



**Institute for Energy Economics
and Financial Analysis**
IEEFA.org

IEEFA Energy Finance Conference 2020 (online)

Tuesday, July 21

Coal Mine Closures: Current Issues as the Industry Rapidly Declines

Bankruptcies — and potential company liquidations — are looming for the coal sector. For communities that depend on coal, the combination of worker layoffs and revenue losses can be devastating. Further, the weak financial condition of many coal companies is making mine cleanup more challenging than ever.

Speakers:

Shannon Anderson, Powder River Basin Resource Council, Attorney

Mary Cromer, Appalachian Citizens' Law Center, Deputy Director

Moderator:

Shannon Fisk, Earthjustice Coal Program, Managing Attorney

Archived presentation: youtu.be/GGwz96_AJI

Q & A*

1. Do you have any statistics on how many non-miners in communities adjacent to large-scale strip mines/MTR [mountaintop removal mining] are now experiencing black lung issues? I know there are some in such communities in WV, but not sure how many. (Robin Blakeman, *Ohio Valley Environmental Coalition*)

Shannon Anderson

This is a question for Mary!

Mary Cromer

Hi Robin. I don't know of any studies on that. I would be interested in connecting and learning more about the studies you reference in WV. "Black lung" has both legal and clinical definitions, which don't exactly line up. (It's sort of a Venn diagram that mostly overlaps.). Legally, a community member without any occupational exposure would not be considered to have "black lung." The clinical definition is fairly narrow and would not include respiratory ailments like COPD. So, while exposed community members may have significant respiratory problems caused by dust exposure from mines, it is doubtful that they would be classified as having "black lung."

2. The Extractive Industries Transparency Initiative (EITI) has rules on disclosing "beneficial ownership," i.e. which individuals profit financially. Would this approach be useful for limiting or even reversing the wiggling out of investors after they have sucked out all the money and shed their stranded liabilities? (Kjell Kühne, *Leave it in the Ground Initiative* [LINGO])

Shannon Anderson

I'm not familiar with the EITI rules, but it seems like they could be useful, provided coal companies participate. We follow SEC disclosure statements closely for coal companies that are in financial trouble. That said, as mentioned during the panel discussion, most coal companies these days are privately held LLCs with limited disclosure and financial oversight.

Mary Cromer

I'm not familiar with the EITI rules either, and as Shannon mentions, it is hard to know who is profiting at non-public companies. However, in the bankruptcy processes we've followed, investors often walk away from the investments during or prior to the bankruptcy with little recourse. As bankruptcies are likely to continue to increase, bankruptcy rules around disclosures and claw-backs need to be strengthened so that this practice is curtailed.

3. Is the industry thinking about continued methane emissions from closed mines? (Jonathan Rea, *Rocky Mountain Institute*)

Shannon Anderson

There were proposed methane mitigation rules from OSMRE during the Obama years, but of course, those rules have been abandoned by the Trump Administration. In Wyoming, there are issues with multiple mineral stipulations as the federal coal leases often overlap with federal oil and gas leases and there is often a requirement to produce the gas before the coal to minimize the amount of methane that is released by coal mining.

But that is all about active mines, so to get to your question about closed mines, that is more of an AML issue and there are some AML projects that mitigate methane emissions. These resources might be helpful for you:

https://www.usgs.gov/centers/eersc/science/assessing-emissions-active-and-abandoned-coal-mines?qt-science_center_objects=0#qt-science_center_objects

Also see: <https://www.epa.gov/cmop/coal-mine-methane-abandoned-underground-mines>

4. How unique are these sorts of bankruptcy practices to coal? Are there similar dynamics in oil and gas bankruptcies? (Kate Aronoff, *The New Republic*)

Shannon Anderson

The common threads we see in many fossil fuel bankruptcies, coal and oil and gas, include : 1) executive retention bonuses; 2) cutting retirement benefits and health care coverage for employees; 3) layoffs; 4) depending on how the “first-day motions” are structured, non-payment and delinquencies of local and state taxes and federal mineral royalties; and 5) sales of assets at fire-sale prices to undercapitalized new companies.

5. What role do (or should) the bankruptcy creditors and regulators play in ensuring the mines aren't left abandoned, workers are taken care of, etc.? (Alison Kirsch, Lead Researcher, Climate and Energy Program, *Rainforest Action Network*)

Shannon Anderson

Regulators definitely play a key role. Unfortunately, most state regulators are captive to industry interests [see: [regulatory capture](#)] and are not strong enough with the incentive to keep revenue and jobs in their states. And too much to say about the Trump Administration Department of the Interior, which is certainly not acting as effective oversight for the mines or state regulators. That said, the Obama Administration Department of the Interior was a key player and incredibly effective within the bankruptcy proceedings during those years.

For creditors in bankruptcy, unfortunately, everyone is mostly out for the small piece of the shrinking pie they can get. There are different categories of creditors, with unsecured creditors receiving hardly anything in most of these coal bankruptcies as there is simply not enough money to go around. There are some key secured creditors, like financial institutions and main lenders, as well as those that lease equipment or other things necessary for the mines to keep going – but it's been hard to get those folks to care more about workers and environmental liabilities. We have been trying to educate creditors and other parties in these huge bankruptcies (there are hundreds of parties in some cases) that they should care about reclamation, bonding, and environmental violations because they matter to whether the mines can keep going. We have had some success in doing that and I think there could be a greater role to play by groups working outside of bankruptcies as well.

Mary Cromer

In addition to all that Shannon said, in some instances, there could be a role for the workers and community members/landowners to act as creditors in the process. Workers in particular, have been represented as a class of creditors particularly effectively in the Blackjewel bankruptcy. However, as we discussed in the panel, the fact that so few miners are now represented by the United Mine Workers union makes it more difficult for miners to have a seat at the table in the bankruptcy. For landowners and community members who may have direct impacts from a mine site, there may be avenues for class certification of claims that could try to ensure that money is set aside for remediation/reclamation. However, the difficulties of litigating such a case in the bankruptcy context makes that unlikely.

6. Are miners organized and vocal in protesting bankruptcies where executives loot company assets and leave workers high and dry? What is their legal recourse? (Sergio Knaebel, Sandler Foundation)

Shannon Anderson

Some miners are organized, but the union presence is low in most mines in the U.S. now, and it is really difficult for an individual miner on their own to engage in these bankruptcy proceedings. You file a claim, but there just might not be enough money in the bankruptcy “estate” to pay it and you will be out of luck. That said, when UMWA is at the table in these bankruptcies, they are a force to be reckoned with and they have special law that helps them as well. Mary spoke to the hot goods protest in the Blackjewel case and I’ll let her explain that below – it was a great story of workers self-organizing and regulators coming in and backing them up with the right legal arguments. We’ve also supported new law in Wyoming that passed in the 2020 legislative session that will allow the state to represent workers for unpaid wage claims through the Department of Workforce Services, and I hope that will help.

Mary Cromer

To add to what Shannon said and to our comments during the conference, there are a number of good articles on the Blackjewel miners protest. This was published today, and looks back at the protests after one year:

<https://ohiovalleyresource.org/2020/07/24/no-pay-we-stay-a-look-back-at-miners-protest-that-rocked-appalachia/>

And here are two that were published last year during the protests:

<https://www.wvpublic.org/post/timeline-briefs-set-blackjewel-hot-goods-case-miner-pay-remains-murky#stream/0>

<https://www.wvpublic.org/post/paychecks-cut-wva-blackjewel-miners-ky-and-va-still-waiting#stream/0>

7. Are there any programs that exist for former coal industry employees? For example, re-education programs to shift these jobs to renewables. If not, what

are the barriers to creating these programs? (Tanya Stasio, *Applied Economics Clinic*)

Shannon Anderson

Mary gave a great live answer to this question and I can't do it justice here, but the short answer is *yes*, there are some programs. The real barriers are 1) employees and communities accepting the reality that coal can't be saved; 2) the ruralness and lack of people/ job opportunities in the coal communities themselves; and 3) the lack of parity in terms of salary and benefits between the previous coal mine job and the new job, whether it be renewables or not. Our organization and many others are committed to these tough conversations and to figuring out ways to bring the right set of solutions, policy and economic, to coal communities. It might not result in miners sticking around and doing something else, but we know we can get to a place where the community as a whole is still resilient and economically sound.

Mary Cromer

I agree with everything that Shannon says here. [Appalachian Citizens' Law Center, ACLC] is also committed to continuing to push for programs for former miners, but the programs have to be designed carefully to fit local needs. That means that programs should be designed with lots of community engagement.

8. For Shannon--Which mines/companies in the PRB [Powder River Basin] do you expect to close or go bankrupt next? (Leslie Glustrom, *Clean Energy Action*)

Shannon Anderson

Seth Feaster at IEEFA has been doing a great job tracking all of the coal plants that are slated for retirement and tracing those plants back to the mines that provide coal. This gives us a snapshot picture of what mines will likely be losing a lot of business in the next 2-5-10 years. And the short answer is they are all going to lose a lot more business (on top of the very steep declines of the past couple of years). Also remember that for the coal plants that are still operating, they are running less as they are being displaced in energy markets by lower cost renewables and natural gas. So, to answer the question, all of the mines are in trouble and the time to think about creating a just transition is now.

9. Employment is one of the reasons stated by the Government to still promote coal mining. [Can you provide examples] where workers are suitably rehabilitated and alternative jobs opportunities created? (Rahul Choudhary, *Legal Initiative for Forest & Environment*)

Shannon Anderson

You can see above for the answer to Tanya Stasio's related question [Question 7]. Unfortunately, I don't think we have really good examples across the board, but there are some success stories. As a result of these bankruptcies, I know some miners that have voluntarily left the industry and are much happier for it, but for many, it is hard to give up a good paying job. The other thing I will mention, and Blackjewel's mass layoffs exemplified this – because coal mining jobs are so well paying often miner families are single income families, or if the spouse works, it is often part-time, so not only do you need to replace the income of the miner, but in some cases, the spouse also needs to find a job. That makes it challenging, but retraining and jobs skills and workforce development programs will be key. Miners have a lot of skills, but not all of them are easily transferable.

Mary Cromer

I agree. In addition, many of the just transition policy initiatives ACLC is pushing for would include a diverse array of employment opportunities. As we discussed in the presentation, with federal support, many jobs could be created cleaning up poorly reclaimed or unreclaimed mine land and many jobs could be created in rebuilding dilapidated infrastructure. That work is critical to ensuring that our coal-dependent regions can transition.

10. I'm surprised [that] the rate of black lung has been increasing in recent years. Can you explain why? I would have expected rates to decrease after such strong policy/regulatory response decades ago. (Alan Yu, *Center for American Progress*)

Shannon Anderson

This is another question for Mary!

Mary Cromer

As the larger coal seams have been mined out, the industry has been mining more rock along with the coal. That creates a situation where miners are exposed to more silica. In addition, as the industry contracts, we're finding that miners are working longer shifts, which also makes their exposures worse. Finally, while cheating on dust sampling and non-compliance with regulations has always been a significant problem at mine sites, we believe that those problems are increasing as the larger, better capitalized companies have exited the industry.

Here are some articles:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6085042/>

<https://onlinelibrary.wiley.com/doi/abs/10.1002/ajim.22974>

<https://www.atsjournals.org/doi/10.1513/AnnalsATS.201804-261OC>

11. Are there ways that very financially weak or violation-troubled companies can be blocked from taking over bankrupt mines? (Seth Feaster, *IEEFA*)

Shannon Anderson

For the violation-troubled companies – yes. Under our coal mining laws, a company that has outstanding violations is what is called “permit-blocked” meaning they can't get a new permit, anywhere in the country. This prevents a bad actor from racking up violations in one state, forming a new LLC and moving somewhere else and not addressing the violations. But it has been a challenge in these bankruptcies to enforce that provision to the utmost ability because the mines are sold in a rushed fire sale way leaving the permit transfer and environmental regulator issues for another day. This is something we are really working to address, along with our colleagues in Appalachia.

On the financially weak piece of it – that is not a barrier per se to a shaky company getting a permit, but it could be a barrier for that company getting reclamation bonding. Surety companies would be wise to require more collateral for a less financially secure company. That said, again the incentives on all parties to move these sales and transfers along are strong and if the surety companies are already on the hook for reclamation costs from the company that is selling the mine, they may be more likely to go along with the new company even though they shouldn't.

Mary Cromer

I don't have much to add, except a small point on wage bonding. In KY, KRS 337.200 requires coal companies that are less than five years old to post a wage bond equal to four weeks' payroll. The Blackjewel bankruptcy revealed that this provision had not been enforced, and there is work to do to improve the effectiveness of the statute. But, generally, given the state of the industry, such bonds should be required for all coal companies to protect miners' pay. It's not certain such an additional bond requirement would be enough to weed out some financially weak buyers, but it would help.

12. What is the level of retraining programs for miners and their integration into wind, solar transmission and related energy infrastructure construction and production and distribution systems? (Edward Woll, attorney, *Gas Leak Allies, Mothers Out Front*)

Shannon Anderson

Thanks for the question – it is similar to a couple of others above so I encourage you to read through those responses.

Mary Cromer

I agree with Shannon here. I also want to mention that it is important to recognize that renewables jobs are not always/often located in coal mining-dependent communities. So, while it's important to retrain miners and give them as many opportunities as possible in renewables, we also have to recognize those constraints.

13. What role can people who live in West Coast communities which receive coal shipments play? I live in Richmond, [California] where organizations work against the unhealthy impacts of the coal shipped to the ports here. How can these communities work together? (Sara Theiss, *Fossil Free California*)

Shannon Anderson

The *Power Past Coal* coalition was extremely effective at joining those of us in the PRB with the West Coast communities with coal ports and proposed ports to organize together and oppose export opportunities for the coal industry. We welcome allies, wherever we can find them!

Mary Cromer

We also welcome allies from all over. Shannon has the best answer, since PRB exports ship from the West Coast.

**Note that questions were submitted by attendees online during the live Q & A session. Answers were provided post-event by presenters. For further information, please contact IEEFA Strategic Communications Director Vivienne Heston (vheston@ieefa.org).*

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