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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 ENERGY AND MINERAL RESOURCES
of the
HOUSE NATURAL RESOURCES COMMITTEE

Legislative Hearing on H.R. 3843, the Locatable Minerals Claim Location and Maintenance Fees Act of 2015,
and H.R. 3844, the Energy and Minerals Reclamation Foundation Establishment Act of 2015

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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 a former President of the National Association of Abandoned Mine Land Programs (NAAMLP). I am appearing here today on behalf of the AML Association 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. My comments will also address the two recently introduced bills before the Committee: H.R. 3843, the *"Locatable Minerals Claim Location and Maintenance Fees Act of 2015,"* which would authorize for a 7-year period the collection of claim location and maintenance fees; create a national hardrock AML reclamation program; and provide liability relief to Good Samaritans working to reclaim abandoned mine lands or restore mine drainage impacted waterways resulting from both abandoned coal and noncoal/hardrock mines, and H.R. 3844, the *"Energy and minerals Reclamation Foundation Establishment Act of 2015,"* which would establish the Energy and Minerals Reclamation Foundation to encourage, obtain, and use gifts, devises, and bequests for projects to reclaim abandoned mine lands and orphan oil and gas well sites. These topics are 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, certain provisions which should be included in any potential Good Sam legislation, and the potential for the bills before the committee today to address these issues.

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.

There are myriad reasons why 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 (CWA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). 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 abandoned mine discharge (AMD) impaired waters. The provisions of Title III of H.R. 3843, "Good Samaritan Remediation of Abandoned Mine Lands," show considerable promise in establishing an effective federal Good Samaritan program. There are however certain provisions which require additional attention, in order to ensure that the efforts of potential Good Samaritans are not discouraged by impracticably extensive permitting and financial capability requirements. This will in turn ensure the program achieves the maximum benefit possible for the remediation of lands and waters affected by abandoned mines.

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 and the restoration of mine drainage impacted waterways.

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 and CERCLA 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 as authorized under the federal Surface Mining Control and Reclamation Act (SMCRA). 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, a significant amount of the hardrock AML sites have been identified and inventoried. The results of that effort 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. The states are therefore well positioned to direct limited reclamation dollars to best protect public health and safety and the environment.

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 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.

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.

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 and restore AMD impaired streams. 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 these 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 qualifies 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 more than 50 Good Samaritan projects to date, and the participants have included local governments, individuals, watershed associations,

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

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 Bennett Branch 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. These projects are discussed at length in Attachment B. While substantial progress has been made under the Pennsylvania program 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.

H.R. 3843 – The Locatable Minerals Claim Location and Maintenance Fees Act of 2015

The states and Tribes represented by IMCC and NAAMLP are thankful to Chairman Lamborn and the Committee for their efforts to develop a program to further the reclamation of hardrock AML sites and to provide protections for Good Samaritans seeking to facilitate remediation efforts. This bill captures many of the aspects we believe are critical in establishing a national Good Samaritan Program. Overall, we are encouraged by the bill and find that it includes many beneficial provisions, in particular for Title III – "Good Samaritan Remediation of Abandoned Mine Lands." A summary of these beneficial provisions is included below, and they are further discussed in the subsequent section of this testimony titled, "Considerations in Crafting a Federal Good Samaritan Program."

IMCC and NAAMLP are particularly supportive of the inclusion of the following provisions:

- ✓ Allows states and Tribes to apply for and administer delegated Good Samaritan programs
- ✓ Provides liability protections for both CWA and CERCLA
- ✓ Applies to coal in addition to hardrock/noncoal AML sites.
- ✓ Allows for partial remediation where appropriate
- ✓ Allows for permit transfer
- ✓ Exempts state and Tribal SMCRA Title IV AML programs from CWA requirements

We are also generally supportive of Title I, "Mining Claim Location and Maintenance Fees," and Title II, "Department of the Interior Inactive and Abandoned Noncoal Mine Lands Program." With regard to Title II and the need for a national noncoal AML program more generally, IMCC and NAAMLP have consistently advocated for legislation that would allow state and Tribal AML programs to address historic hardrock AML problem areas, beginning with the inclusion of Section 409 of SMCRA in 1977. There is clearly a need to establish both the funding mechanism and the administrative program to address these legacy sites. We believe that the approach provided by Title II of H.R. 3843 to further the remediation of noncoal AML sites on federal lands is a promising step in the right direction. We also advocate for a delegated program and required funding for reclamation of hardrock AML sites located outside federal lands.

We are however concerned about certain aspects of H.R. 3843, in particular with the regard to the permitting scheme for Good Samaritans utilized by Sec. 303 of Title III. The overall concern is that the elaborate permitting approach suggested by the bill would be unworkable and a discouragement for many, if not most, potential Good Samaritans, for a number of reasons.

Potential Good Samaritans, in particular NGO's, tend to have limited funding, often in the form of discrete grants. They often acquire funding for watershed restoration projects in small incremental amounts over long periods of time. Overly burdensome permitting requirements will therefore be cost-prohibitive, as many NGO's will not be able to afford compliance with several aspects of the proposed permitting program. These permitting activities would have to be completed before the project is approved. Many NGO's will be reluctant to expend a substantial amount of their grant to develop a project which may never be implemented.

Furthermore, if the permits anticipated by this section would have end dates, meaning that protections would only apply during the time frame of the permit, many potential Good Samaritans will be reluctant to engage in activities for which they might incur liability beyond the termination date of a permit, as would be the case with water treatment projects. Good Samaritans must be supplied with liability protection in perpetuity in order to ensure that they can afford to undertake the project. Similarly, the permit requirement in Sec. 303 (I) to provide evidence that the applicant has sufficient financial resources to carry out any operation and maintenance activities related to the remediation will be extremely prohibitive. Most potential Good Samaritan groups, including the states, will not have the type of financial resources available to fulfill or guarantee this requirement.

As an alternative to a permitting system as outlined in Sec. 303, we suggest consideration of the procedure utilized by the Commonwealth of Pennsylvania's successful Environmental Good Samaritan Act (EGSA). This system utilizes letters of approval that apply to a specific AML or AMD project rather than permits, and is generally more workable and less cost-prohibitive to the efforts of potential Good Samaritans. For example, grant applications include descriptions of the proposed projects, but are not required to submit detailed engineering plans until the basic aspects of the project have been approved, thereby preventing the potential Good Samaritan group from wasting limited resources. Additionally, the EGSA approval provides Good Samaritan projects involving treatment systems that require long-term operation and maintenance perpetual protection from liability, rather than only during the duration of a permit, which quells concerns with long-term liability. The system utilized by the Pennsylvania program is outlined further in Appendix A.

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. We are encouraged that H.R. 3843 would allow for states and tribes to apply for and administer delegated Good Samaritan programs. This section of the bill may require additional attention to clarify that programs administered by the states could undertake projects on state and private lands as well as federal land, and that existing successful state programs could meet the requirements for delegation.

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. We believe that the extension of protections provided by H.R. 3843 to CERCLA in addition to the CWA is reasonable and will encourage Good Samaritan remediation work.

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. We support the eligibility of coal AML sites under H.R. 3843's proposed Good Samaritan program. The inclusion of coal AML will empower local groups to make a much greater impact on the vast inventory of remaining coal AML hazards and coal mine drainage impacted streams.

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. Pursuant to the Fourth Circuit Court of Appeals decision in *West Virginia Highlands Conservancy v. Huffman*[2] 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 unwilling 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.

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

[2] U.S. Fourth Circuit Court of Appeals in *West Virginia Highlands Conservancy v. Huffman*, 625 F.3d 159 (4th Cir. 2010)

that would be imposed by an NPDES permit, and experience has shown that significant improvements in stream water quality can be achieved with partial remediation. 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, landowner cooperation, and cost. The mine drainage at these sites is being treated, pollution is substantially reduced, and noticeable water quality improvements are being made. For these reasons, a potential requirement to obtain NPDES permits for abandoned mine drainage treatment systems would severely complicate and discourage such work, and is of great concern to the state regulatory programs and local watershed groups. Therefore, we support the provision of H.R. 3843 exempting AML reclamation and water treatment work undertaken by the states pursuant to Title IV of SMCRA from NPDES requirements under the CWA. This provision will bolster the efforts of the state and tribal AML programs by protecting the 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. It is poor public policy and short-sighted to reject the opportunity to achieve partial restoration that makes a significant improvement where total cleanup cannot be achieved for one reason or another. 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 are encouraged to see that H.R. 3843 appears to allow for partial remediation.

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 that speaks directly to the potential liabilities of landowners who would otherwise allow free access to Good Samaritan groups seeking to do remediation work.

Good Samaritan protections should be extended to projects undertaken on state and private lands in addition to federal 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. Some additional attention may be beneficial to clarify that H.R. 3843 would provide eligibility to projects on state and private lands.

Another commonly discussed means of facilitating abandoned mine land remediation is providing opportunities for remining and refuse recovery. The Commonwealth of Pennsylvania has made significant progress in cleaning up AML sites through such provisions. While IMCC and NAAMLP maintain that these options should be addressed in a separate and distinct effort from Good Samaritan legislation, they are nonetheless promising additional opportunities which bear consideration.

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 and other AML sites with minimal remaining coal reserves, 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 or the minimal quantity of marketable 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 and 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 January 1991 and December 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 reclamation and 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.

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 (and other federal environmental laws) 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. IMCC and NAAMLP would welcome the opportunity to continue developing H.R. 3843 in order to ensure that it achieves the maximum possible benefit to Good Samaritan efforts in remediating the multitude of AML sites which beset so many of our historic mining communities nationwide.

H.R. 3844

IMCC and NAAMLP thank Representative Hice and the Committee for the opportunity to review H.R. 3844, the Energy and Minerals Reclamation Foundation Establishment Act of 2015. In the pursuit of a problem as massive and far-reaching as the prevalence of abandoned mine lands and the impact on our water from abandoned mine drainage associated with these sites, every opportunity for additional funding and attention to the problem is helpful. We believe H.R. 3844 to be a promising step in that direction. We would welcome the opportunity to continue working with the Committee to more fully understand and assist with the creation of the Energy and Minerals Reclamation Foundation.

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 - Provisions of the Pennsylvania Environmental Good Samaritan Act[3]

The effect of a projects acceptance under Pennsylvania's program are outlined below:

(a) General rule.—Except as specifically provided in subsection (b), a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

> (1) Shall be immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project.
> (2) Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.
> (3) Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.
> (4) Shall not be subject to a citizen suit under section 601 of the act of June 22, 1937 (P.L.l987, No.394), known as The Clean Streams Law, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

Pennsylvania's Environmental Good Samaritan Act 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. 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.

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

- 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.

Appendix-B - Relevant Examples of Pennsylvania AMD Treatment Projects

Bennett Branch Restoration Project

Beginning in 2004, the Pennsylvania Department of Environmental Protection (PA-DEP), Bureau of Abandoned Mine Reclamation (BAMR) worked with multiple partners to restore water quality and reclaim abandoned mines in the Bennett Branch Sinnemahoning Creek Watershed in northcentral Pennsylvania. The Bennett Branch is a tributary to the Susquehanna River which flows to the Chesapeake Bay in Maryland. Over 70% of the land in the watershed is publicly owned in the form of state park land, state forest land, or state game lands. The primary water quality problems in the watershed were the result of uncontrolled and untreated discharges of acid mine drainage (AMD) from abandoned mine lands (AML) that severely degraded the water quality in the lower 33 miles of the Bennett Branch and many of its tributaries. As a result of the AMD impairment, those 33 miles of stream were nearly completely devoid of life.

The primary objective of the Bennett Branch Restoration Project was to develop and implement a detailed mine drainage abatement and abandoned mine reclamation plan. The goals of the plan were to restore water quality in the main stem of the Bennett Branch, improve water quality in the AMD impacted tributaries, and maximize the reclamation of AML throughout the watershed. The plan included a combination of surface reclamation and both active and passive mine drainage treatment. Limestone reserves within the project area provided an opportunity to incorporate alkaline addition in the surface reclamation. Mineable reserves of Upper and Middle Kittanning Coal within the limestone extraction area provided an opportunity to partner with the mining industry in project implementation. The remining was conducted under a demonstration permit authorized under Project XL, an experimental permitting process cooperatively developed by EPA, OSM and the PA-DEP to both facilitate remining and highlight its benefits. The restoration work was pursued in conjunction with the PA Wilds Initiative which advocates economic development and tourism throughout north-central Pennsylvania.

The PA-DEP-BAMR partnered with the Bennett Branch Watershed Association (BBWA), several other state and federal agencies, and the mining industry to maximize the restoration work and to reduce the overall project cost. The BBWA applied for and received approval for PA Good Samaritan protections for their involvement in the project. The project included reclamation of over 800 acres of AML, much of which was restored to rangeland for PA's growing elk herd. Additionally, five passive mine drainage treatment systems and two tipping bucket lime dosers were constructed to treat abandoned mine discharges throughout the watershed. Work on the project was completed in 2012 with the Hollywood AMD Treatment Plant, which treats an average of 2,000 gallons per minute (2.9 million gallons per day) of AMD, being the single biggest project. The Hollywood Plant treats 21 separate AMD discharges at a centralized location which originate from four separate abandoned underground coal mine complexes. The number and severity of the AMD discharges located within the watershed made a "total clean up" to federal CWA standards cost prohibitive. The level of treatment was designed to allow for the biological recovery of the Bennett Branch to support a sport fishery. The project costs for this public-private partnership, which approached $45 million, were split with industry bearing approximately 15% of the total project cost, federal agencies providing approximately 10%, and state/local sources providing the remaining 75%. Water quality has been significantly improved to the

point where, beginning in 2013, fish are now being stocked in the main stem of the Bennett Branch and fish have returned to the Dents Run tributary for the first time in roughly 100 years. In addition to restoration of the main stem of the Bennett Branch, the project allowed for the reconnection of numerous high-quality tributaries which facilitated that rapid biological recovery of the watershed. The PA-DEP developed a short documentary about the project which is posted on the Department's YouTube channel and can be view at the following web link: https://www.youtube.com/watch?v=xERv4sYgyLY.

Abandoned Mine Discharge in the Bennett Branch Watershed

Bennett Branch near the Village of Hollywood Severely Impaired by AMD

AMD Impacted Main Stem of the Bennett Branch Prior to Restoration

Aerial view of the Hollywood AMD Treatment Plant

Lime Doser Treating Abandoned Deep Mine Discharge in the Bennett Branch Watershed

Main Stem of the Bennett Branch Following Restoration

Unreclaimed AML Site with Dangerous Highwalls on State Game Lands in the Bennett Branch

Unreclaimed AML Site with Dangerous Highwalls on State Game Lands in the Bennett Branch

Elk Grazing on Reclaimed AML Site in the Bennett Branch

Remining Operation that Provided Limestone for Other Reclamation Sites in the Bennett Branch

Fish Being Stocked in the Bennett Branch in April 2013

Fish Being Stocked in the Bennett Branch in April 2013

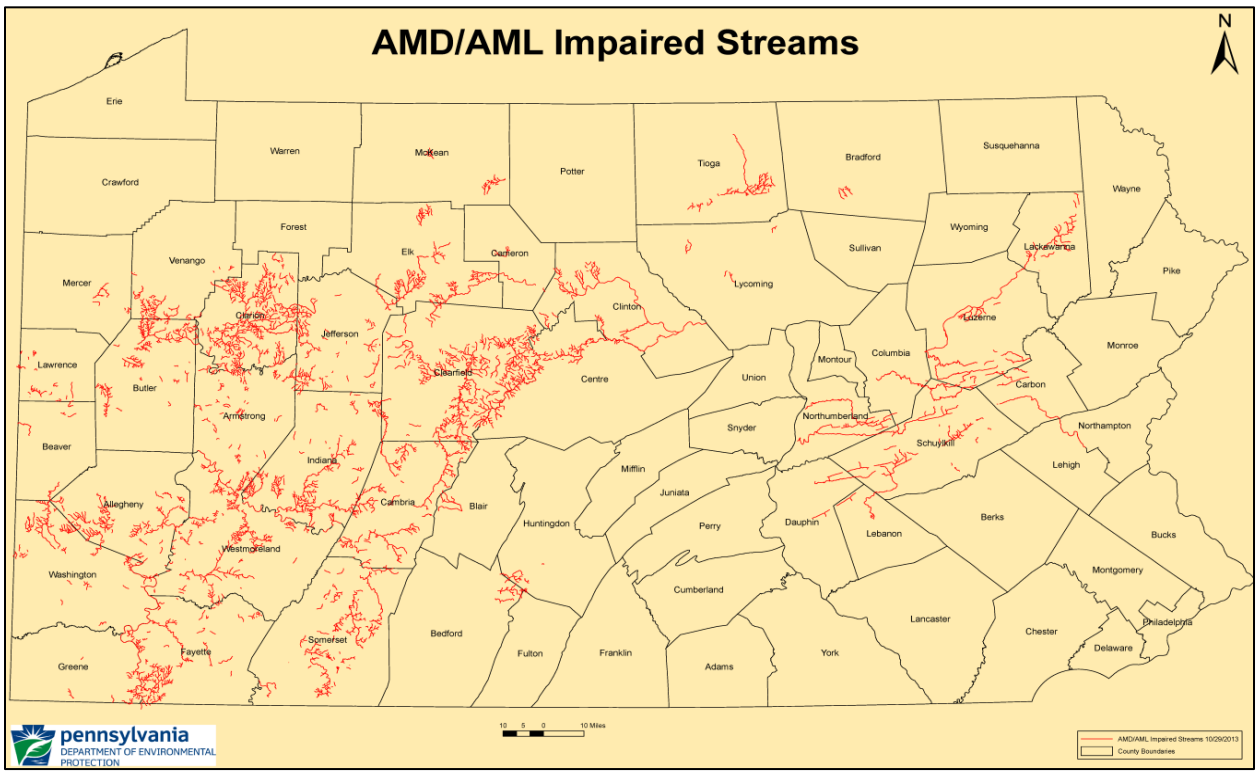
The Gladden AMD Discharge – Chartiers Creek Watershed

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

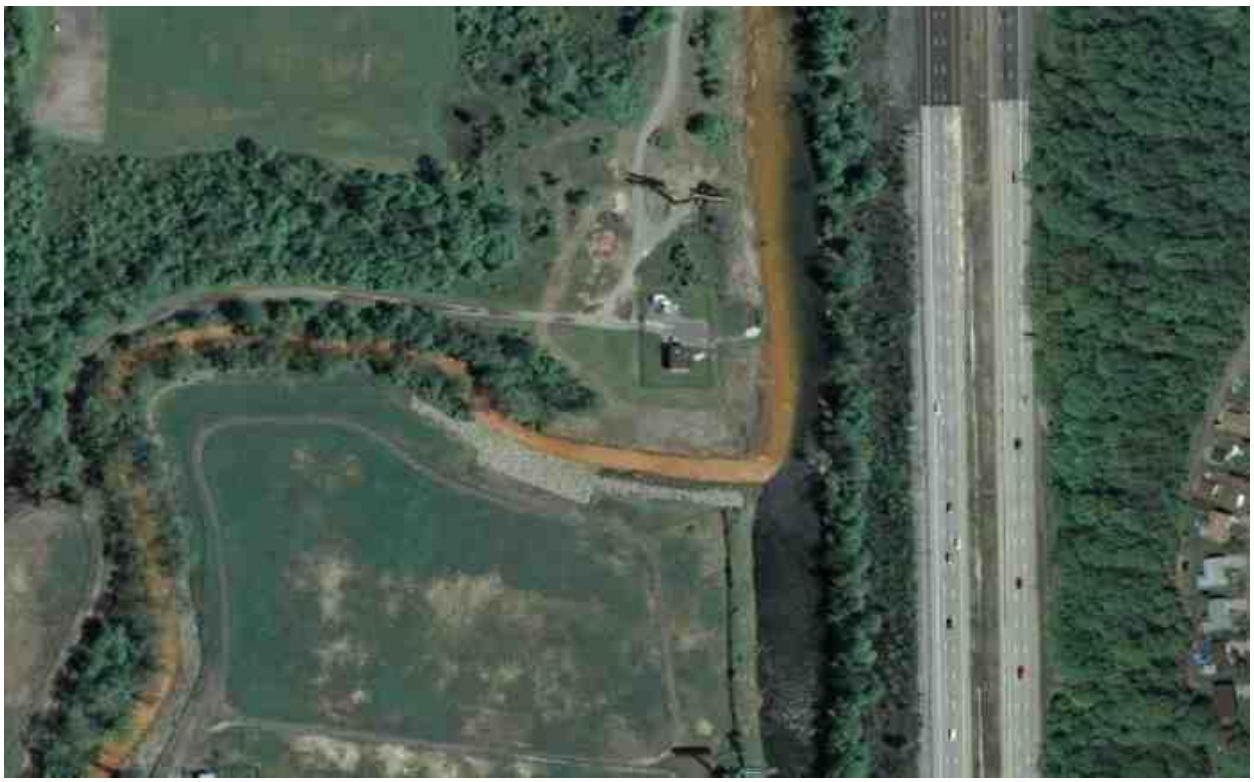
Gladden AMD Discharge in the Chartiers Creek Watershed

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