

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINING PROGRAMS**

DOCUMENT NUMBER: 562-2000-001

TITLE: Environmental Good Samaritan Projects

EFFECTIVE DATE: September 5, 2000

AUTHORITY: Environmental Good Samaritan Act

POLICY:

The department will encourage and guide persons who propose to voluntarily perform reclamation or water pollution abatement projects.

PURPOSE:

The purpose of this guidance is to define a process for approving reclamation projects and water pollution abatement projects and identifying landowners and participants who may be immune from civil liability as provided by the Environmental Good Samaritan Act.

APPLICABILITY:

This guidance applies to reclamation projects and water pollution abatement projects on land and water adversely affected by coal mining, industrial minerals mining, oil or gas extraction or by exploration for these resources.

DISCLAIMER:

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give these rules that weight or deference. This document establishes the framework, within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 20

LOCATION: Vol. 12, Tab 40

DEFINITIONS:

Many of these definitions are derived from the Environmental Good Samaritan Act. When necessary, they have been modified for clarity and understanding.

Abandoned lands – Land adversely affected by mineral or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

Consideration -- Something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purposes of the Environmental Good Samaritan Act, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land. Consideration includes payment of royalties and wheelage.

Eligible land and water -- Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term includes abandoned and inadequately reclaimed permitted mining activity sites for which the department has forfeited and collected the posted bonds and there is no outstanding litigation concerning the bond forfeiture. The term does not include lands contaminated with or adversely affected by the disposal or release of municipal, residual or hazardous waste or discharges from industrial operations.

Participant -- A person who voluntarily provides equipment, materials or services at no charge or at cost for reclamation and abatement work on eligible lands and water.

Permitted mining activity site -- A site permitted under the Surface Mining Conservation and Reclamation Act, the Bituminous Mine Subsidence and Land Conservation Act, the Noncoal Surface Mining Conservation and Reclamation Act, the Coal Refuse Disposal Control Act, or the Clean Streams Law. The definition includes sites for which the permit has been issued but not activated.

Person -- A natural person, partnership, association, association members, corporation, political subdivision of the Commonwealth, an agency, instrumentality or entity of federal or state government or other legal entity recognized by law as the subject of rights and liabilities.

Project work area -- That land necessary for a person to complete a reclamation project or a water pollution abatement project. The project work area may include multiple sites.

Reclamation project -- The restoration of eligible lands and water to productive use. A reclamation project involves regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain, removing highwalls, spoil piles, or depressions that accumulate water, plugging abandoned oil or gas wells, and removing production or storage facilities, supplies and equipment from areas disturbed in siting, drilling, completing and producing such wells.

Water pollution – Pollution of the waters of the Commonwealth as defined in section 1 of the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law, which was caused by mining activities or oil or gas extraction or exploration for these resources.

Water pollution abatement project -- A plan for treatment or abatement of water pollution located on eligible lands and water. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.

TECHNICAL GUIDANCE:

BACKGROUND:

Because the Commonwealth does not possess sufficient resources to reclaim all abandoned mining and oil and gas lands and to abate all water pollution, the Commonwealth encourages reclamation by others. Numerous landowners, citizens, watershed associations, environmental organizations, and governmental entities who do not have a legal responsibility to reclaim abandoned lands or abate water pollution are interested in addressing these problems. These groups have been reluctant to engage in such reclamation and abatement activities because of potential liabilities for personal injury, property damage, water pollution, and the continued operation, maintenance or repair of water pollution abatement facilities. The Environmental Good Samaritan Act (EGSA) provides certain protections and immunities to landowners and those participating in these activities, if a written plan of the proposed reclamation project is submitted to and approved by the department. The EGSA does not provide immunity:

- (a) For injury or damage resulting from the landowner's or participant's acts or omissions which are reckless, grossly negligent or willful misconduct.
- (b) If the landowner charges a fee or receives some other consideration before allowing access to the land. (This applies only to landowners.)
- (c) For unlawful activities by the landowner or participant.
- (d) For damage to adjacent or downstream landowners if the written notice or public notice of the proposed project was not provided.

The EGSA requires landowners to warn the people implementing a reclamation project or water pollution abatement project of any dangerous conditions on the project area that the landowner knows is there but is not readily apparent. The Act does not limit or affect in any way a landowner's liability that results from the landowner's failure to provide this warning.

The EGSA does not give the department the authority to determine who does or does not receive the EGSA protections from liability. That question must be resolved in civil court. If a lawsuit is brought against a landowner or project participant for injury or damage, the landowner or participant will have to show that they qualify for the protections in the EGSA.

PROCEDURE:

A. Roles and Responsibilities

1. The department's role under the EGSA is to:
 - (a) Determine:
 - (i) If a proposed project involves land and water that have been adversely affected by mining or oil and gas extraction.
 - (ii) If the project involves a bond forfeiture site, that the bonds have been collected and all litigation concerning the forfeiture is completed.
 - (b) Review and approve project proposals and identify any permits that may be needed.
 - (c) Make written findings on impacts from or to nearby permitted mining activity sites.
 - (d) Provide public notice of proposed projects or written notice to adjacent and downstream landowners.
 - (e) Maintain an inventory of projects, landowners and participants, which is open to the public.
 - (f) Visit the project on a regular basis to observe progress and, if appropriate, collect samples.
 - (g) Replace water supplies adversely affected by the reclamation or abatement
 - (h) At its discretion, provide advice based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.
2. The project applicant is the person preparing the project. The project applicant's role is to:
 - (a) Submit the project proposal.
 - (b) Identify the landowners and participants.
 - (c) Obtain any required permits.

- (d) Control the activities on the project area.
 - (e) Implement and complete the project as it was described in the approved proposal.
3. A project landowner's role under the EGSA is to:
- (a) Allow access to the project area.
 - (b) Warn the people implementing the project of any dangerous conditions on the project area that may not be readily apparent.
4. A project participant's role is to:
- (a) Provide equipment, materials or services at no cost or at cost.
 - (b) Perform the work as directed by the project applicant.

B. Project and Participant Eligibility

1. To be eligible, a project must be approved by the department before it is completed unless the project is near an active, permitted mine or an active, permitted coal refuse disposal site. If the project is located within 1,000 feet (304.8 meters) of an active mine or coal refuse disposal permit, or is hydrologically connected to an active mine or coal refuse disposal permit, the project must be approved by the department before the project begins in order to be eligible under the EGSA.

Under the EGSA, the proposed project must address land and water that have been adversely affected by coal mining, industrial minerals mining or oil or gas extraction or exploration for these resources. There can be no person with a continuing obligation for the reclamation or pollution abatement. If the land and water are the subject of a bond forfeiture, then all bonds must be collected and all litigation concerning the forfeiture must be completed for the land to be eligible for a project under the Act.

A reclamation project or water pollution abatement project shall not be implemented in a manner that will limit access to an orphan gas well or an orphan oil well.

According to the EGSA, a person who performs one of the following projects does not qualify for protections and immunities from liability:

- (a) A project by a person who is required to perform the reclamation or treatment or abatement through an order or consent order and agreement. These include orders issued under the authority of Section 316 of the

Clean Streams Law and agreements for reclamation in lieu of cash payment of civil penalties.

- (b) A project by the surety that provided bond for the site.
 - (c) A project by a person who is legally responsible to reclaim the land or treat or pollution.
 - (d) A project by a person who is paid or receives some benefit to reclaim the land or treat or abate the water pollution.
 - (e) In addition to these exclusions, EGSA Section 8811(d) states that the Land Recycling and Environmental Remediation Standards Act of 1995 (Act 2) does not apply to reclamation or abatement projects covered by the EGSA.
2. Project participants are persons or organizations that work on the project. Only participants who want to be covered by the EGSA need to be identified. It is not necessary, but it is a good idea, to identify the individual members of participating organizations. From time to time, additional persons may choose to participate. The project applicant can add these persons to the list of participants that the department keeps. Persons not on the list are not prohibited from working on the project.
 3. Under the EGSA, a person or organization that receives payment or consideration, or receives some other benefit through a contract for reclamation, treatment or abatement is not entitled to the EGSA protections. This excludes mine operators, contractors under Government-Financed Construction Contracts, Bureau of Abandoned Mine Reclamation contracts, and contracts with sureties and private contracts with landowners. Although the paid contractors and subcontractors on these projects may not be eligible for EGSA protections, the landowners may be eligible.
 4. Under the EGSA, a person (landowner or participant) who has a responsibility to reclaim the land or abate the water pollution is not eligible for its protections and immunities, nor is the land eligible for EGSA projects.
 5. Nonprofit organizations and government agencies that perform reclamation or abatement work under Growing Greener, 319, Watershed Assessment Project and other grants managed by the department are eligible for EGSA protections. Contractors and mine operators who participate in these projects may be eligible for EGSA protections if their services and materials are provided at no cost or at cost.

C. Project Plans

1. The EGSA requires a written plan of the proposed project to be submitted to, and approved by, the department. The department has developed a project proposal form (5600-PM-MR0020) to facilitate project submittal and approval. The project proposal form requests information that the department believes is necessary in order to be certain that the project will meet all of the provisions of the EGSA. The form can be found on the Bureau of Mining Programs web site at www.dep.state.pa.us. Go to Subject, Mining Programs.
2. The department will accept other forms of project proposals. Persons interested in receiving the protections under the EGSA may submit a copy of an approved grant application.
3. An EGSA project submittal must include at a minimum:
 - (a) A general description and the objective of the project.
 - (b) A detailed written project plan.
 - (c) A description of the work to be performed.
 - (d) A map or narrative describing the project location and boundaries.
 - (e) A list of the landowners.
 - (f) A list of project participants.
 - (g) The name and address of a newspaper of general circulation published in the vicinity of the proposed project.
 - (h) A list of adjacent and downstream riparian landowners. Riparian landowners are those who own streamside property. The EGSA does not provide immunity to project landowners and participants for damage to adjacent or downstream riparian landowners which results from a project where direct written notice or the newspaper notice was not provided. Consequently, the project applicant must determine the potential for damage from the project when preparing the list of downstream riparian landowners. Consideration should be given to the nature and size of the project and the size of the receiving stream.
 - (i) Documentation that each landowner in the project area gives the department permission to enter the property to observe progress, collect samples, and otherwise do its job.

4. It is recommended, but not required, that the submittal also include color photographs of the land to be reclaimed.
5. The EGSA authorizes the department to provide advice and information to landowners and other interested people on reclamation and abatement projects. The department will identify any permits that may be needed for the work to begin.

D. Project Plan Review and Approval

1. Review of project proposals

The review of project proposals will be conducted by the department utilizing the “EGSA Project Review and Findings” form in Appendix A. The department’s review should include a site visit to verify or determine the project boundaries, and collection of water samples to document current conditions. It should also include an evaluation of the potential impact on any water supplies.

2. Public notice and comment

Upon receipt of a proposal, the department will provide public notice of the proposed project. The person or group proposing the project may also give public notice of the project, but is not required to do so. The department will:

- (a) Give public notice of the proposed project in the *Pennsylvania Bulletin* with a 30-day comment period (see Appendix B).
- (b) Provide written notice with a 30-day comment period by certified mail to adjacent property owners and riparian landowners identified by the applicant (see Appendix C); **or** provide public notice of the proposed project in a newspaper of general circulation in the locality of the proposed project (see Appendix D). This advertisement must be published once a week for four consecutive weeks with a 30-day comment period after the last publication of the notice.

The department should consult with the project applicant when deciding which method of notice it will use. Project participants and project landowners can be held liable if the project causes damage to adjacent landowners or downstream riparian landowners who did not receive the certified mail notice. The newspaper notice is more costly and it requires a longer review period.

However, it provides immunity from liability for damage to all adjacent landowners and all downstream riparian landowners. Although the notice by certified mail is less costly and allows for a shorter review period, it requires the project applicant and department to assess the potential for

off-site damage and to determine how far downstream the damage could occur. The list of downstream landowners would be based on this distance.

- (c) Maintain copies of the certified mail or newspaper notices with the project file.

Any person having an interest that may be adversely affected by a proposed project has a right to file written objections with the department. Objections must be filed within 30 days after receipt of the written notice or the date of the last newspaper advertisement. The department will provide a copy of each written objection to the person proposing the project. The department will consider all objections when approving or disapproving a project. The EGSA does not require the department to hold a public meeting to discuss proposed projects. However, the department may choose to hold a public meeting if the public requests one.

3. General criteria for approving project proposals

The department will approve a reclamation project proposal, if the department determines that the project:

- (a) Addresses land and water adversely affected by mining or oil or gas extraction
- (b) Will result in the regrading of the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain, with no highwalls, spoil piles, or depressions to accumulate water.
- (c) Will result in adequate revegetation of the site.
- (d) Is not likely to cause water pollution.
- (e) Is not likely to impact any water supplies.
- (f) Does not limit access to an orphan gas well or an orphan oil well.

The department will approve a proposed water pollution abatement project, if the department determines that the proposed project:

- (a) Addresses eligible land and water.
- (b) Is likely to improve water quality.
- (c) Is not likely to make existing water pollution worse.
- (d) Does not limit access to an orphan gas well or an orphan oil well.

4. Additional criteria for projects near permitted mining activity sites

The protections and immunities available under the EGSA do not apply to a reclamation project or water pollution abatement project that is within 1,000 feet (304.8 meters) of, or is hydrologically connected to, a permitted mining activity site at any distance, unless:

- (a) A written proposal of the reclamation project or water pollution abatement project has been submitted to the department before the project is started; and
- (b) The department determines that:
 - (i) The reclamation project or the water pollution abatement project will not adversely affect or interfere with the permittee's ability to meet his obligations under the permit and the applicable law.
 - (ii) The activities on the project work area cannot be used by the permittee to avoid or reduce the permittee's reclamation or water pollution treatment or abatement obligations.
- (c) The department will provide a written notice of its findings with the approval of the project. A copy of the findings should be sent to each of the nearby, permitted mining activities.

5. Water Supply Information

The department is obligated to replace water supplies adversely affected by an EGSA reclamation or abatement project. Consequently, when reviewing a proposed project the department must determine the potential for adverse impacts on water supplies. If the department determines that such potential exists, then the project should not be approved.

6. Appeals

The department will simultaneously notify the applicant, the municipality and each person who filed a written objection or comment on the proposal of its decision to approve or disapprove a reclamation project or a water pollution abatement project (see Appendix E). The department's decision is appealable to the Environmental Hearing Board.

E. Project Inventory Database

The Bureau of Mining Programs will establish and maintain an Environmental Good Samaritan project inventory database. All department offices and the public will have

access to the information in the database. At a minimum, the database will contain the project location, a list of project participants, a list of project landowners, the results of the department's project review and the written findings if there are nearby permitted mining activity sites. After a project is approved, the department office will input the information into the project inventory database and will forward the project approval information to the Bureau of Abandoned Mine Reclamation.

F. Permits

The EGSA does not waive the requirements to obtain permits under existing laws and regulations, nor does it waive local zoning requirements. The department will advise the applicant of the permits that will be needed for the work to begin.

G. Water Supply Replacement

A public or private water supply contaminated or diminished by a reclamation or a water pollution abatement project will be restored or replaced by the department. The standard for replacement is that the alternate source of water is adequate in quantity and quality for the purposes served by the original water supply. Rebuttable presumption provisions of the Surface Mining Conservation and Reclamation Act do not apply to reclamation and abatement projects. If it is determined that a water supply has been adversely affected by a project, then the department will contract with a driller for replacement of the affected water supply or with the affected party through a cash payment. The funding source for the replacement supply will be determined on a case-by-case basis by the Deputy Secretary for Mineral Resources Management.

APPENDICES:

Appendix A. EGSA Project Review and Findings.

Appendix B. Sample Notice for Pennsylvania Bulletin.

Appendix C. Sample Notice to Adjacent/Riparian Landowners.

Appendix D. Sample Newspaper Notice.

Appendix E. Sample Notice of Department's Decision.

| |
|---------------|
| DEP I.D. No. |
| Date Received |

**APPENDIX A
EGSA Project Review and Findings**

Applicant _____

Project Name _____

Submittal is EGSA Project Proposal Growing Greener Grant Agreement
 Other

| | | | | |
|----|--|------------|-----------|-----------|
| A. | Checklist for completeness. | <u>Yes</u> | <u>No</u> | |
| | 1. Project description | _____ | _____ | |
| | 2. Project location (map or narrative) | _____ | _____ | |
| | 3. List of landowners | _____ | _____ | |
| | 4. List of project participants | _____ | _____ | |
| | 5. List of paid contractors, suppliers N/A | _____ | _____ | _____ N/A |
| | 6. Right of entry for department | _____ | _____ | |

B. Date proposal forwarded to BAMR: _____

C. Public Notice.

1. Date published in Pa. Bulletin: _____
2. Dates of newspaper notices (attach copy): _____, or
 Dates of mailing to adjacent and riparian landowners (attach documentation):

3. Close of public comment period is _____
4. A copy of each written objection has been sent to the person proposing the project. _____ Yes _____ No _____ N/A

D. If project was started prior to department approval, give approximate start date:

E. Supplemental information (provided by department reviewers).

1. Name of 7.5 minute topographic quadrangle: _____
2. Latitude and longitude of center of project area:
 Latitude ____° ____' ____" Longitude 0 ____° ____' ____"

3. Name of watershed: _____ subwatershed: _____
 Name of receiving stream (303(d) list segment): _____
4. Based on the project and its location, the following permits will be necessary:

5. The following water quality monitoring points have been established for this project and ent's Sample Information System:
 I.D. _____ latitude _____ longitude _____

F. Findings.

1. The proposed project addresses land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution _____ Yes _____ No
- a. Site is _____ unreclaimed mining land
 _____ oil or gas extraction lands
 _____ not unreclaimed
- b. Water pollution is due to _____ abandoned mining
 _____ abandoned oil or gas activities
 _____ not present
- c. If a bond forfeiture site, bonds have been collected and there is no outstanding litigation. _____ Yes _____ No _____ N/A
2. If there are nearby permitted mining activity sites,
- a. Is the proposed project area within 1,000 feet _____ Yes _____ No of a permitted mining activity? If yes, attach a list identifying the permits.
- b. Is the proposed project area hydrologically _____ Yes _____ No connected to a permitted mining activity? If yes, attach a list identifying the permits.
- c. Will the proposed project interfere with a _____ Yes _____ No permittee's ability to meet his obligations on any of the listed permits?

- d. Can the activities on the project be used by a permittee to avoid or reduce his obligations on any of the listed permits? Yes No
3. If the proposed project area is within 1,000 feet of a permitted mining activity or if the proposed project is hydrologically connected to a permitted mining activity, was the project proposal submitted to the department before the project started? Yes No N/A
4. Will the proposed project affect any public or private water supplies? Yes No
5. Will the proposed project limit access to an orphan gas well or an orphan oil well? Yes No
6. a. This project has been approved for funding under a grant managed by the department. Yes No
- b. If the answer to "a" is no, then the department must determine the following:
- i. The project will result in appropriate reclamation. Yes No NA
- ii. Project activities are not likely to cause water pollution. Yes No
- iii. The project is likely to improve water quality. Yes No NA
- iv. The project is not likely to make the existing pollution worse. Yes No NA

RECOMMENDATIONS AND SIGNATURES

Approve _____ Do not approve _____ _____
Signature and Date

Approve _____ Do not approve _____ _____
Signature and Date

Final Note: The applicant, the municipality and each person who filed a written objection or comment must be notified of the decision to approve or not approve the proposal.

APPENDIX B

Sample Notice for Pennsylvania Bulletin

Notice of Projects under the Environmental Good Samaritan Act

The Environmental Good Samaritan Act (27 Pa. C.S.A. §§8001 - 8114) provides certain protections and immunities from civil liability for landowners and persons who voluntarily undertake reclamation and abatement projects to address land and water adversely affected by mining or oil or gas extraction or exploration for natural resources and left in an unreclaimed condition or left discharging water pollution. In order for landowners and persons to qualify for immunity, the projects must be approved by the Department.

The following project proposals have been received by the Department of Environmental Protection. A copy of the proposals is available for inspection at the office indicated above each proposal.

Written comments or objections may be submitted by any person or any office or head of any Federal, State, or local government agency or authority to the Department at the same address within 30 days of this publication.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the proposal identification number; and a statement of sufficient detail to inform the Department of the basis of the comment or objection and the relevant facts upon which it is based.

APPENDIX C

Sample Notice to Adjacent/Riparian Landowners

CERTIFIED MAIL NO. _____

Re:

Dear Landowner:

We have received a proposal from _____ (applicant's name, address) _____
to conduct a _____ (type of project) _____ project on the [adjacent or upstream]
lands of _____ (name(s) of project site landowners) _____ in
_____ Township, _____ County.
The project will involve _____ (brief description of the activities to take place) _____ and is
expected to continue for _____ (duration) _____ months.

A copy of the proposal is available for inspection at the _____ (department office and address) _____
between the hours of 9:00 a.m. and 4:00 p.m. Written comments or objections may be submitted
to the _____ (department office) _____ until 30 days after you receive this letter. If you submit
comments, be sure to include your name, address and telephone number. If you have any
questions, please contact _____ at the number shown above.

Sincerely,

APPENDIX D

Sample Newspaper Notice

Pursuant to the Environmental Good Samaritan Act, notice is hereby given that _____ (name and address of applicant) _____ has submitted a proposal to the Department of Environmental Protection (DEP) for a project to _____ (provide a brief description of the project) _____ in _____ Township, _____ County. The project is expected to take _____ (expected duration in months) _____. The project involves _____ acres and is situated _____ (provide distances and directions from local landmarks and roads to allow local residents to identify the project site or include a map that will be published as part of the notice) _____. The receiving stream for this proposed project is _____. The _____ (name of map) U.S. Geological Survey, 7.5 minute topographic map contains the area described.

A copy of the proposal is available for public inspection at the _____ (name and address of department office) _____ between the hours of 9:00 a.m. and 4:00 p.m. Written comments or objections may be submitted to the DEP _____ (department office and address) _____ by _____ (date 30 days following day of 4th publication) _____. The comments must include the person's name, address, telephone number and a brief statement describing the reason for the objection.

APPENDIX E

Sample Notice of Department’s Decision

[To applicant, municipality and each person who submitted comments]

Re: project number
applicant name
_____ Township
_____ County

Ladies and Gentlemen:

This is to notify you that _____ applicant _____ ’s project proposal was [approved or denied or withdrawn or returned to the applicant].

[If the project was approved or denied insert the following paragraph:

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, Pennsylvania 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 1-800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board’s rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.]

If you have any questions, please contact me at the above number.

Sincerely,