

108TH CONGRESS  
1ST SESSION

# H. R. 2835

To provide for the remediation of abandoned and inactive hardrock mines  
in the Upper Animas River Basin in southwestern Colorado.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2003

Mr. MCINNIS (for himself, Mr. TANCREDO, and Mr. HEFLEY) introduced the  
following bill; which was referred to the Committee on Transportation  
and Infrastructure

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## A BILL

To provide for the remediation of abandoned and inactive  
hardrock mines in the Upper Animas River Basin in  
southwestern Colorado.

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 “Pilot Project, Good  
5 Samaritan Provision for Abandoned and Inactive Mined  
6 Land Remediation Act”.

7       **SEC. 2. FINDINGS AND PURPOSE.**

8       (a) FINDINGS.—Congress finds the following:

1           (1) Thousands of abandoned or inactive mines  
2       exist in the West and elsewhere in the United  
3       States.

4           (2) Often, a party that is responsible for condi-  
5       tions at abandoned or inactive mined land is not  
6       identifiable or economically viable, resulting in an in-  
7       ability to compel the party to clean up the mine site.

8           (3) Cleanup of these sites is hampered by liabil-  
9       ity concerns and disagreements over how those con-  
10      cerns should be addressed.

11          (4) A pilot program in a small geographic area  
12      may demonstrate how best to address liability issues  
13      with a variety of ownership patterns and cooperating  
14      entities.

15          (5) Only a small number of the hundreds of in-  
16      active mines in the Upper Animas River Basin in  
17      San Juan County, Colorado, have been actively  
18      mined since the 1940's.

19          (6) Twenty nine total maximum daily load allo-  
20      cations have been established pursuant to section  
21      303(d) of the Federal Water Pollution Control Act  
22      (33 U.S.C. 1313) for particular metals in specific  
23      segments of the Upper Animas River Basin.

24          (7) The Upper Animas River Basin is 1 of 2  
25      geographic areas nationwide chosen for intensive

1 study under the Department of the Interior’s aban-  
2 doned mined lands initiative.

3 (b) PURPOSE.—The purpose of this Act is to initiate  
4 a 10-year pilot program in the Animas River Basin which  
5 will facilitate the cleanup of abandoned and inactive mine  
6 sites in the Basin that negatively impact water quality by  
7 limiting liability under sections 301, 302, and 402 of the  
8 Federal Water Pollution Control Act (33 U.S.C. 1313,  
9 1314, 1342) for third parties not responsible for the deg-  
10 radation but who take steps to improve water quality.

11 **SEC. 3. ABANDONED OR INACTIVE MINED LAND REMEDI-**  
12 **ATION PERMITS.**

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

16 “(r) ABANDONED OR INACTIVE MINED LAND REME-  
17 DIATION PERMITS.—

18 “(1) LIMITED IN LOCATION.—This subsection  
19 applies only to abandoned or inactive hardrock  
20 mines located in the Animas River watershed above  
21 Elk Creek in San Juan County, Colorado.

22 “(2) DEFINITIONS.—In this subsection, the fol-  
23 lowing definitions apply:

24 “(A) ABANDONED OR INACTIVE MINED  
25 LAND.—The term ‘abandoned or inactive mined

land’ means land formerly mined for noncoal resources—

“(i) that is no longer actively mined (and not in temporary shutdown) as of January 1, 1992;

“(ii) that is not included, or proposed for inclusion, on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); and

“(iii) for which there is no known responsible owner or operator.

“(B) RESPONSIBLE OWNER OR OPERATOR.—The term ‘responsible owner or operator’ means a person or entity—

“(i) that is responsible for activities conducted at abandoned or inactive mined land that created conditions that cause or contribute to the discharge of pollutants from the abandoned or inactive mined land; and

“(ii) that is financially capable of compliance with the requirements of sections 301 and 302 and this section.

1           “(C) PERMIT.—The term ‘permit’ means  
2           an abandoned or inactive mined land remedi-  
3           ation permit described under paragraph (3).

4           “(D) REMEDIATING PARTY.—The term ‘re-  
5           mediating party’ means—

6                   “(i) the United States, except with re-  
7                   spect to abandoned or inactive mined land  
8                   located on Federal land;

9                   “(ii) the State of Colorado or political  
10                  subdivision thereof; or

11                  “(iii) a private person or entity that is  
12                  not—

13                           “(I) a responsible owner or oper-  
14                           ator for the site to be remediated; or

15                           “(II) the legal owner of the site  
16                           to be remediated.

17           “(E) COOPERATING PARTY.—The term ‘co-  
18           operating party’ means any person or entity, in-  
19           cluding the Federal Government, that is not the  
20           legal owner of the site to be remediated and—

21                   (i) participates in the design or imple-  
22                   mentation of the practices described in  
23                   subparagraph (4)(B)(viii) with respect to  
24                   the site to be remediated;

1 “(ii) participates in the design or im-  
2 plementation of monitoring or other forms  
3 of assessment described in subparagraph  
4 (4)(B)(x); or

5 “(iii) raises, contributes, or admin-  
6 isters funding or in-kind services for the  
7 purposes described in paragraph  
8 (4)(B)(viii) or (4)(B)(x).

9 “(3) PERMITS.—

10 “(A) IN GENERAL.—The Administrator,  
11 with the concurrence of the State of Colorado,  
12 may issue, modify, enforce, or terminate an  
13 abandoned or inactive mined land remediation  
14 permit to a remediating party for discharges as-  
15 sociated with remediation activity at abandoned  
16 or inactive mined land, that modifies the other-  
17 wise applicable requirements of any other sub-  
18 section of this section and of sections 301, 302  
19 and 401.

20 “(B) DELEGATION.—The Administrator  
21 may delegate all or part of the authority under  
22 subparagraph (A) to the State of Colorado.

23 “(4) PERMIT PROCESS.—

24 “(A) SCOPE.—A remediating party may  
25 apply for a permit for remediation activities at

1 abandoned or inactive mined land from which  
2 there is or may be a discharge of pollutants to  
3 waters of the United States.

4 “(B) REMEDIATION PLAN.—A remediating  
5 party that seeks a permit shall submit an appli-  
6 cation for the permit that includes a remedi-  
7 ation plan that—

8 “(i) identifies the remediating party  
9 and any persons cooperating with the re-  
10 mediating party with respect to the plan;

11 “(ii) identifies the geographic bound-  
12 aries of the abandoned or inactive mined  
13 land addressed by the plan, including a  
14 verification that the land meets the re-  
15 quirements of paragraphs (1) and (2)(A);

16 “(iii) identifies the waters of the  
17 United States affected by past mining ac-  
18 tivities at the abandoned or inactive mined  
19 land;

20 “(iv) describes the baseline conditions  
21 of the waters at the time of the permit ap-  
22 plication (including the nature and extent  
23 of any pollutant causing the impact);

24 “(v) describes the physical and chem-  
25 ical conditions at the abandoned or inactive

1           mined land that are causing adverse water  
2           quality impacts;

3           “(vi) describes the applicant’s reason-  
4           able efforts to identify—

5                   “(I) current owners, lessees, and  
6                   claimants of the abandoned or inactive  
7                   mined land addressed by the plan;  
8                   and

9                   “(II) any persons or entities, in-  
10                  cluding mine operators, whose activi-  
11                  ties at the abandoned or inactive  
12                  mined land after October 18, 1972,  
13                  created conditions that cause or con-  
14                  tribute to the discharge of pollutants  
15                  from abandoned or inactive mined  
16                  land;

17           “(vii) describes the remediation goals  
18           and objectives, including the pollutant or  
19           pollutants to be addressed by the plan;

20           “(viii) describes the practices, includ-  
21           ing a schedule and estimated completion  
22           date for implementing the practices, that  
23           are proposed to reduce, control, mitigate,  
24           or eliminate the adverse water quality im-  
25           pacts, including—



1 “(I) in the case of a new remedi-  
2 ation project, the preliminary system  
3 design and construction, operation,  
4 and maintenance plans; and

5 “(II) in the case of an existing  
6 remediation project, available system  
7 design and construction, operation,  
8 and maintenance plans and any  
9 planned improvements to the projects;

10 “(ix) explains how the practices de-  
11 scribed in clause (viii) are expected to re-  
12 sult in furthering the objectives of existing  
13 total maximum daily load allocations under  
14 section 303(d) for the identified waters;

15 “(x) describes the monitoring or other  
16 forms of assessment that will be under-  
17 taken to evaluate the success of the prac-  
18 tices during and after implementation, rel-  
19 ative to baseline conditions;

20 “(xi) describes contingency plans for  
21 responding to foreseeable, unplanned ad-  
22 verse events, including stabilization of the  
23 site if remedial actions cease prematurely;

1 “(xii) provides a schedule for periodic  
2 reporting on progress in implementing the  
3 plan;

4 “(xiii) provides a budget for the plan  
5 and identifies the funding sources that will  
6 support the implementation of the plan;

7 “(xiv) describes the applicant’s legal  
8 authority to enter and conduct activities at  
9 the abandoned or inactive mined land ad-  
10 dressed by the plan;

11 “(xv) contains any additional informa-  
12 tion requested by the Administrator to  
13 clarify the plan and activities covered by  
14 the plan; and

15 “(xvi) is signed by the applicant.

16 “(C) REVIEW OF APPLICATION.—

17 “(i) IN GENERAL.—The Administrator  
18 shall review each permit application and  
19 determine whether the application meets  
20 the requirements of subparagraph (B).

21 “(ii) DISAPPROVAL.—If the Adminis-  
22 trator determines that an application does  
23 not meet the requirements of subpara-  
24 graph (B), the Administrator shall notify  
25 the applicant that the application is dis-

1 approved, explain the reasons for the dis-  
2 approval, and allow the applicant to submit  
3 a revised application.

4 “(iii) APPROVAL.—If the Adminis-  
5 trator determines that an application  
6 meets the requirements of subparagraph  
7 (B), the Administrator shall notify the ap-  
8 plicant that the application is accepted,  
9 provide to the public notice of and reason-  
10 able opportunity to comment on the appli-  
11 cation, and provide to the public an oppor-  
12 tunity for a public hearing on the applica-  
13 tion.

14 “(D) ISSUANCE.—

15 “(i) DECISION TO ISSUE.—After no-  
16 tice and opportunity for public comment on  
17 a permit proposed to be issued, the Admin-  
18 istrator may issue a permit to the appli-  
19 cant if the Administrator determines  
20 that—

21 “(I) relative to the resources  
22 available to the remediating party for  
23 the proposed remediation activity, the  
24 remediating party has made a reason-

1           able effort to identify persons under  
2           subparagraph (B)(vi);

3                   “(II) no responsible owner or op-  
4           erator exists; and

5                   “(III) the remediation plan dem-  
6           onstrates with reasonable certainty  
7           that the implementation of the plan  
8           will result in an improvement in water  
9           quality and will lead toward the goal  
10          of meeting existing total maximum  
11          daily load allocations under section  
12          303(d) taking into consideration the  
13          resources available to the remediating  
14          party for the proposed remediation ac-  
15          tivity.

16                   “(ii) DECISION NOT TO ISSUE.—If the  
17          Administrator decides not to issue a permit  
18          to the applicant, the Administrator shall  
19          notify the applicant of the reasons for not  
20          issuing the permit.

21                   “(E) MODIFICATION.—

22                   “(i) IN GENERAL.—Not later than 45  
23          days after the receipt of a written request  
24          by a permittee and not later than 30 days  
25          after providing public notice and an oppor-

1 tunity for comment, the Administrator  
2 shall approve or disapprove a modification  
3 of a permit, unless a public hearing is re-  
4 quested by a member of the public, a tribe,  
5 a State agency, or a local governmental  
6 agency within 30 days after the provision  
7 of public notice.

8 “(ii) PUBLIC HEARING.—If a public  
9 hearing is requested, the Administrator  
10 shall have an additional 90 days to provide  
11 for a public hearing and an opportunity for  
12 comment and approve or disapprove a  
13 modification of a permit.

14 “(iii) APPROVAL.—A permit modifica-  
15 tion approved by the Administrator under  
16 this subsection shall be—

17 “(I) by agreement of the per-  
18 mittee and the Administrator;

19 “(II) with the concurrence of the  
20 State of Colorado;

21 “(III) in accordance with the  
22 standards in subparagraph  
23 (D)(i)(III); and

1 “(IV) immediately reflected in  
2 and applicable to the remediation per-  
3 mit.

4 “(5) CONTENTS OF PERMIT.—

5 “(A) IN GENERAL.—A permit under this  
6 subsection shall—

7 “(i) include a remediation plan ap-  
8 proved by the Administrator and additional  
9 requirements that the Administrator estab-  
10 lishes under paragraph (11); and

11 “(ii) provide for compliance with and  
12 implementation of the remediation plan  
13 and any other requirements described  
14 under clause (i).

15 “(B) REVIEW.—A permit under this sub-  
16 section shall establish a schedule for review, by  
17 the Administrator, of compliance with the con-  
18 ditions and limitations of the permit.

19 “(C) COMPLIANCE WITH OTHER LIMITA-  
20 TIONS.—A permit under this subsection shall  
21 not require the remediating party or any co-  
22 operating parties with respect to the remedi-  
23 ation plan to comply with any other subsection  
24 of this section or with sections 301 or 302.

1           “(D) RECOVERABLE VALUE.—A remedi-  
2           ation party is not prohibited from selling or  
3           using materials recovered during the implemen-  
4           tation of the plan, but the proceeds of any such  
5           sale must be used to defray the costs of remedi-  
6           ation of the site addressed in the permit or the  
7           costs of remediation of other abandoned or in-  
8           active mined lands as defined in paragraphs (1)  
9           and (2)(A).

10          “(6) FAILURE TO COMPLY.—If, during the re-  
11          view conducted under paragraph (5)(B), on the re-  
12          ceipt of a petition from any person, or for any other  
13          appropriate reason, the Administrator determines  
14          that the remediating party has failed to comply with  
15          the provisions of the permit, the Administrator may  
16          bring an enforcement action under section 309.

17          “(7) STATE CERTIFICATION.—In so far as this  
18          subsection may relate to water quality standards,  
19          certification under section 401 shall not apply to  
20          permits under this subsection.

21          “(8) TERMINATION.—

22                 “(A) IN GENERAL.—The Administrator  
23                 shall terminate a permit issued under this sub-  
24                 section if—

1 “(i) the remediating party completes  
2 the implementation of the remediation  
3 plan;

4 “(ii) the discharge covered by the per-  
5 mit becomes subject to a permit issued  
6 under the other subsections of this section  
7 for development that is not part of the im-  
8 plementation of the remediation plan and  
9 the remediating party seeking termination  
10 of coverage is not a participant in the de-  
11 velopment;

12 “(iii) an event or condition is encoun-  
13 tered that was not contemplated by the re-  
14 mediation plan and is beyond the control  
15 of the permittee and the surface water  
16 quality conditions due to remediation ac-  
17 tivities at the site, taken as a whole and  
18 with reference to the designated uses of  
19 the waters, are equal to or superior to the  
20 baseline conditions at the site as described  
21 in paragraph (4)(B)(iv); or

22 “(iv) the permittee fails to conduct  
23 the remediation according to the approved  
24 remediation plan.



1           “(B) NO ENFORCEMENT LIABILITY.—If a  
2           permit is terminated under subparagraph (A),  
3           the remediating party or any cooperating par-  
4           ties with respect to the remediation plan shall  
5           not be subject to enforcement under section 309  
6           or 505 for any remaining discharges from the  
7           abandoned or inactive mined land described in  
8           the permit.

9           “(9) LIMITATIONS.—

10           “(A) EMERGENCY POWERS.—Nothing in  
11           this subsection limits the authority of the Ad-  
12           ministrators under section 504.

13           “(B) PRIOR VIOLATIONS.—Nothing in this  
14           subsection or a permit issued under this sub-  
15           section precludes actions under section 309 or  
16           505 or affects the relief available in actions  
17           under those sections, with respect to violations  
18           of this section, or section 301(a) or 302 for a  
19           permit issued under this subsection, that oc-  
20           curred prior to the issuance of a permit under  
21           this subsection.

22           “(C) OBLIGATION OF STATES AND INDIAN  
23           TRIBES.—Except as expressly provided, nothing  
24           in this subsection limits any obligation of a  
25           State or Indian tribe under section 303.

1           “(D) OTHER DEVELOPMENT.—Any devel-  
2           opment of abandoned or inactive mined land  
3           (including mineral exploration or mining) not  
4           described in a permit issued by the Adminis-  
5           trator under this subsection shall be subject to  
6           this Act (other than this subsection).

7           “(10) LIABILITY OF OTHER PARTIES.—Nothing  
8           in this subsection limits the liability of any person  
9           other than the remediating party or any cooperating  
10          parties with respect to the remediation plan under  
11          this Act or any other law.

12          “(11) REGULATIONS.—

13               “(A) IN GENERAL.—Not later than 1 year  
14               after the date of enactment of this subsection,  
15               the Administrator, in consultation with State,  
16               tribal, and local officials and after providing the  
17               public with notice of, and opportunity for com-  
18               ment and a hearing on, regulations proposed to  
19               be promulgated, shall promulgate regulations  
20               establishing generally applicable requirements  
21               for remediation plans described in paragraph  
22               (4)(B) and, as considered to be necessary by  
23               the Administrator, other paragraphs of this  
24               subsection.

1           “(B) SPECIFIC REGULATIONS.—The Ad-  
2           ministrator may promulgate, on a case-by-case  
3           basis, in consultation with State, tribal, and  
4           local officials, and after providing the public  
5           with notice of, and opportunity for comment  
6           and a hearing on, regulations proposed to be  
7           promulgated, more specific requirements that  
8           the Administrator determines would facilitate  
9           implementation of this subsection in an indi-  
10          vidual abandoned or inactive mined land reme-  
11          diation permit.

12          “(12) FUNDING FOR IMPLEMENTING REMEDI-  
13          ATION PLANS.—

14               “(A) IN GENERAL.—There is authorized to  
15               be appropriated to the Administrator  
16               \$5,000,000 to pay 67 percent of the costs of  
17               designing and implementing remediation plans  
18               for which permits are issued under this sub-  
19               section. The remaining share of such costs may  
20               be provided with funds or in-kind services by  
21               private, local, State, or other Federal sources.

22               “(B) PRIORITY.—The funds appropriated  
23               under this paragraph shall be allocated first to  
24               proposed remediation plans that are compara-  
25               tively more likely than other proposed remedi-

1           ation plans to further the objectives of the ex-  
2           isting total maximum daily load allocations  
3           under section 303(d).

4           “(13) REPORT.—

5                   “(A) IN GENERAL.—Not later than 1 year  
6           before the date of termination of permitting au-  
7           thority specified in paragraph (14), the Admin-  
8           istrator shall submit to Congress a report on  
9           the activities authorized by this subsection.

10                   “(B) CONTENTS.—At a minimum, the re-  
11           port required under subparagraph (A) shall—

12                           “(i) identify each permit, and associ-  
13                   ated remediating party, issued under this  
14                   subsection;

15                           “(ii) identify the abandoned or inac-  
16                   tive mine land addressed by each such per-  
17                   mit (including the water bodies and base-  
18                   line water quality of the water bodies af-  
19                   fected by the land);

20                           “(iii) summarize the remediation plan  
21                   associated with each permit issued under  
22                   this subsection, including (I) the goals and  
23                   objectives of the plan, (II) the plan budget,  
24                   and the practices to be employed according

1 to the plan to reduce, control, mitigate, of  
2 eliminate adverse water quality impacts;

3 “(iv) identify the status of the imple-  
4 mentation of each remediation plan associ-  
5 ated with each permit issued under this  
6 subsection (including specific progress that  
7 permitted remediation activities have made  
8 toward achieving the goals and objectives  
9 of the remediation plan);

10 “(v) identify and describe any enforce-  
11 ment action taken by the Administrator or  
12 any civil action brought by a citizen con-  
13 cerning a permit issued under this sub-  
14 section (including the disposition of the  
15 legal action); and

16 “(vi) include recommendations by the  
17 Administrator for any modifications to this  
18 subsection, or regulations promulgated  
19 under paragraph (11) to implement this  
20 subsection, that would facilitate the im-  
21 provement of water quality through reme-  
22 diation of abandoned or inactive mined  
23 land.

24 “(14) TERMINATION OF PERMITTING AUTHOR-  
25 ITY.—The authority granted to the Administrator

1       under this subsection to issue an abandoned or inac-  
2       tive mined land remediation permit terminates on  
3       the date that is 10 years after the date of enactment  
4       of this subsection.”.

○