

106TH CONGRESS
1ST SESSION

S. 1787

To amend the Federal Water Pollution Control Act to improve water quality on abandoned or inactive mined land.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

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

A BILL

To amend the Federal Water Pollution Control Act to improve water quality on abandoned or inactive mined land.

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

3 **SECTION 1. SHORT TITLE.**

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

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

7 (a) FINDINGS.—Congress finds that—

8 (1) thousands of abandoned or inactive mines
9 exist in the West and elsewhere in the United
10 States;

1 (2) drainage and runoff from those abandoned
2 or inactive mines are responsible for significant
3 threats and impairments to water quality; and

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

8 (b) PURPOSE.—The purpose of this Act is to allow
9 a party that is not responsible for environmental condi-
10 tions relating to abandoned or inactive mined land to im-
11 prove water quality affected by past mining activities at
12 the land without incurring liability under sections 301,
13 302, and 402 of the Federal Water Pollution Control Act
14 (33 U.S.C. 1311, 1342) to make further progress toward
15 the goal of meeting or exceeding water quality standards
16 in all waters of the United States.

17 **SEC. 3. ABANDONED OR INACTIVE MINED LAND WASTE RE-**
18 **MEDIATION PERMITS.**

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

22 “(q) ABANDONED OR INACTIVE MINED LAND WASTE
23 REMEDIAL PERMITS.—

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

1 “(A) ABANDONED OR INACTIVE MINED
2 LAND.—The term ‘abandoned or inactive mined
3 land’ means land formerly mined for non-coal
4 resources—

5 “(i) that is no longer actively mined
6 (and not in temporary shutdown) at the
7 times at which the remediation plan is sub-
8 mitted and the permit is issued;

9 “(ii) that is not included, or proposed
10 for inclusion, on the National Priorities
11 List under the Comprehensive Environ-
12 mental Response, Compensation, and Li-
13 ability Act of 1980 (42 U.S.C. 9601 et
14 seq.) and that is not the subject of a
15 planned or ongoing response or natural re-
16 source damages action under that Act; and

17 “(iii) for which there is no identifiable
18 owner or operator for the mine or mine fa-
19 cilities.

20 “(B) IDENTIFIABLE OWNER OR OPER-
21 ATOR.—The term ‘identifiable owner or oper-
22 ator’ means a person identified by a remedi-
23 ating party under paragraph (3)(B)(vi) or by
24 the public under paragraphs (3)(C)(iii) and
25 (3)(D)(i)—

1 “(i) that is responsible for the activi-
2 ties at abandoned or inactive mined land
3 that created conditions that cause or con-
4 tribute to the discharge of pollutants from
5 the abandoned or inactive mined land; and

6 “(ii) that is financially capable of
7 compliance with requirements of sections
8 301, 302, and 402.

9 “(C) PERMIT.—The term ‘permit’ means
10 an abandoned or inactive mined land waste re-
11 mediation permit described under paragraph
12 (2).

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

15 “(i) the United States, except with re-
16 spect to abandoned or inactive mined land
17 located on Federal land;

18 “(ii) a State;

19 “(iii) an Indian tribe; or

20 “(iv) a municipality.

21 “(2) PERMITS.—

22 “(A) IN GENERAL.—The Administrator,
23 with the concurrence of the applicable State or
24 Indian tribe, may issue an abandoned or inac-
25 tive mined land waste remediation permit to a

1 remediating party for discharges associated
2 with remediation activity at abandoned or inae-
3 tive mined land, that modifies the otherwise ap-
4 plicable requirements of any other subsection of
5 this section and of sections 301 and 302.

6 “(B) FEDERAL ENFORCEMENT.—A permit
7 (including conditions of a permit) issued under
8 this subsection is subject to the Federal en-
9 forcement authority under section 309.

10 “(C) DELEGATION.—The Administrator
11 shall not delegate the authority under subpara-
12 graph (A).

13 “(3) PERMIT PROCESS.—

14 “(A) SCOPE.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), a remediating party
17 may apply for a permit for remediation ac-
18 tivities at abandoned or inactive mined
19 land from which there is or may be a dis-
20 charge of pollutants to waters of the
21 United States.

22 “(ii) LIMITATION.—A remediating
23 party may not apply for a permit under
24 clause (i) if the abandoned or inactive
25 mined land is owned by the remediating

1 party, unless the land was purchased by
2 the remediating party for the express pur-
3 pose of remediating pollutant discharges
4 related to past mining activities at the land
5 to improve water quality.

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

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

13 “(ii) identifies the abandoned or inac-
14 tive mined land addressed by the plan, in-
15 cluding a verification that the land meets
16 the requirements of paragraph (1)(A);

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

21 “(iv) describes the baseline condition
22 of the waters (including the nature and ex-
23 tent of any adverse water quality impact
24 and, as applicable, the levels of any pollut-
25 ant causing the impact);

1 “(v) describes the physical conditions
2 at the abandoned or inactive mined land
3 that are causing adverse water quality im-
4 pacts;

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

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

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

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

22 “(viii) describes the practices, includ-
23 ing a schedule and estimated completion
24 date for implementing the practices, that
25 are proposed to reduce, control, mitigate,

1 or eliminate the adverse water quality im-
2 pacts, including—

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

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

12 “(ix) explains how the practices de-
13 scribed in clause (viii) are expected to re-
14 sult in a water quality improvement for the
15 identified waters;

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

21 “(xi) describes contingency plans, in-
22 cluding the practices to be implemented to
23 achieve the remediation goals and objec-
24 tives described in clause (vii), for respond-
25 ing to unplanned adverse events;

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

4 “(xiii) provides a budget for the plan
5 and identifies the funding sources that will
6 support the implementation of the plan, in-
7 cluding practices described in clauses (viii),
8 (x), and (xi);

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

13 “(xv) contains any other additional in-
14 formation requested by the Administrator
15 to clarify the plan and the activities cov-
16 ered by the plan; and

17 “(xvi) is signed by the applicant.

18 “(C) REVIEW OF APPLICATION.—

19 “(i) IN GENERAL.—The Administrator
20 shall—

21 “(I) review each application for
22 an abandoned or inactive mined land
23 waste remediation permit; and

1 “(II) determine whether the ap-
2 plication meets the requirements of
3 subparagraph (B).

4 “(ii) DISAPPROVAL.—If the Adminis-
5 trator determines that an application does
6 not meet the requirements of subpara-
7 graph (B), the Administrator shall—

8 “(I) notify the applicant that the
9 application is disapproved and explain
10 the reasons for the disapproval; and

11 “(II) allow the applicant to sub-
12 mit a revised application.

13 “(iii) APPROVAL.—If the Adminis-
14 trator determines that an application
15 meets the requirements of subparagraph
16 (B), the Administrator shall—

17 “(I) notify the applicant that the
18 application is accepted;

19 “(II) provide to the public notice
20 of and reasonable opportunity to com-
21 ment on the application; and

22 “(III) provide to the public an
23 opportunity for a public hearing on
24 the application.

25 “(D) ISSUANCE.—

1 “(i) DECISION TO ISSUE.—After no-
2 tice and opportunity for public comment on
3 a permit proposed to be issued, the Admin-
4 istrator may issue an abandoned or inac-
5 tive mined land waste remediation permit
6 to the applicant if the Administrator deter-
7 mines that—

8 “(I) relative to the resources
9 available to the remediating party for
10 the proposed remediation activity, the
11 remediating party has made a reason-
12 able effort to identify persons under
13 subparagraph (B)(vi);

14 “(II) no identifiable owner or op-
15 erator exists; and

16 “(III) the remediation plan dem-
17 onstrates with reasonable certainty
18 that the implementation of the plan
19 will result in an improvement in water
20 quality to the maximum extent prac-
21 ticable, taking into consideration the
22 resources available to the remediating
23 party for the proposed remediation ac-
24 tivity.

1 “(ii) DECISION NOT TO ISSUE.—If the
2 Administrator decides not to issue an
3 abandoned or inactive mined land waste re-
4 mediation permit to the applicant, the Ad-
5 ministrator shall notify the applicant of the
6 reasons for not issuing the permit.

7 “(E) MODIFICATION.—

8 “(i) IN GENERAL.—Not later than
9 120 days after the receipt of a written re-
10 quest by a permittee, the Administrator
11 shall approve or disapprove a modification
12 of a permit.

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

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

18 “(II) with the concurrence of any
19 applicable State or Indian tribe;

20 “(III) after providing the public
21 notice of, and opportunity for com-
22 ment and a hearing on, a proposed
23 modification of a permit;

1 “(IV) in accordance with the
2 standards in subparagraph
3 (D)(i)(III); and

4 “(V) immediately reflected in and
5 applicable to the remediation permit.

6 “(4) CONTENTS OF PERMIT.—

7 “(A) IN GENERAL.—A permit—

8 “(i) shall include—

9 “(I) a remediation plan approved
10 by the Administrator; and

11 “(II) any additional requirements
12 that the Administrator establishes
13 under paragraph (9); and

14 “(ii) shall provide for compliance with
15 and implementation of the remediation
16 plan and any other requirements described
17 under clause (i).

18 “(B) REVIEW.—A permit shall establish a
19 schedule for review, by the Administrator, of
20 compliance with the conditions and limitations
21 of the permit.

22 “(C) COMPLIANCE WITH OTHER LIMITA-
23 TIONS.—A permit shall not require the remedi-
24 ating party to comply with any other subsection
25 of this section or with sections 301 or 302.

1 “(D) COMMERCIAL USE OR SALE.—A per-
2 mit shall not authorize any discharge associated
3 with the extraction, processing, or removal of
4 minerals for purposes of commercial use or sale,
5 unless the revenue generated through the use or
6 sale is used for remediation activities that will
7 further improve the quality of waters identified
8 in paragraph (3)(B)(iii).

9 “(5) FAILURE TO COMPLY.—If, during the re-
10 view conducted under paragraph (4)(B), on receipt
11 of a petition from any person, or for any other rea-
12 son, the Administrator determines, based on avail-
13 able information, that a remediating party operating
14 under an approved permit is not in compliance with
15 any condition or limitation of the permit, the Admin-
16 istrator may bring an enforcement action under sec-
17 tion 309.

18 “(6) TERMINATION.—

19 “(A) IN GENERAL.—The Administrator
20 shall terminate a permit if—

21 “(i) the remediating party completes
22 the implementation of the remediation
23 plan;

24 “(ii) the discharges covered by the
25 permit—

1 “(I) become subject to a permit
2 issued under the other subsections of
3 this section for development that is
4 not part of the implementation of the
5 remediation plan; and

6 “(II) the remediating party seek-
7 ing termination of coverage is not a
8 participant in the development; or

9 “(iii)(I) an event or condition is en-
10 countered that was not contemplated by
11 the remediation plan and is beyond the
12 control of the permittee; and

13 “(II) the surface water quality condi-
14 tions due to remediation activities at the
15 site, taken as a whole and with reference
16 to the designated uses of the waters, are
17 equal to or superior to the baseline condi-
18 tions.

19 “(B) NO ENFORCEMENT LIABILITY.—If a
20 permit is terminated under subparagraph (A),
21 the remediating party shall not be subject to
22 enforcement under section 309 or 505 for any
23 remaining discharges from the abandoned or in-
24 active mined land described in the permit.

25 “(7) LIMITATIONS.—

1 “(A) EMERGENCY POWERS.—Nothing in
2 this subsection limits the authority of the Ad-
3 ministrator under section 504.

4 “(B) PRIOR VIOLATIONS.—

5 “(i) IN GENERAL.—Nothing in this
6 subsection precludes actions under section
7 309 or 505 or affects the relief available in
8 actions under those sections, with respect
9 to violations of this section, or sections
10 301(a) or 302, that occurred prior to the
11 issuance of a permit under this subsection.

12 “(ii) EXCEPTION FOR PRIOR ACTIVI-
13 TIES COVERED BY THE PERMIT.—If a per-
14 mit covers remediation activities imple-
15 mented by the permit holder prior to the
16 issuance of the permit, clause (i) shall not
17 apply to an action that is based on condi-
18 tions resulting from those remediation ac-
19 tivities.

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

24 “(D) OTHER DEVELOPMENT.—Any devel-
25 opment of abandoned or inactive mined land

1 (including mineral exploration or mining) not
2 described in a permit issued by the Adminis-
3 trator under this subsection shall be subject to
4 this Act (other than this subsection).

5 “(8) LIABILITY OF OTHER PARTIES.—Nothing
6 in this subsection limits the liability of any person
7 other than the remediating party, under this Act or
8 any other law.

9 “(9) REGULATIONS.—

10 “(A) IN GENERAL.—Not later than 1 year
11 after the date of enactment of this subsection,
12 the Administrator, in consultation with State,
13 tribal, and local officials and after providing the
14 public with notice of, and opportunity for com-
15 ment and a hearing on, regulations proposed to
16 be promulgated, shall promulgate regulations
17 establishing generally applicable requirements
18 for—

19 “(i) remediation plans described in
20 paragraph (3)(B); and

21 “(ii) as considered to be necessary by
22 the Administrator, other paragraphs of
23 this subsection.

24 “(B) SPECIFIC REGULATIONS.—The Ad-
25 ministrator may promulgate, on a case-by-case

1 basis, in consultation with State, tribal, and
2 local officials and after providing the public
3 with notice of, and opportunity for comment
4 and a hearing on, regulations proposed to be
5 promulgated, more specific requirements that
6 the Administrator determines would facilitate
7 implementation of this subsection in an indi-
8 vidual abandoned or inactive mined land waste
9 remediation permit.

10 “(10) FUNDING.—Implementation of a remedi-
11 ation plan under a permit issued under this sub-
12 section shall be eligible for grants under section
13 319(h).

14 “(11) REPORT.—

15 “(A) IN GENERAL.—Not later than 1 year
16 before the date of the termination of permitting
17 authority specified in paragraph (12), the Ad-
18 ministrator shall submit to Congress a report
19 on the activities authorized by this subsection.

20 “(B) CONTENTS.—The report required
21 under subparagraph (A) shall, at a minimum—

22 “(i) identify each permit, and associ-
23 ated remediating party, issued under this
24 subsection;

1 “(ii) identify the abandoned or inac-
2 tive mine land addressed by each permit
3 (including the waterbodies and baseline
4 water quality of the waterbodies affected
5 by the land);

6 “(iii) summarize the remediation plan
7 associated with each permit issued under
8 this subsection, including—

9 “(I) the goals and objectives of
10 the plan;

11 “(II) the plan budget; and

12 “(III) the practices to be em-
13 ployed according to the plan to re-
14 duce, control, mitigate, or eliminate
15 adverse water quality impacts;

16 “(iv) identify the status of the imple-
17 mentation of each remediation plan associ-
18 ated with each permit issued under this
19 subsection (including specific progress that
20 permitted remediation activities have made
21 toward achieving the goals and objectives
22 of the remediation plan);

23 “(v) identify and describe any enforce-
24 ment action taken by the Administrator or
25 any civil action brought by a citizen con-

1 cerning a permit issued under this section
2 (including the disposition of the legal ac-
3 tion); and

4 “(vi) include recommendations by the
5 Administrator for any modifications to this
6 subsection, or the regulations promulgated
7 under paragraph (9) to implement this
8 subsection, that would facilitate the im-
9 provement of water quality through the re-
10 mediation of abandoned or inactive mined
11 land.

12 “(12) TERMINATION OF PERMITTING AUTHOR-
13 ITY.—The authority granted to the Administrator
14 under this subsection to issue an abandoned or inac-
15 tive mined land waste remediation permit terminates
16 on the date that is 10 years after the date of enact-
17 ment of this subsection.”.

○