



## Reclaiming Justice Family-owned Coal Mines Could Create Hundreds of Jobs Across Appalachia

October, 2021

Throughout his political career, West Virginia Governor Jim Justice, who, along with his immediate family, owns dozens of mining companies, has characterized the coal industry as being under attack and has positioned himself as a defender of coal miners' livelihoods.<sup>1,2</sup> This posture, however, is undermined by the practice of laying off miners at Justice family-owned mines after profitable coal has been depleted, but before the required reclamation work has been completed.<sup>3</sup> If proper reclamation were completed in a timely manner, as required by law, miners would be put back to work completing the reclamation they were always meant to do.

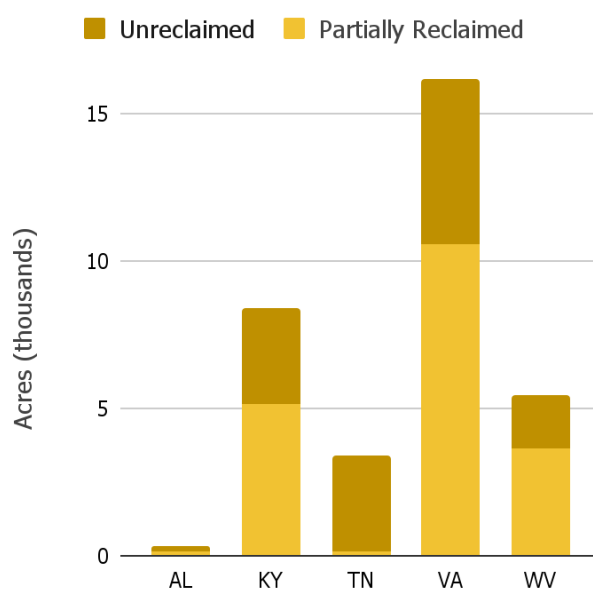
In a July 2021 report, *Repairing the Damage: The costs of delaying reclamation at modern-era mines*, Appalachian Voices determined that a total of 633,000 acres of mined land are currently in need of some degree of reclamation across seven Eastern coal-producing states. Appalachian Voices estimates that reclaiming these modern mines would create between 23,000 and 45,000 job-years. This figure pertains to modern coal mining only, and does not include abandoned mine lands — unreclaimed mines that operated prior to the passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977. There are about 850,000 acres of AML across the nation, with enough reclamation work needed to create 103,000 to 170,000 job-years, mostly in Appalachia.<sup>4</sup>

### Reclamation Need and Potential Jobs at Justice-family Mines

Using the data and methodology from the *Repairing the Damage* report, we analyzed outstanding reclamation, liability, and potential job creation for the subset of mines owned by the Justice family. **We found that nearly 34,000 acres are in need of some degree of cleanup.** Nearly 20,000 acres of Justice family coal mines are only partially reclaimed, and 14,000 acres remain unreclaimed altogether. The likely collective outstanding cost of this cleanup is between \$367 and \$444 million.

**If all of these mines were fully reclaimed, it would create between 1,100 and 2,300 job-years on mines across Alabama, Kentucky, Tennessee, Virginia, and West Virginia.**

### Reclamation Needs at Justice Family Mines by State



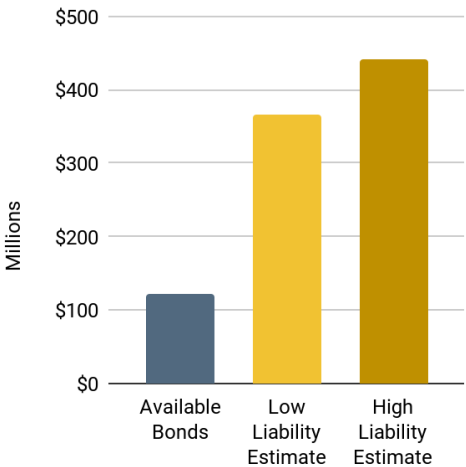
In other words, reclamation of Justice-family mines could employ as many as 220 to 460 workers for five years. This would more than double the number of workers currently employed by Justice-owned mining companies. During 2020 and 2021, an average of 179 and 194 workers respectively were employed at Justice-family mines across several states.<sup>5</sup>

State	Job-years (low scenario)	Job-years (high scenario)
Alabama	11	22
Kentucky	278	556
Tennessee	242	483
Virginia	431	861
West Virginia	174	349

Inadequate Bonding and Enforcement

Federal law requires coal companies to obtain bonds to help ensure that proper reclamation of mines occurs, but

Available Bonds and Estimated Liabilities



in many cases bond amounts are insufficient to reclaim the site and enforcement mechanisms are inadequate.<sup>6</sup> The threat that a regulator may seize a company’s bonds if it does not adequately reclaim its mines provides states with leverage to compel such reclamation. But if a mine’s bond is less than the actual cost of reclamation, regulators lose this leverage, which in turn enables coal companies to indefinitely delay reclamation obligations. **We calculate the total outstanding reclamation on Justice family mines to fall in between \$367 million and \$444 million, but these operations are only bonded at \$122 million – one third of our low-end estimate.**

For years, Justice family companies have proven willing and able to exploit these flaws in bonding and enforcement mechanisms, thus evading reclamation requirements. A consequence of this behavior is the loss of job opportunities for would-be reclamation workers.

Case Study: Southwest Virginia

Our research indicates that the footprint of Justice mines and the associated potential job creation is largest in Virginia, with just over 16,000 acres in need of reclamation work. Of this, 5,500 acres remain unreclaimed and an additional 10,500 acres have undergone only partial reclamation.

More than two thirds of this mine-impacted land is permitted to A&G Coal Corporation, which holds \$24 million in self-bonds (essentially statements of intention to pay that are not attached to any actual monetary instrument) for 20 mines in Virginia.<sup>7</sup> These bonds are supplemented with \$5.5 million in surety and cash bonds. Nineteen of the 20 permits also participate in



The Looney Ridge Mine in Wise County, Virginia.



Virginia's pool bond, which holds a total of \$10 million and covers portions of 151 permits held by 33 companies. Virginia outlawed self-bonding in 2014, but regulators have been unable to compel A&G to replace their existing self-bonds with more secure surety bonds.<sup>8</sup> The state has likewise been unable to effectively enforce the requirement that reclamation be conducted in a timely and satisfactory manner on these mines. The mines have sat largely unreclaimed for nearly a decade, though some cleanup work on A&G's highest-liability operations has commenced as of summer 2021, after mounting pressure from regulators and advocacy groups, including Appalachian Voices.

Our analysis puts the outstanding cost of reclamation for A&G's Virginia mines at \$94 million. A 2016 estimate by the state put the cost at \$134 million. Some reclamation has occurred since 2016, meaning the current cost of reclaiming A&G's mines is likely somewhere in between these two estimates. Whatever the precise figure, it is greater than the available bonds by tens of millions of dollars.

If Justice family-owned companies were to fully reclaim all of their Virginia mines, of which A&G's operations comprise more than half, we estimate it will create 431 to 861 job-years.

### Case Study: Eastern Kentucky

In Kentucky, the Energy and Environment Cabinet has recently moved to forfeit the bonds and revoke the permits for five Justice-family mines with long-standing environmental violations and past-due reclamation dating back as far as 2012.<sup>9</sup> Justice companies have currently posted only \$9.8 million in bonds for these mines, while our estimate puts the actual outstanding reclamation liability closer to \$25 million.<sup>10</sup>



These highwalls on Infinity Energy's Opossum Hollow Surface Mine in Harlan County, Kentucky have remained unreclaimed since 2012.<sup>14</sup>

It is promising that Kentucky regulators have taken this step, but troubling that such a shortfall exists between the available bonds and the outstanding liability. To make up for bonding deficits, SMCRA provides that the regulatory authority may recover additional reclamation funds from the operator, in this case the Justice family companies.<sup>11</sup> Some regulatory agencies have pursued this tactic in the past, but it is rare, and may involve drawn-out civil court proceedings.<sup>12</sup> Indeed, Justice's attorneys have already cried foul at Kentucky's efforts to recover the posted bonds for these mines, as well as an additional \$2.9 million in past penalties for various regulatory infractions.<sup>13</sup>

Reclamation on just these five mines would create 81 to 162 job-years. Full reclamation of all Justice-family mines across Kentucky would create 278 to 556 job-years.

### Recommendations

It is incumbent on state and federal authorities to enforce SMCRA and other applicable laws much more aggressively than has been common in the past. Regulators should revoke permits and forfeit bonds on long-idled Justice company coal mines, as the state of Kentucky has recently taken steps to do, and they should hire contractors to complete the necessary reclamation under the regulatory authorities' own supervision. Additionally, when bonded amounts prove inadequate to complete satisfactory reclamation, regulators should

exercise their authority to recover the needed funds from the Justice family companies, in order to make up for such shortfalls.

Finally, Congress should consider providing additional funding from the general treasury to supplement state bonding programs. This funding should be accessible to state regulators in order to complete reclamation at bond-forfeited mines, but only after the state has made every effort to recover the necessary funds from all liable parties. If state regulatory authorities had such a backstop available, they may be more willing to forfeit bonds at noncompliant mines for which outstanding liabilities exceed available bonds, such as many of the Justice family's operations.

## Methods

Detailed Appendices explaining our research and analysis methodologies can be found in [\*Repairing the Damage: the cost of delaying reclamation at modern-era mines\*](#).

## Sources and notes

- 1 Office of the Governor Jim Justice. Governor Jim Justice Urges Congress to Disapprove Stream Protection Rule. <https://governor.wv.gov/News/press-releases/2017/Pages/Governor-Jim-Justice-Urges-Congress-to-Disapprove-Stream-Protection-Rule.aspx>
- 2 Office of the Governor Jim Justice. Gov. Justice Supports President Trump's Rollback of Obama's War on Coal. <https://governor.wv.gov/News/press-releases/2019/Pages/Gov.-Justice-supports-President-Trump%E2%80%99s-rollback-of-Obama%E2%80%99s-war-on-coal.aspx>
- 3 West Virginia Public Broadcasting. Idle Lands: Justice Coal Group Top User of Loophole Allowing Mined Lands to Sit Idle. <https://www.wvpublic.org/news/2019-09-04/idle-lands-justice-coal-group-top-user-of-loophole-allowing-mine-lands-to-sit-idle>
- 4 Ohio River Valley Institute. Repairing the Damage: Cleaning up the land, air, and water damaged by the coal industry before 1977. <https://ohiorivervalleyinstitute.org/wp-content/uploads/2021/04/AML-Report-Dixon-ORVI-V1.1-4.pdf>
- 5 Mine Safety and Health Administration. Accident, Illness and Injury and Employment Self Extracting Files (Part 50 Data). <https://arlweb.msha.gov/stats/part50/p50y2k/p50y2k.htm>
- 6 The Alliance for Appalachia. Central Appalachia Coal Mining Reclamation Bonding Policy Recommendations. <https://theallianceforappalachia.org/wp-content/uploads/2018/04/Bonding-policy-recommendations-in-appalachia.pdf>
- 7 Virginia Department of Mines, Minerals & Energy (now Virginia Department of Energy). Information obtained through records request. January 2021.
- 8 Virginia Department of Mines, Minerals & Energy. Virginia No Longer Accepts Self-Bonds from Coal Companies. May 24, 2016. <https://www.dmme.virginia.gov/dmme/pdf/news%20releases/2016Releases/DMMENoLongerAcceptsSelfBonding.pdf>
- 9 Commonwealth of Kentucky vs A&G Coal Corporation, et al, Civil Action NO. 15-CI-01125
- 10 Kentucky Energy and Environment Cabinet. Surface Mining Information System, bond amounts search for permits 898-0882, 898-0884, 848-5459, 848-0238, 848-5510. <http://smis.ky.gov/SMIS.Web/PermitBonds>
- 11 [30 C.F.R. § 800.50 \(d\)\(1\)](#)
- 12 United States vs Whizco, Inc., et al, Civil Action NO. 87-5317
- 13 Estep, Bil. "Motion: W. Va. Gov. Jim Justice hasn't reclaimed KY coal mines, should forfeit \$2.9M." Lexington Herald-Leader. Sep 29, 2021. [https://www.kentucky.com/news/politics-government/article254616547.html?fbclid=IwAR1cy0080ZpsWVCeT5iThcUmNRb1Z3qSwtpC3iP0WFm9UmGU52LKall\\_7iw](https://www.kentucky.com/news/politics-government/article254616547.html?fbclid=IwAR1cy0080ZpsWVCeT5iThcUmNRb1Z3qSwtpC3iP0WFm9UmGU52LKall_7iw)
- 14 Commonwealth of Kentucky vs A&G Coal Corporation et al, Civil Action NO. 15-CI-01125, Exhibit 1.