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GOOD SAMARITAN UPDATE



LORETTA PINEDA

EPA Guidance



- On June 6, 2007, the EPA issued “Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans” (hereinafter, the “2007 Guidance”).
- The December 2012 memo is intended to encourage “Good Samaritan” cleanup activities at abandoned mine sites by reducing perceived legal vulnerability to those who want to conduct such cleanups.

2007 VS 2012



- The purpose of the 2007 Guidance is to reduce barriers under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for volunteers ("Good Samaritans") to clean up abandoned hard rock mine sites. The 2007 Guidance notes that discharges from on-site response actions associated with creating or modifying point sources do not need an NPDES or any other federal permit during the CERCLA removal action under the provisions of CERCLA §121(e), and 40 C.F.R. §300.400(e)(1).
- How is this new memorandum different from the 2007 Guidance? This memorandum focuses more on Good Samaritans' responsibilities under the CWA. Specifically, this memorandum discusses potential CWA responsibilities for a Good Samaritan after the cleanup activity undertaken consistent with the 2007 Guidance is successfully completed, including when a passive treatment system remains. In the alternative, the CERCLA action could also be continued.

Power vs Responsibility



- Is the use of the word "power" in the factors intended to imply that states and tribes will usually be considered "operators" because "power" could be interpreted to include the sort exercised by a state or tribe as part of a sovereign's police powers?
- The factors listed in this latest memorandum are not meant to be applied as if they were rules, and there is no hard-and-fast number of factors for determining that an entity will -- or will not -- be considered an "operator" after work under a CERCLA tool is successfully completed. The question whether any given entity is an "operator" should be answered on a case-by-case basis. In the case of a sovereign entity -- such as a state or tribe -- the EPA anticipates the focus to be more on the sovereign's "responsibility" to take action rather than "power" to take action.



Colorado Project?



Tiger Mine Restoration Project Leadville, Colorado

To address the acid mine drainage discharging from the Tiger Tunnel itself, Trout Unlimited, Colorado Mountain College, and the Colorado School of Mines is currently in the process of developing a sulfate-reducing bioreactor design that will further reduce the metals loading entering the surface streams.

The Tiger Tunnel drainage and the large mine waste pile that was removed by the BLM in 2009. This drainage has a very low pH and is high in heavy metals, and plays a large role in the Lake Fork of the Arkansas being one of Colorado's most polluted rivers



Acid mine drainage from the collapsed Tiger Tunnel runs across the large mine waste pile.



At the completion of the removal of the mine waste pile and the construction of the repository, future SRB cells were excavated. These cells will likely remain empty and inactive until the passage of federal Good Samaritan legislation.

Matrix Questions for Watersheds



- **Number of Mines in class?**
- **Are the techniques proposed new and innovative ?**
- **Are the techniques transferable to other locations with similar conditions?**
- **Could a standardized procedure be designed from this project?**
- **Will this project be cost effective?**
- **Can we get surrounding entities to help fund project if it benefits them ?**
- **Does this project demonstrate the Good Samaritan Ruling**
- **Can a Standardized restoration legal agreement be produced to eliminate legal work for each mine ?**
- **Are there other mine clean-up projects that are a better demonstration from the previous questions**

Questions Remain



Does the EPA memo clearly address legal requirements that the Clean Water Act imposes on governmental entities as operators once clean up is initiated?

Without legislative change, does the memo provide relevant clarification and guidance to other than private groups and individuals (e.g. the State)

How can governmental agencies provide technical, financial or other support to facilitate Good Samaritan projects by private entities?

How does EPA (and the State of Colorado) envision a project proceeding from the Good Sam's initial identification of a site through completion of the proposed activities?

Long Term Maintenance



In the alternative, the CERCLA action could also be continued.“

" Or, subsequent long term maintenance needs (every five or ten years) could be accomplished through a successive series of "new" Good Sam projects, with multiple different entities stepping in to keep the systems operating through "one-time" maintenance projects. EPA is looking into this.

