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September 27, 2006

The Honorable Ken Salazar
702 Hart Senate Office Bldg.
Washington, D.C. 20510-0607

The Honorable Wayne Allard
521 Dirksen Senate Office Bldg.
Washington, D.C. 20510-0606

Dear Senator Salazar and Senator Allard:

On behalf of the Western Governors' Association, we commend you for your efforts on developing legislation to remove legal disincentives to the Good Samaritan cleanups of abandoned and inactive mines. The Western governors have consistently identified Good Samaritan legislation as one of our high priorities regarding water quality, as abandoned and inactive mines are responsible for many of the greatest threats and impairments to water quality across the Western United States.

On June 13, 2006, the Western Governors' Association sent a letter to Chairman Inhofe regarding S. 2780, "Good Samaritan Clean Watershed Act," introduced on behalf of the U.S. Environmental Protection Agency. The letter expressed support for S. 2780 as "a solid basis for moving forward."

The Western Governors Association recognizes and appreciates the efforts you have each made, with the support of Chairman Inhofe, to pass Good Samaritan legislation that combines the best elements of S. 2780 and S. 1848. With this letter, we would like to also state our support for your efforts to move this important legislation forward through S. 1848, "Cleanup of Inactive and Abandoned Mines Act," as passed by the Senate Environment and Public Works Committee on September 13, 2006. We have identified a few remaining issues in the amended bill with respect to which we seek further clarification (see attachment). Our staffs will work with committee staff in an effort to resolve those issues via committee report language or otherwise. In general, however, we believe the amended bill will provide States and other possible Good Samaritans the protections necessary to conduct voluntary cleanups, while assuring that these cleanups will result in improvements to water quality and the environment.

Again, we commend you for your efforts on S. 1848. We look forward to working with you, Congress, and the Administration to see Good Samaritan legislation enacted this year.

Sincerely,

Janet Napolitano *Gill Owens* *Bill Richardson*
Janet Napolitano Bill Owens Bill Richardson
Governor of Arizona Governor of Colorado Governor of New Mexico
WGA Lead Governor WGA Lead Governor WGA Lead Governor

cc: Senate Environment & Public Works Committee
The Honorable Stephen L. Johnson, U.S. Environmental Protection
Agency

Attachment

Issues in S. 1848 for which WGA Seeks Clarification or Revision

- *Scope of Liability Protection* – WGA supports allowing liability relief to Good Samaritans for the Clean Water Act and CERCLA. However, we would like clarification as to why the bill also proposes liability relief under the Toxic Substance Control Act, the Solid Waste Disposal Act, applicable State and Tribal environmental laws, and applicable environmental laws of a political subdivision of a state.
- *Cleanup Standard* – Under “Permit Issuance,” paragraph (f)(1)(A)(i) requires the permitting authority to determine that “the project will improve the environment on or in the area of the mine site to a significant degree, as determined by the permitting authority.” (Emphasis added.) The states agree that only those plans that result in “significant” improvements should be approved, but we recognize the difficulty in legislatively defining such terms as “significant.” For example, in some cases, “significant improvement” might be achieved through stabilization of a site. The states therefore seek report language to clarify the meaning of “to a significant degree.” We believe such clarification should direct that the permitting authority approve a permit only if it determines that the remediation plan demonstrates with reasonable certainty that the actions will result in an improvement to the environment, including water quality, to the degree reasonably possible, taking into consideration the resources available to the remediating party for the proposed project.
- *State Program Requirements* – Delegated states are required under (d)(2)(A) to “agree to participate as a permit signatory in the issuance of permits for each project...” Additionally, the same requirement applies to States Without Good Samaritan Programs under (d)(3). We would like clarification of the intended purpose for this requirement, and question why such a requirement is needed when elsewhere in the bill such state is required to concur with the permit (either as the permitting agency, or under (3)(f)(B) for non-delegated states).
- *Financial Assurances* – We believe the parenthetical in (e)(12) that reads “(if any)” should be deleted. Financial assurance should always be required in the permit application.
- *Review for Certain Projects* – We seek clarification as to how the more rapid review process under (f)(5) is intended to be applied, and whether any limitations exist for its use.
- *Judicial Review* – We would like clarification regarding the language in Subsection (p) that would require “clear and convincing evidence of an abuse of discretion” to overturn a permit on judicial review. This appears to be a very high standard compared with “arbitrary, capricious or an abuse of discretion.”
- *State and Tribal Reclamation Programs (Paragraph (v))* – This section identifies that work being completed under SMCRA does not require a permit under this Act. States believe there also needs to be clarification that work completed under other cleanup laws, such as State superfund laws, do not need a Good Samaritan permit. Additionally, there should be some definitional work done to ensure that the terms “remediate” and “reclamation” are used in a manner consistent with the definitions of CERCLA, SMCRA and other laws.
- *Transfer of Permits* – We would like clarification regarding whether concurrence by the state is required in the cases of permit transfers (See (h)(6) “Transfer of Permits”). If state concurrence is not currently included in the bill, we would seek that amendment.