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Joseph G. Pizarchik
Office of Surface Mining Reclamation and Enforcement
Administrative Record Room 252 SIB
1951 Constitution Avenue NW.
Washington, D.C. 20240

RE: Comments on Petition to Initiate Rulemaking; Ensuring That Companies With a History of Financial Insolvency, and Their Subsidiary Companies, Are Not Allowed to Self-Bond Coal Mining Operations. [Docket ID: OSM-2016-0006]

Dear Director Pizarchik,

We are writing to encourage the Office of Surface Mining Reclamation and Enforcement (OSMRE) to initiate rulemaking procedures in response to the well-reasoned petition from WildEarth Guardians dated March 3, 2016. The Conservation Law Center and Hoosier Environmental Council are both nonprofit organizations in Indiana that work to protect Indiana's communities, wildlife, and ecosystems from the harmful effects of surface coal mining. The proposed changes to self-bonding regulations are necessary to ensure that all companies fully comply with reclamation requirements. The recent bankruptcies of major coal companies and stricter regulation of surface coal mining operations both weigh in favor of the petitioned rulemaking.

Congress passed the Surface Mining Control and Reclamation Act (SMCRA) to "protect society and the environment from the adverse effects of surface coal mining operations." 30 U.S.C. § 1202(a). To ensure that companies cleaned up mines after extracting coal, SMCRA required corporations to file a bond "sufficient to assure the completion of the reclamation plan" in the event corporations did not or could not fulfill their obligations under the Act. 30 U.S.C. § 1259(a). Although Congress allowed companies to self-bond, 30 U.S.C. § 1259(c), the guiding standard for all bonds is ensuring that companies set aside enough funds to assure complete reclamation. Companies that are insolvent or near insolvency cannot meet that standard.

Now more than ever, OSMRE needs to address the problem of self-bonding by insolvent corporations. Peabody Energy, the world's largest private-sector coal producer, declared bankruptcy on April 13, 2016. Peabody's bankruptcy is just the latest in a string of major coal company bankruptcies including Arch Coal, Alpha Natural Resources, and Patriot Coal. Together, these companies maintain over $2 billion in self-bonds that may never be paid.

OSMRE is currently revising the Stream Protection Rule to reduce surface coal mining's impacts on aquatic resources. These changes are likely to require greater expenditures by coal companies as they must take additional steps to ensure the structure and function of impacted streams is avoided, minimized, and compensated. For the Stream Protection Rule to meet its goal, all permittees must fulfill their bonding promises. OSMRE's recognition of the need to better protect streams from surface coal mining weighs in favor of eliminating self-bonding for corporations that are insolvent or nearing insolvency.

The petitioned revision to self-bonding rules is especially needed in Indiana. Indiana has primacy to enforce SMCRA within the state. Indiana law prohibits rules on surface mining operations that are stricter than the federal standards. Ind. Code § 14-34-1-4. In response to a 2014 survey from the Interstate Mining Compact Commission, Indiana indicated it has no plans to disallow the use of self-bonds or require replacement bonds from insolvent or nearly insolvent corporations. That same survey indicated that the now bankrupt Peabody Energy and its subsidiary United Minerals have over $168 million in outstanding self-bonds for Indiana mines. These self-bonds are listed as nonpriority unsecured claims on Peabody's bankruptcy filing, placing the fulfillment of these obligations at serious risk. Changes to the federal rules are necessary to ensure that corporations mining in Indiana can always comply with all reclamation requirements.

The limitation on self-bonding should not be limited solely to ultimate parent corporations in or on the verge of bankruptcy. Often, a company's troubles will be visible long before such dire steps. We propose that OSMRE also prohibit self-bonding for applicants and their ultimate parent corporations that are in default on the terms of any loan, bond, or other financial obligation. OSM should also require applicants to disclose such defaults to the regulatory authority. These measures provide a more cautious approach to a corporation's financial health and ensure that the regulatory authority can acquire alternative bonds to cover reclamation costs the corporation may be unable to adequately self-bond. Additionally, OSM should ensure that parent companies are not able to sequester or isolate self-bonding requirements in a subsidiary. All companies within a corporate hierarchy must be able to take responsibility for service of the self-bond.

We urge OSMRE to initiate rulemaking to solve the problem of self-bonding by insolvent and nearly insolvent corporations. Please add us to your notice list using the information below.

Sincerely,

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