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Animas River spill: Root causes and continuing threats

By Joel A. Mintz



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The recent spill of gold-mine wastewater into the Animas River near Silverton, Colorado, has given EPA's die-hard critics ammunition to last the summer. Without question, EPA bears responsibility for the spill, since its contractor was at fault. But before the hate-EPA-first critics in Congress come back in September and start using the accident as an excuse to cut the agency's funding, it's important to put the incident into perspective.

First, although the mistakes by EPA's contractor were the immediate cause of the discharge of some 3 million gallons of wastewater, the actual source of the pollution was an unremediated mineral mine, one of many such abandoned mines across Colorado and the American West. In fact, some 20,000 abandoned mine sites in southwestern Colorado are the sad legacy of an archaic—yet still unreformed—1874 federal mining statute that encourages excessive mining on sensitive public lands by permitting private mining companies to reap vast profits through mineral extraction while paying absurdly low royalties to the public treasury. In all, there are roughly 500,000 abandoned mine sites across the nation. They constitute a ticking time bomb that could cause additional, massive and spontaneous toxic discharges into rivers at any time.

Second, it's worth recalling that long before the recent spill the Animas River was contaminated with mining wastes and other pollutants. Pre-spill testing revealed excessive levels of zinc, copper, cadmium and other metals, along with high concentrations of human fecal coliform bacteria. Moreover, still more damaging pollution incidents have taken place in the same vicinity in past years, including a disastrous 1975 discharge to the Animas of metal-loaded mine tailings and a discharge of roughly 500 million gallons of wastewater in 1978. That's no excuse for the mistakes made in this incident. Nevertheless, it's an example of why EPA was in the vicinity to begin with: to clean up a huge mess of someone else's creation.

That task would have been made much easier if EPA had been able to designate the site as a Superfund site, because it would have allowed the agency to fund a wastewater treatment facility needed to clean up the mine discharge contamination. However, despite prodding from EPA and state officials, local business interests repeatedly obstructed the Superfund designation of the area. Their short-sighted resistance surely helped set the stage for the calamitous events of early August.

The Animas River accident happened when an EPA contractor drilled into the side of the now-closed Gold King Mine, as part of an effort to remedy a steady, 176 gallon per minute leak of toxic materials from the mine into the river. The torrent of wastewater that escaped turned the waters of

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the Animas to a mustardy yellow before coursing through Durango, Colorado, and traveling far downstream into other Western states.

From the way the anti-EPA crowd talks about it, you'd think EPA had cooked up the toxic chemicals in a lab, transported them by black helicopter to Colorado, and secretly poured them into the river.

To the contrary, EPA promptly took responsibility for the disaster, something you don't always see from corporate polluters. Along with other EPA officials, the regional administrator of the agency's Denver office, Shaun McGrath, and its administrator, Gina McCarthy, both visited local areas affected by the spill. At a public comment session in Durango, McGrath said, "We're going to continue to work until this is cleaned up and hold ourselves to the same standards that we would [apply] to anyone [else] that...created this situation."

Administrator McCarthy announced an immediate suspension of all EPA mine reclamation work pending a full internal review of relevant EPA procedures and practices, as well as a fully independent outside review of the Animas River spill. McCarthy and her staff have also given regular public updates on the level of contaminants in the river revealed by post-spill sampling. Those tests initially indicated that the spilled wastewater plume, at its peak, contained elevated levels of certain heavy metals, and that the Animas River's acidity was at approximately the same pH level as black coffee. More recent tests indicate that, just below the point of the spill, water quality in the Animas has already returned to pre-spill levels.

The downstream impact of the spill is not yet clear. It does not appear to have killed many fish, or caused any direct human physical injury, and the unsightly discoloration of the affected water has already significantly faded. However, the incident is still taking a toll on businesses that rely on summer outdoor tourism, and the Navajo nation is understandably upset at the harm the spill could do to its farmers and ranchers.

But none of that is any reason to slash EPA's already grossly underfunded budget. Instead, Congress urgently needs to increase its funding of Superfund so that the continuing threats posed by abandoned gold mines, and other contaminated sites, can at last be eliminated.

Mintz is a professor of Law at Nova Southeastern University College of Law. He is a member scholar of the Center for Progressive Reform.



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