West Virginia's Mine Land Reclamation System

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Research Highlights

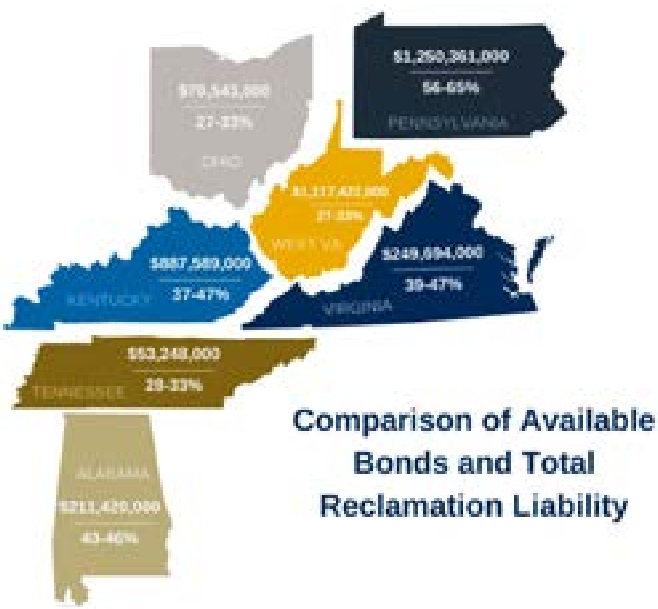
- SMCRA created a legal requirement for states to restore former mine lands to their pre-mining state. Former mine lands that are reclaimed have the potential to provide economic benefits rather than be a liability to the community.
- Existing funding available to reclaim former mine lands in West Virginia may be insufficient. Many bonds are underwritten by a single company, increasing the risk that bonds will not be recoverable if that company declares bankruptcy.
- Policy options include adjusting bonding rates, imposing maximum thresholds on reclamation bonds guaranteed a single company, reducing the time before starting reclamation activity, and ensuring coal taxes are properly collected.

Former mine lands can be managed to minimize adverse environmental effects and restore the land to beneficial use, such as wildlife conservation, agriculture, housing, or industrial/commercial development. The [Surface Mining Control and Reclamation Act (SMCRA) of 1977] requires states to restore mine lands operating after 1977 to their pre-mined state at the conclusion of mining activity.

This Science and Technology Policy Note discusses financial challenges to the West Virginia mine land reclamation system for post-1977 former mine lands, as well as opportunities for improving the system.

The Former Mine Land Reclamation System

SMCRA created a system to help ensure mine lands are ultimately restored to their pre-mining state and do not remain an economic, environmental and health liability. The law requires mining companies to have a reclamation plan and to post bonds (called permit bonds) sufficient to cover the costs of remediation prior to the start of mine operation. If a company is unable to complete the reclamatioin as required by the law, it forfeits its bonds to the state. The state then uses this money to complete required reclamation activity.



The figure above shows how West Virginia's reclamation liabilities compare to those of other Appalachian states. The top number is the total for all available bonds in each state in dollars. The bottom number is the estimated percentage of total reclamation liability covered by those bonds. All bond types are included in the total for each state except Virginia, where self-bonds are not included because of the uncertainty in the state's ability to collect those bonds.

Under SMCRA, states are required to reclaim a former mining site if a coal company enters bankruptcy or abandons its reclamation obligations. West Virginia's Special Reclamation Funds (SRFs) are meant to cover any shortfall between forfeited bonds and actual reclamation costs. The SRFs are funded via a state tax on coal mining activity.

Combined, permit bonds and SRFs total $1.1 billion in West Virginia mine reclamation funds. Full reclamation costs for actively bonded West Virginia mines have been estimated to be [between $2.3 billion and $3.6 billion], raising concerns that West Virginia taxpayers could be liable for millions of dollars in reclamation costs if coal companies are unable to complete required reclamation activities.

Financial Challenges to the Reclamation System: SRF Solvency, Bond Consolidation

The $1.1 billion to support reclamation activities in West Virginia is comprised of permit bonds posted by coal companies and the state's Special Reclamation Funds (SRFs), funded through taxes on coal mining activity. Therefore, the decline in coal mining activity leads to declining SRF funding. Historically, permit bonds have covered 10% of the actual cost of reclaimation, leaving SRFs responsible for 90%. Five major coal companies in bankruptcy hold over $500 million in posted reclamation bonds in West Virginia. Further, the bonding system is highly concentrated: one surety company, Indemnity National Insurance Company, holds 66.9% of all surety bonds in the state. Director of Mining and Reclamation Harold Ward noted that the bankruptcy of one coal company, ERP, threatened to overwhelm West Virginia's SRF in 2020. If the full amount of posted bonds was recoverable, it may still be insufficient to cover the costs of land reclamation. According to a 2021 report from the West Virginia legislative auditor, the program has no known contingency plans if reclamation funds were to become insolvent or insufficient.

West Virginia Status and Policies

The 2021 state legislative auditor report identified a number of areas where the West Virginia Department of Environmental Protection (DEP) is in violation of state and federal laws regarding the administration of the reclamation system. These include laws that require the use of forfeited bond funds to reclaim the property for which the bond was posted and granting reclamation tax credits prior to approval from the Office of Surface Mining and Reclamation. It was also found that DEP was not requiring companies to post bond amounts adequate to cover reclamation costs or promptly commencing reclamation activities as required by legislative rules. According to the report, the median time between bond forfeiture and beginning reclamation activities was 67 months. Additionally, DEP did not properly verify correct tax amounts that were remitted to the SRFs and overall kept inadequate records.

In 2021, state lawmakers passed a resolution asking for $8 billion in federal funding to assist with reclamation liabilities. In 2023, a bill (HB 3057) was introduced, which would have addressed issues raised by the legislative auditors (i.e., by raising required bonding amounts and improving tax collections for the SRFs). This bill was referred to the Energy and Manufacturing Committee and then to the Finance Committee. It did not come to the floor for a vote.

Benefits of Improving the Reclamation System

Improving the administration and financial stability of the reclamation system would bring numerous benefits to West Virginians. It would remove a large taxpayer liability while bringing West Virginia into compliance with state and federal law. Further, it would allow for the possibility of new productive uses of former mine lands, helping to revive coal communities and stimulate the state's economy. It could help restore the state's landscape, allowing for wildlife and natural ecosystems to return. It would also eliminate sources of potential pollution, improving the health of West Virginia communities.

Policy Options for Reclaiming Former Mine Lands

The 2021 West Virginia legislative auditor report recommends several policy options to reduce the impact of idled mines on the solvency of the bonding system. These include the following:

1. The legislature or DEP could consider adjusting bonding rates, which are currently set between $1,000 to $5,000 per acre, to reduce the state's financial liability if liability for reclamation falls to the state.
2. Maximum thresholds could be imposed on the face value of reclamation bonds permitted to be underwritten by a single surety company. This could help spread risk and limit the consolidation currently seen in the bond market.
3. Currently, mine status designations are not specifically defined by statue. In 2020, there were 160 permits listed as inactive and 320 listed as active that were not currently mining coal. Creating clear statutory definitions could ensures permits do not remain inactive for periods longer than permissible and reduce the risk of bond forfeiture.
4. Auditors found over $5 million in delinquent taxes on coal mining activity. Legislators could pass a law strengthening DEP oversight and the ability to penalize companies for delinquent taxes. This would help ensure the solvency of the state's Special Reclamation Funds.

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