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On Behalf of

The National Association of Abandoned Mine Land Programs

and

The Interstate Mining Compact Commission

Before the

SUBCOMMITTEE ON WATER RESOURCES AND THE ENVIRONMENT
of the
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

Oversight Hearing on Abandoned Mines in the United States
and Opportunities for Good Samaritan Cleanups

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Statement of Eric Cavazza, Director, Bureau of Abandoned Mine Reclamation, Pennsylvania Department of Environmental Protection

Good morning, Mr. Chairman. My name is Eric Cavazza and I am the Director of the Bureau of Abandoned Mine Reclamation within the Pennsylvania Department of Environmental Protection and the outgoing President of the National Association of Abandoned Mine Land Programs (NAAMLP). I am appearing here today on behalf of NAAMLP and the Interstate Mining Compact Commission (IMCC).

Introduction

We appreciate the opportunity to appear today to share our views and concerns regarding this very important initiative. My comments today will address the issue of abandoned mine lands and the potential for a Good Samaritan program to encourage the remediation of abandoned mine sites by individuals or entities that are not legally responsible for the remediation. This is a topic of great interest and importance to the Commonwealth of Pennsylvania and the states and Tribes represented by IMCC and NAAMLP. My testimony today will focus on the nature and extent of AML problems throughout the country, the potential benefit of a Good Samaritan program, the model and success of the Pennsylvania Good Samaritan program, and the importance of incorporating certain provisions into any potential Good Sam legislation, in order to ensure the program achieves the maximum benefit possible to the health of the environment and to our coalfield and hardrock AML communities.

There are myriad reasons that a federal Good Samaritan program is needed, but the most important is to remove the potential for incurring liability under federal environmental protection statutes such as the Clean Water Act. These liabilities deter motivated, well-intentioned volunteers from undertaking projects to clean up or improve abandoned sites, thereby prolonging the harm to the environment and to the health and welfare of our citizens. These prohibitive circumstances also have economic impacts that are felt nationwide. In addition, the universe of abandoned mine lands is so large and the existing governmental resources so limited that without the assistance of Good Samaritan volunteers, it will be impossible to reclaim all of these lands and clean up all of the AMD impaired waters.

The Interstate Mining Compact Commission (IMCC) and the National Association of Abandoned Mine Land Programs (NAAMLP) are multi-state governmental organizations that together represent over 30 mineral-producing states and Indian tribes, each of which implements programs that regulate the environmental impacts of both coal and hardrock mining and that reclaim abandoned coal and hardrock mine sites. Many of these programs earned delegations of authority from the federal government to implement national environmental laws such as the Surface Mining Control and Reclamation Act (SMCRA) and the Clean Water Act.

The Abandoned Mine Land Problem

Over the past 40 years, following the passage of comprehensive national environmental laws, the states and Indian tribes have taken the lead in fashioning and implementing effective programs for the regulation of mining and its impacts, including the cleanup of inactive and abandoned mine lands.

Nationally, coal and hardrock abandoned mines continue to have significant adverse effects on the environment. Environmental impacts that occur at AML sites include subsidence, surface and ground water contamination, erosion, uncontrolled sedimentation, chemical releases, and acid mine/acid rock drainage. Safety hazards associated with abandoned mines account for several deaths and numerous injuries each year. Abandoned and inactive mines, resulting from mining activities that occurred over the past 150 years prior to the implementation of present day regulations and controls, are scattered throughout the United States. The sites are located on private property, state owned land, and federal public lands.

We commend you, and your colleagues, Mr. Chairman, for your continuing efforts in pursuing Good Samaritan protections under the Clean Water Act for those interested in treating abandoned mine water discharges. Despite the extraordinary dedication of those involved in the AML arena, there remains a substantial amount of work to be done. This is due primarily to insufficient funding, not a lack of will by the states, tribes and others. The states and tribes – often together with our federal agency partners as well as local watershed groups – have made notable progress in addressing the issue. But our efforts need a substantial boost and the potential Good Samaritan solution before the Subcommittee today will propel us toward accomplishing this goal. A Good Samaritan program will allow us to engage the knowledge and passion available in local watershed groups coupled with private sources of funding to accomplish much more reclamation and watershed restoration. This effort would be undertaken with little or no additional cost to the government, simply by protecting these groups from unreasonable and prohibitive liability.

Hardrock AML sites continue to pose an especially difficult problem, largely due to the lack of a federal hardrock AML program such as is in place for coal AML remediation. Over the years, several studies have been undertaken in an attempt to quantify the total hardrock AML cleanup need. Despite these efforts, there is currently no comprehensive, fully accurate on-the-ground national inventory of the hardrock AML problem. Estimating the costs of reclaiming hardrock abandoned mines is difficult for a variety of reasons, one of which being the time-consuming and expensive nature of inventorying work. The cost of remediating environmental problems such as ground water and surface water contamination, acid mine/acid rock drainage or windblown contaminants are even more difficult to estimate. Despite the lack of a complete inventory, the data demonstrates that nationally there are large numbers of significant safety and environmental problems associated with inactive and abandoned hardrock mines and that cumulative remediation costs are very large.

What becomes obvious in any attempt to characterize the hardrock AML problem is that it is pervasive and significant. Although inventory efforts are helpful in attempting to put numbers on the problem, in almost every case, the states and tribes are intimately familiar with the highest priority problems within their borders and know where limited reclamation dollars must be directed to protect public health and safety or protect the environment from significant harm.

Today, state and tribal agencies are working on hardrock abandoned mine problems through a variety of state and federal funding sources. Various federal agencies, including the U.S. Environmental Protection Agency, the Bureau of Land Management, the National Park Service, the U.S. Forest Service, and the U.S. Army Corps of Engineers have provided some funding for hardrock mine remediation projects. These state/federal partnerships have been instrumental in assisting the states and tribes with their hardrock AML work. As states and tribes take on a larger role in hardrock AML cleanups in the

future, they will continue to involve their federal partners. Unfortunately, most of these existing federal grants are project specific and do not provide consistent funding.

For states and tribes with coal mining, the most consistent source of AML funding has been the Title IV grants authorized under the Surface Mining Control and Reclamation Act (SMCRA). While the vast majority of this funding is used to address coal AML and AMD problems, *Section 409 of SMCRA allows states and tribes to use these grants at high priority non-coal AML sites.* The funding is generally limited to safeguarding hazards to public safety (e.g., closing mine openings) at hardrock sites. The small amount of money that SMCRA states have been able to spend on physical safety hazards at hardrock sites appears to be making a difference. More specific information regarding the nature and extent of the hardrock AML accomplishments of the states and tribes is available from IMCC and NAAMLP or at the federal Office of Surface Mining (OSM) website (www.osmre.gov).

A federal Good Samaritan program also holds immense potential benefit for remediation of abandoned coal mines, in particular where they affect surface and groundwater resources. The AML program under Title IV of SMCRA is making great progress with coal AML, but these funds are limited and therefore tend to be focused on immediate health and safety problems. SMCRA requires that sites posing immediate dangers to human health and safety must be designated as higher priority. It is therefore difficult to direct meaningful AML funds to water treatment problems. These difficulties are further exacerbated by the fact that State AML programs are subject to the same potential liability issues as local watershed groups. The situation is further complicated by a decision of the U.S. Fourth Circuit Court of Appeals in *West Virginia Highlands Conservancy v. Huffman*, 625 F.3d 159 (4th Cir. 2010) which held that systems for treating water related to bond forfeiture sites qualify as point sources and require NPDES permits under the Clean Water Act. While focused on bond forfeiture sites under SMCRA, the reasoning of the decision may apply equally well to the construction and operation of passive treatment systems employed by states to address acid mine drainage at any abandoned coal mine. This situation must be rectified and ideally addressed in this legislation to clarify that NPDES requirements do not apply to AML projects conducted under Title IV of SMCRA. Often, this mandate results in less effective and more costly treatment than would a scientifically-based watershed restoration approach. Good Samaritan protections that address this issue for both local groups and state programs would go a long way toward facilitating their efforts to remediate water quality problems related to abandoned coal mines.

Further to this issue, state mining regulatory authorities, particularly in coal mining regions, have experienced significant permitting issues trying to fit abandoned mine drainage treatment systems into the NPDES framework outlined in the CWA. Although treatment systems for abandoned mine drainage have the characteristics of a point source discharge, NPDES permits have not been routinely issued in many states, (either to the state or to non-profit watershed groups or trustees of trust funds), for these treatment systems. There are several reasons for this. First, passive water treatment systems constructed at abandoned mine sites often have not been designed to meet stringent effluent limitation requirements that would be imposed by an NPDES permit. Second, watershed groups often lack the resources needed to obtain, hold and comply with NPDES permit requirements. Third, funding limitations have led many states to adopt an approach that attempts to maximize the number of discharges that receive treatment, albeit at levels that do not strictly meet water quality based effluent requirements but nevertheless significantly improve the water quality in the receiving stream and the watershed such that they can support healthy populations of aquatic life. Historically, for abandoned discharges, EPA has not

provided clear direction as to when permits are required and what the performance standards must be (likely because of the problem's complexity and scope and the lack of sufficient funding for an adequate remedy). As a result, hundreds of treatment facilities have been constructed by the states or by partnering groups or agencies in the past several decades without NPDES discharge permits being obtained for these facilities. Decisions regarding water treatment at these sites are often based on practical limitations such as available space, technology options and cost. The mine drainage at these sites is being treated, pollution is substantially reduced, and noticeable water quality improvements are being made.

One proposed "fix" is a revision to SMCRA that addresses discharges from abandoned mines covered under Title IV of SMCRA. It would provide relief from NPDES requirements under the CWA in situations where the mine discharge is being controlled and treated by state or tribal governments or their agents. These sites include passive and active treatment facilities, including a number of high-flow treatment systems. These facilities rely on standard mine drainage treatment technologies designed to meet technology-based effluent limits, resulting in a substantial reduction of pollutant loads and in significant stream restoration.

As states and tribes work to address the remaining inventory of abandoned coal and hardrock mine sites, we are increasingly concerned about the escalating costs of addressing those problems that continue to go unreclaimed due to insufficient funding. Unaddressed sites often worsen over time, thus increasing reclamation costs. Inflation without concurrent increases in funding further increases these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. In addition, the states and tribes are finding new, higher priority problems each year, especially as many of our urban areas encroach upon what were formerly rural abandoned mine sites. New sites also continually appear due to the effects of time and weather, especially in the case of mine subsidence. This underscores the need for constant vigilance to protect our citizens and their environment, and the importance of Good Samaritan relief before the Subcommittee today.

We believe that the enactment of Good Samaritan legislation will be immensely helpful to the States' and Tribes' ongoing efforts to remediate the vast quantities of AML sites remaining, and those continuing to manifest. We have seen the results from this type of approach in states such as Pennsylvania, which enacted its own Good Samaritan law to provide protections and immunities related to state clean water requirements for those groups and individuals who were not legally responsible but who voluntarily undertook the reclamation of abandoned mine lands or abatement of mine drainage. However, under the Pennsylvania Good Samaritan program, these groups are still exposed to potential liability under the federal Clean Water Act for their good deeds, which is having a chilling effect on watershed cleanup efforts.

Pennsylvania's Experience

The experience of Pennsylvania has demonstrated there are countless opportunities for Good Samaritans to clean up abandoned mine land. Pennsylvania's citizen, watershed, and environmental groups have long been working to address the problems in their geographical areas. When Pennsylvania officials tried to leverage the state's limited resources to accomplish more reclamation by working with these groups, we met significant resistance regarding sites that had existing pollutional mine drainage. Many groups would not reclaim sites that had pollutional mine drainage discharges because by

reaffecting the site, they could be held liable under state and federal law to permanently treat the discharge. They could incur this liability even though they had not created the discharge and even if their reclamation improved the overall quality of the discharge. With the advances made in science, technology, and our understanding of mine drainage, we in the Pennsylvania Department of Environmental Protection were aware of many abandoned mine discharges that could be eliminated or improved at little or no cost to the Commonwealth if we could address the potential for personal liability.

In response to this problem, Pennsylvania enacted the Environmental Good Samaritan Act[1] in 1999. Projects must meet certain criteria to be covered by the Environmental Good Samaritan Act and must be reviewed and approved by Pennsylvania's Department of Environmental Protection. Eligible projects must restore mineral extraction lands that have been abandoned or not completely reclaimed, or they must be a water pollution abatement project that will treat or stop water discharges from abandoned mine lands or abandoned oil or gas wells. The Act provides that a person, corporation, nonprofit organization, or government entity that participates in an eligible Good Samaritan project is eligible for protection if they meet certain conditions, which are elaborated upon in Appendix A.

Pennsylvania's experience indicated that landowners' exposure to potential liability also impedes AML remediation efforts. The Act therefore also provides that a landowner who provides access to the land without charge or compensation to allow a reclamation or water pollution abatement project is eligible for protection.

Pennsylvania's Good Samaritan program has been a great success and provides proof of the Good Samaritan concept. Pennsylvanians have undertaken at least 48 Good Samaritan projects to date, and the participants have included local governments, individuals, watershed associations, corporations, municipal authorities, and conservancies. Some projects are simple low maintenance treatment systems while others are large and complex.

We would like to highlight a couple of examples from Pennsylvania: the Indian Creek Restoration, a project successfully completed under the state's Good Samaritan protections, and the Gladden AMD Discharge, a project which was planned but never implemented as a result of liability concerns.

The Indian Creek Restoration Project

Over the last fifteen years, the Pennsylvania Department of Environmental Protection (PA-DEP), Bureau of Abandoned Mine Reclamation (BAMR) and the USDA Natural Resource Conservation Service (NRCS) worked with the Mountain Watershed Association (MWA) and several other partners to restore water quality and reclaim abandoned mines in the Indian Creek Watershed in southwestern Pennsylvania. Indian Creek is a 125 square mile watershed which is very sparsely populated (<10,000 residents) and contains significant publicly owned land (approximately 60% of the watershed). Indian Creek is a tributary to the Youghiogheny River which flows into the Monongahela River which flows into the Ohio River at the point in downtown Pittsburgh.

[1] Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101 - 8114

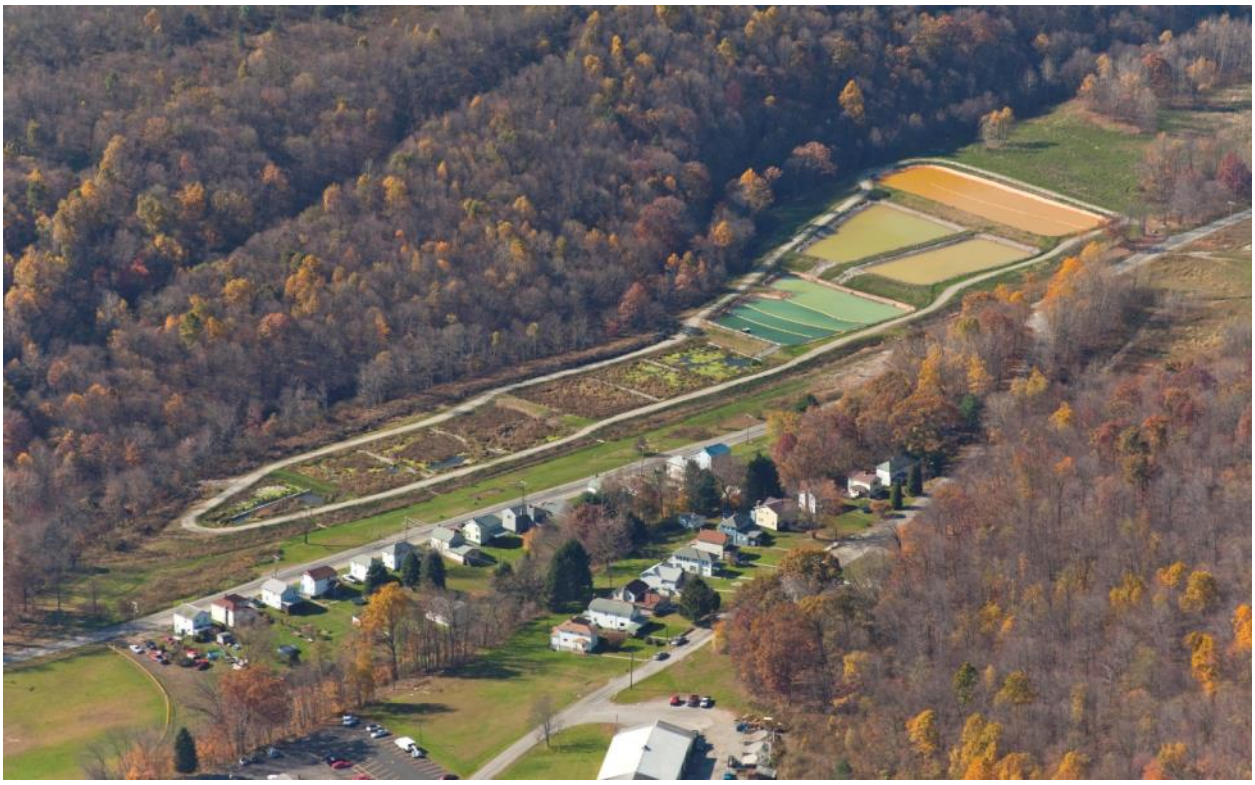
The MWA completed a watershed assessment of the Indian Creek Watershed in 1998. The study revealed that mine drainage from abandoned surface and underground mines was the biggest source of impairment in the watershed and degrading water quality in 17.4 miles of Indian Creek and its tributaries. Unregulated mining began in the watershed in the late 1800s and continued into the 1960s. One hundred and nineteen (119) mine drainage discharges from those mining operations were documented in the watershed. An analysis of those discharges revealed that the 10 most significant discharges in the watershed accounted for 94% of the total acid load, 90% of the iron load and 94% of the aluminum load in the watershed.

MWA worked with the NRCS to develop a PL566 Watershed Restoration Plan (completed in October 2000) to address the most severe discharges and restore water quality in the Indian Creek Watershed. Since that time, MWA, NRCS and PA-DEP-BAMR have constructed six passive mine drainage treatment systems to treat the worst discharges in the watershed. Early in the project, it was clear that most of the treatment systems necessary to restore water quality in the watershed would need to be constructed on private property. The private landowners and the MWA were both extremely concerned about liability under the CWA. The MWA along with each of the private landowners applied for and received approval for PA Good Samaritan protections for their involvement in the project. Without this protection, this project never would have been undertaken or completed. As a result of remediation work undertaken, the stream has made a dramatic recovery and now supports a healthy fish and macroinvertebrate community. Once an eyesore and a liability to the local area, Indian Creek is now a community asset and a source of community pride. A walking trail was incorporated into one of the passive treatment system designs which ties to the Indian Creek Trail that is part of the Youghiogheny Trail Network.

The Rondell-Coreal Abandoned Mine Discharge in the Indian Creek Watershed

Indian Creek Severely Impaired by AMD Prior to Restoration

Abandoned Mine Discharge Near Melcroft Prior to Treatment



Aerial View of the Melcroft Passive Mine Drainage Treatment System

Walking Trail Incorporated into Melcroft Passive Mine Drainage Treatment System Project

Aerial view of the Gallentine Discharge Passive Treatment System under Construction

Aerial view of Kalp AMD Treatment System – Largest Source of Contamination in the Watershed

Indian Creek After Restoration

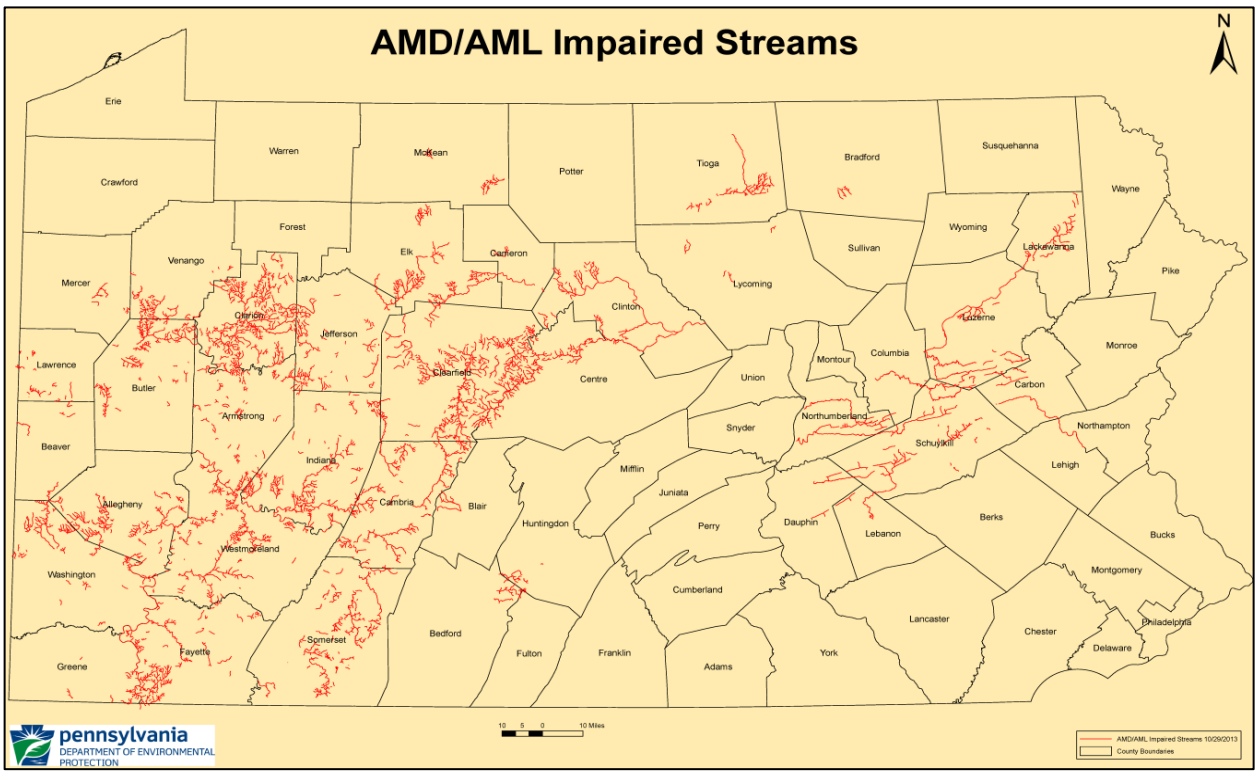
Indian Creek just Upstream of the Mouth near its Confluence with the Youghiogheny River

The Gladden AMD Discharge – Chartiers Creek Watershed

A relic of unregulated coal mining, the Gladden Discharge, named for the small community nearby, is just one of thousands of abandoned coal mine discharges that pollute more than 5,500 miles of streams in Pennsylvania. According to the Pennsylvania Department of Environmental Protection (PA-DEP), that represents about 1 mile out of every 15 miles of stream in the state. The Gladden Discharge flows from the abandoned Montour No. 2 underground coal mine operated by the former Pittsburgh Coal Company and abandoned circa 1920. The discharge dumps on average more than 900 gallons of iron-laden (approximately 100 mg/liter) water into Millers Run every minute (1.3 million gallons per day). According to watershed studies completed by the local conservation groups in conjunction with PA-DEP, the Gladden discharge is responsible for 60 % of the iron loading and 70% of the acidity loading to Chartiers Creek. Within a half-mile from where the Gladden Discharge enters Millers Run, it changes from a clear stream with trout to an orange stream with virtually no life. Millers Run then flows into Chartiers Creek degrading the stream quality to a point where it can support almost no aquatic life. Chartiers Creek, located partially in Washington and Allegheny Counties, flows into the Ohio River just a few miles downstream from the confluence of the Allegheny and Monongahela Rivers where the Ohio River is born in downtown Pittsburgh.

Two local conservation groups, the South Fayette Conservation Group and the Chartiers Nature Conservancy, have been working with the PA-DEP, Bureau of Abandoned Mine Reclamation, several other state and federal agencies, and private individuals and businesses for over a decade to develop and implement a plan to treat the Gladden Discharge and restore lower Chartiers Creek. In 2009, a private business approached the group with a concept to construct a treatment facility to treat the Gladden Discharge and to establish a long-term operation and maintenance (O&M) trust fund for the facility in exchange for the right to use some of the treated water for the water needs of the business. The total capital cost to construct the treatment facility was estimated at that time to be approximately $1.2 million and the annual O&M was estimated to be approximately $250 thousand. The facility was proposed to be built on private property and would be owned and operated by one of the conservation groups or the PA-DEP.

Both the private landowner and the private business inquired about long-term liability for their involvement in a project of this type. Both were happy to learn of Pennsylvania's Environmental Good Samaritan Act and the protections it afforded, but were disappointed to learn that no equivalent such law existed to protect them from third-party lawsuits and liability under the federal Clean Water Act. After further review by legal counsel for both the private landowner and the private business, both entities withdrew from the project. No subsequent treatment plan has been implemented for the Gladden Discharge and it continues to spew AMD into Millers Run and Chartiers Creek today.



Location of the 5,500 Miles of Streams Impaired by AMD in Pennsylvania


Gladden AMD Discharge in the Chartiers Creek Watershed

Gladden Discharge Confluence with Millers Run

Gladden Discharge Flowing into Millers Run

Millers Run Downstream of the Gladden Discharge

Confluence of Millers Run and Chartiers Creek

Aerial View of the Confluence of Millers Run and Chartiers Creek

While substantial progress has been made under the Pennsylvania program, a number of projects have not been undertaken because of the potential for incurring liability under Federal law, such as the Gladden Discharge. The opportunities for reclamation by Good Samaritans in Pennsylvania and throughout the country would be greatly enhanced by the enactment of federal Good Samaritan legislation.

Considerations in Crafting a Federal Good Samaritan Program

Over the course of the past fifteen years, several bills have been introduced in the U.S. Congress to enhance the cleanup of inactive and abandoned mines by emulating the Pennsylvania Good Samaritan program. Each bill offered a unique approach for addressing Good Samaritan voluntary remediation efforts by removing the current disincentives in the federal Clean Water Act that inhibit these cleanups. From the states' and tribes' perspective, we have several recommendations and concerns that we believe should be considered in any Good Samaritan legislative effort.

In accordance with the principles of state primacy contained in laws such as SMCRA and the Clean Water Act, we believe it is essential that Good Samaritan programs be administered by state and Tribal regulatory authorities as the states and Tribes best understand the complexities associated with abandoned mine lands within their borders, including which sites can be improved and how to accomplish the improvement. States also tend to have a better working relationship and understanding of potential Good Samaritans. We believe that the states and Tribes are in the best position to

administer Good Samaritan programs with limited, appropriate oversight by federal agencies such as EPA and OSM.

Many previous Good Samaritan legislative efforts have focused only on liability with regard to the Clean Water Act. While this is certainly the most needed protection, we maintain that Good Samaritan remediation efforts will still be stifled by the prospect of incurring liability under a variety of other federal environmental protection laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The key here is that if potential Good Samaritans do not feel completely assured of liability protection related to these additional laws, many groups, private individuals, and businesses will have little choice but to forego remediation at sites where the risk is simply too great a threat to their organization's financial health.

Due to recent events, much attention has rightfully been paid to the problems of hardrock AML. A federal Good Samaritan program is imperative to the progress of hardrock AML work, but is also crucially important for work on abandoned coal sites. The real cost of addressing high priority coal AML problems likely exceeds $9 billion. The cost of cleaning up all coal related AML problems, including acid mine drainage, could be 5 to 10 times this amount and far exceeds available monies. A federal Good Samaritan program would empower local groups to make a much greater impact.

Furthermore, with regard to water quality treatment at coal AML sites, the state AML programs often find their hands tied by the same liability concerns from the CWA which impede the efforts of local groups. Due to the 4th Circuit court decision discussed earlier to designate water treatment facilities as point-source discharges, West Virginia must now obtain CWA permits for bond forfeiture sites. There have been concerns that this ruling could be extended to bond forfeiture sites in other states or to all AML projects being undertaken by states and Tribes. Just as with Good Samaritans, the state and Tribal AML programs are often unable to pursue simple but effective water treatment solutions where they lack the resources to engage in full remediation, for fear of incurring liability for the entire discharge as a result of affecting the site – even where the effect is undoubtedly positive. Therefore, we advise that part of a successful Good Samaritan program should include a clarification that water treatment systems constructed pursuant to Title IV of SMCRA are not considered point-source discharges and are not subject to NPDES requirements, thereby protecting the state and Tribal programs from unnecessary and prohibitive potential liability.

With respect to applicable environmental standards for Good Samaritan projects, we believe it is absolutely critical that the legislation include flexible standards to allow for partial remediation, based on a determination by a state or federal regulatory authority that the Good Samaritan efforts will result in environmental improvement. Some abandoned mine problems are so intractable that it is not possible to achieve "total cleanup" even with today's advanced technologies. These types of cleanups could also be cost prohibitive. We know that in many circumstances a limited cleanup can result in significant environmental improvement. Rejecting the notion that partial restoration that makes a significant improvement where total cleanup cannot be achieved for one reason or another is poor public policy and shortsighted. We also know that, in some circumstances, even where total cleanup is technically possible, at some juncture the cleanup reaches a point of diminishing returns and the money would be better spent on cleaning up other sites. The bottom line here is that some cleanup is usually better than none at all. We therefore recommend that Good Samaritan legislative efforts include provisions to allow the partial remediation in appropriate cases.

We also recommend that legislators consider including a provision allowing for an "end date" to be established for Good Samaritan projects that require long term operation and maintenance. The concern is that Good Samaritan's will be unwilling or unable to commit to perpetual maintenance of their treatment systems. By allowing the initial construction and long term operation and maintenance to be treated under separate Good Samaritan approvals held by separate groups, smaller watershed groups which specialize in long term maintenance work could take over responsibility from larger, better financially leveraged environmental groups that are capable of constructing expensive, large-scale treatment systems

As discussed earlier, it has been Pennsylvania's experience under its law that it is important that innocent landowners be covered for the Good Samaritan project activities. Some landowners will not cooperate if they are not protected. We recommend the inclusion of language speaking directly to the potential liabilities of landowners who would otherwise allow free access to Good Samaritan groups seeking to do remediation work.

As a result of an extensive history of underground mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite coal fields. These refuse piles are unsightly, unsafe and are a significant source of sedimentation and mine drainage pollution entering the Commonwealth's streams. These piles have varying degrees of economic value depending on the method used to process and clean the coal and the volume of refuse material available at a given location. Many are good sources of material suitable for use in fluidized-bed combustion processes employed at cogeneration plants. As a consequence, mining companies see opportunities in conducting remining activities at these sites. However, the related mine water treatment liability has historically served as a deterrent to remining.

To address the issue Pennsylvania has instituted incentives for remining at both large economically viable refuse sites and for smaller abandoned coal waste sites that have low economic value. Large economically viable sites are typically permitted under the Title V regulatory scheme. Permit applicants are required to establish existing site-specific baseline pollution loads. The permit applicant must then demonstrate that the remining and reclamation of the site is likely to improve or eliminate the pre-existing discharge. These permitting decisions are made using the Best Professional Judgment Analysis in accordance with the Clean Water Act. If the remining project is successful, then the mine operator is not held responsible to treat the portion of the pre-existing discharge that remains. If the discharge is made worse, then the operator must treat the discharge to the point of the previously established baseline.

At smaller refuse sites, the Commonwealth implemented a program, known as Government-Financed Construction (Reclamation) Contracts (GFCCs), where a reclamation contract is issued under Pennsylvania's federally approved SMCRA, Title IV Reclamation Plan. Remining does not typically occur at these sites due to the low economic value of the waste coal, the cost of obtaining a Title V mining permit, and/or the potential liability if a discharge is present. The Title IV approach allows a contractor to remove incidental coal refuse during the reclamation of an abandoned mine site in order to accomplish reclamation without incurring liability for pre-existing discharges. The value of the coal or coal refuse that must be removed to reclaim the site offsets the cost of the reclamation project. Under this program, the mining industry has made progress in reclaiming coal refuse and other AML sites at no

additional direct cost to the commonwealth. Between Jan. 1991 and Dec. 31, 2014, there were 262 contracts issued reclaiming 2,956 acres for a total reclamation value of approximately $19.4 million. In the anthracite coal fields of Northeastern Pennsylvania, coal refuse mining accounts for the removal of about 4 million tons of abandoned coal refuse each year.

By providing for these remining and refuse recovery opportunities, the Commonwealth of Pennsylvania has succeeded in encouraging a substantial amount of mine water remediation which would otherwise likely have gone untreated. Since its inception, Pennsylvania's reclamation and remining incentives programs have been very successful. Coal mine operators using these programs have reclaimed over 6,900 abandoned mine land (AML) acres equivalent to an estimated $44.9 million in reclamation value at no cost to the public. Similar programs have been developed and implemented in other states with similar positive results, and any Good Samaritan Program implemented at the federal level should not interfere with these well-established and successful remining programs.

Finally, Good Samaritan protections should be extended to both public and private lands. Pollution problems know no such boundaries and must be addressed wherever they occur. The environment and public health and safety all benefit by cleanup of abandoned mine lands and restoration of AMD impaired streams, whether public or private.

Conclusion

The legacy of abandoned mine lands still looms large in many of our nation's communities. In the pursuit of eliminating the lingering effects of abandoned mines, and in particular the impairment of water resources, every source of help is needed. To that end, the enactment of reasonable CWA liability protection for prospective Good Samaritan groups and State and Tribal AML programs holds immense potential benefit. The experience of Pennsylvania demonstrates that the Good Samaritan idea works, but the obstacles to further enfranchisement of these groups must be removed. It is time for Congress to act to enable Good Samaritans to help conquer the monumental task of reclaiming our abandoned mine lands and restoring our mine drainage impaired waters.

Thank you for the opportunity to submit this testimony. Should you have any questions or require additional information, please contact us.

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Appendix-A

Pennsylvania's Environmental Good Samaritan Act provides that a landowner who provides access to the land without charge or compensation to allow a reclamation or water pollution abatement project is eligible for protection. The Good Samaritan Act also provides that a person, corporation, nonprofit organization, or government entity that participates in a Good Samaritan project is eligible for protection if they:

- Provide equipment, materials or services for the project at cost or less than cost.
- Are not legally liable for the land or water pollution associated with past mineral extraction.
- Were not ordered by the state or federal government to do the work.
- Are not performing the work under a contract for profit, such as a competitively bid reclamation contract.
- Are not the surety that issued the bond for the site.

Landowners who provide free access to the project area are not responsible for:

- Injury or damage to a person who is restoring the land or treating the water while the person is on the project area.
- Injury or damage to someone else that is caused by the people restoring the land or treating the water.
- Any pollution caused by the project.
- The operation and maintenance of any water pollution treatment facility constructed on the land, unless the landowner damages or destroys the facility or refuses to allow the facility to be operated or repaired.

Landowners are not protected from liability if they:

- Cause injury or damage through the landowner's acts that are reckless, or that constitute gross negligence or willful misconduct.
- Charge a fee or receive compensation for access to the land.
- Violate the law.
- Fail to warn those working on the project of any hidden dangerous conditions of which they are aware within the project area.

Landowners are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of the project was not provided.

People who participate in a Good Samaritan project are not responsible for:

- Injury or damage that occurs during the work on the project.
- Pollution coming from the water treatment facilities.
- Operation and maintenance of the water treatment facilities.

Good Samaritan project participants are not protected if they:

- Cause increased pollution by activities that are unrelated to work on an approved project.
- Cause injury or damage through acts that are reckless, constitute gross negligence or willful misconduct.
- Violate the law.

Participants are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of that project was not provided.