NY Times: Will Big Coal Pay to Clean Up Its Messes?

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The nation's leading coal companies are increasingly filing for bankruptcy, leaving behind enormous tracts of scarred terrain and rising doubts that they will ever meet their legal commitments to repair the earth. Concern is growing that the companies and their debtors will use Chapter 11 bankruptcy protection to force the costs of mine reclamation onto taxpayers, despite the industry's standing obligations to pay.

The profits of Big Coal have been plummeting in a shifting energy market. Abundant supplies of cleaner natural gas have replaced coal as the fuel of choice in an increasing number of power plants, while the industry has been disappointed in its plans to expand overseas into China and other markets. Jobs have disappeared, a major topic on the campaign trail. Also at stake in the more than three dozen bankruptcies declared in the last three years are hundreds of millions of dollars in cleanup obligations, primarily in the Appalachian coal fields.

Companies insist they will not shirk their reclamation duties. Unfortunately, their track record is not good in West Virginia, where the mining method called mountaintop removal — the systematic dynamiting of summits to get at underlying coal seams — has devastated the Appalachian landscape, polluted waterways and driven entire hamlets into retreat. "Lipstick on a corpse," was how Ken Hechler, a former West Virginia congressman, described the industry's cosmetic repairs to the state's mesa-like remains of mountains.

The court fights are focusing on a loophole, called self-bonding, in the 1977 federal surface mining control law. This allowed state regulators to recklessly let companies, in profitable times, offer a mere promise to cover reclamation costs instead of requiring that they purchase bonds as insurance. The fear is the industry will use bankruptcy to see their obligations to banks and hedge funds paid first, leaving little for environmental cleanups.

"Bankruptcy courts need to hold strong and not let financial institutions pocket the money and leave a huge part of Appalachia out to dry," Peter Morgan, a lawyer for the Sierra Club, told the reporter Michael Corkery of The Times. Similar concerns are growing in other coal-producing regions, westward to Wyoming. The latter produces 40 percent of the nation's coal and has $2.25 billion in company promises that supposedly will be there for extensive reclamation jobs.

The industry was shocked when Peabody Energy, the world's largest private-sector coal producer, filed for bankruptcy protection in April. It continues to operate but carries $1.47 billion in self-bonding liabilities. Officials in Illinois are now beginning to wonder whether Peabody will carry through on its pledge to clean up at three old mines.

In West Virginia, where politicians have traditionally gone easy on the companies, the mood is hardening as Big Coal vanishes. A special assistant state attorney general has been appointed to pressure the industry's lenders to share responsibility for the mine cleanups. Industry will make its case in court hearings scheduled next month. Taxpayers can only hope the bankruptcy courts there and elsewhere hold Big Coal to its obligations to fully pay for its decades of severe damage to the environment.

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