

***Colorado Environmental Management Society
Fall Conference – September 12, 2023***

Church Ranch Event Center, 10200 Wadsworth Blvd, Westminster, CO

**Abandoned Mines Remediation in Colorado
Proposals for Federal and State Legislative Solutions
The Remediation of Mineral Development Sites Act
*aka***

The Colorado Environmental Good Samaritan Act of 2024

John L. Watson

***Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203***

Cell: 303.882.7941

jwatson@spencerfane.com

Typical Good Samaritan Laws – The Focus is Protection From Civil Liability for Helping in an Emergency

Example - Virginia Law Protects Good Samaritans

- The law protects people who stop to help because it encourages people to help each other during an emergency.
- If the law provided no protection for those who did try to help others in emergency situations, then far fewer people would.

Virginia's Law

- The Virginia Good Samaritan Law, Va. Code § 8.01-225, generally protects those who try to [help accident victims](#).
 - **How Does Virginia's Good Samaritan Law Work?**
- Under [Virginia law](#), anyone who renders emergency aid to someone who is at risk of serious harm or death is immune from civil liability for injuries or death of that person.
- However, several conditions must exist in order for a person to receive this protection.
- The law shields a person from liability who acts reasonably to help someone in need at the scene of a wreck.

All 50 States Have Some Version

- All 50 states and the District of Columbia have some type of Good Samaritan law. The details of good Samaritan laws/acts vary by jurisdiction, including who is protected from liability and under what circumstances.
- The laws include all 50 states:
- <https://recreation-law.com/2014/05/28/good-samaritan-laws-by-state/>

Colorado

- **C.R.S. Section 13-21-108.**
 - **Persons rendering emergency assistance exempt from civil liability**

Colorado

- (1) Any person *licensed as a physician and surgeon* under the laws of the state of Colorado, or *any other person, who in good faith renders emergency care or emergency assistance* to a person not presently his patient without compensation at the place of an emergency or accident, including a health care institution as defined in section 13-64-202 (3), *shall not be liable for any civil damages for acts or omissions made in good faith* as a result of the rendering of such emergency care or emergency assistance during the emergency,
- *Unless the acts or omissions were grossly negligent or willful and wanton.*

Colorado

- This section shall not apply to any person who renders such emergency care or emergency assistance to a patient he is *otherwise obligated to cover*.
 - *So, does this section apply to women?*
 - *Claro*
 - *Ciertamente*
 - *Si*
 - *Of course, amigos*

Colorado

- (2) Any person while acting as a ***volunteer member of a rescue unit***, as defined in **section 25-3.5-103 (11), C.R.S.**, notwithstanding the fact that such organization may recover actual costs incurred in the rendering of emergency care or assistance to a person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident ***shall not be liable for any civil damages for acts or omissions in good faith.***

Colorado

- (3) Any person, including a ***licensed physician, surgeon, or other medical personnel***, while ***acting as a volunteer member of a ski patrol or ski area rescue unit***, notwithstanding the fact that such person may receive free skiing privileges or other benefits as a result of his volunteer status, who in good faith renders emergency care or assistance without other compensation at the place of an emergency or accident ***shall not be liable for any civil damages for acts or omissions in good faith***.

Colorado

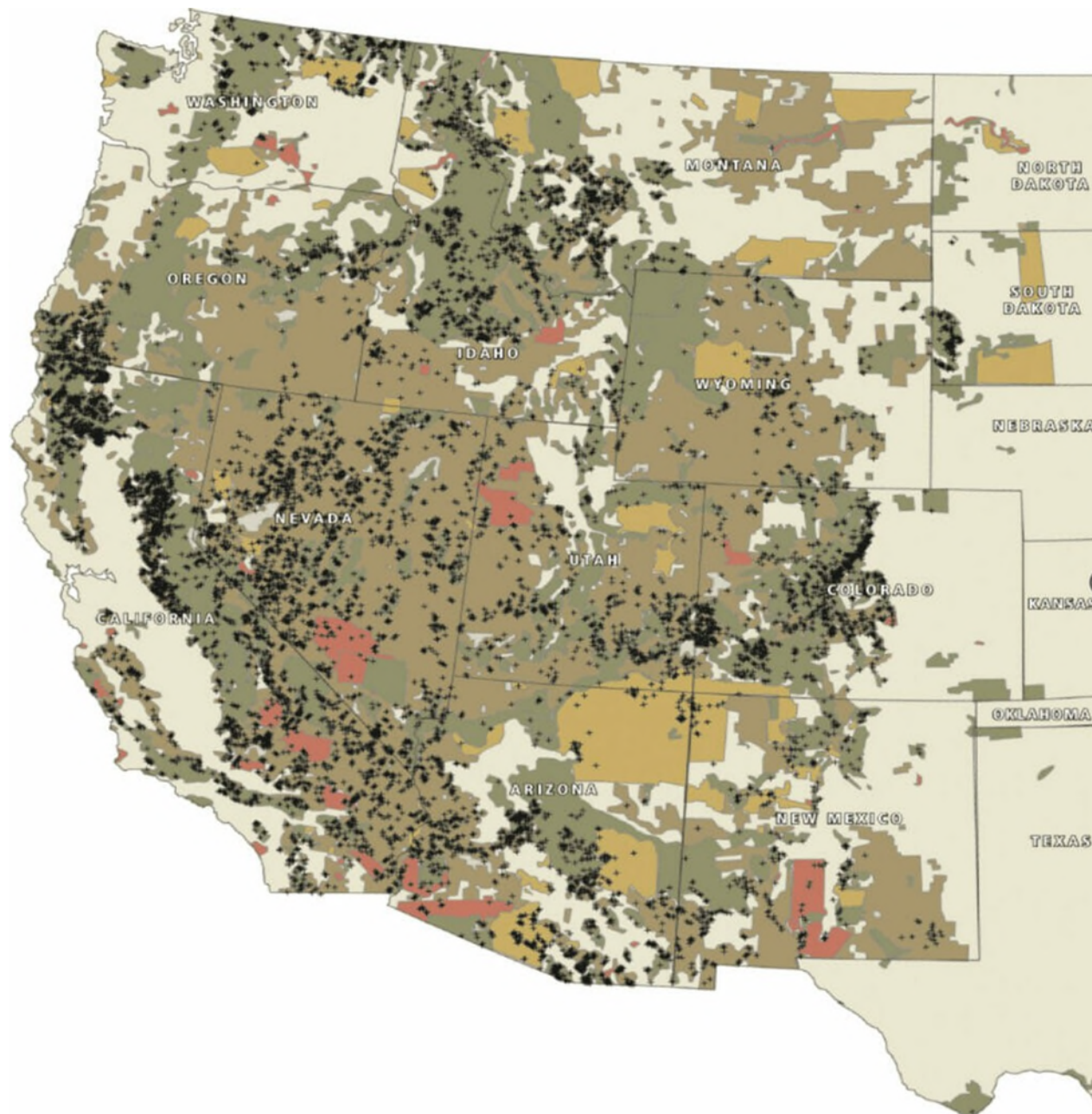
- (5) An ***employer shall not be liable for any civil damages for acts or omissions made by an employee*** while rendering emergency care or emergency assistance if the employee:
 - (a) Renders the emergency care or emergency assistance in the course of his or her employment for the employer; and
 - (b) ***Is personally exempt from liability for civil damages for the acts or omissions*** under subsection (1) of this section.

So, That Sets The Stage

- If you're being a good person
- Trying to help out
- And didn't cause the problem
- Or were already responsible, somehow,
- A Good Sam (or Good Samantha)
- Should NOT have to worry about being liable
- For voluntarily helping to fix the problem.

And What's the Problem?

- ***Wherever you have mineral development***
- ***You'll have abandoned mines, oil wells, and operations***

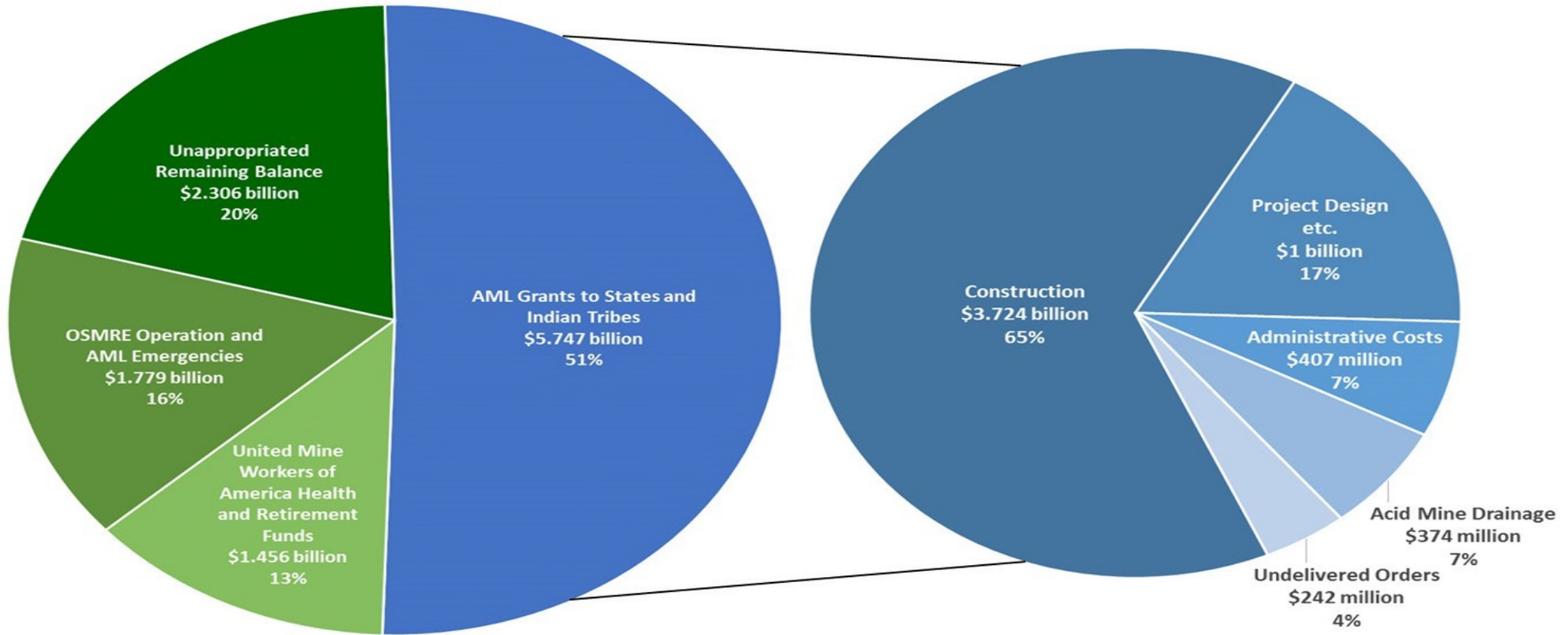


For Some Problems

Lots and Lots of Money



Abandoned Mine Land (AML) Reclamation Fund FY 1977 – FY 2018 Total \$11.288 Billion as of September 30, 2018



Data Sources: OSMRE's DOI Financial Business Management System (FBMS) is the system of record for the AML Program that contains comprehensive information on AML grant allocations and expenditures. The enhanced Abandoned Mine Land Inventory System (eAMLIS) only accounts for direct construction costs to reclaim each AML problem.

But Not For These Problems













And the Big One – The Gold King Animas River Spill

- *August 5, 2015.*
- Workers accidentally spilled a *million gallons* of mine waste into the Animas River.
 - The contaminants that dumped into the river,
 - At a rate of *548 gallons per minute,*
 - Included *arsenic, copper, zinc, lead, aluminum, and cadmium.*
- The Animas flows into the San Juan River in New Mexico
- And joins the Colorado River in Utah's portion of Lake Powell.

Trout Unlimited Supporting Bipartisan Federal Legislation

The Trout Unlimited 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.

Link: <https://www.tu.org/good-samaritan/>

Trout Unlimited Summarizes The Legal Conundrum

- There are two types of hardrock mining pollution – waste rock piles and draining mine openings. The 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 from intermingling with water.
- For instance, a project might move waste rock away from streams, cap the waste rock with impermeable materials or haul waste rock away for dry disposal.

Trout Unlimited Summarizes The Legal Conundrum

- However, under the Clean Water Act, a mine discharging polluted water out of a tunnel is considered ‘point-source’ pollution, meaning it is 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 National Pollutant Discharge Elimination System and meet the conditions of the Clean Water Act with water treatment.

Trout Unlimited Summarizes The Legal Conundrum

- This is an effective system and necessary to maintain the health of our nation's waters –
 - ***Except when there's an abandoned mine with no entity legally responsible for the cleanup.***
- In this situation, the liability for the pollution could transfer to the Good Samaritan, leaving them on the hook for any remaining pollution
 - ***Even though they did not create the pollution in the first place and have made successful improvements to water quality with their remediation project.***

Trout Unlimited Summarizes The Legal Conundrum

- In most cases, the only way to meet Clean Water Act standards for acid mine drainage is through active treatment facilities, but the remote location of many abandoned mines precludes the use of active treatment systems.
 - ***In these situation passive treatment technologies and nature-based solutions are the best and most cost effective way to improve water quality.***
- This might include tumbling mine water over limestone rocks to lessen the acidity, and engineered wetlands or settling ponds to capture heavy metals.

Trout Unlimited Summarizes The Legal Conundrum

- These are the types of low-risk projects that Good Samaritan legislation would implement to help make our nation's waters more swimmable, fishable and drinkable.
- ***But first, we need Congress to pass liability protections to make these projects a reality.***

U.S. Congressional Action The Proposed Good Samaritan Remediation of Abandoned Hardrock Mines Act

A proposed bill in the U.S. Senate (S.3571) was introduced in 2022 and will be submitted again this year.

The bill is intended to address these concerns at the federal level.

The bipartisan **Good Samaritan Remediation of Abandoned Hardrock Mines Act** would make it easier for “Good Samaritans” such as state agencies, local governments, nonprofits, and other entities and persons to clean up and improve water quality in and around abandoned hardrock mines.

Federal Good Samaritan Legislation

The federal legislation would establish a new **pilot program** administered by the Environmental Protection Agency 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.

Federal Good Samaritan Legislation

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 Colorado Facts

- Estimated **23,000** abandoned mine lands (AML) in Colorado
 - Source: Colorado Geological Survey
- The Colorado Geological Survey conducted an abandoned mine land (AML) inventory for the U.S. Forest Service on National Forest System lands in Colorado from 1991 through 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!

Colorado's Inactive Mine Reclamation Program

- Since 1980, the *Inactive Mine Reclamation Program* which is run by the Division of Reclamation, Mining and Safety (“DRMS”) has safeguarded over 10,500 hazardous openings and reclaimed 4,000 acres of abandoned mined land statewide.
- Link: <https://drms.colorado.gov/programs/inactive-mine-reclamation-program/inactive-mine-reclamation-program-progress-and>
- The major program activity is to identify the hazards and environmental problems arising from abandoned mines, design appropriate closure methods and reclamation techniques for project sites and reclaim or safeguard abandoned mine hazards and environmental problems with the landowner's consent.

Colorado's Inactive Mine Reclamation Program

- Project activities include:
 - field investigations,
 - project development,
 - project design,
 - realty work,
 - historical and cultural resource evaluation,
 - wildlife considerations,
 - NEPA compliance,
 - construction contract bidding and management,
 - site construction and reclamation,
 - construction inspection, and
 - site monitoring and maintenance of prior project work.

Colorado's Inactive Mine Reclamation Program

- DRMS has numerous partners participating in mine safety closure projects with the goal of alerting the public to the hazards of exploring abandoned and inactive mines.
- Partners include the Bureau of Land Management, the U.S. Forest Service, Colorado Division of Parks and Wildlife, Women in Mining, local county and city governments, mining associations, private citizens, and the Colorado Scenic and Historic By-Ways Commission.

The Colorado Good Samaritan Act of 2024 (The “CGSA”)

Proposed state legislation would ***complement, not supplant***, the existing Inactive Mine Reclamation program run by DRMS.

In addition, this state law does not trump federal law.

The Clean Water Act, Clean Air Act, RCRA, Superfund and other federal laws would still be alive and well in Colorado.



The Colorado Good Samaritan Act of 2024 (The “CGSA”)

***The proposed CGSA provides incentives for,
and attempts to remove roadblocks***

***To encourage and allow Good Samaritans to
engage with others to reclaim abandoned sites.***



The Pennsylvania Environmental Good Samaritan Act of 1999

- The Colorado proposed legislation is based on the Pennsylvania statute which was signed into law on December 15, 1999.
- Link to text of *Pennsylvania Environmental Good Samaritan Act*
- <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=27&div=0&chpt=81>

Outline of the Colorado Proposal



The Act's Purpose

- The proposed statute would protect landowners, groups and individuals who volunteer for such projects from civil and environmental liability.
- Law is intended to encourage landowners and others to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mines, and 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 under the Act?

- ***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:

Who is eligible for protection under the Act?

- ***Provide equipment***, materials or services for the project for no profit;
- ***Did not cause or create*** the abandoned mineral extraction land or water pollution;
- ***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 competitive bid project; and
- ***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 that are 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 under the Act?

- 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 agencies.

What protections are provided to landowners who allow their property to be used for a water pollution abatement or land reclamation project?

- Landowners who provide access to the project area are **not** responsible for:
 - Injury or damage to a person who is restoring the land or treating the water pollution while the person is on the project area;
 - Injury or damage to a person that is caused by the people restoring the land or treating the water pollution;

What protections are provided to landowners who allow their property to be used for a water pollution abatement or land reclamation project?

- Injury or damage to a person as a result of the project;
- Any pollution that may be caused by the project; or
- 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.

Are there exceptions to the protections provided to landowners under the Act?

- Landowners will not be protected from liability if they:
 - *Deliberately or recklessly* cause injury or property damage;
 - **Charge a fee** or receive some other form of compensation for access to the land;
 - **Violate the law**; or
 - **Fail to warn** those who are working on the project about any dangerous conditions of which they are aware within the project work area.

Are there exceptions to the protections provided to landowners under the Act?

- 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.

What protections are available to individuals who participate in a land reclamation or water treatment project?

- Participants in a land reclamation or water pollution abatement project are not responsible for:
 - Injury or damage that occurs during the work on the project;
 - Any pollution coming from the water treatment facilities; or
 - Operating, maintaining or repairing the water treatment facilities.

Are there any exceptions to the protections provided to a participant in a land reclamation or water treatment project?

- Participants will not be protected from liability if they:
- ***Cause increased pollution*** by activities that are unrelated to work on the approved project;
- ***Deliberately or recklessly*** cause injury or property damage; or
- ***Violate the law.***

Are there any exceptions to the protections provided to a participant in a land reclamation or water treatment project?

- Additionally, participants are not protected under the Act if the project damages adjacent or downstream landowners, and
- Written or public notice of the proposed project was not provided.
 - This notice is given while agencies are reviewing the proposed project.

The Act Does **NOT** Trump Federal Law

- The Colorado Good Samaritan Act provides protection under state law only and does not apply to federal law.
- While Colorado agencies determine project eligibility under the Act, the agencies do not have the authority to make legal rulings on who receives protections from liability.
 - Who decides that issue?
 - Judge in a court of law.
- If a landowner or participant in a project is sued for injury or damage,
 - They should use the agencies' approval of the project and record of participation by landowners and others in their defense.

How does anyone get protection under the Act?

- Only projects ***approved by the Colorado agencies*** are eligible for protections under the Good Samaritan Act.
 - The agencies will develop a ***project proposal form*** for participants and landowners.
- ***Each proposal must***
 - Identify the project participants and landowners,
 - Describe the location of the project and the environmental problems that will be addressed, and
 - Establish a work plan for the proposed project for agency approval.

How does anyone get protection under the Act?

- 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 Good Samaritan Act.

Positive Reinforcement





Mine Reclamation



Before



After

Reclamation of Abandoned Coal Mines in Ağaçlı, İstanbul



Pennsylvania Environment Digest Blog

Coal Mine Reclamation



Before

Harmony Lake, MO

After



Yellowstone's Soda Butte Creek

U.S. Park Service



Hope Mine Near Aspen, Colorado



Eagle Mine, Colorado



In 1993



After reclamation, 1999

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The Remediation of Mineral Development Sites Act

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