

Good Samaritan Protection for Abandoned Mine Cleanup

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TROUT UNLIMITED

PA's Environmental Good Samaritan Act

Any landowner or person who voluntarily provides equipment, materials, or services at no charge or at cost for a reclamation project or a water pollution abatement project is covered from:

- Liability for any injury or damage incurred during project
- Legal responsibility/liability for any pollution resulting from project
- Citizen suit filed under PA's Clean Streams Law for pollution resulting from project
- Liability for the operation, maintenance, or repair of the water pollution abatement facilities constructed or installed during the project

PA's Environmental Good Samaritan Act is Not the “Cure All” for Liability

- Surface Mining Control and Reclamation Act (SMCRA) does not provide pollution liability protection
- PA's Environmental Good Sam does not provide pollution liability under the federal Clean Water Act (CWA)
 - Still subject to third party citizen suits under CWA

More on the Federal Clean Water Act

- By legal definition, abandoned mine drainage is a point source of pollution
- CWA defines a point source as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container.... from which pollutants are or may be discharged.”
- All point sources of pollution require, under the CWA, NPDES permits
 - Translates into end-of-pipe treated water must meet water quality based effluent limits, which would be cost-prohibitive for most passively treated AMD

Abandoned Hard Rock Mine Cleanups Stymied by CWA

- Case law in western states has effectively halted any volunteer-sponsored remediation projects for abandoned hard rock mine sites
- Only pollution prevention projects allowable without obtaining permit – or those that receive Agreement Order on Consent for reduction of CERCLA (Superfund) liability
- Ongoing efforts in past ~15 years to pass some type of federal Good Samaritan Act

Clean Water Act Liability Concerns

- Outcome of recent litigation WV Highlands Conservancy v. Huffman
 - “Keeley Decision” (January 2009)
 - 4th Circuit Court of Appeals decision (November 2010)
 - Decision upheld lower court’s ruling that certain treatment systems for treating AMD are point sources of pollution that require NPDES permits under the Clean Water Act
- Good Samaritans are vulnerable to third-party citizen suits under the federal CWA