent shall approve or disapprove a
25 modification to the permit.

1 “(B) APPROVAL.—A modification to a per-
2 mit approved by the permitting agent under
3 this subsection shall—

4 “(i) be made by agreement of the per-
5 mittee and the permitting agent and with
6 the concurrence of any applicable State or
7 Indian tribe with jurisdiction over the
8 abandoned or inactive mine land subject to
9 the permit;

10 “(ii) be made in accordance with sub-
11 paragraphs (2)(B) and (3); and

12 “(iii) take effect on approval.

13 “(6) FAILURE TO COMPLY.—If a remediating
14 party fails to comply with any term or condition of
15 a permit under this subsection, the failure shall be
16 considered to be a violation subject to enforcement
17 under sections 309 and 505, except in a case in
18 which—

19 “(A)(i) based on information submitted to
20 the permitting agent by the permittee, the per-
21 mitting agent determines that the noncompli-
22 ance was the result of an unanticipated event or
23 condition; and

24 “(ii) not later than 30 days after the date
25 on which a determination is made under clause

1 (i), the permittee establishes, to the satisfaction
2 of the permitting agent, that the permittee is in
3 compliance with the permit; or

4 “(B)(i) the permitting agent determines
5 that compliance with the permit is infeasible be-
6 cause of reasons not contemplated at the time
7 at which the permit was issued; and

8 “(ii) the permitting agent and the per-
9 mittee modify the permit in accordance with
10 paragraph (5).

11 “(7) TERMINATION OF PERMIT.—

12 “(A) IN GENERAL.—The permitting agent
13 shall terminate a permit if—

14 “(i) the remediating party completes
15 the implementation of the remediation
16 plan;

17 “(ii) the discharges covered by the
18 permit become subject to a permit that is
19 issued—

20 “(I) under another subsection;
21 and

22 “(II) for the extraction, proc-
23 essing, or removal of minerals for
24 commercial sale, the net profits of
25 which shall be used for purposes other

1 than the purposes described in para-
2 graph (3)(A)(i)(XII)(bb)—

3 “(aa) that is not part of the
4 implementation of the remedi-
5 ation plan; and

6 “(bb) with respect to which
7 the remediating party is not a
8 participant;

9 “(iii) an unanticipated event or condi-
10 tion is encountered that is beyond the con-
11 trol of the remediating party; or

12 “(iv) the permitting agent determines
13 that remediation activities conducted under
14 the permit have resulted in surface water
15 quality conditions that are equal to or bet-
16 ter than the baseline condition of the water
17 as of the date of the permit application.

18 “(B) NO ENFORCEMENT LIABILITY.—If a
19 permit is terminated under subparagraph (A),
20 the remediating party shall not be subject to
21 enforcement under section 309 or 505 for any
22 subsequent discharges from the abandoned or
23 inactive mine land subject to the permit.

24 “(8) LIMITATIONS.—

1 “(A) IN GENERAL.—A remediating party
2 issued a permit under this subsection and, for
3 purposes of conducting a preliminary investiga-
4 tion of a site to determine whether to pursue a
5 permit application, a potential applicant for a
6 permit, for a period of not more than 120 days
7 unless otherwise stated by the permitting au-
8 thority, shall not be considered to be an owner
9 or operator for purposes of—

10 “(i) this Act;

11 “(ii) the Comprehensive Environ-
12 mental Response, Compensation, and Li-
13 ability Act of 1980 (42 U.S.C. 9601 et
14 seq.); or

15 “(iii) the Solid Waste Disposal Act
16 (42 U.S.C. 6901 et seq.).

17 “(B) PRIOR VIOLATIONS.—With respect to
18 violations of this section, or sections 301, 302,
19 and 402 that occur before the date on which a
20 permit is issued under this subsection, nothing
21 in this subsection—

22 “(i) precludes an action under section
23 309 or 505 for such violations; or

24 “(ii) affects the relief available under
25 section 309 or 505.

1 “(9) REGULATIONS.—Not later than 1 year
2 after the date of enactment of this subsection, the
3 Administrator, in consultation with State, tribal, and
4 local officials and after notice and opportunity for
5 public comment, shall promulgate regulations that—

6 “(A) establish requirements for remedi-
7 ation plans under this subsection; and

8 “(B) provide guidance for the development
9 of State programs for the issuance and admin-
10 istration of permits under this subsection.

11 “(10) FUNDING.—A remediating party that im-
12 plements a remediation plan under a permit issued
13 under this subsection shall be eligible for grants
14 under section 319(h).

15 “(11) EFFECT.—Nothing in this subsection—

16 “(A) limits the liability associated with any
17 mining or processing activities in existence be-
18 fore, on, or after the date of enactment of this
19 subsection; or

20 “(B) affects any obligation of a State or
21 Indian tribe under section 303.”.

○