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**On Behalf of**

**The Interstate Mining Compact Commission**

**Testimony before the**

**SUBCOMMITTEE ON ENERGY & MINERAL RESOURCES**
**of the**
**HOUSE RESOURCES COMMITTEE**
**UNITED STATES HOUSE OF REPRESENTATIVES**

**Hearing on the Opportunities for Good Samaritan Cleanup of Hard Rock Abandoned Mine Lands**
**July 13, 2006**

Statement of Joseph Pizarchik, Director, Bureau of Mining and Reclamation,
Pennsylvania Department of Environmental Protection

Good morning, Mr. Chairman. My name is Joseph Pizarchik and I am Director of the Bureau of Mining and Reclamation within the Pennsylvania Department of Environmental Protection. I am appearing here today on behalf of the Interstate Mining Compact Commission (IMCC). The IMCC is an organization of 22 states located throughout the country that together produce some 80% of the nation's coal, as well as important noncoal materials. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. I am pleased to appear before this Subcommittee to discuss what we have accomplished in Pennsylvania through measures that encourage others to clean up abandoned mines and the opportunities for Good Samaritan Cleanup of Abandoned Mines that could be realized through the enactment of federal Good Samaritan legislation. In particular, I will address the views of the Commonwealth of Pennsylvania regarding our experience with the reclamation of abandoned mine lands under Title IV and Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Pennsylvania's Environmental Good Samaritan Act and the need for federal Good Samaritan Legislation.

EXECUTIVE SUMMARY

Over 200 years of mining in Pennsylvania left over 200,000 acres of abandoned mine lands and thousands of miles of streams affected by mine drainage. Reclamation efforts began 60 years ago. While hundreds of millions of dollars of state and federal funds eliminated many hazards, by the early 1980s it was clear that the limited government funds could not reclaim all of the abandoned mine lands and polluted streams.

In 1984 Pennsylvania instituted a program that provided the opportunity for reclamation through remining of abandoned mine land with preexisting discharges. Under this program remining improved 140 miles of streams by removing, on an annual basis, 2,900 tons of acid, 95 tons of iron, 5.6 tons of manganese, 55 tons of aluminum and 2,400 tons of sulfates saving over $3,000,000 per year of government funds. In 1992 Pennsylvania enacted incentives to encourage reclamation of abandoned mine lands through remining by providing permit application assistance, remining financial guarantees and reclamation bond credits. The additional remining resulted in the reclamation of 2,387 acres valued at $14,794,010.

In 1999 Pennsylvania enacted the Environmental Good Samaritan Act to encourage volunteers to improve land and water adversely affected by mineral extraction by limiting the Good Samaritan's potential liability. Thirty-four projects, focused mainly on mine drainage but also including coal refuse, have been undertaken. A number of other projects have not been undertaken because of the potential for incurring liability under

federal law. The opportunities for reclamation by Good Samaritans would be enhanced by the enactment of federal Good Samaritan legislation that includes coal.

In 1992 Pennsylvania created a contract reclamation program to allow for the limited recovery of coal from waste piles where the coal removal was necessary to complete reclamation. The value of the recovered coal is used to pay for the reclamation. The program was expanded in 1999 to include other abandoned coal mine land. This program has financed the reclamation of 812 acres valued at $4,603,771.

Pennsylvania has demonstrated there are countless opportunities for Good Samaritans to clean up abandoned mine land. We need federal Good Samaritan legislation that protects Good Samaritans from potential liability under the Clean Water Act and under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); that allows for the recovery of minerals from the mining waste; that provides flexible standards; that is not burdensome and can be administered by either the states or the federal government. While abandoned hard rock mines present the most pressing need for Good Samaritan Legislation, coal should also be included. It is time for Congress to act to enable Good Samaritans to help conquer the monumental task of abandoned mine lands.

## I. BACKGROUND

Mr. Chairman, during the past quarter of a century significant and remarkable work has been accomplished pursuant to the abandoned mine lands (AML) program under SMCRA. The Office of Surface Mining Reclamation and Enforcement (OSM) and the states have documented much of this work. (See the 2006 Accomplishments Report recently published by the National Association of Abandoned Mine Land Programs and OSM's twentieth anniversary report.) OSM's Abandoned Mine Land Inventory System (AMLIS) provides a fairly accurate accounting of the work undertaken by most of the states over the life of the AML program and also provides an indication of what is left to be done.

Over the past 25 years, tens of thousands of acres of abandoned mine land have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Based on information maintained by OSM in AMLIS, as of June 30, 2005, $2.6 billon worth of high priority coal-related public health and safety problems have been funded and reclaimed. Another $354 million worth of environmental problems have been funded or completed and $398 million worth of noncoal AML problems have been funded and reclaimed. In addition to the aforementioned federally funded projects, Pennsylvania has taken other steps to address the abandoned mine land problem within the Commonwealth.

There are numerous success stories from around the country where the states' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and

objectives set forth by Congress when SMCRA was enacted – including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal mining.

As we work to address the remaining inventory of abandoned coal mine sites, the states are particularly concerned about the escalating cost of addressing these problems as they continue to go unattended due to insufficient appropriations from the AML Trust Fund for state programs. Unaddressed sites tend to get worse over time, thus increasing reclamation costs. Inflation exacerbates these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. In addition, the states are finding new high priority problems each year, especially as we see many of our urban areas grow closer to what were formerly rural abandoned mine sites. New sites also continually manifest themselves due to time and weather. For instance, new mine subsidence events and landslides will develop and threaten homes, highways and the health and safety of coalfield residents. This underscores the need for constant vigilance to protect our citizens. In addition, as states certify that their abandoned coal mine problems have been corrected under SMCRA, they are authorized to address the myriad health and safety problems that attend abandoned noncoal mines. In the end, the real cost of addressing high priority coal AML problems likely exceeds $6 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. Estimates for cleaning up abandoned noncoal sites are in the billions of dollars.

In my home state of Pennsylvania, Mr. Chairman, over 200 years of mining in Pennsylvania left a legacy of over 200,000 acres of abandoned unreclaimed mine lands (Pennsylvania's Abandoned Mine Reclamation Plan, 1983). These abandoned sites include open pits (Attachment 1), some of which are water filled pits (Attachment 2), spoil piles (Attachment 3), waste coal piles, mine openings and subsided surface areas.

Many of the abandoned sites discharge polluted water (Attachment 4). The mine drainage discharges range from alkaline water containing iron to heavily polluted acid discharges containing iron, aluminum, manganese and sulfates. The volume of pollution discharged varies. Some discharges are small seeps (Attachment 5) while others are large underground mine tunnels. One such tunnel discharges 40,000 gallons per minute (Attachment 6, Jeddo Mine Drainage Tunnel). According to an EPA Region III list from 1995 there were 4,485.55 miles of streams affected by mine drainage in Pennsylvania, Maryland, Virginia and West Virginia (Attachment 7). Three thousand one hundred and fifty eight miles were in Pennsylvania. These discharges have a significant impact on Pennsylvania's streams and rivers (Attachment 8).

Pennsylvania began addressing abandoned mine land problems in the 1940s. A more comprehensive and systematic approach to address these problems began in 1968 with the enactment of the Land and Water Conservation and Reclamation Act. After years of government effort and changes in state and federal law that imposed liability on a mine operator or anyone who remined or affected an abandoned discharge, it became clear that

without help from other parties, government efforts would take many decades and billions of dollars to clean up all of the problems. Additional options were needed.

Upon examining the issue, Pennsylvania found that operators were obtaining permits for previously abandoned sites, and, using modern equipment, they were mining the coal that previously had not been economically or technologically feasible to remove. These abandoned mine lands were being remined and reclaimed in accordance with modern standards and laws. However, such remining and reclamation was not occurring on sites that contained mine drainage discharges.

Citizen, watershed, and environmental groups were also working to address some of 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.

Mine operators and many citizen groups would not reclaim sites that had pollutional mine drainage discharges because if they reaffected 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 remining or reclamation improved the quality of the discharge.

With the advances made in science, technology, and our understanding of mine drainage, we in the Pennsylvania mining program knew many abandoned discharges could be eliminated or improved at little or no cost to the Commonwealth if we could address the potential for personal liability.

In Pennsylvania we took two different approaches to limit the potential liability under state law. First, for remining and reclamation of abandoned mine sites with preexisting discharges we worked to change the mining laws to limit a mine operator's potential liability. Federal regulations contain similar remining provisions. Several years later incentives to encourage remining and reclamation were also enacted. Second, Pennsylvania enacted a new law to provide protections and immunities to those people who were not legally liable but who voluntarily undertook the reclamation of abandoned mine lands or abatement of mine drainage. This new law is called the Environmental Good Samaritan Act. Pennsylvania Good Samaritans are still exposed to potential liability under federal law for their good deeds. We also developed a way to make the coal waste pay for reclamation.

## II. REMINING

Under the changes made to the coal mining laws for remining, an operator gathers data on the quality and quantity of the preexisting pollutional discharge to establish a baseline of the pollutants being discharged. The operator must demonstrate in its mining permit application, and the Pennsylvania Department of Environmental Protection must find, that the remining and reclamation of the site is likely to improve or eliminate the preexisting discharge in order for the permit to be issued. These permitting decisions are

made using the Best Professional Judgment Analysis in accordance with the Clean Water Act. If the remining and reclamation is successful, then the mine operator is not held responsible to treat that portion of the preexisting discharge that remains. If the discharge is made worse, then the operator must treat the discharge to the point of the previously established baseline of pollutants.

Pennsylvania's remining program has been very successful. In a 2000/2001 study of 112 abandoned surface mines containing 233 preexisting discharges that were remined and reclaimed, 48 discharges were eliminated, 61 discharges were improved, 122 showed no significant improvement, and 2 were degraded. In terms of pollutant load reductions, the net acid load was reduced by 15,916 pounds per day or 2,900 tons per year. The net iron load was reduced by 518 pounds per day or 95 tons per year. The net manganese load was reduced by 31 pounds per day or 5.6 tons per year. Aluminum was reduced by 303 pounds per day or 55 tons per year. The sulfates being discharged to the streams were reduced by 13,175 pounds per day or 2,400 tons per year. Approximately 140 miles of streams were improved. The pollutant load reductions were due to reductions in the flow and concentrations. (The report can be found at pages 166-170, volume 312 of *Transactions 2002* published by the Society for Mining, Metallurgy, and Exploration, Inc.) If these materials were to have been removed through treatment, it is estimated it would have cost the government at least $3,000,000 per year, every year. (This number does not include the costs of constructing the treatment systems.) These cost savings do not include what it would have cost Pennsylvania to reclaim these 112 sites. These environmental improvements occurred at no cost to the government or taxpayers because the operator's potential liability was limited and the operators were able to recover the coal that remained on the site. In addition, the operators paid a reclamation fee of 35 cents per ton of coal mined, reclaimed the land in accordance with modern standards, and made a profit.

The benefits of remining are not limited to water quality improvements. Significant amounts of Pennsylvania's abandoned lands have been reclaimed at a significant savings to the government. For example, from 1995 through 2005, 465 projects reclaimed 20,100 acres and eliminated 139.68 miles of highwall. Abandoned waste coal piles were eliminated (Attachments 9 and 10 – before and after), abandoned pits were filled (Attachment 11), and lands were restored to a variety of productive uses, including wildlife habitat (Attachment 12). The estimated value of this reclamation is $1,135,695,950 - money the state and federal government did not have to spend to reclaim these abandoned mine lands.

## III. ENVIRONMENTAL GOOD SAMARITAN ACT

A second approach undertaken to encourage reclamation of abandoned mine lands and treatment or abatement of abandoned discharges occurred in 1999 when Pennsylvania's General Assembly enacted the Environmental Good Samaritan Act, Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101 - 8114. The purpose of the Good Samaritan Act was to encourage volunteers to improve land and water adversely affected by mining or oil and gas extraction by limiting the potential liability. Prior to the

Good Samaritan Act, anyone who voluntarily reclaimed abandoned lands or treated water pollution for which they were not liable could be held responsible for treating the residual pollution.

Projects must meet certain criteria to be covered by the Good Samaritan Act. The project must be reviewed and approved by Pennsylvania's Department of Environmental Protection. The proposed project must restore mineral extraction lands that have been abandoned or not completely reclaimed, or it must be a water pollution abatement project that will treat or stop water pollution coming from abandoned mine lands or abandoned oil or gas wells.

The law contains protections for landowners and for the people who do the work.

Pennsylvania's Environmental Good Samaritan Act 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.
- 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.

In addition to being crafted to address potential legal liabilities that deter Good Samaritans from acting, Pennsylvania's Environmental Good Samaritan Act was also crafted to address potential financial hurdles that could impede a Good Samaritan project. A landowner, contractor, or materialman who desires to profit from the efforts of the volunteers can do so. People who profit from Good Samaritans are not eligible for the immunities and protections available to the Environmental Good Samaritans. This approach was taken to encourage more people to provide their goods and services as economically as possible to allow Good Samaritans to accomplish more with their resources.

Pennsylvanians have undertaken 34 Good Samaritan projects. Participants include local governments, individuals, watershed associations, corporations, municipal authorities and conservancies. The status of the projects range from "very successful at removing metals from the water" to "not yet started." Some projects are simple low maintenance treatment systems. Other projects are large complex projects. A project in Vintondale, Pennsylvania, transformed an abandoned mine into a park that treats acid mine drainage, celebrates the coal mining heritage, provides recreation facilities for Vintondale's residents and serves to heighten public awareness and educate people on treating mine drainage.

## IV. MINERAL RECOVERY RECLAMATION CONTRACTS

Pennsylvania has thousands of small abandoned coal waste sites. Remining was not occurring on small abandoned coal waste sites due to the low economic value of the waste coal, the cost of obtaining a mining permit, and the potential liability if a discharge was present. These sites were also a low priority under the SMCRA ranking system and were likely to never be funded for government cleanup.

In 1992 Pennsylvania implemented a program where a reclamation contract is issued to reclaim abandoned waste coal sites. This program became part of Pennsylvania's federally approved SMCRA Title IV Reclamation Plan and includes safeguards to prevent misuse. The contractor is allowed to recover coal from the waste that is

necessary to be removed in order to reclaim the site. The value of the recovered coal is used to pay for the cost of the reclamation. As of December 21, 2005, 63 contracts have been completed reclaiming 812.9 acres. This reclamation is valued at $4,603,771; money the government did not spend. There are 54 other reclamation contracts underway.

## V. RECENT LEGISLATION

During the 109th Congress, several bills have been introduced addressing the cleanup of inactive and abandoned mines. These include H.R. 5404 (and its companion in the Senate, S. 2780), H.R. 1266, and S. 1848. Each of these bills offers various approaches to "Good Samaritan" voluntary remediation efforts and the current disincentives in the Clean Water Act that inhibit those cleanups. While each of these bills provides a solid framework on which to build an effective Good Samaritan program, we have several recommendations, perspectives and/or concerns that we offer for your consideration:

- There are myriad reasons why Good Samaritan legislation is needed, but perhaps the most important is the potential for incurring liability under the Clean Water Act and 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 impacts 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 clean up all of these lands. In this regard, it makes sense to consider expanding the protection from potential liability beyond the Clean Water Act and CERLA to include other laws such as the Toxic Substances Control Act, the Safe Drinking Water Act, the National Environmental Policy Act, the Clean Air Act, and the Uranium Mill Tailings Radiation Control Act.

- 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 regulatory authorities (or federal agencies where a state chooses not to administer the law), as the states 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. Given the current structure of laws like SMCRA and the Clean Water Act, we believe that the states are in the best position to administer Good Samaritan programs with appropriate oversight by federal agencies such as EPA and OSM

- There is merit to extending Good Samaritan protection to abandoned coal, as well as hard rock, sites. The Western Governors Association has taken the position that the proposed definition of "abandoned or inactive mined lands" could be drafted to include coal sites eligible for reclamation or drainage

treatment expenditures under SMCRA. We agree with this assessment. Also, to the extent that Good Samaritan permits are not required by states who are certified under Title IV of SMCRA when performing hard rock AML remediation, this same protection should be afforded to states performing coal AML work. Furthermore, from a political support perspective, extending Good Samaritan protections to abandoned coal mines would likely enlist the support of more eastern and mid-continent states for the legislation.

- Some have suggested that provisions addressing remining of abandoned mine sites should be included in the legislation. Our position is that these two matters should not be connected. They have somewhat different goals. As an example, Pennsylvania allows those who are not legally liable for the reclamation to engage in remining. Sites that have a preexisting discharge can only be remined if the applicant demonstrates and the state finds that the remining will improve or eliminate the discharge. If the remining degrades the preexisting discharge, the mine operator is responsible to treat the resulting pollution. Remining of abandoned mine land that does not contain preexisting mine drainage is allowed, provided the operator reclaims the site to modern standards. To the extent that additional incentives are considered as part of Good Samaritan legislation, we suggest including technical assistance and federal funding for these projects.

- Good Samaritan legislation should also include provisions that allow for the minerals contained in the waste on the abandoned mine land to be recovered as part of the reclamation. Allowing recovery of materials from the waste can help offset or totally pay for the reclamation. However, the mineral recovery must be secondary to the purpose of reclaiming the site. Appropriate safeguards must be provided in the legislation to ensure the purpose of the work is to reclaim the site and not to conduct mining. New mining or remining should not be a part of Good Samaritan legislation.

- Good Samaritan protections should be extended to both public and private lands. The pollution problem knows no such boundaries and must be addressed wherever it occurs. The environment and public health and safety all benefit by cleanup of abandoned mine lands, whether public or private. We also believe the protections should extend beyond federal lands so as to allow nationwide application.

- With respect to applicable environmental standards for Good Samaritan projects, we believe it is absolutely critical that the legislation include flexible standards, based on a determination by the 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 with today's technology to achieve "total cleanup". These types of cleanups could also be cost prohibitive. We know that in many circumstances some cleanup can result in significant environmental improvement. Forswearing that

improvement because total cleanup cannot be achieved is poor public policy and shortsighted. 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. In the end, some cleanup is often better than none at all.

- Finally, it has been Pennsylvania's experience 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.

## VI. CONCLUSION

While Pennsylvania's Good Samaritan Act has been successful in helping to engage local residents in restoring and assisting in the restoration of their environment, there are concerns. First, the Federal Clean Water Act citizen suit provision still poses a potential liability to the Good Samaritans. Recent developments portend actions by some who hold a strict, literal view of the National Pollutant Discharge Elimination System (NPDES) permitting requirements and of the Total Maximum Daily Load requirements. Without a Federal Good Samaritan Act or an amendment to the CWA providing that Good Samaritan projects and abandoned mining discharges are not point sources and are not subject to NPDES permitting requirements, the potential good work of volunteers in Pennsylvania and of others throughout the country are at risk. People who undertake projects that benefit the environment and America could be held personally liable for making things better because they did not make them perfect.

Mr. Chairman, our experiences in Pennsylvania with Good Samaritan cleanups and remining cleanups is instructive for others who are struggling to find effective mechanisms for addressing abandoned mine sites, be they coal or noncoal. The opportunities are there. The country needs Congress to enact Good Samaritan legislation to make the opportunities a reality. Through the Interstate Mining Compact Commission, we have worked with other organizations to address this critical matter. We look forward to future opportunities to work together. We also welcome the opportunity to work with this Subcommittee, Mr. Chairman, to address the legal and legislative barriers that stand in the way of meaningful reclamation of abandoned mines throughout the country.

Thank you for the opportunity of appearing before you today. I would be happy to answer questions you may have or to provide follow up answers at a later time.