



**GOOD SAMARITAN PROTECTION TO ENHANCE
ABANDONED MINE LAND CLEANUP-
FINDING A PATH FORWARD**

SUMMIT REPORT

JULY 2018

<http://www.mmsa.net/AMLPage.html>

APPENDIX A – SESSION DISCUSSIONS AND QUESTIONS

Time was reserved at the end of each session for questions. Following is a summary of questions and issues discussed at the end of the presentations. The slides for some of the presentations are available on the MMSA AML Conference Web page (<http://www.mmsa.net/AMLPage.html>).

QUESTIONS AND DISCUSSIONS FROM THE PLENARY SESSION

- Question: **Adrian Brown** (Reclamation Consultant) stated CERCLA focused on getting the cleanup of industrial sites done. CERCLA a) Did not see the need for a permitting system; b) Just get it done – focus is on Superfund sites. Does CERCLA allow doing the work with an AOC (Agreement on Consent)?

Response: **Dustin Sherer** explained that work cannot be done on superfund sites without a permit. Good Samaritan legislation is trying to develop a system for cleanup of properties which are not on Superfund sites.

- Question: **Tawny Bridgeford** (National Mining Association) asked “Why did it take TU two years to permit, and how was it done?”

Response: **Laura Skaer** suggested discussing this in the afternoon session. Could approach with an umbrella statute for liability.

- Question: **Doug Young** (Keystone Policy Center) stated that we have many examples of success; what is the issue as to “point source” problems, feel the issue is a liability problem (Citizen Lawsuit protection) – how do we get Citizen Comfort?

Response: **Chris Wood** – Feels we need CERCLA & CWA variation language. Also, AML problems are generally 80% dry sites, 20% draining adits.

- Question from the floor: What are the metrics for success? What could be accomplished with legislation?

Response: **Jeff Graves** – State of CO uses metrics of quality and quantity for partial success. Think outside the box in measuring success. Partial improvements are possible.

Response: **Dustin Sherer** – Provide upfront flexible scope of what you intend to do.

- Question from the floor: There are categorical exclusions in NEPA. What measurements plus impact on environment could be defined?

Response: **Chris Wood** – No Categorical Exclusion – how would process be designed?

- Question from the floor: Do legislators understand most sites already are “Dead Streams”?

Response: **Dustin Sherer/Chris Wood** – Set up a project for a simple result, try to raise no one’s hackles.

Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup – Finding a Path Forward

Summit Report

Response: **Kathy Benedetto** - Categorical exclusion can be done.

Response: **Adrian Brown** – consideration is needed for natural background conditions.

Response: **Amanda Aspatore** - Take CWA off the table.

- Question from the floor: Are there ways to get exemption?

Response: There are ways to address background. If standards programs could work with groups, there are ways to do it. There is a reluctance to decrease standards. Stringent standards don't have any relation to human safety.

Other statements

- Statement from the floor was made that Colorado is an exception – Most states get in the way of AML cleanup. BC (British Columbia, Canada) is far ahead of the US in progress on AML cleanup of sites. Bring AWAR's to CWA. (AWAR= Advance Work Authorization Request)
- **Trish Oeth** (Colorado Department of Public Health and Environment) – Have examples in Colorado where we can clean up AML sites.
- **Ms. Skaer** – Get legislation first, Funding will come.
- **Ms. Carpenter** – What about state statutes? Is this an issue – Can we use Colorado as an example?
- **Mr. Graves** – Colorado uses Federal Standards as basis of consideration.
- **Ms. Aspatore** – CWA standard difficult and expensive to use in cleanup efforts.

QUESTIONS AND DISCUSSIONS FROM THE MID-MORNING SESSION

- **Question from floor:** – Made a general statement that all agencies should get together to solve AML problems without further legislation. **Kathy Benedetto** response - there is still a need for Good Samaritan legislation if non-government entities get involved.
- **Jeff Parshley** – Some NGO's business model is to use Citizen Suits as a fundraising tool.
- **Jim Hesketh** (Viva Gold Corp) – Re Kendall Mine in Montana, Citizen suit brought on CWA involved issues related to underground mining in the late 1880's, and early batch heap leach activities in the 1980's. Citizen suit for water routes and pollution. Commented on no baseline for background water quality.
- **Mr. Hesketh** also mentioned his progress at Kendall in doing small steps with a posted bond on each step being a concept that worked. Such a program “put to bed” most of the environmental group's concerns.

Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup – Finding a Path Forward

Summit Report

- A brief discussion occurred on a concept of moving a project along by bonding each small area separately, do the reclamation, then get release and move to next small area.
- **Individual** – Need to do sites with a definite plan and responsibility.
- **Dennis Ferrigno** – Made the statement that most reprocessing of tailings was done in foreign locations.
- **Doug Young** (Keystone Policy Center) – Indicated that AML work is done with high risk and turns a Good Samaritan permit into an NPDES permit.

QUESTIONS AND DISCUSSIONS FROM THE AFTERNOON SESSIONS

Additional Comments noted after Group 10 presentation.

- TU hasn't touched water on any site.
- Better, not perfect.
- Re-mine – no place on the front range to take material to recover metals.
- Mine dumps – get water off the pile.
- Attempting to treat activates CWA.
- For the pilot project, avoid re-mining.
- AOC = agreement on consent
- 2015: HR 3843 – proposed legislation.
- What happens to longer term operations & maintenance component – replacement?
- Pilot – have a sunset time.
- Causes of actions are limited – not a complete waiver of liability – for certain conditions of what the Good Samaritan promised.
- Can only reauthorize a federal program for 7 years
- Amend/use CERCLA mechanisms instead (not the CWA since WOTUS not resolved)
- Don't amend CERCLA or CWA, but for a very limited purpose Good Sams are exempt. Could be done BUT the exemption will be perceived as an "amendment"
- CERCLA provides Good Sam protection on Superfund sites. Expand it to cover other GOOD Sam sites. Could this work to affect other statues? NMA did explore this but doesn't think it can be used more broadly
- If reprocessing is requested/considered, subject to review of claims to respect any valid and existing rights

Good Samaritan Protection to Enhance Abandoned Mine Land Cleanup – Finding a Path Forward

Summit Report

- Start legislation from something existing. E.g. Pennsylvania
- Water Flow considerations – (much greater back East)