

# PREVENTING ZOMBIE MINES

2024 Congressional Policy Platform



## Summary

In this policy platform, we identify the key problems that are leading to unreclaimed modern-era (post-1977) coal mines (commonly referred to as “zombie mines”) that put communities at risk and shift financial responsibility to under-funded regulators.<sup>1</sup> We then outline the high-level policy priorities needed to address those problems.

The recommendations detailed in this document are summarized in [this two-page platform](#) released in February 2024. This coalition of community and national organizations developed the “Preventing Zombie Mines” platform to provide Congress, the president and states with a clear roadmap to solve this problem so that zombie mines can stop damaging the health, environment and economy of coal communities and start being transformed into alternative uses that can create jobs and benefit local residents and businesses.

## Background

Since 1977, the Surface Mining Control and Reclamation Act (SMCRA) has provided much-needed oversight of surface coal mining and reclamation across the country. But now, as the coal industry has drastically declined, many operators are not completing reclamation as intended under the law, putting surrounding communities at risk of landslides, catastrophic flooding events, water pollution, aquifer depletion and other health and safety hazards, and holding up land that could be used for economic development, recreation, ranching or ecological restoration.

Mine reclamation is a significant source of employment in coal mining communities, with reclamation work often being completed by the same people employed in the mining industry. The coal industry has lost tens of thousands of jobs in recent years, declining from 110,000 jobs in 2011 to 36,000 in 2022.<sup>2</sup> Layoffs are expected to continue in the coming decades.<sup>3</sup> Addressing the reclamation backlog and ensuring reclamation occurs at all modern-era coal mines would put a substantial number of people back to work. In the seven Eastern coal-mining states alone,

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<sup>1</sup> It is important to note that these modern-era mines, left unreclaimed, are not eligible for funding under the Abandoned Mine Land program or funds for abandoned mine lands allocated under the Bipartisan Infrastructure Law. **Abandoned Mine Land** funding is only available to mines permitted **before** SMCRA was enacted in 1977, for which no coal company can be held responsible for reclamation. The scope of this proposal is limited to mines permitted after SMCRA was enacted.

<sup>2</sup> Bureau of Labor Statistics. Labor Force Statistics from the Current Population Survey. [https://beta.bls.gov/dataQuery/find?st=0&r=20&q=coal+mining&more=0&fq=survey:\[In\]](https://beta.bls.gov/dataQuery/find?st=0&r=20&q=coal+mining&more=0&fq=survey:[In])

<sup>3</sup> Tate, R.D.; D. Mei; T. Means; and S. Sugaya. Scraping By: Global Coal Miners and the Urgency of a Just Transition. Global Energy Monitor. October 2023.

[https://globalenergymonitor.org/wp-content/uploads/2023/09/GEM\\_Coal\\_Mine\\_Employment\\_2023.pdf](https://globalenergymonitor.org/wp-content/uploads/2023/09/GEM_Coal_Mine_Employment_2023.pdf)

23,000-45,000 job-years could be created by completing reclamation at modern-era coal mines currently left unreclaimed.<sup>4</sup> It is estimated that between 6,081 and 12,161 job-years could be created by completing reclamation in seven Western states.<sup>5</sup>

Additionally, in recent years, communities surrounding unreclaimed mines have experienced significant precipitation events, and these mines have changed the hydrology of the landscape and contributed to flood damage to local homes.<sup>6</sup> These problems will only continue to worsen as climate change creates more frequent and worsening heavy rainfall events in certain parts of the country.

Inadequate reclamation bonding plays a major role in the lack of adequate and timely reclamation because companies do not have sufficient financial incentive to complete reclamation themselves as the law intended. As coal companies collapse, regulatory agencies often do not have adequate bonds to cover the true costs of mine reclamation, so they are reluctant to pursue bond forfeiture. Other enforcement mechanisms, such as fines and denial of new permit applications, mean little to coal companies in or nearing bankruptcy. Once bankruptcy is filed, many mines sit for months or years accruing violations. In recent instances, companies buying mines in bankruptcy sales have been unable to fulfill the requirements needed to bond the mine and transfer the permit.

For all of these reasons and more, many mines have been functionally abandoned — although sometimes listed by regulators as active or merely “idled.” In reality, the operators have no intention of ever resuming coal removal or completing reclamation.

## Detailed Platform

### Problem 1: Existing coal bonding systems are not sufficient to guarantee reclamation in a declining industry

The federal SMCRA statute allows state regulatory agencies to create reclamation bonding programs based on a variety of options. There are three major types of allowable bonds. **Surety bonds** are bonds issued to the regulator by a third-party company that charges fees and imposes additional costs on the permit holder. **Collateral bonds** are financial instruments or property assets posted by the permittee, including cash, certificates of deposit and first-lien interests in real estate. **Self-bonds** are a bond amount promised by the coal company, but no cash or collateral is actually held by the regulatory agency or by an independent third party. States are also allowed to employ alternative bonding systems, including **bond pools**, where regulators pool money from multiple operators — in the form of fees — to cover reclamation at many permits, though the total funds in the pool represent only a fraction of the total reclamation costs covered.

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<sup>4</sup> Savage, E. Repairing the Damage: Reclamation at Modern-Era Mines. Appalachian Voices. 2021. [https://appvoices.org/resources/RepairingTheDamage\\_ReclamationAtModernMines.pdf](https://appvoices.org/resources/RepairingTheDamage_ReclamationAtModernMines.pdf)

<sup>5</sup> Western Organization of Resource Councils. Coal Mine Cleanup Works: A Look at the Potential Employment Needs for Mine Reclamation in the West. November 2020. [https://www.worc.org/media/Reclamation-Jobs-Report-FINAL\\_Nov-2020.pdf](https://www.worc.org/media/Reclamation-Jobs-Report-FINAL_Nov-2020.pdf)

<sup>6</sup> See for example: Todd, R. Backlog of unreclaimed mine lands puts people at risk of flooding and landslides. Radio IQ. December 13, 2022. <https://www.wvtf.org/news/2022-12-13/backlog-of-unreclaimed-mine-lands-puts-people-at-risk-of-flooding-and-landslides>

Full-cost **surety bonds** were once considered the most secure form of bonding. Unfortunately, as the coal industry has contracted, so has the number of financially sound surety companies willing to provide reclamation bonds. Several surety companies have taken on more than a billion dollars in liability by providing bonds for multiple permits for multiple mining companies across multiple states. This means that the bankruptcy of even one large coal company could put the financial health of a surety company at risk. The failure of that surety could then set off a cascading effect across multiple states in the case of widespread bond forfeiture.

In **bond pool systems**, each mining permit has a permit-specific bond, but the coal company also pays fees into a state pool. In exchange, the permit-specific bond is a lower amount than would be required by full-cost bonding. Under this scenario, when a permit is forfeited, the permit-specific bond is first used to fund reclamation, then any remaining cost is covered by the pool. The major problem with pools is that they are not set up to cover the cost of wide-spread bond forfeiture. Regulators rely on backward-looking actuarial studies to determine how much money is needed in the pool at a given time. In many states, the bankruptcy of a single large or even medium-scale operator would be enough to wipe out the entire bond pool.

**Self-bonds** have always been considered the least secure, since this approach more or less amounts to a company promising to keep money set aside for reclamation. Coal companies utilizing self-bonds have little incentive to ever reclaim mines, because they are not paying a third party to provide a reclamation bond, and so do not have any bond-related costs or collateral obligations tying up their financial resources. A 2018 U.S. Government Accountability Office report identified over \$1 billion in remaining self-bonds.<sup>7</sup> Over the last five years, many states have restricted the use of self-bonds and required more secure bonding, after a wave of bankruptcies starting in 2015. Self-bonds are still utilized in Alaska, Missouri, North Dakota, Texas and Virginia, and amount to roughly \$600 million. In addition, approximately 16 other states still technically allow self-bonding under state or federal statute and could implement this type of bonding again in the future. OSMRE initiated rulemaking to limit self-bonding in 2016, but never completed the rulemaking process.<sup>8</sup> However, even if OSMRE finished this rulemaking, it would only restrict self-bonding, not eliminate it. In order to eliminate self-bonding, a statutory change in SMCRA is necessary.

For all forms of bonding, including surety bonds, bond levels are often set too low. The insufficiency of a bond may also become more extreme over the life of the mine, due to changes in the mine plan, deterioration during idling and/or inflation. Additionally, the unanticipated early closure of a mine can impact the cost of reclamation. For example, there may not be sufficient spoil available to reclaim, given that coal production did not occur as planned. Several analyses over the past two decades indicate that many states have not calculated bond amounts at an amount sufficient to cover the cost of reclamation, despite the requirements included in

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<sup>7</sup>United States Government Accountability Office. Coal Mine Reclamation: Federal and State Agencies Face Challenges in Managing Billions in Financial Assurances. March 2018. GAO-18-305. <https://www.gao.gov/assets/gao-18-305.pdf>

<sup>8</sup>Office of Surface Mining Reclamation and Enforcement. "Office of Surface Mining Reclamation and Enforcement to Initiate Rulemaking on Self-Bonding for Coal Mines." August 16, 2016. <https://www.osmre.gov/sites/default/files/pdfs/081616.pdf>

SMCRA.<sup>9,10,11,12</sup> Lastly, too much of the bond is released in early stages of reclamation, which lessens the incentive for coal companies to complete reclamation.

Inadequate bonding for long-term water pollution treatment is also a significant issue. Under SMCRA, OSMRE and state regulatory authorities do not approve a permit for a coal mine if the regulatory authority expects the mine to result in long-term water pollution. However, long-term water pollution does often occur, and since it was not anticipated at the time the permit was granted, the cost of addressing it is not included in the initial bond that the operator provides. If the regulatory authority later determines that long-term water treatment is needed, the regulatory authority is then required to adjust the amount of financial assurance that the company is required to provide, typically through a performance bond. But it is unclear how often this actually happens, especially in states without specific bonds or funds for long-term treatment. The costs and duration of long-term water treatment are not well defined, and surety bonds are not well-suited to provide assurance for such indefinite long-term costs.

All states where coal mining occurs face some degree of risk of – or are already experiencing – a new wave of abandoned, unreclaimed mines. States utilizing self-bonds or pool bonds or a combination of both likely have the largest degree of risk. Self-bonds are difficult, if not impossible, to collect in the case of bankruptcy. Existing pool bonds are likely not sufficient to withstand the failure of one or more of the larger coal companies taking part in the pool. Even states that utilize full-cost surety bonding are exposed to risk: If bond amounts are not calculated accurately and updated periodically, the bonds will not cover the full cost of reclamation. In addition, as bonds become consolidated under fewer surety companies, some of those sureties are at risk of insolvency in the event of widespread coal company bankruptcies.

### **Problem 1: Recommended solutions**

1. Establish a new system of financial assurances for reclamation. Options 1 and 2 below could be combined.
  - a. **Option 1:** Establish permit-specific sinking trust funds as the primary financial assurance mechanism under SMCRA.
    - i. This would be a mandatory program for states with active coal industries.
    - ii. The trusts could be held by each state (or OSMRE for states and tribal areas where OSMRE retains SMCRA implementation jurisdiction), or could be held and administered by OSMRE. Having the trusts held by a government entity ensures that they are bankruptcy-proof.
    - iii. Each permittee (coal company) would contribute to a permit-specific trust with regular payments (monthly or quarterly); as funds in the trust grow, the

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<sup>9</sup> Center for Business and Economic Research, Marshall University. Assessment of Alternative Funding Mechanisms to Encourage Environmental Compliance and to Maintain Solvency of the Special Reclamation Fund. February 3, 2006.

<sup>10</sup> West Virginia Office of the Legislative Auditor. Legislative Audit Report: WV Department of Environmental Protection Division of Mining & Reclamation - Special Reclamation Funds Report. 2021. [http://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA\\_2021\\_722.pdf](http://www.wvlegislature.gov/legisdocs/reports/agency/PA/PA_2021_722.pdf)

<sup>11</sup> Appalachian Voices. Repairing the Damage: the cost of delaying reclamation at modern-era mines. July 2021

<sup>12</sup> Government Accountability Office. (2010). Surface Coal Mining: Financial Assurances for, and Long-term Oversight of Mines With Valley Fills in Four Appalachian States. GAO-10-206. <https://www.gao.gov/assets/310/300079.pdf>

- bonding requirement for that permit would shrink, until 100% of the reclamation costs would be covered by the permit-specific trust, and the bond program would be phased out.
- iv. Reclamation liabilities would be reviewed annually. Given that many bonds are currently inadequate, many operators would likely be required to invest some initial amount of funding into the trust fund before being permitted to reduce other bonding instruments in use.
  - v. Payments by coal companies would be based on their mine reclamation obligation; payments would continue until the full cost of reclamation has been paid, and a secondary bond would be required until full cost has been met; the remaining corpus would be returned to the company upon successful reclamation and release of the permit.
  - vi. Similar to current bond-release mechanisms, the balance of funds from each permit-specific trust would be released back to the permittee (coal company) as reclamation is completed.
- b. **Option 2:** Establish a new federal reclamation fund that would be financed by a new fee levied on the industry.
- i. Coal operators would be required to make quarterly payments to the fund based on the amount of disturbed acreage under their permit. Similar to how the Abandoned Mine Land severance fee and fund currently operate, operators would provide quarterly reports on disturbed acreage to state regulatory bodies or OSMRE, dependent on primacy/jurisdiction, and pay a corresponding, per-acre fee. Alternatively or additionally, coal operators could be required to pay a fee based on coal production.
  - ii. Collected funds would be disbursed annually to state regulators (or used by OSMRE for areas where OSMRE retains SMCRA implementation jurisdiction) to fund reclamation on forfeited permits for which bonds were inadequate.
- c. **Federal funding supplement:** Because the coal industry is in decline, even if one or both of the above options are enacted, it is unlikely that all reclamation could be completed using fees from the coal industry; the options above will likely need to be paired with additional federal funding to ensure reclamation at all modern-era mine sites. See, for example, the RENEW Act.<sup>13</sup>

*Note: The subsequent problems listed below cover partial fixes to an existing bonding system, as opposed to a new financial assurance system, but none are sufficient to fully guarantee reclamation of modern-era coal mines.*

- 2. Ensure sureties will be able to cover the bonds they provide
  - a. Amend SMCRA to require that every surety providing coal mine reclamation bonds be included in the United State Department of the Treasury's Circular 570, which provides a list of certified companies that write or reinsure federal bonds;

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<sup>13</sup> 117th Congress. H.R. 7937. RENEW Our Abandoned Mine Lands Act. Rep. Lamb, C.  
<https://www.congress.gov/bill/117th-congress/house-bill/7937/text>

- b. Amend Treasury's rules to consider a surety's existing aggregate risk, including coal mine reclamation exposure across all permits in all states when determining whether to approve the surety's listing in Circular 570;
  - c. Require Treasury to set an aggregate underwriting limit for sureties listed in Circular 570.
- 3. Phase out state bond pools
  - a. Prohibit any new mining permits from participating in a bond pool;
  - b. Prohibit any transferred permits from participating in a bond pool;
  - c. Require that existing bond pools must be limited to current participants, and must demonstrate that they present no greater financial risk to the SMCRA regulatory authority than traditional, full-cost bonding;
  - d. Require that each state regulatory authority utilizing a bond pool must obtain an actuarial analysis from a third-party of the bond pool based on rate of bond forfeiture over the past three years combined with the consideration of coal market forecast and Energy Information Administration projections. Require that actuarial analyses be completed for all states within two years of the date of enactment, and updated every two years thereafter. If actuarial analysis indicates risk beyond that of full-cost bonding, the regulatory authority must then implement a plan to address the inadequacies of the pool bond within two years, or must require all permits in the pool to obtain full-cost performance bonds.
- 4. Set performance bonds amounts, whether provided through sureties or collateral, at an amount sufficient to cover the actual, current cost of reclamation, accounting for contingency costs and third-party contract fees
  - a. Require regulatory authorities to reconsider the adequacy of performance bonds at permit renewal and permit transfer;
  - b. Require that consideration include inflation, the cost of reclamation if performed by the regulatory authority (or its contractor), the potential for subsidence and the potential impact on reclamation cost of unplanned mine closures prior to completion of the mining plan, including whether there is sufficient spoil available to reclaim given that future coal production may not occur as planned. In all such reanalyses, the SMCRA regulatory authority must pay particular attention to the proposed termination date of the permit to ensure that the end date (and therefore the anticipated final reclamation date) is realistic given coal market conditions.
- 5. Adjust bond release phases to incentivize full reclamation
  - a. Reduce the percentage of bonding release allowed at Phase I to create more incentive for companies to continue reclamation to obtain Phase II and Phase III bond releases. Specifically, amend the maximum percentages of bonds that may be released at each phase to Phase I: 25%; Phase II: 25%; Phase III: 50%.
- 6. Improve bonding and reclamation requirements for long-term water treatment
  - a. For any permit identified as requiring long-term water treatment, require financial assurances that provide a dedicated income stream using a trust or annuity. Require that the permittee's obligation to provide such financial assurance must take effect as soon as the presence of a source of long-term water pollution is detected and must extend for a minimum of 75 years;

- b. Make clear that the regulatory authority cannot terminate its jurisdiction over a site until water treatment is no longer necessary.
- 7. Eliminate self-bonding (see for example, Coal Cleanup Taxpayer Protection Act<sup>14</sup>)
  - a. Prohibit any new permits from using self-bonds;
  - b. For any existing self-bonded permits, either:
    - i. Require existing self-bonds to be replaced with surety bonds or cash bonds by not later than the earlier of—
      - 1. The date of renewal of the permit under section 506(d); or
      - 2. The date of any major permit modification under section 506
    - ii. Require existing self-bonds to be replaced with surety bonds or cash bonds when the permit is transferred to a new company, or at permit renewal, whichever occurs first.

## **Problem 2: Coal companies are not conducting contemporaneous reclamation**

As demand for coal declines, weaknesses in coal mining regulations are becoming apparent. Coal companies are stalling reclamation and idling mines to cut costs, and regulatory agencies can do little to push for speedier work without clear rules for reclamation timelines. Mines idled during times of higher coal prices are unlikely to ever return to operation as prices continue to decline. The incomplete reclamation at those sites is therefore likely to become the responsibility of regulators.

While SMCRA requires contemporaneous reclamation (i.e., requires coal companies to reclaim mined-out areas as they go), there currently are no specific quantitative measures for this requirement. 30 C.F.R. § 816.101 included specific requirements for backfilling and regrading – within 60 days or 1,500 linear feet following coal removal at contour mines, and within 180 days and not more than four spoil ridges behind coal removal at area mines – but this section has been indefinitely suspended since 1992.<sup>15</sup> The Stream Protection Rule established more stringent requirements for coal companies’ reclamation plans and timetables,<sup>16</sup> but that rule was rescinded in 2017 through the Congressional Review Act.<sup>17</sup> The Stream Protection Rule also added additional surface water and groundwater monitoring requirements during both mining and reclamation to enable timely detection and correction of adverse trends in the quality or quantity of surface water and groundwater, and to ensure that land disturbed by mining operations is restored to a condition capable of supporting the uses it was capable of supporting before mining.<sup>18</sup>

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<sup>14</sup>117th Congress. H.R. 2505. Coal Cleanup Taxpayer Protection Act. Rep. Cartwright, M.  
<https://www.congress.gov/bill/117th-congress/house-bill/2505>

<sup>15</sup> Department of Interior. Notice of Suspension. 57 FR 33874 (July 31, 1992).  
<https://www.osmre.gov/sites/default/files/pdfs/57fr33874.pdf>

<sup>16</sup>Office of Surface Mining Reclamation and Enforcement, Interior. Stream Protection Rule.  
<https://www.federalregister.gov/documents/2016/12/20/2016-29958/stream-protection-rule>

<sup>17</sup> House Committee on Natural Resources. Stream Protection Rule.  
<https://naturalresources.house.gov/issues/issue/?IssueID=118694>

<sup>18</sup> Office of Surface Mining Reclamation and Enforcement, Interior. Stream Protection Rule.  
<https://www.federalregister.gov/documents/2016/12/20/2016-29958/stream-protection-rule>

Compounding the problem, SMCRA allows coal companies to temporarily idle coal mines. Mines are idled usually due to market conditions; however, there is no regulation to define how long a mine can be in “temporary” cessation. Significantly, coal companies are not required to reclaim mines during temporary cessation, which further delays reclamation. It is unlikely that coal market conditions will substantially improve in the future for any significant amount of time, meaning most mines in “temporary” cessation are, in reality, closed permanently. Today, many mines remain in temporary cessation for years – some for longer than 10 years. Sometimes mines move in and out of periods of temporary cessation, with little meaningful reclamation and site remediation work done between those periods.

An analysis of mine permit data conducted by the Center for Public Integrity finds Central Appalachia is home to about half of all idled coal mines in the country. CPI found more than 200 mines are idled across Kentucky, Tennessee, Virginia and West Virginia. About half have been that way for three or more years.<sup>19</sup>

Essentially, coal companies are using temporary cessation to delay reclamation of the mines, creating “functionally abandoned” mines. The result is mines that sit unreclaimed for years, making them more dangerous and more expensive to reclaim. Thus, the full scale of the modern-era mine abandonment crisis has been obscured, and there are far more abandoned modern-era mines in need of reclamation than regulators’ records would suggest.

## **Problem 2: Recommended solutions**

1. Require more timely reclamation by setting clear and enforceable deadlines for reclamation milestones by setting an objective definition for “contemporaneous” reclamation.
2. Amend 30 U.S.C. §1265 to prohibit any permit or portion of a permit from remaining in temporary cessation status or idled for more than a total of six months within any three-year period without active coal removal or reclamation progress, unless:
  - a. The permit is in compliance with contemporaneous reclamation requirements and does not have any variances from contemporaneous reclamation requirements, and;
  - b. The permittee has provided a plan to return to production and/or enter final reclamation within one year.
3. Require that a request for temporary cessation status constitutes a significant permit revision under 30 U.S.C. §1261, triggering a public comment period and hearing, and require that the permittee must show that reclamation is up to date and that they have the equipment and resources to maintain sediment controls and other safety features on the mine site.
4. Require disturbed areas be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium, and that they be planted with non-invasive species appropriate for current and anticipated future conditions.

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<sup>19</sup> Patterson, B. Idle Lands: Justice Coal Group Top User of Loophole Allowing Mine Lands to Sit Idle. WV Public Broadcasting. Sep. 4, 2019.  
<https://wvpublic.org/idle-lands-justice-coal-group-top-user-of-loophole-allowing-mine-lands-to-sit-idle/>



5. Ensure full compliance with water monitoring and Clean Water Act requirements through full reclamation.
  - a. Require quarterly monitoring of surface water and groundwater during mining and reclamation;
  - b. Require an annual assessment of the biological condition of streams to demonstrate full restoration of the pre-mining biological condition of the stream;
  - c. Require collection of on-site precipitation measurements using self-recording rain gauges;
  - d. Require an inspection of surface water runoff control structures after every storm event.

### **Problem 3: Permit transfers allow companies to shed responsibilities**

More than 50 coal companies declared bankruptcy between 2010 and 2019, and 22 additional coal companies declared bankruptcy in 2020 alone.<sup>20,21</sup> Companies are using bankruptcy to shed reclamation and other liabilities. From 2012 to 2017, four large coal companies – Patriot Coal, Alpha Natural Resources, Arch Coal, and Peabody Energy – shed almost \$5.2 billion of environmental and retiree liabilities through Chapter 11 bankruptcies. In most of these earlier bankruptcies, companies shed their environmental liability by selling mines to smaller, less well-capitalized companies. Mines were often sold for little to no money – sometimes “buyers” were even paid to acquire the mines and liabilities. These transfers often result in further reclamation delays, with some mine permits going through multiple rounds of bankruptcy and multiple transfers, during which no reclamation occurs.

State agencies and OSMRE rely on the Applicant/Violator System to track outstanding violations at coal companies so that decisions can be made regarding permit transfers and grants of new permits. Although useful in theory, the current system contains loopholes that allow parent companies, owners, and officers of companies to avoid enforcement under SMCRA by creating multiple subsidiary companies that shield related companies from responsibility for environmental violations. Additionally, current practices allow companies to remain eligible for new permits or permit transfers while they appeal violations.

### **Problem 3: Recommended solutions**

1. Require that before a regulator approves a transfer, it must make affirmative determinations that:
  - a. The approved reclamation plan is adequate given the current condition of the site;
  - b. The transferee operator has the resources and ability to complete the reclamation plan; and
  - c. The reclamation bond is adequate to ensure the reclamation plan can be carried out in the event of forfeiture.

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<sup>20</sup> <https://www.nsenenergybusiness.com/news/us-coal-company-bankruptcies/>

<sup>21</sup> <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/eia-sees-higher-coal-production-in-2021-us-bankruptcies-breach-500-mark-60695665>

2. Redefine “permit applicant” in 30 U.S.C. §1291(16) to mean “the legal entity that applies for issuance of a permit under this statute and each other legal entity that owns or controls an applying entity” in order to close loopholes that currently allow out-of-compliance companies to create subsidiaries and obtain new permits.
3. Close loopholes that allow out-of-compliance companies to create subsidiaries and obtain new permits by expanding permit application requirements. Specifically, amend the third sentence of 30 U.S.C. §1260(c) to read: “Where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant **or by any entity that owns or controls the applicant** is currently in violation....”
4. Close loopholes that allow companies to remain eligible for new permits or permit transfers while appealing violations.
5. Require OSMRE’s Applicant/Violator System to provide all of the information in 30 C.F.R. §778.14 in order to allow the regulatory authority in another state to verify the accuracy of information contained in a permit application (or transfer or renewal application).

#### **Problem 4: Companies and regulators are not planning for mine closures**

As the industry winds down, the current practices of coal companies and regulators are not sufficient to keep up with actual reclamation needs and associated impacts to communities. Allowing long-term temporary cessation and disregarding reclamation standards has resulted in functionally abandoned mines that create real on-the-ground negative impacts for nearby communities and hampers their economic transition efforts. Current regulatory oversight points can provide opportunities to ensure coal companies and regulators are planning and executing reasonable reclamation processes as mines close down, but must be more completely exercised.

#### **Problem 4: Recommended solutions**

1. Amend 30 C.F.R. § 774.17 to require coal companies to provide mine closure plans (i) at the time of permit transfer, (ii) if a permit has been in cessation or idled for more than six months, (iii) if a permit has obtained three or more amendments to delay reclamation work, (iv) if a mine drops 25% or more in production on an annual basis, or (v) if other factors indicate risk of closure. Require mine closure plans to include:
  - a. The anticipated timing of closure and conditions leading to closure;
  - b. The cost of uncompleted reclamation work and identification of company assets and/or income that is available to complete that work separate and apart from the permit’s performance bonding;
  - c. Estimated worker numbers, a plan for hiring, and an economic impact analysis of the closure and reclamation work to better understand the direct and indirect benefits of cleanup;
  - d. Evidence that adequate wage bonds have been filed with states (where required);
  - e. Requirements for public notification of executive compensation during the pre- and post-closure periods;

- f. Plans for the disposition of mine lands and anticipated post-mine land use (especially if any changes are anticipated from the company's reclamation plan); and
  - g. Other elements that are common to retirement plans for facilities such as power plants.
- 2. Increase public input and transparency by adding a new definition under 30 U.S.C. §1291 for "significant permit revision," to be defined as including, without limitation, all instances where:
  - a. A permittee announces a mine closure or shutdown;
  - b. A permittee seeks a change in permit status that allows it to halt production and delay reclamation for any period in excess of six months;
  - c. A mine reclamation plan is being amended;
  - d. A permittee or surety agrees to complete reclamation in response to initiation of bond forfeiture proceedings;
  - e. A permittee requests a change that may affect the hydrologic balance on or off of the permitted area.
- 3. Impose new requirements for permit renewals in 30 U.S.C. §1256(d) so that regulators can better evaluate the company's ability to meet reclamation requirements.
  - a. Require regulators to require additional information at each permit renewal, including:
    - i. Data that indicates the financial status of the permittee and any corporate parent
    - ii. A revised estimate of the life of the mine
    - iii. Disclosure of outstanding liabilities
    - iv. An updated reclamation cost estimate reflecting current site conditions;
  - b. Repeal the "right of successive renewal" for SMCRA permits, or modify the provision to require that the permittee has the burden to demonstrate that renewal should be granted.

**To learn more about these issues and new legislative opportunities to help solve them, please contact [Chelsea@AppVoices.org](mailto:Chelsea@AppVoices.org) or [RShelton@aclc.org](mailto:RShelton@aclc.org).**