

Docket #: EPA-HQ-OLEM-2025-0586
Good Samaritan Financial Assurance Guidance
EPA Response to Public Comments and Questions
Public Comment Period: August 13, 2025 – September 12, 2025
October 15, 2025

EPA-HQ-OLEM-2025-0586-DRAFT-0004

Colorado Department of Reclamation and Mine Safety (CO DRMS)

1. Definitions Section

- a. “Baseline conditions” - the definition in the guidance varies from the definition in the Act. The guidance definition adds in this language “the current known or reasonably discoverable data regarding” the concentrations, locations, and releases of any hazardous substances... Whereas the Act references this as information in the permit. Is this definition intended to assist the applicant in identification of baseline conditions? If so, is the financial assurance guidance document the correct document?

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “baseline conditions” is intended to clarify the relationship between the baseline conditions as described in the permit and the FA, not to guide the description of baseline conditions.

To this purpose, the guidance incorporates by reference the definition in the Act as well as includes language from the Act’s description of information required to demonstrate baseline conditions in the permit application. Because the applicant’s financial assurance is based in part upon the project budget, which is itself required as a part of the application, the guidance included this language to clarify the relationship between baseline conditions and financial assurance.

- b. “Long-term monitoring” - The definition states that the long-term monitoring should ensure that site conditions have not become “measurably worse”. As long-term monitoring occurs after remediation is complete, shouldn’t long term monitoring ensure that the site conditions remain in the remediated state?

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “long-term monitoring” is intended to clarify the relationship between the monitoring requirements described in the permit and the financial assurance, not to guide the description of long-term monitoring as may be required in the permit.

The Act requires that remediation plans (required as part of application materials) include a monitoring plan to evaluate the success of remediation activities with respect to baseline conditions, during and after remediation. Financial assurance for any long-term

monitoring assures that declines will be detected.

- c. "Low risk" - the definition does not provide an actual definition but only excludes major excavation. The guidance needs to provide a more detailed and quantitative definition of what constitutes a "low risk" project. This definition should also reference the definition of "remediation" in section 2(14) of the Act and specifically reference exclusions in section 2(14)(C) or the Act for "any action that requires plugging, opening, or otherwise altering the portal or adit of the abandoned hardrock mine site."

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance's definition of "low risk" is intended to clarify the relationship between low risk projects and the FA, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as "major excavation," may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act's NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of "low risk," which includes the term "major excavation," from the revised guidance.

- d. "Measurably worse" - this definition should acknowledge that a measurably worse condition must be the result of a Good Samaritan or Cooperating person failing to comply with term, condition or limitation of a covered permit in accordance with Section 4(n)(3)(E) of the act. Also, Section 4(n)(3)(E) specifies that a permit violation must result in "surface water quality or other environmental conditions" are measurably worse and should be acknowledged in the definition.

RESPONSE:

Under the Act, "measurably worse" conditions need not be the result of a Good Samaritan failing to comply with permit terms. Provisions connecting the two conditions pertain to, for example, situations in which EPA is required to notify a Good Samaritan of a failure to comply resulting in measurably worse conditions and require the Good Samaritan to undertake reasonable measures to correct.

Throughout the Act the Administrator is given the discretion to determine that conditions are measurably worse than baseline conditions. This determination is distinct from the conclusion that a permittee has failed to comply with permit terms.

- e. "Project budget" - includes footnote 5, which is blank.

RESPONSE:

The typographic error in footnote 5 (resulting in the information in the footnote appearing

on the line below the number 5) will be corrected in the revised guidance.

2. Initial Project Budget Section - A primary concern for state regulators is that the financial assurance may not be sufficient to cover the full costs of a failed or incomplete project. The guidance should emphasize the need for conservative cost estimates that account for potential contingencies and unforeseen circumstances.

RESPONSE:

EPA may only accept the applicant's financial assurance if, among other requirements, it secures a project budget that, to the satisfaction of the Administrator, accurately captures, at least, the estimated cost of the project, long-term monitoring, operations and maintenance, and measures to address potential contingencies. EPA may require adjustments be made to the project budget as appropriate.

3. Forms of FA section -
 - a. Option 1 is access to necessary financial resources. - The guidance needs to provide clarity on how EPA can access these funds if the applicant fails to proceed with the requirements of the permit. The direct funding option does not include a process for how these funds will be deposited into the Good Samaritan Mine Fund.

RESPONSE:

The Act's "access to financial resources," or "option 1," is only available if the applicant has demonstrated, to the satisfaction of the Administrator, sufficient funds to comply with the permit requirements. The Act does not authorize EPA to deposit those funds into the Good Samaritan Mine Remediation Fund should the applicant fail to meet the permit requirements.

- b. The guidance lists several potential financial assurance mechanisms (e.g., letters of credit, trust funds, surety bonds). It would be beneficial to provide more detailed criteria on what makes each mechanism acceptable for this specific program. For instance, what are the specific requirements for the financial institutions providing these mechanisms? Are there any specific terms and conditions that must be included?

RESPONSE:

The guidance provides the following specific requirements for the institutions providing letters of credit, trust funds, and surety bonds:

"A letter of credit provided as a third-party FA mechanism should be . . . issued by an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency."

"A fully funded trust fund should be established . . . by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency."

“A surety bond . . . should be issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury and should not exceed the listed limitations in Circular 570.”

Specific terms and conditions will be discussed with applicants on a site-specific basis. As the Act’s pilot program advances, EPA may also evaluate whether model language for these mechanisms should be created.

4. General comments:

- a. While the EPA has the final say, the guidance should outline a more formal and collaborative process for involving state regulators in the determination of financial assurance amounts. State agencies often have more localized knowledge of the site conditions, labor costs, and other factors that can influence the cost of remediation.

RESPONSE:

As appropriate, EPA plans to work closely with states to incorporate localized knowledge.

- b. The guidance should provide a clear, step-by-step process for the release of financial assurance funds once a project is completed. This should include specific milestones, documentation requirements, and timelines. A transparent process will give Good Samaritans more confidence in the program.

RESPONSE:

A clear process for release of financial assurance funds is important. Because this process may contain site-specific requirements, addressing this process in the permit may be a better fit than in a general guidance.

- c. Abandoned mine sites often require long-term monitoring and maintenance. The financial assurance guidance needs to explicitly address how these long-term costs will be calculated and secured. A one-time remediation effort may not be enough to ensure long-term environmental protection.

RESPONSE:

The Act requires that any long-term monitoring and operations and maintenance costs be included in and secured by a project’s required financial assurance. EPA will review and may adjust the calculation of costs as appropriate, consistent with the guidance.

- d. The Act allows for the reprocessing of recovered materials, with the proceeds used to fund the remediation. This could create a perverse incentive for Good Samaritans to prioritize reprocessing over remediation. The guidance needs to establish clear rules to ensure that remediation remains the primary goal of the project.

RESPONSE:

This guidance is limited to financial assurance aspects of the Act.

Some definitions should be adjusted for clarity and completeness

The first section of this guidance is definitions, appearing from the bottom of page 1 through the middle of page 3. Although most of these definitions have a clear basis in statute, existing policy, or administrative structure, some are unclear or do not appear to fulfill the need for which are included. Several key concepts within the guidance are not defined. EPA should add or revise the following definitions:

- “Commercial entity” is not currently included as a definition, although the entirety of Appendix C is dedicated to commercial entities. A well thought out definition is essential because there are a wide variety of commercial entities who may perform roles in these projects in different contexts, and the two other entity types are defined.

RESPONSE:

A definition of “commercial entity” will be added to the revised guidance, stating that:

“Commercial entity” means a business or legal person engaged in commercial activities with the primary goal of making a profit.

- “Corporate Guarantee” as a concept appears extensively in the guidance but is not defined. A clear definition will help to address some of the challenges present elsewhere in the document.

RESPONSE:

A definition of “corporate guarantee” will be added to the revised guidance, stating that:

“Corporate guarantee” means a guarantee by an applicant’s parent or other corporate affiliate, made on behalf of the applicant, to fund or continue activities required by a Good Samaritan permit if the Good Samaritan is no longer able to complete the permit requirements.

- “Major excavation” is currently used in the “low risk” definition but not used elsewhere in the document. If the term is to remain in the guidance, it should be defined as presently it is not clear what types of activities do and do not fall into this category. However, it may not be necessary to define this term if it is removed from the definition of low risk as proposed below.

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “low risk” is intended to clarify the relationship between low risk projects and the FA, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as “major excavation,” may not

always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act's NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of "low risk," which includes the term "major excavation," from the revised guidance.

- "Low Risk" (in the context of a Good Samaritan project) as currently defined does not appear to be based on an assessment of risks of a project and may both block some low-risk projects and allow some higher risk projects. The current definition of low risk is "projects that do not involve major excavation." This definition falls short for several reasons:
 - a. The term "major excavation" is not used elsewhere in the guidance and is not defined. Thus, it is not clear what activities would and would not be excluded (see comment above).
 - b. Although every project will be different, a Good Samaritan project could be as straightforward as removing inappropriately stored mine tailings where they currently present a risk of contaminating a nearby water body to a more secure location or to some form of treatment or remediation. Such projects might represent "major excavation" while still being "low risk" when proper protective measures are taken because there are relatively few contingencies to address.
 - c. Conversely, some projects may have no major excavation but cannot be categorically assumed to present low risk. Some activities might involve an activity such as pumping contaminated water, which if done without proper safeguards could result in considerable releases to the environment despite little to no excavation.
 - d. The "low risk" definition should focus on adverse impacts that could happen due to any of the potential contingencies of a project. Identifying contingencies is already a required element of the application process. A low-risk project could be defined as one where the potential contingencies have limited impacts, whereas a high-risk project is one where potential contingencies have large impacts.

RESPONSE: This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance's definition of "low risk" is intended to clarify the relationship between low risk projects and the FA, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as "major excavation," may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act's NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of "low risk," which includes the term "major excavation," from the revised guidance.

- "Non-profit" is currently defined incorrectly. The definition currently included is essentially the Internal Revenue Code (IRC) definition of "tax exempt." Nonprofit organizations are defined by

and organized under state law, which can vary considerably from one state to another.¹ When applicable, such entities apply for recognition of tax-exempt status through the IRS if one of the more than 20 categories for exemption applies.² Not all nonprofit organizations meet these criteria. Nonprofit status cannot correctly be defined through tax status alone.

RESPONSE:

The definition of “non-profit” will be revised in the guidance to state that:

“Non-profit” means a non-governmental organization operating for public benefit rather than profit, with revenue used to further the organization’s purpose rather than distributed to owners or shareholders. Many nonprofits also receive tax-exempt status.

Appendices A, B, and C require additional context and revision to address several challenges

Appendices A, B, and C (pages 9-13) discuss requirements for non-profit entities, government entities, and commercial entities, respectively. The requirements included in these appendices, plus the context of what they are to be used for, require clarification.

These appendices are not titled or directly explained to indicate their purpose. A reader could reasonably interpret them to be describing limitations on what entities can be accepted as *applicants*. Although the guidance indicates the appendices are for the much narrower qualification of an entity to provide a *third-party corporate guarantee*, this information as presented is very easy to miss and not in the appendices themselves. EPA should update each appendix to clearly identify (through the title and/or description) how they are intended to be used to prevent misinterpretation.

RESPONSE:

The appendices titles will be updated in the revised guidance as follows to clearly identify how they are intended to be used.

Appendix A: Criteria a non-profit entity should meet to provide a corporate guarantee

Appendix B: Criteria a government entity should meet to provide a corporate guarantee

Appendix C: Criteria a commercial entity should meet to provide a corporate guarantee

¹ The following IRS FAQ provides both more details and references on the differentiation of nonprofit status from tax exempt status: <https://www.irs.gov/charities-non-profits/frequently-asked-questions-about-applying-for-tax-exemption>

² A list of the categories of tax exemption available under Section 501(c) of the Internal Revenue Code can be found at <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFR062882ac6495890?toc=1>

The content of these three appendices should be better explained either within the appendix or in context in the guidance itself. Although the goal of each is currently stated to be the same, the three appendices have non-parallel construction addressing not only varying levels stringency by entity type, but also different categories of requirements. Although there may be some meaningful differences depending on the entity type, at present the requirements are so different that it seems unlikely they could be used to address the same question. Page 6 only notes that each appendix aligns to a different entity type with no explanation of why they differ so greatly or how the content was determined. Examples demonstrating these challenges include, but are not limited to, the following:

- Only “government entity” (Appendix B) guarantors have public notice, recordkeeping, and reporting requirements (parts B and C). It is unclear how those requirements impact the applicability or lack thereof of providing a guarantee, despite likely being good governance practices overall. Clarification is necessary to understand why these requirements apply only to these entities.

RESPONSE:

See below.

- “Non-profit entity” guarantors can meet the criteria through “a high rating from a non-profit assessment entity” (Appendix A, part A). The only example listed is Charity Navigator, which per that organization’s methodology uses information from nonprofit organization’s IRS form 990 to generate a score based upon a range of metrics, most of which are not metrics of financial health or capability.³ Charity Navigator indicates the evaluation process is primarily designed to “inform donors of not just where their dollars are going but what their dollars are doing”.⁴ Most of the metrics appear to be unrelated to the ability to fulfill a financial guarantee should it be necessary. Although there are other similar organizations (examples include Candid, CharityWatch, and GiveWell), it is not clear if any are applicable for this purpose. Should EPA retain the use of this provision, it should at a minimum provide an analysis of how the rating system aligns with the goals of providing appropriate financial assurance, as well as discuss the intended use with any planned “non-profit assessment entity” to assure their system can be used the way EPA is intending to use it.

RESPONSE:

See below.

The other “non-profit entity” option is to fulfill a series of financial statement ratios and other financial requirements (parts B and C of Appendix A) which in combination are likely much more stringent than (although in many ways not comparable to) the rating requirement in part A, to the point where even many financially healthy nonprofits will likely not be able to meet them. For example, part B(4) requires an operating margin greater than zero. Although not stated, presumably this metric would be from the most recent audited financial statement. Although a positive operating margin is necessary over the long term for any entity to be sustainable, it is common for nonprofits (and for-profit organizations alike) to have negative operating margins

for one to several years, especially during times of growth or during economic challenges, and still be financially healthy due to adequate reserves. As written, this requirement would prevent any nonprofit with a single year of net negative operating margin from participating no matter how financially capable they otherwise can prove they are. Other challenges include that part B(1) and part C(1) refer to the same ratio with different requirements and part B(6) notes a ratio but does not have a benchmark associated with it (and therefore it is unclear how it could be met).

RESPONSE:

The Government, corporate, and non-profit entities corporate guarantee criteria is non-parallel because the structures of these types of entities are substantially different. It would not be possible to create one set of criteria, or parallel criteria, that would be applicable to all entities.

For these reasons, the tests provide different frameworks:

- 1. Governments are not created to generate profit. Therefore, the metrics for government are designed to provide insight into their financial management capabilities.**
- 2. The metrics for corporate entities are used to analyze a company's profitability and ability to remain viable as a profitable entity over the expected term of the Good Samaritan project.**
- 3. Finally, the metrics for non-profits are used to determine their financial management capabilities and ability to continue to obtain funding.**

Despite the differing frameworks, all of the metrics relied on serve the same purpose: to provide EPA with insight into an entity's financial situation based on which EPA can provide a financial analysis on which a decision on whether to accept a corporate guarantee can be made. Providing entities multiple methods to fulfill the corporate guarantee criteria provides flexibilities to applicants while still ensuring EPA is given adequate information as a part of Good Samaritan permit review.

EPA-HQ-OLEM-2025-0586-DRAFT-0006

Anonymous

General Comment

I recommend the permit s only be issued if they are written to forever ban any mining or extractive activity at the site. Under no circumstance should any extraction occur unless it is to remove hazardous waste. In addition no American tax payer dollars should be expended in any stage of the process.

The ful and sole cost must be the responsibility of the private industry.

RESPONSE:

Thank you for your comment. EPA will implement this program and issue permits in line with the requirements of the Act.

EPA-HQ-OLEM-2025-0586-DRAFT-0007

Interstate Mining Compact Coalition (IMCC)

Received by email (Thursday, September 4, 2025 @ 2:11pm). *Note that these comments were later submitted via the public docket. Please see comment above (“EPA-HQ-OLEM-2025-0586-DRAFT-0008”) for comments and responses.*

- Can you tell me any more about how what counts as “major excavation” will be evaluated? That sounds a little concerning if it precludes much earth moving.

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “low risk” is intended to clarify the relationship between low-risk projects and the FA, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as “major excavation,” may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act’s NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of “low risk,” which includes the term “major excavation,” from the revised guidance.

- For the definitions of long-term monitoring and operation and maintenance, it says “after the remediation project”, but otherwise doesn’t specify a time frame or indicate that there might be an end-date. Is this intention to keep this open-ended and allow possibility of a reasonable end-date for responsibility? Or is the notion that the responsibility is in perpetuity? (as we’ve discussed before, we believe it’s vital that there be a possibility of a reasonable end date for all responsibility for a project)

RESPONSE:

The appropriate time frame for any long-term monitoring and operations and maintenance is a site-specific question better addressed in the permit.

- Can you tell me how you envision calculating the amount of FA required with respect to the potential costs of addressing contingencies/returning a site to baseline conditions when something goes wrong or doesn’t work the way it’s intended? I know with the low risk limit we shouldn’t be dealing with huge catastrophic costs, but it still seems a bit open-ended to me if FA cost is based on hypotheticals. I’m sure this is a common issue with FA it’s just not something I am familiar enough with to know how that works.

RESPONSE:

EPA will review the sufficiency of calculations included in permit applications of the amount of financial assurance required to address contingencies. The amount of required financial assurance may change over the life of a project as potential contingencies

change.

- Building on the above question, might be helpful to address the possibility of force majeure provisions in a permit, since that would be a limit on the outer tails of what could go wrong and potentially need to be fixed with FA?

RESPONSE:

The potential for force majeure provisions in a permit is outside the scope of this guidance.

EPA-HQ-OLEM-2025-0586-DRAFT-0008
Interstate Mining Compact Commission

- 1) The definition of “low risk” doesn't not provide clarity on what will be considered “major excavation”. Can the term “major excavation” be clarified, and can this definition be applied in such a way as not to preclude the kinds of earth-moving required of most water restoration projects?

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “low risk” is intended to clarify the relationship between low-risk projects and the financial assurance, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as “major excavation,” may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act’s NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of “low risk,” which includes the term “major excavation,” from the revised guidance.

- 2) The respective definitions of long-term monitoring and operation and maintenance do not specify a time frame for these responsibilities. Will some reasonable end date to these responsibilities be allowed? Or is the expectation that these responsibilities apply in perpetuity?

RESPONSE:

The appropriate time frame for any long-term monitoring and operations and maintenance is a site-specific question better addressed in the permit.

- 3) How will the amount of financial assurance required be calculated with respect to the potential costs of addressing contingencies and/or returning a site to baseline conditions when adverse unexpected events occur?

RESPONSE: EPA will review the sufficiency of calculations included in permit applications of the amount of financial assurance required to address contingencies. The amount of required financial assurance may change over the life of a project as potential contingencies change.

- 4) Building on the above question, might be helpful for the Guidance to address the possibility of force majeure provisions in a permit, as that would provide a bound on the potential costs of financial assurance?

RESPONSE: The potential for force majeure provisions in a permit is outside the scope of this guidance.

1. The EPA should allow the use of a corporate guarantee for all Good Samaritan projects.

Congress, in the Act, provides that a corporate guarantee may be used as the FA mechanism for a Good Samaritan project. See Sec. 4(m)(1)(A)(vi)(V)(bb). By definition, all Good Samaritan projects that the EPA permits under the Act are low risk projects. See Sec. 4(b)(1)(D). Creating a new category of project—“relatively lower risk projects” (see FA Guidance, p.6)—that may use a corporate guarantee appears to be inconsistent with section 4 of the Act.

For commercial entities that volunteer to become Good Samaritans, the EPA has also proposed financial assurance criteria (see Appendix C to the FA Guidance) that are far more stringent than the criteria that apply to owners, operators, and other responsible parties under either the RCRA or CERCLA financial tests. More stringent criteria are unnecessary and may discourage participation in the program by entities that have the experience, capacity, and financial strength needed to complete the project.

More specifically, the proposed criteria require: “[n]et working capital and tangible net worth each at least twelve times the sum of the project budget and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.” (FA Guidance, Appendix C, section (A)(2) at page 11, *emphasis added*.) RCRA requires six, not twelve, times this sum. (See 40 C.F.R. §§ 264.143(f)(1)(i)(B), 145(f)(1)(i)(B); CERCLA Financial Test: Sample CFO and CPA Letters (Alternative Tests 1 and 2) – Settlements, Financial Test: Sample CFO and CPA Letters (Alternative Tests 1 and 2) – Orders).

Additionally, the proposed criteria require at least \$75 million in tangible net worth, which is more than the tangible net worth required under the RCRA and the CERCLA. (See 40 C.F.R. §§ 264.143(f)(1)(i)(C), 145(f)(1)(i)(C); CERCLA Financial Test: Sample CFO and CPA Letters (Alternative Tests 1 and 2) – Settlements, Financial Test: Sample CFO and CPA Letters (Alternative Tests 1 and 2) – Orders.)

We suggest that EPA consider using the same corporate guarantee criteria that are already in use under the RCRA and CERCLA in its Good Samaritan program, rather than creating a new, more stringent set of criteria that apply only to voluntary efforts to remediate sites under the Good Samaritan program.

RESPONSE:

A corporate guarantee will be considered whenever proposed by an applicant and may be used when appropriate. The Good Samaritan Act financial assurance requirements differ from CERCLA and RCRA because this new statutory program gives rise to a variety of considerations that differ from those separate statutory programs. The Act does not provide the same enforcement mechanisms as CERCLA or RCRA, and it is likely that Good Samaritan projects will be performed by entities with substantially different financial risk profiles than parties performing many CERCLA or RCRA actions. EPA will revise language surrounding low risk projects to avoid the appearance of creating a new category of relatively lower risk projects.

2. The final FA Guidance should define “corporate affiliate” to expressly allow a sister corporation and a corporation with a substantial business relationship with the permittee to provide a corporate guarantee for the owner or operator.

The proposed corporate guarantee language in the FA Guidance allows “a corporate guarantee from a parent or other corporate affiliate.” While implied, we suggest that this language be expanded to expressly allow a sister corporation and a corporation with a substantial business relationship with the permittee to provide a corporate guarantee for the owner or operator. This could be achieved by adding the language shown in the underlined text:

a corporate guarantee from a parent or other corporate affiliate, including a sister corporation, i.e., a firm whose parent corporation is also the parent corporation of the permittee, and a corporation with a substantial business relationship with the permittee

This approach allows a permittee to obtain a corporate guarantee from a related corporate entity that is financially strong and structured to meet the financial requirements in a wide range of potential future economic conditions that might impact the permittee. The EPA has an interest in securing corporate guarantees from the strongest corporate entities. Allowing corporate guarantees from a related corporate entity would help provide assurance and security to our country and its citizens, who ultimately seek protection against the risk of non-performance or non-payment.

RESPONSE:

The phrase “a corporate guarantee from a parent or other corporate affiliate” is statutory text. It is not clear that a corporate affiliate includes all entities with a substantial business relationship with the applicant, but EPA will evaluate specific corporate guarantees proposed by an applicant for conformance with the requirements of the Act.

3. The Moody’s rating requirement for commercial entities using the corporate guarantee should include all “Baa” ratings and the Standard and Poor’s rating for commercial entities using the corporate guarantee should include all “BBB” ratings.

We suggest that the credit rating required for guarantors should be expanded to include all investment grade ratings. The proposed language in the FA Guidance requires a Moody’s credit rating of Baa1 or better, among other acceptable credit ratings. Moody’s uses several “Baa” ratings: Baa1, Baa2, and Baa3. The proposed language in the FA Guidance alternatively requires a credit rating of BBB+ or better by Standard and Poor’s. Standard and Poor’s uses three “BBB” ratings: BBB+, BBB, and BBB-. All three “Baa” ratings and all three “BBB” ratings should be accepted, and this should be stated clearly in the final FA Guidance, as these Baa and BBB ratings are all considered investment grade, subject only to moderate credit risk. They are acceptable under both the RCRA and CERCLA financial tests and should also be accepted under the FA Guidance.

RESPONSE:

The Good Samaritan Act financial assurance requirements differ from CERCLA and RCRA in certain ways because this new statutory program gives rise to a variety of considerations that differ from those separate statutory programs. The Act does not provide the same enforcement mechanisms as CERCLA or RCRA, and it is likely that Good Samaritan projects will be performed by entities with substantially different financial risk profiles than parties performing many CERCLA or RCRA actions.

4. The EPA should allow a permittee 60 days to increase its FA to match an increase project budget.

An increase to a third-party FA mechanism requires a permittee to coordinate and undertake administrative actions with a third party. A considerable amount of time may be required for the third party provider to issue original documents and for those documents to be executed following by the permittee. Allowing only 30 days to increase a FA mechanism is not sufficient time, as this process is not under the exclusive control of the permittee: it is dependent on the third-party issuer. Consistent with the RCRA's and the CERCLA's model language, the EPA should allow 60 days to increase a third-party FA mechanism.

RESPONSE:

EPA agrees that 60 days is a reasonable time period and will revise the guidance accordingly.

5. The EPA should expressly allow the modification of the form of FA in all Good Samaritan permits.

The FA Guidance states that "Good Samaritan permits may also allow modification of the form of FA. For example, permits may include a provision allowing the Good Samaritan to request a change to the form of FA at appropriate intervals." (FA Guidance at p.7, emphasis added.) We suggest that this language be modified to allow Good Samaritans to submit a proposal to change their financial assurance provider or methods when the party believes a change is needed, as follows:

Good Samaritan permits shall may also allow modification of the form of FA. For example, pPermits shall may include a provision allowing the Good Samaritan to request a change to the form of FA at appropriate intervals.

The flexibility to change a financial assurance provider or method will allow the Good Samaritan to anticipate potential defects in a financial assurance instrument or provider, and eliminate them proactively, before they become financial assurance violations. It is in EPA's interest to allow permittees to propose such changes to their FA mechanism at any time, so long as the new mechanism complies with the FA Guidance.

RESPONSE:

EPA anticipates allowing modifications as necessary and in line with this guidance. In addition, EPA notes that this is a guidance document that merely sets out general considerations rather than making specific determinations about what must be required to provide adequate financial assurance for a particular permit application. That said, nothing in the guidance precludes the inclusion of a modification provision. To the contrary, EPA is affirmatively stating that permits may include such a provision.

6. The EPA should establish a process to access FA, subject to review.

We suggest that the FA Guidance include a process for giving entities notice and an opportunity to cure, before the EPA draws on an FA mechanism. The EPA could establish such a process through adding the text shown below:

When the Administrator initially determines that a Good Samaritan will not complete the permitted work, EPA shall notify the Good Samaritan in writing and may grant the Good Samaritan an appropriate amount of time, of at least 10 days, to demonstrate that it is still capable of completing the remediation. In the Administrator's discretion, if the Good Samaritan remains unable to complete the permitted

work, then EPA may require that the funds secured by an FA mechanism be deposited into a Good Samaritan Mine Remediation Fund.

Additionally, we suggest that a decision by the EPA to access the funds secured by an FA mechanism be subject to dispute resolution, as it would be in a situation where an owner, operator, or other responsible party is providing financial assurance for a remediation obligation it holds under CERCLA.

RESPONSE:

EPA anticipates giving permittees notice and an opportunity to cure as necessary and in line with this guidance. To clarify this sentence, EPA will revise the guidance to state:

When the Administrator initially determines that a Good Samaritan will not complete the permitted work, EPA will notify the Good Samaritan in writing of this determination and grant the Good Samaritan a reasonable period of time to demonstrate that it is still capable of completing the work.

7. Release of FA should be mandatory.

We suggest that the EPA make minor edits to its Release of FA language for clarity and uniformity, as shown here:

Good Samaritan permits should shall include instructions regarding the release of FA. Releasing FA must be released may be appropriate after the Administrator determines that all obligations under a Good Samaritan permit are complete. In that situation, EPA will notify the Good Samaritan that the FA mechanism may be terminated. The termination of a Good Samaritan permit does not necessarily mean that all permit obligations are complete.

Once the remediation project is complete, and the Good Samaritan's work is complete, there appears to be little or no reason to require the Good Samaritan to maintain financial assurance for the completed work. If there is a need for financial assurance for potential repairs or maintenance, that could be secured through a financial assurance instrument that is intended to cover that work.

RESPONSE:

EPA anticipates releasing financial assurance as reasonable and in line with this guidance. In addition, EPA notes that this is a guidance document that merely sets out general considerations rather than making specific determinations about what must be required in terms of financial assurance for a particular permit application. That said, nothing in the guidance precludes the inclusion of instructions for the release of funds in permits. To the contrary, EPA is affirmatively stating that permits should include appropriate instructions for the release of funds.

- **“Long term monitoring.”** We would like the definition of “Long-term monitoring” to take into consideration the complexity of the permitted project and believe an overall time limit should be specified by the project proponent. We recognize that monitoring ensures that remediation objectives have been met, that site conditions have not become measurably worse, and is necessary to determine whether the Good Samaritan program has been successful as a whole, especially when compiling data that will inform the agency’s mandatory report to Congress. However, we believe the definition should recognize that the length of long-term monitoring will be decided on a case-by-case basis with the project proponent and commensurate with the permitted remediation work, so the Good Samaritan does not get trapped in unnecessary indefinite monitoring.

RESPONSE:

EPA agrees that the appropriate time frame for any long-term monitoring and operations and maintenance is a site-specific question. As such, it is better addressed in the permit.

- **“Low risk.”** The guidance for the first time defines this term as “projects [that] do not involve major excavation.” We are concerned that this definition of “low risk” projects misses the mark, in part because the term “major” is vague. There could be projects that involve moving large amounts of waste rock or tailings that should be considered “low risk.” We appreciate that EPA is trying to put some specificity into the term “low risk,” which the statute defers to the Administrator’s discretion:

(b) GOOD SAMARITAN PERMIT ELIGIBILITY.—

(D) the proposed project poses a low risk to the environment, as determined by the Administrator.¹

It is conceivable that the removal of a waste rock or tailings pile could require “major excavation” in order to measurably improve site conditions, but that does not necessarily mean those excavation and removal activities entail much risk. We believe it would be better not to finalize the definition of “low risk” in this guidance and instead continue to refer to “as determined by the Administrator” to avoid unnecessarily limiting the types of projects that can be considered for this pilot program. Stakeholders in all sectors could then continue a discussion with the agency on what “low risk” means, and project proponents can put forth permit applications that are reviewed on a case-by-case basis. Given that EPA plans to take this one project at a time, the agency will retain the ability to adjust terms as the agency and stakeholders gain additional knowledge about the universe and diversity of “low risk” sites appropriate for this pilot program. In the meantime, the individual project specifications, determined by EPA to be “low risk,” will determine the level of financial assurance.

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “low risk” is intended to clarify the relationship between low risk projects and the FA, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as “major excavation,” may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act’s NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of “low risk,” which includes the term “major excavation,” from the revised guidance.

- **“Measurable progress.”** We are concerned that the definition of “measurable progress” referenced in the guidance is more general than that in the legislation. We recommend that EPA refer to and use the language in the following section of the law to reduce ambiguity.

(m) Permit Grant:

(v) the proposed activities, as compared to the baseline conditions described in the permit, will make measurable progress toward achieving— (I) applicable water quality standards; (II) improved soil quality; (III) improved sediment quality; (IV) other improved environmental or safety conditions; or (V) reductions in threats to soil, sediment, or water quality or other environmental or safety conditions;³

RESPONSE:

The definition of measurable progress included in the guidance is intended to explain this concept as applied to the Act’s financial assurance requirements. The Act states that the Administrator may grant a Good Samaritan permit only if the Administrator determines that, among other things, the proposed project will make measurable progress toward achieving remediation goals and is designed to meet all other goals, as determined by the Administrator.

- **“Measurably worse.”** We urge EPA to more clearly define this phrase to follow more closely to the definition in the law, which is tied to surface water quality and other environmental conditions, and is determined at the discretion of the Administrator. In particular, EPA’s example of “sustained decrease in water quality” could be problematic, as there may be scenarios where a baseline study or investigative sampling permit reveals declining water quality that could subsequently place the project proponent in a precarious situation, depending on the discretion of the Administrator. One of our members also suggested that a project proponent may conceive of a project that is unable to improve the water quality on a project site but is able to slow the decline in water quality. Such a scenario may still be beneficial to the overall environmental conditions.

RESPONSE:

The Act provides the Administrator with the discretion to determine that conditions are measurably worse than baseline conditions. These determinations will be made on a site-specific basis, taking all relevant issues into account.

³ Public Law 118-155, 138 STAT. 1707 (Dec. 17, 2024), available at <https://www.congress.gov/118/plaws/publ155/PLAW-118publ155.pdf> (last visited Sept. 12, 2025).

- **“Potential contingencies.”** While it certainly makes sense to consider a range of contingencies for which a project proponent should plan and prepare, requiring worst-case contingency planning will lead to increased costs, discouraging potential Good Samaritans from ever considering projects. In the definition of “project budget,” bullet #4 notes a project budget should include “measures to address *any* potential contingencies,” [emphasis added] which seems overly broad and inconsistent with other sections, where the guidance attempts to give examples of contingencies to plan for. EPA should set reasonable and consistent boundaries of what will be required.

RESPONSE:

The guidance is intended to reflect the requirements of the Act. EPA must determine that the applicant has the financial resources to address any contingencies identified in the permit application and included in the permit as appropriate. In addition, third party financial assurance must account for potential contingencies. EPA will revise the language to address any confusion raised by the commenter.

General Comments

The requirements to submit a project budget that includes “at least the estimated cost of the proposed project, long-term monitoring, operations and maintenance, and measures to address any potential contingencies” could add significant upfront costs and add a great deal of uncertainty, both of which could discourage otherwise viable Good Sam projects. While it is prudent to plan for disruptions and create a budget, we would respectfully encourage EPA to view the guidance and Good Samaritan projects as a whole. As a result, certain portions of the guidance seem out of place.

One example of this comes in the “Access to Financial Resources” section, which notes that the applicant should provide a “business plan” for its proposed project. This undefined term may unnecessarily confuse project proponents. Good Samaritans will not be approaching these projects as business ventures, so a project budget, rather than a business plan, should be sufficient.

RESPONSE:

Where the term ‘business plan’ appears in the guidance, EPA will replace it with ‘project budget.’

Regarding budget modifications, we acknowledge that the need occasionally arises, and protocols should be in place so expectations between the agency and project proponents are clear. We recommend that 30 days will likely not be enough time for proponents to quickly and accurately submit budget modifications to EPA. If a project experiences cost overruns for whatever reason, business expenses are often invoiced up to 30 days after they are incurred. With that in mind, we suggest 60 or even 90 days would be a more realistic timeframe to submit budget modifications.

RESPONSE:

EPA agrees that 60 days is a reasonable time period and will revise the guidance accordingly. Permits may also allow reasonable extensions of timing requirements, if necessary.

- Page 2/13: “Low risk” is defined as projects that do not involve major excavation. This should be either further clarified to be “major excavation around an adit” or redefined because its current definition would disqualify most AML cleanups that have been completed or would be proposed under this law. Major excavation is also very vague and could be limiting of project types. For example, our organization has completed AML cleanups where 1,500 to 120,000 cubic yards of mine wastes have been consolidated and safeguarded. Would this qualify as a major excavation? Major excavations are commonly part of AML projects and could still be determined as Low Risk.

RESPONSE:

This guidance is limited to the financial assurance aspects of a Good Samaritan permit. As such, the guidance’s definition of “low risk” is intended to clarify the relationship between low risk projects and the financial assurance, not to guide the description of low risk as a permitting threshold.

EPA appreciates the comments that including metrics, such as “major excavation,” may not always be helpful for determining whether a project is low risk. Commenters also noted that under the Act, projects cannot plug, open, or otherwise alter a portal or adit. In addition, EPA notes that projects must comply with the Act’s NEPA requirement, which will help inform whether the project is low risk. Accordingly, whether a project is low risk will be a case-by-case determination, and EPA will remove the definition of “low risk,” which includes the term “major excavation,” from the revised guidance.

- Page 2/13 – Long Term Monitoring: This could mean many things and should have some duration or finality to it. The duration of Long-Term Monitoring will be project specific and should be for a specified duration in the Good Sam permit, and agreed upon by EPA.

RESPONSE:

EPA agrees that the appropriate time frame for any long-term monitoring and operations and maintenance is a project-specific question that should be addressed in the permit.

- Page 2/13: “Measurable Progress”achieving remediation goals, as described in the permit or determined by the Administrator. Should “determined” be replaced with “approved by the Administrator”? EPA is not prescribing what should be done at a site when Good Sam is proposing the project, correct?

RESPONSE:

The Act states that the Administrator may grant a Good Samaritan permit only if the Administrator determines that, among other things, the proposed project will make measurable progress toward achieving remediation goals and is designed to meet all other goals, as determined by the Administrator.

- Page 2/13: “Potential Contingencies”. Does the Good Sam need to account for future or

unforeseen events that might degrade a completed remedy? Once the remediation is completed, any acts of god, nature, etc should not be the responsibility of the Good Sam to provide FA for. The Good Sam could certainly fundraise to complete work in these events. What is considered the difference between operations and maintenance vs. a contingency?

RESPONSE:

Contingencies will be included in a Good Samaritan permit as appropriate and in line with the requirements of the Act. In addition, the amount of required financial assurance may change over the life of a project as potential contingencies change.

As separately defined in the guidance, operations and maintenance actions are required actions that ensure the permitted work remains effective. Contingencies, which may or may not occur, are ways in which conditions may become measurably worse than baseline conditions.

- Would contingencies be defined on a project-by-project basis by the Administrator? This should be stated, if so, in the definition so the contingencies are fully outlined beforehand and agreed upon by both the Good Sam and EPA.

RESPONSE:

Permit applications must include a contingency plan and a project budget that includes costs to address potential contingencies for review by EPA. Contingencies will be included in a Good Samaritan permit as appropriate and in line with the requirements of the Act.

- Is there a percentage that should be set aside for contingencies, or will these estimates be based on the type of contingency measure?

RESPONSE:

Contingencies need not cover a set percentage of a project budget. Contingencies calculations will be decided on a site-specific basis.

- Page 4/13: Some examples of materials EPA may request to review for first party FA:
 - For non-profits, would corporate funding agreements, grant awards, or grant contracts count as a viable means of FA? These are what we commonly utilize as proof that the money has been awarded to the project.

RESPONSE:

The guidance includes a grant as an example of an acceptable option for meeting the first party financial assurance.

- Page 4/13: "Project Budget". Life of project needs more definition. Is the project completed when remediation is completed, when long-term monitoring is completed, or is Life Of Project

“as defined in the Good Samaritan Permit and approved by the EPA”? Therefore, the Good Sam would have the ability to define the terms and proposed duration of the Good Sam project to complete reclamation and fully show measurable progress.

RESPONSE:

EPA will replace ‘life of the project’ with language indicating ‘while financial assurance is required’ in the revised guidance to clarify the intended meaning of this term.

- Appendices listing criteria for Non-Profits, Government, and Commercial entities are outlined at the end of the document. Are there specific requirements for Tribal Nations or would they follow the same criteria as Government entities?

RESPONSE:

Yes, the definition of government entity includes federally recognized Tribes. EPA encourages any applicant unsure of how to approach the financial assurance aspect of an application for a Good Samaritan permit to reach out to EPA for site-specific advice, as appropriate. As listed in the guidance, questions can be addressed to Jamey Watt in the Office of Mountains, Deserts, and Plains at watt.jamey@epa.gov.

1. General Comment – while there is some mention of FLMA’s (on page 4 and 5 “relevant federal land management agency” is used), I think a definition for “Delegated Federal Land Management Agency” should be added to the Definitions section as follows:
“Delegated Federal Land Management Agency” or “DFLMA” means and federal agency delegated CERCLA authority pursuant to Executive Order 12580.”

RESPONSE:

The Act includes the following definition for “Federal land management agency, ‘Federal land management agency’ means any Federal agency authorized by law or executive order to exercise jurisdiction, custody, or control over land owned by the United States.” EPA will include the Act’s definition in the guidance.

2. I also think a definition for “Project Completion Certification” is needed, as follows: “Project Completion Certification” means the certification provided by EPA or the DFLMA that the Good Samaritan project is complete and that the financial assurance mechanism is released.”

RESPONSE:

Releasing financial assurance may be reliant on site-specific and permit-specific requirements. Creating a universal completion requirement for all permits is beyond the scope of this guidance.

3. Page 1, “Purpose” section, add to the end of the section “or DFLMA.”

RESPONSE:

At the end of this sentence EPA will add “with, as appropriate, the relevant federal land management agency.”

4. Page 1, “General” Section, add the words “or DFLMA’s” before “sole unreviewable discretion . . .”

RESPONSE:

EPA will add “and as appropriate the head of the relevant federal land management agency” to this sentence.

5. Page 4 and 5, instead of using “relevant federal land management agency” substitute with “relevant DFLMA” in both locations.

RESPONSE:

EPA will maintain the use of federal land management agency because that is the term used in the

Act.

6. Page 7, “Access to FA”, there should be some procedures for the DFLMA to access FA for cleanups on land under DFLMA jurisdiction.

RESPONSE:

EPA appreciates the comment and will coordinate with its partner federal land management agencies to address this issue through further consultation.

7. Page 8, “Release of FA” section, at the end of the first sentence add “and issues to the Good Samaritan a Project Completion Certification.”

RESPONSE: Releasing a financial assurance mechanism may be reliant on site-specific and permit-specific requirements. Creating a universal completion requirement for all permits is beyond the scope of this guidance.