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BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
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Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear today to discuss former and abandoned mine cleanup and related Good Samaritan issues.

Former and abandoned mine sites can pose public safety and environmental hazards. Former hardrock mines located in the western states are among the largest sources of pollution degrading water quality in the United States. Acid mine drainage from these mines has polluted thousands of miles of streams and rivers, as well as groundwater, posing risks to human health, wildlife, and the environment. This polluted drainage can also affect local economies by threatening drinking and agricultural water supplies and limiting recreational use of water resources.

CLEANING UP HAZARDOUS WASTE SITES UNDER CERCLA

Protection and restoration of our land is an important component in the EPA's mission to protect human health and the environment. The EPA leads the federal effort to reduce risks posed by contaminated land, undertaking cleanup and other activities that allow land to be returned to

beneficial use. Since the 1980 enactment of CERCLA (or "Superfund"), the EPA, along with federal agencies and states and tribes, have made significant progress toward this goal.

Under the Superfund program, 1,709 hazardous waste sites have been final listed on the Superfund National Priorities List (NPL). The EPA has used its Superfund program authorities to address hazardous releases related to former or abandoned mines at sites both listed and not listed on the NPL. Of the 1,709 sites, 129 are mining and mineral processing sites, and another eight sites are being addressed through Superfund Alternative Approach agreements.

From fiscal year 2010 through fiscal year 2014, the EPA expended more than $1 billion for Superfund removal and remedial actions at non-federal NPL and non-NPL mining related sites. Of that amount, approximately $585 million came from congressionally appropriated Superfund program funds and $470 million came from responsible party settlement funding held in Superfund Special Accounts. These expenditures do not include resources contributed by responsible parties, including federal agencies, on cleanup work that they have performed.

FORMER AND ABANDONED HARDROCK MINE SITES

A 2011 U.S. General Accountability Office report found there were at least 161,000 abandoned hardrock mine sites in the 12 western states and Alaska, and at least 33,000 of those sites had degraded the environment by contaminating surface water and groundwater or leaving arsenic-contaminated tailings piles. In Colorado alone, the state has identified approximately 23,000 former mines. Other state inventories can be found at the following link: http://www.abandonedmines.gov/mapdata.html

Abandoned mine lands exist across private, mixed, federal and state lands. This mixture of land ownership adds to the complexity of the issue. Federal programs that address former and abandoned mines are spread among a variety of federal agencies with no one agency having overall statutory responsibility. Principally five federal agencies - the Department of the Interior's Bureau of Land Management, Office of Surface Mining Reclamation and Enforcement, National Park Service, the Department of Agriculture's Forest Service, and the Environmental Protection Agency provide federal funding for the cleanup of some of these hardrock mine sites.

To help address the legacy of hardrock mining across the country, the Department of the Interior has an Abandoned Mine Lands (AML) program for hardrock mines on federal lands. The Administration has proposed in the FY 2016 and prior budgets to fund the program through a new AML fee which would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines on public lands, just as the coal mining industry pays to reclaim abandoned coal mines.

HARDROCK MINING SITES AND EPA's GOOD SAMARITAN TOOLS

The EPA has heard from certain stakeholders that liability concerns, whether under the Clean Water Act (CWA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), may deter voluntary remediation efforts. Private parties cleaning up a release of hazardous substances feared potential liability as either an operator of the site, or as an arranger for disposal of the hazardous substances. Parties had been also concerned that required permits under the CWA may impose an obligation to meet water quality standards in streams that were already in violation of those standards. Addressing the liability concerns would encourage more Good Samaritans to perform cleanup actions in watersheds affected by acid mine drainage.

Cleanup activities performed by Good Samaritans can result in environmental improvements and improve water quality. By addressing potential liability for Good Samaritans, more voluntary and collaborative efforts would be encouraged to restore watersheds impacted by acid mine drainage.

It is important to note, encouraging Good Samaritan cleanups is not about inappropriately lowering environmental standards nor letting polluters off the hook. Good Samaritans should be held to a standard that results in environmental improvements. To that extent, in 2007, the EPA issued administrative tools that provide strong protections for Good Samaritans under CERCLA. The agency interim guidance and the model Good Samaritan Agreement and comfort/status letter can be used to provide greater legal certainty to a volunteer while also providing adequate assurances to the agency that a cleanup will be performed properly. These tools were intended to address the performance of a removal action by a Good Samaritan at an orphan hardrock mine site where the Good Samaritan's voluntary effort will accelerate partial or complete cleanup and will result in environmental improvement.

Further, in 2012, the EPA issued another memorandum to provide clarification that in general, a Good Samaritan would not be the entity responsible under the Clean Water Act to obtain a discharge permit after the completion of cleanup work under a CERCLA removal plan developed pursuant to an Administrative Settlement Agreement. Thus, the administrative tools addressed many of the Good Samaritan issues raised to the EPA by stakeholders over the years.

CONCLUSION

The hundreds of thousands of former and abandoned hardrock mine sites located throughout the country pose public safety and environmental hazards. Former hardrock mines are among the largest sources of pollution degrading water quality in the western United States. The scope of the problem cannot be addressed solely by current federal or state cleanup programs. Much more must be done to address the risks posed by former and abandoned hardrock mines. Encouraging Good Samaritan cleanups and passing the AML fee are just some of the many tools needed to help address the complex and costly problem posed by polluting former and abandoned hardrock mines.