



OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS

WASHINGTON, D.C. 20460

November 19, 2024

Chairman Mike Rogers
House Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

Ranking Member Adam Smith
House Armed Services Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rogers and Ranking Member Smith:

As you begin the conference on the National Defense Authorization Act for Fiscal Year (FY) 2025, the Environmental Protection Agency (EPA, Agency) would like to express our significant concerns regarding inclusion of Division K of Senate Armed Services Committee Managers Package to S. 4638 (S. Amendt. 3290 – the “Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024”), hereafter known as Division K. EPA supports efforts to clean up pollution from abandoned hardrock mines but urges Congress to exclude Division K to allow for continued dialogue to ensure that a Good Samaritan cleanup program is successful.

While EPA supports providing opportunities for entities, including Good Samaritans, to make progress in cleanups and provide environmental benefits to contaminated legacy mining areas, EPA already has authorities and tools to support existing and future Good Samaritan projects and is concerned that implementing Division K could result in administrative and financial burdens on the Agency.

EPA Has Significant Concerns with Division K Establishing a Good Samaritan Pilot Program

Division K contains ambiguous language that could complicate EPA’s ability to hold accountable permit holders whose activities exacerbate pollution and cause negative impacts on local communities. The bill would establish a pilot permit program outside of EPA’s existing authorities but lacks the sufficient clarity of key terms, including “baseline conditions” and “measurably worse”, making it difficult to determine if cleanups are successful while also ensuring adequate protection for human health and the environment. These ambiguous terms would all present additional litigation risks that would arise if EPA sought to require a permittee whose actions caused an increase in pollution, to return the site to

the conditions prior to any activities. Additionally, once a permit is terminated, EPA would be unable to require the permittee to take any action to respond to a degradation of the environmental conditions after the permit is terminated, leaving taxpayers on the hook to address the increased pollution.

EPA has concerns regarding the Agency's ability to implement key terms in the legislation to provide effective management of the program. EPA is also concerned that the legislation as written would prevent the successful implementation of the partnerships intended, and the short timeframe and duplication of authorities could hinder cleanups and fail to meet the intent of the legislation.

EPA notes that its existing administrative tools, including under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), continue to be successfully implemented by the Agency in partnership with Good Samaritans. Further, the language in Division K establishing a Good Samaritan Mine Remediation Fund is ambiguous regarding withdrawal by multiple federal agencies and lacks an interest accrual mechanism to support long-term success of the program.

EPA has Significant Concerns Regarding Potential Impacts to Other Statutory Authorities

EPA has concerns regarding the requirement in Division K to apply the National Environmental Policy Act (NEPA) to all of the Good Samaritan permit pilot projects. CERCLA's orderly environmental review and public participation is functionally equivalent to NEPA requirements. Notably, the Good Samaritan permitting process involves EPA, an agency with the environmental expertise to conduct an orderly review and involve public participation. Thus, incorporating the NEPA environmental review process would create duplicative efforts and increase costs. Additionally, while the pilot program is separate from EPA's existing authorities, the unclear NEPA requirements and legislative text may inadvertently result in the interpretation that NEPA would apply in CERCLA actions.

The language in Division K also could have impacts to State and Tribal authorities under §401 of the Clean Water Act which allows States and authorized Tribes to add conditions to certain federal permits to ensure compliance with applicable water quality requirements (including water quality standards and other applicable state or tribal laws). As written, permits issued under this program could undermine the ability to make reasonable progress toward achieving the intent of the Clean Water Act. Division K requires that a State or Indian Tribe where the abandoned hardrock mine is located be given the opportunity to review and comment if necessary on the proposed Good Samaritan permit, but it is unclear the extent to which any comment must be incorporated into the final permit. If this review and comment requirement replaces §401 certification, States and authorized Tribes will lose the ability to add certification conditions ensuring compliance with applicable state or tribal laws to a Good Samaritan permit.

Similarly, the notice of proposed Good Samaritan permits given to downstream governments and tribes is less robust than the neighboring states and tribes provisions of §401, which require notice and an opportunity to make recommendations if the discharges from the proposed permit may affect the water quality of those states or tribes.

We appreciate the opportunity to present these comments and it is our hope that you will consider these comments and concerns during conference. Thank you for your consideration of these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Del Monico". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Tim Del Monico
Associate Administrator