

114TH CONGRESS
2D SESSION

S. 2950

To require the Administrator of the Environmental Protection Agency to receive, process, and pay certain claims relating to the Gold King Mine spill.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2016

Mr. GARDNER (for himself and Mr. HATCH) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Administrator of the Environmental Protection Agency to receive, process, and pay certain claims relating to the Gold King Mine spill.

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 “Gold King Account-
5 ability and Compensation for Taxpayers” or the “Gold
6 King ACT”.

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) on August 5, 2015, the Environmental Pro-
2 tection Agency caused the release of approximately
3 3,000,000 gallons of contaminated water from the
4 Gold King Mine into Cement Creek;

5 (2) the Environmental Protection Agency takes
6 full responsibility for the Gold King Mine spill;

7 (3) the peer reviewer of the Corps of Engineers
8 to the report of the Department of the Interior re-
9 lating to the Gold King Mine spill expressed con-
10 cerns about the independent nature of the report
11 and the internal communications and decisions of
12 the Environmental Protection Agency relating to the
13 spill;

14 (4) the Environmental Protection Agency
15 should be held to the same standards as the private
16 sector would be if the private sector caused a similar
17 spill;

18 (5) the Environmental Protection Agency
19 should hold accountable those individuals responsible
20 for the Gold King Mine spill; and

21 (6) since response activities took place after Oc-
22 tober 31, 2015, the Environmental Protection Agen-
23 cy should reimburse requests for response activity
24 expenses incurred after that date.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) GOLD KING MINE SPILL.—The term “Gold
7 King Mine spill” means the discharge on August 5,
8 2015, of approximately 3,000,000 gallons of con-
9 taminated water from the Gold King Mine north of
10 Silverton, Colorado, into Cement Creek that oc-
11 curred while contractors of the Environmental Pro-
12 tection Agency were conducting an investigation of
13 the Gold King Mine.

14 (3) INDEPENDENT CONTRACTOR.—The term
15 “independent contractor” means any person, as of
16 August 5, 2015, that—

17 (A) entered into a contract with a Federal
18 agency (as defined in section 2671 of title 28,
19 United States Code) for goods or services relat-
20 ing to the Gold King Mine spill; and

21 (B) was not an employee of the Govern-
22 ment (as defined in section 2671 of title 28,
23 United States Code).

24 (4) INJURED PERSON.—The term “injured per-
25 son” means a person that—

1 (A) suffered injury resulting from the Gold
 2 King Mine spill; and

3 (B) is—

4 (i) an individual;

5 (ii) an Indian tribe, tribal corporation,
 6 or other tribal organization;

7 (iii) a corporation, business, partner-
 8 ship, company, association, insurer, county,
 9 township, city, State or political subdivi-
 10 sion of a State, school district, ditch com-
 11 pany, special district, water district, water
 12 company, the Animas-La Plata Operation,
 13 Maintenance and Replacement Association,
 14 or other non-Federal entity; or

15 (iv) a legal representative of an indi-
 16 vidual or entity described in any of clauses
 17 (i) through (iii).

18 (5) INJURY.—The term “injury” means any
 19 damage to, or loss of, property, or a personal injury
 20 or death, caused by a negligent or wrongful act or
 21 omission of a Federal officer, employee, contractor,
 22 or subcontractor while acting within the scope of of-
 23 fice, employment, or contract, under circumstances
 24 in which the Federal officer, employee, contractor, or
 25 subcontractor, if a private person, would be liable to

1 the claimant in accordance with the law of the juris-
2 diction in which the act or omission occurred.

3 **SEC. 4. GOLD KING MINE SPILL CLAIMS PURSUANT TO THE**
4 **FEDERAL TORT CLAIMS ACT.**

5 (a) RESPONSIBILITIES OF THE ADMINISTRATOR.—

6 (1) IN GENERAL.—An injured person may bring
7 a claim arising out of, or relating to, any injury re-
8 sulting from the Gold King Mine spill under chapter
9 171 of title 28, United States Code (commonly
10 known as the “Federal Tort Claims Act”) and the
11 Administrator shall receive, process, and pay those
12 claims in accordance with this section.

13 (2) TIMING.—

14 (A) IN GENERAL.—Notwithstanding sec-
15 tion 2675(a) of title 28, United States Code,
16 not later than 90 days after the date on which
17 an injured person submits to the Administrator
18 a claim under this section, the Administrator
19 shall award or deny the payment of the claim.

20 (B) PARTIALLY PAID CLAIMS.—In the case
21 of a claim for which, as of the date of enact-
22 ment of this Act, the Administrator has par-
23 tially awarded payment to an injured person,
24 the Administrator shall award the remaining

1 payment not later than 60 days after that date
2 of enactment.

3 (C) PREVIOUSLY FILED CLAIMS.—In the
4 case of a claim for which, as of the date of en-
5 actment of this Act, not fewer than 90 days
6 have passed since the date on which an injured
7 person submitted to the Administrator a claim
8 under this section, not later than 60 days after
9 that date of enactment, the Administrator shall
10 award or deny payment of the claim.

11 (b) APPLICABILITY OF OTHER LAW.—

12 (1) APPLICABILITY OF EXCEPTION.—Section
13 2680(a) of title 28, United States Code, shall not
14 apply to claims brought under this section.

15 (2) INDEPENDENT CONTRACTORS.—For pur-
16 poses of a claim brought under this section, the defi-
17 nition of the term “Federal agency” under section
18 2671 of title 28, United States Code, shall be con-
19 sidered to include an independent contractor.

20 (c) ALLOWABLE DAMAGES.—

21 (1) PROPERTY LOSS.—A claim that is paid for
22 loss of property under this section may include oth-
23 erwise-uncompensated damages resulting from the
24 Gold King Mine spill for—

1 (A) a cost resulting from lost tribal or non-
2 tribal subsistence from hunting, fishing, fire-
3 wood gathering, timbering, grazing, or agricul-
4 tural activities, or from lost use for traditional
5 or ceremonial uses, conducted on land or water
6 damaged by the Gold King Mine spill;

7 (B) a cost of reforestation or revegetation
8 on tribal or non-Federal land, to the extent that
9 the cost of reforestation or revegetation is not
10 covered by any other Federal program;

11 (C) any costs borne by any injured person
12 to determine the extent of—

13 (i) the damages to agricultural land;

14 or

15 (ii) any other damages covered by this
16 Act;

17 (D) any costs borne by an injured person
18 to pay for water supplies or equipment to treat
19 water during the period for which a water sup-
20 ply of the injured person was compromised by
21 the Gold King Mine spill; and

22 (E) any other loss that the Administrator
23 determines to be appropriate for inclusion as
24 loss of property.

1 (2) BUSINESS LOSS.—A claim that is paid for
2 an injury under this section may include damages
3 resulting from the Gold King Mine spill for the fol-
4 lowing types of otherwise-uncompensated business
5 loss:

6 (A) Damage to tangible assets or inven-
7 tory.

8 (B) Lost business income.

9 (C) Overhead costs.

10 (D) Employee wages for work not per-
11 formed.

12 (E) Any other loss that the Administrator
13 determines to be appropriate for inclusion as a
14 business loss.

15 (3) FINANCIAL LOSS.—A claim that is paid for
16 an injury under this section may include damages
17 resulting from the Gold King Mine spill for the fol-
18 lowing types of otherwise-uncompensated financial
19 loss:

20 (A) An insurance deductible.

21 (B) Lost wages or personal income.

22 (C) Emergency staffing expenses.

23 (D) Debris removal and other cleanup
24 costs.

1 (E) Any other loss that the Administrator
2 determines to be appropriate for inclusion as a
3 financial loss.

4 (d) RECOUPMENT FOR IMPROPER PAYMENTS.—Not-
5 withstanding any other provision of law, during the 13-
6 year period beginning on the date on which a claim is
7 awarded under this section, the Administrator may take
8 such action as is necessary to recover payments made
9 under this section with respect to fraudulent claims and
10 claims made with inaccurate information.

11 (e) SOURCE OF PAYMENTS.—

12 (1) IN GENERAL.—Any compensation or award
13 against the Government made pursuant to a claim
14 under this section shall be paid by the Administrator
15 from unobligated balances in the appropriations ac-
16 counts of the Environmental Protection Agency.

17 (2) INTENT OF CONGRESS.—It is the intent of
18 Congress that no additional funds be appropriated to
19 carry out this Act.

20 **SEC. 5. GOLD KING MINE SPILL CLAIMS PURSUANT TO THE**
21 **COMPREHENSIVE ENVIRONMENTAL RE-**
22 **SPONSE, COMPENSATION, AND LIABILITY**
23 **ACT.**

24 (a) IN GENERAL.—The Administrator shall, con-
25 sistent with the national contingency plan, receive, proc-

1 ess, and pay under the Comprehensive Environmental Re-
2 sponse, Compensation, and Liability Act of 1980 (42
3 U.S.C. 9601 et seq.) claims related to the Gold King Mine
4 spill.

5 (b) ELIGIBLE CLAIMS.—The Administrator shall re-
6 ceive, process, and pay under the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9601 et seq.) claims related to the Gold
9 King Mine spill that otherwise would be ineligible under
10 that Act or the national contingency plan if the response
11 action carried out by the claimant is not inconsistent with
12 the national contingency plan as described in section 107
13 of that Act (42 U.S.C. 9607).

14 (c) TIMING.—

15 (1) IN GENERAL.—Not later than 90 days after
16 the date on which an injured person submits to the
17 Administrator a claim under this section, the Ad-
18 ministrator shall award or deny the payment of the
19 claim.

20 (2) PARTIALLY PAID CLAIMS.—In the case of a
21 claim for which, as of the date of enactment of this
22 Act, the Administrator has partially awarded pay-
23 ment to an injured person, the Administrator shall
24 award the remaining payment not later than 60 days
25 after that date of enactment.

1 (3) PREVIOUSLY FILED CLAIMS.—In the case of
2 a claim for which, as of the date of enactment of
3 this Act, not fewer than 90 days have passed since
4 the date on which an injured person submitted to
5 the Administrator a claim under this section, not
6 later than 60 days after that date of enactment, the
7 Administrator shall award or deny payment of the
8 claim.

9 **SEC. 6. EFFECT OF ACT; REDUCTION IN PAYMENT.**

10 (a) EFFECT OF ACT.—This Act does not diminish the
11 ability of the Administrator to carry out the responsibil-
12 ities of the Administrator under any other provision of
13 law.

14 (b) REDUCTION IN PAYMENT.—To prevent a claim-
15 ant from receiving twice the damage award for the same
16 injury or claim—

17 (1) any compensation or award against the
18 Government under section 4 shall be deducted from
19 any payment awarded against the Government under
20 section 5; and

21 (2) any compensation or award against the
22 Government under section 5 shall be deducted from
23 any payment awarded against the Government under
24 section 4.

1 **SEC. 7. WATER QUALITY PROGRAM.**

2 (a) IN GENERAL.—In response to the Gold King
3 Mine spill, the Administrator, in coordination with af-
4 fected States and Indian tribes, shall develop and imple-
5 ment a program for long-term water quality monitoring
6 of the Animas River.

7 (b) REQUIREMENTS.—In carrying out the program
8 described in subsection (a), the Administrator shall—

9 (1) collect water quality samples and sediment
10 data;

11 (2) provide the public with a means of viewing
12 the samples and data referred to in paragraph (1)
13 by, at a minimum, posting the information on the
14 website of the Administrator;

15 (3) take any other relevant measure necessary
16 to assist affected States and Indian tribes with long-
17 term water monitoring; and

18 (4) carry out additional program activities, as
19 determined by the Administrator.

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