

IMCC Mid-Year Meeting Held in Santa Fe

The Interstate Mining Compact Commission (IMCC) hosted its 2015 Mid-Year Meeting in Santa Fe, New Mexico, October 26 - 28, 2015 at La Fonda Hotel.

The meeting began on the afternoon of Monday, October 26 with a meeting between the states and guests from the Bureau of Land Management, including Lonny R. Bagley, Deputy State Director for Energy, Lands and Minerals, and Bill Auby, Geologist with the Division of Environmental Quality and Protection. A meeting with officials from the Office of Surface Mining in the Department of the Interior followed. A Santa Fe themed networking reception was held in the evening.

On Tuesday, October 27, a joint meeting of the Coal Environmental Affairs Committee and the Abandoned Mine Lands Committee began in the morning and resumed following a luncheon. Luncheon speaker, Ryan Flynn, Secretary of the Environment and Natural Resources Trustee for the State of New Mexico presented an interesting and informative talk on the impacts on and experiences of the state during and following the Gold King Mine Spill. A joint meeting of the Noncoal Section of the Environmental Affairs Committee with the Mine Safety and Health Committee took place in the afternoon.

The Finance and Administrative Committee and Resolutions Committee met jointly the morning of Wednesday, October 28. The IMCC Executive Commission Business Meeting followed and concluded the Mid-Year Meeting.

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A Newsletter Published by
Interstate Mining Compact
Commission

Featured in this Issue:

Compact Forum Article by Eric E. Cavazza, P.E. of Pennsylvania

Upcoming Meetings:

IMCC 2016 Annual Meeting

April 17 - 20, 2016
Mirror Lake Inn
Lake Placid, NY

For more information on IMCC Meetings as it becomes available, visit our website:

www.imcc.isa.us and click on the "Conferences" tab. Some presentations from IMCC Meetings and Workshops can also be viewed on the website at the "Conferences" tab. Copies of IMCC's Compact Newsletter are available on the website by clicking on the "Publications" tab.

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Call for Nominations for IMCC's First Annual Mine Safety and Health Training Awards

On November 16, 2015, the Interstate Mining Compact Commission (IMCC) adopted a new "Mine Safety and Health Training Awards" program. The annual awards program will recognize excellence in mine safety and health training and materials. The awards will be presented in two main categories, a state award and an industry award, each including four subcategories: coal surface, coal underground, metal/nonmetal surface, and metal/nonmetal underground. Nominations are now being accepted for the first Mine Safety and Health Training Awards, which will be presented during IMCC's 2016 Annual Meeting in Lake Placid, New York on April 19, 2016. Competition for the national awards is limited to IMCC member states. Nomination information was recently sent to the member states and is available from IMCC.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

IMCC 2016 Annual Meeting Scheduled for Lake Placid, New York

The Interstate Mining Compact Commission's (IMCC) 2016 Annual Meeting will be held at the Mirror Lake Inn in scenic Lake Placid, New York from April 17 - 20. More detailed information along with registration and room reservation forms was recently sent to the member states and will be made available on IMCC's website in the near future at the following link: <http://www.imcc.isa.us/Conference.htm>. As the itinerary and agendas are developed, they will also be posted on the website.

A welcoming reception will be held on the evening of April 17. Speaker sessions and meetings of the Coal and Noncoal Environmental Affairs Committees, the Mine Safety and Health Committee and the Abandoned Mine Lands Committee will take place on Monday, April 18 and Tuesday April 19. IMCC's Annual Awards Banquet is scheduled for the evening of April 19, at which the annual reclamation and minerals education awards will be presented, along with the first annual mine safety and health training awards (see related article). The Resolutions Committee and Finance and Administrative Committee meetings, and the Executive Commission Annual Business Meeting are scheduled for April 20, with the business meeting concluding the Annual Meeting by early afternoon.

For more information, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

Omnibus Appropriations Bill for FY 2016 Signed by President Obama

Recently Congress passed and the President signed the Omnibus Appropriations bill for Fiscal Year (FY) 2016, which will fund the federal government through September 30, 2016. There were several significant wins for the states on a number of fronts.

The bill funds the Office of Surface Mining (OSM) at \$123,253,000 to carry out the provisions of the Surface Mining Control and Reclamation Act (SMCRA). State Title V regulatory grants under SMCRA are funded at \$68,590,000, the same level as last year. The explanatory statement accompanying the law includes the following with regard to the Administration's proposal to reduce state Title V grants and enhance OSM oversight: "The Committees find that the budget proposal to reduce regulatory grants would undermine the State-based regulatory system. It is imperative that States continue to operate protective regulatory programs as delegation of authority to the States is the cornerstone of the surface mining regulatory program. Further, the agreement does not provide funds to expand and enhance Federal oversight activities of State programs."

The decision by the Committees to maintain the funding level for these grants and to discourage additional federal oversight activities comports with the Interstate Mining Compact Commission's (IMCC) recommendations in its testimony on the proposed budget. The bill also expressly prohibits OSM from obtaining their requested additional Full-Time Employees (FTEs), which IMCC believes would be used to further OSM's oversight activities. It also appears to include \$750,000 for OSM support of electronic permitting.

Importantly, a policy rider related to OSM's development of the final stream protection rule (SPR) is included in the bill. The accompanying language expresses the Committees' concerns with the adequacy of OSM's efforts to consult with state regulatory authorities in the development of the proposed SPR and requires OSM to disseminate a cadre of technical reports and draft documents related to the SPR. The rider states, "The Committees are concerned about the work at OSMRE [OSM] on the Stream Buffer Zone rule [SPR] and notes that more than half of the States who agreed to work as participating agencies have withdrawn from the process. The Committees are concerned that the OSMRE is not working with important State partners in an effective manner and believe that OSMRE should reengage State partners in a meaningful manner before finalizing the Stream Buffer Zone rule. To achieve the best outcome possible, *OSMRE is directed to provide the States with all technical reports, data, analyses, comments received, and drafts relative to the environmental reviews, draft and final environmental impact statements, and meet with any State with primacy during such process at the request of the State* [emphasis added]."

While IMCC is pleased that the Committees have heard the states' concerns in this regard, there is uncertainty regarding how OSM will respond to this congressional directive and the extent to which state input will be seriously considered, especially given the immensity of the effort that would be required to review and meaningfully comment on all of the referenced materials. There is also concern that by fulfilling these requirements, OSM will be considered to have rectified their initial failure to consult with the states without the rule being materially affected in response to previous state comments. IMCC maintains that the current version of the rule cannot be meaningfully improved without it being withdrawn and redeveloped – this time with adequate state consultation.

The Omnibus provides \$27,303,000 to OSM for the federal "discretionary" share of abandoned mine land (AML) funding under Title IV of SMCRA. AML grants to states are mandatory payments and do not need authorization by

Congress. These latter grants, however, are subject to the 6.8% sequestration cut that applies to mandatory funding. Sequestration cuts do not apply to discretionary funding pursuant to the Budget Resolution adopted by Congress earlier this fall.

The law also provides \$90 million for the states of Kentucky, West Virginia and Pennsylvania to be allocated within 60 days of the bill's enactment. These supplemental AML grants are for the reclamation of AML in conjunction with economic and community development and reuse goals and are to be distributed to the three states in accordance with the goals, intent and direction provided in House Report 114-170 (adopted by the House Appropriations Committee last summer).

It is uncertain what the \$90 million economic revitalization pilot project will mean for the fate of the Administration's Power Plus AML proposal (AMLER). IMCC suspects Congress will likely be uninterested in pursuing this until after a full assessment of the success of the pilot project.

Given this supplemental funding and the additional funding approved as part of the Transportation Bill for Wyoming (approximately \$250 million to be paid immediately and the removal of the \$15 million cap going forward), the AML distribution will likely be delayed for FY 2016 grants to state AML programs. It is uncertain whether all of this "new" funding will result in the overall \$490 million cap provided for under the 2006 AML program amendments being exceeded. Much depends on how much will be required for the United Mine Workers (UMW) Pension Fund in FY 2016. The UMW Pension Fund receives a portion of the mandatory appropriation authorized under Title IV of SMCRA.

Several riders were added to the Department of Interior and Environmental Protection Agency portions of the Omnibus concerning issues of concern to the states, including:

- Gold King Mine Spill ("Animas Spill"): The Committees expressed concern about the impacts following the Gold King Mine Spill on August 5, 2015 and believe long-term monitoring efforts are an important need. The Committees are also concerned that EPA's monitoring plan does not have the full support from the impacted states and tribes. Therefore, EPA is directed to coordinate with impacted states and tribes on development of a robust, long-term plan for independent monitoring. With existing funds, EPA is directed to continue to seek ways to provide states and tribes with support for their contribution to monitoring efforts.
- CERCLA 108(b): Prior to proposing any rule pursuant to section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9608(b)) (CERCLA), the EPA Administrator is directed to collect and analyze information from the commercial insurance and financial industries regarding the use and availability of necessary instruments (including surety bonds, letters of credit and insurance) for meeting any new financial responsibility requirements and to make that analysis available to the House and Senate Committees on Appropriations and to the general public on EPA's website 90 days prior to a proposed rulemaking. In addition, the analysis shall include EPA's plan to avoid requiring financial assurances that are duplicative of those already required by other federal agencies.
- Sage Grouse: Prohibits funding for the Fish and Wildlife Service to issue further rules to place sage grouse on the Endangered Species List.

As requested by the states, the bill also provides for \$8,441,000 for state assistance grants under the Mine Safety and Health Act, which is administered by the Mine Safety and Health Administration (MSHA), as amended.

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: gconrad@imcc.isa.us.

IMCC Executive Director Addresses ISMR Conference

IMCC Executive Director Greg Conrad addressed the 29th Annual Technology Transfer Seminar of the Indiana Society of Mining and Reclamation on December 8 in Evansville, Indiana. In his remarks, entitled "Moving Targets and Sitting Lame Ducks – A DC Update", Mr. Conrad provided an overview of several key issues being pursued by Congress and/or the Administration that would impact the states and coal industry. Among the topics he addressed were the Office of Surface Mining's stream protection rule, the FY 2016 budget and appropriation process, Good Samaritan protections for those undertaking abandoned mine reclamation work, reclamation bonding, and a proposed rule concerning mine placement of coal combustion residues. With regard to 2016, Mr. Conrad noted that the Obama Administration will be working to put into place the last pieces of its legacy, including transportation, immigration and education reform. "With respect to mining, the White House will continue to push the Power Plus agenda, including a proposal to enhance AML [abandoned mine land] funding, as well as completion of the stream protection rule, both of which are high priorities," Conrad said. As for the second session of the 114th Congress, with the limited number of legislative days currently on the calendars for both the House (111) and Senate (143) and the upcoming national

election, few substantial measures have hope of advancing. "With respect to the two political parties, they must now walk a fine line between providing enough of a positive agenda to defend their majorities, while not getting ahead of their own party's eventual presidential nominee," he said. A copy of Mr. Conrad's full remarks are available from IMCC.

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: gconrad@imcc.isa.us.

House Subcommittees Hold Joint Hearing on "Examining the Stream Protection Rule"

A joint hearing of the House Committee on Oversight and Government Reform's Subcommittee on the Interior and Subcommittee on Health Care, Benefits and Administrative Rules was held on Tuesday, December 8, 2015 titled, "Examining the Stream Protection Rule." The sole witness for the hearing was Janice Schneider, Assistant Secretary for Land and Minerals Management. The purpose of the hearing largely revolved around examining the nature of the Office of Surface Mining's (OSM) consultation with cooperating state agencies during the development of the Draft Environmental Impact Statement (DEIS) related to the proposed Stream Protection Rule (SPR). The hearing also touched on the Regulatory Impact Analysis (RIA) associated with the SPR.

On December 15, the Interstate Mining Compact Commission (IMCC) submitted a statement to be included in the record for the hearing. The statement provides clarity from the states' perspective on several points discussed by Ms. Schneider during her testimony, particularly regarding the characterization of the consultation efforts engaged in by OSM with the ten states that had signed on as cooperating agencies through Memoranda of Understanding (MOUs) related to the development of the DEIS. The statement also provides clarity regarding recent and ongoing meetings OSM has been conducting with state regulatory authorities to discuss comments the states submitted on the SPR during the public comment period.

In making a case for having provided stakeholders, including the states, ample opportunity for "robust" input, Ms. Schneider pointed out in her testimony that the proposed rule had been made available for public comment for "close to 3.5 months, including one extension of the comment period." She reported that over 94,000 comments have been received to date, and said she believes "The process is working."

When questioned about why 8 of the 10 states who had originally signed on to be cooperating agencies had chosen to withdraw, Ms. Schneider responded, "What they have said is they had some concerns about the process." Representative Meadows (R-NC) asked if she had addressed those concerns, to which she responded, "Yes, I believe we have. Between 2010 and 2011 OSM provided chapters of the administrative draft of the EIS to the cooperative agency states. The states had opportunity to provide comments. They did so. We used those comments to draft the EIS that is out on the streets." IMCC's statement clarifies that the cooperating agency states had been given the opportunity to comment on only 3 of the chapters of the DEIS, and that the states were given unreasonably short deadlines, thereby preventing them from providing the optimum level of review. IMCC also clarified that the states believe their comments had been largely ignored and not incorporated into the DEIS that was finally released.

Rep. Meadows questioned Ms. Schneider about a meeting of the cooperating agency states with OSM that took place in Baltimore last April during IMCC's 2015 Annual Meeting. When asked whether the participation had been "robust", she said that it had been. IMCC's statement contends that the cooperating agency states in attendance considered the Baltimore meeting to be a briefing by OSM, rather than an opportunity for the states to provide substantive input or any meaningful participation, and that the meeting had little value.

In her testimony, Ms. Schneider cited the estimated net loss of 10 jobs reported in the RIA. When questioned about the great disparity in the number of estimated job losses compared with the tens of thousands of estimated job losses found in the National Mining Association's (NMA) analyses, Ms. Schneider asserted that the version of the proposed SPR and DEIS that is out on the streets now is "a totally different version than what NMA's job loss estimates were based on." She repeated the point when pressed about the initial estimated job loss number of 7000 that had been "leaked" by stakeholders working on developing the DEIS, and reasserted that the calculation of 7000 job losses referred to "a completely different document." By admitting that the original version of the draft was substantially different from the version that was released with the proposed SPR in order to justify the job loss estimates and costs cited in the RIA, Ms. Schneider also inadvertently made the case for the states that the original draft chapters provided to the cooperating agency states for comment did not represent meaningful participation, as noted in IMCC's statement.

Rep. Lummis (R-WY), Chairman of the Interior Subcommittee, questioned whether efforts were being made to reengage the states in the process at this time. Ms. Schneider reported that OSM had already met with several of the states to discuss the states' comments submitted on the proposed SPR and she characterized the meetings thus far as having been "very positive" - leaving the impression that the states are being fully engaged as an important part of

the process going forward and that the states' comments would be seriously considered as revisions are made prior to issuing a final rule. Schneider also told the committee that all of the original cooperating agency states have been invited to reconnect as cooperating agencies, and that to date none of them have chosen to take them up on it, stating "I think it's a shame" as it would give the states opportunity for broader participation. IMCC's statement also addressed this, noting that the states who had already met with OSM as of the time of the hearing found the meetings to have little value, and remained skeptical that their comments or input will be seriously considered in the final rule.

In her closing remarks, Rep. Lummis clarified that the sole reason the state of Wyoming remained as a cooperating agency state and did not withdraw from the process was in order to protect the state's right to sue the federal government. In her remarks, Mrs. Lummis also made an excellent case for all of the cooperating agency states in demonstrating that the process had failed.

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MSHA Awards \$8.4 Million in State Grants

The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) has awarded \$8,441,000 in grant funding to 47 states and the Navajo Nation to reduce mining accidents, injuries and illnesses by supporting safety and health training courses and other programs. Grantees will use the funds to provide miners with federally mandated training. The grants cover training and retraining of miners working at surface and underground coal and metal and nonmetal mines, including miners engaged in shell dredging or employed at surface stone, sand and gravel mining operations.

Grants were awarded in fiscal year 2015 based on applications from states, and they are administered by state mine inspectors' offices, state departments of labor, and state-supported colleges and universities. Each recipient tailors the program to the needs of its mines and miners, including mining conditions and hazards miners may encounter, and provides technical assistance.

"Training of our nation's miners is critical to miners' safety and health, and thousands of miners receive training through these state grants," said Joseph A. Main, Assistant Secretary of Labor for Mine Safety and Health. In addition to safety and health training, some states use these grants to support their mine emergency response efforts and other Mine Act functions.

IMCC Comments on OSM's Proposed Stream Protection Rule

On October 23, the Interstate Mining Compact Commission (IMCC) filed comments on the proposed Stream Protection Rule (SPR) that was published by the Office of Surface Mining (OSM) in the Federal Register on July 27, 2015. IMCC's comments reflect the 30-plus years of experience of the Compact's 25 member states, several of whom implement regulatory programs as the primary and exclusive regulatory authorities under the Surface Mining Control and Reclamation Act (SMCRA).

The IMCC member states view the rulemaking as a whole as a "squandered opportunity" by OSM, according to the comments. After OSM initially reached out to the states as the primary regulatory authorities for their input on the need for and nature of potential revisions to the agency's 1983 stream buffer zone rule in 2007, the states have been treated as any other stakeholder in the process. A handful of cooperating agency states were initially involved in the development of the Draft Environmental Impact Statement (DEIS) associated with the proposed rule in late 2010 and early 2011, but OSM shut the process down by completely excluding these states from the process following some limited, initial opportunities for comment on early chapters of the DEIS that were subsequently significantly revised. IMCC asserts that OSM "lost the chance to receive and incorporate the valuable insight and experience of the primary states and the best practices that they have developed and incorporated into their respective programs over the years." As a result IMCC says "that time and again throughout the proposed rule, OSM demonstrates its lack of understanding of how states have handled the various permitting requirements and performance standards that this expansive rule addresses." The comments also cite OSM's reliance on "new science" as "often either inapplicable or taken out of context", and states that OSM's "assessment of impacts on state regulatory programs in terms of implementation and resources is completely out of touch with reality."

IMCC addressed several specific deficiencies in the detailed comments. Taken together, IMCC's comments gravitate to the conclusion that OSM must abandoned this rulemaking, stating "While we had initially held out some glimmer of hope that the Proposed Rule could be revised in ways to make it palatable and allow it to withstand legal challenge, our ultimate sense is that this is not possible given all the various deficiencies in the rule. Should OSMRE desire to pursue a replacement rule, the agency would be well advised to meaningfully work with the states to design an

approach that is reasonable, workable and sound.... there are too many disconnects, inaccuracies and misapplications, especially when it comes to the science relied upon by OSM, to continue forward without further collaboration and consultation.”

In addition, IMCC filed comments on the DEIS and the Draft Regulatory Impact Analysis (RIA) associated with the proposed rule. Copies of IMCC’s comments can be obtained by contacting the IMCC offices.

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Interior Department Releases First USEITI Report

The U.S. Department of the Interior recently released the first report of the U.S. Extractive Industries Transparency Initiative (USEITI) in which the Interstate Mining Compact Commission (IMCC) played a critical role as part of the Multi-Stakeholder Group (MSG) that was responsible for guiding development of the report. The EITI is a global standard that promotes “open and accountable management of natural resources” in an effort to increase public trust and dialogue, improve governance, attract investment, and manage and enhance growth so that citizens receive financial and societal benefits from a country’s natural resources. A full copy of the interactive, online report can be accessed at <https://useiti.doi.gov/>. IMCC’s term as a member of the MSG Advisory Committee recently expired and the organization was recognized by the Interior Department at a December 15 meeting of the MSG for its substantial contribution to the effort.

For more information, contact: Greg Conrad at 703.709.8654 or E-mail: gconrad@imcc.isa.us.

House Committee on Natural Resources Report on STREAM Act (H.R. 1644)

A House Committee on Natural Resources Report to accompany H.R. 1644, the “Supporting Transparent Regulatory and Environmental Actions in Mining Act” (STREAM Act) was issued on October 1, 2015. The interstate Mining Compact Commission (IMCC) testified in support of the Act at a hearing held in May.

The stated purpose of the STREAM Act is to ensure transparency in the development of regulations by the Office of Surface Mining (OSM), and specifically targets the Proposed Stream Protection Rule (SPR). The report explains the provisions of the STREAM Act and its proposed amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which would require all scientific products to be made publicly available 90 days before publication of said rule, analysis, etc., including the raw data used for any federally funded products. It would also require the Secretary of Interior, in consultation with IMCC and the member states, to enter into an agreement with the National Academy of Sciences (NAS) to perform a study on the effectiveness of the 1983 Stream Buffer Zone Rule within 90 days after enactment of the STREAM Act. It would prohibit OSM from issuing a final SPR or other regulations related to stream protection until one year after results of the study (which must be done within 2 years) are reported to the House Committee on Natural Resources, Senate Committee on Energy and Natural Resources, and to the governors of the IMCC member states. It would require any future regulations to take into consideration any recommendations made in the study.

The report also provides background on the need for the STREAM Act and identifies the issues it would address, including clarifying OSM’s statutory boundaries under SMCRA, specifically regarding the lack of authority for OSM to interpret provisions of the Clean Water Act; remedying the lack of cooperation with the states in the Environmental Impact Statement and rulemaking development process by providing an opportunity for substantive input by the states; as well as providing for independent examination of the need for a regulatory update. The Congressional Budget Office’s report on the cost of implementation estimates under the STREAM Act are included in the report as well, along with discussion of estimated affects and costs of the SPR if implemented by OSM. Dissenting views on H.R. 1644 conclude the report.

For more information, or a copy of the report, contact: Beth Botsis at 703.709.8654 or E-mail: bbotsis@imcc.isa.us.

IMCC/NAAML P Testifies at Two House Hearings Re. Hardrock AML and Good Samaritan Cleanups

On Wednesday, October 21, 2015, the House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and the Environment held an oversight hearing entitled, "Abandoned Mines in the United States and Opportunities for Good Samaritan Cleanups." Eric Cavazza, Director of the Bureau of Abandoned Mine Reclamation and outgoing President of the National Association of Abandoned Mine Land Programs (NAAML P), testified on behalf of the Interstate Mining Compact Commission (IMCC) and NAAML P. A written statement with more extensive comments was also filed jointly by the two organizations.

Mr. Mathy Stanislaw, Assistant Administrator for the Office of Solid Waste Management and Emergency Response within the U.S. Environmental Protection Agency (EPA) was the sole panelist for the first portion of the hearing. Mr. Stanislaw's testimony focused on the hardrock abandoned mine land (AML) inventory information that EPA currently holds, EPA's role in remediating certain hardrock AML sites under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA aka Superfund), and EPA guidance documents meant to alleviate the liability concerns of potential Good Samaritans. Questions directed to Mr. Stanislaw focused on EPA's handling of the Gold King Mine incident, the adequacy of the EPA guidance on Good Samaritan protections, and the potential benefit of obtaining a comprehensive hardrock AML inventory.

The second panel was comprised of Mr. Cavazza, Luke Russell representing the National Mining Association (NMA), Doug Young representing Keystone Policy Center, Chris Wood representing Trout Unlimited, and Lauren Pagel representing Earthworks. The panelists' statements were in accord for the most part and generally focused on the extensiveness of the hardrock AML problem, particularly with respect to mine drainage discharges, obstacles to remediation of these sites, and the dire need for protection from Clean Water Act (CWA) liability to encourage and empower Good Samaritan groups to treat water at these sites.

Ms. Pagel's testimony dissented from the other panelists in that her testimony focused on enactment of a hardrock AML fee and reform of the 1872 Mining Law, to include federal collection of royalties. She did, however, acknowledge that the work of Good Samaritans is helpful and enhanced liability protection is needed.

In response to questions from the minority on the importance of obtaining a comprehensive hardrock AML inventory, Mr. Cavazza explained that while a robust inventory would be helpful, the existing information possessed by the states on hardrock AML sites within their respective borders is more than enough to begin working on the highest priority problems. Mr. Cavazza described the various difficulties and associated expense which attend inventorying efforts. He recommended that, considering the difficulty of inventorying and the immensity of the high priority sites already identified, any additional funding should be directed to actual reclamation of these sites, rather than inventorying new sites. Mr. Cavazza also noted the importance of the coal AML fee to clean up of coal AML sites in the states, and recommended that the committee support efforts to reauthorize the program under Title IV of SMCRA.

Mr. Cavazza also discussed at length Pennsylvania's experience with their own Good Samaritan program. He described how the program operates, the success and proof of the Good Samaritan concept demonstrated by the state's program, as well as specific examples. One project cited was completed under the state's Good Samaritan program, and a second was planned but never implemented as a result of federal liability concerns.

A November 4, 2015 legislative hearing was held by the House Subcommittee on Energy and Mineral Resources at which Mr. Cavazza also testified on behalf of IMCC and NAAML P. The hearing focused on two bills introduced by the Committee. The first, H.R. 3843, the "Locatable Minerals Claim Location and Maintenance Fees Act of 2015," would authorize a 7 year period of claim location and maintenance fees for locatable minerals on federal land, establish a hardrock AML program for federal lands administered by the Bureau of Land Management (BLM), and establish a federal Good Samaritan program. H.R. 3844, the "Energy and Minerals Reclamation Foundation Establishment Act," would establish a foundation to collect private donations and direct assets to environmental clean up, including AML.

With all of the recent attention paid to the Animas River Spill involving EPA, there is a significant amount of momentum surrounding efforts to establish a federal Good Samaritan program – something IMCC and NAAML P have advocated for over many years. Willingness to find a viable, bi-partisan solution for establishing these long sought-after protections appears to be mounting.

For copies of the testimonies, or more information, contact: Ryan Ellis at 703.709.8654 or e-mail: rellis@imcc.isa.us.

compact forum

Pennsylvania's Environmental Good Samaritan Act: Making the Case for Federal Good Samaritan Protections

By

Eric E. Cavazza, P.E.

Director, Bureau of Abandoned Mine Reclamation
Pennsylvania Department of Environmental Protection

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 abandoned mine land (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.

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 a national Good Samaritan solution would propel us toward accomplishing this goal. A Good Samaritan program would 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.

The experience of Pennsylvania (PA) has demonstrated there are countless opportunities for Good Samaritans to clean up AML and restore acid mine drainage (AMD) impaired streams. PA's citizen, watershed and environmental groups have long been working to address the problems in their geographical areas. When PA 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 had these discharges because by re-affecting 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 PA Department of Environmental Protection (PDEP) 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, PA enacted the Environmental Good Samaritan Act in 1999 (Title 27 Pennsylvania Consolidated Statutes Annotated Sections 8101 - 8114). Projects must meet certain criteria to be covered by the Act and must be reviewed and approved by the PDEP. 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 laid out in the Act. PA'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.

PA'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, corporations, municipal authorities and conservancies. Some projects are simple low maintenance treatment systems, while others are large and complex.

I would like to highlight a couple of examples from PA. First, the Bennett Branch Restoration Project was successfully completed under the state's Good Samaritan protections. Beginning in 2004, the PDEP, 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 north-central PA. 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 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 streams were nearly completely devoid of life

The primary objective of the 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 re-mining was conducted under a demonstration permit authorized under Project XL, an experimental permitting process cooperatively developed by the Environmental Protection Agency (EPA), the Office of Surface Mining (OSM) and the PDEP to both facilitate re-mining 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 PA.

The PDEP-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 Clean Water Act (CWA) standards cost prohibitive. The level of treatment was designed to allow for 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 PDEP developed a short documentary about the project that is posted on the PDEP's YouTube channel and can be viewed at this link: www.youtube.com/watch?v=xERV4sYgLY .

In contrast, the Gladden AMD Discharge - Chartiers Creek Watershed is a project that was planned but never implemented as a result of liability concerns. 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 stream in PA, which equates to about 1 mile out of every 15 miles of streams 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 PDEP, the Gladden discharge is responsible for 60% of the iron loading and 70% of the acidity loading to Chartiers Creek. Within a half-mile form 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 PDEP, BAMR, 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 PDEP.

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 PA'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 CWA. After further review by legal counsel for both the private landowner and 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.

While substantial progress has been made under the PA program, the opportunities for Good Samaritans in PA and throughout the country would be greatly enhanced by the enactment of federal Good Samaritan legislation.

-End-

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