

**Reclaiming Pennsylvania's  
Abandoned Minelands**

**Limiting liability through:**

**Environmental Good Samaritan,  
Sub-Chapter F & GFCC Programs**

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**Environmental Good**

**Samaritan Act**

**(EGSA)**

**Pennsylvania's legacy:**

**>100,000 hectares of AML**

**3,200 km of degraded streams**

**Citizens are reluctant to volunteer to reclaim  
AML because of the potential liabilities**



## History

Amended Title 27 (Environmental Protection)

Added Chapter 61--The Environmental Stewardship and Watershed Protection Act (funding source for Growing Greener Program)

Added Chapter 81—(EGSA)

## Intent of legislation

- ✦ Encourage improvement of land and water adversely affected by mining and oil and gas extraction
- ✦ To aid in the protection of wildlife
- ✦ To abate hazards to health and safety
- ✦ Aid in the prevention and abatement of pollution of rivers and streams...and...

## Intent of legislation, cont'd.

- ✦ To improve water quality, control and eliminate water pollution by limiting the liability which could arise as a result of the voluntary reclamation of AML or the reduction and abatement of water pollution

## Who's eligible for protection?

- ✦ Landowner or person\* who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or water pollution abatement...
- ✦ \*Person, association, corporation, state or federal agency, political subdivision

## And who's NOT eligible?

- ✦ Anyone who is responsible to reclaim/treat pollution. Anyone who is under DEP order to treat water pollution (Surety companies)
- ✦ Projects (hydrologically connected) to active mining that may affect permittee's obligations under the permit
- ✦ Projects as "lieu of paying civil penalties"

## EGS Applications

- ✦ "Simple"—can be easily filled out by citizens groups—(six pages+)
- ✦ Includes applicant data, project description, rights of entry, landowners, project participants, list of adjacent and (downstream) riparian landowners
- ✦ DEP responsible for public notice

## EGS review: DEP's Role

- ✦ Eligibility of applicant and site
- ✦ Are any permits needed?
- ✦ Is the remediation/treatment plan/abatement plan environmentally sound?
- ✦ Verify data in the field

## EGS project is approved if...

- ✦ All technical issues are resolved...
- ✦ Project will result in the regrading of land to stable contours
- ✦ Project will result in the appropriate revegetation of site
- ✦ Project is NOT likely to result in water pollution (will improve water quality)

## Liability limitations...

- ✦ Applies to landowner, project or person who provides services...
- ✦ Must provide land access without charge
- ✦ Services are provided free or at cost...
- ✦ Are then immune from the following:

- ✦ By the person implementing the reclamation or water pollution abatement project while the person is within the project work area
- ✦ By a third party which arises out of or occurs as a result of an act or omission of a person implementing... during project
- ✦ By a third party which arises from reclamation or water pollution project

## “Liability immunities”

- ✦ Person will not be deemed to assume legal responsibility for any pollution resulting from project
- ✦ Will not be subject to a citizen suit filed under the PA Clean Streams Law
- ✦ Will be immune from liability for the operation maintenance or repair of the water treatment facilities unless the landowner is negligent or denies access to the facilities ‘operator’...

## Exceptions...(uh, oh....)

- ✦ Landowner may **STILL** be liable if he fails to provide warning of a known latent dangerous condition located on the project area not subject to the reclamation project.
- ✦ Landowner may **STILL** be liable for injury from his acts of gross negligence or willful misconduct or if he charges a fee to the site or for any unlawful activities.....or...

## Exceptions, cont'd.

- ✦ Landowner may **STILL** be liable for damage to riparian landowners from a project where written notice or public notice of the proposed project was **NOT** provided.

## EGS: “Pros”

- ✦ Great potential to get a significant amount of AML reclamation and/or reduction in pollution loads from AML discharges or abandoned gas/oil well discharges--at very little cost to the government.

## EGS: “Cons”

- ✦ EGSA does not prevent the landowner or participant from being sued. EGS was designed—not ‘carte blanche’--but to provide an “affirmative defense”. DEP will testify that the participants successfully completed all necessary steps to qualify for EGS coverage and that the project is environmentally sound and...

## Con's (cont'd).

- ✦ Landowner and participants can **STILL** be sued under the Federal Clean Streams Law
- ✦ Water supply replacement section: DEP responsible for replacing W/S—if so, then should project be approved?  
“Accidental loss/contamination--ok”

## Overall effectiveness

- ✦ “So far, so good”. Increasing interest by watershed groups in obtaining EGS coverage—most projects are for passive or active treatment of abandoned deep mine discharges.
- ✦ At present, 15-25 EGS applications have been reviewed—most of them in the last six months...

## Room for Improvement?

- ✦ EGS applications will soon be incorporated into our G2 grant apps. EGS coverage will be automatically granted upon approval of the G2 grant.
- ✦ No funds were allocated to the program for establishment of a comprehensive database. No easy way for watershed groups to access data from past projects.

## More room for improvement...

- ✦ General permit provision—develop a “general permit” allowing the watershed group to use Best Management Practices (BMP’s) and not be subject to stream encroachment, earth disturbance or NPDES permit requirements

“Not yet developed”

## Even more.....

- ✦ Expand the EGS program to include not only abandoned mines and oil and gas wells but other types of industrial sites, as well...
- ✦ Make the program broader. Consider a NATIONAL EGS program...
- ✦ Consider allowing retroactive EGS approval

## Examples

- ✦ “Washington Site” a) DEP determined an operator was responsible for discharge [DO YOUR HOMEWORK!] b) adjacent (downstream) landowner protested new discharge of water across his land
- ✦ “Saltlick Site” Significant increase in pollutant loading from deep mine, overwhelmed treatment pond; protest from downstream owners



## Pre-existing discharge liability



## History

- ✦ Early 1980's: Clean Water Act/PA Clean Streams Law: all discharges from mine site must meet BAT effluent standards—NO EXCEPTIONS.
- ✦ Mining companies held responsible for on-permit or hydrologically-connected pre-existing discharges → must treat to present-day effluent standards...

## Definitely a disincentive to remining/reclamation!



## History (cont'd).

- ✦ 1984—PA legislature/EPA determined that pre-existing mine discharges did NOT fit into the standard BAT framework. As long as the operator did not make the discharge worse than “baseline”—he was not held responsible for permanent treatment or abatement of the discharge.

“Sub-chapter F regulations”

## “Baseline...?”

- ✦ Six-twelve monthly samples (including flows) of discharge. Data then put into EDA (exploratory data analyses—PA) or Mann-Whitney U non-parametric test (EPA)
- ✦ To obtain “baseline standards”—operator is required to reclaim a substantial “abatement area”

## Overall Effectiveness?

- ✦ Study of 110 remining sites (233 affected pre-existing discharges) showed that:
- ✦ Acidity loads reduced by 61% (7219 kg/day)
- ✦ Fe, Mn, Al loads reduced 235, 14, 137 kg/day, respectively
- ✦ Sulfate loads reduced 5900 kg/day
- ✦ Median flow reduced by > 63 liter/second
- ✦ Fewer than 1% of the mine sites got worse

## Results...

- ✦ By 2001, >>12,000 hectares in PA have been reclaimed, 7600 hectares through re-mining by the mining industry
- ✦ **Project XL:** eight sites in PA; trigger point is downstream point; if degradation occurs, operator has option of reclaiming another part of the watershed instead



## GFCC Program

- ✦ “Government Financed Construction Contracts”
- ✦ Active vs Abandoned Mining Programs
- ✦ 1999—PA received approval to amend it’s AML program to allow contractors (coal operators) to remove coal during reclamation. Administered by Active Program

## Features

- ✦ Reclamation contract vs permit to mine
- ✦ “No” barriers: house, stream, cemetery...
- ✦ No discharge liability (no baseline, either)
- ✦ Bonding is higher but returned faster; different bonds; must equal actual reclamation cost

## Features, cont'd.

- ✦ Whole-site reclamation is required—but can be ‘phased’. GFCC sites are usually small (~2-5 hectares)
- ✦ Useful for housing developments over deep mines (vs subsidence insurance)
- ✦ Project must be approved by State & Federal Government
- ✦ 2002--over 600 hectares have been reclaimed



## Contacts

- ✦ [www.dep.state.pa.us](http://www.dep.state.pa.us) ['subjects' tab]
- ✦ [www.dep.state.pa.us/dep/deputate/minres/districts/homepage](http://www.dep.state.pa.us/dep/deputate/minres/districts/homepage)
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- ✦ [deajones@state.pa.us](mailto:deajones@state.pa.us) (if all else fails...)



**The end...**