Energy and Mineral Resources Subcommittee
of the House Natural Resources Committee
United States House of Representatives

Questions for the Record from Committee Members

Legislative Hearing:
Coal Community Protection and Revitalization

Responses from Erin Savage
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1. **Ms. Savage, recently there has been an increase in both coal production and coal-generated electricity. In fact, coal use has gone up under the Biden Administration compared to the Trump Administration.**

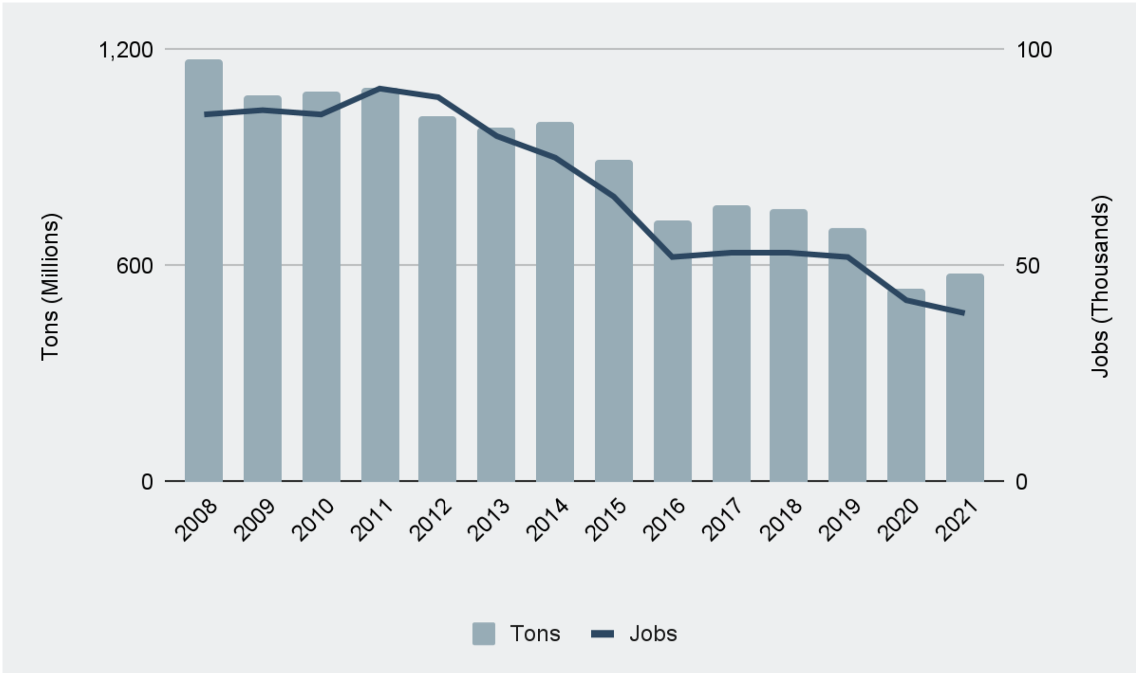
   Does anything about this recent bump suggest to you that the long-term economic outlook for coal has changed in any way? Are we about to see a great resurgence of the coal industry?

Answer:

We are very unlikely to see a great resurgence of the coal industry. While production has increased recently, it is more informative to look at longer term trends in production, demand, and energy production. In general, coal production in the United States has been trending downward in a predictable manner. Global influences, including the COVID pandemic and the war in Ukraine have caused short-term changes in coal demand, but have not yet had long term impacts.

There has been a steady decline in coal production since about 2008, with a steeper drop in 2014, 2015, and 2016, and a leveling off after that.

Nationwide Coal Production From Both Surface and Underground Mines[1]



The Energy Information Administration predicted these trends in coal production at least half a decade ago. Looking back to the Energy Information Administration's Annual Energy Outlook from 2017, which was roughly the last year of that short steep drop from 2014-2016, the EIA predicted a significant leveling off of coal production, even if natural gas use declined.[2] Despite the increase in production from 2020 to 2021, production is generally following the EIA predicted trend, and is lower now than EIA's highest prediction for 2021 from the 2017 report (lowest predicted production for 2020 was ~750 million tons, and actual production was 535 million short tons).

There was a sharp decline in Central Appalachian production in quarters 2-4 of 2020 due to COVID, and a similar trend nationwide. This, combined with increased important demand from Europe and China, has resulted in an apparent spike in production when comparing only 2021 and 2022. But quarter 1 2022 production is lower than quarter 1 2020 production for both Central Appalachia and the country as a whole, and just barely higher than quarter 1 2021.[3] Coal prices are increasing due to global political issues, but production is increasing in a much less dramatic fashion, because production at mines cannot ramp up quickly.[4] Coal companies are wary of beginning new production projects that take years to complete, in response to market conditions that may only last months.

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[1] Mine Safety and Health Administration. Accident, Illness and Injury and Employment SelfExtracting Files (Part 50 Data). https://arlweb.msha.gov/stats/part50/p50y2k/p50y2k.htm
[2] https://www.eia.gov/todayinenergy/detail.php?id=31792
[3] Mine Safety and Health Administration. Accident, Illness and Injury and Employment SelfExtracting Files (Part 50 Data). https://arlweb.msha.gov/stats/part50/p50y2k/p50y2k.htm
[4] https://ohiovalleyresource.org/2022/05/23/coal-prices-are-surging-but-appalachian-boom-unlikely/

In summary, the long term production estimates from the EIA are likely accurate, if not somewhat high. Coal production is unlikely to crash to zero any time soon, but rather will continue a slow, steady decline. This provides a good opportunity for coal companies to wind down their mines in a responsible manner.

2. Ms. Savage, coal companies said for years that they would take care of the communities
they operated in, providing work, healthy pensions, and good healthcare – as well as promises to clean up after themselves. That isn't happening. Do you agree that this is an environmental justice concern?

a. What do you think are the best ways to turn things around?

Answer:

This is absolutely an environmental justice concern. Not only are coal companies delaying mine reclamation, but some companies are failing to pay pensions and health insurance. During the Blackjewel bankruptcy, the company dropped their employees' health insurance coverage.[5] Black lung disease continues to be a huge problem in this country, including for employees on surface mines, when it has essentially been eradicated in other countries.[6]

We need to get as much reclamation work out of coal companies as we can right now, while they still have money to complete reclamation work. This will create jobs, and address some environmental degradation. And we need to make sure their activities are well-regulated — including following MSHA dust regulations, as well as mine reclamation requirements. MSHA just announced increased oversight of silica exposure, and we're very happy to see the agency take this step to protect miners from black lung.

3. Ms. Savage, we're more than a year and a half into the Biden Administration and the Office of Surface Mining Reclamation and Enforcement, still doesn't even have a nominee for Director. What is the impact of not having a Senate confirmed Director?

Answer:

The bills under consideration during the June 9th hearing could help to address many of the problems with coal mining and reclamation we are seeing today. Another important avenue for addressing these problems is through enforcement from the Office of Surface Mining Reclamation and Enforcement (OSMRE). But the agency is unlikely to take action on these problems without a director.

There are a number of steps OSMRE should take, including:[7]

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[5] https://wyofile.com/workers-in-limbo-and-uninsured-as-blackjewel-deal-languishes/
[6] https://www.npr.org/2012/07/09/155978300/as-mine-protections-fail-black-lung-cases-surge
[7] For more discussion of steps OSMRE could take, please see: https://appvoices.org/2021/06/08/collapse-coal/

- inventorying reclamation needs and costs at post-SMCRA mine sites;
- strengthening bonding programs, including discontinuing the use of self-bonding and alternative bonding systems;
- ensuring reclamation takes place in a timely manner;
- and planning for long-term water pollution treatment.

4. Ms. Savage you led a report at Appalachian Voices detailing the gap in coverage of bonds and the outstanding reclamation work that needs to be done. Can you tell us more about the scale of this issue? What happens if we don't act soon?

Answer:

My written testimony includes a discussion of my analysis of reclamation needs across the country. I authored a report last year that provides in depth analysis of reclamation needs in the Eastern coal mining states.[8] I was compelled to complete this analysis because of the lack of available comprehensive data on reclamation needs and costs at either the state or federal level. In addition, we know that many mines have been sitting idle for years, with little to no reclamation taking place; but we do not have a comprehensive understanding of this problem, as mines often move in and out of idled status, and data on this issue is difficult to compile.

As mine reclamation is delayed longer, the risk grows. SMCRA requires coal companies to complete "contemporaneous reclamation," but this term is not well defined, so regulatory agencies have struggled to enforce reclamation timelines. Many mined out permits have significant amounts of outstanding reclamation. Often, these permits are passed from one coal company to another, either as part of a private business transaction or as part of a bankruptcy proceeding. Sometimes the acquiring company receives financial or other incentives to take on mines in need of reclamation. When permits are transferred, the new owner must also secure new reclamation bonds. This has resulted in bonds consolidating under a few smaller, less well-resourced surety companies as well. Essentially, both coal companies and sureties are playing a game of hot potato with unreclaimed mine permits.[9] It is very likely that regulatory agencies, taxpayers, and local communities will be the ultimate losers in this game.

I urge OSMRE to gather more information about the total amount of outstanding reclamation across the country, estimated reclamation costs, status of idled mines, as well as the financial health of sureties providing reclamation bonds. Characterizing the scope of the problem is a necessary first step to solving the problem. OSMRE should then quickly take steps to ensure that coal companies remain responsible for mine reclamation wherever possible.

5. Ms. Savage – you've been raising concerns about this bankruptcy and abandonment issue
for a while now. In your opinion, why didn't we catch these systematic bonding failures earlier? Did coal companies know their bonds would not hold up?

    a. As a follow up, from what you know, why did SMCRA ("smack-ra") offer self-

[8] https://appvoices.org/coal-impacts/repairing-the-damage/
[9] https://appvoices.org/2020/03/31/companies-play-hot-potato-with-unreclaimed-blackjewel-mines/

bonds and other alternative bonding systems to begin with and how have conditions for the industry changed?

Answer:

In some ways, we did catch systematic bonding failures sooner. OSMRE initiated a bonding rulemaking and released a policy advisory urging states to discontinue self-bonding in 2016, which was rescinded in 2017.[10] The Alliance for Appalachia released a bonding report in 2018 calling for full cost third-party bonding.[11] The issue of surety solvency is a more recent development. Many, myself included, used to think third-party surety bonds were reasonably secure. But now we're seeing a few smaller companies, like Indemnity National Insurance, take on huge amounts of liability, without much diversification in what other industries they cover.

I am not sure when or to what extent coal companies realized bonds might not hold up. Perhaps a more important question is when, or whether state agencies realized their bonding programs would not hold up to likely widespread bankruptcies. Certainly states like Kentucky and West Virginia are now realizing that their pool bonds will not handle the failures of Blackjewel and ERP Environmental, respectively, but now that those companies have already failed, there is little those states can do to address the lack of adequate bonds to cover reclamation at those mines. Other states may still have time to improve bonding before more permit forfeitures occur.

I understand that the drafting and passage of SMCRA was a huge accomplishment. But bills are often passed with compromises. My assumption is that the inclusion of alternative bonding systems was a compromise to allow states regulatory autonomy and to reduce costs for coal companies. Pool bonds and self-bonds were instituted when the industry was more robust, and widespread bankruptcies were not predicted. Now, as the industry winds down, self-bonds are absolutely not secure, and pool bonds cannot cover reclamation at enough mines.

6. What are the cascading impacts of a coal company bankruptcy?

Answer:

One primary impact of a cascade of coal company bankruptcies is a lack of mine reclamation. This lack of reclamation has many impacts, including health and environmental harm, as well as negative consequences for economic development.

During past bankruptcies, mine permits were typically transferred to other coal companies. Mines that were part of a wave of bankruptcies around 2015 were transferred to smaller, less well resourced companies. Many of those permits have made little reclamation progress over the last 7 years, and some are now part of a second round of bankruptcies. But at this point, it is difficult to find buyers for these mines. Even when there is a buyer, many times the buyer can't

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[10] https://www.osmre.gov/sites/default/files/pdfs/081616.pdf
[11] thealliancefor appalachia.org/wp-content/uploads/2018/04/Bonding-policy-recommendations-in-appalachia.pdf

get a new bond because many sureties are unwilling to take on new risk, or are requiring 100% collateral. State regulatory agencies are reluctant to pursue strong enforcement of environmental and reclamation requirements, for fear of pushing additional companies into bankruptcy.

The end result is that mines sit idled for years on end with no mining or reclamation taking place, sometimes for a decade or longer. They are essentially zombie mines. Miners aren't being put to work doing the reclamation they were always meant to do. As mines sit idled, they deteriorate, becoming more expensive to reclaim, and creating problems like landslides, flooding, and water pollution. And land isn't being put to productive use, whether that's through carbon sequestration in the form of reforestation, or through being developed for other projects.

7. Ms. Savage, if bonding regulations are strengthened and there are enough funds available
to clean up unreclaimed mines through passage of something like the RENEW Our Abandoned Mine Lands Act, what future do you see for your community?

a. How do you think your communities will diversify their economies – is there a future for industries renewable energy or outdoor recreation?

Answer:

I'm hopeful for the future of this region; in many communities, we are seeing leaders think creatively and collaborate to create diverse economies.Cleaning up mines (both AML and modern mines) will only make the region more attractive for other industries – the more we delay clean up, the harder it is for communities to attract new businesses and new people.

We are seeing some development of tourism, solar, and other industries coming into the region. With a cleaner, healthier environment, outdoor recreation can be an important piece of the new economy. But diversifying the economy requires grassroots community input, investment in public infrastructure, new training opportunities, and better access to healthcare. Investing in environmental reclamation is an important first step in investing in a new economy.