

**TESTIMONY OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

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Good Morning Mr. Chairman and Members of the Subcommittee, I am James A. Hanlon, Director of the Office of Wastewater Management at the United States Environmental Protection Agency (EPA). Thank you for the opportunity to discuss an important issue facing the United States -- impaired watersheds and legacy impacts from abandoned mines.

The Abandoned Mine Problem

Inactive or abandoned mine sites can pose serious public safety and environmental hazards. The good news is that there are significant resources available through voluntary efforts to remediate these sites and improve environmental health and safety. Unfortunately, as a result of avoidable legal obstacles, we have been unable to take full advantage of opportunities to promote cooperative conservation through partnerships that will restore and enhance abandoned mine sites throughout the United States.

According to estimates, there are over half a million abandoned mines nationwide, most of which are former hardrock mines located in the western

states, which are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these abandoned mines has polluted thousands of miles of streams and rivers, as well as ground water, posing serious risks to human health, wildlife, and the environment. This problem can affect local economies by threatening drinking and agricultural water supplies, increasing water treatment costs, and limiting fishing and recreational opportunities.

The Center of the American West at the University of Colorado, Boulder developed and published a report entitled, "Cleaning Up Abandoned Hardrock Mines in the West – Prospecting for a Better Future," for which EPA provided financial assistance. However, the report does not represent formal EPA policy. The report details the history of the nation's mining industry, the environmental legacy that remains, and describes challenges and management options – at the Federal, State and local level – in reducing the effects of inactive and abandoned mines.

Mine drainage and runoff problems can be extremely complex and solutions are often highly site specific. In many cases, the parties responsible for the pollution and clean up of these mines no longer exist. However, over the years, an increasing number of Good Samaritans, who are not responsible for the pollution, have stepped forward on a voluntary basis to clean up these mines. Through their efforts, we can help restore watersheds and improve water quality.

Liability

The threat of liability, whether under the Clean Water Act or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), can be a real impediment to voluntary remediation. A private party cleaning up a release of hazardous substances might become liable as either an operator of the site, or as an arranger for disposal of the hazardous substances. Under the Clean Water Act, a party may be obligated to obtain a discharge permit which requires compliance with water quality standards in streams that are already in violation of these standards. The potential assignment of liability occurs even though the party performing the cleanup did not create the conditions causing or contributing to the degradation. Removing this liability threat will encourage more Good Samaritans to restore watersheds impacted by acid mine drainage.

The Clean Water Act requires permit holders to comply with their permits so discharges do not violate water quality standards. While this concept has been extremely effective for protecting and restoring our Nation's waters, it inhibits the type of work Good Samaritans would undertake. Partial cleanups by Good Samaritans will result in meaningful environmental improvements and will accelerate achieving water quality standards. Yet, in many cases, the impacted

water bodies may never fully meet water quality standards, regardless of how much cleanup or remediation is done.

By holding Good Samaritans accountable to the same cleanup standards as polluters or requiring strict compliance with the highest water quality standards, we have created a strong disincentive to voluntary cleanups. Unfortunately, this has resulted in the perfect being the enemy of the good. Another concern for potential Good Samaritans is their potential liability for any remaining discharges at the abandoned mine site. The ability for a Good Samaritan to go onto a site, do a clean up to improve the quality of a discharge, and then leave the site after completing what they said they were going to do without long term liability, is not possible under current law. A statutory change for the Clean Water Act is necessary to provide these protections and to be realistic and fair to a volunteer agreeing to improve water quality. By removing this threat of liability, we will encourage more voluntary and collaborative efforts to restore watersheds impacted by acid mine drainage.

Let me emphasize, however, encouraging Good Samaritan cleanups is not about lowering environmental standards or letting polluters off the hook. Good Samaritans should be held to a realistic standard that results in environmental improvements and to be held accountable while they have a permit. And those responsible for the pollution, if still in existence, will remain accountable, consistent with the Agency's "polluter pays" policy.

Good Samaritan Tools

In June of this year, EPA Administrator Steve Johnson released administrative tools that provide strong protections for Good Samaritans under CERCLA. The Agency developed a model Good Samaritan Agreement and comfort/ status letter that can be used to provide greater legal certainty to a volunteer while also providing adequate assurances to the Agency that a cleanup will be performed properly. We are also working closely with our Federal land management agencies and State partners to encourage, where appropriate, greater use of voluntary cleanup programs for abandoned mine remediation. In addition, we are developing guidance that will help Good Samaritans understand our approach to these cleanups. Our administrative tools do much under CERCLA to remove roadblocks, but we can only go so far administratively.

Legislative Efforts

In addition to the administrative tools, the Administration and EPA proposed The Good Samaritan Clean Watershed act in the last Congress to comprehensively reduce the Good Samaritan liability issues. That legislation, as you probably know, would modify both CERCLA and the Clean Water Act. With the release of our administrative tools, and our desire to accelerate the pace of

environmental improvement, EPA continues to work with a broad range of stakeholders including the Western Governors' Association, and others, to develop a bipartisan legislative proposal for the Clean Water Act which remains the main obstacle to Good Samaritan cleanups. In fact, there are many cleanups in the State of Colorado that remain on hold and unfinished, not because of CERCLA liability concerns, but because of Clean Water Act liability concerns.

We applaud the bipartisan legislative efforts in both houses of Congress to correct the issue, and we look forward to working with the appropriate Congressional committees on legislation. In the interim, and until such time as Good Samaritan legislation is enacted, EPA will continue to encourage and facilitate clean up of abandon mines through use of its administrative tools and authorities.

Good Samaritan Activities

The first project under the Agency's Good Samaritan Initiative is the abandoned mine in Utah's American Fork Canyon. We are working with Trout Unlimited (TU) and a private landowner who had not caused the pollution at the site. This project will help restore a watershed that has been impacted for well over a century, restoring the water quality and the habitat of a rare cutthroat trout species. Restoration of the American Fork is part of an ambitious multi-year effort by Trout Unlimited to draw attention to the problem of abandoned mines in

the western United States while also identifying solutions. EPA has learned from the experience of the Trout Unlimited project and is putting those lessons to good use. This restoration effort exemplifies how cooperative conservation, emphasizing collaboration over confrontation, can accelerate environmental protection.

Mine scarred lands are a particular concern of the EPA Brownfields Program and they were explicitly highlighted in the Brownfields Law passed in 2002. The Brownfields Program has coordinated a multi-agency collaborative initiative to help communities clean up and reuse mine-scarred lands. The federal partners are implementing six community pilots in Virginia, Pennsylvania, West Virginia, Colorado and Nevada. The pilot communities received targeted federal technical and financial support; initially to help develop action plans and then to create local assistance packages leading to revitalization.

Conclusion

We hope the Good Samaritan initiative will be a springboard for future successes, such as those achieved through the Brownfields program. But unlike the situation with Brownfields, Good Samaritans at abandoned mine sites are not looking to purchase the property or receive monetary awards for their efforts -- they simply want to engage in voluntary stewardship activities that benefit the environment.

The bottom line is that this type of innovative partnership agreement -- coupled with targeted watershed grants and other assistance -- can help dramatically in revitalizing thousands of water bodies harmed by acid mine runoff.

A comprehensive solution to the problem associated with abandoned mine remediation is long overdue. EPA is actively working with Congress and our partners at the State and local levels to create a long-term solution to encourage and expedite Good Samaritan cleanups. EPA will continue to provide leadership through the Good Samaritan Initiative and to work with our Federal land management agencies, States and Congress to pass legislation for the Clean Water Act that promotes and encourages environmental restoration of abandoned mine sites across the country.

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