



Photo by Christi Root

Coal Mine Bonding, Bankruptcy, and Unreclaimed Post Law Mines

Grassroots Listening Project Report Back

August 2020 - February 2021



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Summary

Members of The Alliance for Appalachia conducted a listening project between August 2020 - February 2021 around the mounting number of unreclaimed coal mines across our region, and the increasingly clear probability that many of these mines will become abandoned in the coming years as the coal industry continues to collapse, they continue to go bankrupt, and bonding and enforcement mechanisms prove to be grossly insufficient.

Interviewees were primarily individuals living and/ or working in Appalachian coalfield communities, with some history of engagement with environmental and public health issues related to coal mining.

The goals of the project were to:

1. Educate and learn from interviewees regarding the issue described above
2. Solicit ideas for strategies, tactics, and solutions to the problem of unreclaimed, post-law mines

Please Note:

No positions or prospective policies discussed in this document are officially proposed or endorsed by the Alliance for Appalachia, or its member groups. Rather, this information is intended to foster continued conversation towards developing policy proposals, specifically in the legislative arena.

This project focuses on the problem of unreclaimed mines that were permitted after the implementation of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, and thus not eligible for reclamation funding through the existing Abandoned Mine Lands (AML) program. The term “post-law” is used to describe mine permits issued after the passage of SMCRA. The term “functionally-abandoned” is used to describe a mine that is not administratively classified as having been abandoned, but that is nonetheless lacking in active or expected reclamation activities.

Below are the key takeaways from the listening project, starting with five points of relative unity, and followed by several areas with varying degrees of consensus.

If you have further questions please reach out to Lyndsay Tarus, Alliance Engagement Coordinator at lyndsay@theallianceforappalachia.org.

Points of Unity

1. An **extensive public education** effort is needed to better inform community members and other stakeholders of the looming post-law mine abandonment crisis, and to build support for policy proposals to address the situation. Print and web resources, as well as videos, radio/ podcast features, conventional media engagement, and other methods of mass communication, should cover:
 - An overview of the problems related to bonding, enforcement, and bankruptcy,
 - Specific case-studies of functionally-abandoned permits,
 - Reclamation liability estimates and available bond amounts,
 - Maps showing the locations of functionally abandoned permits,
 - Information and maps regarding water contamination,
 - Projected jobs numbers if needed reclamation were to take place,
 - Examples of economic, infrastructure-development, and academic opportunities in mine reclamation
2. **Substantial and sustained federal investment** in reclamation is necessary to address this problem. Congress should act to allocate the necessary resources, and direct the appropriate agencies as to the implementation of a major reclamation effort.
 - Investments could be made to address the lack of continuity and documentation of the problems surrounding polluting mine lands. We need consistent, uniform data points, definitions, and standards in regard to problem areas, site features, etc. to fully understand the scope of the problem, including the costs of land reclamation and water treatment.
3. Both grassroots advocates and government officials should **frame this effort as a job-creation initiative**, first and foremost. Environmental and public safety benefits are commendable, but the primary emphasis should be placed on the job creation and economic benefit that is inherent in funding reclamation projects, as this will most effectively build broad popular and bipartisan support for the program.
4. **Mining companies that fail to reclaim permits**, the individual officers of those companies, and regulators that have proven themselves unwilling or incapable of enforcing the law, are culpable of immense environmental and community degradation. These **entities and individuals should be held accountable** through all available regulatory, administrative, and legal avenues. These individuals should play no role in receiving, disbursing, advising, or otherwise engaging federal investment in reclamation.
5. Reclamation **contracts should be awarded with preference to union labor** and local companies.
 - Reclamation should include the remediation of impacts to ground and surface waters and an extensive inventory of contaminant point sources will be necessary.
 - Repairs and upgrades to public water systems should be incorporated into mine reclamation work.
 - Innovative mine reclamation projects that lay the groundwork for ongoing economic and/ or academic benefit should be encouraged where possible.

Other areas of interest

Where does the money come from?

In general, interviewees agree that the majority of the funds required for needed reclamation on post-law mines should be provided by an increase in taxes paid by very wealthy individuals and households, and or come from coal and other fossil fuel industries themselves. Ideas for achieving the latter include:

- An increase in the AML fee, and an expansion of the AML program to include post-law mines,
- A separate per-unit tax or fee on the extraction, sale, or combustion of coal and other fossil fuels, and
- A carbon tax.

Additionally, reclamation on some mines could be subsidized by public grants (POWER, brownfields, AML Pilot, etc.) and/ or private investment in the economic development of those sites. Some sites have latent economic value in the potential for carbon sequestration, utilization of ponds and underground mine pools for pumped-hydro power generation, and the industrial utilization of Acid Mine Drainage.

What would a major reclamation program look like, and who would run it?

Many interviewees expressed a lack of trust in state mining regulators to implement such a program, and a preference that OSMRE fulfill that role. Others, however, felt that the responsibility should fall with states and tribes. Notably, this sentiment was most present in Tennessee, where no state reclamation and enforcement agency currently exists, and the OSMRE regulates coal mining directly, and the state runs the AML program.

Some individuals expressed an interest in either a new federal program or a new multi-agency partnership (perhaps including federal agencies,

local entities, research institutions, and non-profits) being created to implement reclamation on post-law mines.

Is there an opportunity to transfer land?

It is not widely understood that mined land is often only leased, rather than owned, by the companies that hold mining permits, and are thus legally responsible for reclamation. That said, several interviewees wondered if it would be possible for mined lands to be transferred to organizations that would steward the land's remediation.

One interviewee suggested the land should be assessed and taxed according to a County valued appraisal process that could then be placed into an abandoned land bank repository at some level of government to be sold or leased to generate funds to assist with further reclamation and remediation.

First and foremost, these individuals expressed an interest in transferring the ownership of land to Native American tribes and organizations, if any were interested in receiving it. Potential transfers of land to the US Forest Service, state public lands agencies, local governments, and research institutions were also discussed.

Bonding reforms

Some discussion of needed bonding reforms arose in the course of these interviews. Namely, several individuals expressed that a smaller percentage of a mine's bond should be released back to the company after the completion of phase 1 of reclamation, with a larger portion of the bond being held by the regulator until the full completion of reclamation work.

Others discussed a need to eliminate self-bonding and pool-bonding. Some argued that state and federal regulators should do more to inform the public about bond releases.