



Western Governors' Association Policy Resolution 13-05

Cleaning Up Abandoned Mines in the West

A. BACKGROUND

1. Mining has a long history in the West. The western states are rich in hardrock minerals like gold, silver and copper.
2. Cleanup of old abandoned hardrock mines is hampered by two issues -- lack of funding and concerns about liability. Both of these issues are compounded by the land and mineral ownership patterns in mining districts. It is not uncommon for there to be dozens of parties with partial ownership or operational histories associated with a given site.
3. Recognizing the potential economic, environmental and social benefits of remediating lands and streams impaired by abandoned hardrock mines, Western states, municipalities, federal agencies, volunteer citizen groups and private parties have come together across the West to try to clean up some of these sites. However, due to questions of liability, many of these Good Samaritan efforts have been stymied.
4. Potential liability exists for Good Samaritans under Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permit program because a party can inherit liability for any discharges from an abandoned mine site remaining after their cleanup efforts, even though the volunteering remediating party had no previous responsibility or liability for the site, and has reduced the water quality impacts from the site by completing a cleanup project.
5. Potential liability exists for Good Samaritans under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act).
6. Liability concerns also prevent mining companies from going back into historic mining districts and remining old abandoned mine sites or doing volunteer cleanup work. While voluntary remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for cleaning up abandoned mine sites.
7. In December 2012, EPA issued a memorandum to its regional offices the intent of which was to reduce the perceived Clean Water Act legal vulnerability faced by "Good Samaritans" who want to clean up their communities. EPA's memorandum clarifies that Good Samaritans who volunteer to clean up these abandoned sites are generally not responsible for obtaining a permit under the Clean Water Act either during or following a successful cleanup.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors commend EPA for issuing an instructional memorandum helping clarify CWA liability for Good Samaritan cleanups. We urge EPA to issue additional instructional memorandum to address potential liabilities related to CERCLA, RCRA and remining, including specific guidance for local and state governments.
2. To add greater certainty, Western Governors call on Congress to amend the Clean Water Act to legally protect volunteering remediating parties, including local and state government agencies, which conduct authorized remediation from becoming legally responsible under section 301(a) and section 402 of the CWA for any continuing discharges from the abandoned mine site after completion of a cleanup project, provided that the remediating party -- or "Good Samaritan" -- does not otherwise have liability for that abandoned or inactive mine site.
3. Legislative and administrative remedies to address potential CERCLA and RCRA liabilities should also be considered, as should liabilities associated with remining that deter the mining industry, likely the best suited industry in terms of equipment, technology and expertise, from improving conditions at abandoned mine sites.
4. As the costs to clean up abandoned hardrock mines are significant, the Western Governors support efforts by Congress and the Administration to encourage public-private partnerships that would facilitate cleanups by Good Samaritans.

C. GOVERNORS' MANAGEMENT DIRECTIVES

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. WGA staff is directed to convey this policy resolution to the Congressional committees of jurisdiction, the Executive Branch and other interested parties as appropriate. WGA shall monitor developments on this issue and report to the Governors' staffs as developments warrant. WGA staff shall identify opportunities to advance the Governors' policy position that warrant further action by the Governors.

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