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**Testimony on *Abandoned Mined Lands: Innovative Solutions for Restoring the Environment, Improving Safety and Creating Jobs***

**July 14, 2011**

**Executive Summary**

Chairman Lamborn, Ranking Member Holt and Members of the Committee, the Northwest Mining Association (NWMA) appreciates this opportunity to provide testimony on *Abandoned Mined Lands: Innovative Solutions for Restoring the Environment, Improving Safety and Creating Jobs*.

The mining industry has long been front and center in trying to deal responsibly with AMLs. Some of these efforts are documented in a study researched and authored by two of our members, Debra W. Struhsacker and Jeff W. Todd, and published in 1998 by the National Mining Association entitled “*Reclaiming Inactive and Abandoned Mine Lands – What Really is Happening.*” (A copy of this study is being included in the record and is hereinafter cited as the “NMA Study”). This study presents compelling evidence that given the right opportunity, the mining industry can play a significant role in eliminating the safety hazards and improving the environment at abandoned and inactive mines.

The industry also continues to strongly support the enactment of comprehensive Good Samaritan legislation that would allow mining companies with no previous involvement at an AML site to voluntarily reclaim and improve safety and environmental conditions at that site, in whole or in part, without the threat of potentially enormous liability under CERCLA, the Clean Water Act, and other federal and state environmental laws.

Industry wants to see abandoned mines cleaned up. After all, they are incorrectly portrayed as being *our* dirty pictures, when they in fact represent the results of historic practices, typically 50 to 150 years old, implemented by companies no longer in existence and/or persons no longer alive, and are reflective of societal values at that time (for example metals production at all costs for World War II). Nevertheless, mining opponents use pictures of historic, unreclaimed abandoned mines to foment public opposition to new mine proposals, suggesting disingenuously that these historic practices reflect modern practices. This is the equivalent of showing a picture of a 1957 Chevrolet Bel Air and stating that it does not have seat belts, air bags, pollution control devices or meet CAFE requirements and therefore GM should not be allowed to produce new cars in 2011.

Industry wants to see AMLs reclaimed and safety and environmental conditions improved as much as anyone, but we need your help. The mining industry has the desire, the experience, the technology, and the expertise to mitigate and reclaim AMLs. In fact, the mining industry has more experience and expertise than all other potential Good Samaritans combined. Additionally, the mining industry can contribute private-sector capital towards addressing the abandoned mine problems thereby reducing the need for public-sector resources. Effective Good Samaritan legislation makes sense and can be a win-win-win for the environment, for federal, state and local governments, for jobs for the Good Samaritan, for the community, and for society. We are here today to ask Congress to do its part and enact Good Samaritan legislation that will remove the legal liability hurdles and provide non-monetary incentives for a variety of persons and entities to reclaim and improve safety and environmental conditions at AMLs throughout the West.

We applaud the Chairman for holding this hearing and look forward to working with him to produce Good Samaritan legislation that will actually result in on-the-ground Good Samaritan cleanups at Abandoned Mine sites.

### **NORTHWEST MINING ASSOCIATION: WHO WE ARE**

NWMA is a 116 year old, 2,000 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration, mining and reclamation operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens. Our members have extensive first-hand experience with reclaiming active and inactive mine sites and remediating a variety of environmental conditions and safety issues at these sites.

Our members also have extensive knowledge of Abandoned Mine Lands (AMLs) in the U.S. In addition to the study mentioned above, Ms. Struhsacker has testified before the Senate Energy and Natural Resources Committee on AML issues (March 12, 2008), and I have testified before this subcommittee on AML and Good Samaritan issues on two previous occasions (July 13, 2006 and October 3, 2007). Another NWMA member, Julian C. Isham, testified at a subcommittee field hearing on *Abandoned Mines and Mercury in California* (November 23, 2009). Copies these testimonies are attached and incorporated into the record for this hearing.

### **ABANDONED MINE LANDS ARE HISTORIC**

It is important to understand when we talk about hardrock abandoned mine lands we are talking about a problem which was created in the past due to mining practices used at sites mined prior to the enactment of modern environmental laws and regulations and the requirement for mine operators to provide financial assurance to guarantee their sites will be properly reclaimed. Table 1 lists the dates of development of many of the major mining districts in the country compared to the dates of enactment of many of the federal and state environmental laws and regulations that govern hardrock mining activities. As is clearly seen from this table, mining in the U.S. dates back to the 1820s, with significant historic mine development throughout the remainder of the 19<sup>th</sup> century and into the early part of the 20<sup>th</sup> century. Many of the AML sites that need attention were created in this timeframe.

It also is important to note that during World Wars I and II, the federal government directed operations at many mines to produce the metals and minerals necessary for the war efforts. The focus was on maximizing production and winning the war – not on using mining methods that were designed to protect the environment. The metals mined from these sites greatly benefited U.S. society by contributing to the country's victories in both wars. What we are left with today, however, are the environmental impacts created by these unregulated mining activities. Some of these war-efforts mines are now abandoned. Because the American public benefited in the past from mining of these sites, we now have a public responsibility to develop policies and funding mechanisms to reclaim these sites.

Many modern mining practices began to be implemented in the mid-1960s at about the same time that the country was developing an environmental awareness and when Congress was starting to enact environmental laws. Thus, as is readily apparent from Table 1, the U.S. environmental statutory and regulatory framework is a recent development compared to the history of mining in the U.S. Moreover, it

is important to recognize that many of the laws and regulations governing hardrock mining are quite new – some are less than 25 years old. For example, Nevada’s state reclamation law went into effect in 1990, only 21 years ago. BLM’s regulations for hardrock mining, the 43 CFR. Subpart 3809 program, went into effect in 1981 and were substantially updated just ten years ago in 2001.

The body of federal and state environmental laws and regulations shown in Table 1 has had a significant and positive impact on the way mining is now conducted in the U.S., resulting in a substantial reduction in environmental impacts and dramatic improvements in reclamation. As a result of these laws and regulations, the domestic hardrock mining industry of today is highly regulated and environmentally and socially responsible. The creation of these laws has caused the mining industry to completely revise how mines are designed and operated, so that now, reclamation is a fundamental and integrated part of mine planning and operation as today’s mines are designed, built and operated for closure. Also, because these laws and regulations require exploration and mining companies to provide financial assurance to guarantee reclamation at the end of the project, mines today will not become future AML sites. In the event a company goes bankrupt or defaults on its reclamation obligations, state and federal regulatory agencies will have bond monies available to reclaim the site. In a June 21, 2011 letter from Robert V. Abbey, Director of the Bureau of Land Management (BLM) to Senator Lisa Murkowski, the BLM told Senator Murkowski that 659 Plans of Operation have been approved since 1990 and that none of those sites have been placed on the CERCLA NPL list. Thus, the AML problem is a finite and historical problem and not one that will grow in the future.

As shown in Table 1, the US Forest Service adopted the 36 CFR. Part 228A surface management regulations governing hardrock mining operations on National Forest Lands in 1974. Six years later, in 1980, BLM enacted the 43 CFR. Subpart 3809 surface management regulations, which were substantially expanded and updated in 2000 and 2001. Both BLM’s 3809 regulations and the U.S. Forest Services’ 228A regulations require all exploration and mining activities above casual use provide federal land managers with adequate financial assurance to ensure reclamation after completing the exploration or mining project. Because the underlying purpose of the financial assurance requirement is to ensure reclamation of the site in the event an operator goes bankrupt or fails to reclaim a site for some other reason, the amount of required financial assurance is based on what it would cost BLM or the U.S. Forest Service to reclaim the site using third-party contractors to do the work. According to BLM’s June 21 letter to Senator Murkowski, the amount of financial assurance currently held by BLM is \$1.7 billion.

In addition to mandating reclamation and establishing financial assurance requirements, these comprehensive federal regulations also require compliance with all applicable state and federal environmental laws and regulations to protect the environment and to meet all applicable air quality, water quality and other environmental standards.

Additionally, all western public land states have enacted comprehensive regulatory programs that govern hardrock mining operations in their respective state. Like the federal financial assurance requirements, these state regulatory programs require the posting of adequate financial assurance or reclamation bonds in an amount equal to the cost that would be incurred by the government if it had to contract with a third party to remediate and reclaim the site. In many states, federal and state regulators with jurisdiction over mining work together to jointly manage the reclamation bonding programs. For example, in Nevada, the BLM, the U.S. Forest Service and the Nevada Division of Environmental Protection/Bureau of Mining Regulation and Reclamation have entered into a Memorandum of Understanding (MOU) that establishes procedures for coordinating the federal and state regulatory programs for mining. This MOU specifies that the federal and state agencies will work together to review reclamation cost estimates and to agree upon the required bond amount.

<b>Table 1</b>		
<b>Chronology of U.S. Mine Development and Enactment of Environmental Regulations</b>		
<b>Year</b>	<b>Commencement of Mining Activities</b>	<b>Enactment of State and Federal Environmental Laws Affecting Mining</b>
<b>Historic Mining</b>		
1825	Upper Mississippi Valley lead mining (Southwestern Wisconsin and adjacent Iowa and Illinois)	
1849	California - gold mining	
1858	Colorado - precious metals mining	
1859	Nevada - Comstock Lode silver and gold mining	
1862	Montana - gold mining	
1863	Utah - copper mining	
late 1860s	Upper Mississippi Valley zinc mining (Southwestern Wisconsin and adjacent Iowa and Illinois)	
1875	South Dakota - Black Hills gold mining	
1877	Colorado - base metal mining	
1877	Arizona - copper mining	
1882	Montana - copper mining	
1906	First gold produced from Round Mountain, NV	
1917	Colorado - molybdenum mining	
<b>Modern Mining</b>		
1965	Nevada - Carlin-type gold mining started	
1966		National Historic Preservation Act
1967		Air Quality Act
1969		National Environmental Policy Act (NEPA)
1970		Occupational Safety and Health Act (OSHA)
		Clean Air Act
1971		CA Environmental Quality Act (CEQA)

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		MT Metal Mine Reclamation Act  MT Environmental Policy Act (MEPA)
1972		Federal Water Pollution Control Act/Clean Water Act
1973		Endangered Species Act
1974	Mining begins at Henderson, CO	U.S. Forest Service Mining Regulations
1975	Modern mining begins at Round Mountain, NV	CA Surface Mined Land Reclamation Act (SMARA)
1976		Federal Land Policy and Management Act (FLPMA)  Resource Conservation and Recovery Act (RCRA)  Clean Water Act Amendments  CO Mined Land Reclamation Act
1977		Mine Safety and Health Act (MSHA)  Surface Mining Control and Reclamation Act (SMCRA)  WI Metallic Mining Reclamation Act  ID Surface Mining Act
1979		Archaeological Resources Protection Act
1980	Mining begins at Jerritt Canyon, NV	Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA – Superfund)
1981		U.S. Bureau of Land Management Hardrock Mining Regulations
1982		SD Mined Land Reclamation Act
1984		Hazardous and Solid Waste Amendments
1985	Mining begins at McLaughlin, CA	
1985	Mining begins at Sleeper Mine, NV	
1986	Mining begins at Goldstrike Mine, NV	Superfund Amendments and Reauthorization Act
1987	Mining begins at Stillwater Mine, MT	UT Mined Land Reclamation Act
1989		NV Water Pollution Control Law  NV Mined Land Reclamation Act
1990 -	On going development of Nevada's gold	Clean Air Act Amendments

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Present	mining industry	
2001		Updating of BLM's 43 C.F.R. 3809 regulations to include mandatory bonding requirements for all surface-disturbing activities

In 1999, the National Academy of Sciences National Research Council, in response to a request from Congress to assess the adequacy of the regulatory framework for hardrock mining on federal lands, found that “ [t]he overall structure of the federal and state laws and regulations that provide mining–related environmental protection is complicated, but generally effective.” Thus, these state and federal comprehensive regulatory programs together with financial assurance requirements work together to ensure that modern mining is environmentally responsible and that today’s mines will be reclaimed.

**THE VAST MAJORITY OF AML SITES DO NOT POSE SIGNIFICANT ENVIRONMENTAL PROBLEMS**

It is important to understand that the vast majority of all hardrock AML sites are not problematic. The 1998 WGA report mentioned above estimated that more than 80% of AML sites create neither environmental nor immediate safety hazards. Where problems do exist, safety hazards are the primary problem although some AML sites have both environmental and safety issues.

The Center of the American West released a study in 2005 entitled “Cleaning Up of Abandoned Hardrock Mines in the West.” The Center, which is affiliated with the University of Colorado, states at page 31 of its report that “only a small fraction of the 500,000 abandoned mines [identified by the Mineral Policy Center] are causing significant problems for water quality.”

A 2007 USFS/BLM report estimates that as many as 10% of the AML sites on USFS- or BLM-managed land may include environmental hazards and that the balance, or approximately 90%, are landscape disturbances or safety hazards. The finding that landscape disturbance and safety hazards comprise the bulk of the AML problem is consistent with other reports.

Although much of the public debate about the AML problems typically focuses on environmental issues, it is really safety hazards that deserve our immediate attention. Nearly every year, the country experiences one or more tragic accidents or fatalities at an AML site where somebody has fallen into or become trapped in an unreclaimed historic mine opening. AML safety hazards pose a far greater risk to the public than AML environmental problems. Therefore, we should focus first-priority AML funds on eliminating safety hazards at AML sites located near population centers and frequently used recreation areas.

The 1998 NMA Study cited above includes a comprehensive discussion of the types of safety hazards and environmental problems that exist at AML sites. Table 2 summarizes this discussion and lists the safety hazards and environmental problems that may occur at AML sites and the techniques used to address these hazards and problems. As stated above, landscape disturbances and safety hazards are the dominant problem at most AML sites. However, some sites may have a combination of landscape disturbance, safety hazards, and environmental problems.

<b>Table 2 Generalized Characterization of Issues at AML Sites</b>	
<b>Types of AML Problems</b>	<b>Examples of Typical Response Measures</b>
<p><b>Landscape Disturbances</b></p> <ul style="list-style-type: none"> <li>• Surface Disturbance that detracts from the aesthetic or natural appearance of the site,</li> <li>• Discarded equipment, abandoned buildings in disrepair</li> </ul>	<ul style="list-style-type: none"> <li>• Regrading and recontouring disturbed areas to blend in with the surround topography</li> <li>• Revegetating regraded areas with native species</li> <li>• Removing and properly disposing of discarded materials</li> <li>• Dismantling and disposal of buildings</li> </ul>
<p><b>Safety Hazards</b></p> <ul style="list-style-type: none"> <li>• Unrestricted and hazardous openings (shafts, adits, portals, stopes)</li> <li>• subsidence features and exploration excavations</li> <li>• Dangerous highwalls and open pits</li> <li>• Unsafe structures and dilapidated buildings</li> </ul>	<ul style="list-style-type: none"> <li>• Partial or complete backfilling of mine openings</li> <li>• Installation of gates, grates, and doors to impede access into mine openings,</li> <li>• Fencing around mine openings and hazardous highwalls and open pits</li> <li>• Signage to warn the public to avoid dangerous mine openings and highwalls</li> <li>• Removal of unsafe buildings.</li> </ul>
<p><b>Environmental Problems</b></p> <ul style="list-style-type: none"> <li>• Erodible waste rock dumps, tailings deposits, and smelter wastes</li> <li>• Acid rock drainage from mine openings, waste rock dumps, and tailings deposits</li> <li>• Blowing dust from tailings piles</li> <li>• Contaminated soils,</li> <li>• Chemical contamination from processing reagents</li> </ul>	<ul style="list-style-type: none"> <li>• Removing mine wastes and contaminated soils and placing in an authorized engineered structure,</li> <li>• Stabilizing the wastes in-situ with engineered covers to prevent wind erosion and to minimize infiltration of precipitation</li> <li>• Rerouting drainages to avoid contact with mine wastes</li> <li>• Installing plugs in portals with drainage</li> </ul>

Although many of the above listed measures are expensive – especially those used to improve safety and environmental problems – they are technically straightforward, well understood, and are generally quite effective in improving environmental conditions at AML sites. The NMA Study identified a number of AML sites with safety hazards and/or environmental problems that were substantially reduced through the use of one or more of the measures listed in Table 2. It is important to understand, however, that each AML site is different and the nature of AML issues is site-specific. The measures shown in Table 2 to address landscape disturbance, safety hazards, and environmental problems at an AML site must be custom-tailored to fit the site-specific conditions of a particular site. A cookie-cutter, one-size-fits all approach will not achieve optimal results and may even fail to address the problem.

AML policy discussions have had a tendency to focus on the worst and most complex AML sites. This mischaracterization of the global AML problem has probably contributed to the lack of progress in developing federal policies and programs to solve the AML problem. The legislative dialogue about enacting Good Samaritan legislation has perhaps been made more difficult by focusing on sites with very serious or complex environmental and liability issues such as sites with acid drainage from underground mine openings which typically require extensive and costly remediation efforts. Not all AML sites that may be discharging contaminated water can be remediated easily. Although this type of site is serious and

deserving of our immediate attention, it is not representative of the safety and environmental concerns at most AML sites. In other words, not every AML site will be a model for a Good Samaritan project. Focusing solely on the most challenging AML sites is likely to produce programs and policies with unwarranted complexity and costs, resulting in little or no environmental improvement.

## **THE NEED FOR GOOD SAMARITAN LEGISLATION**

Although, as discussed above, some progress has been made by industry and existing State and federal AML programs in reducing safety hazards and remediating and reclaiming hardrock AMLs, the number one impediment to voluntary cleanup of hardrock abandoned mine lands is the potential liability imposed by existing federal and state environmental laws, in particular the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (commonly known as Superfund), the Resource Conservation & Recovery Act (RCRA), and the Federal Toxic Substances Control Act. Under these laws, a mining company, state or federal agencies, communities, NGOs, individuals or other entities that voluntarily improve safety and environmental conditions at an abandoned mine site could potentially incur both immediate and “cradle-to-grave” liability, even though they did not cause or contribute to the environmental condition at the abandoned mine land site and their actions improve the environment or abate a safety hazard.

Furthermore, they could be required under the CWA to prevent discharges to surface waters from the AML in perpetuity, or obtain a permit and treat such discharges to meet strict effluent limitations that do not result in exceedences of stringent water quality standards, something that may not be possible; and in any event, may be so expensive that no company, individual, or other entity would undertake a voluntary cleanup.

Virtually everyone who has looked at the AML issue in the west has recognized and documented the legal impediments to voluntary cleanup of AMLs and has urged that those impediments be eliminated. These groups include the Western Governors Association, the National Academy of Sciences, and the Center for the American West.

The time has come for Congress to adopt the recommendation from the National Academy of Sciences National Research Council’s 1999 report to Congress and enact effective Good Samaritan legislation that will create a framework, with regulatory incentives and liability protection for numerous entities, including mining companies, local, state and federal agencies, communities, NGOs, and tribes to voluntarily improve safety and environmental problems caused by others at abandoned hardrock mine sites in the U.S.

The Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21(a)), specifically establishes the Congressional intent “to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals, metal, and mineral reclamation industries.” Including provisions to authorize managing historic mine wastes to minimize or eliminate pollution or the threat of pollution in Good Samaritan legislation is consistent with and promotes this Congressional intent.

## **ELEMENTS OF EFFECTIVE GOOD SAMARITAN LEGISLATION:**

To be effective, Good Samaritan legislation must embody the following key provisions:

1. **Mining companies that did not create environmental problems at an AML must qualify as Good Samaritans.** No one knows more about the proper management of mine wastes and reclaiming and mitigating mine sites than the mining industry. The mining industry has the desire,

technical expertise, experience, and technology to effectively and efficiently assess the safety and environmental issues present at an AML site and to properly secure, improve safety and environmental conditions, and reclaim those sites. In some situations, this can be done in conjunction with mining and reclamation activities at nearby active mines which the company operates, resulting in an efficient use of resources to improve the environment and enhance public safety. Creating a Good Samaritan law that removes the existing regulatory and liability barriers that currently discourage private sector cleanups would be good public policy because it would stimulate the use of private-sector resources to address the public problems caused by abandoned mines and create jobs.

For example, Teck Cominco American Incorporated (now Teck American) purchased the Pend Oreille Mine in Pend Oreille County, Washington in 1996 and brought it back into production in 2004. It is located in a setting where a substantial amount of historical mining took place before there were environmental laws and regulations and modern mining practices. There are many abandoned mine sites in the area of the Pend Oreille Mine. In working with the local community, Teck determined that many of the old mine openings presented a potential hazard to public safety. Those that did not involve environmental issues were voluntarily closed through the installation of bulkheads in several of the openings.

Teck has been approached by state and federal agencies to see if it could mill some of the historic waste rock piles, ore piles and concentrate accumulations in the area. In each and every case, the company chose not to undertake this cleanup effort due to the strict nature of its Clean Water Act authorization as interpreted by Washington State that prohibits any tailings other than those generated from the Pend Oreille Mine to be placed in its lined and approved tailings disposal facility. Furthermore, the company is reluctant to undertake cleanup efforts at any of these old sites for fear of being deemed an operator and incurring cradle-to-grave liability for the site under a variety of federal and state environmental laws.

All mines run out of ore and towards the end of production may look for additional sources of mineralized material to mill. Having the ability to augment or extend the productive life of the mine benefits the mining company, the community and the Nation. It also benefits the environment through metal source reduction as more metal will ultimately be recovered from the AML sites and the resulting tailings are placed in a regulated, engineered and permitted containment structure. This promotes conservation of the resource and sustainable development with a net improvement in the environment.

This is but one of many, many examples of sites throughout North America where existing mines are located adjacent to abandoned historical mines. Another example from the Northwest is Meridian Gold Company's Beartrack Mine near Salmon, Idaho. Deposits from historic mining were located on the mine property. As a result, Napias Creek no longer supported salmon habitat. Meridian used the equipment and personnel that were on-site at Beartrack to remove the historic tailings and waste rock piles from Napias Creek and fully mitigate the site and restore the streambed to salmon habitat. The company won several environmental awards for their work. The mine was able to use the tailings and waste rock materials from historic mining *located on the mine property* (emphasis added), at the Beartrack Mine, increase the ultimate recovery of metals from the mine and improve the environment. A scenario where everyone wins.

I have emphasized *located on the mine property* to highlight the important distinction between the Pend Oreille mine example and the Beartrack example. The Napias Creek tailings and waste rock piles were located on the mine property and covered by Beartrack's operating permits. The lack

of effective Good Samaritan legislation has prevented, to date, the same win-win-win result at Pend Oreille.

2. A Good Samaritan law must have sufficient flexibility to allow site-specific solutions that take into account the fact that many historic mine sites include both public and “private” land where the previous land owner(s) no longer exist.
3. A potential Good Samaritan must be able to gather the needed site characterization data to develop a technically sound remediation proposal without having to conduct a Potentially Responsible Party (PRP) search or go through a long, complicated and involved permitting process. A Good Samaritan must be able to conduct a site survey without the potential for becoming liable for the site solely by virtue of gathering data.
4. Individual Good Samaritan projects should be subject to review and authorization by the federal government **or** by an individual state’s abandoned mine land program (and/or the environmental permitting authority for those states where EPA has delegated Clean Water Act authority).
5. The permit process must be simple, straight-forward and understandable. The environmental requirements for a Good Samaritan project should be wrapped into a single permit. The permit should be approved only if the project is technically sound and promises overall improvement to the environment and/or securing of safety hazards.
6. The Good Samaritan must have full legal protection under the permit. That is, a Good Samaritan permit-holder must be able to obtain a specific, concrete list of the federal, state and local environmental laws that would be deemed satisfied by completion of the work authorized under the permit. One of the Good Samaritan bills introduced in the 109<sup>th</sup> Congress, S. 1848, and H.R. 3203 introduced in the 111<sup>th</sup> Congress, contain a list of federal environmental laws that is a good starting point.
7. Good Samaritan projects should be allowed as long as they are likely to result in an improvement to the environment, even if they will not result in the complete cleanup of all contaminants at an abandoned mine land site or the attainment of all otherwise applicable environmental standards, such as stringent water quality standards. To quote an oft-repeated phrase, “don’t let pursuit of the perfect be the enemy of the good.” A 75 percent improvement in water quality downstream from an AML site is a far better result than no cleanup due to a Good Samaritan’s concerns that their cleanup activities may not be able to achieve water quality standards that would be applicable at a modern mine.
8. The permitting authority must be given discretion under any Good Samaritan legislation to make site-specific adjustments to environmental requirements, standards and liabilities arising under state and federal environmental laws that could otherwise be applicable and prevent Good Samaritans from undertaking remedial actions. This is not a new concept. The Applicable or Relevant and Appropriate (ARAR) approach under CERCLA might be a reasonable starting point.

The permitting authority also should have the discretion to waive the PRP search requirement. A Good Samaritan willing to spend private monies to improve safety and environmental conditions and reclaim an AML site should not have to spend time and resources conducting and certifying a PRP search. It should not matter whether there might be a PRP. The goal should be environmental improvement, not finding someone to blame.

9. Any Good Samaritan legislation, to be effective and result in actual, on-the-ground cleanup, should encourage entities with sufficient expertise and resources to manage and/or use the mine wastes in order to recover, remove, or reduce the metal content. In many settings, this would result in the greatest degree of environmental improvement.

Using tailings, waste rock piles and other historic mining materials at AML sites may be the most efficient means of cleaning up a site. The most efficient and environmentally benign scenario for managing historic mine wastes is using such materials feedstock at an adjacent or nearby modern fully regulated and bonded mineral processing facility. The new waste that would be generated from historic materials at a modern mineral milling facility would then be disposed of in a modern engineered facility that complies with current environmental standards and practices including performance monitoring and financial assurance. Using historic mine waste as a feedstock is a superior environmental remedy that achieves resource recovery and source reduction. Given the desirability of achieving the resource recovery and source reduction that can result from using historic mine materials, Good Samaritan legislation should encourage management of historic ores, minerals, waste rock piles and other materials existing at an AML site to create jobs, taxes, a return on investment and a cleaner environment.

The benefits associated with reusing historic mine wastes are twofold. First, treating these wastes to recover some of the residual metals (which are usually the primary constituent of concern) would be an efficient use of resources to generate some of the metals the U.S. needs for strategic and economic purposes. Secondly, reusing historic mine wastes would achieve superior environmental results compared to the usual AML remedy (especially if EPA is involved), which is to move the contaminants to a newly constructed waste repository and cover them. Relocating the metal-bearing historic mine wastes does not reduce or remove the source of pollution. Furthermore, merely relocating the wastes into a new repository site creates the need for long-term maintenance and monitoring in order to reduce at the risk of leakage or other failure. Removing such metal from the environment and placing it into useful commerce is far more environmentally and economically beneficial than merely reburial of such wastes in another place.

AMLs are generally located in highly mineralized areas. Not only are these highly mineralized areas the location of historic mining, they are likely to be the location for future mines as prices and technology allow. Therefore, there is significant potential for redevelopment of these sites or for discovery of a new, nearby mineral deposit. The discovery of a new deposit near an AML site or the redevelopment of an historic mine site, would require the full mine permitting process, (including an environmental analysis required by the National Environmental Policy Act if the project affects public land) and would be allowed only if the proposed new mine complied with all current standards of environmental protection. This new mine with its engineered, fully permitted and bonded beneficiation and processing circuit and mine waste disposal facilities would provide a new mine solution to old mine waste, while creating hundreds of new high paying jobs and generating federal, state, and local tax revenues.

Contrary to the assertions of mining opponents, the mining industry has no desire to use Good Samaritan legislation to avoid the mine permitting process or the application of current environmental laws and regulations that apply to today's modern mines. The Good Samaritan approval authority, through permit conditions, can easily prevent the misuse of a Good Samaritan permit.

10. Good Samaritan legislation should allow Good Samaritan actions at AMLs to qualify as off-site mitigation under the CWA for mining companies permitting new mines or expansion of existing

mines. This would provide an additional incentive for a mining company to undertake a Good Samaritan cleanup while meeting the permitting requirements at new or expanded mines.

### **SUPERFUND IS NOT THE ANSWER:**

Some Members of Congress and anti-mining groups argue that instead of focusing on Good Samaritan legislation, Congress should fund the Superfund program and EPA, under the Superfund program, should address all Abandoned Mine Lands. In our opinion, this is a wrong-headed approach to mitigating and reclaiming historic abandoned mine lands.

Superfund does not have a very good track record at mine sites. Superfund was not designed to address natural processes that result in contaminated watersheds at AMLs. The historic mining communities of Aspen and Leadville in Colorado, Butte, Montana, Triumph, Idaho and the Bunker Hill site in northern Idaho's Silver Valley all have experienced first hand the failures of Superfund and the costly results of misguided policies and millions of dollars wasted on legal delays and repetitive studies. Of the billions of dollars spent of Superfund efforts, only 12% of those moneys have actually gone into cleaning up the environment while the balance went to legal and consulting fees.

In each of the Superfund sites cited above, the cleanup costs have exceeded reasonable estimates by a magnitude of three to five times. Bunker Hill is a prime example of the waste that occurs when an EPA-led Superfund effort is undertaken at mine sites. This can be demonstrated by comparing Bunker Hill with another example from the Silver Valley in northern Idaho.

Just outside the Bunker Hill Superfund site are many historic mining sites on Nine Mile and Canyon Creeks. Two mining companies working together with the State of Idaho were able to cleanup and remove historic mine wastes, tailings and waste rock piles from Nine Mile and Canyon Creeks, and restore fish habitat on the two creeks at cleanup costs one-fourth to one-fifth the cleanup costs incurred by EPA under Superfund on a per-cubic-yard of material removed basis.

I have visited these sites on five occasions and can personally attest to the outstanding remediation and reclamation on Canyon and Nine Mile Creeks, and that there has been substantial improvement in water quality as a result of these efforts. And, the work is done, unlike the work at Superfund sites which seems to never end.

Finally, at the risk of stating the obvious, the Superfund legal procedures to identify Potentially Responsible Parties (PRPs), to assign joint and several liability, and to recover costs are premised on the concept that the site in question has owners who can be identified and compelled to pay for the cleanup. None of these provisions are appropriate for AML sites, which by definition, no longer have an identifiable owner. Thus, the Superfund Program is not an ideal or even applicable template for most AML sites.

There may be some sites for which Superfund is the appropriate remedy, but let's not limit the tools we have in the toolbox. Thoughtful and effective Good Samaritan legislation that encourages and incentivizes Good Samaritans is an important tool to add to the Abandoned Mine Land remediation and reclamation toolbox. Our goal should be not just move the contaminants, but remove the contaminants and place them into useful commerce.

### **PREVIOUS GOOD SAMARITAN PROPOSALS:**

Our members are familiar with all Good Samaritan legislation that has been drafted and introduced over the past fifteen years. While we applaud any and all efforts to advance the Good Samaritan concept, our analysis of most Good Samaritan legislation introduced in the past is that it is not intended for use by the mining industry. This not only disappoints our members, it would be a huge opportunity lost for the Nation and for the environment if mining companies are not allowed to utilize Good Samaritan legislation. As mentioned above, the mining industry has the technical expertise, experience, and technology to effectively and efficiently assess the safety and environmental issues present at an AML site and to properly secure, reclaim and improve safety and environmental conditions at those sites. Moreover, creating a Good Samaritan law that recognizes the role that modern mining companies and other private-sector entities could play in improving environmental conditions at AML sites would reduce the amount of tax payer resources that will be needed to solve the AML problem

With respect to previous Good Samaritan bills, we believe H.R. 3203 introduced by the Chairman in the last congress, and a similar bill, S. 1848 introduced by Senators Salazar and Allard in 2005 provide a good starting point for effective Good Samaritan legislation. We also believe these bills can and should be improved to ensure that they foster on-the-ground Good Samaritan projects at AML sites. Both bills already incorporate many of the ten concepts enumerated above, and could be improved by: 1) providing a mechanism for conducting site investigations without incurring environmental liability and without having to go through the full permitting process; 2) the PRP search should be significantly streamlined and eliminated when only private monies are funding the cleanup; and 3) any restrictions on the ability of a mining company or other Good Samaritan to mill historic mine wastes in order to remove metals from these materials should be eliminated.

The problems with other, prior Good Samaritan bills and the reason why we believe they won't accomplish their stated intent can be summed up as follows: 1) the liability relief provision is too restrictive; 2) the PRP search requirements are too cumbersome and costly; 3) the permitting process is too complex and rigid; 4) a full PRP search and certification is required for privately funded cleanups; 5) the definition of a Good Samaritan is too limiting --merely appearing in the chain of title should not disqualify someone and federal land management agencies must be allowed to conduct Good Samaritan cleanups on the lands they manage; 6) the definition of eligible site does not include sites that pose only physical or safety hazards; and 7) there are too many restrictions on waste treatment. Significant on-the-ground Good Samaritan activities at AMLs are not going to take place under Good Samaritan legislation that contains these defects.

#### **CONCLUSION:**

Effective Good Samaritan legislation makes sense and can be a win-win-win-win for the environment, for the Good Samaritan, for the community, and for the Nation. We look forward to working with this committee to produce Good Samaritan legislation that will actually result in on-the-ground Good Samaritan cleanups at Abandoned Mine sites.