

Good Samaritan Legislation

A number of barriers may prevent environmental cleanup of abandoned mines – technological, institutional, financial or regulatory. The latter can be overcome, in some cases and to some extent, by what is generally known as Good Samaritan Legislation.

Without examining or testing the motives for such actions, it is sufficient to suggest that there are times when a mining company – either a new player in an area or an existing operator – may wish to enter either private or crown lands to remediate a shutdown or orphan mine site. The concern may be one of safety – open holes, collapsed ground; of visual impact – old buildings; or of existing or potential environmental impacts – acid generating materials or unsafe tailings dams or water retaining structures.

Unfortunately, more often than not these remediation activities do not take place. The reason for that is simply one of liability – a company acting responsibly to its shareholders simply cannot risk the potential of accepting liability for issues not of its own making.

Let me give you an example, albeit from United States and involving not a mining company as the third party, but, rather, a public utility and a government agency. An orphan mine in California – the Penn Mine – was discharging contaminated mine drainage. A municipal utility and a regional water quality control board constructed facilities to contain the contaminated mine drainage, which substantially improved downstream water quality while not totally eliminating drainage from the site. A local activists group sued the municipality and the board, claiming they were responsible for illegal discharges without a permit. The plaintiffs prevailed and ultimately reached a settlement with the defendant involving a plan to treat the remaining mine drainage and additional site remediation work. The initial cost of the project was compounded many times over by the assumption of this additional burden. Would you expect them – or others – to undertake a similar project with this sort of end result being a potential outcome?

The aggressive litigation activities of an opportunistic element of the American legal community in this and other similar cases can be said to be unlikely to happen in Canada, but who is prepared to take the risk? The result of this reluctance to become involved is a net loss to the environment.

As another issue, no environmental improvements are being realized at sites at which a partial cleanup could achieve incremental – and in some cases significant – water quality improvement. The pursuit of the possibly unattainable is thwarting realization of the good. Coupled with this is the general requirement in most jurisdictions to undertake formal, and sometimes protracted, environmental review and permitting before improvement projects can be undertaken. Clearly, if a company is prepared to do a voluntary cleanup, maximizing expenditure of resources on actual mitigation measures must be the goal. It is more than reasonable to assume they would be unwilling, or at least reluctant, to devote resources to legal, administrative or regulatory reviews.

So what do we need? We need regulations which can provide third parties (introduce term Good Samaritan) with statutory protection from liability for damage that might arise out of work undertaken on a voluntary basis; a mechanism that can recognize that such work is not taken as an admission of responsibility by that third party; and a mechanism that can recognize that the third party is not seen as being put in charge, in control or in possession of the site. Further, this protection must extend to not only public (Crown) lands, but must be available for private lands, say, where the present owner lacks the funds to undertake the corrective action. And finally, the review and administrative burdens for these types of works must be minimal – the volunteer proponent and regulatory agencies must be able to work together in a technical forum to develop the optimal reclamation / remediation design.

There is no environmental downside to the establishment of Good Samaritan legislation. What we need is responsible and cooperative undertakings by three different groups – by governments to put in place the legislative implements, by industry to take actions, and by the environmental community to supply support.