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Reclamation of Abandoned Mines: Legislative Proposals to Incentivize Good Samaritans

Good Samaritan Laws

All U.S. states and the District of Columbia have some form of "Good Samaritan" law that protects people and companies from civil liability for voluntarily helping others. The foundation for these statutes, of course, is that the person or company that is shielded from liability did not have a hand in causing the harm in the first place.

The details of Good Samaritan laws vary by jurisdiction,[1] including who receives protection from liability and under what circumstances. Colorado provides its law in C.R.S. section 13-21-108. The law shields from civil liability physicians and surgeons, volunteer members of a rescue unit or ski patrol, firefighters, police officers, teachers, and "any person . . . who gratuitously and in good faith renders emergency care or treatment ...."

An example would be a skier on the slopes in Colorado who finds an injured skier who has collided with a tree, broken her leg, and is at risk of smothering because they have fallen into a deep "tree hole" filled with powder snow. If the volunteer skier (ski patrol or another skier) helps that person out of the tree hole, effectively saving her life, the "Good Samaritan" would be shielded from civil liability if the injured skier were to later claim that moving them out of the tree hole exacerbated the person's injury.

What About Water and Other Environmental Pollution from Abandoned Mines? If a Volunteer Wants to Help, Are They Subject to Possible Civil Liability?

Unequivocally, yes. The conservation group, Trout Unlimited, has been working for two decades on the abandoned mines problem in an effort to cause the U.S. Congress to provide a legislative fix. The organization's website provides a vivid outline of the abandoned mine site problems and the exposure anyone faces under federal law when getting involved with abandoned sites.

There are two sources of hardrock mining water pollution – (1) waste rock and tailings piles and (2) draining mine openings. The federal Clean Water Act addresses these differently, creating the need for Good Samaritan legislation.

Under current laws, Good Samaritans can and do perform "dry site" projects that prevent contaminated waste rock or tailings from intermingling with water. For instance, a project might move waste rock or tailings away from streams, cap the waste rock with impermeable materials, or haul waste rock away for dry disposal.

However, under the Clean Water Act, a mine discharging polluted water out of a tunnel is considered a "point-source" of pollution, meaning that the tunnel is releasing a contaminant that enters the environment from an easily identified and confined place. As such, a mine operator is required to obtain a discharge permit under the federal National Pollutant Discharge Elimination System (or state equivalent) and must meet the conditions of the Clean Water Act using some form of water treatment.[2]

The permitting system for mine operators can effectively prevent contamination. The conundrum arises when one deals with an abandoned mine where there is no entity or person legally responsible for managing the pollution.

In this situation, volunteering persons or entities might want to undertake actions to address the problem, but the liability for the pollution could transfer to any Good Samaritan, leaving them on the hook for any remaining pollution. That's the case even though they did not create the pollution in the first place and are proposing (or already have made) successful improvements to water quality with their remediation project.

Even for "dry site" activities undertaken by Good Samaritans whereby waste rock and tailings piles have been moved or stabilized with synthetic cover material and/or rip-rap, for example, any resulting releases of contaminants to the air or surface or groundwater could trigger strict, joint, and several liability for the Good Samaritan pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund).[3]

That's a long way of saying that volunteer organizations and people who would otherwise be willing to expend time and money to address the abandoned mine pollution are often frightened away from doing the work.

In the words of one my clients: "Wow, John. Well, I thought I'd like to help, but I'm not interested in getting into that quicksand."

That dilemma triggered the interest of multiple parties to seek help from the U.S. Congress and the Colorado state legislature.

U.S. Senate Passes the Good Samaritan Remediation of Abandoned Hardrock Mines Act

When was the last time you heard of the U.S. Senate passing any legislation "unanimously?"

It actually happened just a few weeks ago. On August 1, 2024, the U.S. Senate unanimously passed the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act.

This bill promotes the remediation of abandoned hardrock mine sites by Good Samaritans, *i.e.* a person that is: (1) not a past or current owner or operator of the abandoned site; (2) had no role in the creation of the historic mine residue; and (3) is not potentially liable under any law for the remediation, treatment, or control of the historic mine residue.[4]

The bill requires the U.S. Environmental Protection Agency (EPA) to establish a Good Samaritan pilot program. Under the program, the EPA may issue certain permits to allow Good Samaritans to remediate historic mine residue at abandoned hardrock mine sites without being subject to enforcement or liability under specified

environmental laws for past, present, or future releases, threats of releases, or discharges of hazardous substances or other contaminants at or from the abandoned mine site.

In addition, the bill establishes a Good Samaritan Mine Remediation Fund for land management agencies that authorize Good Samaritans to conduct remediation projects on federal land.

The federal legislation would establish a new pilot program administered by the EPA to permit up to 15 Good Samaritan abandoned mine cleanups.

Legislation would require remediation projects to pose a low risk to the environment and produce improvements in environmental conditions, while also stipulating requirements for public involvement, environmental review, public hearings, and state and tribal consultation.

If a permit is approved, qualified Good Samaritans would be provided with conditional liability relief, which will allow them to move forward with projects addressing harmful abandoned mine waste. Additionally, provisions specify that mining activities are strictly prohibited.

Importantly, if a permit violation causes an uncorrected worsening of environmental conditions, all liability protections would be revoked and the permittee would be subject to all applicable environmental laws, including citizen lawsuits under the Clean Water Act.

The bill has been introduced in the House as H.R. 7779.

What About State Legislation? The Pennsylvania and Colorado Examples

The Colorado Geological Survey has identified an estimated 23,000 abandoned mine lands (AML) in Colorado. The agency's AML inventory focused on national forest system lands in the period between 1991 and 1998. The inventory identified physical and environmental hazards associated with mine features such as mine openings, waste rock dumps, tailings dumps, and mine structures. Approximately 18,000 individual mine features were inventoried.[5]

The Pennsylvania Environmental Good Samaritan Act

Those facts, coupled with my interactions with clients, triggered my interest in drafting Colorado legislation modeled on the Pennsylvania Environmental Good Samaritan Act.

The Pennsylvania statute provides certain protections and immunities to landowners who propose reclamation projects. The statute does not provide immunity for injury or damage resulting from acts or omissions which are reckless, grossly negligent, or willful misconduct or other unlawful activities.

The Colorado Good Samaritan Act (Draft Only)

The legislation I have drafted aims to provide incentives for Good Samaritans to engage with others to reclaim abandoned sites in Colorado. As such, it does not supplant federal law. It also does not supplant, but is designed to complement, the state's Inactive Mine Reclamation Program implemented by the Division of Reclamation, Mining, and Safety in the Department of Natural Resources. Since 1980, the state program has safeguarded over 10,500 hazardous openings and reclaimed 4,000 acres of abandoned mined land statewide.

To complement that program, the draft Colorado Good Samaritan Act would protect landowners, groups, and individuals who volunteer for such projects from civil and environmental liability. The draft law intends to encourage landowners and others to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mines, as well as abandoned oil and gas wells. The Colorado Department of Public Health and Environment and the Colorado Department of Natural Resources would review project proposals for protection under the Good Samaritan Act and will administer and review project proposals to determine project eligibility.

Who is Eligible for Protection?

Any landowner who provides access to the land without charge or compensation for a reclamation or water pollution abatement project is eligible for protection under the Act. Additionally, any person, corporation, nonprofit organization, or government

entity that participates in a project is eligible for protection if they:

Provide equipment, materials, or services for the project for no profit;

1. Did not cause or create the abandoned mineral extraction land or water pollution;
2. Were not ordered by the state or federal government to do the work;
3. Are not performing the work under a contract for profit, such as a competitive bid project; and
4. Are not the surety that issued the bond for the site.

What Types of Land Reclamation Projects Are Covered?

Eligible projects are those that restore mineral extraction lands that have been abandoned or not completely reclaimed. This also includes areas where the mine operator has forfeited bonds on the site.

Typical conditions suitable for land reclamation projects include features such as, but not limited to, abandoned mine pits and underground mine entrances, refuse piles, and unplugged oil and gas wells. Projects addressing areas where abandoned structures or equipment from past mineral extraction operations are located are also eligible. State agencies must approve each project and determine that the project will not cause water pollution.

What Types of Water Pollution Projects Are Covered?

Eligible water pollution abatement projects are those that treat or stop water pollution caused by abandoned mines or oil and gas wells. Project proposals must be capable of improving water quality and must be approved by the state agencies.

Landowner Protections and Exceptions

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

1. Injury or damage to a person who is restoring the land or treating the water pollution while the person is on the project area;

2. Injury or damage to a person that is caused by the people restoring the land or treating the water pollution;
3. Injury or damage to a person as a result of the project;
4. Any pollution that may be caused by the project; or
5. The operation, maintenance, or repair of any water pollution treatment equipment constructed on the land, unless the landowner damages or destroys the water pollution treatment equipment or refuses to allow the equipment to be operated or repaired.

Landowners will not be protected from liability if they:

1. Deliberately or recklessly cause injury or property damage;
2. Charge a fee or receive some other form of compensation for access to the land;
3. Violate the law; or
4. Fail to warn those who are working on the project about any dangerous conditions of which they are aware within the project work area.

In addition, landowners will not be protected under the Act if the project damages adjacent or downstream landowners, and those individuals had not received written or public notice of the proposed project. This notice is given while the agencies are reviewing the proposed project.

Non-Landowner Protections and Exceptions

Those that are not landowners who participate in a land reclamation or water pollution abatement project are not responsible for:

1. Injury or damage that occurs during the work on the project;
2. Any pollution coming from the water treatment facilities; or
3. Operating, maintaining or repairing the water treatment facilities.

Participants who are not landowners will not be protected from liability if they:

1. Cause increased pollution by activities that are unrelated to work on the approved project;
2. Deliberately or recklessly cause injury or property damage;

3. Violate the law; or
4. If the project damages adjacent or downstream landowners, and
5. Written or public notice of the proposed project was not provided.
6. This notice is given while agencies are reviewing the proposed project.

How To Get Protection Under the Act?

Only projects approved by the Colorado agencies are eligible for protections under the draft Good Samaritan Act. The agencies will develop a project proposal form for participants and landowners.

Each proposal must:

Identify the project participants and landowners;

1. Describe the location of the project and the environmental problems that will be addressed; and
2. Establish a work plan for the proposed project for agency approval.

The agencies will evaluate each proposal and determine if the project is capable of reclaiming the land or improving water quality. The agencies will also advise participants on any permits that may be needed. Once the project is approved, the agencies will maintain a permanent record of the participants and landowners who are protected under the Act.

The Act Does NOT Supplant Federal Law.

The draft Colorado Good Samaritan Act provides protection under state law only and does not supplant federal law. While Colorado agencies determine project eligibility under the Act, the state agencies do not have the authority to make legal rulings on who receives protections from liability. That decision is made by a judge in a state court of law.

If a landowner or participant in a project is sued for injury or damage, they should use the state agencies' approval of the project and record of participation by landowners and others in their defense.

Alternative Options in the Colorado Legislature

While drafting this article, I received a notice from the Colorado Mining Association that the Colorado legislature's Water Resources and Agricultural Review Committee is considering a legislative proposal to address the remediation of abandoned legacy mines.

Following drafting and a fiscal analysis of potential costs, the Committee plans to vote on September 18 on whether to move forward and recommend the proposal as an Interim Committee bill.

The proposal purports to encourage entities to come forward and clean up waste rock left at legacy mine sites. As it is described to us, there will be no contact with surface water, thus it is designed to eliminate the liability issues encountered with Good Samaritan bills.

To do this, the Department of Natural Resources (through the Division of Reclamation Mining and Safety) envisions establishing a separate reclamation-only permit (separate from mining), which intends to be more streamlined and less costly. Several other provisions could be included in the legislation, one of which would authorize the state to seek full membership and participation in the Interstate Mining Compact Commission. Currently, Colorado is an "Associate Member," the only member state in this category.

The remainder of the details have yet to be determined by the Interim Committee.

This blog was drafted by John L. Watson, an attorney in the Spencer Fane Denver, Colorado office. For more information, visit www.spencerfane.com.

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