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Representative Alan S. Lowenthal, Chair
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Representative Lowenthal,

I would like to thank you again for the opportunity to testify before the Subcommittee's hearing on "Environmental Justice for Coal County: Supporting Communities Through the Energy Transition." Coalfield communities throughout the country are grateful that the subcommittee is investigating what can be done to help ensure that we are not burdened by unreclaimed or poorly reclaimed coal mines as the industry declines.

I provide here my answers to the post-hearing questions for the record provided by the subcommittee. I also include a fuller answer to the question posed by Representative Levin that I was unable to answer fully during the hearing. If the subcommittee would like any further information, I am happy to provide that to the best of my ability.

Questions from Rep. Lowenthal for Ms. Cromer:

- 1. Given the scale of coal mining in Wyoming, are operations and regulations of the Wyoming state program representative of issues that are occurring in other states and tribal regions?**

Each coal region has its own unique challenges and perspectives, and what is happening in Wyoming is not the same as other areas. The size of mines, the number of operators, and the rate of decline of coal production are all very different in Wyoming and Central Appalachia. Wyoming has around a dozen permitted mines, each of which are very large. In contrast, Kentucky has hundreds of smaller mine sites permitted to numerous coal companies. (As of March 2021, there were over 1300 SMCRA permits in Kentucky. However, a single mine may be comprised of several permits.) In addition, the trends in domestic coal production have differed in the East and in the West. If you look at the discussion of coal production in the November 17, 2020 CRS report "Reclamation of Coal Mining Operations: Select Issues and Legislation," you see that the downturn in coal production in the East began around 1990. Whereas production didn't really



start to fall in the West until around 2010. More specifically, while Wyoming's coal production declined by 37% from 2011 to 2019; production in Eastern Kentucky declined by 84% during the same time period.

These differences in scale and timing impact how coal production affects Wyoming as compared with other regions in the country, as well as the severity of those impacts. Because it has fewer operators with larger reclamation liabilities, Wyoming's risk is somewhat more concentrated. (Although, as the recent audit of the West Virginia bonding program demonstrates, risks posed by the potential insolvency of surety companies are concentrated even in coalfield regions with many operators and many permits.) Likewise, because Eastern Kentucky has seen such a dramatic decline in coal production in the past decade, the environmental impacts of the idling of those coal mine sites are being experienced most acutely in that region.

That said, as coal production declines, the risk that coal mines will remain unreclaimed or will be poorly reclaimed occurs throughout the country. OSMRE needs to set and oversee the implementation of national standards to improve bonding protections and require contemporaneous reclamation of all mine sites to protect coalfield citizens against the risk that coal mines will be unreclaimed or poorly reclaimed as production continues to decline.

2. While coal operators in Wyoming have largely replaced their self-bonds, is self-bonding still a problem in other states? Are there additional forms of bonding that are problematic?

Self-bonding is a serious problem anywhere it occurs. Despite the fact that SMCRA expressly provides for self-bonding as an option, more and more SMCRA regulatory authorities are phasing it out, either by expressly disallowing it or by simply no longer granting self-bonded permits. And let's be clear: self-bonding is really no bonding at all, because if a self-bonded company goes into bankruptcy there are unlikely to be any unencumbered assets available to cover the costs of reclamation. OSMRE can easily address the issues that remain related to self-bonding of new permits by immediately reinstating the August 15, 2016 self-bonding policy advisory that I discuss on page 9 of my written testimony.

Even if no more self-bonded permits are issued, however, residual problems remain with self-bonded permits in a number of states, including Wyoming and Virginia. In Virginia, A&G Coal Company, which is owned by the Justice Group, still holds a number of self-



bonded permits that are not being reclaimed in a timely manner. Twenty mining permits are covered by over \$24 million in self-bonds. The Virginia SMCRA agency has issued numerous violations related to the failure to reclaim, but lacks sufficient leverage to compel timely reclamation because the state cannot afford for the company to abandon its mines. The state would need to take further legal action to collect these self-bonds in the event of bond forfeiture. Under a bankruptcy scenario, the state would likely be unsuccessful in collecting these bonds, and would have to assume the full cost of reclamation if the company were to walk away from these mine sites.

Other alternative forms of bonding are similarly unreliable. Pool bonding programs, which currently exist in West Virginia, Kentucky, Virginia, Indiana, and Ohio, put the SMCRA regulatory authorities at great risk. In pool bonding systems, the individual SMCRA permit holder provides a surety or collateral bond for a fraction of the estimated reclamation cost. The permittee then also pays into the state's pool bond that can be tapped to fund any remaining cost of reclamation beyond the surety bond for each bond forfeiture site. In a declining market, bond forfeitures may quickly deplete the pool bond fund, especially where one company's failure causes numerous permit forfeitures to occur in quick succession. That is the case in Kentucky with Blackjewel. Kentucky has estimated that the cost of reclamation of the 33 Blackjewel permits that were forfeited in March 2021 will exceed the permits' surety bond amounts by more than \$28 million, meaning Kentucky's pool bond will be called upon to make up that difference. Currently, Kentucky's entire pool bond fund is just over \$50 million. So, while Kentucky may have sufficient money in its pool bond to cover this round of forfeitures, the fund will likely be severely depleted and insufficient to cover future forfeitures.

Finally, as coal production declines and bond forfeitures increase, there is an increased risk that sureties will become insolvent. If any of the major surety bond providers themselves go out of business, the demands on the bond pool will be even greater. This is particularly so because SMCRA regulators have allowed a small number of bond providers to issue a huge percentage of the overall thermal coal surety bonds. One example of such a company is Indemnity National Insurance Company. The West Virginia legislative audit of the state's bond fund demonstrated that that company holds approximately two-thirds of all coal mine surety bonds in the state. The same company holds over \$153 million in bonds issued to Blackjewel. The insolvency of just that one company could leave SMCRA regulators with significant reclamation obligations and little money available to cover the costs.



3. Ms. Cromer, do coal companies comply with SMCRA's mandated contemporaneous reclamation standards in Kentucky?

They do not. This is a problem for active mines, but it is an even bigger problem for mines that have been allowed to go idle prior to completing reclamation. In particular, in Eastern Kentucky where coal production has all but ceased, companies have put operations on hold while disturbed areas remain unreclaimed. It is increasingly clear that those mines will never restart, and reclamation of many of those sites will become the responsibility of state regulators.

Through my representation of landowners in Eastern Kentucky, I am aware of two particularly egregious examples of hazardous mine sites that were effectively abandoned in an unreclaimed state in the years immediately before the permittee declared bankruptcy. One is the Blackjewel coal mine on Tracy Neece's land that I discuss on pages 3-4 and footnote 18 of my written testimony. The second is a Cambrian Holding Company permit that the company mined from 2014 to 2015. In 2015, Kentucky allowed Cambrian to defer its reclamation obligations because of the softening coal market. When the deferment period ended in 2018, the company did not reclaim. It also stopped fulfilling its basic environmental compliance obligations, like water monitoring and certification of its ponds and fills. Kentucky issued numerous enforcement orders that had little effect. When Cambrian entered bankruptcy in 2019, the mine had numerous violations including failure to contemporaneously reclaim, improper steep slope mining, failure to revegetate, improper spoil disposal, and failure to backfill and grade. No work has been done on the site since 2015. Both the Blackjewel and Cambrian mines are perched on mountaintops with houses below. The unstable slopes, landslides, and sediment coming from those mines are increasingly dangerous to those communities.

What is clear from these two examples and others like them is that as companies cease operations and move toward dissolution under the protections of the bankruptcy court, the regulatory authorities' abilities to enforce SMCRA's contemporaneous reclamation requirements are diminished. At the same time, the regulators are hesitant to initiate their ultimate enforcement mechanism, permit forfeiture, because the reclamation bonds are insufficient, especially where the cost of reclamation has increased as conditions on the permit have degraded.

And, in Kentucky, we know that coal production has nearly ceased. Eastern Kentucky coal production has decreased by 90% in the past decade. Of the over 1300 SMCRA permits held in Kentucky, only 54 were classified as "actively producing coal" in March 2021. Most of those are in Western Kentucky. There are many idled mine sites in Kentucky that are not being contemporaneously



reclaimed.

Any delays in reclamation of these sites that are no longer producing coal mean that coalfield communities' risks from landslides, water pollution, and other hazards from unreclaimed mine sites are extended. OSMRE oversight is needed to ensure that Kentucky is properly and stringently enforcing its contemporaneous reclamation standards. And, for intransigent companies like Blackjewel and Cambrian, OSMRE should ensure that the permit and bond are forfeited, so that reclamation can begin as soon as possible.

4. When regulators fail to require adequate bonding, is the risk limited to a lack of funding for reclamation, or are there other consequences?

As I discuss more in my previous answer, a lack of adequate bonding can significantly limit a regulator's ability and willingness to enforce SMCRA. SMCRA's ratcheting enforcement scheme relies on two primary backstops. The first is the Applicant Violator System, under which a coal operator with existing unabated violations is blocked from getting a new mining permit or expanding an existing permit. That mechanism has little effect where companies are no longer seeking new permits or expanding operations.

The second is the permit forfeiture process, whereby the regulatory authority is required to forfeit the permit and bond if the operator does not bring its mine sites into compliance with SMCRA. That mechanism is ineffective if the regulatory authority does not initiate forfeiture because of concerns that the bond is insufficient to fund reclamation. Therefore, mine operators who were allowed to self-bond, or who otherwise lack adequate bond coverage for their mines, gain enormous leverage over regulators. The ever-present threat of mine abandonment leads regulators to become very wary of taking any action that could precipitate permit abandonment. Even where it is clear that a mine site will eventually be abandoned, regulators would prefer to delay the point at which the mine becomes their responsibility. In contrast, where adequate bonding is in place, regulators are free to take appropriate enforcement actions because they know that no matter what they will be able to ensure the site is reclaimed.

5. Ms. Cromer, if the Committee only takes one thing away from the hearing, what would you want that to be?

Recent events, including but not limited to the Blackjewel bankruptcy, have made clear that SMCRA's reclamation and bonding requirements were not designed to address the permanent decline of the coal mining industry. The present reality of declining demand for coal has dramatically increased the likelihood that the



communities who have borne the impacts of coal extraction will now also be burdened by living near unreclaimed or under-reclaimed mine sites. There is a limited window of time remaining for federal and state regulators to ensure that industry completes as much reclamation as possible. Even then, some states will be left with significant shortfalls between the costs to reclaim abandoned mines, and funds available from reclamation bonding.

Questions from Rep. DeGette for Ms. Cromer:

The state of Colorado recently created an Office of Just Transition and an action plan to help coal communities and workers move towards a more prosperous future. Rep. DeGette will soon be reintroducing a Clean Energy Innovation and Deployment Act, which includes an Energy Workforce Training and Transition Title, based in part on the Colorado Just Transition Law.

The energy workforce title of the DeGette bill includes several measures to promote access to jobs in the modern energy economy, especially for workers in transition. Much like the Colorado law, it will create a new DOE Energy Workforce Transition Office to identify existing resources for displaced energy workers and communities. It will also provide financial and technical assistance to states to develop energy plans that address workforce and economic transition, and establish apprenticeship, workforce placement, and university leadership programs.

- 6. Would programs like those that would be established by the DeGette bill be helpful, or have been helpful, to the workers and communities in energy-related transitions that you have observed? Please refer to specific measures of the DeGette bill, as described in Attachment A, that you believe would be helpful; more helpful with some revision; or not helpful.**

Yes, a federally supported initiative committed to assisting communities impacted by a changing energy economy would be helpful for workers and coalfield communities. I offer some specific comments below on the measures currently included in the DeGette bill.

1. Concerning the tasks of the Energy Workforce Transition Office and Advisory Council in Sec. 512, ACLC supports the development of a federally supported and coordinated plan to support workers and communities. However, I would like to draw your attention to an existing report authored by the Union of Concerned



Scientists and the Utility Workers Union of America, [*Supporting the Nation's Coal Workers and Communities in a Changing Energy Landscape*](#), that puts forward a proposal for supporting and transitioning energy workers.¹ The report justifies and calculates needed wage and benefit replacement, as well as training and educational services. Due to the urgency of the issue, rather than wait for an advisory council's recommendations, we ask that you consider legislation that would carry out the proposals in this report.

2. ACLC supports Sec. 513 of the proposed legislation, Energy Workforce Transition Plans and Reemployment of Affected Workers, that requires energy facilities to develop workforce transition plans as well as provide advanced notice of facility closure. As written in our briefing paper to OSMRE, we recommend legislation that would require coal mining companies to submit detailed closure and reclamation plans, and that these plans should be required (1) at the time of a permit transfer, (2) if a permit has been in cessation or idled for more than six months, (3) if a permit has obtained three or more amendments to delay reclamation work, or (4) if a mine drops 25% or more in production on an annual basis. Requiring plans at these junctures will help ensure that a mining and reclamation plan is feasible and sufficient given existing market conditions. Such closure plans should undergo notice and comment procedures and include:
 - a. The anticipated timing of closure and conditions leading to closure;
 - b. Cost of uncompleted reclamation work and identification of company assets and/or income 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

¹ <https://www.ucsusa.org/sites/default/files/2021-05/Supporting-the-Nation%27s-Coal-Workers-%28report%29.pdf>.



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- g. Other elements that are common to retirement plans for facilities such as power plants.

However, these requirements will not protect coal workers and coalfield communities where coal companies use the bankruptcy process to abandon their reclamation obligations. Therefore, we also think that OSMRE must be required to actively engage in all coal bankruptcies to oppose all attempts to sidestep SMCRA's enforcement processes and weaken reclamation plan standards and reclamation plan permit obligations.

3. The proposed legislation is primarily focused on retraining efforts that will transition workers into jobs in the new energy economy. Though we think this should certainly be further explored and supported, ACLC encourages an expansion of the focus of worker transition and retraining beyond modern energy jobs. Specifically, we ask that you consider support for other kinds of jobs that are needed in our communities. For example, Central Appalachia needs more skilled workers who can install and maintain water and wastewater infrastructure.
4. ACLC also encourages you to consider how programs like the Climate Resiliency Corps could be linked to existing, successful programs in our communities. For example, the Appalachian Regional Reforestation Initiative is a successful program that should be provided pilot funding to reforest legacy mine sites in order to create jobs, potentially help repurpose legacy mines sites for future agricultural or other community or economic use, and also mitigate runoff from these sites that causes increased risk of flooding in our communities.
5. Last, I also attaching for your review a recent letter sent to House and Senate leadership from 35 organizations involved in energy transition efforts. The letter calls for a "whole of government approach" to transition and includes a legislative agenda to support coal impacted communities and workers.

Question from Rep. Levin for Ms. Cromer:

- 7. Ms. Cromer, I imagine you have some seen successful transitions in Appalachia away from an economy based on the coal industry and towards a more sustainable economy. Can you share with us some of the best strategies for**



communities that are looking to transition?

There are numerous entrepreneurs who are working hard at creating opportunities to transition our area away from coal. But, because our region has been so dependent on one industry that provided fairly high wage jobs, no one great entrepreneurial idea or one new industry can ensure that the transition away from coal is just.

More than anything, I want to stress that you can't rebuild an economy on broken foundations. To be just, transition must include plans to reclaim all abandoned coal mines, both AML and post-law sites, to ensure access to safe, affordable drinking water and reliable wastewater systems, to ensure full benefits for miners suffering from black lung, and to rebuild our dilapidated houses and towns. There is so much work to do. And, all of this work is a necessary precondition for just transition.

Therefore, the transition strategies that we are most excited about in Appalachia are those that invest directly in our people and our communities. Specifically, we need more support for organizations that provide training for local workers to do the work that is needed to help rebuild our communities. [Coalfield Development Corporation](https://coalfield-development.org)² in West Virginia and [the Hope Building project](https://hdahome.org/hope-building/)³ in Kentucky are two such organizations that are training local workers to build homes and repair and renovate dilapidated buildings. Another such organization is Kentucky's [Mountain Association](https://mtassociation.org),⁴ which helps local residents and businesses deal with increasingly unaffordable electricity rates through weatherization and rooftop solar installations.

CONCLUSION

I appreciate the opportunity to provide these responses to the Subcommittee's post-hearing questions for the record. I am happy to provide further information or clarifications if that would be helpful.

Sincerely,

Mary Varson Cromer

Encl.

² <https://coalfield-development.org>

³ <https://hdahome.org/hope-building/>

⁴ <https://mtassociation.org>