

Gold King Mine Spill May Renew Interest in "Good Samaritan" Legislation

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On August 5, an accidental spill from the Gold King Mine, a long-abandoned gold mine site in Colorado, released an estimated 3 million gallons of acid mine drainage (AMD) wastewater into a tributary of the Animas River. From there, the contaminated wastewater migrated downstream to the San Juan River into New Mexico, Utah, and tribal lands. (For background, see CRS Insight IN10341, [Gold King Mine Spill: EPA Response and Related Issues](#).)

[Water samples](#) taken in days immediately after the mine blowout indicated elevated levels of some metals (copper, lead, and manganese), although concentrations diminished to "pre-incident" levels as the plume moved downstream. Nevertheless, the spill led to widespread concern about impacts on water quality, public health, agriculture, fish, and wildlife. It also raised concern about other inactive or abandoned hardrock mine (IAM) sites on public and private lands in the United States. The precise number is unknown, but [GAO estimated](#) that there may be more than 160,000 abandoned hardrock mines in the western states and Alaska and that 20% of these sites (about 33,000) had degraded the environment outside the mine. The Colorado spill has raised interest in facilitating cleanup of legacy pollution at IAM sites in order to prevent similar accidents.

One approach that has drawn attention is encouraging remediation by so-called "Good Samaritan" entities, third parties who have no history of polluting at a particular site or legal responsibility for its pollution, but who step forward to clean up AMD or other historic mine residue of pollution. Legislation to authorize Good Samaritan remediation has been introduced regularly since 1999, including [H.R. 963](#) in the 114th Congress. These bills would establish a process for issuing permits to Good Samaritans and providing incentives such as reduced liability from environmental laws and, in some cases, less stringent remediation standards.

Mining companies have been the strongest proponents of Good Samaritan legislation. They contend that stringent liability rules under environmental laws and strict regulatory standards stymie voluntary efforts. Without efforts by Good Samaritans, they say, abandoned mines may be remediated using public funds—where funds are available—or, more likely, will not be remediated at all. Some conservation advocates support Good Samaritan legislation. Many others acknowledge that IAM remediation would benefit the environment, but they contend that exemptions and relief proposed in some bills might be the first step in dismantling key environmental laws. States (especially western states) have said that there is a need to eliminate disincentives to voluntary, cooperative efforts to remediate IAM sites.

Good Samaritan proposals raise a number of issues, including eligibility and conditions for permits, remediation standards, treatment of revenue from cleanup, and the role for states and Indian tribes. Proponents contend that liability under the [Clean Water Act \(CWA\)](#) and the [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#) is a major issue and obstacle to voluntary remediation of IAMs.

The CWA comes into play because of its requirement that all point-source discharges into waters of the United States must be authorized by a permit under the act, and the likelihood that a Good Samaritan could be deemed subject to that requirement. CWA permits impose "liability," or obligations, in two senses. First, they require the permit holder to comply with effluent limitations and water quality standards in streams that are already violating these standards. Second, noncompliance with permit conditions may result in civil and criminal penalties. In addition, the CWA

contains an "emergency powers" authority, rarely used, under which the Environmental Protection Agency (EPA) can seek a court order requiring such action as may be necessary to remedy an imminent and substantial endangerment.

Under CERCLA, an entity is liable for remediation costs and natural resource damages resulting from release (or threatened release) of hazardous substances if that entity falls into any of four categories of potentially responsible parties (PRPs). At least two of those categories might apply to the Good Samaritan. First, such an entity might be deemed an "operator" of the "facility" where the release occurred. Second, a Good Samaritan might constitute an "arranger"—someone who arranged for transport of hazardous substances from the IAM facility to another site. A Good Samaritan could face a stringent liability scheme if designated a PRP under CERCLA. It is strict (does not require negligence) and joint and several (a single liable party among several can be held responsible for the entire liability). And liability may attach even though the Good Samaritan does not cause or contribute to the hazardous substance release. Finally, a Good Samaritan-PRP could not choose to deal with only certain aspects of an IAM's pollution, cleaning up only part way (i.e., the easiest or most cost-effective problems). Rather, CERCLA requires that cleanups must meet all applicable or "relevant and appropriate" federal and state standards.

Some have argued that Good Samaritan legislation is not needed, because IAM projects can be authorized by EPA using its inherent enforcement discretion under CERCLA to tailor liability relief and environmental requirements to a project and obviate the need for additional permits. In 2007, EPA announced an [initiative to encourage voluntary cleanups](#) of abandoned hardrock mine sites consisting of administrative tools intended to reduce the threat of CERCLA liability for Good Samaritans. It followed with a [2012 guidance memorandum](#) that addressed circumstances that would preclude potential CWA responsibilities for a Good Samaritan after a project done pursuant to the CERCLA tool is complete. Some stakeholders find EPA's initiatives and guidance helpful, but that they do not resolve all liability questions. Thus, they believe that broader legislative solutions are needed, while environmental and other critics seek assurance that when IAM remediation occurs, environmental conditions will be improved, not worsened. (For discussion of liability and other issues raised in past legislation, see CRS Report RL33575, [Cleanup at Abandoned Hardrock Mines: Issues Raised by "Good Samaritan" Legislation in the 109th Congress.](#))