

# GROUPS PUT OSM ON NOTICE FOR FAILURE TO PROTECT WEST VIRGINIA COMMUNITIES FROM THREAT OF BANKRUPT COAL MINES

## Agency Allowing West Virginia to Maintain Defective Reclamation Bonding System

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WASHINGTON, DC – Today, community and environmental groups sent the federal Office of Surface Mining, Reclamation and Enforcement (“OSM”) notice of their intent to sue the agency if it fails to take action forcing West Virginia to secure funding to cover the full cost of cleaning up coal mines across the state. Appalachian Mountain Advocates filed the notice letter on behalf of Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, and Sierra Club.

The Surface Mining Control and Reclamation Act (“SMCRA”) was passed by Congress in 1977 to ensure that mine owners and operators, who have profited from mining, prevent environmental harm and pay the costs of cleanup necessitated by their mining activities. Without such protection, taxpayers would be on the hook to clean up pollution left behind when coal operators declare bankruptcy. Recent decisions by the West Virginia Department of Environmental Protection (“DEP”) undermine those guarantees and would instead pass the costs of cleaning up old coal mines on to West Virginia communities.

According to DEP’s own reports, companies holding more than 900 mining permits in West Virginia filed for bankruptcy in 2015, and more companies have filed or are expected to file this year. Yet the agency refuses to fix its bonding program to ensure mine operators set aside sufficient funds to cover actual cleanup costs. For example, DEP refuses to take any steps to increase the size of its “Special Reclamation Fund,” which covers the State’s share of any reclamation costs when mine operators go out of business. The Fund contains only \$78 million, though bankrupt mine operators hold hundreds of millions of dollars of unfunded and unsecured reclamation liabilities. Because of

OSM's failure to rein in DEP, the DEP continues to blatantly and illegally allow some coal operators to self-bond, even when they are in bankruptcy.

In their notice letter, the groups allege OSM has failed to carry out its nondiscretionary duty to ensure West Virginia addresses those deficiencies on a programmatic basis.

“Rather than protect the communities and environment threatened by the mines operated by bankrupt coal companies, OSM and DEP have decided to bury their heads in the sand,” **said Liz Wiles, Chair of the Sierra Club's West Virginia Chapter.** “We need action by OSM to make sure the costs of cleaning up these sites never gets passed on to West Virginia's citizens.”

“DEP's and OSM's failure here is one more obvious example of how 'our' government protects the profits of fossil industries. The right of people to have safe water is simply irrelevant,” **said Dianne Bady, Project Coordinator the Ohio Valley Environmental Coalition.**

“This has gone on too long. We have begged, pleaded and litigated since at least 1990 to make the state comply with the law. The state's response has been to dance around the issue and make only incremental and inadequate improvements. OSM has known about the ever-expanding liabilities and issued warning letters, but has not followed through with the necessary enforcement measures to make the state fulfill its legal responsibility under the law,” **said Cindy Rank with the West Virginia Highlands Conservancy.** “There is little consolation in knowing the predictions and warnings of the past years are coming to fruition in such devastating fashion and there is no excuse for allowing this to continue.”

“We are disappointed OSM has once again turned a blind eye as DEP thumbs its nose at laws enacted by Congress and the Legislature to protect our communities,” **said Mike Becher, Attorney with Appalachian Mountain Advocates.** “If coal companies do not pay the full cost of their business, taxpayers will be stuck with the bill to pay hundreds of millions of dollars in cleanup costs. The agencies' failure to enforce the law is an unconscionable abdication of their responsibilities to assure that coal operators do not have their way with our State and then leave us to pay the bills after they have taken their profits out of State.”

Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy and Sierra Club are represented in this action by attorneys with Appalachian Mountain Advocates.

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**Campaign Name:**  
[Beyond Coal](#)