Mr. Thom Kay

Senior Legislative Representative, Appalachian Voices

Legislative Hearing on the Discussion Draft of the Community Reclaimers Partnership Act

House Committee on Natural Resources Subcommittee on Energy and Mineral Resources

May 24, 2017

Thank you Chairman Gosar, Ranking Member Lowenthal, and members of the Committee for the opportunity to testify on the discussion draft of the "Community Reclaimers Partnership Act."

I am the Senior Legislative Representative for Appalachian Voices, an organization working to protect the land, air, and water of central and southern Appalachia for future generations and to one day see the region upheld as a national model of a vibrant, just, and sustainable economy.

There is an enormous burden on state agencies to deal with existing pollution

Throughout Appalachia, there is an enormous need to restore former coal mine lands. Mined land that existed prior to the passage of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), known as Abandoned Mine Land (AML), and mines that have been bond-forfeited more recently put large burdens on state agencies and the public. State agencies work hard to treat existing problems, but they simply do not have the resources necessary to complete the reclamation of millions of acres of land and thousands of miles of streams anytime in the near future. Virginia, for example, has over $400 million in remaining AML costs, but only receives in the ballpark of $5 million per year in AML grants. While distribution totals may change once the AML program is reauthorized, there is no reason to believe sufficient funds will all of a sudden become available.

The decline of the coal industry over the last five years has led to a staggering number of bankruptcies and associated bond forfeitures. SMCRA was supposed to address this issue through bonding; however, bonding programs in Central Appalachian states remain insufficient to deal with the industry downturn. In many cases, bonds at individual mines are insufficient to cover reclamation costs, especially when long-term water treatment becomes necessary. Many companies have been allowed to self-bond, in which states rely on a "too big to fail" approach, even as many of the largest companies have gone bankrupt. In other cases, pool bond programs have not accounted for multiple forfeitures at once. While these situations would not be directly impacted by this bill, they are important to consider because they place an additional burden upon state agencies. Once a mine is bond-forfeited, its reclamation becomes the responsibility of the state.

Clean up provides economic and environmental benefits

In order to build wealth and prosperity in rural communities, clean water is absolutely essential. Additional resources are clearly needed for states to address decades' worth of mining pollution.

Cleaning up mine sites can improve both surface water and groundwater, which has clear environmental and economic benefits. Along with creating immediate reclamation jobs and drawing tourism through improving the land and protecting fish and wildlife, cleaning up mining pollution can help improve the health of communities. Stream and well water contamination are both widespread throughout Central Appalachia. Many rural communities do not have easy access to municipal water when their well water becomes contaminated. Some common contaminants, such as iron, are a nuisance - staining clothes and appliances orange. Other common contaminants, like manganese, have potential effects on childhood development that are only beginning to be understood. Though thankfully more rare, some contaminants, such as arsenic, are known carcinogens. Appalachian Voices has found all three of these contaminants, as well as many others, in private well water throughout the region.

Appalachian communities have demonstrated growing excitement about the lasting benefits associated with mine reclamation. Between the AML Pilot Program and the progress of the RECLAIM Act (H.R. 1731), communities are envisioning new, long-term economic opportunities that can be paired with the reclamation of our country's Abandoned Mine Lands. Pairing such efforts with passage of the Community Reclaimer Protections Act could result not only in more clean up, but also spur innovative projects in coal communities, many of which continue to struggle with the decline of coal mining jobs.

The bill should not allow any company to abuse the liability waivers for re-mining

It is my understanding that the bill is intended to allow for and encourage non-governmental organizations to take on some of the heavy burden of treating water pollution caused by coal mining before 1977, while also preventing mining companies from escaping any of the responsibilities they have under current law. Most importantly to Appalachian Voices is that this bill does not allow companies to conduct any mining with any reduction in standard permitting requirements under the Clean Water Act, SMCRA, or other applicable law.

We understand that, in certain cases, incidental coal removal can reduce the overall cost of site reclamation and does not further threaten water resources. This type of activity should be allowed if reclamation leaves previously polluted streams cleaner than they were before. But we see no reason for any company to receive extra liability protection for re-mining.

We do not believe there is an intention to allow companies to carry out re-mining projects under this bill, but it is possible, perhaps even likely, that changes to the existing language of this discussion draft will occur. I urge the committee to ensure no loopholes are created that would allow any company to abuse the liability waivers granted under this act in order to obtain new surface mining permits at an AML site.

Defining a "Community Reclaimer"

While one solution to the issue of coal companies abusing the bill is to simply prohibit any such company from qualifying as a "Community Reclaimer," I understand that the authors would like to give companies that opportunity. Given the experience and resources mining companies bring to the table, that decision is not unreasonable. Included in the bill's definition of a "Community Reclaimer," however, are sensible restrictions that would prohibit companies with unfulfilled reclamation obligations or outstanding violations from qualifying. We agree with that decision, but defining such persons or companies can be quite difficult.

In many instances, a parent company may own as many as a several dozen subsidiary mining companies. These corporate structures often shield each individual company, as well as the parent company, from protective measures within SMCRA intended to prevent widespread pollution issues. According to the Office of Surface Mining Reclamation and Enforcement, "section 510(c) of SMCRA prohibits issuance of a new permit to any applicant who owns or controls mining operations having unabated or uncorrected violations anywhere in the United States until those violations are abated or corrected or are in the process of being abated or corrected to the satisfaction of the agency with jurisdiction over the violation." State agencies routinely issue permits to subsidiary companies even when other subsidiaries have outstanding violations.

For example, citizens living around Coal River Mountain in West Virginia recently objected to the issuance of several new mountaintop removal permits in their area. Republic Energy, Inc., a subsidiary of Alpha Natural Resources, applied for the permits. Republic's newest permit for the Long Ridge Mine was issued over citizens' objection, even when Alex Energy, another Alpha subsidiary, had outstanding reclamation schedule violations at the time. Alpha Natural Resources owns at least 22 coal companies currently registered with the West Virginia Secretary of State. These companies all list the same manager, organizer, and office address. Alpha Natural Resources and its subsidiary have had numerous recent issues in West Virginia, including ongoing violations, coal slurry spills, and allegations of fraud, yet the subsidiaries are routinely treated as individual companies and granted leniency when it comes to permitting decisions and enforcement actions.

Due to the prevalence of permitting and enforcement issues among subsidiary companies, the language defining "Community Reclaimer" should be strengthened. Currently, the definition includes, "Is not a past or current owner or operator of any site with ongoing reclamation obligations or subject to violations listed pursuant to section 510(c) of this Act (30 U.S.C. 1260(c))." We suggest updating the definition to read "Is not a past or current owner or operator, *and does not share a common owner or parent company with a past or current owner or operator*, of any site with ongoing reclamation obligations or subject to violations listed pursuant to section 510(c) of this Act (30 U.S.C. 1260(c))."

Communications with the public

Lastly, there is a provision in this act that requires a notice be provided to "adjacent and downstream landowners and the public before the project is initiated." That is important, but should go further in providing each of the listed entities the opportunity to express concerns and have those concerns addressed by either the state or the Community Reclaimer. After all, a notice in the mail can raise a lot more questions than it answers.

Regardless of how beneficial a project might be, neighbors may raise legitimate issues. They deserve an accessible and clear method of sharing their thoughts with the Community Reclaimer and the state and to have their concerns addressed in a timely manner.

To be perfectly clear, we are not advocating for the creation of a bureaucratic barrier that could serve to prevent good projects from moving forward, nor do we want to allow any person from stopping projects without cause. Instead, we think the bill could be improved by making a clear requirement that the public should be given a reasonable opportunity to express concerns and have those concerns addressed.

In doing so, it should also be clarified in the bill which entity is responsible for communication with the public from a project's inception to completion: the state or the Community Reclaimer. It appears that the responsibility falls to the Community Reclaimer, but clarification would be helpful.

Conclusion

As the Community Reclaimer Protection Act moves forward, we hope you'll consider our thoughts and ensure that re-mining is not considered eligible for liability waivers and that local communities are given an opportunity to voice concerns and have them addressed. If the committee is able to sufficiently address those issues while providing non-governmental entities the liability coverage they need to help clean up Appalachian streams, then we would urge Congress to pass this bill quickly.