Now is the Time to End Self-Bonding

Why Congress and states should act now to strengthen coal mine reclamation bonds

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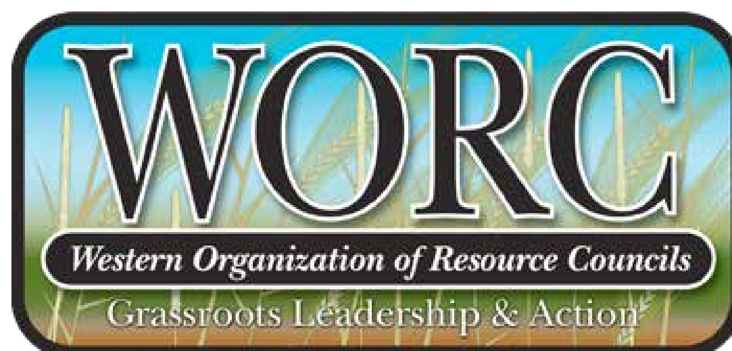

About this Report

This report is a publication of the Western Organization of Resource Councils (WORC). This report was prepared by Dan Cohn. Many thanks for revisions, editing, and support to Bob LeResche, Sara Kendall, and Shannon Anderson. All views and opinions expressed in this report are those of WORC and do not necessarily reflect the views of WORC's funders. Any errors are the responsibility of WORC.

Front cover photo by EcoFlight.

About WORC

WORC is a regional network of grassroots community organizations that include 15,190 members and 39 local chapters. WORC's network includes: Dakota Resource Council (North Dakota); Dakota Rural Action (South Dakota); Idaho Organization of Resource Councils; Northern Plains Resource Council (Montana); Oregon Rural Action; Powder River Basin Resource Council (Wyoming); Western Colorado Congress and Western Native Voice (Montana). WORC's mission is to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable environmental and economic communities that balance economic growth with the health of people and stewardship of their land, air, and water.

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“SELF-BOND”

A promise to pay for required coal mine cleanup (“reclamation”) without providing any collateral. If a self-bonded coal company liquidates before completing reclamation, the self-bond becomes an uncollectible “I.O.U.” and the public is left without sufficient funds to complete reclamation.

Introduction

In the eight months between August 2015 and April 2016, the three largest coal companies in the United States all filed for bankruptcy: Peabody Energy, Arch Coal, and Alpha Natural Resources. Between them, they had pledged $2.3 billion of self-bonds in support of mine cleanup, known as “reclamation.”

Coal companies are required by law to provide reclamation bonds so regulators will have access to funds to complete reclamation if a company were to abandon its mine without doing so. But self-bonds are more like an unenforceable “I.O.U.” than a reliable bond. Were a self-bonded coal company to abandon unreclaimed mined lands, the public would be left holding the bag to complete the work. Some states accept self-bonds to back coal mine reclamation, while others do not.

The coal industry has been in decline for years, facing steep competition for electricity production from natural gas and renewable energy. The recent distressed sale by Contura Energy to Blackjewel LLC of the Eagle Butte and Belle Ayr mines is further evidence of the market headwinds faced by the coal industry.[1] As the industry’s customers dwindle, companies will continue to file for bankruptcy, and some will cease to exist.

In this context, the slow pace of reclamation is very troubling. It is imperative that reliable and secure reclamation bonds are in place to prevent the cost of cleanup from falling to the public’s purse. The problems inherent in self-bonding should disqualify it from further use.

- Findings:
    - In 2015, taxpayers and the public purse were exposed to $2.6 billion of self-bonds backing the cleanup of coal mines across the western United States. Today, that figure stands at $577 million, a 78% decrease in three years. The volume of outstanding self-bonds has hit a historic low point.

- Many of the companies that continue to self-bond today have done so for years, but several of the riskiest coal companies that self-bonded in 2015 have been forced to discontinue the practice. This comes mostly as a result of negotiations during bankruptcy proceedings.

- Formerly self-bonded companies largely replaced self-bonds with surety bonds underwritten by large insurance firms. Surety bonds appear to remain available to the industry at affordable rates.

- The companies that continue to self-bond today generally have superior credit ratings to those that have already replaced their self-bonds.

- Nevertheless, self-bonds have many fatal flaws and do not meet the purposes of reclamation bonding. They do not provide readily accessible funds to coal mining regulators in the event of abandonment of a mine.

- Because the coal industry is in a structural decline, the problems inherent in self-bonding are greater than ever before. Today, we face an unprecedented opportunity to end self-bonding without excessively impacting the coal industry and the surety bond industry.

- Recommendations:

  - To protect coalfield communities from the threat of abandoned reclamation and the consequent loss of jobs, self-bonding should be prohibited by a change to federal statute. Such legislation has been introduced in the current session of Congress as S. 800, the "Coal Cleanup Taxpayer Protection Act," sponsored by Sen. Maria Cantwell (D-WA).

  - Federal regulators at the Office of Surface Mining Reclamation and Enforcement should expedite the rulemaking entitled, "Ensuring That Companies With a History of Financial Insolvency, and Their Subsidiary Companies, Are Not Allowed to Self-Bond Coal Mining Operations," and should propose and finalize new rules that strictly limit eligibility for self-bonding.

  - The Office of Surface Mining Reclamation and Enforcement should reinstate its "Policy Advisory" on self-bonding, signed Aug. 5, 2016, and rescinded Oct. 12, 2017.

  - States should move forward with rulemaking and policy to end the use of self-bonding within their jurisdiction.

Background

The process of strip mining for coal requires the use of explosives and heavy machinery to remove soil and rock "overburden" to access coal seams. The process of reclamation involves re-filling mined pits, contouring the new ground surface to promote water drainage, replacing topsoil, and re-establishing vegetation and to the extent possible the pre-mining hydrologic balance. Reclamation is essential to the health, wellbeing, and recovery of coalfield communities and the natural environment, but it takes time and is very expensive. Recognizing this, state and federal legislatures established provisions to ensure that land is restored to a condition that is capable of supporting pre-mining uses and potentials.

Coal mining companies must post and maintain financial guarantees in order to legally mine for coal under federal law. The purpose of these financial guarantees is to provide adequate funds to state, tribal, and/or federal governments to reclaim mined lands if the mine operator abandons the mine without completing reclamation. Acceptable bonding instruments vary by jurisdiction, but may include surety bonds, letters of credit, cash, and self-bonds.

Some states make self-bonding available to coal companies that appear to be "too big to fail." If a coal company meets certain financial tests, the company can promise to complete reclamation *without* turning over any funds or liquid instruments to state, tribal, or federal regulators. That arrangement amounts to an unenforceable "I.O.U." rather than a rock-solid guarantee for the costs of mine reclamation. Were a self-bonded coal company to abandon unreclaimed mined lands, the public would be left to pay for the completion of mine reclamation.

Self-bonding is authorized for coal mines in the federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA") at 30 U.S.C. § 1259(c) and enabled in federal rule at 30 C.F.R. 800.23. Self-bonding is not authorized for hard rock mines or for oil or gas production.[2] States or Tribes with primacy to implement SMCRA have discretion to allow self-bonding, or not. Among Western states, coal self-bonds are accepted in Colorado, New Mexico, North Dakota, and Wyoming. Notably, the State of Montana does not accept self-bonds. Regulators are also charged with replacing self-bonds with another bonding instrument when the bond's guarantor is no longer eligible for self-bonding.

Outstanding self-bonds: Then and now

We collected publicly available figures of outstanding self-bonds held by four Western states in 2015 and 2018: Colorado, New Mexico, North Dakota, and Wyoming.[3] In 2015, aggregate self-bonding among these four states was approximately $2.6 billion. At the beginning of 2018, aggregate self-bonding in the same region was approximately $577 million, a 78% decrease.

The primary factor behind the large decrease in outstanding self-bonds since 2015 is the forced replacement of self-bonds by bankrupt coal companies. Alpha Natural Resources, Arch Coal, and Peabody Energy, the country's three largest coal companies in 2015, filed for bankruptcy between August 2015 and April 2016. Together, they entered bankruptcy with $2.3 billion in outstanding self-bonds. Under sustained public pressure, including activity in bankruptcy court by WORC, Powder River Basin Resource Council, and other NGOs, each company's plan of reorganization included an agreement to replace their self-bonds with reliable financial assurances. As a result, major coal operators in the Powder River Basin replaced $2.5 billion of self-bonds during 2016 and 2017, by and large with surety bonds.

Surety bonds appear to be available to the coal industry at affordable rates

According to reclamation bond data obtained by WORC, companies have largely turned to surety bonds as a replacement for self-bonds. Surety bonds appear to be affordable and readily accessible by the coal industry. Four examples bear this out:

- Westmoreland Coal Company commented on the market availability of surety bonds in its recent 10-K, saying:

> *The costs of these bonds have fluctuated in recent years, and the market terms of surety bonds have generally become more favorable to us. Surety providers are requiring smaller percentages of collateral to secure a bond, which will require us to provide less cash to collateralize bonds to allow us to continue mining. These changes in the terms of the bonds have been accompanied, at times, by an increase in the number of companies willing to issue surety bonds.*[4]

- On March 9, 2017, as Peabody was under pressure to replace its self-bonds as a condition of emerging from bankruptcy, the company filed in its bankruptcy docket a declaration from one of its financial advisors that revealed that surety bond providers' quotes for replacing the company's self-bonds came in below management's expectations. This made self-bond replacement with surety bonds more affordable than anticipated:

  > *The Debtors received indications of interest after the Valuation Date from surety providers to address Reorganized Peabody's reclamation bonding requirements that would oblige Reorganized Peabody to post less cash collateral on the Effective Date than projected by the Debtors' management as of the Valuation Date.* […] *Furthermore, the annual costs of procuring the necessary surety bonds is expected to be lower than the costs assumed by the Debtors' management as of the Valuation Date, which would increase Reorganized Peabody's unlevered free cash flow post-emergence and therefore its Total Enterprise Value.*[5]

- On July 28, 2016, another large coal mining company that has not filed for bankruptcy as of the publication of this report, Cloud Peak Energy, announced that it had secured favorable terms to replace its outstanding self-bonds in Wyoming with surety bonds.[6] Among the terms was the provision of collateral at only 15% of the face-value of the bond amount. Although few coal companies disclose their collateralization of surety bonds, Arch Coal reported in bankruptcy filings that its surety bonds were backed by collateral ranging from 9% to 45%.[7] By comparison, Cloud Peak achieved favorable terms for its surety bonds.[8]

- Fifteen months later, Cloud Peak announced on October 26, 2017 that the company had reduced the collateral held by its surety bond providers from 15% to 5.5% owing to "the improved Company and coal industry conditions."[9]

These data points indicate that surety bonds continue to be available on affordable terms to the coal industry. If this evidence applies broadly, companies that continue to self-bond may be able to replace their self-bonds today at reduced costs compared to the recent past. The favorable credit profiles of companies that continue to self-bond suggest that this is doubly true.

Self-Bonding, Then and Now

Self-bonding in four Western states has dramatically decreased from 2015 (approx. $2.6 billion) to 2018 (approx. $577 million), a decrease of 78%. These charts compare those figures on an aggregate basis, below, and disaggregated by state and company (below right).

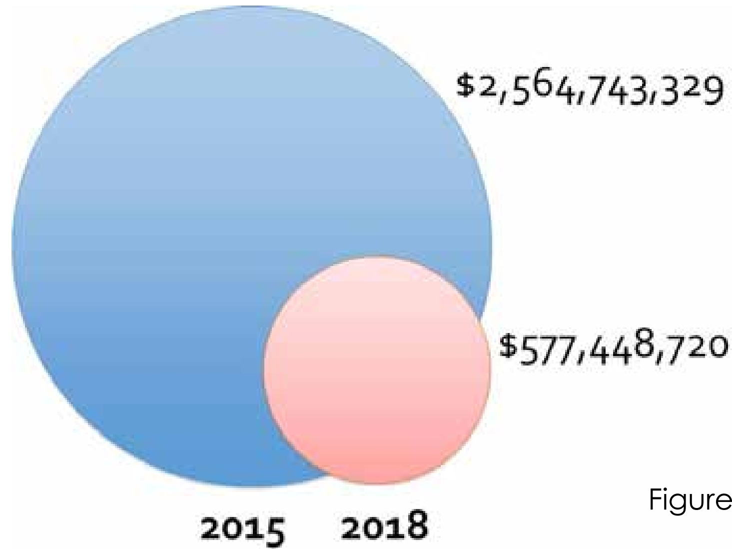

Figure 1.

State	Self-Bond Guarantor	2015	2018
Colorado	Peabody Energy	$27,000,000	$0
Colorado	Tri-State Gen. & Trans. Assoc.	$91,317,829	$91,072,520
New Mexico	Peabody Energy	$181,000,000	$0
North Dakota	Basin Electric Power Cooperative	$107,100,000	$131,400,000
North Dakota	Great River Energy	$77,400,000	$79,830,000
Wyoming	Alpha Natural Resources	$411,000,000	$0
Wyoming	Arch Coal	$485,500,000	$0
Wyoming	Basin Electric Power Cooperative	$18,300,000	$14,700,000
Wyoming	Cloud Peak Energy	$200,000,000	$0
Wyoming	Idaho Power Co.	$73,675,167	$56,694,333
Wyoming	Kiewit Corporation	$0	$75,663,200
Wyoming	Pacificorp	$147,350,333	$113,388,667
Wyoming	Peabody Energy	$726,800,000	$0
Wyoming	Tri-State Gen. & Trans. Assoc.	$18,300,000	$14,700,000
Total		**$2,564,743,329**	**$577,448,720**

Table 1. Self-bonds by state, company, and year.

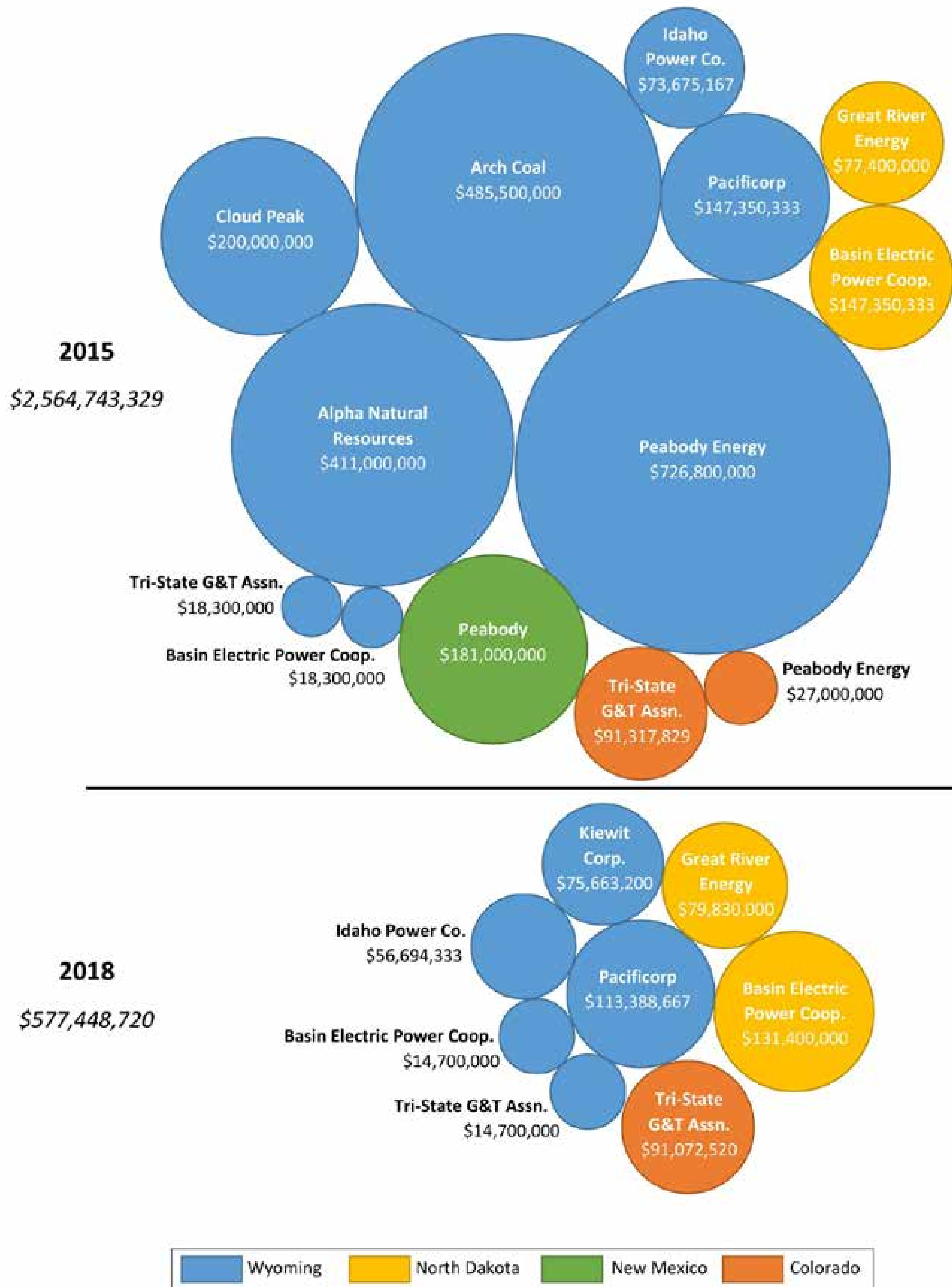

Figure 2. Self-bonds by state, company, and year.

Coal companies that remain self-bonded tend to have good credit ratings

The surety industry is known to do deep due diligence when assessing a coal company's risk profile to determine the terms when offering surety bonds. The specific factors that surety bond providers examine and weigh are not generally disclosed to the public. However, it is logical that there may be an overlap between the factors used by the surety industry and the factors that determine a coal company's credit rating.

We researched credit ratings for companies identified as self-bond guarantors as of 2018, and compared to the credit ratings of companies that have left self-bonding since 2015. The credit ratings of currently self-bonded companies appear favorable compared to the ratings of formerly self-bonded companies. See Table 2 on pg. 9.

Self-bonding is riddled with flaws

The purpose of reclamation bonds is to maintain a stable store of value that will be accessible to state regulators should a coal mine operator abandon a mine. Reclamation bonding was written into SMCRA in order to avoid replicating the situation of the country's early coalfields: that of abandoned mine lands that continued to damage the environment and pose health and safety hazards to residents of the coalfields for decades, centuries or, in some cases, in perpetuity. Self-bonding fails to meet these requirements on many fronts.

Self-bonds fail at the moment when reclamation bonds are most needed. Eligibility for self-bonds are related to company valuations, which change over time, sometimes rapidly. The purposes of reclamation bonding require stable, long-term stores of value that are readily liquid in the event of bond forfeiture. Self-bonds are neither readily liquid nor stable, long-term stores of value. They become worthless when a coal company is in financial distress or has abandoned its mine, which is precisely the moment when a secure reclamation bond is most needed.

Eligibility for self-bonding is determined using inadequate standards. Coal companies may qualify to self-bond based on *(i)* their credit rating from Moody's or Standard & Poors or *(ii)* certain corporate financial ratios. Although credit ratings may be sometimes influenced by lobbying from the rated company, the mechanical use of the financial ratios in question is particularly inappropriate in this case.

Federal rules outline two ratios: total liabilities to net worth must be 2.5 or less, and current assets to current liabilities must be 1.2 or greater. These ratios take a stab at characterizing a company's scale of liabilities and its ability to continue meeting its financial commitments. Although liabilities tend to be fairly easy to quantify, accounting rules allow some liabilities to be recorded "off balance sheet," resulting in their being hidden from some analyses. More important, accounting rules result in asset valuations being not typically adjusted for adverse market conditions. This makes net worth—a comparison of assets to liabilities—a useless measure of creditworthiness when the bottom is falling out of an industry.

It's difficult to determine at what price a tract of coal, land, or a coal mine should be valued, because mines are not regularly bought and sold. Yet companies must assign a dollar value to coal, mines, and land for company accounting to function. These asset valuations are frequently little more than hypothetical. Consider that Peabody Energy slashed its estimation of its land and coal interests by 63%, from $10.3 billion down to $3.8 billion, as a result of "fresh start accounting" following its emergence from bankruptcy, and

<table>
<tr><th>Self-Bond Guarantor as of 2015</th><th>Credit Rating (Issuer)</th><th>Self-Bond Guarantor as of 2018</th><th>Credit Rating (Issuer)</th></tr>
<tr><td>Peabody Energy</td><td>Ba3 (Moody's)
B+ (Standard & Poors)</td><td>Tri-State G&T Assn.</td><td>Baa1 (Moody's)
A (S&P)</td></tr>
<tr><td>Arch Coal</td><td>B1 (Moody's)
B+ (S&P)</td><td>Basin Electric Power Cooperative</td><td>A1 (Moody's)
A (S&P)</td></tr>
<tr><td>Cloud Peak Energy</td><td>Caa2 (Moody's)
B– (S&P)</td><td>Pacificorp (Berkshire Hathaway Energy)</td><td>A3 (Moody's)
A (S&P)</td></tr>
<tr><td>Alpha Natural Resources</td><td>No longer rated</td><td>Idaho Power Co. (Idacorp)</td><td>Baa1 (Moody's)
BBB (S&P)</td></tr>
<tr><td colspan="2" rowspan="2">Hierarchy of Credit Ratings[10]
<u>Moody's</u> Aaa Aa(1-3) A(1-3) Baa(1-3) Ba(1-3) B(1-3) Caa(1-3) Ca C
<u>S&P</u> AAA AA(+/–) A(+/–) BBB(+/–) BB(+/–) B(+/–) CCC(+/–) CC C</td><td>Great River Energy</td><td>Baa1 (Moody's)
A– (S&P)</td></tr>
<tr><td>Kiewit Corporation</td><td>Not rated</td></tr>
</table>

Table 2. Credit Ratings of Self-bonded coal companies, 2015 vs. 2018. Coal companies that remain self-bonded tend to have good credit ratings.

took a separate $2.2 billion write-down of its buildings and machinery.[11] The new figures reflect the value of Peabody's portfolio in today's shrunken market for coal, but were not used in Peabody's pre-bankruptcy accounting or self-bond applications. The same adverse economic conditions are reflected in the rare instances in which land and coal interests in the Powder River Basin have been recently sold: mines have sold for bargain-basement prices, or for no cash at all.[12] Although the coal industry's downturn has revealed that asset values are often arbitrary and unconnected to present economic conditions, federal self-bonding rules accept them blindly as the basis to determine eligibility for self-bonding.

A reliable evaluation of a company's creditworthiness for self-bonding should involve a comprehensive analysis of a company's ability to meet its financial commitments. The credit ratings industry already performs this analysis, and, indeed, a coal company may qualify for self-bonding using such ratings. These analyses often consider an alternative set of financial ratios dictated by a coal company's agreements with its creditors, which often compare expenses and debt loads to *earnings* rather than *asset values*. In short, self-bonding eligibility criteria measure the wrong ratios. Because they shed little light on the creditworthiness of a self-bond guarantor, it is inappropriate to rely on them as indicators of the value of self bonds.

Some companies have made use of a "subsidiary loophole." Current rules governing eligibility for self-bonds do not require regulators to consider the financial stability or turmoil of an ultimate parent entity – the entity at the top of the corporate family tree. Instead, coal companies may submit the financial statements of a "mid-stream" subsidiary, even one that is pledged as collateral for the debt of its ultimate parent entity. Self-bonds may be approved based on the misleading financial information of this mid-stream subsidiary. This is the primary reason Arch Coal and Peabody Energy were able to maintain self-bonds into bankruptcy.

Allowing financially unstable companies to self-bond defeats the entire purpose of reclamation bonding. Federal regulations allow self-bonds to be guaranteed by a mine operator, a parent entity (known as a "corporate guarantee") or a non-parent entity ("non-parent corporate guarantee"). This has allowed wholly-owned mid-stream subsidiaries of major coal mining companies (such as "Arch Western Resources" or "Peabody Investments Corporation") to serve as self-bond guarantors even where the ultimate parent entity (Arch Coal, Inc., and Peabody Energy Corporation, respectively) did not qualify for self-bonding. In essence, current self-bonding rules allow shell companies to guarantee self-bonds.[13]

Peabody's and Arch's mid-stream subsidiaries that guaranteed self-bonds were ***not*** financially solvent on an independent basis from their respective ultimate parent entities. The mid-stream subsidiaries filed bankruptcy simultaneously with their ultimate parent entities. The reason was that the mid-stream subsidiaries were pledged as collateral for the ultimate parent entity's corporate debt, an arrangement known as an "upstream guarantee." Without simultaneous filings for bankruptcy protection, creditors could complicate bankruptcy proceedings by laying claim to the mid-stream subsidiaries outside of bankruptcy court.

Regulators face a dilemma when forcing the replacement of self-bonds. Federal and state rules allow regulators to require self-bond replacement, often over a period of 90 days, if a company ceases to be eligible for self-bonding. The act of replacing self-bonds forces a company to commit its dwindling liquidity as collateral for new bond instruments, and struggling companies may not be able to secure replacement bonds on affordable terms. This means that by the time a company is no longer eligible for self-bonding, it may be too late to replace the self-bonds with effective financial guarantees.

Hence, the regulator's dilemma: self-bonds must be replaced when there is danger that a company is headed toward insolvency, but self-bond replacement will hasten the insolvency.[14] In fact, Alpha Natural Resources cited the moves by Wyoming and West Virginia regulators to replace its self-bonds when filing for bankruptcy.[15]

Companies were not meant to carry self-bonds into bankruptcy, but those that do have significant leverage when negotiating with regulators over future reclamation bonding. Alpha Natural Resources entered bankruptcy with over $655 million in self-bonds ($411 million in Wyoming), while Arch Coal and Peabody Energy entered bankruptcy with $486 million and $1.2 billion of self-bonding, respectively. Federal and state laws prohibit coal mining where sufficient reclamation bonds are not in place, but each of these companies was able to continue mining through bankruptcy reorganization with inadequate bonds by leaning on the threat of liquidation. In a liquidation, the entire costs of unfunded cleanup would be transferred to state and federal taxpayers. This served as leverage for the companies to strike deals with regulators that allowed them to continue mining during bankruptcy without substantially replacing self-bonds. It was only at the end of each bankruptcy proceeding that Alpha, Arch, and Peabody were forced to agree to replace their self-bonds.

How could self-bonding be ended?

Self-bonding is authorized in statute under SMCRA but no state is required to allow it. 30 U.S.C. § 1259(c) states:

> (c) **Bond of applicant without separate surety; alternate system**
>
> The regulatory authority *may (emphasis added)* accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the regulatory authority the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount or in lieu of the establishment of a bonding program, as set forth in this section, the Secretary may approve as part of a State or Federal program an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

Until SMCRA is amended to remove any authorization for self-bonding, the practice will have a legal basis in federal law. However, state regulators with primacy to implement SMCRA may tighten eligibility criteria for self-bonding or even prohibit self-bonding outright in their state. Several states, including Montana, have done so.

Due to the flaws inherent in self-bonding, it is not a reliable instrument to guarantee coal mine reclamation. Although no bonding instrument is risk-free, the fatal flaws in self-bonding should proscribe its future use.

The most recent wave of bankruptcies within the coal sector should serve as a warning to current and future regulators. The ongoing structural decline of the coal industry has increased the chance that future bankruptcies will result in liquidation of self-bonded companies. In a liquidation, coal mine regulators would be forced to "forfeit," or cash in, self-bonds. Needless to say, this would leave coal mine regulators without sufficient funds to complete reclamation.

Had Alpha, Arch, or Peabody liquidated rather than reorganized during bankruptcy, the public would have been left to pick up the bill of over $2,300,000,000. It is a major victory for taxpayers and the public purse to have forced that $2.3 billion in self-bonds to be replaced through their bankruptcy proceedings.

In light of this close call, efforts to end or reform self-bonding should proceed apace.

- To protect coalfield communities from the threat of abandoned reclamation, self-bonding should be prohibited by a change to federal statute. Such legislation has been introduced in the current session of Congress as S. 800, the "Coal Cleanup Taxpayer Protection Act," sponsored by Sen. Maria Cantwell (D-WA). [16]

- Federal regulators at the Office of Surface Mining Reclamation and Enforcement should expedite the rulemaking entitled, "Ensuring That Companies With a History of Financial Insolvency, and Their Subsidiary Companies, Are Not Allowed to Self-Bond Coal Mining Operations," and should propose and finalize new rules that strictly limit eligibility for self-bonding.[17]

- The Office of Surface Mining Reclamation and Enforcement should reinstate its "Policy Advisory" on self-bonding, signed Aug. 5, 2016, and rescinded Oct. 12, 2017.

- States should move forward with rulemaking and policy to end the use of self-bonding within their jurisdiction.

Appendix – Self-bonded mines by state, company, and year.

State	Self-Bond Guarantor	2015	2018	Mines
Colorado	Peabody Energy	$27,000,000	$0	Twentymile
Colorado	Tri-State Gen. & Trans. Assoc.	$91,317,829	$91,072,520	Colowyo, New Horizon, New Horizon North
New Mexico	Peabody Energy	$181,000,000	$0	Lee Ranch, El Segundo
North Dakota	Basin Electric Power Cooperative	$107,100,000	$131,400,000	Freedom
North Dakota	Great River Energy	$77,400,000	$79,830,000	Falkirk
Wyoming	Alpha Natural Resources	$411,000,000	$0	Eagle Butte, Belle Ayr
Wyoming	Arch Coal	$485,500,000	$0	Black Thunder, Coal Creek, Medicine Bow, Vanguard, Seminoe II, Carbon Basin, Izita
Wyoming	Basin Electric Power Cooperative	$18,300,000	$14,700,000	Dry Fork
Wyoming	Cloud Peak Energy	$200,000,000	$0	Antelope, Cordero Rojo
Wyoming	Idaho Power Co.	$73,675,167	$56,694,333	Bridger
Wyoming	Kiewit Corporation	$0	$75,663,200	Buckskin
Wyoming	Pacificorp	$147,350,333	$113,388,667	Bridger
Wyoming	Peabody Energy	$726,800,000	$0	North Antelope Rochelle, Caballo, Rawhide, School Creek, Shoshone #1
Wyoming	Tri-State Gen. & Trans. Assoc.	$18,300,000	$14,700,000	Dry Fork
Total		**$2,564,743,329**	**$577,448,720**	

References

1 http://ieefa.org/financial-facts-dont-support-coal-industrys-claims-2017-recovery/

2 Financial Assurances For Reclamation: Federal Regulations and Policies for Selected Mining and Energy Development Activities. GAO-17-207R. Publicly Released: Jan 17, 2017. https://www.gao.gov/products/GAO-17-207R

3 Data on 2015 reclamation bonds was collected from company bankruptcy filings and personal communications with state regulatory staff. For data on 2018 reclamation bonds, see: "Reclaiming coal: US mines' clean-up cash – all our data." Mark Olalde. Climate Home News, Mar 15, 2018. http://www.climatechangenews.com/2018/03/15/us-coal-mines-clean-up-bonds-database and http://www.climatechangenews.com/files/2018/03/MASTER_reclamation.xlsx

4 Westmoreland Coal Company Annual Report on Form 10-K. Page 19. Filed April 2, 2018. Online: https://www.sec.gov/Archives/edgar/data/106455/000010645518000028/wlb201710-k.htm

5 Declaration of Tyler W. Cowan in Support of Confirmation of the Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession. Page 15. Docket Entry 2657: http://www.kccllc.net/peabody/document/1642529170309000000000050

6 Cloud Peak was the one company operating in the Powder River Basin to replace its self-bonds voluntarily, outside of bankruptcy proceedings.

7 Debtors' Motion for Entry of an Order Authorizing (i) the Debtors to Continue and Renew Surety Bond Program and (ii) Financial Institutions to Honor and Process Related Checks and Transfers. Page 4.

https://cases.primeclerk.com/archcoal/Home-DownloadPDF?id1=MjU1MDk3&id2=0

8 http://investor.cloudpeakenergy.com/press-release/earnings/cloud-peak-energy-inc-announces-results-second-quarter-and-first-six-months-6

9 http://investor.cloudpeakenergy.com/press-release/earnings/cloud-peak-energy-inc-announces-results-third-quarter-and-first-nine-months-7

10 See https://www.moodys.com/sites/products/AboutMoodysRatingsAttachments/MoodysRatingSymbolsandDefinitions.pdf and https://www.standardandpoors.com/en_US/web/guest/article/-/view/sourceId/504352

"Financial Facts Don't Support Coal Industry's Claims of 2017 Recovery." Tom Sanzillo, January 2, 2018. http://ieefa.org/financial-facts-dont-support-coal-industrys-claims-2017-recovery/

11 On Dec. 11, 2017, Contura Energy announced the sale of its Wyoming mines to Blackjewel LLC for zero upfront consideration. See: http://conturaenergy.com/news/contura-subsidiaries-sell-powder-river-basin-assets/

12 On Sept. 12, 2014, Cloud Peak transferred its 50% stake in the Decker mine in southeastern Montana to co-owner Ambre Energy (now Lighthouse Resources) for no consideration except an option to ship coal overseas through the Millennium Bulk Terminal, an unbuilt facility that faces immense public scrutiny and pressure, and which still has not yet been approved for construction as of the time of publication. https://www.sec.gov/Archives/edgar/data/1441849/000110465915011392/a15-1789_110k.htm

13 We are not expressing an opinion about whether specific companies such as Arch Western Resources or Peabody Investment Corporation qualify as "shell companies" based on contemporary definitions.

14 "Mine Reclamation Bonding – from Dilemma to Crisis to Reinvention: What's a State Regulator to Do?" Gregory E. Conrad. February 11, 2014. http://www.imcc.isa.us/EMLF%20Bonding%20Presentation%20Final.pdf

15 Declaration of Kevin S. Crutchfield, Chief Executive Officer and Chairman of the Board of Directors of Debtor Alpha Natural Resources, Inc., in Support of First Day Pleadings of Debtors and Debtors in Possession. Page 21. http://www.kccllc.net/alpharestructuring/document/1533896150803000000000007

16 https://www.congress.gov/bill/115th-congress/senate-bill/800

17 Rulemaking petition accepted on Sept. 7, 2016 at 81 FR 61612.

A “self-bond” is a promise from a coal company to pay for legally required coal mine cleanup, known as reclamation, without providing any collateral. If a self-bonded coal company liquidates before completing reclamation, the self-bond becomes an uncollectible “I.O.U.” and the public is left without sufficient funds to complete reclamation. Several states continue to accept self-bonds for coal mines.

There has never been a better opportunity to end self-bonding altogether without excessive impact on the coal industry or the market for conventional reclamation bonds.

- The amount of outstanding self-bonds has hit historically low levels, following replacement of self-bonds by three major coal mining firms during their respective bankruptcy proceedings.

- Surety bonds, a conventional alternative to self-bonds, are available to the coal industry on affordable terms.

- Coal companies that remain self-bonded tend to have good credit ratings, which suggests they can replace self-bonds with conventional bonds on affordable terms.

As the coal industry continues to decline, self-bonding rolls the dice that taxpayers and the public purse will clean up after coal mining companies. Congress and states should expeditiously curtail the practice. Only the end of self-bonding will adequately protect coalfield communities from the burden of abandoned and unreclaimed coal mines.