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TO PROMOTE REMEDIATION OF INACTIVE AND ABANDONED MINES, AND FOR OTHER PURPOSES

SEPTEMBER 27, 2006.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1848]

The Committee on Environment and Public Works, to which was referred a bill (S. 1848) to promote remediation of inactive and abandoned mines, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

It is estimated that there are as many as 500,000 abandoned hardrock mines throughout the United States. While the Western Governors Association estimates that 80 percent of these sites do not pose any environmental or safety concerns,[1] thousands of them have acid mine drainage (AMD) which contains pollutants like mercury and lead that have polluted waters in the affected states, or are otherwise polluting air, soils and/or groundwater. Cleaning-up pollution stemming from abandoned mines should be a priority. The EPA estimates that thousands of stream miles have been impacted by acid mine drainage which may include heavy metals

[1] Western Governors' Association and National Mining Association, Cleaning Up Abandoned Mines; A Western Partnership; page 6. 1998.

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such as lead, copper, zinc, arsenic, mercury, and cadmium.[2] The former U.S. Bureau of Mines estimated that 12,000 stream miles and 180,000 acres of lakes in the West have been impacted by acid mine drainage.[3]

Senator Ken Salazar said on the floor of the Senate when he introduced the bill, "The Western United States is pockmarked with old mines and mining residues, and many of these sites continuously pollute the water, the land, and the air. Our rivers and streams suffer particularly from this type of pollution. In many cases, no one alive is legally responsible for cleaning these sites. In other cases, those who are legally responsible lack the money or other resources necessary to clean them up, and the pollution continues."[4]

The Center for the American West in its report, "Cleaning Up Abandoned Hardrock Mines in the West," described one aspect of the problem:

> The vegetation along the stream or river thins out or even disappears altogether. Part of the streambed displays unnatural shades of red and orange that defy the ideal of a clear-running, sparkling Western stream. You may have a vague notion that those gaudy colors come from some kind of iron deposit. But what you are seeing is a symptom of a grave environmental disease: the toxic and acidic discharges from long-abandoned hardrock mines, a witch's brew that destroys aquatic life and pollutes waterways wherever it flows. This environmental ailment goes by the name of "acid mine drainage."[5]

These mines are for the most part legacy mines, abandoned long ago before modern environmental laws were enacted. As Senator Wayne Allard explained at an Environment and Public Works Committee hearing, "A [typical] mining claim in Colorado * * * is a relatively small parcel of land, 600 feet by 1,500 feet long. This dates back to the early silver and gold days of Colorado when silver and gold was very profitable in the State, and we had many prospectors come to Colorado and file claims. They would * * * start a mine, they would hit a small vein, and then maybe it wasn't financially practical to continue with it." According to Senator Allard, these claims would then be abandoned and have been left untouched ever since.[6]

Because these sites do not have an identifiable and financially viable owner or operator, their cleanup most likely falls to the government—or the pollution continues unabated because state and federal resources are limited. Sometimes, though, "Good Samaritans," volunteers who have no connection to the mining activity and no liability for the cleanup are interested in voluntarily restoring the body of water affected by pollution from the site.

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[2] EPA letter responding to questions at June 14, 2006 EPW hearing "Oversight Hearing to Consider Whether Potential Liability Deters Abandoned Hard Rock Mine Clean-Up." July 14, 2006.

[3] Ibid.

[4] Floor Statement (Sen. Salazar) upon introduction of S. 1848 (October 6, 2005).

[5] "Cleaning Up Abandoned Hardrock Mines in the West, Prospecting for a Better Future," Center for the American West, page 1. 2005.

[6] Testimony of Senator Wayne Allard. Senate Committee on Environment and Public Works; Oversight Hearing to Consider Whether Potential Liability Deters Abandoned Hard Rock Mine Clean-Up. June 14, 2006.

Good Samaritans may be nonprofit groups, municipalities, States, Tribes, or private corporations interested in restoring these sites. However, concern about liability under the nation's environmental laws has prevented these potential Good Samaritans from moving forward to remediate these legacy mines. The nation's environmental laws have provided benefits to our society that one cannot begin to calculate. But in this instance they also have had an unforeseen consequence that may be having the opposite effect on the environment.

Senator Salazar said during testimony in support of his bill, "[I]ronically, the draconian liability schemes under CERCLA and the Clean Water Act deter would-be volunteers, or "Good Samaritans," from getting near those sites for fear of unlimited liability. Even with a solid, sensible plan to clean up a mine site, Good Samaritans assume massive liabilities under the Clean Water Act and CERCLA, in addition to state and local laws. These liabilities dissuade efforts to erase the environmental legacy of hard rock mining."

John Whitaker, President Nixon's Undersecretary for the Environment noted, "We did not envision at the time that the day would come when the zero discharge provision [of the Clean Water Act] would prevent Good Samaritans from cleaning up acid mine drainage or when the onerous and costly federal permit requirements would snuff out any economic incentive to curb the acid mine drainage problem associated with abandoned mines." [7]

The National Association of Clean Water Agencies stated in a letter to the Committee that "[Good Samaritan legislation] is important to interested stakeholders, including publicly owned treatment works (POTWs) who want to prevent further degradation of and help to improve the quality of waters impaired by runoff from abandoned mines." [8] Further, at the June 14, 2006 hearing, John Gioa, the County Supervisor of Costa Contra County explained that the County had received a grant to remediate an abandoned mine that is leaching mercury into a reservoir owned by the County. However, concern about liability from both Superfund and the Clean Water Act forced the County to turn down the grant and postpone any plans to remediate the mine.[9]

In a letter to the Committee on Environment and Public Works, Trout Unlimited, a conservation group involved in the cleanup of several abandoned mines, stated "[an] impediment to making progress on the ground is the lack of a clear permitting process that allows for would-be Good Samaritans to initiate cleanups. The [Superfund law] and the Clean Water Act are outstanding tools for holding polluters and other potentially responsible parties accountable for their actions and for preventing water pollution. But on many of the sites where we work, there is not potentially responsible party, or the area is not high enough of a priority to warrant federal funding or enforcement actions. On these sites, there is often no party available as a target for an enforcement action, and

[7] Center for the American West, page 23.

[8] Letter to Senator James M. Inhofe from the National Association of Clean Water Agencies. June 19, 2006.

[9] Statement of John Gioa, Committee on Environment and Public Works. June 12, 2006.

the simple fact is that there is absolutely no prospect of any future enforcement action to drive clean-up."[10]

The Committee believes that to incentivize voluntary cleanups of such sites, it is necessary to establish a new permit program pursuant to which EPA (or a delegated State or Tribe) may issue a permit to a Good Samaritan that may, on a case by case basis, waive or relax the regulatory, permitting and/or liability provisions that might otherwise be triggered under CERCLA, the Clean Water Act and several other laws and that would dissuade a Good Samaritan from taking steps to improve that environment at and in the vicinity of the mine site.

An example of a case where EPA has undertaken a clean-up of this type with a non-responsible party is the clean up of four sites located on the North Fork of the American Fork River, in American Fork Canyon, Utah County, Utah. Trout Unlimited (TU) entered into an Administrative Order on Consent (AOC) under CERCLA in order to accomplish a conduct a short-term removal action at an abandoned mine site in Utah. An AOC is an enforcement tool used by EPA to bring those who violate the nation's environmental laws into compliance. This innovative agreement required TU to enter into the AOC even though it was acting as a volunteer with no liability whatsoever for cleanup of the abandoned mine.

The AOC provided TU with protection against CERCLA liability to the federal government as well as provided TU with protection from any future liability to potentially responsible parties for contributions under CERCLA. The AOC included protection from future EPA action based on unknown releases because the project was relatively small in comparison to typical violations being addressed by an AOC.

While some have argued that Trout Unlimited's experience shows that EPA already has the administrative power under CERCLA to address the liability concerns of potential Good Samaritans, the TU AOC involved circumstances that will not necessarily be applicable to the vast majority of inactive and abandoned mine sites that are polluting the environment. Importantly, the site in Utah that Trout Unlimited has remediated did not involve discharges into a navigable waterway.

Many mine sites that a Good Samaritan would seek to remediate will involve a discharge into a navigable water. An AOC under CERCLA, such as TU's, would not eliminate the requirements for such sites under the Clean Water Act to meet stringent water quality standards or any applicable requirements under RCRA or TSCA. Because TU AOC addressed only liability under CERCLA, it may not be an effective model for sites with water quality concerns. Moreover, the TU AOC requires TU to comply with the many procedural and substantive requirements contained in the CERCLA National Contingency Plan—which is required in any AOC negotiated pursuant to CERCLA. While compliance with these requirements may not be unduly burdensome in the case of a short-term removal action (such as that undertaken by TU at the Utah site in question), this would not necessarily be the case with the many requirements that would apply with a Good Samaritan remediation of a complex site. Although Section 113 of CERCLA

[10] Letter to Senator James M. Inhofe from Chris Wood of Trout Unlimited. June 13, 2006.

provides protection for a party that "has resolved its liability to the United States or a State in an administrative or judicially approved settlement" from "claims for contribution regarding matters addressed in the settlement," it is unclear that such "contribution protection" would protect a future Good Samaritan that negotiates an AOC—from suits by States, Tribes, and other non-PRPs (such as innocent purchasers or bona fide prospective purchasers of the site) under Section 107 of CERCLA. Potential Good Samaritans should have certainty from liability under applicable federal statutes.

The AOC negotiated with Trout Unlimited, which involved only short-term removal action, took over fourteen months to negotiate. In response to questions concerning the time required to negotiate an AOC posed to the EPA at the Committee's hearing on this topic, the Agency stated, "* * * The TU AOC is one of the first times that an administrative order on consent has been used with a non-liable party that is not also a bona fide prospective purchaser. Therefore, a number of legal and policy issues of first impression had to be fully considered and decided." Moreover, the federal government made clear in the AOC that because of the NGO status of TU and the limited nature of the response action, the AOC "is not intended to serve as a model for any other administrative order or agreement".[11] Thus, while the CERCLA AOC is certainly an option to be pursued, as EPA Administrator Johnson explained during the June 2006 Committee on Environment and Public Works (EPW) hearing, "The value of legislation is that it provides legal certainty; it provides a streamlined permitting process; and it also ensures inclusive stakeholder involvement."

Senator Salazar stated in testimony before the June 2006 EPW hearing that "most people would be afraid to touch these sites because of CERCLA liability that comes attached to [the cleanup]."

Other Good Samaritans in addition to municipalities and non-profit organizations include mining companies. Mining companies know mines better than any other entity. A successful Good Samaritan program relies upon capturing their knowledge and resources. There are simply too many abandoned mines to discount any non-liable, willing Good Samaritan. In its 1999 report, "Hardrock Mining on Federal Lands," the National Research Council of the National Academy of Sciences recommended "Existing environmental laws and regulations should be modified to allow and promote the cleanup of abandoned mine sites in or adjacent to new mine areas without causing the mine operators to incur additional environmental liabilities."[12]

Further, the NAS report explains the situation many mining companies encounter today in which they have to mine around existing abandoned mines to avoid liability rather than reusing and remediating those older mine sites:

> Concern over legal liabilities or the ability to meet regulatory standards leads mine operators to design around older mined areas and pre-existing discharges. In many cases, however, reclamation of previously mined areas

[11] Administrative Order on Consent for Removal Action between EPA and Trout Unlimited, page 3. September 2005.

[12] National Academy of Sciences; "Hardrock Mining on Federal Lands." 1999. page 104.

> would be a reasonable approach for combining construction of the new mine with improvement of environmental problems caused by earlier mining. For example, existing pits might be appropriate places for waste rock disposal; construction of tailings facilities might present opportunities to stabilize or reclaim previous disposal sites; or replacement wetlands sties might be located to provide some treatment for existing poor-quality discharges. Incentives might be needed to assure that appropriate opportunities for reclamation and improvement of environmental impacts are not missed.[13]

It further follows that mining companies may seek to remove tailings and abandoned mined ores to extract from them whatever marketable ore may remain and then dispose of the wastes from such activities in an environmentally-sound manner. As noted by the Center of the American West's report, "Some kind of profit incentive could dramatically accelerate the process of cleaning up abandoned mines. Private enterprise has an energy and drive that could have a very positive effect. Mining companies, after all, know how to work the sites * * * Why exclude this expertise from the effort?" [14]

Different versions of Good Samaritan legislation has been introduced in three of the past four Congresses and both the current and previous Administrations noted the need for it. As Charles Fox, President Clinton's Assistant Administrator for Water testified in 2000 on Senator Max Baucus' Good Samaritan legislation: "Unfortunately, there are limitations under the CWA that often hamper remediation and restoration activities at abandoned mine sites. In particular, the permitting requirements under Section 402 of the CWA require that the permittee meet all of the requirements and effluent discharge limits set out in their discharge permit. These discharge limits include water quality standards that have been established for the body of water into which the treated effluent is discharged. In addition, these requirements mean anyone conducting reclamation or remediation at an abandoned mine site may become liable for any continuing discharges from that site." [15]

Liability concerns have proven to be a detriment to the cleanup of abandoned and inactive hardrock mines. The National Academy of Sciences summed up the objectives of Good Samaritan legislation in its 1999 report: "The objective of changes in laws and regulations would be to recognize that environmental improvement is worth pursuing at abandoned sites and to limit the liability incurred by the cleanup entity." [16]

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

"The Cleanup of Inactive and Abandoned Mines Act."

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[13] Ibid., 105.

[14] "Cleaning Up Abandoned Hardrock Mines in the West," page 25.

[15] Testimony of Charles Fox, Senate Subcommittee on Fisheries, Wildlife and Water. "Hearing to examine S. 1787, the Good Samaritan Abandoned or Inactive Mine Waste Remediation Act".

[16] National Academy of Sciences, page 106.

Sec. 2. Findings and purposes

Sec. 3. Remediation of inactive or abandoned mines by Good Samaritans

Summary

Section (3)(a) defines several terms used throughout the bill: Administrator, Cooperating Agency, Environmental Law, Good Samaritan (Good Sam), Historic Mine Residue, Inactive or Abandoned Mine Site, Indian Tribe, Permitting Authority and Person.

Discussion

This section defines the Administrator as the Administrator of the Environmental Protection Agency and a Cooperating Agency as a Federal, State, tribal or local agency or other person that is authorized to participate in the issuing of a permit under this section and chooses to participate. The term Cooperating Agency does not include the Administrator.

The term environmental law encompasses Toxic Substances Control Act (TSCA), the Federal Water Pollution Control Act (the Clean Water Act), the Solid Waste Disposal Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), applicable environmental laws of a State or Indian Tribe and applicable environmental ordinances of a political subdivision of State or Indian Tribe. Pursuant to Section 3(f) of the Act, the permit issuer (either EPA or a delegated State or Tribe) is authorized to issue a permit allowing a Good Samaritan to remediate, in whole or in part, an inactive or abandoned mine site that is polluting the environment. Pursuant to Section 3(g), the permit issuer can (on a case-by-case basis) waive or relax the regulatory, permitting, and/or liability provisions that would otherwise apply under one or more provisions of any of the above-listed environmental laws. However, pursuant to Section 3(g), the permit issuer is not authorized to relieve the permittee of the obligation to comply with TSCA or RCRA with respect to the off-site disposal of any waste or material removed from the inactive or abandoned mine site.

The four laws listed as environmental laws under the Act are laws which potential Good Samaritans have raised as containing regulatory, permitting, and/or liability provisions that, if applicable to all Good Samaritan projects would dissuade Good Samaritans from acting. Under the Clean Water Act (CWA), for instance, a Good Samaritan who begins to clean up a mine site would need a National Pollutant Discharge Elimination System (NPDES) permit under Section 402(a) of the Act for any discharges from the site to a water of the United States. Such a permit also would require that the discharge be treated, or otherwise managed in perpetuity, so that it will meet all applicable technology based standards and so that the discharge does not result in an exceedence of applicable water quality standards. Given resource constraints, many of those seeking to reduce harmful discharges from one of these abandoned sites may not be able to, or may not be willing to expend the resources needed to, fully restore the waterbody to meet all CWA standards or to perpetually treat all discharges from the site, although a Good Samaritan may be willing to undertake certain ac-

tivities that could positively affect the quality of the water. Once NPDES permit requirements are triggered, the Good Samaritan assumes liability under the statute for all existing and future discharges.[17]

Superfund has also been raised as a statute about which potential Good Samaritans are equally concerned.[18] In testimony before the Environment and Public Works Committee, John Goia, County Supervisor for Costra Contra County in California stated, "There is also liability exposure to the County under the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This law imposes liability for response costs upon owners and operators for the release of hazardous materials from a facility."[19]

Under existing case law, a Good Samaritan who enters upon a site with which it was not previously associated and begins to conduct remediation activities may be held an "operator" of the site under section 107(a) of CERCLA, and be potentially liable to clean-up the entire site.[20] In addition, under the case law, such a Good Samaritan, by moving about any "hazardous substance" (such as heavy metals) already located on the site, could be liable as a "transporter" or an "arranger" under Section 107(a) of CERCLA.[21] Further, to the extent that a Good Samaritan acquires a possessory or ownership interest in the property in order to conduct the clean-up, it could be deemed an "owner" liable under CERCLA for releases from the site. If held liable, the Good Samaritan may not only be liable for the costs of cleaning up releases of hazardous substances it caused, but also for the clean-up of releases, or threatened releases, of any hazardous substances from the entire site—including those caused by the activities of historic mine owners or operators.

CERCLA provides for some limitations on liability for owners of sites. First, the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Pub. L. No. 107–118) amended CERCLA to exempt "bona fide prospective purchasers" from liability as an owner or operator of the site, if it satisfies several conditions, including, but not limited to (1) conducting all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices, and (2) purchasing the property after the Brownfields statute was enacted on January 11, 2002. However, this limitation on CERCLA liability does not protect a bona fide prospective purchaser from liability under other environmental statutes (e.g., the Clean Water Act), nor would the bona fide prospective purchaser be summarily protected from the substantive regulatory requirements that apply under such other federal laws. Most importantly, the Good Samaritan would have to purchase the property in order to qualify as a bona fide prospective purchaser and receive protection from CERCLA liability. However, most Good

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[17] Center for American West. Page 20.

[18] Congressional Research Service. "Superfund Overview and Selected Issues," page 2. May 17, 2006. RL33426

[19] Ibid, Gioa.

[20] See, *e.g.*, *Kaiser Aluminum & Chemical Corp.* v. *Catellus Development Corp.*, 976 F.2d 1338, 1342 (9th Cir. 1992).

[21] See, *e.g.*, *Redwing Carriers, Inc.* v. *Saraland Apartments*, 94 F.3d 1489, 1511–1512 (11th Cir. 1996); *Kaiser Aluminum & Chemical Corp.* v. *Catellus Development Corp.*, 976 F.2d at 1343.

Samaritans wish only to clean up the mines, not own the property. For instance, TU did not purchase the property on which were the mines it remediated under its AOC. Indeed, in the case of sites located on public lands, the Good Samaritan would not be able to purchase the site, even if it wished to do so.

Section 107(b) of CERCLA contains the "innocent landowner" defense, which provides protection for purchasers of sites who did not know or had no reason to know that hazardous substances had been disposed on, in or at the site (see section 101(35)(A)(i) of CERCLA). Good Samaritans would be taking cleanup actions at sites precisely because they are aware of the presence of hazardous substances there that need to be cleaned up. As such, they could not claim that they were unaware of the presence of hazardous substances at the time they undertook the remediation activities. Moreover, as in the case of the bona fide prospective purchaser, to satisfy the "innocent land owner" defense, the Good Samaritan would actually have to own the land—which will not occur in the vast majority of Good Samaritan projects. The innocent landowner defense is a defense to CERCLA liability only, not the Clean Water Act.

Some argue that one need not pass legislation including the Clean Water Act because the Administrator or On-Scene Coordinator can provide relief from CWA standards through Superfund in the case of a CERCLA remedial action. However, the Administrator or the OSC under the National Contingency Plan must generally ensure that the actions being taken under Superfund provide equivalent protections as those under Environmental statutes, for instance the Clean Water Act (See Section 121(d) of CERCLA). As such, the actual substantive standards imposed by the Clean Water Act could not generally be relaxed or waived. While the statute also allows EPA or the OSC to allow compliance with an equivalent standard of performance, this is a case-by-case determination that does not provide any certainty to a potential Good Samaritan considering taking on the remediation of an abandoned mine site. This person would have to commit time and resources into the process in the hopes that the Administrator or OSC makes the subjective determination that equivalent protection will be provided. Nonetheless, one goal of the Good Samaritan legislation is to provide EPA with the ability to relax the requirements of the Clean Water Act where this is deemed appropriate in order to allow an environmentally beneficial Good Samaritan project to go forward, even though the project might not result in compliance with all Clean Water Act substantive requirements or even "equivalent" protection. In many Good Samaritan projects, "equivalent" protection cannot, or will not given available resources, be obtained, but a lesser clean-up would still be desirable.

Conversely, some argue that one does not need to address Superfund as long as liability under the Clean Water Act has been addressed, due to the federally permitted release exception in CERCLA Section 107(j). This exception applies to NDPES permitted point source discharges to surface waters. However, an inactive or abandoned mine site may have releases, or threatened releases, to several environmental media in addition to surface waters (including to groundwater, soils, and air). Moreover, it will likely have non-point source discharges to surface waters which are

not covered by an NPDES permit. The "federally permitted release" exception in CERCLA Section 107(j) may not cover the costs of cleaning up releases to other environmental media or non-point discharges not covered by the NPDES permit. The Good Samaritan could be liable for all such costs should someone choose to sue the Good Samaritan. Even to obtain relief with respect to the permitted releases, the Good Samaritan would have to prove in Court that the costs of cleaning up the permitted releases are divisible from the costs of cleaning up the non-permitted releases.[22]

Moreover, the "federally permitted release" exception would only apply to releases that occur after a Clean Water Act permit has been issued. The person could be sued and would have to mount a vigorous defense against liability for pre-existing releases. Thus, liability for costs and damages due to pre-permit discharges to surface waters—which would have been caused by historic owners and operators of the mine site—will remain. See Iron Mountain Mines, 812 F.Supp. at 1541. This individual would have certainty against liability if Good Samaritan legislation were enacted.

Further, pursuant to longstanding EPA interpretation, if any effluent limit in an NPDES permit is exceeded, the "federally permitted release" exception would cease to apply, because the discharge would not be in "compliance with" the permit, as required by the literal language of Section 101(10) of CERCLA.

Finally, and most importantly, despite these protections that may exist under current law as indicated above, there is uncertainty for the Good Samaritan under existing processes and he may still be subject to legal actions. If the current processes provided the Administrator with sufficient ability to protect Good Samaritans and if those protections were certain, far more Good Samaritan projects would be currently ongoing. Given the lack of progress in restoring the nearly 100,000 waters being affected by AMD under current authorities, legislation is clearly needed

Concerns have also been expressed by potential Good Samaritans about the Toxic Substances Control Act (TSCA) and the Solid Waste Disposal Act (also known as RCRA).[23] S. 1848 allows a Good Sam to ask the permit-issuing authority to waive or relax some or all of the RCRA or TSCA permitting, regulatory, and liability provisions that might otherwise apply to a Good Samaritan project. During restoration and remediation of the site, a Good Samaritan might encounter materials that, if disturbed in any way, could constitute "hazardous wastes" under RCRA, principally because these materials may contain metals that were impurities in the ore that was historically mined at the Good Sam site. By disturbing these materials, the Good Sam could be considered the "generator" of a hazardous waste, subject to RCRA regulatory requirements. Moreover, by moving these materials from one location to another on the site (for instance, either to move them away from drainage paths so that they do not continue to be a source of pollution to surface water, or by otherwise placing them in a manner that is less poten-

[22] See, *e.g., Lincoln Properties, Ltd.* v. *Higgins,* 1993 U.S. Dist. LEXIS 1251, at * 76 (E.D. Cal. 1992); *United States* v. *Shell Oil Co.,* 1992 U.S. Dist. LEXIS 3947, at * 18 (C.D. Cal. 1992); *United States* v. *Iron Mountain Mines,* 812 F. Supp. 1528, 1541 (E.D. Cal. 1992); *In re Acushnet River & New Bedford Harbor,* 722 F. Supp. 893, 896–97 (D. Mass. 1989).

[23] Testimony of Scott Lewis, Senate Committee on Environment and Public Works. "A Hearing to Consider Whether Potential Liability Deters Abandoned Hard Rock Mine Clean-Up", June 14, 2006.

tially harmful to the environment), the Good Samaritan could be considered to be operating a "storage" or "disposal" facility under RCRA, which would require the Good Samaritan to obtain a RCRA permit and to comply with many substantive design and operating standards that would be very onerous to a potential Good Samaritan and might dissuade the Good Samaritan from acting. Some abandoned sites may also have PCBs in soils and other materials situated on site due to spills from transformers that occurred in the past or possibly from transformers buried in old tailings piles. Pursuant to TSCA, if the PCB concentrations exceed 50 parts per million, the Good Sam might be required to comply with numerous substantive standards in order to take any action in connection with remediation of these soils, including merely moving them from one place on site to a different place on site where they are less likely to be impacted by surface water drainage.

This bill would allow the permitting authority to relax or waive some or all of the requirements or potential liabilities under the Clean Water Act, CERCLA, TSCA and/or RCRA that would otherwise apply, in order to incentivize Good Samaritans to undertake partial remediations at such sites that will result in significant improvements to the environment.

This section also includes in the definition of environmental statute certain state, local and tribal laws. As noted below, since State and relevant Tribes must sign off on any Good Sam permit that is issued (whether or not EPA has delegated administration of the Good Sam program to a State or Tribe), States or Tribes will in effect have veto authority over the issuance of any permits that would waive or relax the requirements of State or tribal law. Similarly, to the extent that any Good Sam permit would relax the requirements of local laws, the political jurisdiction in question would have to consent to the issuance of the permit (subparagraph (f)(1)(C)).

Section (3)(a) defines a Good Samaritan as a person that had no role in the creation of the historic mine residue, had no role in creating the environmental pollution caused by the historic mine residue and is not liable under any Federal, State, tribal or local law for the remediation of the historic mine residue. This section ensures that a person who is liable under any Federal, state or local law for the historic mine residue cannot be a Good Samaritan. Therefore, anyone who is a potentially responsible person or otherwise liable under Superfund cannot be a Good Samaritan. Further, a person who may not be liable under a statute but had a role in creating the mine residue or the pollution caused by it cannot be a Good Samaritan. If a person had previously attempted to cleanup a site and perhaps made it worse, thus contributing to the environmental pollution, that person cannot be a Good Samaritan.

This section defines Historic Mine Residue as mine residue or conditions at an inactive or abandoned mine site that pollute the environment. It includes, among other materials, previously mined ores and minerals that directly contribute to acid mine drainage or other pollution; equipment (or materials in equipment); wastes or materials from extractions, beneficiation, or other processing; and acidic or otherwise polluted flows in surface water or groundwater. Thus, the term would include, among other things, previously mined ores and minerals that are intermixed with on-site soils, or

that are not protected from storm water run-on or potential dispersal by wind or the elements, or that are otherwise in the path of drainage flows.

The term inactive or abandoned mine site/mine site means the site of a mine and associated facilities that were used for the production of mineral other than coal, have historic mine residue and are abandoned or inactive as of the date on which an application is submitted for a permit under this section.

The term Indian Tribe has the meaning given the term in Section 4 of the Indian Self-Determination and Education Assistance Act.

The term permitting authority means the Administrator or a State or Indian Tribe with a Good Samaritan program approved under subsection (d).

The term person includes an individual, a firm, a corporation, an association, a partnership, a consortium, a joint venture, a commercial entity, a nonprofit organization, the Federal Government, a State, a political subdivision of a State, an interstate entity, a commission and an Indian Tribe.

(b) Permits

Summary

This section authorizes the permitting authority to issue permits to Good Samaritans.

Discussion

This section creates the permitting authority's power to issue permits to Good Samaritans.

(c)(1) Eligibility for Permits

Summary

This section outlines eligibility for permits. The principal purpose of the project must be the reduction of pollution caused by historic mine residue. The abandoned site may not be on CERCLA's National Priorities List. Further, the person obtaining the permit must be a Good Sam and the relevant State or Tribe must have in place a remediation program. Finally, the permit does not authorize any other activity than the remediation of the mine site, including without limitation, any mining or processing in addition to that required for the remediation of historic mine residue for the public good.

Discussion

This section lays out the requirements for a Good Samaritan project. It specifically states that any site on Superfund's National Priorities List cannot be the subject of a Good Samaritan permit under the bill. Further, it requires the person receiving the permit to be Good Samaritan as that term is defined in the Act. It also authorizes only those activities that are directly required for the remediation of the mine site. A Good Samaritan cannot use the permit to extract new ores from a site for the sole purpose of mining those ores and recouping their value. The Good Samaritan may remove under a permit only those materials, including previously mined ores and minerals that are contributing to pollution at the

site. To be eligible for a permit, the principal purpose of a proposed Good Samaritan project must be the reduction of pollution caused by historic mine residue at the inactive or abandoned mine site in question. The bill recognizes that inactive and abandoned hardrock mine sites can vary in the types of environmental problems that are posed, and that appropriate remediation measures to reduce pollution at such sites will vary from site to site. At some sites, or portions of sites, the permit issuer may authorize the physical removal of wastes and other mine residue and their disposal off-site. At other sites, it may be appropriate for the permit issuing authority to issue a permit that allows the Good Samaritan to divert stormwater or mine drainage away from wastes and other materials (including previously mined ores) that are highly mineralized. In this respect, inactive and abandoned mine lands tend to be located in highly mineralized areas—that is why mining occurred at those sites in the first place. Often, wastes and previously mined ores and minerals (such as ore stockpiles) abandoned by historic mining operations have quantities of a desired metal (such as gold, silver, zinc or copper) that can be recovered with modern mining technology. Allowing a Good Samaritan—particularly a mining company with operations nearby to the site—to process such materials and wastes as part of a Good Samaritan project that results in reduction of pollution will provide a financial incentive for mining companies to remediate such sites.

(d) State or Tribal Program

(d)(1) Program

Summary

Requires the state to have a program in place before the issuance of any Good Samaritan permits. This section further outlines the process by which a State or Tribe may seek delegation of the Good Samaritan program. The State or Tribe must submit an application that includes a complete and detailed description of the permit program as well as a statement from the appropriate state or tribal official that the laws of the State or Tribe provide adequate authority to carry out the proposed program. The Administrator must approve the application within 120 days of its receipt unless the Administrator determines that the application does not meet all necessary requirements outlined in (d)(2).

Discussion

Section (d)(1) defines the process by which a State or tribal government would seek delegation of the Good Samaritan program. Paul Frohardt, Administrator of the Colorado Water Quality Control Commission, testified on behalf of the Western Governors' Association, in support of delegating the program to the States. Forty-five states already manage the Clean Water Act (CWA) permitting requirements. The bill requires that states and Tribes prove their ability to both legally and capably administer the program. It lays out the application process. The application must contain a complete and detailed description of the proposed permitting program and a statement by the State Attorney General or an equivalent tribal official that the laws of the State or Indian Tribe provide adequate authority to carry out the program. The Administrator

must approve the application no later than 120 days after it is received unless the Administrator determines that the State or Tribe did not meet the requirements of the program.

(d)(2) Requirements

Summary

The bill outlines several criteria a state or Tribe must meet in order to be delegated a Good Samaritan program. A State or Tribe must agree to participate in each project as a permit signatory, designate a lead State or Tribal agency to carry out permitting responsibilities, provide an opportunity for judicial review in State Court or by the appropriate tribal body of the final decision to approve or deny a permit application, possess the legal authority to implement a Good Sam program, agree to carry out the program in accordance with the Act except that the State or Tribe may be more protective of the environment, and provide for and encourage public participation in the permitting process. Further, the State or Tribe must agree that a Good Sam shall comply with the terms and conditions of the permit.

Discussion

This section requires a State prove that it not only has the capability of running such a program but that it will also fully meet the program's goals. By requiring the State to have the legal authority to carryout the program, the Act ensures States have the ability to perform the necessary tasks.

(d)(3) States and Indian Tribes Without Good Samaritan Programs

Summary

This section describes the actions a state or Tribe that is not seeking delegation must take in order for EPA to issue Good Samaritan permits in the State. The State must have in place a Good Samaritan program in order for EPA to issue Good Sam permits within the state or with respect to tribal lands. Through the program, a State, or Tribe must agree to participate as a permit signatory, in each project for which a permit for remediation in the State or on that tribal land is issued under this section, agree that a permittee shall comply all the terms and conditions of the permit, in lieu of compliance with any environmental laws, or provisions of environmental laws, that the permit issuer determines need not be complied with by the Good Samaritan, authorize State or Tribal agencies to participate in the permit process and designate a lead State or Tribal agency to be responsible for carrying out permitting responsibilities.

Discussion

This section is designed to protect the rights of states and Tribes who choose to leave the authority to issue Good Samaritan permits with the EPA. States or Tribes must have in place a program that facilitates their participation in the permitting process. Further, if a Good Samaritan chooses to seek liability relief from a state or Tribal environmental law, this section ensures state or Tribal participation in the permit approval process. Subsection (f) requires the State or Tribe concur with, and sign, the permit.

(e) Application for Permits

Summary

To obtain a permit to remediate an inactive or abandoned mine, the application must include the following: a description of the site, identification of any owner/operator or person with a legal right to exclude others from the mine site, a description of the relationship between the applicant and all persons that may be legally responsible, a certification that the applicant knows of no other person who is responsible for the clean up and has the resources to complete the remediation, a detailed description of the historic mine residue to be remediated, a description of the baseline conditions of the site; a description of the nature and scope of the remediation and engineering plans for the project, a description of the manner the remediation will assist the mine site in meeting, to the maximum extent reasonable and practical under the circumstances, water quality standards, an identification, based on an inquiry that is reasonable under the circumstances, of any significant adverse effects on the environment that could reasonably likely occur as a result of the Good Samaritan project if the permittee fails to properly implement the proposed remediation, a schedule, budget, financial assurances, a monitoring program following remediation, a plan for operation and maintenance of remediation, and a list of all environmental laws for which the applicant seeks protection.

Discussion

Section 3(e) of the bill sets forth the items that must be addressed in an application for a Good Samaritan permit. These items, to the extent applicable, must also be addressed in any application to the permitting authority for modification of an existing Good Samaritan permit. In some cases, the potential Good Samaritan may not, at the time of initial permit application, have complete knowledge of many of these matters, including, for instance, a detailed description of the mine residue to be remediated or a description of the baseline conditions at the site, and as a result may not be able to provide detailed engineering plans or detailed plans for remediating the site. Section 3(h)(3) of the bill takes account of this possibility by allowing the potential Good Samaritan to apply for a permit allowing a program of investigative sampling, so that the potential Good Samaritan can better characterize the site and develop an appropriate remediation plan, or, alternatively, decide not to pursue further remediation. Such a permit application, if it involves activities that do not pose risks to the environment, may be a candidate for a review under the more simple and rapid review process authorized in Section 3(f)(5) of the bill.

Section 3(e)(10) would require the Good Samaritan to identify, based on an inquiry that is reasonable under the circumstances, any significant adverse effects on the environment that are reasonably likely to occur if the permittee fails to implement the proposed remediation in accordance with the engineering plans. This subsection presupposes a violation of the permit and as such requires the permit applicant to identify significant adverse risks of environmental harm that are reasonably likely to occur as a result of the Good Samaritan project itself, and then only if the Good Samaritan fails properly to perform the remediation in accordance with an ap-

proved work plan. It does not require the Good Samaritan to identify adverse effects on the environment that might occur if the Good Samaritan project were not undertaken there. Likewise, the permit applicant need not demonstrate (under Section 3(f)(1)(A)(iv)) that it has the financial resources to address adverse effects on the environment that might occur if no Good Samaritan project is undertaken at the site.

(f) Permit Issuance

Summary

Permits may be issued only if the Permitting Authority determines that the project will improve the environment to a significant degree, the project will meet applicable water quality standards to the maximum extent reasonable and practicable under the circumstances, the Good Samaritan has the financial resources to complete the work, the project meets the requirements of this bill, and for those states or tribes without delegation, the State or Tribe concurs with and signs the permit. Further, the permittee must have the financial and other resources to address any contingencies identified in the permit application pursuant to paragraph (3)(e)(0), except that the permitting authority may waive this requirement for projects with a budget of less than $300,000. The permit must also provide protection for the Good Samaritan under any environmental law listed in the permit and, if the project is to occur on Federal land, each State or Tribe within which the Federal land is located concurs with the permit.

Moreover, if the permit provides protection for the permittee under a law of a political subdivision of a State or Tribe, the political subdivision must also concur with the issuance of, and sign, the permit.

Further, this section provides that the issuance of a permit and the concurrence of the State, or Tribe shall be discretionary actions taken in the public interest and that no action of the administrator or any other person shall be required to comply with section 102 of the National Environmental Policy Act (NEPA) of 1969. It also establishes deadlines by which the permit must be issued or denied. If the Administrator fails to issue or deny a permit, it shall be considered denied. The permitting authority may use expedited procedures to approve a project that is less complex and poses less risk than other projects.

Discussion

In order to approve a permit application, the Permitting Authority must determine that the project will improve the environment. The project also must, to the maximum extent reasonable and practicable, meet existing water quality standands. The Good Samaritan is not required to meet otherwise applicable water quality standards, however, if, for example, to do so would require disproportionately more resources than a particular project warrants. The intent of the program is to improve the environment to a significant degree, taking into account all of the relevant circumstances. For instance, a Good Samaritan may take on only the task of moving a tailings pile out of the path of stormwater flow. This will result in an immediate and long-term improvement to the

water body, even though it alone may not be enough to bring the water body into compliance with all applicable water quality standards. Without the actions of the Good Samaritan, the stormwater would continue to flow over the mine tailings, causing the discharge of heavy metals and other contaminants.

For State or Tribes with delegated authority, the State or Tribe would necessarily approve of the inclusion of any State or Tribe statutes in the permit by issuing the permit. For non-delegated State or Tribes, the relevant State or Tribe must sign the permit in order for the Administrator to issue it, thereby approving the inclusion of any State or Tribe statute in the permit.

The Act also provides that Section 102 of the National Environmental Policy Act (NEPA), from which the requirement for both environmental assessments and environmental impact statements is derived, does not apply to the issuance of a Good Samaritan mine cleanup permit under the Act. NEPA's purpose is to inform a Federal decision-maker of the environmental consequences of the decision that he or she is about to make and to ensure that the public is involved in that process. The NEPA process is particularly useful where the underlying Federal action proposed is not environmental remediation.

S. 1848 is an environmental remediation bill. Rather than seeking to alter the natural environment, it seeks to restore it. Further, the bill requires an extensive public process, including public notice on the receipt of the permit application, public comment on the draft permit and a public hearing in the vicinity of the mine site. The bill fulfills the underlying objective of NEPA, an environmental review with public input, without subjecting a volunteer to potential liability for cleanup and the expensive and time-consuming NEPA process.[24] Finally, this section allows the permitting authority to develop an expedited process for projects that the permitting authority determines are less complex, or pose less risk. The expedited process can include a public hearing if an interested party requests one.

(g) Effect of Permits

Summary

A permit issued under this Act shall authorize a Good Samaritan to carry out activities described in the permit, authorize enforcement under this section, and provide liability protection for the activities authorized under the permit. The Good Samaritan is required to comply with the terms and conditions of a permit in lieu of compliance with the environmental laws, or portions of environmental laws, that are listed by the permit issuer in the permit as environmental laws with which the permittee need not comply. In addition, to the extent specified in the permit, the permit relieves the permittee from liability under the environmental laws. However, a permit issued pursuant to this Act can not relieve a permittee from any obligation to comply with applicable provisions of the Toxic Substances Control Act or the Solid Waste Disposal Act relating to off-site disposal of any waste or material removed from the applicable inactive or abandoned mine site.

[24] Written Testimony of Michael Caskey. Senate Committee on Environmental and Public Works, "Environmental Impacts of U.S. Natural Gas Production." March 24, 2004.

Discussion

This section clarifies the protections given to the Good Samaritan under a permit issued pursuant to this Act. Whether, and the extent to which, the permittee will be relieved of the obligation to comply with, or will be subject to liability under, the environmental laws will be determined by the permitting authority on a case-by-case basis. The permittee must comply with the terms and conditions of the permit instead of the specific environmental statutes listed in the permit as being waived, and the permittee shall be relieved of any obligations and liabilities arising from those laws for actions taken under the permit. The permit, however, cannot relieve a Good Samaritan from compliance with the off-site disposal requirements of TSCA or RCRA. It is the Committee's intent that any hazardous materials located at an abandoned or inactive mine site that are removed from that site shall be disposed of in accordance with all applicable TSCA and RCRA requirements. Nothing in this Act shall be construed as providing liability relief from these off-site requirements.

(h) Content of Permits

Summary

(h)(1) In General.—A permit must contain a detailed description of the proposed work plan, a specific list of the environmental laws under which liability protection is provided and which need not be complied with by the permittee, a provision stating that the Good Sam is responsible for securing all authorizations, licenses and permits required under applicable law other than those that would otherwise be required under the laws whose provisions are waived in the Good Samaritan permit, and any other terms determined appropriate by the permitting authority.

(h)(2) Force Majeure.—The permit may include, at the request of the Good Sam, a provision outlining responsibilities of the Good Sam in the event of an Act of God or other unforeseen circumstance.

(h)(3) Investigative Sampling.—A permit may identify an appropriate program of investigative sampling to be completed prior to remediation. In the event that investigative sampling is authorized, the permit may allow the Good Sam to decline further remediation to proceed based upon sampling results and authorizes the permit to be modified after the sampling is conducted.

(h)(4) Timing.—Requires that work shall commence no later than 18 months after the date of issuance and continue until completed. If work is not begun within 18 months, the permit is terminated.

Subsection (h) further requires the signature of the Good Sam and authorizes the transfer of a permit to a person that qualifies as a Good Sam and signs the permit. Finally, the Administrator may include additional requirements in a transferred permit.

Discussion

The permit must clearly state the obligations of the Good Samaritan and the terms for completing the project. It must include a technical work plan for the proposed remediation, a description of the engineering work and it must enumerate the specific environmental laws from which the Good Samaritan seeks liability protec-

tion. Further, it must include a statement that the permittee is responsible for complying with all other applicable environmental statutes and for securing all necessary licenses, permits and authorizations. It may include other terms and conditions as determined by the permitting authority.

The permit may include, at the request of a Good Samaritan, a force majeure provision. For example, the AOC between EPA and Trout Unlimited contains a force majeure provision which outlines the obligations of Trout Unlimited should an unforeseen event occur, such as a major flood or other natural disaster. The exact terms of force majeure provision will be negotiated between the applicant and the permitting authority and may include time extensions as well as a definition of what types of unforeseen events would be covered by the provision.

The permit may also identify an investigative sampling regime for the Good Samaritan. This provision allows the potential Good Samaritan to apply for a permit allowing a program of investigative sampling, so that the putative Good Samaritan can determine better the characteristics of the site and can develop an appropriate remediation plan or, alternatively, decide not to pursue further remediation. Such a permit application, if it involves activities that do not pose risks to the environment, could be a candidate for review under the more simple and rapid review process authorized in Section 3(f)(5) of the bill. This would enable the Good Samaritan to do more intensive sampling than it may have done prior to submitting the permit application. If the Good Samaritan should find unexpected conditions that are beyond the Good Samaritan's ability or resources to address, the permit may be voided and the liability protections maintained, so that the Good Samaritan is not held liable for the sampling work.

Work must begin within 18 months from the date of permit issuance but can be extended during adverse weather or other conditions specified in the permit. The permittee has legally acknowledged its obligations under the permit by signing it. The permit can be transferred to another person, but only if such person qualifies as a Good Samaritan, signs and agrees to be bound by the permit, and agrees to comply with any additional terms and conditions necessary to meet the goals of the Act.

(i) Role of the Permitting Authority

Summary

The Permitting Authority shall consult with prospective applicants, accept permit applications, coordinate and lead a review process, maintain records, provide an opportunity for cooperating agencies and the public to participate, issue permits, and enforce and carry out this section.

Discussion

The section identifies actions the permitting authority must carry out. In addition to accepting applications and leading the application review process, the permitting authority must maintain all records related to the permit and provide an opportunity for cooperating agencies and the public to participate in the permit process. A detailed public notice and comment requirement is explained

in subsections (j), (k) and (l). The permitting authority is also responsible for issuing and enforcing permits.

(j) Cooperating Agencies

Summary

Notice of an application for a permit will be provided to the lead State or Tribal agency, local government, each federal and State or Tribal Agency that may have interest.

Discussion

If the permitting authority knows an application will be submitted, it must alert the lead State or tribal agency designated by the State, or Tribe, each local government located within radius of 75 miles of the mine site and each Federal, State, and tribal agency that may have an interest in the application. This section ensures that all governmental entities near the mine site will be given ample notice of a pending application, if possible. Because a Good Samaritan could seek liability protection from State, tribal and local ordinances, this advance notification is critical for these levels of government to have full participation in, and input into, the Good Samaritan program.

(k) State, Local and Tribal Communities

Summary

If the permitting authority receives an application for a Good Samaritan permit, the permitting authority shall, as soon as practicable, provide notice of the application to the lead State and tribal agencies, each local government located within 75 miles of the project site and each Federal, State, and tribal agency that the permitting authority determines may have an interest in the application.

Discussion

If the permitting authority receives a permit application, it must alert notify the relevant state and tribal agencies, each local government located within radius of 75 miles of the mine site and each Federal, State, and tribal agency that may have an interest in the application. This section ensures that all governmental entities near the mine site will be given amble notice of a pending application. Because a Good Samaritan could seek liability protection from state, tribal and local ordinances, this advance notification is critical for these levels of government to have full participation in, and input into, the Good Samaritan program.

(l) Public Notice of Receipt of Applications

Summary

On receipt of a completed application, the permitting authority shall, no later than 30 days after receipt of the application, provide to the public a notice that describes the location of the mine site, the scope and nature of the proposed remediation and the name of the Good Samaritan applying for a permit to carry out the proposed remediation. The notice must also provide the public with a means of viewing or obtaining the application.

Before the permit is issued, the permitting authority shall hold a public hearing in the vicinity of the mine site to be remediated. Not later than 30 days before the date of the hearing, the permitting authority shall provide the public with notice of the hearing and a draft permit. Finally, the permitting authority shall provide the applicant and the public with the opportunity to comment on the draft permit at the hearing and submit written comments to the permitting authority during the 30-day period following the hearing.

Discussion

Full public participation in the permitting process is critical to a successful Good Samaritan program. This section outlines the process by which the public is to be notified of an application, including the opportunity to view the application and related materials. Further, the public, including every municipality and tribal government within 75 miles of the mine site, may participate in a public hearing on the draft permit. Finally, the public shall be given the opportunity to comment on the permit. The public will have the opportunity to comment on the assumptions used by the Good Samaritan in developing its proposal, the potential Good Samaritan's engineering and work plans, the need for the liability protections being sought by the Good Samaritan, and the appropriateness of any recovery of ores and minerals from the site. Further, local governments are given a prominent role in the permitting process and will be given advance notice of pending applications as soon as the permitting authority is made aware of one. The participation of the public and interested governments is an important element in the consensus-based permitting decisions contemplated by the bill.

(m) Monitoring

Summary

The permittee shall take such actions as determined by the Permitting Authority are necessary to ensure baseline monitoring, monitoring during the remediation and post-remediation monitoring.

Discussion

This section allows the permitting authority to require monitoring during and after the remediation. A description of baseline conditions is a required element of the application process outlined in subsection (3(e)); however the permitting authority may require additional baseline monitoring. The Administrator may weigh the size and scope of the project, the risk to down gradient communities, and the overall cost of the project against the need for additional information and make case-by-case decisions on the degree of monitoring, if any, that is needed.

(n) Enforcement

Summary

Section 3(n) specifies the enforcement authorities under the bill. The permitting authority may bring a civil action (for injunctive relief or civil money penalties) for violation of a permit. Any person

who violates a permit is subject to civil penalty of up to $10,000 a day for each day of the violation. Alternatively, EPA or a state may, on its own, issue administrative orders or impose administrative penalties.

Discussion

This section outlines the various enforcement tools available to the permitting authority to address permit violations by Good Samaritans. A person who violates a provision of the Good Samaritan permit is subject to these enforcement authorities, in lieu of enforcement authorities under environmental laws that have been specified in the permit pursuant to Section 3(g)(1)–(2) and (h)(1)(B). The Good Samaritan may be fined up to $10,000 per day for a violation of a Good Samaritan permit. Further, the permitting authority may use its existing administrative authorities or seek a judicial remedy. Courts are granted authority to issue injunctions, if a permit violation has occurred, to force compliance with the permit, to prevent violation of a permit or to force a work stoppage under the permit. The Court may, at a minimum, require that the permittee repair any damage to the environment caused by the permit violation and that the environment be restored to its condition prior to the violation of the permit. This section provides the permitting authority with full authority to use all of its available enforcement options to remedy a permit violation and restore the environment.

(o) Grant Eligibility

Summary

A remediation project conducted pursuant to this section shall be eligible for funding under section 319 of the Clean Water Act.

Discussion

This section would clarify federal policy that Section 319 funds can be used to fund the cleanup of abandoned hardrock mines. The program has already funded projects in almost half of the States in the U.S. The projects include cleanups at Mosquito Creek, CO[25] and Georges Creek, MD.[26]

EPA's policy on the use of Section 319 is set forth in the Nonpoint Source Program and Grants Guidelines for States and Territories, 68 FR 60653, 60665 (Oct. 23, 2003). This language first appeared in EPA's guidelines published in May 1996, entitled "Nonpoint Source Program and Grants Guidance for FY 1996 and Future Years". The Guidelines state, "Abandoned mine land reclamation projects that are designed to restore water quality are eligible for Section 319 funding except where funds are used to implement specific requirements in a draft or final NPDES permit. For example, Section 319 funds cannot be used to build treatment systems required by an NDPES permit for an inactive mine, but they may be used to fund a variety of other remediation activities at the mine site."

Currently, EPA and the States do not issue permits for abandoned mine cleanups and therefore there is not a conflict with the

[25] *http://www.epa.gov/nps/success/state/co_mos.htm*
[26] *http://www.epa.gov/nps/success/state/md.htm*

guidance allowing Section 319 funding. However, projects permitted pursuant to this Act would now have a permit that could create some uncertainty as to whether they could continue to receive Section 319 funds. Subsection (o) ensures their continued eligibility.

As noted by Dennis Ellis, Executive Director of Colorado's Department of Public Health and the Environment, "To assure that Section 319 funds will continue to be available for such cleanup projects, any Good Samaritan proposal should include a provision clarifying that such funds may be used for projects subject to Good Samaritan permits."

(p) Judicial review

Summary

A court may set aside or modify action of the Administrator issuing a permit only on clear and convincing evidence of abuse of discretion.

Discussion

Before a Good Samaritan permit may be issued, a true consensus must develop that the project is a good one. The Administrator and the State or Tribe involved both must be convinced that the project is in the public interest and that that project will improve the environment to a significant degree. These are discretionary conclusions. Both governments must sign the permit, signifying their agreement, or the permit does not issue. If the permittee is to receive protection from local environmental laws, as well, the local government must also sign the permit, signifying its agreement.

Further, the bill encourages early public input in the project by requiring prompt notice of a permit application and an opportunity for public comment. The permitting authority is required to hold a public hearing in the vicinity of the mine site prior to issuance of the permit. At least 30 days before the hearing, the permitting authority must provide notice of the hearing and a draft permit.

Given these rigorous public notice, comment and hearing provisions and the need for consensus-based permitting decisions, third-party litigation challenging the issuance of a Good Samaritan permit should be unnecessary. Moreover, the permitting authority has broad discretion to grant or deny a permit application and to specify the terms and conditions of the permit. The standard of judicial review contained in the bill, therefore, imposes a high burden of proof on the party challenging the issuance of a permit and is appropriately deferential to the exercise of agency discretion. Both elements of the standard of review are designed to discourage unnecessary and frivolous litigation. Such litigation, even if unmeritorious, is costly to defend, which itself would be a deterrent to expeditious cleanup of inactive and abandoned mine sites.

As noted by Dennis Ellis, Executive Director of Colorado's Department of Public Health and the Environment, "A Good Samaritan is a not a polluter. Rather, they are an entity that voluntarily attempts to step in and remediate pollution caused by others * * * In this case, sound public policy needs to be focused on creating incentives for Good Samaritans' actions, not on aggressive enforce-

ment that creates risks to those that might otherwise undertake such projects."

(q) Transfer of Permitting Authority

Summary

Not later than 120 days after the date on which a State or Indian Tribe has submitted an application to administer a Good Sam program, the Administrator shall suspend the issuance of Good Sam permits in the State or tribal area unless the Administrator determines that the application for permitting authority does not satisfy the requirements of this Act. The 120 days can be extended by mutual agreement.

Discussion

This section requires the Administrator to cease issuing permits within a State or tribal area 120 days after a State or Tribe has submitted an application for delegation of the program. This is to ensure there is no overlap of responsibilities and that the State or Tribe has ample time to take over the permitting authorities from the Administrator.

(r) Notification of Administrator

Summary

Each State or Indian Tribe authorized to administer a Good Sam program shall submit to the Administrator a copy of each permit application and provide notice to the Administrator of each permit proposed to be issued by the State or Indian Tribe. The Administrator may object to a permit up to 90 days after being notified of the proposed permit by the State or Indian Tribe. The Administrator must provide an explanation for the objection.

Discussion

Subsection (r) provides the Administrator with a veto over permits issued by a State or Tribe. The State or Tribe must provide the Administrator with a copy of each permit application as well as each permit proposed to be issued, including modifications, transfers or terminations. No permit can be issued if the Administrator, no later than 90 days after receiving the proposed permit notification, objects in writing to the State or Tribe. The Administrator must determine that the permit would not be in accordance with the Act and provide reasons for the objection. The Administrator may waive his ability to veto the permit thus enabling the State or Tribe to issue the permit before the 90-day deadline afforded the Administrator for objecting to the permit.

If the Administrator objects to a permit, the State or Tribe may request a public hearing on the objection. If no hearing is requested and if the State or Tribe fails to revise the permit within 90 days of receiving the Administrator's objection, or fails to resubmit the permit applications within 30 days of a public hearing, the Administrator shall determine if the permit should be issued or denied. This section ensures a firm timeline for the permit issuance or denial to ensure that there is a date certain for the Good Sam.

(s) Withdrawal of Approval of State or Tribal Program and Return of State or Tribal Program to Administrator

Summary

In General, each State or Tribal Good Samaritan program shall be administered in accordance with the Act. If the Administrator determines, after a public hearing, that a State or Indian Tribe is not administering the program in accordance with this Act, the Administrator shall notify the State or Tribe of its finding and failing appropriate corrective action within 90 days, withdraw the program. The Administrator shall not withdraw a program until the Administrator has notified the State or Tribe and makes available to the public, in writing, the reasons for the withdrawal.

Discussion

This section provides the Administrator with the authority to withdraw a State or Tribe's delegation if the Administrator finds that the program is not being administered pursuant to this Act.

(t) Federal Land Management Agencies

Summary

A Federal land management agency that provides authorization for, or participates in, a Good Sam project shall not be liable under environmental laws for the conduct or actions of a Good Sam.

Discussion

This section protects the Federal land management agency from liability if a Good Samaritan project occurs on Federal lands.

(u) Emergency Authority and Liability

Summary

Nothing in this section affects the authority of Federal, State, tribal or local agency to carry out any emergency authority, including an emergency authority provided under any environmental law listed in a permit. Further, except to the extent that a permit provides protection under an environmental law specified in the permit, nothing in this section or a permit issued under this section limits the liability of any person under any other provision of law.

Discussion

This section provides a savings clause which protects the authority of Federal, State, tribal or local agencies to use any emergency authorities, including but not limited to any emergency authority provided under any environmental law listed in the permit. It further limits the protections afforded to the Good Samaritan to only those laws specifically addressed in the permit issued pursuant to this Act.

(v) State and Tribal Reclamation Programs

Summary

No State, Indian Tribe or Other Good Samaritan shall be required to obtain a Good Sam permit to remediate an abandoned or inactive mine site for the conduct of reclamation work under a

SMCRA approved State or tribal abandoned mine reclamation plan.

Discussion

The Surface Mining Control and Reclamation Act of 1977 provides states with resources and authority to remediate coalmines. Once a state has remediated abandoned coalmines, the State may use funds under SMCRA to remediate abandoned hardrock mine sites consistent with an approved reclamation plan (33 U.S.C. 1240(a)). States are afforded liability protection for mine sites remediated in accordance with their SMCRA approved plan. The Western Governors Association testified before the House of Representatives Committee on Transportation in support of clarifying the law such that nothing in S. 1848 is intended to preclude a State from addressing these sites under an approved SMCR program.[27] States are concerned that they could be required to do these cleanups under Good Samaritan permits instead of under their already successful SMCRA program permit. This subsection clarifies that States can continue to remediate abandoned hardrock mining sites through their approved SMCRA programs without needing a Good Samaritan permit.

(w) Termination of Authority

Summary

The Act shall terminate on September 30, 2016. However, the permitting authority may issue permits after September 30, 2016, if the application for the permit was submitted not later than 180 days before that date; and was completed in accordance with subsection (e) no later than September 30, 2016. Any permit issued pursuant to this Act that is in effect after September 30, 2016, shall remain in effect after that date in accordance with the terms and conditions of the permit and this Act except that all work must be completed the later of 10 years after the date of enactment or four years after the issuance of the permit.

Discussion

This section establishes a sunset for both the Act and work authorized by a Good Samaritan permit. The Act's authorization ends on September 30, 2016. Projects must be completed the later of ten years from the date of enactment or four years after the permit has been issued. Finally, this section provides an exception for those permit applications received 180 days before September 30, 2016. The permits may still be issued and work may continue under those permits for up to four years after the date of issuance.

(x) Report to Congress

Summary

Not later than January 1, 2016, the Administrator shall submit a Report to the Committee on Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Resources of the House of Representatives. The report shall include a description of the number,

[27] Ibid, Frohardt.

types and objectives of permits issued pursuant to this Act and each site remediation project authorized by those permits. The report shall also include qualitative and quantitative data on the results achieved under the permits, a description of any problems encountered in administering the act and whether the problems can be addressed through administrative action. Finally, the report shall include a description of progress made in achieving the purposes of the Act and recommendations on whether the permit program should be continued including any suggested statutory modifications.

Discussion

This section requires the Administrator to submit a report to the various Congressional authorizing committees describing the projects that were permitted pursuant to this Act as well as recommendations for improvements to the program.

(y) Regulations

Summary

Provides the Administrator with the Authority to issue regulations to implement the Act and allows permits to be issued and projects to begin regardless of when or whether regulations are promulgated.

Discussion

This section requires the Administrator to issue regulations as the Administrator determines are necessary describing how to implement the Act. It authorizes the issuance of permits prior to the issuance of regulations.

LEGISLATIVE HISTORY

On October 6, 2005, Senator Salazar and Senator Allard introduced S. 1848, "The Cleanup of Inactive and Abandoned Mines Act." On June 14, 2006, the Committee held an oversight hearing to consider whether potential liability deters abandoned hard rock mine clean up.

ROLLCALL VOTES

Senator Inhofe offered a complete substitute that was accepted. Senator Carper offered an amendment to modify a provision relating to injunctions. The amendment was accepted. Senator Carper offered an amendment to require completion of Good Sam projects within a certain timeframe. Senator Carper offered a second-degree amendment to modify the timeframe. The second degree and the underlying amendment were accepted. Senator Carper offered a third amendment to amend the bill's monitoring provisions. The amendment was accepted. Senator Carper offered a fourth amendment to require that certain applicants provide financial assurances. Senator Carper offered a second-degree amendment to his fourth amendment. Both the base amendment and the second degree were accepted. Senator Boxer offered a complete substitute amendment as modified that was defeated 7 to 11 with Senators Boxer, Jeffords, Lautenberg, Clinton, Lieberman, Obama and Chafee voting aye and Senators Inhofe, Warner, Bond, Voinovich,

Thune, Murkowski, DeMint, Vitter, Isakson, Carper and Baucus voting nay.

S. 1848 was then passed by voice vote.

REGULATORY IMPACT

In compliance with Section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the bill. The bill does not create any additional regulatory burdens.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 1848 imposes no Federal intergovernmental mandates on State, local or tribal governments.

COST OF LEGISLATION

Due to time constraints the Congressional Budget Office estimate was not included in the report when received by the committee, it will appear in the Congressional Record at a later time.

ADDITIONAL VIEWS OF SENATOR JEFFORDS

During my time in the Senate, I have been concerned about modernizing mining statutes to improve health and safety, and reduce the environmental impact of mining. As a result of several studies that reported abuse of current mining laws and the lack of modern environmental standards in the law, efforts to reform the General Mining Law of 1872 gained some momentum in the late 1980s and early 1990s. I was one of several cosponsors of S. 257, the Mineral Exploration and Development Act of 1993, introduced by Senator Dale Bumpers (D–AK), in the 103rd Congress. The proposed legislation would have provided comprehensive reform of the General Mining Law of 1872. Included in the bill were provisions to impose a royalty on mineral production on federal lands, reclamation and bonding requirements, and an abandoned hardrock mine reclamation fund to reclaim abandoned hardrock mines. The House and Senate versions of the bill became deadlocked in conference and did not emerge as public law. Since that time, I have supported the passage of a provision in the annual Interior appropriations bill that imposed a moratorium on patents [1]—a practice that would give the mineral claimant title to the land and minerals.

In subsequent years, I have cosponsored legislative efforts that would have addressed the General Mining Law of 1872, such as the Elimination of Double Subsidies for the Hardrock Mining Industry Act in 1999 (S. 590) and 2001 (S. 115). Among other things, the bill would have established an Abandoned Mine Reclamation Trust Fund. As I said on June 14, 2006 in my statement for the Environment and Public Works Committee Oversight Hearing on Abandoned Hardrock Mine Cleanup, "First, we need to fully fund the Superfund program so that the EPA has the ability to do its job and cleanup the contaminated toxic mining sites around the nation."

There is no question that cleaning up pollution stemming from abandoned mines should be a priority. It is estimated that there are as many as 500,000 abandoned hardrock mines throughout the United States.[2] The EPA estimates that thousands of stream miles have been impacted by acid mine drainage which may include heavy metals such as lead, copper, zinc, arsenic, mercury, and cadmium.[3] The former U.S. Bureau of Mines estimated that 12,000 stream miles and 180,000 acres of lakes in the West have been impacted by acid mine drainage.[4] Currently, there are more than 80 abandoned mining sites on the National Priorities List. Many of

[1] This effort began in FY 1995 with the Bumpers/Jeffords amendment number 2400 to H.R. 4602.

[2] Mineral Policy Center, "The Last American Dinosaur * * *. The 1872 Mining Law," finds 557,000 abandoned hardrock mines nationwide, 1995.

[3] EPA letter responding to questions at June 14, 2006 EPW hearing on Good Samaritan legislation, July 14, 2006.

[4] Ibid.

these sites are categorized as mega-NPL sites,[5] which are large, complex, and costly sites in which total cleanup costs are expected to equal or exceed $50 million.[6] In fiscal year (FY) 2005, approximately half of the Superfund obligations for long-term, ongoing cleanup work were committed to just eleven of these sites.[7] The EPA expects the situation to be the same this fiscal year.[8] EPA funded mega-sites cleanup of abandoned mines has languished. In Vermont, there are three copper mines that have been on the NPL for years while little cleanup action has been taken. In 2004, the EPA's Office of Inspector General estimated that the potential cleanup costs nationwide could be as much as $24 billion.

If we had enacted the proposals for a trust fund in 1999 or 2001, I believe that we would have already had 5 years of progress on cleaning up abandoned mines. We need to fully fund the Superfund program so that the EPA has the ability to do its job to cleanup the contaminated toxic mining sites around the nation. The Superfund program has successfully removed PCBs, arsenic, lead and other toxic wastes from almost 900 communities. Yet, this Administration refuses to reauthorize the expired Superfund polluter-pays fees that were supported by Presidents Reagan, Bush and Clinton. As a result, the Superfund Trust Fund that once contained a surplus of $3.8 billion when the fees expired in 1995 is now essentially bankrupt and the burden on taxpayers to support it has increased by 300 percent.[9] Due to this Administration's failure to seek reinstatement of the Superfund fees, the Superfund program is limping along with about 40 percent fewer dollars in real terms than in 1987.[10] Since 1987, annual Superfund appropriations have varied from a low of $1.1 billion in FY 1988 to a high of $1.6 billion in FYs 1991 and 1992.[11] The program's FY 2005 appropriations of $1.2 billion are the equivalent of $820 million in constant 1987 dollars—a 40 percent decrease in purchasing power when compared with actual FY 1987 appropriations of $1.4 billion.[12]

The President's budget requests only $1.26 billion for Superfund cleanups in FY 2007. This level of funding would cleanup only 40 sites, down from an average of 87 sites a year cleaned up during the Clinton Administration. This funding level is grossly inadequate to protect human health and the environment and it will continue to shift the costs of these cleanups onto the taxpayers. Abandoned mines pose significant public safety and environmental hazards and are in desperate need of cleanup. Acid drainage from these mines damages watersheds and degrades water quality. Leaching of metals from relic tailings and other mine waste piles damages surrounding soil, ground water and surface water (creeks,

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[5] Environmental Protection Agency/Department of Energy Mine Waste Technology Program 2005 Annual Report, page 3.

[6] *Superfund and Mining Megasites,* National Research Council of the National Academies, December 2005, page 412.

[7] Statement of Susan Parker Bodine, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. EPA, before the Senate Subcommittee on Superfund and Waste Management, June 15, 2006.

[8] Ibid.

[9] Center for Health, Environment and Justice, "25th Anniversary of Superfund, America's Safety Net in Crisis" (2005).

[10] Statement of Katherine Probst, Senior Fellow, Resources for the Future, before the Senate Subcommittee on Superfund and Waste Management, June 15, 2006.

[11] Ibid.

[12] Ibid.

streams, rivers). I strongly believe that Americans deserve clean soil and water. Nothing would be more effective in spurring clean-up and environmental improvement than a dedicated and reliable source of funding.

JIM JEFFORDS.

ADDITIONAL VIEWS OF SENATORS BOXER, LIEBERMAN, LAUTENBERG, OBAMA AND CLINTON

S. 1848, the Clean-Up of Inactive and Abandoned Mines Act, unnecessarily waives environmental protection statutes, putting human health and the environment at further risk from threats from abandoned mines. The answer to the environmental threat posed by abandoned mines is not to undermine the environmental standards that apply to the clean-ups. It is instead to fully utilize existing authority to relieve innocent parties from potential liability where appropriate and fully fund existing programs that support abandoned mine cleanups, including Superfund.

EXISTING AUTHORITIES CAN EXPEDITE CLEAN-UP AND ENSURE THAT THE ENVIRONMENT IS PROTECTED

In 1980, when Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., (CERCLA), it provided agencies with broad authorities to limit liability and ensure flexibility when parties, including innocent parties, agree to undertake clean-up actions. In 2001, Congress expanded some of these authorities when it enacted the Small Business Relief and Brownfields Revitalization Act. In addition, the United States through the Department of Justice, has long been recognized to have broad settlement authorities which can be utilized to protect innocent parties from liability, when they agree to perform a clean-up. A brief summary of key existing authorities will highlight just how extensive the available liability protection is under current law. Every such authority is not listed here. The protections are far broader than suggested in the Majority views. These cleanup agreements can be memorialized in an Administrative Order on Consent. EPA should create a model order to expedite the process.

Section 107(d) of CERCLA provides " * * * no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan * * * " This umbrella liability protection is one of the strongest available in statute. It can be applied to innocent parties who wish to perform a cleanup.

It is worth noting that the NCP allows substantial flexibility when a party performs the kind of interim clean-up measures that an innocent party would most likely perform at an abandoned mine. When a party seeks to undertake an interim measure, rather than the final cleanup, it could be accomplished as a removal action under the NCP. Removal actions at a site can involve in some cases multi-million dollar, multi-year clean-ups. Removal actions may attain the applicable or relevant and appropriate require-

ments to the extent practicable considering the exigencies of the situation. 40 CFR 415.

It is also worth noting that pursuant to Section 121(e) of CERCLA, "No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site * * * " Accordingly, if an innocent party enters into an agreement with the United States to perform an interim clean-up at an abandoned mine, permitting requirements, including Clean Water Act permitting requirements are limited. This protection allows a party to reach agreement with EPA on a scope of work that includes flexible application of relevant standards, while at the same time receiving protection from permitting requirements and liability to the United States.

The Brownfields law specifically provides additional liability protections for bonafide prospective purchasers and contemplates that mine scarred lands will be addressed under the Brownfields provisions. See CERCLA Section 101(39) and CERCLA Section 107(r). EPA may enter bonafide prospective operator agreements as well.

The United States, as noted above has broad inherent or plenary settlement authorities, in addition to those provided in the CERCLA statute. Even the Section 122 settlement authorities in CERCLA allow discretion regarding compliance with the NCP. See Section 122(a). Section 113 also allows the United States to grant contribution protection, but clearly, it is not the sole basis for granting liability relief.

Courts have repeatedly recognized the plenary authority of the United Sates to settle claims involving the United States. See e.g., Swift v. United States, 276 U.S. 311, 331–332. This plenary authority has been relied upon by the United States to provide liability protections and settle matters, such as the Good Samaritan Administrative Order on Consent reached with Trout Unlimited in December of 2005.

Clearly, the tools exist in the law to formulate settlements that are protective of innocent parties who wish to clean-up an abandoned mine site. At the same time, environmental standards are clear but flexible, ensuring that the sites are not made worse despite a party's good intentions. The notion that the environmental laws stand in the way of environmental protection is a fallacy. The large number of organizations across the country who have raised serious concerns about the broad waivers of environmental laws and lack of standards, among other concerns, in S. 1848 makes clear that the notion that this bill is a step forward for environmental protection is unfounded. In fact, it presents a serious threat of taking environmental conditions backwards. It is worth noting that Mr. Goia of Contra Costa County, who testified at the hearing in the Environment and Public Works Committee on June 14, 2006 on this issue, indicated a strong interest in pursuing the administrative approach to addressing abandoned mines.

Groups raising concerns about S. 1848 include, Sierra Club, Natural Resources Defense Council, Earthjustice, National Environmental Trust, National Wildlife Federation, EARTHWORKS, National Catholic Rural Life Conference, Clean Water Action, Friends of the Clearwater, Western Environmental Law Center, Silver Valley Community Resource Center, Northern Alaska Environmental

Center, Siskiyou Project, Allied Fishing Groups, California Sportfishing Protection Alliance, California Striped Bass Association, California Water Impact Network, Coastkeeper Alliance, Committee to Save the Mokelumne, Butte Environmental Council, Deltakeeper Chapter of Baykeeper, Environmental Water Caucus, Friends of the River, Friends of the Trinity River, NCC Federation of Fly Fishers, Pacific Coast Federation of Fisherman's Association, Planning and Conservation League, San Joaquin Audubon, Southern California Watershed Alliance, Winnemem Wintu Tribe, Idaho Conservation League, Citizens for Victor, The Lands Council, Mining Impact Coalition of Wisconsin, Western Organization of Resource Councils, Earth Island Institute, Southeast Alaska Conservation Council, Alabama Rivers Alliance, Arroyo Seco Foundation, Coast Action Group, Environmental Law Society, Boalt Hall, Planning and Conservation League, Sierra Club, Rocky Mountain Chapter, Grassroots Coalition of Connecticut, Clean Water Network of Florida, Environment Florida, Florida Federation of Garden Clubs, Inc., American Bottom Conservancy, National Catholic Rural Life Conference, Kentucky Resources Council, Inc., Kentucky Waterways Alliance, Inc., Gulf Restoration Network, National Lawyers Guild Environmental Committee, Conservation VP, St. Louis Audubon Society, Fishing Outfitters Association of Montana, Western Nebraska Resources Council, New Hampshire Rivers Council, U.S. Environmental Watch, Amigos Bravos, Friends of the Wild Rivers, Bronx Greens, Citizens Campaign for the Environment, Great Lakes United, League of Women Voters of Westchester, Waterkeeper Alliance, Clean Water for North Carolina, Neuse River Foundation, Ohio Environmental Council, Ohio River Foundation, Rivers Unlimited Save the Illinois River, Inc., Northwest Environmental Defense Center, Tualatin Riverkeepers, Western Environmental Law Center, Clean Water Action, South Dakota Tennessee Clean Water Network, Lake Champlain Committee, Friends of the North Fork of the Shenandoah River, Friends of Milwaukee's Rivers, West Virginia Environmental Council, Wyoming Outdoor Council.

BARBARA BOXER.
FRANK R. LAUTENBERG.
BARACK OBAMA.
HILLARY RODHAM CLINTON.
JOE LIEBERMAN.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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