

FREE

# The Appalachian VOICE

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**IN THIS ISSUE:**

The Intelligence of  
**Slime Mold**

**10 Ways** to  
Reduce Plastic Use

**Giants** of the  
Great Smoky Mtns

**SPECIAL EDITON**

## The Legacies of **COAL**





## Community Efforts to Stop Construction of Rockwool Plant in WV Continue

Grassroots activism against Rockwool, a proposed stone insulation manufacturing plant, continues in Jefferson County, W.Va.

Many residents were not aware of plans for the facility, which would spin rock into material for industrial insulation and other uses, until construction broke ground in June 2018. State and local government officials had been working with the Netherlands-based Rockwool to smooth the way for the plant, securing permits and offering them a five-year tax break.

When locals found out about the

plant, many banded together against it. Community groups opposed to Rockwool include Eastern Panhandle Green Coalition, Jefferson County Vision, Rural Agriculture Defenders and Resist Rockwool.

Architect Gavin Perry analyzed the potential environmental impacts for the group Concerned Citizens Against Rockwool – Ranson, WV, listing potential damaging effects to waterways and marshes as well as groundwater. The area has porous karst topography, and there is a high density of sinkholes near the proposed site.

A top concern is air quality; the plant is permitted to emit 470 tons of volatile organic compounds into the air annually. Its proposed location is a little more than 1,000 feet from an elementary school and within two miles of three other schools.

The group Jefferson County Prosperity favors the plant, noting the company's projection that it will supply 150 jobs.

Rockwool's efforts to connect to a fracked-gas pipeline have furthered controversy. Columbia Gas sought to drill a pipeline beneath the Potomac River on Maryland public property, which the state denied. Columbia challenged the decision in court, but in August, a federal judge upheld the Maryland's sovereignty. Rockwool will still have access to natural gas; Mountaineer Gas has extended a pipeline to reach the facility.

The question of how the plant would access sewer services is one of the latest fronts in the community effort to stop construction. In September, hundreds of Charles Town, W.Va., residents petitioned the city council to require a supermajority in order to approve a state-funded sewer pipeline for the Rockwool plant, according to Spirit of Jefferson and Farmer's Advocate. The council unanimously rejected the

petition.

Also in mid-September, local non-profit group Jefferson County Vision filed a lawsuit arguing that Ranson, W.Va., improperly issued the facility's building permits because sewer service was not arranged at the time.

On Aug. 13, a county judge dismissed a lawsuit that Jefferson County Vision brought against the Jefferson County Development Authority for the facilitation of a "payment-in-lieu-of-taxes," or PILOT, agreement designed to make Jefferson County attractive to Rockwool. In his ruling, however, the judge noted that it is "not an enforceable agreement — it is merely a proposal."

In a statement, Jefferson County Vision Board Member Shaun Amos said, "With this ruling, all governmental bodies in Jefferson County are free to disregard PILOT and require that Rockwool pay their fair share of the taxes they owe to our community."

A public hearing for the potential renewal of Rockwool's construction stormwater permit will be held on Oct. 23 from 6-8 p.m. at Storer Ballroom at the Shepherd University Student Center in Shepherdstown, W.Va. After the public hearing, the comment period will continue until 8 p.m. on Oct. 31. — *By Molly Moore and Kelsey Stratman*

## Conservation Grants Aim to Improve Cumberland Shortleaf Pine Forest

The National Fish and Wildlife Foundation has awarded a series of grants for conservation projects throughout the Cumberland Plateau. Several collaborating organizations plan to use the funds to restore shortleaf pine and wetland forests and in-stream habitats in Alabama, Kentucky and Tennessee.

Partnering foundations matched the \$1.3 million in grant funding provided by the Cumberland Plateau Stewardship Fund for a total of \$2.6 million. The grants are intended to improve more than 9,700 acres of shortleaf pine and riparian forest, according to a National Fish and Wildlife Foundation press release.

Along with partners, the Tennessee Wildlife Federation and the Forest Stewards Guild, two of the grant-receiving organizations, plan to restore 5,400 acres of shortleaf pine forests using strategies such as thinning, strategic planting and

prescribed burning. Phase two of the shortleaf pine restoration work is underway and is set to conclude in fall 2021.

Phase two involves restoration of publicly managed land, such as 2,000 acres within Grundy County's Savage Gulf State Natural Area in Tennessee, and private land held mostly by families, according to Nick Biemiller, southeast regional coordinator for the Forest Stewards Guild.

"What we're doing is connecting [landowners] with resources to better steward their forests for the long term," says Biemiller.

Since 2013, the Cumberland Plateau Stewardship Fund has contributed to projects that will affect more than 81,500 acres of shortleaf pine and streamside forests, according to the National Fish and Wildlife Foundation. — *By Jack Singletary*

## States Work to Defend Appalachia from Invasive Fish

Strategies to prevent the spread of the invasive Asian carp are advancing in several Appalachian states.

State agencies are using barriers in dams and encouraging commercial harvesting to prevent the upstream migration of the fish in the Tennessee River. Multiple agencies and partners are also involved with an experimental sound barrier in Kentucky's Lake Barkley scheduled to be installed October 1, according to the Tennessee Wildlife Resources Agency Chief of Fisheries Frank Fiss.

"The goal is to get the barriers in place

so that we have them contained, and then fish them down, that's the strategy," says Fiss.

The Asian carp outcompetes native fish for food and poses risks to boaters due to the jumping behavior of the heavy fish, according to the Kentucky Department of Fish and Wildlife.

While the fish is an environmental threat, the growth of Asian carp populations along the Mississippi River has also led to the rise of fish processing plants and markets for Asian carp consumption. — *By Jack Singletary*

## New State Trail Designated in Western North Carolina

The Northern Peaks Trail was signed into law as a North Carolina state trail on July 1, a designation that provides funding opportunities for trail development. The path will connect Boone to West Jefferson in 40 scenic miles, featuring areas like Elk Knob State Park and Three Top Mountain Game Lands in between.

Trail planners aim to educate visi-

tors and conserve the unique biodiversity, geography and culture of the High Country. Project Manager Eric Woolridge stated that work could begin at Howard Knob Park, a node on the trail, in 2020 or 2021, and that the overall trail-building timeline will be shaped by the state's ongoing development of a master plan for Elk Knob State Park. — *By Rachael Kelley*

## Student Sustainability Program at Virginia Tech Receives Award

Virginia Tech's Green Request for Proposals Program received the 2019 Sustainability Innovation Award for Facilities Management from APPA — Leader in Educational Facilities. For the past nine years, the Green RFP program has implemented student-proposed projects, including reusable-to-go containers and LED lighting, that

support the Virginia Tech Climate Action Commitment. The commitment defines goals to increase campus recycling rates to 50 percent by 2020, improve energy efficiency in buildings, and reduce carbon dioxide emissions by 80 percent below 1990 levels by 2050. — *By Rachael Kelley*

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## Pushing Back Against Plastics

### Communities are fighting the petrochemical industry's plans to expand in Appalachia

By Jack Singletary

Scientists have found a significant amount of microplastics — tiny pieces of plastic smaller than 5 millimeters — in Arctic snow, according to a study published in *Science Advances* in August. Researchers found that these microplastics were transported there through the atmosphere, which shows how widespread plastic has become in the environment.

Cutting down global plastic use may seem daunting, but individual actions (see sidebar) can help to reduce how much plastic ends up in the environment. At the same time, people concerned about plastics are pursuing more systemic change. For many Northern Appalachian residents and activists, this means resisting the construction of new plastic manufacturing facilities in the region.

Shell is constructing a facility on the Ohio River in Beaver County, Pa., known as the Pennsylvania Petrochemicals Complex. The company expects the facility to produce more than 1.6 million tons of polyethylene plastic each year beginning in the early 2020s.

Polyethylene is one of the most abundant forms of plastic globally, according to a 2018 United Nations report. It is also the same material most shopping bags are made from.

Shell's plastic-making process will rely on "cracking," which involves converting ethane, a natural gas liquid, into polyethylene at high temperatures. Oil and gas companies extract natural gas liquids from the Marcellus and Utica shale plays in the Ohio River Valley through hydraulic fracturing, or fracking, a process that can cause severe water quality impacts, according to a 2016 report from the U.S. Environmental Protection Agency.

Two chemical companies, one based in Thailand and one based in South Korea, are also pursuing plans to construct an ethane cracker along the Ohio River in Belmont County, Ohio. State regulators granted an air pollution permit to the petrochemical plant developers in December 2018, which environmental groups appealed.

On Sept. 23, the groups dropped the appeal after reaching an agreement with developers. The company has agreed to increase transparency and pollution controls in exchange.

According to FracTracker Alliance, a nonprofit organization that analyzes oil and gas industry data, proposed ethane crackers like Shell's facility will "rely on a regional network of fracking, pipelines, compressor stations, processing stations, and

*Modern life can involve a lot of plastic, like these items dropped off at the recycling center in Watauga County, N.C. While recycling plastic is an option, it's better to use less in the first place. Photo courtesy of Cole Kiziah*

storage to operate." The U.S. Department of Energy stated in July that ethane from fracking and continued expansion of the Appalachian petrochemical industry could support at least five petrochemical crackers and the associated massive increase in fracked-gas infrastructure.

Opponents of the projects have organized and voiced their concerns to legislators over the potential impacts of pollution that the plastic-producing complex could have both locally and globally. Mark Dixon, a leader in the grassroots resistance effort, co-founded the online platform NoPetroPA to mobilize concerned residents against the Beaver County facility.

"We need to collectively organize to shift consumer demand and government policy to motivate manufacturers and consumers to move away from plastics as one of the primary ways by which we make the stuff that we need every day," Dixon says.

Learn more about the proposed petrochemical and plastics manufacturing hub in Appalachia and get involved at [breatheproject.org/fracking-and-petrochemicals](http://breatheproject.org/fracking-and-petrochemicals). ♦

## Reducing Your Plastic Footprint

In addition to opposing new plastic facilities and related infrastructure, there are different strategies you can use to reduce the impacts of plastic waste.



"If you can be a little conscientious towards the Earth and what we're doing, then it's amazing how many little things that you can find throughout the day that you don't really need," says Cole Kiziah, recycling coordinator for Watauga County, N.C.

Here are 10 strategies you can put into practice to reduce the amount of plastic consumed in your household:

- 1. Drink** from a reusable water bottle and a reusable coffee mug. One million plastic bottles were purchased every minute across the world in 2017, according to a report from market research firm Euromonitor International.
- 2. Bring** your own reusable bags or containers to the store for groceries, produce and other dry goods. Cotton muslin bags can transport fruit and veggies.
- 3. Source** your food from your local farmers markets or gardens to reduce your dependence on food products packaged in plastic.
- 4. Purchase** essential goods in bulk and avoid plastic packaging when possible. Buying in bulk can also save you money because bulk goods usually cost less per unit.
- 5. Use** bar soap and shampoo or soap powder in reusable containers instead of liquid soap packaged in plastic.
- 6. Cook** dinner instead of picking up takeout. Cooking at home can reduce plastic packaging, save money and result in healthier eating habits.
- 7. Make** your own cleaning products to reduce the amount of plastic containers in your household. Baking soda and vinegar can work as an alternative to cleaning products packaged in plastic.
- 8. Opt** for second-hand purchases. Pre-owned goods tend to have less packaging.
- 9. Wear** clothing made from natural fibers. Synthetic fibers such as polyester tend to shed off clothes and contribute to microplastic pollution. When washing synthetic clothing, use a laundry bag or laundry ball designed to catch microfibers.
- 10. Contact** manufacturers, legislators and local businesses to let them know you support alternatives to single-use plastics.



Switching out disposable drink containers for a reusable mug may not seem like much, but lifestyle changes to reduce plastic use can contribute to the increasing efforts made by people all around the world to reduce the amount of plastic wasted every single day.



# Hiking the Highlands

## Giants of the Smokies Old-growth forest at Albright Grove

By Eric Halvarson

Walking through an ancient forest is a rare experience for the average hiker like me. When I learned about a rare stand of original cove-hardwood forest on the Albright Grove Loop Trail in the Great Smoky Mountains National Park, I had to take a trip there.

Almost 99 percent of old-growth trees on the East Coast of the United States have been chopped down, according to the Old-Growth Forest Network. This nonprofit organization operates an online database of preserved, mature old-growth forests to raise awareness of these areas. When trying to find the nearest old-growth forest to me, I used the Old-Growth Forest Network's website.

My girlfriend MJ and I arrived at Maddron Bald Trailhead in the early afternoon after some GPS trouble. If you are using GPS, be careful that the final road leading to the trailhead is Baxter Road; some GPS listings of Maddron Bald Trail or Albright Grove Trail lead you far away from the parking for the trailhead. Luckily, local neighbors have set up signs that say, "Turn around, GPS is wrong," for tourists like us.

The bright sky and lack of clouds made this Thanksgiving Day hike warm and pleasant. Other families also celebrated the holiday under the afternoon sun.

After walking for about 10 minutes, we passed Baxter Cabin. This single-room cabin sports a chimney and was constructed by Willis Baxter in 1889 for his son as a wedding present. Other hikers stepped inside, and as we continued our hike, we could hear them say "cheese" for their pictures.

### Albright Grove

**LENGTH:** 6.7 miles round-trip  
**DIFFICULTY:** Moderate  
**DIRECTIONS:** From intersection of Parkway and 321 in Cosby, Tenn., head west on 321 for 2.5 miles. Go left on Baxter Rd. Continue .5 miles until you see a sign for Maddron Bald Trailhead. If using GPS, use "Maddron Bald Trailhead, Cosby, TN" as

The first mile of the hike ascends a wide gravel road. We walked alongside a stream and listened to the running water and the crunching leaves for a little over a mile. We came to a welcome rest stop and crossroad with signs showing we still had 1.7 miles to the Albright Grove Loop.

The road continued and the number of families on our route dwindled as the sun lowered in the sky. Eventually the road ends and turns into a single-path trail, only wide enough for one person at a time. This is where the trees really start to show their age.

The land here was previously owned by Champion Paper Company in Canton, N.C., now Evergreen Packaging. According to Great Smoky Mountains National Park Supervisory Forester Kristine Johnson, the grove might have been selectively logged for particularly large trees under the company's ownership until the National Park Service acquired the land.

The national park was established in 1940, and today, some hemlocks and tulip trees on the trail are more than 200 years old. Soon, we found our first huge hemlock, a tree that made me stop and say "whoa" out loud! The lowest branch was at least 35 feet high and the trunk over five feet wide.

We began to look for some indicators of old-growth, like large trees, downed trees that fell naturally and a diversity of tree species. These traits indicate a healthy old forest that has avoided the axes of loggers in the past. We crossed Indian Camp Creek on a beautiful wooden bridge. After a total of three miles, we reached Albright Grove!

The loop is three quarters of a mile long and winds through Eastern hemlocks, tulip poplars, red maples, northern red oaks, birch, hickory and

your destination, rather than "Maddron Bald Trail" or "Albright Grove." These other locations will take you far off course.  
**CALL:** Main park office at (865) 436-1200  
**OTHER NOTES:** Pets are prohibited. Parking is very limited, but this is a low-traffic destination. Make sure to allot proper time for the hike, at least 5 hours round-trip.



Hiker MJ Sanqui looks up at an enormous tree at Albright Grove. Photo by Eric Halvarson

Carolina silverbells. The path has many changes in elevation and beautiful views of giant trees off the trail.

"It is a really good example of old-growth, intact cove hardwood forest," says Johnson, adding that it "isn't necessarily a pure stand of ancient trees where everything is old. You've got a mix of older and younger."

About 20 percent of Great Smoky Mountains National Park is old-growth forest, according to Johnson. While other old-growth is on high ridges where logging is difficult, the Albright Grove is a rare, accessible hike for visitors to enjoy.

The largest tree in the national park is a tulip tree, also known as a yellow poplar, with an access path right off the loop trail. With a circumference of 25 feet and 3 inches, it would have stood almost 135 feet tall at one point, but the crown has been damaged, perhaps by lightning.

Large snags, which are standing dead trees, dot the trail and serve as ideal habitats for a variety of species. Outside of old-growth forest, these

large snags are rare because most other trees of their width were logged. These empty, larger dead trees make for great breeding areas for birds and for hibernating bears, which prefer them to smaller snags. Some species that benefit from these old giants are woodthrushes, winter wrens, black-throated blue warblers, barn owls and flying squirrels.

Preserving entire areas of old forests like this one is important because these environments foster unmatched water quality and habitats for species diversity, which individual elderly trees cannot do on their own.

Johnson frequently visits the grove, enjoying it in all seasons.

"In the wintertime there's no leaves and you can just look at that wonderful architecture of bare trees and see the snow on the hemlocks," Johnson says, "In the spring it's wonderfully rich with wildflowers."

On Thanksgiving, I was grateful we could spend time in this forest—and that it will be preserved for years to come. ♦

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# Play Bears Witness to Knoxville's Red Summer, 100 Years Later

## Reflections on an episode of racial violence

*"Forgetting is mighty dangerous, somebody's got to bear witness to the truth." — Dantzler, narrator of the play "Red Summer"*

Essay By *Andre Canty*

Knoxville has had a storied history with mass-scale riots. The most recent riot occurred in 2010 with the sudden departure of Lane Kiffin from his head coaching job with the University of Tennessee. After a year of coaching the Vols, Kiffin left to pursue a dream position at the University of Southern California after a 7-6 season and was rewarded with countless people storming campus, burning furniture and causing traffic in the area.

In September 2019, The Carpetbag Theater, Inc., a Knoxville-based ensemble company led by Linda Parris-Bailey, put on a performance to highlight a deeper microcosm of racial violence in its telling of the Race Riot of 1919, otherwise known as the Red Summer.

The Red Summer got its title from a string of anti-Black riots across the country following the end of World War I — these riots peaked during the summer of 1919. After the riots, hundreds of Black people nationwide were beaten and killed by White mobs due to growing racial hatred. Acknowledgement of such riots has been absent from our history books. The few who have written about this incident in-depth include historian Bob Booker in a fictionalized account and journalist Matt Lakin.

"This story is too powerful not to be told from a perspective that doesn't downplay the truth about the events which occurred on the streets of downtown Knoxville 100 years ago," says Jonathan "Courageous" Clark, managing director of Carpetbag Theater. "We cannot afford to let anyone forget that history, for we know if we do, we may be doomed to repeat it."

The cast of "Red Summer" were Kisha Rockett, Jazmin Witherspoon, Will Dorsey, Drew Drake, Carlton "STARR" Releford, Kim Tooks and Andresia "Real" Moseley. The performance was

written by Linda Parris-Bailey and directed by Leilani Chan.

The play highlighted a snapshot of the attitudes, fear and reality after a white mob descended onto downtown Knoxville, which was populated by mostly Black people. The performance gave a view of the fallacy many in Knoxville held before the riot that the city was free of any racial tension. It also explored how politicians respond to such tension, and how some media can shift the narrative when it comes to racism.

East Tennessee has always prided itself on being racially tolerant, going all the way back to the Civil War when the region was surprisingly pro-Union as opposed to the rest of Tennessee and the South. With Black people holding public office in the dawn of the 20th Century, many people both Black and White were under the impression that racism had no place in Knoxville. In his 2000 piece on Red Summer written for the East Tennessee Historical Society, journalist Matt Lakin described Knoxville at that time as such: "For over fifty years, Knoxville, Tennessee had boasted of its harmonious race relations, holding itself as a model to other American cities."

According to the Journal of Negro History, in 1918 Charles Cansler, a prominent member of the Knoxville Black community, said of Knoxville that, "in no place in the world can there be found better relations existing between the races than here in our own county of Knox. No race riots have ever disgraced our city and no mob has ever vented its fury here upon any Negro victim."

Parts of the play described the fallacy of social progress, with the characters naming off all the achievements surrounding Tennessee prior to 1919, including being the deciding state to give voting rights to women and the founding of the Knoxville Branch of the NAACP. In between those achievements were reminders of social decay,



*"Red Summer," a performance by The Carpetbag Theatre, Inc., shows Maurice Mays at three moments in his life. Falsely accused of murder in 1919, his arrest ignited a race riot in Knoxville, Tenn. Photo courtesy of The Carpetbag Theatre, Inc.*

with segregation of public schools and Jim Crow laws. When it came to 1919, the characters portrayed how one event gave a chilling awakening and a grim reminder of how society valued Black life in the wake of tragedy.

The man at the center of the Knoxville race riot was Maurice Mays, owner of Stroller's Café on Center Avenue who was also a social debutante and former sheriff's deputy. Mays was a Black man raised by foster parents and was theorized to be the son of then-Knoxville mayor John McMillian.

In August 1919, an intruder invaded the home of Bertie Lindsay and killed her in her bedroom on Eighth Avenue. Police arrived to Mays' home soon after and brought him to Ora Symth, the only witness and cousin to Lindsay, under a bright streetlight where Symth named Mays as the killer.

The play went back and forth between the telling of Mays' story and portrayals of Black people at the height of the riots after Mays' arrest for the murder of Lindsay, a White woman. Mays also had relationships with other White women, which made him a target of local law enforcement. Before the Supreme Court ruled interracial marriage legal, any relational interaction between

racism was considered not only taboo, but a ticket to the jail or the grave.

The day after Mays' arrest, a violent White mob came to the Knoxville jail for retribution, which provided the catalyst for the riot. Officials correctly anticipated a violent response, and quickly shipped Mays to Chattanooga. A mob formed to march to the jail in downtown Knoxville in search of Mays after word spread about the murder.

The Black community in Knoxville was mostly concentrated downtown, so the likelihood of a clash grew as the mob grew in number and rage. What the mob did not expect was that Black people in the area were ready to defend themselves. Stores were looted of ammunition and alcohol to add to the tension, and it all culminated in the heart of downtown with shots fired on Aug. 31, 1919. Black veterans from the war participated not only out of a sense of protecting their neighbors, but also rejecting surrender to racism after they risked their lives for the country a year prior. Some members of the National Guard, though called to stop the riot, participated with the mob and fired at Black people to further add blood

*Continued on next page*

## Knoxville's Red Summer

*Continued from previous page*

in the streets. After close to 48 hours, the violence was quelled following a mandated curfew. Hundreds of people were injured and several killed.

Mays returned to Knoxville a month later to stand trial with the weight of his accusation and the riot. He found himself alone after requesting help from the NAACP, but was rejected due to scarce resources already allocated to other riots that same summer. An all-White jury found him guilty after a mere 18 minutes and he was sentenced to death. On the ides of March, the same time Julius Caesar was killed, Maurice Mays was executed in 1922 by electric chair.

Knoxville found itself at a crossroads with that riot — it was no different than most cities at the time, and it took one case for reality to set in. It's an all too familiar example of how when a Black person is accused of anything, the entire race is on trial and forced to play defense attorney. The mob did look for Mays specifically, but the riot itself signified that it could have been anyone in that cell as long as they were Black.

During the heat of the riot, the characters on stage wrestled with standing up to the mob while realizing how Knoxville was not exempt from racism. Characters gave accounts of what really happened during that time to counter the biased portrayal of the event through the media, which appeared to be one of the main antagonists in the play.

It parallels reports of current racial injustice with Black victims frequently illustrated as the provokers of their own demise and their killers viewed as the true victims, shifting the narrative to put the deceased through the trial of public opinion and supporting a false

sense of utopian progress decades after the Civil Rights Movement. Even those who went to the streets to address injustice have been seen in some media as rabble-rousers, with damaged property given more attention than the reason why people were in the streets in the first place.

"Red Summer' emphasizes the importance the media played, and continues to play, in deciding how folks see one another and this is still true today," says Jonathan Clark, managing director of the theater.

Throughout the performance, different eras of Black music were centered, including R&B, gospel, and even hip-hop to show the varying perspectives of why the riot occurred and the characters' roles in it. The ending of the play showed Mays in three eras of his life. He is the ideal man in a suit, tie, hat and cane; he is the man in his house clothes under the streetlight shocked that racism literally came to his door; he is the man desperately pleading for his life in a jail cell while waiting on his impending doom.

The play also exposed that Tennessee's governor at the time did not want to intervene in the case and claimed that any move in Mays' favor would result in political ruin, leading to the argument that addressing racism is a moral right and has to be a priority for our leaders. Nearly 100 years later in 2011, former Tennessee Gov. Bill Haslam declined to clear Mays' record, deferring to the decision of the jury at the time.

What was unknown to most was revealed toward the end of the play: five years after Mays was executed, a



*Photo of Maurice Mays, courtesy of Beck Cultural Exchange Center*

will offer some semblance of justice that we desperately owe our past."

Decades later in the 1960s, Knoxville boasted that it was an "All-America City," while protestors challenged the title by protesting segregation at the Tennessee Theater a street up from the Bijou Theater, which hosted the Red Summer play this year.

As much progress as Knoxville has made over the past 100 years, we must not forget the work needed to be done to achieve true

progress. Maurice Mays was Emmitt Till. He was Mike Brown. He was Trayvon Martin. He was Sandra Bland. The play was a rallying call to us to keep the fight going to honor those who fought and died simply for existing. The play and the man at the center of it should be a stark reminder that whether concealed or open, racism is a sickness to be tackled head-on and not something to be treated naively. ♦

"Craggy Pinnacle Stone Work"  
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Robert Stephens

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# How Brainless Slime Mold Challenges Our Notion of Intelligence

By Hannah McAlister

Scientists have found that a brainless, single-celled organism is capable of solving mazes and even learning.

This remarkable organism is broadly known as slime mold, though there are many kinds.

Researchers from the Smokies All Taxa Biodiversity Inventory recorded at least 230 species of myxomycetes — a type of slime mold with one cell surrounded by membranes and a nucleus — within Great Smoky Mountains National Park. With about 1,000 known myxomycetes species worldwide, the Smokies hold nearly a quarter of the known global population, according to Steve Stephenson, a professor of biological sciences at the University of Arkansas.

Those hunting slime mold in Appalachia will want to embark during the fruiting season between late May and early October, after a period of rainy weather, and search among decaying logs on the forest floor.

Slime mold comes in various colors and shapes, from the reddish-brown *Stemonitis axifera*, which is distinguished by its tall stalks, to the vivid yellow of the *Fuligo septica*, also known as dog vomit slime mold due to its bile-appearance, which can be as large as a dinner plate. *Fuligo septica* is found in forests as well as among mulch beds in urban areas,

but it poses no harm to grass or plants, so control is not necessary.

Slime mold could be mistaken for a type of fungi called a jelly fungus, and scientists once classified it this way. But unlike a jelly fungus, slime mold is not firm and will not retain its shape when touched.

As cells, slime molds live in the soil and feed on bacteria, releasing nutrients that plants need in the process.

“Slime molds are key players in nutrient cycling, which is incredibly important to how the Earth functions,” says Stephenson.

Enemies of slime mold include beetles and slugs, to name a few. Since slime mold is not toxic, anything can eat it. Although some species exist in Arctic regions, most slime mold does not fare well in cold climates.

## The Amazing Life of a Slime Mold

When food is scarce, the single-celled organism will emit chemical signals to attract other slime molds and form a bigger mass. This chemical process, referred to as the plasmodial life stage, also prevents competition between individuals and aids in communication. However, this process does make the slime mold sensitive to airborne chemicals.



Once joined together, these formerly independent cells cooperate and move in unison as a gelatinous, multicellular structure that can be up to several meters in diameter and has the ability to travel faster and farther than before.

In this state, the slime mold transitions into another significant part of its lifecycle and produces a fruiting body, which can take on various shapes and forms, typically a millimeter or two high. One type looks similar to a small globe atop a delicate stalk, although stalks are not always necessary. The goal of this state is to release spores, which the wind or passing animals can transport so the slime mold can begin the life cycle again.

## Slime Mold Intelligence

Slime mold, like some protists, possesses both plant and animal characteristics. But slime mold also has exceptional intelligence. In an interview with Princeton University, the late John Tyler Bonner, a professor emeritus of biology and a top slime mold expert, described them as “no more than a bag of amoeba encased in a thin slime sheath, yet they manage to have various behaviours that are equal to those of animals who possess muscles and nerves with ganglia



Slime mold is at least 600 million years old, which means it could be one of the first organisms formed by independent cells joining together. At top, a chocolate tube slime mold in the *Stemonitis* genus emerges from a tree at Shenandoah Mountain. Below, wolf's milk slime mold, *Lycogala epidendrum*, found in the Smokies. Photos by Jason Hollinger

– that is, simple brains.”

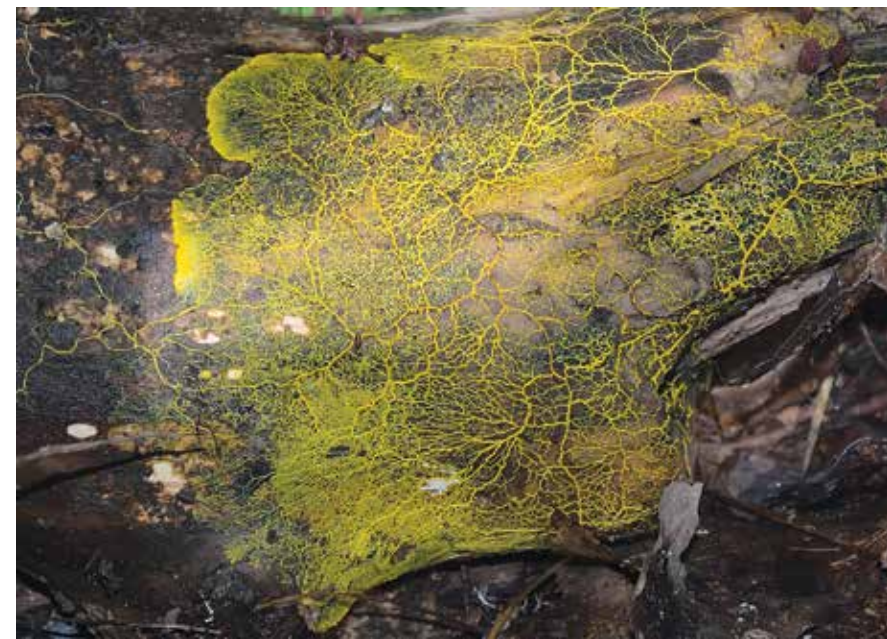
When studied under a microscope, the complexities of slime mold are apparent. Not only does slime mold appear to branch out through vein-like structures, but its movement is quite unique.

Timelapse footage demonstrates that slime mold will slow, stop and reverse direction about every minute, giving a pulsating appearance. This is due to a network of fibers and motor proteins that cause contractions and allow decision-making.

“It's similar to what happens in our muscles when they contract,” Juan Carlos del Álamo, a University of California San Diego professor of mechanical and aerospace engineering, told KQED Science.

The pulsating slime mold can reach

*Continued on next page*



Once the water-soaked surface of this rotten log dries, *Physarum polycephalum* slime mold will no longer be able to travel. The slime will then change form and become stationary. This slime mat is about the size of a dinner plate and was found at Patapsco Valley State Park in Howard County, Md. Photo by Richard Orr

## Slime Mold

*Continued from previous page*

speeds of up to 1.35 millimeters per second, making it the fastest microorganism recorded.

A 2012 study revealed that slime mold can solve mazes and appears to learn new things about its environment. When food is placed at the end, slime mold locates the food by exploring every part of the maze. The slime mold will find the shortest path to the food and retract all paths that don't lead to these points, leaving behind a trail of slime that chemically signals a dead end, according to The Well, the news platform of the University of Chicago's Marine Biological Laboratory.

Astoundingly, slime mold fairly accurately mapped a portion of the Japanese rail system, according to a January

2010 paper published in *Science*. In the experiment, researchers from Japan and England placed oat flakes in a pattern similar to the way outlying cities are distributed around Tokyo and allowed the slime mold to roam. The research team believes that a new model of the rail system based on the slime mold's behavior may be more efficient and adaptable.

A January 2008 study demonstrates that these amazing organisms can learn to memorize and anticipate changes in their environment that keep happening. In the experiment, scientists lowered the temperature and humidity around a plate with slime mold for 10-minute intervals. Each time, the slime mold would slow down its movement to conserve energy.

After three instances of cold conditions, the scientists stopped manipulating the temperature and observed the slime mold starting to slow down, in an-

ticipation of the change, but returning to normal when conditions remained stable for a while. As soon as the cold conditions returned, they resumed the behavior and correctly recalled the appropriate timing of the intervals. The researchers note that for a single cell to demonstrate such a learning ability demonstrates a “primitive version of brain function.”

Even more incredible, a 2016 experiment showed that not only can slime molds get used to a chemical they don't like over time, they can share what they have learned with other slime molds by fusing with them.

This is a form of learning called “habituation,” which the researchers tested by challenging the slime mold with quinine and caffeine, both harmless, yet bitter-tasting chemicals. The only way for the organism to reach its food was to cross a bridge covered in the bitter substances, which the slime mold was initially reluctant about. This bridge crossing took the slime mold more than triple the amount of time it took a control group without a chemically treated bridge. By day six, the slime mold cut its crossing time in half.

In a separate experiment conducted by these researchers, they introduced

a slime mold that had been exposed to salt and a “naive” slime mold that had not. The molds formed together and demonstrated zero apprehension about crossing a salted bridge. It appears that the habituated slime mold had educated the naive one through a vein after two to three hours of fusion, although it is unclear what is going on inside the channel.

What is clear is that there is something biochemical going on within these brainless, gelatinous slime molds that scientists have yet to figure out. Already, scientists are excited about harnessing slime mold's abilities in unique ways, including creating adaptable, wireless networks for natural disasters, testing slime mold's antibiotic properties in clinical trials against cancer cells, converting plasmodial slime mold into biofuel and more.

Slime mold's abilities “might be a chance to reconsider what intelligence is,” biophysicist and slime mold researcher Toshiyuki Nakagaki told *Discover Magazine*.

So while that nuclear-yellow blob encasing a decaying trailside tree limb may look like dog vomit, a closer look might reveal primordial intelligence in action. ♦



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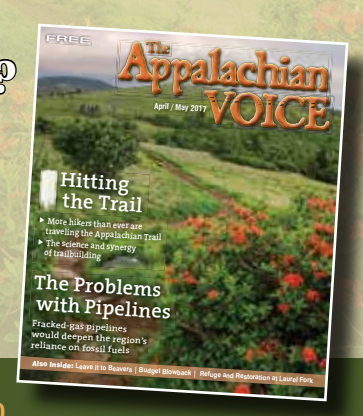
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# The Legacies of COAL



Acid mine drainage at an abandoned mine portal. Photo courtesy of Virginia Department of Mines, Minerals and Energy

## IN THIS SECTION

- Reclamation 101.....12
- Idle Lands.....13
- Abandoned Mine Lands.....15
- Workers Push for Pay After Bankruptcy.....16
- When Coal Companies Go Bankrupt, Who Cleans Up the Mess?.....17
- A Pilot Program's Uncertain Record.....20
- The Black Lung Association Responds to the Deadly Disease's Rise.....23
- Bankruptcies Highlight Concerns with Black Lung Benefits Fund.....25

Coal is deeply embedded in the life and history of Central Appalachia. The industry provided jobs and spurred the formation of small towns across the region, bringing great wealth to coal company owners while much of the region contended with poverty. In boom years, main streets in coal towns were bustling — but after a lengthy downturn in the coal industry, those towns are facing hard choices about how to balance budgets and bring in new opportunities. Mechanization of the industry began displacing workers decades ago, and the jobs that remain are often high paying but can be tenuous. In return, the work is difficult and dangerous.

Coal mining has long sickened both workers and people living nearby. This publication has shared stories of families with drinking water containing more than triple the legal limit of beryllium, creeks with more than 100 times the allowable amount of aluminum, well-tended homes shaken from their foundations by blasting, upwards of 20 scientific health studies linking mining to human health problems, and more.

Despite the industry's overall weakening, mining is by no means over in the region, and the health of communities near mine sites is still imperiled. This

fall, coal companies are seeking permission to open a new 422-acre surface mine in Tennessee.

Still, the coal industry is in an undeniable decline — and as it contracts, the scale of the damage it leaves in its wake is clear.

In this issue, we examine several topics related to the legacies coal is leaving for the land and people of Appalachia. The following pages include stories about how recent bankruptcies are affecting workers and the prospects for mine reclamation, the impact of mines left in unreclaimed limbo, and the overwhelming need for abandoned mine land cleanup across the region. We also look at how members of the Black Lung Association are fighting for benefits and workplace protections, and the successes and problems associated with a program designed to spur economic development near abandoned mine sites.

## Reclamation 101 Understanding the mine cleanup process

By Matt Hepler

A recent string of bankruptcies in Central Appalachia and across the United States is bringing more attention to the vast amount of mined land in need of cleanup. After extracting coal, mine operators are required by federal law to bring mined land back to a minimum level of repair. What that reclamation status entails — and how to make sure coal companies do it — is the subject of a complex regulatory process.

The federal Surface Mine Control and Reclamation Act of 1977 ties the reclamation process to bonds to try to ensure that the state has money to clean up a site should a company go bankrupt, and to incentivize companies to repair the land and water at their former mine sites. Typically, mining companies post a cash bond equivalent to the estimated cost of repairing the

site, though there is evidence that some of these bond amounts may be too low (read more about this beginning in the centerspread).

Reclamation is the actual process of restoring disturbed mine land into what the regulations call the site's "post-mining land use." When companies apply for a mining permit, they are required to declare what type of land use the site will be suitable for after mining. Very often, the post-mining land use is designated as unmanaged forest, which requires the permittee to

include reforestation as part of the plan. Other uses, such as commercial forests and hayfields, are also common.

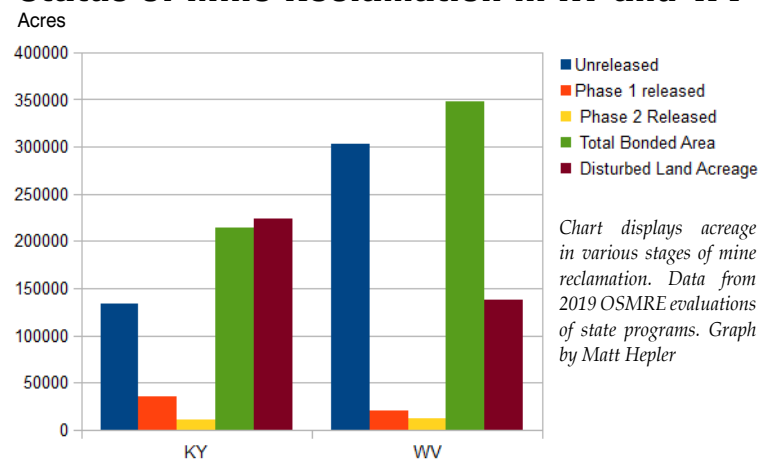
All operators are required to return the land to what regulators refer to as its "approximate original contour" through backfilling and regrading. When the state mining agency — or, in Tennessee's case, the federal mining agency — is satisfied with this stage of the work, they release 60 percent of the bond back to the bond owner. This

process is known as phase one bond release. At this stage, the mine looks very much like the surface of the moon, and not a single thing has been planted yet.

While in phase two of the bond release process, surface mines are required to follow the revegetation plan in their mine permit, which is tailored to the site's designated post-mining land use. The revegetation plan includes which species of trees and grasses are to be planted as well as how much and which kinds of fertilizers will be employed. It generally also includes the metrics that will be used to evaluate the success of the planting.

To get the phase two portion of their bond released, mining companies have to undergo two successful planting seasons and conduct a vegetative assessment that is submitted to the state or federal agency. If unmanaged forest is the post-mining land use, the success

### Status of Mine Reclamation in KY and WV



Continued on page 15

## Idle Lands

### Justice coal group top user of loophole allowing mine lands to sit idle



Republished with permission from Ohio Valley ReSource

By Brittany Patterson

Standing at an overlook on the top of Black Mountain — the tallest point in Kentucky — the wooded Appalachian mountains stretch on like a sea of green for miles.

For many, this mountain is synonymous with the coal industry. It straddles the state line separating Harlan County, Kentucky and Wise County, Virginia, two communities that have long relied on mining the black gold contained in its depths.

Among the lush forests, barren, brown spots dot the landscape, a testament to this history. These are coal mines, created when the tops of these mountains were removed. From the top of Black Mountain, one sprawling mine and its towering high wall dominate the view.

"So, we are looking currently looking at Looney Ridge surface mine number one," says Matt Hepler, an environmental scientist with the advocacy group Appalachian Voices.

Hepler has for years been following

action, or lack thereof, at the Looney Ridge mine, which is operated by A&G Coal, a coal company run by the family of West Virginia Gov. Jim Justice.

Coal has not been produced here since at least 2013 when A&G Coal asked Virginia regulators to place the mine in what is called temporary cessation. The permit status allows mining to pause, giving mining companies flexibility on requirements for land reclamation until it becomes more economically feasible to begin extracting coal again. And, as the name implies, this idling of mines is supposed to be temporary.

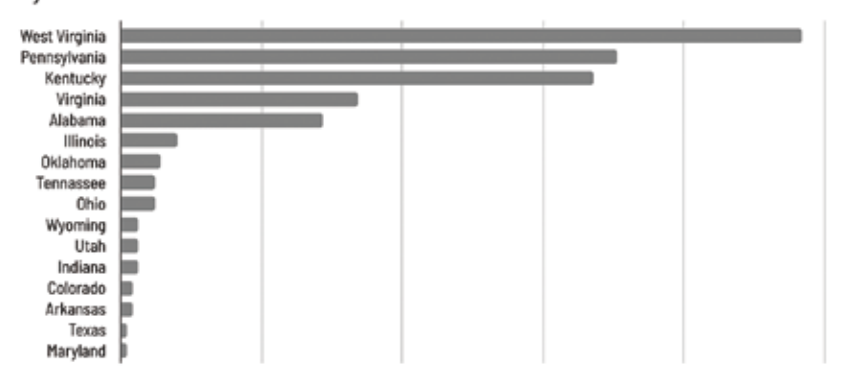
An analysis of mine permit data conducted by the Center for Public Integrity finds Central Appalachia is home to about half of all idled coal mines in the country. CPI found more than 200 mines are idled across West Virginia, Kentucky, Tennessee, and Virginia. About half have been that way for three or more years. Warehousing mines using this permit status throws workers and nearby communities into limbo all while crucial environmental cleanup is delayed.

The analysis shows that the Justice companies are the nation's most frequent users of coal mine idling. Thirty-three mines and a coal preparation plant owned by the Justice family's companies were idled as of mid-August. Fifteen of those have been in that status for at least



Matt Hepler of the advocacy group Appalachian Voices. Photo by Brittany Patterson.

### Idle Permits for Coal Mines and Facilities



Note: All coal mines and facilities that are idle as of Aug. 15, 2019, regardless of length of idle status. Source: Center for Public Integrity analysis of MSHA data. Graphic by Alexandra Kanik



View of the Looney Ridge surface mine from atop Black Mountain. Photo by Brittany Patterson

three years, according to CPI's analysis. In West Virginia, one Justice mine in McDowell County has been idled for almost a decade.

That number doesn't include the Looney Ridge mine or others nearby in Virginia where coal also hasn't been mined for years. That's because in early 2014, state mining regulators entered into a compliance agreement with the Justices to force them to reclaim the site.

Hepler, with Appalachian Voices, said that agreement has not resulted in much actual reclamation. The Virginia Department of Mines, Minerals and Energy has amended the compliance agreement multiple times.

"It's looked like this for as long as I've been coming up here," he said, pointing to the same broken-down bulldozer that has been there for years.

Tarah Kesterson, a spokesperson with the Virginia DMME, said the agency is pushing the Justices to clean up the site and is actively monitoring the situation as well as conducting inspections.

"We are doing everything within our enforcement authority to ensure that this gets done," she said.

In a statement, a spokesperson for

the Justice companies defended the reclamation work and said idling permits is a standard practice across the industry.

But as the nation shifts away from coal toward more economic options for power generation, such as natural gas and renewable energy, some fear the use of mine idling can be used as a stepping stone to abandon mines, passing the responsibility for cleanup to the government and taxpayers.

### Community Impact

Idle mines, especially those left untouched for years at a time, can negatively affect the economy, health, and environment of nearby communities.

"When mines become inactive or idle, they starve a local community, and they deprive the community of the coal mining jobs and other related jobs," said Joe Pizarchik, former head of the U.S. Department of the Interior's Office of Surface Mining Reclamation and Enforcement, the federal agency in charge of regulating surface coal mines, during the Obama administration.

When mines enter temporary cessation employment plummets. CPI's analysis found coal operations that have

Continued on page 14

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## Idle Lands

Continued from page 13

been idled for at least three years had 85 percent fewer full-time employees after switching into idle status than they did a year before.

“It also puts that land in a totally non-productive state,” Pizarchik said. “It’s not making money on anything for anybody for the community, and it can be a potential pollution source.”

In addition to being unsightly, there are health and safety risks associated with leaving mines unreclaimed, said Emily Bernhardt an ecosystem ecologist and biogeochemist and professor at Duke University’s Nicholas School of the Environment. Mines left idled can expose residents to coal and silica dust. They can also pose a risk for landslides and flooding. During surface coal mining, operators pile tons of rock and liquid behind earthen dams. When left idle, those impoundments face a greater likelihood of failing.

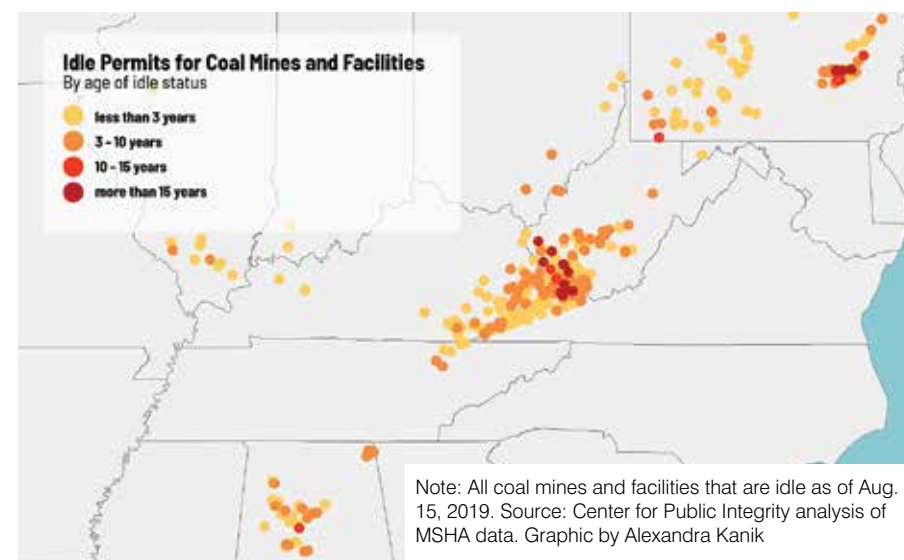
“You can’t actually make any improvements when you’re just sort of on hold,” Bernhardt said.



“I believe it’s extremely unlikely that those mines will ever be activated again because the price of coal is never going to go up,” he said. “The demand is only going to continue to shrink.”

If operators walk away from idled mines, states could face challenges with mine reclamation depending on how coal mine bonds

Former miner Larry Bush lives near two large coal mines in Virginia. Photo by Brittany Patterson.



## Who Pays?

Federal regulators have made two attempts since the 1990s to reform the way temporary cessation is used, according to public records obtained by CPI. Both have stalled. That’s despite a 2010 survey of state regulators that showed most states believed there should be limits on how long mines could be idled.

Federal law only requires that mining companies notify regulators when a permit will be in temporary cessation longer than 30 days.

State regulators can reject applications to change mines to an idled status if they find noncompliance or ongoing pollution. Kesterson with the Virginia DMME said before an operator can apply for temporary cessation, reclamation must be up to date. In Kentucky and Virginia, inspections continue while a mine is idled, and operators are fined if violations are found.

While in the past, mine operators may have used idling to pause production to allow coal prices to rebound, Pizarchik worries the nation’s shift away from coal means the chances of idled mines being cleaned up are shrinking.

## Idle Permits for Coal Mines and Facilities

By top ten controllers with the most idle permits

Controller	Total idle count	Avg. idle time (years)	Longest idle mine (years)
Justice family	34	2.2	8
Jeff A. Hoops	21	0.9	7
Blackhawk Mining LLC	12	2.2	6
James H. Booth	7	3.3	4
Contura Energy Inc	7	2.3	9
Quest Energy Corporation	6	2.2	5
Metinvest B V	6	4.0	7
Freddy Hunt; Michael T. Costello	6	3.0	8
Douglas Warriner	6	3.0	5
ArcelorMittal	6	2.8	8

Note: All coal mines and facilities that are idle as of Aug. 15, 2019, regardless of length of idle status. Jeff A. Hoops permits include permits from Lexington Coal Company. Source: Center for Public Integrity analysis of MSHA data. Graphic by Alexandra Kanik

are regulated, and that could leave taxpayers on the hook for paying for reclamation.

In Virginia, for example, Justice mines have an estimated \$200 million worth of cleanup liabilities, according to minutes from an April 2017 Coal Surface Mining Reclamation Fund Advisory Board meeting.

While Virginia is moving away from allowing coal operators to “self-bond” — or not put up a cash bond or buy a bond from an insurance firm if a company is deemed to be in good financial health — some A&G Coal permits remain self-bonded, Kesterson said. That means if the company were to go under, the state would get none of the money required for cleanup.

The state has in the past allowed coal companies to pay only partial bond amounts into a shared pool. The bond pool is meant to supplement cleanup for more than 150 permits, but the pool has less than \$10 million cash.

“The reclamation would cost more than what we have in a pool bond,” Kesterson said of liabilities owed by A&G Coal. “So that’s why we’re trying to work with them, to get them to pay for the reclamation.”

Not all states are concerned. John Mura, spokesperson for the Kentucky Energy and Environment Cabinet, said in an email that only 10 percent of Kentucky’s coal mines, or 150 permits, are in temporary cessation.

CPI’s analysis examined federal MSHA data on idled mining permits and is likely an undercount of idled mines because state and federal data are incomplete and often not comparable.

Mura said that following an order in 2011 by OSMRE to reform the state bonding program, base bond amounts have increased by about 60 percent.

“Kentucky has made great strides to ensure that reclamation bonds are adequate to complete reclamation in the event of bond forfeiture,” he said.

As the industry contracts, more bankruptcies are likely, which can open the door for companies to walk away from mines where buyers can’t be found.

That’s one concern currently playing out with the Blackjewel LLC bankruptcy, which has left more than 1,000 miners in Kentucky, Virginia, and West Virginia without their last paychecks.

CPI’s analysis found Blackjewel and other subsidiaries owned by former CEO Jeff Hoops had 21 coal mines and related facilities temporarily idled as of mid-August, according to Mine Safety and Health Administration data, and seven of those had been paused for at least three years. Many of those mines have not been purchased since Blackjewel’s bankruptcy.

At least 16 additional operations owned by other companies in bankruptcy sit in idle status, all of them in Central Appalachia, according to federal data.

Retired coal miner and mine inspector Larry Bush knows firsthand how idle mines can impact the environment.

Bush lives below two Justice mines — one that is active and Looney Ridge. Sitting under a covered gazebo at a park in the town of Appalachia, Virginia, where he has lived almost his whole

Continued on page 15

## Abandoned Mine Lands

The cost of reclaiming abandoned mine lands is massive, but the fee that funds cleanup is set to expire

By Erin Savage

The history of coal mining in Appalachia goes back to the late 1700s — and from then until 1977, there was no federal law that ensured coal surface mine reclamation after mining. The 1977 Surface Mining Control and Reclamation Act was far from perfect, but it reduced the risk of companies leaving strip-mined lands without taking steps to restore them. This law also created the Abandoned Mine Land reclamation program to address the mines that companies had already forsaken.

Over the last four decades, the program has provided \$5.7 billion to remediate mine sites that threaten public health and safety, including open mine shafts, highwalls, mine fires, acid mine drainage, erosion and subsidence.

The program is funded by a per-ton fee on coal production so that the industry as a whole takes responsibility for mining’s legacy. Currently, the fee is set to expire in 2021 unless Congress acts to extend it again.

Since 1977, Congress has decreased the fee multiple times, a decline in coal

production has reduced revenues, and the fee has never been corrected for inflation. The current fee structure is about 23 percent of what the original would be if adjusted for inflation.

The federal inventory of AML sites accounts for \$10.6 billion of unfunded remaining reclamation needs. Due to deficiencies in the federal inventory, however, this estimate is likely very low. There is currently an unspent balance of about \$2.3 billion in the AML fund.

The inventory is maintained by the Office of Surface Mining Reclamation and Enforcement and is updated by both states and OSMRE. But not all states have the resources to adequately identify and inventory AML sites. Previously unknown AML sites are discovered on a regular basis, and new AML features like sinkholes can develop over time, so many state inventories continue to grow.

OSMRE is required to approve the addition of new sites into the inventory,



## AML Sites

This map shows abandoned mine problems that are included in the federal inventory. Data from OSMRE e-AMLIS, Sept. 24, 2019. Map created by Matt Hepler

the state’s own inventory included \$4.5 billion. In addition, cost estimates for specific sites may be decades old and might not represent the true cost of reclamation.

Appalachian states — particularly Pennsylvania and West Virginia — have the greatest number of abandoned coal

sites in the inventory. But AML funds are distributed to states and tribes based on current coal production and historical coal production, not how much reclamation is needed. As coal mining decreases, especially in the East, some historic coal states are even less likely to receive adequate funds. ♦

## WEB FEATURES

- Learn more about abandoned mine lands, including individual AML sites, with interactive maps at [appvoices.org/aml-story-map](http://appvoices.org/aml-story-map)
- View timelapse footage of mining and reclamation at [appvoices.org/mountaintop-removal-timelapse](http://appvoices.org/mountaintop-removal-timelapse)

## Idle Lands

Continued from page 14

life, Bush said he sees the environmental toll unreclaimed mines can have on the environment.

“There’s a little stream that’s pretty much filled up with silt,” he said. “Nothing can live in it. I mean, there’s nothing, I don’t think.”

The 70-year-old Vietnam veteran is soft-spoken and sports a pair of reflective aviator glasses.

Bush wants to see this region rebound as the coal industry declines, but he struggles to see how that can happen with idled mines marking the landscape.

“If they’re not actively employing people, or actively working the site, they should be forced to do their reclamation work,” he says. ♦

This story was produced by Ohio Valley ReSource in partnership with High Country News and the Center for Public Integrity. CPI’s Mark Olalde contributed reporting and Joe Yerardi produced CPI’s data analysis.

## Reclamation 101

Continued from page 12

metric will include a minimum survival rate for the tree species planted and a ground cover metric as well. The success standards for various post-mining land uses are spelled out in the state or federal regulations.

The remainder of the bond is released to the mine permit holder at phase three. This is typically when the roads once used by coal transport trucks are removed. Sediment ponds are also removed at this stage following some additional water testing to make sure they are still within compliance. The site also undergoes a more comprehensive vegetative assessment. For most post-mining land uses, the site must be able to maintain a suitable amount of plant life without intervention from the permit holder.

According to data from the Office of Surface Mining Reclamation and Enforcement, a cumulative total

of 31,932 acres in West Virginia had progressed to the first two stages of mine reclamation by 2018, with 347,796 acres of former surface mine awaiting reclamation. In Kentucky, reclamation work was needed on 213,522 acres as of 2018, with 46,780 acres progressing through the first stages. The data came from the agency’s annual evaluation of state programs; cumulative totals were not given for Tennessee and Virginia.

The public has the right to participate in each phase of the bond release, though the details vary by state. When each stage of bond release for each permit is up for review by regulators, that announcement is posted in the classified section of local newspapers. Residents can contact their local state mining agency and request their own inspection to see if the mine is complying with each bond release phase. (Read more about people exercising this right beginning on the centerspread).

When talking about the environmental liabilities associated with mining, the conversation includes all

aspects of the reclamation process. This includes the cost of necessary earthmoving, structure removal, road removal, successful revegetation, and dealing with potential long-term impacts to water quality.

While federal law has these bonding systems in place to try and mitigate the impacts of coal company bankruptcy, the system shows signs of falling short. An April 2018 report from The Alliance for Appalachia indicates that many of the alternative bonding systems widely used by Appalachian states, such as self-bonding and pool bonds, are insufficient. Inadequacies in the bonding system, plus the decline of the coal economy with multiple bankruptcies, are leaving many in Appalachia concerned about a new abandoned mined land problem looming on the horizon. ♦

Read more about problems with reclamation on idled mines on page 13 and how recent coal bankruptcies are raising concerns about mine cleanup beginning on the centerspread.



# Blackjewel's Bankruptcy Disaster

Blackjewel and Revelation Energy's July bankruptcy announcement is the latest in a long string of bankruptcies plaguing the coal industry. But this bankruptcy is different. The troubles it brings could be a sign of more problems to come.

## Workers Push for Pay After Bankruptcy

By Kevin Ridder

A nearly two-month long protest by laid-off coal miners in Harlan County, Ky., came to an end on Sept. 26. After Blackjewel, LLC and its affiliate Revelation Energy suddenly declared bankruptcy and retroactively withdrew paychecks in early July, a group of miners, their families and supporters stood in front of a trainload of coal that they had mined and not been paid for.

Blackjewel and its related companies operated coal mines in Kentucky, Virginia, West Virginia and Wyoming and employed roughly 1,700 miners, including more than 1,100 in Central Appalachia. Many coal companies have gone out of business in the last few years — but this time was different.

"Every miner that worked for the company had their last paychecks pulled out of their accounts, leaving a lot of people anywhere between \$1,500 to \$3,000 in the negative," says former Blackjewel miner Chris Rowe. "And then the last six days we worked, we never even received a check for."

Under Kentucky law, Blackjewel should have posted a bond to cover wages in the event of bankruptcy when it incorporated in 2017 — but the company never did, the Lexington Herald-Leader reports.

On July 29, word got out that a train was coming to move \$1.4 million worth of coal in Harlan County that Blackjewel employees had mined without pay — so Blake



Former Blackjewel miner John Cress and his wife Felicia pass the time at the Harlan County, Ky., blockade on Sept. 5. Photo by Kevin Ridder

Watts and four other former Blackjewel miners set up camp in the train's path.

"We decided that if they were going to take that coal and not pay us, then that's not right," says Watts. "We worked for that coal and we deserve our pay."

It's not the first time Harlan County miners have taken a stand against the coal industry — in the 1930s, a series of strikes, armed skirmishes and more took place between coal miners and law enforcement and security firms hired by coal companies.

Watts is one of the few who found mining work after the company shut down, but he now drives 45 minutes to work each day instead of five. Some have moved to Alabama to find coal jobs. Others have found work outside the mines, and some have decided to change careers completely.

Former Revelation and Blackjewel CEO Jeff Hoops did more than just issue bad paychecks. Although many miners' pay stubs dating back months show that Blackjewel deducted money for retirement accounts, child support and more, at least \$80,000 never made it to its destination — this is in addition to \$8.3 million in payroll taxes that were deducted from checks but not sent to the government. One former employee was threatened with jail for missing months of child support payments that he thought he had made.

"Not only did he put us out of work and call our checks back, but even after the fact we were not allowed to sign up on any kind of unemployment because the company was still saying that we were employed," says Chris Rowe. "So we went probably three weeks to a month before we could even sign up on unemployment."

Rowe, who received multiple job offers during the blockade, has since taken a job as a truck driver. He was one of the first miners on the tracks and was the last to leave along with his wife Stacy, WYMT reports.

In July, attorneys rep-

resenting former Blackjewel employees filed a class-action lawsuit against Blackjewel asking for an undetermined amount in damages. No court date was set as of press time.

The U.S. Department of Labor has labeled the train cars of coal in Harlan County as "hot goods" due to the unpaid wages, and a federal judge issued a temporary restraining order on Aug. 23 preventing the coal from being transported until bankruptcy proceedings move forward. The judge gave the agency and Blackjewel until Oct. 1 to submit arguments as to whether the coal should be allowed to be sold before the miners are paid.

In mid-September, Blackjewel issued final paychecks to the several dozen miners who worked at a mine in Fayette County, W.Va. Approximately 1,000 miners in Kentucky and Virginia have yet to receive their checks as of press time in early October, although a deal between the Department of Labor and a company associated with Blackjewel bodes well for the laid-off workers. A federal judge approved the sale of two Blackjewel mines in Wyoming on Oct. 3, finalizing an agreement that includes \$5,475,000 in back pay to the workers. In exchange, the agency would allow the trainload of Harlan County coal to be sold.

From July to late September, the cluster of tents and camp shelters next to U.S. Route 119 served as a sort of second home for many of the laid-off Harlan County miners. Several picnic tables covered with newspapers and coloring books sat beside a makeshift kitchen, and the miners and their families would often gather around a car radio to listen to bankruptcy proceedings.

A large white banner with "NO PAY WE STAY" painted in block letters faced the road. Many drivers, including local



Former Blackjewel coal miner Blake Watts, above, stands by the blockade in Harlan County, Ky., on Sept. 5. Photo by Kevin Ridder. At right, Larah Helayne and Pierceton Hobbs, both members of youth organization The STAY Project, visit the blockade on July 31. Photo by Lou Murrey

law enforcement, honked and waved as they drove by.

Support from near and far poured in for the out-of-work miners at the blockade. Harlan County donated a generator, lights, portable toilets and a dumpster to the camp. Food donations included canned goods and an unexpected shipment of 100 watermelons and about 30 pounds of bacon.

"When we first started, all we had was a case of water and a box of pizza," says Rowe. "As the days went on, more donations came in, people started donating these tents, so we just started setting up camp." Speaking at the camp in early September, he described it as "a home outside of home."

Soon after Blackjewel announced bankruptcy, former coal executive Richard Gilliam also donated \$2,000 to each of the 1,700 laid-off miners.

Duffield, Va., resident Laura Gilliam, a home health nurse and volunteer with the Appalachia Community Action & Development Agency, or AppCAA, has helped to raise more than \$100,000 for the miners and their families by traveling around the region and asking for help from municipal governments. Buchanan County, Va., donated \$70,000 after listening to Gilliam speak. Tazewell County, Va., funded \$25,000, and the Tazewell Board of Supervisors collectively donated \$200 to each miner from their personal accounts.

Additionally, Gilliam set up a Go Fund Me page and a bank account called



C.O.A.L. for Miners at Powell Valley National Bank that anyone can donate to, and AppCAA has been collecting donated food and supplies. She states that she has delivered most of the donations herself.

"We've been paying electric bills, water bills to all the miners, and then we've been taking up donations, food, toiletries, house supplies — everything," Gilliam says.

"I try to reach out to those counties in need and go up there once a week, once every other week or so and take supplies or whatever I can," she adds. "Somebody's got to be the mouth of the South."

Sheldon Bush is one of several Claiborne County, Tenn., residents who lost his job when Blackjewel shut down. He states that he knows of five or six others who lived in Tennessee and commuted to a Blackjewel mine in Virginia, and that the unemployment benefits in Tennessee are much worse than Kentucky or Virginia.

He worked at a factory nearby in the weeks following the bankruptcy, although it paid \$6 less an hour, before securing a job at a Kentucky mine.

Bush, who has worked nearly 30 years in the mines, calls the Blackjewel shut down "a rude awakening" and states

Continued on page 18

# When Coal Companies Go Bankrupt, Who Cleans Up the Mess?

Editor's note: This three-part story is adapted from blogs written by Appalachian Voices staff members Erin Savage, Matt Hepler and Willie Dodson, and were first published online on the Appalachian Voices Front Porch Blog

## Part 1: Bankrupt Coal Companies Dodge Liability

By Erin Savage, Central Appalachian Program Manager for Appalachian Voices

On July 1, Blackjewel and Revelation Energy announced the companies were entering Chapter 11 bankruptcy. The news was notable for a number of reasons — mines shut down immediately, workers had paychecks retroactively withdrawn from accounts, and Jeff Hoops, the founder and leader of the companies, was forced out within days.

In the past, bankrupt companies have reorganized and transferred mines to other companies. But they have generally kept productive mines active, allowing employees to keep their jobs through the bankruptcy process.

This is changing. In July, David Roberts of Vox wrote, "As the industry contracts, it's a game of hot potato, as failing mines get passed around to increasingly fly-by-night companies that extract a little value before passing them along or going under." Blackjewel and Revelation have attempted to reorganize, shedding debt and liability by auctioning off mine permits to other companies. This has been only moderately successful so far.

Jeffrey Hoops is a well-known figure in the Central Appalachian coal industry, founding several large Central Appalachian coal companies, including Revelation Energy in 2008. He ventured into the western coal market when one of his companies, Blackjewel, acquired Belle Ayr and Eagle Butte mines from Contura Energy in late 2017. These mines were already subject to one bankruptcy proceeding when Alpha Natural Resources declared bankruptcy in 2015. Alpha's stakeholders formed Contura, which took on the Wyoming mines, once referred to as the company's "crown jewels." But within two years, Contura "gifted" these mines to Hoops by paying Blackjewel \$21 million to take the mines, in an attempt to shed liability for reclaiming the sites. Now, Blackjewel is the one that is bankrupt.

The bankrupt companies owe hundreds of millions of dollars. Reporting from watchdog network Little Sis estimates that the

companies owe Appalachian employees more than \$11 million in back wages in addition to roughly \$33 million to investment group Riverstone Holdings and \$23 million to equipment company Caterpillar. Blackjewel and related companies also owe \$60 million in mining royalties to the federal government and somewhere between \$10 and \$19 million to the Internal Revenue Service.

State and local governments have also filed claims. In Appalachia, the Kentucky Department of Revenue claims nearly \$20 million, the Kentucky State Treasurer filed for more than \$6 million, the West Virginia State Tax Department seeks \$10.5 million, Virginia Department of Taxation claims \$1.7 million, and Virginia's Buchanan County Treasurer seeks nearly \$3 million, among others.

Even former CEO Jeff Hoops, who is currently building a \$30 million luxury resort that includes a replica of the Roman Coliseum, is asking for money from his former companies. He filed claims for \$11 million in an undocumented loan that he says he gave Blackjewel, and another \$11.2 million that he claims is owed to other companies owned by him or his wife.

So what does all this debt mean for Blackjewel and Revelation mines in Central Appalachia moving forward? According to data from state mining agencies and the U.S. Office of Surface Mining Reclamation and Enforcement, Revelation Energy, Blackjewel and their related companies have about 300 permits in Central Appalachia. One mine site may require multiple adjacent permits and a permit may be anything from a haul

road to a 1,000-acre surface mine, so it is almost impossible to identify a specific number of mines. Of these permits, 213 are in East Kentucky, 72 are in Virginia, 12 are in West Virginia and two are in Tennessee.

In a July 25 court hearing, an attorney for Blackjewel stated the bankruptcy would convert to Chapter 7 liquidation following the auction. This could result in bond forfeiture of numerous permits, which means the companies would forfeit their reclamation bonds and leave the state to clean up the mine sites and any related water pollution problems. The auction occurred in early August, but the negotiated sales are still being finalized by the court. In the meantime, the Virginia Department of Mines, Minerals and Energy has initiated bond forfeiture at several mines held by the bankrupt companies.

On Oct. 3, a federal bankruptcy court approved the sale of the Belle Ayr and Eagle Butte mines in Wyoming to Contura Energy, which is passing them along to Eagle Specialty Minerals, an affiliate of FM Coal. The deal also solidified arrangements to pay former Blackjewel miners who were owed back pay (see story on left). The deal awaited approval by the U.S. Department of Interior at press time.

Continued on page 18



Joanne Golden Hill and Teri Blanton monitor water quality at Copperas Fork in Daniel Boone National Forest, where acid mine drainage is coming from a site owned by bankrupt Revelation Energy. Photo by Joanne Hill

## Bankruptcy & Cleanup

Continued from centerspread

Contura held the Wyoming permits before Blackjewel took over in 2017. But the transfer was never completed, so Contura still holds the reclamation liability for those mines. In mid-September, Contura proposed a plan where it would take over the permits and then transfer the property — along with \$90 million in cash — to Eagle Specialty Minerals. In exchange, Eagle would operate the mines and assume responsibility for \$237 million in reclamation liability and related collateral. The OSMRE made several concessions as part of the negotiations, including agreeing to not hold Contura liable for any violations that occur at the mines before Eagle Specialty Minerals begins operating the sites.

Earlier that week, the bankruptcy court had approved the sale of the Pax surface mine in West Virginia to Contura, and Blackjewel had requested approval for a private sale of six Kentucky coal mines and related permits to Black Mountain Resources, LLC. On Sept. 17, the bankruptcy court approved Kopper Glo Mining's purchase of 63 mining permits owned by Blackjewel — 34 permits in Kentucky and 29 permits in Virginia.

These mine permits being purchased out of bankruptcy represent the next transaction in the game of hot potato as these new permit-holders attempt to make a profit. But 199 permits across Central Appalachia have not been considered for sales. The majority, 161, are in Kentucky.

According to state inspection records, there are more than 8,000 unclaimed acres on the unsold permits in Kentucky, and more than 900 unre-

claimed acres in Virginia. Luckily, all but one of the unsold permits in Virginia are covered by full-cost surety bonds, meaning that a third-party company provides the full estimated cost of reclamation. That amount is supposed to be directly available for reclamation if the company abandons the permit, forfeiting the bond. In Kentucky, the unsold permits are covered in part by a third-party surety bond, and also participate in a bond pool, which would be available to cover any shortfalls in the reclamation cost.

It is difficult to determine actual reclamation liability, as reclamation costs vary by amount of land disturbed, type of mining and water pollution issues, among other factors. Presumably, the third-party bonds should represent the full expected cost of reclamation, at least for the Virginia mines, but bonding programs across Appalachia have been chronically underfunded.

OSMRE reviewed Virginia's bonding system in 2011 and found that the federal agency's average bond calculations were 26 percent higher than those determined by the Virginia Department of Mines, Minerals and Energy. In 2012, OSMRE ordered Kentucky to address chronic underfunding issues in its bonding program. The state addressed the shortfall by instituting the bond pool, which currently holds about \$46 million. If the states are still underestimating the real cost of reclamation, that could mean that sites don't get cleaned up, or it could put taxpayers at risk of paying the difference.

In part two, we examine problems stemming from two mine sites, which illustrate some of the safety risks and environmental damages behind the numbers and dollar figures.

## Workers Push for Pay

Continued from centerspread

that bankruptcies just seem part of the norm now.

"When these coal places shut down, it's hard on communities; businesses close," says Bush. "These small communities thrive on coal. And once it's gone, the community dries up."

Former Blackjewel employee and Pound, Va., resident David Phillips recalls that mine management was vague the day that the companies filed for bankruptcy.

"They said that they were going to

work through it, and nobody was going to get laid off or anything like that, we were just going to work through the bankruptcy," says Phillips. "Well, we went underground, and we were probably under there almost three hours, and they told us to come outside and that nobody was to be on the premises."

Managers then told the miners that they would return to work on Monday, July 8, according to Phillips. But while he was vacationing with family for the 4th of July, Phillips discovered that his account balance was negative \$1,900.

"Luckily I was with my parents, and they helped us get back home," he says.

## Part 2: Acid Mine Drainage in Kentucky

By Matt Hepler, Environmental Scientist for Appalachian Voices

To understand the situation the state could face in cleaning up mine permits liquidated by bankruptcy, travel to the Daniel Boone National Forest in McCreary County, Ky., where Copperas Fork and its tributaries often run a bright orange due to acid mine drainage originating from the mined land upstream owned by Revelation Energy.

For the past few years, volunteers Teri Blanton and Joanne Hill have been testing water quality at Copperas Fork through The Alliance for Appalachia's Appalachian Citizens Enforcement Project, which facilitates water quality testing of public waterways below coal sites. Following some initial water



Contaminated water runs from an old coal-washing site, under a highway and into a wildlife management area in McCreary County, Ky. Photo by Joanne Hill

testing, Hill and Blanton informed the Kentucky Energy and Environmental Cabinet's Department for Natural Resources of the acid mine drainage problem in the creek.

Acid mine drainage forms when sulfur compounds in shales and coal such as pyrite are exposed to oxygen and water, beginning a series of chemical reactions that create sulfuric acid and lower the water's pH, or measure of acidity. As the sulfuric acid travels downstream, the pH level rises and it picks up trace amounts of metals like iron, manganese and aluminum from the rocks. When the pH rises above 3.5, ferric iron precipitates out of the solution, giving the water a characteristic yellow and orange color. Once these acidic seeps begin they can last for decades, causing environmental harm and saddling local residents with unhealthy, contaminated water.

Federal mining law gives citizens the option to go with an inspector on a mine site inspection that results from their complaint. On May 1, I joined Blanton and Hill to accompany a mine inspector onto the two permits that make up Revelation's Greenwood processing facility. During the inspection, they saw several sets of ponds with the characteristic orange color of acid mine drainage. Those ponds were not discharging at that time, and the inspector stated that Revelation was pumping the ponds into an upper reservoir to form a closed loop and prevent water from leaving the site.

This system does not treat the acid mine drainage — it only prevents contaminated water from flowing off-site. But

Continued on next page

miners have moved to find mining jobs, Phillips does not want to uproot his family and has taken up odd jobs here and there in the meantime. He says that if not for his parents and his wife's job, they would have lost the house.

"Having to struggle trying to get our kids new school clothes and stuff like that, it just shows you that companies now, they don't care about their people," he says. "And [former Blackjewel CEO Jeff Hoops] didn't care about us or he would've took care of us. We were just there to make him money, he didn't care one bit about us at all. We were just a number to him." ♦

While some former Blackjewel

## Bankruptcy & Cleanup

Continued from previous page

it complies with the law, as water needs to flow into public waterways before it is subject to water pollution regulations. The pumps are designed to stop the ponds from overflowing and releasing acid mine drainage into the streams below. It was obvious from the spillway of pond 13 that this had happened in the past.

Though Blanton, Hill and I had tested the creek's water quality downstream on public land, the inspectors would not permit us to take water samples on the mine site. Instead, a hydrologist sampled locations on the mine site at our request. However, despite filing a Freedom of Information Act request in May, we have not obtained the information the hydrologist collected.

On July 1, a couple months after the inspection, Revelation Energy and its affiliate Blackjewel declared Chapter 11 bankruptcy and workers were suddenly laid off.

Three weeks later, the creek was more orange than usual. I conducted follow-up water testing in the national forest, and Blanton called the inspector again. The inspector found that the pumps were no longer operating and that Revelation was discharging polluted water from their ponds into tributaries of Copperas Fork. He issued four cessation orders to the company, citing significant, imminent environmental damages. Independent lab testing of our stream samples also showed unacceptable levels of manganese and pH.

This year wasn't the first time that Blanton and Hill reached out to Kentucky officials about acid mine drainage near the old Greenwood coal-washing facility. Hill explains that they initially contacted state regulators about orange runoff leaving the site in 2016, but an inspector who visited the area disagreed and said the polluted water was within the permit boundaries.

Hill is frustrated that regulators did not act after their first complaint in 2016.

"Why didn't they try and do this then and we might could be working on doing something [to fix it] already?" she says.

Now, it is unclear what impact these cessation orders will have on the site, as Revelation is still in the middle of its bankruptcy proceedings. Still, this acid mine drainage violation highlights several concerns related to reclamation, bonding and bankruptcy.

## The Kentucky Outlook

One possibility is that more mine permits held by Blackjewel, Revelation and their related companies could go into bond forfeiture.

In a court document filed in early August, Indemnity National Insurance, a surety company that holds \$115 million of the bankrupt companies' reclamation bonds, objected to the sale of some of Revelation's assets. Indemnity National stated that the environmental liabilities — in this case thousands of acres of unreclaimed mined land — were treated as if they had zero value when the sale was considered, and that state regulatory authorities could be on the hook for hundreds of millions of dollars.

"At the end of the auction," the court document states, "the Debtors had sold mining operations in the East with bonded liability of approximately \$45 million and had failed to sell mining operations with bonded liability of approximately \$220 million."

The bankruptcy auction ended with no purchasers for the two permits at the Greenwood coal processing facility, and it is unclear what happens next. The two Greenwood permits are bonded by Lexon Insurance Company at just under \$3 million.

Still, bonding does not always cover the cost of reclamation liabilities. A 2017 report from the Office of Surface Mining Reclamation and Enforcement found that Kentucky's bonds only covered a little more than 50 percent of the actual costs associated with mined land reclamation. In January 2018, OSMRE approved some changes to strengthen Kentucky's bonding programs — but it did not approve of the state's approach to determining the cost of long-term treatment of mine drainage.

Kentucky bases its bond amounts on an assumption of what 20 years of water treatment would cost, but the federal agency found that the state did not demonstrate that the 20-year benchmark would be adequate to protect water quality. For example, in Tennessee, where the mine reclamation program is federally managed, the agency maintains a separate fund for water quality issues like acid mine drainage based on an assumption of 75 years of water quality treatment. OSMRE wrote that the law does not "provide any exceptions to the requirement to post a bond that is fully adequate to cover the cost of reclamation, including water treatment."



The ditches meant to contain runoff from the unreclaimed Aily Branch mine are clogged with sediment, which caused this berm to burst and send a torrent of mud and debris toward the Mitchells' home this summer. Below, a mine permit sign. Photos by Willie Dodson

Kentucky does not have a federally approved long-term water treatment plan in case places like the Greenwood processing plant surrender their bonds. This process, known as bond forfeiture, occurs when regulators seize monetary resources provided by a company in order to fund reclamation when the mine operator fails to perform such work itself, either through bankruptcy or neglect.

A 2018 report from The Alliance for Appalachia outlines that Kentucky and

other Central Appalachian states have insufficient bonding mechanisms to deal with the declining coal economy and widespread bankruptcies of many mines at once.

"I am very concerned about this bankruptcy and the impacts it will have on the streams and wildlife in the Daniel Boone National Forest," Joanne Hill says. For now, she and Teri Blanton will keep watch over Copperas Fork and wait and see how the bankruptcy affects cleanup.

## Part 3: Bond Forfeiture in Virginia

By Willie Dodson, Central Appalachian Field Coordinator for Appalachian Voices

In Southwest Virginia, bond forfeiture is underway for several of the bankrupt companies' permits. Bond forfeiture is the most severe enforcement action available to mining regulators, and it is extremely rare.

On Aug. 1, Virginia's Department of Mines, Minerals and Energy initiated bond forfeiture on four coal mining permits held by bankrupt Revelation Energy and its affiliate Blackjewel. On Aug. 12, the DMME initiated forfeiture on a fifth Revelation permit. Of these five mining permits, only one was being purchased by another coal company as of press time in early October. The other four appeared headed for liquidation under Chapter 7 bankruptcy.

The permits currently in question are all located in Buchanan County, Va., and each has arrived at forfeiture after a history of unabated environmental damage, a failure to reclaim mined areas, or both.



Runoff and debris from the Aily Branch surface mine in particular has caused serious impacts to Dismal Creek and adjacent property dating back to 2014. The most recent incident of this sort occurred on Aug. 13.

## Aily Branch Mine

"This sort of thing has happened at least five times," says Bobby Mitchell, whose property abuts the Aily Branch mine. "We just had a short period of rain this time, but a big wave of water came down off the mountain. One other time the water coming off the mountain was so loud it woke up my dad, who really couldn't even hear too well. We had logs, big rocks, and mud all over our property that time."

Appalachian Voices, the nonprofit organization that publishes this news-

paper, became aware of community complaints around the Aily Branch mine in 2017 and visited the area to discuss local residents' concerns. After the most recent washout affecting Mitchell's prop-

Continued on page 27

# A Pilot Program's Uncertain Record

Some projects receiving federal funds for economic development near abandoned mines have strong community support; others, not so much

By Kevin Ridder

Once the headquarters of the Clinchfield Coal Corporation, the unincorporated community of Dante, Va., (rhymes with “paint”) in northwestern Russell County suffered with the decline of the coal industry. Once a thriving community of 6,000 with multiple stores, a hospital, a movie theater and more, Dante is now home to roughly 800 people.

“It’s the same sad story around Southwest Virginia,” says Russell County, Va., resident Jarred Glass. “The town was built on coal. That’s all it knew was coal, that’s what it relied on. There’s never been any other mechanism for anything else to have any draw to Dante.”

In early 2016, Glass, along with Dante residents and Russell County District Two Supervisor Lou Ann Wallace, set out to revitalize the area and formed the Dante Community Association, which began to gather local input on how to improve the area. The group saw a chance to breathe new life into Dante when Abandoned Mine Lands Pilot funds were made available in Virginia in 2017.

AML Pilot is an offshoot of the Abandoned Mine Lands program, which was created by the 1977 federal surface mining law. The law requires coal companies to pay a fee to the U.S. Office of Surface Mining Reclamation and Enforcement for each ton of coal produced. The federal agency then distributes annual payments to states and tribes to remediate mines that companies abandoned before the 1977 law went into effect.

After repeated calls to accelerate Appalachian mine remediation, Congress created the AML Pilot program in 2016. Today, the program authorizes annual payments from the U.S. Treasury, not the AML fund, to six Appalachian states and three tribes in an effort to foster economic development near mines abandoned before 1977. The states of Kentucky, Pennsylvania and West Virginia received \$25 million each from the AML Pilot program in 2019, while Alabama, Ohio and Virginia received \$10 million apiece. The Navajo Nation, Hopi Tribe, and Crow Tribe



The community of Dante, Va., is building a walking and biking path and an ATV trail with AML Pilot funds. Above, a new sign welcoming visitors to Dante, Va. At left, the first general store in the community in more than a decade. Photos by Kevin Ridder

each received \$3.3 million. Unlike the traditional AML program, no environmental remediation is required for projects funded through the pilot program.

Some of the projects funded by the program have occurred with community input and been well-received. In other cases, communities left out of the process have found that the pilot grants are going to projects supported by local elites with little grassroots support.

Although Dante did not secure funding in the 2017 round of proposals, the community applied again in 2018 with help from Appalachian Voices, the publisher of this newspaper, after securing several grants from other sources for projects including the recently completed construction of a new playground and a stone welcome sign. The association has also received grants to install bike racks and trash cans and to restore a historic train depot in the center of town.

In March 2019, Virginia awarded the association \$269,000 in AML Pilot funds to seal several mine portals and to convert former coal-transportation infrastructure into an 8-mile walking and biking path, and a 30-mile ATV trail expected to connect with trails in the nearby town of St. Paul.

“We’re left with all these old railroad tracks and tram roads and everything else,” says Glass. “The tracks and all those things are gone, but we’re left with all these flat roads, basically, that weave through the mountains. The framework for trails and things are already there.”

Glass states that ATV riding is a big draw to the area.

“If you come in to St. Paul on a Friday or Saturday morning, you’d be surprised how many people come in from out of the area to ride,” he says. “We want to be able to continue that in Dante.”

“Especially for that much mileage, Russell County and the immediate area doesn’t have anywhere like that to offer,” Glass adds.

In addition to drawing out-of-towners to the ATV trails, Glass notes that the trails will showcase Dante’s history as a coal town. Although the mine portals will be closed, the entrances will be cleaned off to give trail-goers an idea of what they looked like. The trail will also go right behind the Dante Coal and Railroad Museum.

Jarred Glass describes local talk of opening up short-term rentals and possibly putting in a campground.

“They’re looking at the big picture of the next few years of what Dante could look like,” says Glass.

Sitting outside the newly opened Dante General Store, it’s easy to see how close-knit the small community is. Residents sit down and chat for a spell with store owners Dennis and Mildred Porter, and just about every driver honks and waves as they pass. Before the couple raised the modest metal building this summer that sells everything from food to front doors, residents had to drive seven miles to St. Paul.

“We come up here and built this right here, no planning whatsoever, the Lord just spoke to us and said go help them people,” says Dennis Porter.

A former coal and hard rock miner,

Porter says that Dante was “a thriving town” when he got his first job in the coal mines in the 1970s. Knowing that much of the community’s population was aging and dealing with problems related to poverty, the couple set out to give back to Dante.

Dennis Porter says that the Dante Community Association is “a wonderful thing,” and especially lauds county official Lou Ann Wallace’s help in starting to get Dante back on its feet.

“These people here are struggling,” says Porter. “I didn’t have no idea just how bad it was. So we’re going to try and dedicate all the service we can to help them. With Lou Ann’s help, we can make it work.”

## AML Pilot So Far

Joey James is a senior strategist with Downstream Strategies, a consulting firm that has assisted several communities applying for AML Pilot funding. He states that the program grew out of a pillar of former President Barack Obama’s POWER+ program.

“Unfortunately, the POWER+ program didn’t come out in the way that we expected it to, but, good for us, there were people within Congress that saw the value in economic revitalization of these under-utilized and often harmful sites,” says James. “The whole idea was to pilot the idea of having some sort of economic development program aimed at revitalizing these specific areas.”

According to James, AML Pilot is much more open to the public than the traditional AML program.

Continued on next page

## AML Pilot Program

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“These are projects that are supposed to have originated from innovative thinkers within these communities, whereas projects through the traditional AML program, which is important, are often coming on recommendations from state agencies,” he says, noting that economic development is not typically a part of traditional AML projects.

James explains that each state has a large amount of discretion as to how they distribute AML Pilot funds so that each state can decide whether to prioritize environmental cleanup or economic development.

But this level of discretion can lead to questionable AML Pilot projects, especially when states don’t seek out public input.

“If there’s not as much public outreach, I think it leans more towards a political decision to fund certain projects — or it comes down to pure nepotism,” says James, noting that Kentucky is “ground zero” for these types of issues.

The AML Pilot program is similar to the RECLAIM Act, a bill supported by Appalachian Voices and others that would accelerate the distribution of \$1 billion from the AML fund to states and tribes for projects that involve both mine reclamation and economic development. The U.S. House Natural Resources Committee passed the bill in May, and it has yet to receive a full House or Senate vote. The bill had 65

cosponsors in the House and six cosponsors in the Senate as of press time in early October.

While the AML Pilot program does not require community input before allocating funding, the RECLAIM Act would mandate a process for public engagement before funds are released. And while projects under the pilot program frequently include environmental remediation, they are not required to do so, whereas remediation would always be required under the current RECLAIM Act.

## Questionable Projects

On Sept. 5, U.S. Rep. Hal Rogers (R-KY) and Kentucky Gov. Matt Bevin announced \$34.4 million in AML Pilot funds for 20 economic development projects in Eastern Kentucky that include a children’s hospital and a drone testing facility. The funds, as well as several other grants, were announced at the 2019 Shaping Our Appalachian Region, or SOAR, Summit in Pikeville. One of the AML Pilot grants provides \$2 million towards new infrastructure for the southern portion of the Martin County Water District.

The rural county has struggled with leaky and contaminated water lines, water outages and more for years. But Ricki Draper with local group Concerned Citizens for Martin County states that the money will not be a boon for residents, and that it won’t be enough since fixing the district’s water problems would cost an estimated \$13.5 million. Most of the new \$2 million



About 40 residents attended this Sept. 12 Martin County Concerned Citizens meeting to discuss how to address the area’s numerous drinking water problems. Read the group’s new water affordability study for Martin County online at [tinyurl.com/martincountywater](http://tinyurl.com/martincountywater). Photo by Roger Smith/The Mountain Citizen

grant is slated for a new booster pump station and a 250,000-gallon storage tank that Draper says will primarily be used for a high-security federal prison.

“They say it’ll help the residents and increase revenue because it’ll be able to provide water to the prison, but the prison has always been promised as a cash cow and has never delivered,” says Draper.

According to Draper, the problem that most Martin County residents want to see addressed is repairing residential water lines — and none of the AML Pilot money has been earmarked for that purpose.

This isn’t the only federal money Martin County has received for water system improvements. At the 2019 SOAR Summit, the U.S. Army Corps of Engineers gave nearly \$2 million to improve water service to an area with 250 homes that is also near the prison and an industrial park. Officials announced \$3.4 million in AML Pilot funds in 2018 to repair and improve the district’s water treatment plant and intake equipment. And in 2017, the Appalachian Regional Commission awarded \$1.2 million to replace residential water lines.

As for 2019 AML Pilot grants, officials allocated \$3.37 million in AML Pilot funds for the Eastern Kentucky Business Park in Martin County. The money would be used to build and renovate infrastructure in the park including the construction of a 33,000-square-foot facility for future interested companies.

Three facilities are currently sitting empty on the 300-acre site, and only two companies are in operation there.

As far as the planning process for

AML grants, Draper states that public officials need to ask the community what is needed.

“There is zero participation as far as public input from residents,” says Draper, noting that many community members expressed outrage about the projects at a Sept. 12 community meeting.

“A lot of people were saying we don’t need this, that this money just keeps going to the same people and the same projects; it doesn’t help the community,” she continues. “I think really only the local elites are in favor of this.”

Nina McCoy, chairperson of Martin County Concerned Citizens, argues that AML Pilot money should be used to help the community rather than large businesses.

“It is high time the voters of this region demand a new vision for how to use public money for the common good,” said McCoy in an email. “No self-respecting industry will move good jobs to an area where their workers cannot depend on safe, clean, reliable drinking water.”

In June, the U.S. Bureau of Prisons withdrew plans to build a \$510 million federal prison on a former mine site in Letcher County, Ky., stating that more analysis of environmental concerns was needed. Kentucky awarded the project \$4.5 million in AML Pilot funds in late 2018 to build water infrastructure for the prison and surrounding homes.

Attorneys filed suit against the agency in November 2018 on behalf of 21 federal prisoners, claiming that the prison would harm the environment

Continued on page 22

## AML Pilot Program

Continued from page 21

and expose inmates and employees to health risks associated with the site and a nearby active coal mine. U.S. Rep. Hal Rogers has been pushing for the prison — which would have been his district's fourth and the most expensive in U.S. history — for more than a decade.

"The only sensible reason that seems to support the [prison] is to satisfy Representative Hal Rogers' pork barrel politics so that federal tax dollars can be spent on construction and development contracts with his constituents," reads the lawsuit against the prison.

The Bureau of Prisons projected the facility would house roughly 1,200 inmates and create 300 jobs, which prison supporters argued the region desperately needed. But the Letcher County Governance Project, a local group formed in opposition to the prison, argues on their Facebook page that a prison would not provide positive economic development for the county.

In July, Ada Smith with the Letcher County group told The Appeal that the campaign against the prison was meant to underscore the feeling that "the federal government isn't listening to what people want to do here." She added that the campaign has been "a beautiful process in trying to showcase that there is a lot of interest in federal support of economic development in this region but this isn't what people were dreaming of."

Joey James with Downstream Strategies says the prison "goes against the spirit of AML Pilot being something that is supposedly designed to drive innovation in these rural communities, not lock us up."

In contrast to Kentucky, James calls Virginia's AML Pilot program the "gold standard" for projects.

"It's actually kind of surprising, because Virginia has a smaller amount of money than what Kentucky and West Virginia are dealing with; only \$10 million compared to \$25 million," he says.

### Wise County

In 2018, the City of Norton in Southwest Virginia received \$3.5 million in AML Pilot funds to transform a 200-acre former mine into an industrial park. Appalachian Voices assisted in the grant application. A portion of the funds will be used to tear down a dangerous, crumbling highwall on-site that is ad-

acent to a four-lane highway.

Norton City Manager Fred Ramey says that the city hopes to attract advanced manufacturing companies.

"Our goal is to create as many high-paying jobs that can accommodate our assets and our labor pool that we have in not just the city but in the region so we can replace a lot of [coal] jobs," says Ramey.

Industrial parks on former mine lands are typically a risky investment since mines are usually located far from utilities and transportation infrastructure, something that the site in Norton does not lack. In addition to necessary utilities infrastructure already located nearby, Norton is situated at the intersection of two major four-lane highways.

The industrial park would be owned and managed by a regional group of local governments including Norton and the counties of Wise, Lee, Scott and Dickenson. Ramey estimates the project will create roughly 1,700 jobs once companies take up residence. Ramey expects that dismantling the highwall will begin this fall and that construction on building sites will begin in 2020.

"The biggest benefit is not just to the city of Norton," says Ramey. "We really believe that if this is successful, it's going to be a huge benefit to the larger region as a whole."

Elsewhere in Wise County, a 3.5-megawatt solar farm is slated to be built on a reclaimed coal mine that was strip mined in the 1980s and power a federal data center. The project was awarded a \$500,000 AML Pilot grant in 2019, and Appalachian Voices assisted with the application process. To read more about the Wise County solar farm, visit [appvoices.org/WiseCountySolarFarm](http://appvoices.org/WiseCountySolarFarm).

### West Virginia

In late 2018, West Virginia granted \$3 million in AML Pilot funds for the construction of an 8.5-mile rail-trail along the Cheat River. The funds were awarded to Friends of the Cheat, a nonprofit organization dedicated to restoring the river, which once ran orange with acid mine drainage.

"We're excited to be able to share this river corridor with a lot of folks, to show them the work that we've done and what the state has done to revitalize the Cheat River," says Friends of the Cheat Associate Director Owen Mulkeen.

Instead of environmental remediation, however, this project, like other



Officials plan to remove this dangerous highwall next to a four-lane highway in Norton, Va., as part of an AML Pilot project. Photo by Kevin Ridder

West Virginia AML Pilot projects, will focus primarily on economic development. In addition to transforming unused railroad tracks into trails alongside the river into a non-motorized path, Friends of the Cheat plans to implement a grant program where local businesses can apply for grants up to \$5,000. The organization plans to hire a part-time coordinator and start an internship program to assist with community development related to the trail.

While portions of the Cheat River watershed have been reclaimed, there remains a lot of work to be done. Mulkeen states that the trail will branch off to an area where hikers can see an open mine portal surrounded by rocks stained bright orange by acid mine drainage.

"We are doing a spur trail from there to kind of educate the public or visitors on the history of mining and reclamation in the area," he says, adding that it would likely cost more than \$4 million to clean up the portal site and that the state has yet to come up with concrete plans to address the issue.

The project has received public support.

"Local folks are excited about this, we had over 35 letters of support for this project," says Mulkeen. "We had one from Sen. Manchin all the way down to folks who just wanted to see this project happen."

Mulkeen states that Friends of the Cheat recently applied for AML Pilot funding to create an educational trail leading to unremediated mine portals. He says they plan to revamp the former site of a coal preparation plant into a destination-worthy trailhead by tearing up asphalt, planting native trees, and adding lighting and park benches. ♦

This would be the second West Virginia rail-trail funded by AML Pilot grants. In June 2018, the town of Whitesville, W.Va., received \$2.25 million in AML Pilot funds to build the first eight miles of the future Clear Fork Rail Trail on unused railroad tracks. The idea for the trail sprung up in a 2015 community meeting hosted by the nonprofit West Virginia Community Development Hub's town revitalization initiative.

The town expects the trail to span a little more than 15 miles with the possibility for private bicycle rentals and shuttle services to and from Whitesville, according to The Hub.

Congress votes on whether to reauthorize the AML Pilot program annually, and has voted in favor of the program for the last three years. Each year it is approved, states are required to submit proposals for pilot projects to the federal government by Sept. 30, though some do so much earlier.

A vote on AML Pilot's reauthorization is expected in early 2020. Meanwhile, the RECLAIM Act, which would accelerate the distribution of \$1 billion from the AML fund to state and tribes for reclamation projects that also provide economic opportunity, awaited a full vote in the House as of press time.

On Oct. 31, the Reclaiming Appalachia Coalition is expected to release a new report detailing current and future projects planned for reclaimed mine lands. The coalition, which includes several environmental groups including Appalachian Voices, released a similar report in 2018. A public webinar will be held at 10 a.m. on Oct. 31 to coincide with the release of the report. Register at [tinyurl.com/rac-report-webinar-2019](http://tinyurl.com/rac-report-webinar-2019) or visit [appvoices.org](http://appvoices.org) for updates. ♦

# The Black Lung Association Responds to the Deadly Disease's Rise

By Kevin Ridder

Once a month, the back room of the Mt. Zion Church in the unincorporated community of Dawes, W.Va., plays host to the Kanawha County chapter of the Black Lung Association. Like other chapters, the group is dedicated to helping miners obtain healthcare benefits through education and advocating for legislation.

The Kanawha County chapter was formed in early 2019, making it one of the newest chapters of the roughly 50-year-old association. When the organization was founded, members were focused first on convincing legislators that the fatal, incurable condition caused by overexposure to coal and silica dust was an occupational disease and that those afflicted and their families should receive workers' compensation. Once a miner is deemed eligible for black lung healthcare, federal law stipulates that the coal company that last employed the miner for at least one year is responsible for doling out monthly payments. If the company is unable to pay, usually due to bankruptcy, then the federal government pays through the Black Lung Disability Trust Fund.

Today, members are mainly focused on shortening the legal process to receive black lung benefits — an uphill struggle against bureaucracy and coal company lawyers that can often take a decade or more — and on securing funding for the Black Lung Disability

Trust Fund. The trust fund helps support coal miners and their surviving dependents in cases where the miners' employer has either gone bankrupt or has been found not responsible. Set up in 1977, the trust fund is funded by an excise tax paid by companies per ton of coal sold domestically at a tax rate that was unchanged for more than three decades. But Congress failed to extend this tax rate before the end of 2018, resulting in a 55 percent cut to the tax.

In Kanawha County, nearly 20 former coal miners, their family members and others gather around purple and white tables to discuss upcoming events and the goings-on of the chapter. Talk turns to politics as the group begins to discuss the chapter's participation in a July visit to Congress by more than 150 coal miners with black lung or their loved ones from across Appalachia.

The coalition of coal miners and their supporters made the long bus trip to call for a 10-year reinstatement of the excise tax rate and stronger workplace protections to prevent the disease. In the capitol, the delegation met with 22 congressional offices and held a roundtable discussion that included four U.S. senators, miners and the president of the United Mine Workers of America.

Federal and state legislators have introduced new bills meant to help coal miners with black lung (see below). But many



Jimmy Moore, above, of the Whitesburg, Ky., Black Lung Association. Retired miner Leonard Pettry, left, at a Dawes, W.Va., BLA meeting. Photos by Kevin Ridder

Kanawha County Black Lung Association members and others expressed frustration that Senate Majority Leader Mitch McConnell (R-KY) only gave a few minutes of his time to the visiting miners and offered no assurances that he would support the excise tax extension.

"I think we left a good impression on everybody but Mitch McConnell," says Jimmy Moore, president of the Black Lung Association chapter in Whitesburg, Ky.

Rates of black lung disease have skyrocketed in recent years. According to an August 2018 study conducted by federal researchers, one in five Central Appalachian coal miners who have spent 25 years or more working underground suffer from black lung disease, a 25-year high.

Kanawha County Black Lung Association President Jerry Coleman worked underground for 37 years. As a result, he was diagnosed with black lung and lung cancer.

"[Black lung] will rob your life," says

Coleman after the chapter's meeting. "It takes things away from you that you should be able to do. I can't hunt because I can't go up a hill, I can't play with my grandkids; it robs you of everything."

"If I had to do it, I wouldn't do it again, work in the mines," he adds. "My health is worth more than the money."

### A History of Activism

Although miners had implored the United Mine Workers of America to declare black lung an occupational disease since at least 1942, the union had yet to do anything about it by the late 1960s, according to a West Virginia Encyclopedia article by West Virginia University history professor Paul H. Rakes. After a mine explosion killed 78 miners in November 1968 and politicians and the UMWA president defended the compa-

Continued on page 24

## Black Lung Legislation

State and federal legislators have introduced several bills in 2019 that support black lung benefits. Bills that awaited decision in committee as of press time in early October are marked with an asterisk.

### Federal

- S.2205\*, The Black Lung Benefits Improvement Act: Introduced by Sen. Robert Casey (D-PA), S.2205 would create a fund to pay up to \$4,500 in attorneys' fees and up to \$3,000 in "reasonable and unreimbursed" medical bills while the case is established, require all parties to disclose all medical evidence, strengthen criminal penalties for false statements during the case, and more.
- S.27\*, The American Miners Act of 2019: Introduced by Sen. Joe Manchin (D-WV), S.27 would transfer additional funds to the United Mine Workers of America Pension Plan, extend and increase the excise tax that funds the Black Lung Disability Trust Fund, and more.

- H.R.170\*: Introduced by Rep. Morgan Griffith (R-VA), H.R.170 would amend the Black Lung Benefits Act to preserve the Byrd Amendments of the Affordable Care Act in the event that the ACA is repealed, making it easier for miners who worked underground for 15 years and their widows to receive benefits.

- H.R.3876\*, The Black Lung Benefits Disability Trust Fund Solvency Act: Introduced by Rep. Bobby Scott (D-PA), H.R.3876 would restore the former rate of the excise tax on coal companies that funds the Black Lung Disability Trust Fund and extend that rate through 2029.

### West Virginia

- Resolution 59 requests the state to study the causes of increased black lung rate, determine the best way to compensate those affected, implement policies to reduce disease risk, and determine ideal testing methods to diagnose black lung. The state Senate passed the resolution in March, and it awaits decision in the House.

- S.B.260\* would allow miners to receive partial disability awards if they are diagnosed with black lung but not found to be impaired by the disease.

- S.B.144\* would create a state black lung healthcare program that would provide a minimum of \$300 a month to miners who establish that they were exposed to coal dust for at least 10 years.

- H.B.2588\* would clarify that there is no time limit for a miner to request a review from a state board that assesses work-related pneumoconiosis compensation cases, challenging a recent West Virginia Supreme Court decision.

### Kentucky

- H.B.75\* would repeal a 2018 state law that halved the amount of doctors that miners could visit to obtain a black lung diagnosis.

## Black Lung Association

Continued from page 23

ny, miners decided to take matters into their own hands.

In December 1968, a group of miners in Montgomery, W.Va., formed the first chapter of the Black Lung Association, according to Rakes. Hundreds of miners in southern West Virginia went on strike the following February to demand mine safety standards and workers' compensation for black lung disease while the state legislature was discussing mine legislation. When it looked like the state House was going to pass weak mine safety standards, more than 40,000 West Virginia coal miners went on strike, leading to the passage of a stronger bill.

Later in 1969, Congress passed the Federal Coal Mine Health and Safety Act, which enacted the first mine safety standards including limits on dust levels. The law also required companies to pay compensation for miners disabled by black lung or their widows, with a federal fund established as a backstop. The law also created what would become the U.S. Mine Safety and Health Administration and stipulated that if a coal miner was disabled from a lung disease and had mined for at least 15 years, they were eligible for benefits unless their employer could prove the impairment was not a result of mining.

Rakes writes that, by the early 1970s, black lung benefit payments were costing the federal government nearly \$1 billion per year. This led to the creation of an excise tax on coal companies in 1977 for each ton of coal mined to support the Black Lung Disability Trust Fund. Almost immediately, the trust fund went into the red — today, it's more than \$4 billion in debt.

In the 1980s, President Ronald Reagan's administration enacted much stricter black lung disability eligibility requirements, which included ending the presumption that miners who were disabled from a lung disease and worked for 15 years had black lung and making it more difficult for widows to receive benefits. This meant miners needed to be diagnosed by a federally approved doctor before getting benefits.

John Cline, an attorney based in Piney View, W.Va., has represented coal miners in black lung benefits cases since the early 1990s. He says that the Reagan-era eligibility requirements "put a

real hardship on [widows] at a bad time."

"When the miner passed, the widow not only lost her spouse, but lost the black lung benefits at the same time," says Cline. "And then they had to file again to establish their own entitlement to benefits, which could take a long time, usually years, to establish that, and it was virtually impossible to establish it if they died of a heart attack or a car accident or something other than a pulmonary death."

"All through the 1990s, the Black Lung Association was making annual trips with support from the UMWA to Washington to lobby for the reinstatement of the widows provision and the 15-year presumption," he continues. "So the bill would be introduced every year through most of those years."

Cline states that the continued activism of the Black Lung Association was critical for the inclusion of the Byrd Amendments in the 2010 Affordable Care Act, which re-established the 15-year presumption and made it so the miner's spouse automatically received widow's benefits after the miner's death. However, it can still take years for a miner's black lung claim to process.

### A Long Process

Once doctors diagnosed Kanawha County Black Lung Association President Jerry Coleman with the disease, he waited almost seven years before he was awarded black lung benefits. Unfortunately, this story is all too common among miners with black lung and their surviving dependents.

When a miner or their survivors file a claim to receive federal benefits, a U.S. Department of Labor physician performs a medical exam to determine if the miner has or had black lung disease. After allowing the miner and the coal company to submit any additional evidence, an agency district director either approves or denies a claim, typically after one year.

If the claim is approved, the coal company almost always appeals the decision, which can lead to the miner's request for benefits bouncing around in legal limbo for years.

"In five years, they're hoping you'll die," says Coleman. "Then they just got to pay your wife if you're married. If you ain't married, they don't pay nothing."

It took 14 years for Southwest Virginia Black Lung Association Founder Bethel Brock to receive his federal black lung healthcare. Now, he uses that experience to help other coal miners



Miners with black lung talk with U.S. Sen. Tim Kaine at the capitol during a lobbying trip in July. Roughly 150 miners and family members made the trip along with groups like Appalachian Voices and Appalachian Citizens' Law Center. Photo by Erin Savage

apply for benefits.

"We try to educate miners on and give them information on what they can do to win a case, and what they should or should not do," says Brock.

"The company lawyers drag it on so they can add to their bill," he adds. "They get paid win, lose or draw. We get paid if we win only."

Brock notes that this tends to deter lawyers from taking on black lung cases. Due to this and other reasons, only 42 percent of claimants are represented by lawyers during the initial black lung benefits eligibility determination.

Since founding chapters in Norton and Vansant, Va., Brock has worked to start up another chapter in Harlan, Ky.

"I think we can build this organization, and we're going to have to," he says. "The politicians understand numbers, and that's about it."

### Looking Forward

Now an author and Virginia Tech professor emerita of women's and gender studies, Barbara Ellen Smith came to West Virginia in the early 1970s to work with the Black Lung Association and has been involved in miners' rights ever since. Smith is currently working on a follow-up to her 1987 book, "Digging Our Own Graves: Coal Miners and the Struggle over Black Lung Disease."

With the ongoing decline in union mines, Smith states that the Black Lung Association's efforts to address the health needs of miners is critical.

"That kind of organizing just becomes more and more necessary," says Smith. "And the union is of course fighting the same battle for the Black Lung Disability Trust Fund, for pensions, for medical benefits. So there's kind of a

convergence because so much of the UMWA constituency is now retired."

As many mines are reduced to extracting thinner seams of coal, the amount of dangerous silica dust that miners breathe in has risen greatly in the past few years. This, combined with coal companies allegedly submitting tampered dust samples and working miners longer hours, has led to a massive resurgence in both black lung and progressive massive fibrosis, or complicated black lung, an advanced stage of the disease.

"The horrible rates of the disease really cry out for a silica standard in coal, and they cry out for much more vigilance and monitoring of dust levels," Smith says.

She states that the decline in union mines has made the profession a much more dangerous one.

"There remain union mines, but they're few and far between," she says. "[The UMWA's decline] was very much a matter of certain coal operators deciding that they wanted the flexibility to run their mines absolutely as they saw fit."

In regards to the resurgence in black lung disease, Smith says, "Obviously, silica is an issue. But I would also argue that the decline of the union is fundamental. The human element does control the production of dust."

Jimmy Moore, president of the Black Lung Association chapter in Whitesburg, Ky., worked in a union mine for 22 years. He filed an initial claim for healthcare benefits in early 2019 and has yet to hear back. Moore's son, who worked in a non-union mine for about 27 years, suffers from complicated black lung disease.

"I was exposed to a lot of dust, but not like my son was," says Moore. "It's

Continued on page 25

THE APPALACHIAN VOICE

## Bankruptcies Highlight Concerns with Black Lung Benefits Fund

By Willie Dodson

When Blackjewel Energy crashed into bankruptcy this summer, the case gained notoriety for the company's affronts to working miners, but its impact on the imperiled black lung benefit fund is also troublesome.

According to court documents filed in July, Blackjewel failed to pay \$9.7 million in taxes to a federal fund that provides healthcare and disability benefits to miners with black lung whose employers have gone bankrupt.

To be clear: Blackjewel's workers cannot depend on Blackjewel to provide black lung benefits as the company has gone bankrupt, and Blackjewel has not paid nearly \$10 million in taxes to a fund that provides a safety net for workers in exactly that situation.

The bankruptcy court had not scheduled a motion to resolve this and other outstanding tax debts as of press time in late September.

Under the Black Lung Benefits Act of 1973, any coal company found

by the U.S. Department of Labor to be the "responsible operator" for a given miner's black lung affliction is required to provide healthcare and disability benefits for that miner. A 1977 law requires that companies pay a small tax on each ton of coal mined to maintain the Black Lung Disability Trust Fund — this is the tax that Blackjewel has failed to pay. Companies were historically taxed \$1.10 per ton for coal mined underground, and \$0.55 per ton for surface-mined coal. On Jan. 1, 2019, that rate was cut in half. The trust fund is already about \$4.2 billion in debt to the general treasury, and the federal government projects that debt will now exceed \$15 billion by 2050.

Blackjewel's failure to honor commitments to miners with black lung is not unique.

Patriot Coal was formed in 2007 and acquired numerous permits from Peabody Energy and Arch Coal that carried substantial obligations for

black lung benefits, retiree healthcare and pensions. When Patriot filed for bankruptcy in 2015, it left more than \$1 million in miners' benefits hanging in the balance.

Ultimately, the Department of Labor compelled Arch and Peabody to resume payments to black lung beneficiaries they had attempted to shove off onto Patriot, but who had never actually worked at a Patriot mine. In an attempt to continue dodging obligations to employees suffering from the fatal disease, Arch Coal unsuccessfully sued the DOL in federal court.

Benefits owed to miners for whom Patriot was found to be the responsible operator were offloaded onto the Black Lung Disability Trust Fund after the company's liquidation.

And earlier this year, Westmoreland Coal was granted permission by a Texas bankruptcy court to outright default on \$21.8 million in payments owed to black lung beneficiaries. These payments have now been add-



Retired miners with black lung wore shirts with this design during a July lobbying trip to D.C. The Black Lung Association has used the image for decades.

ed to the already-strained Black Lung Disability Trust Fund.

It appears that this ongoing barrage of bankruptcies will continue to jeopardize the payment of black lung benefits directly by coal companies, and rapidly push the federal Black Lung Disability Trust Fund further into debt. Read about how the Black Lung Association is responding beginning on page 23.

## Black Lung Association

Continued from page 24

supposed to be a law that you can't work more than 15-and-a-half hours in the mines, and my son would work 20 hours and go right on."

"I think when the unions started falling away, that's when the complicated black lung started coming up more, because they was working in more dust and longer hours, too," he adds.

Some states like Kentucky provide their own black lung benefits through the workers' compensation program. Moore says these are easier to access than federal benefits, and that his son is using the program.

"I love working [with the Black Lung Association], and I love coal mining," says Moore. "I did, and he did too. But then after you don't know the damage that it's doing to you, you think when you're young, you're invincible, and you can just take on the world I guess is what you might say."

Barbara Ellen Smith states that while the Black Lung Association is by no means a replacement for the union, it has served a very important purpose

for communities.

"They're a place to gather, to share information and to get help with federal black lung compensation claims," says Smith. "But also they perform a kind of social function for people whose local union has shut down."

Moore reiterates that he loves being involved in the Black Lung Association, and that he'll be turning 74 soon.

"I'm gonna be to where I can't go to Washington and fight for what we've got," says Moore. "But I really enjoy being with my brothers and each of us fighting for what we think is right for our self and for the widows, and for the young miners that has complicated black lung."

Meanwhile, the Black Lung Association continues to push for the passage of legislation to address the deadly disease and make it easier for those affected to obtain benefits (read about some of these bills on page 23). Moore emphasizes that organizing new chapters has been critically important in getting legislators' attention.

"I've been up there three times, fighting for it," he says. "I think it's a good thing, and we've got a lot of backing now." ♦



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# Pipeline Developers Push Back Against Grassroots Resistance

By Kevin Ridder

While the Mountain Valley Pipeline's environmental problems continue to stack up, developers are pushing forward on their plans to extend the unfinished 303-mile pipeline by another 73 miles from Pittsylvania County, Va., into North Carolina's Rockingham and Alamance counties. The proposed extension, called MVP Southgate, would also require a new compressor station to be built at the Virginia starting point.

In August, MVP Southgate developers sued five Alamance County landowners to gain access to their land for surveying. In total, the pipeline company has petitioned 12 residents of Alamance and Rockingham counties for land access. Hearings on four of the five new cases were scheduled to be held on Sept. 30, and Mountain Valley withdrew the fifth suit. A judge has so far granted access to three of the 12 properties, according to the Times-News.

The regulatory process for the potential new pipeline entered a new stage when the Federal Energy Regulatory Commission released their draft environmental impact statement for MVP Southgate in August. The public comment period closed on Sept. 16. Environmental nonprofit organization Appalachian Voices, the publisher of this newspaper, submitted a letter to FERC citing numerous water quality violations from Mountain Valley developers and stating that the pipeline would only benefit private companies and that an economic analysis shows it is not needed.

Members of Native American tribes in North Carolina have also spoken out.

"The proposed Mountain Valley Pipeline Southgate extension and construction through the northern part of Alamance County would destroy any remaining Native artifacts, burial mounds and ancestors left there," wrote Crystal Cavalier Keck of the Occaneechi band of the Saponi Nation in a Sept. 15 Times-News op-ed.

The thousands of people who voiced their opposition to the project were joined by the North Carolina Department of Environmental Quality. The agency submitted a scathing rebuke of the pipeline in response to the draft environmental impact statement, writing that MVP

Southgate is unnecessary and that FERC did not properly analyze clean energy alternatives to the fracked-gas project. The agency put MVP Southgate's application on hold on Sept. 23, stating that additional information was required and that a public hearing must be held before Dec. 22.

The U.S. Fish and Wildlife Service also raised concerns with the environmental analysis. In a Sept. 16 letter to FERC, Fish and Wildlife stated that there was not enough information provided for FERC or other agencies to make an informed decision.

FERC plans to issue a final environmental impact statement for the proposed pipeline in December.

## Mountain Valley Pipeline

Work continues along much of the Mountain Valley Pipeline's route, but legal challenges currently prevent construction at water crossings and national forests.

On Aug. 28, FERC ordered the U.S. Fish and Wildlife Service to review a permit allowing Mountain Valley Pipeline developers to harm threatened and endangered species in its path. This follows an Aug. 12 petition to the Fish and Wildlife Service from several environmental groups, including Appalachian Voices, asking the agency to reverse and review the permit. On Aug. 15, Mountain Valley voluntarily suspended certain construction activities in areas where work could harm threatened and endangered species.

The groups also requested that the agency suspend the permits during litigation, which the agency denied, citing Mountain Valley's voluntary suspension. The organizations stated that a voluntary suspension is not enough, observing that construction has been reported to continue. On Aug. 21, the groups filed a motion with a federal court to suspend the permit while litigation is pending.

"The Fish and Wildlife Service's original biological opinion was wholly inadequate to protect imperiled species in the path of the Mountain Valley Pipeline," said Jason Rylander with Defenders for Wildlife, one of the seven groups involved in the suit. "Further construction on the pipeline must cease while the Service con-



Above, MVP Construction near Virginia's Poor Mountain in early August. Photo courtesy of Appalachians Against Pipelines. At left, signs from the September Climate Emergency Tri-State Pipeline Strike in Roanoke, Va. Photo: Lara Mack.

ducts this necessary review of its impacts."

In July, Amy Blough, the widow of a Mountain Valley contractor who was killed by a falling tree in March 2018, sued pipeline developers for failing to provide a safe work environment. She states in the lawsuit that the companies did not mark dangerous trees and allowed workers to use manual tree-felling equipment instead of waiting for permits to use heavy equipment in order to meet a tight March 31 tree-felling deadline, according to the Pennsylvania Record.

## Atlantic Coast Pipeline

Construction on the Atlantic Coast Pipeline has been stalled for months due to ongoing court challenges. A legal battle over whether the pipeline can cross the Appalachian National Scenic Trail on federal land was unresolved at press time.

The U.S. Fourth Circuit Court of Appeals stopped construction across the trail in the George Washington National Forest and in the Monongahela National Forest in December. The federal appeals court ruled that the agency had violated two laws and did not have authority to give Atlantic Coast developers a right-of-way.

In June, the U.S. Solicitor General and Atlantic Coast developers asked the U.S. Supreme Court to hear the case. The West Virginia attorney general and representatives from 15 other states threw their support behind the plea.

On Oct. 4, the Supreme Court announced it would hear the case. No date for oral argument had been set at press time.

Meanwhile, pipeline opponents are calling on Congress to resist any attempts by Atlantic Coast developers to pass language into law that would allow them to

cross the Appalachian Trail on federal land.

On Aug. 13, two environmental groups petitioned the North Carolina Department of Environmental Quality to cancel a key water permit for the Atlantic Coast Pipeline. North Carolina Climate Solutions Coalition and Friends of the Earth argue that the department lacked information on the pipeline's potential expansion into South Carolina at the time of the permit's approval.

Additionally, the groups stated that nine additional natural gas projects are planned near the Atlantic Coast Pipeline's terminus in Robeson County, N.C. — a far cry from the two projects disclosed in the pipeline's original permit application. County residents are resisting a proposed liquid natural gas facility along with two supplemental pipelines that Duke Energy and Piedmont Natural Gas plan to build as connectors to existing infrastructure, according to Appalachian Voices' Ridge Graham.

"Duke-owned Piedmont Natural Gas wants to build this facility, which would pump out hazardous air pollutants like benzene, without an air permit by abusing state regulations for natural-gas-powered heaters," says Graham. "This facility is unnecessary and could hook up to the embattled Atlantic Coast Pipeline in the future."

## Tree-sit Reaches Landmark

Sept. 5 marked the one-year anniversary of the Yellow Finch tree-sit in the path of the Mountain Valley Pipeline in Elliston, Va. Over the last 365-plus days,

*Continued on page 27*

## Bankruptcy & Cleanup

*Continued from page 19*

erty, he lodged a complaint with the DMME and called Appalachian Voices for support. At this point, I visited Mitchell's property to survey the damage, and then asked the DMME for permission to conduct a citizen inspection at the Aily Branch permit. This inspection was granted, and on Aug. 27, I visited the site with two state mine inspectors.

During the inspection, I saw a large area of barren dirt and rock along a steep slope, graded down into the hollow above the Mitchells' home. Below this unreclaimed slope, ditches intended to catch sediment and control runoff were full of mud and rock to the point that they did not function. As a result, the earthen berm on the downslope side of one ditch had burst through, allowing a torrent of mud and debris to rush down the mountainside, rutting out a headwater tributary to Dismal Creek and accumulating in the Mitchells' yard. Another sediment pond had overflowed, damaging the mine's access road.

In response to the incident, the DMME issued two notices of violation to Revelation for failure to control sediment, and one for failure to maintain a haul road. But with Revelation bankrupt and workers shut out, there is no one on-site to remedy the situation.

These violations also occurred two weeks after the DMME had already initiated bond forfeiture on the mine, a move supposedly more extreme than simple notices of violations, but in reality proving to be equally impotent in the face of this particularly chaotic bankruptcy.

## Bad Bonding Practices

When dealing with chronic violators, the DMME and other regulators have typically entered into, and often

continually renewed, compliance agreements — compromise plans where companies promise regulators to eventually fix problems on a relaxed timeline. These compliance agreements and extensions often occur well before the specter of bond forfeiture enters the picture.

Why would regulators make a habit of kicking the can down the road like this? The strongest incentive is the fear that bonding amounts may be insufficient, and the forfeiture of bonds could require states to assume the massive liabilities associated with mine cleanup without the necessary resources to do so.

There are several ways coal companies skirt the requirement to post bonds that are adequate to fully fund mounting reclamation needs across the region.

Most egregious is the practice of self-bonding, by which a mine operator simply swears that they are capable of handling the cost of reclamation, without any actual transfer of cash into a secured account, and regulators agree based on the company's current financial health. Virginia outlawed this practice in 2016, but self-bonds are still in effect for 20 permits in the state that are held by the family of West Virginia Gov. Jim Justice.

Pool-bonding is when a company posts only a portion of a mine's estimated cost of reclamation into a pooled fund with other companies, on the assumption that while some bond forfeitures may occur, the total fund will remain solvent — a premise that is refuted in The Alliance for Appalachia's 2018 report, as well as a 2012 study funded by the state of Virginia. There are many pool-bonded mines in Virginia, including four permits held by Revelation.

The specific permits involved in the current Blackjewel and Revelation bond forfeitures are all bonded at the full cost of reclamation work — or at

least what the DMME estimates that cost to be. For the Aily Branch mine, that figure is \$10,747,600. These bonds are also backed up by sureties, which are insurance policies guaranteeing the payment of a debt.

The long history of violations on the Aily Branch permit provided the state of Virginia with ample cause to initiate bond forfeiture at an earlier stage when Revelation at least presented itself as financially sound. Instead, regulators allowed the company a lenient compliance schedule, which has now extended into the company's bankruptcy.

This should be a cautionary tale for the DMME and Virginia Gov. Ralph Northam, as other companies — notably, but not limited to, those associated with West Virginia Gov. Jim Justice — are currently on the same path towards insolvency. If, and quite possibly when, permits are revoked for Gov. Justice's family's self-bonded mines, the DMME would assume \$195 million in cleanup costs with no funds to perform the necessary work.

## Mystery Timeline

The DMME gave Revelation and Blackjewel, as well as their surety providers Indemnity National Insurance Company and Lexon Insurance Company, 30 days from the initiation of bond forfeitures to request a hearing reviewing the forfeiture decisions. The surety companies have requested a meeting to discern if they would like to take on reclamation of the permits in question or simply release the bond to the DMME. The agency is not considering this meeting to be a request for a formal hearing — such a hearing would allow a surety company, or permittee, to contest a forfeiture decision.

This meeting between the DMME, Indemnity National and Lexon has not yet been scheduled and will not be open to the public. According to DMME

spokesperson Tarah Kesterson, the forfeitures are on hold until the meeting takes place and there is no deadline for the finalization of a coal mine bond forfeiture anywhere in Virginia regulations.

This means the forfeitures are essentially on hold indefinitely. While Appalachian Voices is not aware of any statute regarding a meeting like this, Virginia law states that a "request for a hearing will not operate as a stay of the forfeiture decision." Ultimately, DMME may allow Indemnity National and Lexon to directly assume the responsibility of remediating violations and completing reclamation for these permits, or it may finalize the forfeitures and contract out the necessary work itself.

One of these five permits, though not the one above the Mitchells' home, is being purchased by Rhino Resource Partners, LP. The permit transfer was not complete at press time.

"The bond forfeiture goes away with the transfer but the company is responsible for correcting the violations that led to that forfeiture," the DMME's Tarah Kesterson wrote in an email. "We do give the new company a grace period to do the work. In some cases, the new company may want to change the reclamation and mining plan in the permit and that would require them to go through the permit revision process."

At this point it is not clear who will perform the needed work at the remaining sites, or when. In the meantime, a vast expanse of bare dirt and rock sits up a steep slope from Bobby Mitchell's home.

"If we get a real hard storm, it could be really dangerous," says Mitchell. "Not only could it flood the property, but it could actually hurt someone. I'd just like to see the mountain repaired all the way up. That's the only thing that's gonna really stop the problems we've been having."

*For updates, follow Appalachian Voices' Front Porch Blog at [appvoices.org/blog](http://appvoices.org/blog). ♦*

grow our power both as individuals and as a community," wrote representatives of the tree-sit in a Sept. 5 post on the Appalachians Against Pipelines Facebook page.

On Sept. 16, a judge dismissed assault charges filed by a Mountain Valley security contractor against protester Jammie Hale after watching a video of the incident in which Hale pointed his cane at a security guard.

Additional demonstrations continue to spring up along the pipeline's route. On Sept. 27, 75-year-old grandmother

Duff Benjamin locked herself to construction equipment in Montgomery County, Va., and stopped work for five hours before being arrested and meeting bail. Over two September days in Greenbrier County, W.Va., five protesters were arrested after locking themselves to construction equipment and stopping work for hours, according to Appalachians Against Pipelines. All met bail.

On Aug. 29, two demonstrators locked themselves to equipment and stopped work in Greenbrier County for

approximately two hours before being removed, cited for trespassing and released by law enforcement.

On Aug. 15, two protesters locked themselves to Mountain Valley Pipeline construction equipment and halted work for more than six hours. Both were charged with two misdemeanors, and one, a white woman, was released after meeting bail, according to Appalachians Against Pipelines. The other, a transgender man of color, was held without bail for several days before being released. ♦

## Electric Utility News From Around the Region

### Tennessee Valley Authority

Memphis Light, Gas and Water — the largest of the 154 local power companies that buys power from the Tennessee Valley Authority — is studying whether cutting ties with TVA would cut costs. If the Memphis utility left TVA, substantial rate increases for the other 153 companies would likely follow. A Sept. 11 analysis found that the Memphis utility could save more than 33 percent in power generation costs if it broke from TVA.

In a Sept. 22 article, the Energy and Policy Institute, a watchdog organization, stated that TVA is attempting to lock many of its local power companies into 20-year contracts to stop them from jumping ship. Most companies have contracts that are renewed every 10 years or fewer. The new contracts, which more than 125 local power companies had signed as of press time, require the companies to give a 20-year notice before leaving.

In August, the TVA Board of Directors approved a power generation plan for the federally run monopoly utility through 2030. TVA plans to retire 1.9 gigawatts of coal power by 2023 and evaluate the closure of another 2.2 gigawatts if cost effective. The utility also plans to add between 2 to 17 gigawatts of new natural gas capacity.

The utility's plan also mentions the

### Coal Company Seeks Mine Permit in TN Wildlife Area

The U.S. Office of Surface Mining, Reclamation and Enforcement, which directly controls surface mining in Tennessee, has reopened the permit process for a proposed 422-acre mine in Campbell County, Tenn.

Environmental groups Tennessee Clean Water Network, Sierra Club, Defenders of Wildlife and SOCM wrote to the agency to express their objections. The groups wrote, "The proposed permitted area falls almost entirely within the North Cumberland Wildlife Management Area ridgelines that the Department of the Interior has designated as unsuitable for coal surface mining in its December 7, 2016 decision."

possibility of adding up to 14 gigawatts of solar, but TVA recommended the inclusion of only 5.5 gigawatts to the board of directors.

### Duke Energy

On Oct. 2, the N.C. Senate unexpectedly voted on and passed S.B.559, a utilities bill backed by Duke Energy that includes a controversial multi-year rate plan. Critics, including Appalachian Voices, the publisher of this newspaper, allege the plan would smooth the way for Duke to charge ratepayers an additional \$23 billion over 10 years with less public accountability. Although state Senate rules stipulate that bills must be posted on the calendar at least 24 hours before a vote, legislators placed it right after starting the session and passed it 26-16. The N.C. House of Representatives had not voted on the bill as of press time on Oct. 3.

The latest bill resulted from a conference committee that formed to reconcile the versions that passed the state House and Senate. On Aug. 27, the state Senate struck down an amendment to S.B.559 that the state House had passed one week earlier. The amendment would have required a study of the bill's most disputed provisions, including the rate plan.

State campaign finance data shows that three of the five Senate appointees to the conference committee were among the top five recipients of Duke's campaign donations to state senators in the 2018 election cycle.

Triple H Coal, LLC, originally filed the permit in 2014, and the groups objected then as well. Their original concerns include the potential for new acid mine drainage problems, threats to human health in the area, harm to federally threatened blackside dace and damage to the hydrologic balance beyond the mine permit boundary. The groups urged the agency to consider the cumulative impacts to land, air and water from other nearby coal operations when evaluating this mine.

The agency is holding an informal hearing about the mine at 6 p.m. on Oct. 15 at the Jacksboro municipal building in Jacksboro, Tenn. — *By Molly Moore*

On Aug. 27, the N.C. Utilities Commission ordered Duke Energy to revise long-term energy generation plans for its two subsidiaries in the Carolinas and to potentially address state emission reduction goals. But the monopoly utility's Sept. 3 updates to the plans rely far too heavily on fracked gas, according to the Sierra Club's David Rogers.

While the utility projects adding 4.8 gigawatts of solar and battery storage over the next 15 years, it also plans to add 12.1 gigawatts of fracked gas in the same period — up 33 percent from Duke's 2018 estimate. Duke also plans to keep some coal plants open through 2048.

### Old Dominion Power

In July, Old Dominion Power Company, a unit of Kentucky Utilities, filed an application with the Virginia State Corporation Commission seeking to increase its monthly rates by an average of \$28.93 for residential customers, and raise its revenue by \$12.7 million. The rate hike would raise power costs in two economically distressed Virginia counties. The utility also seeks to raise its base service charge by \$4.13 to \$16.13 per month.

"These high fixed charges proposed by ODP are specifically designed to dis-

### Kentucky Residential Solar Costs Expected to Rise

Starting in 2020, a law changing solar energy costs in Kentucky will take effect. Currently, Kentucky residents with solar panels can feed their extra energy back into the grid, receiving full compensation from utility companies for the amount they produce. The process, called "net metering," is supplemented by a 30 percent federal tax credit for the system's cost, making solar energy a financially feasible choice for many.

S.B. 100, which became law in March, will reduce the residential tax credit to 26 per-

### Fracking Waste Leaches into Pennsylvania Waterways

Since at least 2009, the Pennsylvania Department of Environmental Protection has allowed 14 sewage waste treatment plants to leak radioactive fracking waste into 13 Pennsylvania waterways, according to an investigation by Public Herald.

When the Pennsylvania landfills accept fracking waste, radioactive materials pulled from the earth's core — some of which are carcinogens — contaminate the landfill leachate. Duke University's Avner Vengosh told Public Herald that because sewage

courage energy efficiency and renewable energy investments by ODP's customers and protect the utility's profits," said Appalachian Voices' Chelsea Barnes.

The commission is expected to decide on the rate hike request early next year. A public hearing in Norton, Va., was held Oct. 2, and the official case hearing is slated to begin on Jan. 22 in Richmond.

Appalachian Voices is intervening in the case. Public comments can be submitted until Jan. 15, 2020 at [scc.virginia.gov/case/PublicComments.aspx](https://scc.virginia.gov/case/PublicComments.aspx). Be sure to reference docket PUR-2019-00060.

### Dominion Energy

On Aug. 29, Virginia regulators reported that Dominion Energy had collected an excess of \$277 million in profits in 2018 over the state-approved level. The typical monthly residential bill has increased \$23.17 since 2007, according to a state report released in August.

The utility also seeks to raise the approved profit level from 9.2 percent to 10.75 percent, compared with the actual 2018 overcollected figure of 13.47 percent. Dominion plans to invest \$16 billion of ratepayer dollars in "grid improvement" and capital projects, which is expected to increase residential bills by \$29.37 per month by Dec. 31, 2023.

cent next year, eliminating it entirely by 2022 for residential customers. The law also tasked the Kentucky Public Service Commission with setting new home solar compensation rates for each utility. The changes are expected to increase the cost of residential solar energy.

The commission is accepting written comments until Oct. 15 and scheduled a 9 a.m. public hearing on Nov. 13 at the PSC offices in Frankfort. The commission will have to approve utilities' new net metering rates in 2020. — *By Rachael Kelley*

plants cannot treat the radioactive material, they release it into waterways instead.

"Sanitary landfills are no place for drilling wastes that contain toxic metals, organics, and radioactive materials," John Stolz of Duquesne University told Public Herald. "The leachate from these landfills is so toxic it kills the microbes whose job it is to treat it."

Public Herald's investigation estimates that between 500 million to 1.6 billion gallons of leachate could be released into Pennsylvania rivers per year. — *By Rachael Kelley*

## Trump Administration Rolls Back More Environmental Protections

### Methane Emissions

On Aug. 21, the U.S. Environmental Protection Agency announced its intent to roll back Obama-era methane emission regulations. Methane is a harmful greenhouse gas that is 80 times more potent than carbon dioxide in trapping heat in Earth's atmosphere. Smaller domestic companies supported the rollback, but it was met with pushback from global oil and gas companies that claim they are committed to reducing their environmental impact. Many larg-

er companies have said they intend to self-regulate their emissions regardless.

### Protected Waters

The Trump administration is repealing an Obama-era definition of the "waters of the United States." The 2015 definition clarified the scope of waters protected under the federal Clean Water Act, adding many wetlands and smaller waterways to the list. The EPA's new definition, anticipated to be finalized this winter, is expected to remove federal protection for many of these water sources.

## Audit Finds Mine Safety Penalties Ineffective

A federal audit of the U.S. Mine Safety and Health Administration, released in August 2019, found no evidence to support a correlation between payment of mine safety penalties and the safety of mine operations over 18 years.

Wes Addington, executive director of the nonprofit Appalachian Citizens Law Center, told National Public Radio that "penalties just aren't high enough to deter bad behavior."

The auditors looked at coal, metal and nonmetal mines together.

The auditors recommended that MSHA hold mine operators accountable for their safety record by not allowing them to open new mines if they have outstanding penalties. However, MSHA claims they do not have the legal authority to do this. Auditors also recom-

mended that MSHA develop ways to measure the effectiveness of penalties, but MSHA expressed difficulties, telling NPR that fines are one of many variables to make mines safe.

West Virginia Gov. Jim Justice and his family own the most delinquent mine companies in the country. The companies owed \$4.7 million in unpaid mine safety penalties as of September, which accounts for nearly 10 percent of all mine-related delinquent debt in the United States, according to information disclosed by MSHA.

In May, MSHA and the U.S. Department of Justice sued the Justice family for failure to pay. In July, lawyers for the Justice family filed a motion to dismiss, which federal prosecutors refused. — *By Hannah McAlister*

## NC and VA Announce Clean Energy Goals

On Sept. 27, North Carolina Gov. Roy Cooper's announcement of a clean energy plan for the state was met with applause from environmental groups — but protesters also called on Cooper to revoke permits for the Atlantic Coast Pipeline and to end large-scale deforestation that is supplying European biomass power plants. The plan is a follow-up to Cooper's October 2018 executive order, which set a 40 percent greenhouse gas emissions reduction goal for state agencies by 2025. The plan sets a goal of full carbon neutrality in the electric power sector by 2050.

On Sept. 17, Virginia Gov. Ralph Northam signed Executive Order 43,

establishing clean energy goals for the commonwealth. The order requires several state agencies to develop a plan by July 2020 to meet renewable energy goals, which include sourcing 30 percent of Virginia power from renewable resources by 2030. Northam also announced a goal of achieving full carbon neutrality in the electric generation sector by 2050 using sources such as nuclear, solar and wind. The order does not define "renewable energy," which could include carbon-intensive biomass and trash incinerators as power sources. Additionally, the order makes no mention of the Mountain Valley or Atlantic Coast pipelines. — *K.R.*

### Light Bulb Standards

The U.S. Department of Energy is revoking light bulb energy standards that were set to take effect in 2020. Implemented in 2007 by President George W. Bush and continued by the Obama administration, the standards were meant to phase out incandescent and halogen light bulbs to increase energy efficiency and reduce costs. Critics of the rollback state that the Trump administration's changes could lead to higher energy bills and more pollution.

### Coal Ash Storage

The Environmental Protection Agency announced a proposal to alter the 2015 coal combustion residual rule on July 30. The regulations require coal ash fill projects greater than 12,400 tons to implement environmental protections and follow onsite dry ash storage requirements. If passed, the proposal will eliminate onsite storage requirements and enforce environmental protection requirements only at sites with geographic vulnerabilities. — *By Rachael Kelley*

## Study Shows Wood Pellet Electricity Harmful to Climate

A recent analysis of three Southeast wood pellet mills and the United Kingdom power plants that burn their pellets reveals that burning trees for electricity, even from sustainably managed forests, would increase carbon pollution for more than four decades as compared to the status quo. This exceeds the Intergovernmental Panel on Climate Change's timeframe for critical carbon reduction.

Research firm Spatial Informatics Group conducted the study for the non-

profit Southern Environmental Law Center.

The three mills in the report are located in Louisiana and Mississippi and, combined, produce up to 1.5 million metric tons of wood pellets per year. This is sourced mainly from non-industrial pine plantations. The biomass is burned in the U.K., where mill owner Drax Biomass has converted four coal-fired units using government subsidies.

The Southern Environmental Law Center states that Southeast pine plantations are seen as a way to meet demand as the wood pellet industry rapidly expands. — *H.M.*

## Newsbites

### States Sue Over New EPA Carbon Rule

In August, 22 states and seven cities, including Virginia and North Carolina, sued the U.S. Environmental Protection Agency over the Affordable Clean Energy rule, which loosens Obama-era restrictions on coal-fired power plants. The states behind the lawsuit all have Democratic attorney generals who claim the rule violates the federal Clean Air Act by undercutting efforts to reduce greenhouse gas emissions and the carbon footprint of power plants. West Virginia Attorney General Patrick Morrisey calls the lawsuit a "power grab," according to WOWK-TV. — *H.M.*

### Co-op Members Condemn Board Actions

After Powell Valley Electric Cooperative's Sept. 21 annual meeting, member-owners with co-op reform group PVEC Member Voices accused co-op leadership of mischaracterizing a proposed bylaw amendment before it was voted down by the membership. The amendment would have clarified members' ability to attend and record board meetings, access minutes and address the board as a permanent right.

A PVEC attorney incorrectly told members that the amendment would lead to a rate increase, according to member-owner Bill Kornrich. When Kornrich attempted to speak, PVEC Board Chair Roger Ball dis-

allowed further discussion. After Kornrich resubmitted a clarified amendment for a vote in 2020, Ball instead called for an immediate vote contrary to co-op procedure. The amendment failed. — *K.R.*

### Clean Air Lawsuit Against NC University

On Sept. 17, the Center for Biological Diversity and the Sierra Club filed a notice of intent to sue the University of North Carolina at Chapel Hill for ongoing violations of the federal Clean Air Act. The infractions include using two outdated coal-burning boilers and exceeding federal air pollution limits. — *R.K.*

### Report on Ohio Secret Fracking Chemicals

A report by Partnership for Policy Integrity discovered that between 2013 and 2018, Ohio gas and oil companies injected classified chemicals nearly 11,000 times into more than 1,400 wells. Ohio law does not require disclosure of chemicals deemed "trade secrets." The report authors say this puts the public at risk and prevents first responders from preparing for chemical spills. — *R.K.*

### New Power Plant Application Filed in WV

In September, the owner of Longview Power in West Virginia applied to build a combined-cycle gas-fired power plant and a solar facility adjacent to its coal-fired plant. The gas-fired power plant would include a 6.2 mile-long, 20-inch-diameter gas pipeline. — *R.K.*

## Energy Democracy Tour Gathers Communities' Visions for Our Energy Future

The **Tennessee Valley Energy Democracy Tour** has nearly completed its first phase of events, visiting more than 10 different communities and hundreds of people throughout the Tennessee Valley Authority's footprint. This regional listening project was coordinated by Appalachian Voices, Science for the People, Statewide Organizing for Community eMpowerment (SOCM), and more than a dozen other organizations, community groups and local power companies.

During the tour stops, communities participated in education sessions about the structure, history and impacts of the TVA energy system. Attendees provided input during listening sessions and asked questions such as, "What do we want for our energy future?" and "What needs to change at TVA in order for us to reach that future?"

Information from the visioning discussions is still being processed, but emerging themes include:

- Just, equitable energy production and use
- Environmental health prioritized with renewable, efficient energy generation
- Locally owned energy generation

- Safe, secure and skilled energy jobs created and supported with workforce training
- Energy decisions democratically controlled

Overwhelmingly, communities expressed that TVA's current decision-making model is disempowering and ignores community concerns and priorities. Many ideas were generated around TVA reform that targeted the federal utility's governance structure, communication processes and revising the TVA Act.

The Tennessee Valley Energy Democracy Tour will make its final stop in Anderson County, Tenn., with communities living near the Bull Run Fossil Plant, which TVA voted to close earlier this year. After processing notes from the sessions and conducting additional research, groups involved with the tour will release a report that summarizes the feedback we heard and provides a list of policy suggestions for reaching the energy future that communities want. Keep an eye out for this exciting update!

After two successful stops in Raleigh and Asheville, the **Energy Justice North Carolina, End the Duke Monopoly Tour** continues to work its



Knoxville Energy Democracy Tour attendees share ideas during education modules, above and left. Photos by Jamie Goodman.

way across North Carolina with events planned for Oct. 23 in Charlotte, and Boone in early November.

The tour is bringing communities together across the state to discuss the

electric utility system and the pitfalls of Duke Energy's monopoly control. Both events have allowed ratepayers to continue dialogue about the issues their communities face, as well as plug into local events and movements. Ratepayers have made it clear that it's time to end the Duke monopoly.

Stay tuned for upcoming events in Virginia! Visit [EnergyDemocracyYall.org](http://EnergyDemocracyYall.org) for details.

## Power to the People Pilsner

Wild Wolf Brewing Company in Nellysford, Va., is in the process of brewing our benefit beer! The "Power to the People Pilsner" raises awareness of our work to advance an inclusive clean energy future for Appalachia.

Thank you to all of the artists who participated in our label design contest! Our supporters have voted, and the winner is "A Clean Energy Future IS Possible," by Virginia Greene. Kudos to our other two finalists, Cody Statler's "Flower Power" and Olivia York's "Wild Wolf Howling at the Moon."

The hoppy pilsner will be flowing Nov. 1-2 at Tomtoberfest in Charlottesville, Va., with a special release party on Friday, Nov. 1, at Wild Wolf Brewing Company's new restaurant in downtown Charlottesville. Check [appvoices.org/calendar](http://appvoices.org/calendar) for details!



## Wise County Solar Tour

On Oct. 19, tour some of Wise County's solar energy installations as part of the 24th Annual National Solar Tour, a project of The Solar Workgroup of Southwest Virginia, the American Solar Energy Society, and Solar United Neighbors.

The tour will begin at noon at Mountain Empire Community College during the annual Home Craft Days festival. Participants can then visit residents in Wise County who have installed solar panels on their properties, learn about solar financing opportunities, and can receive a free home solar assessment.

## Clean Water, Not Pipelines!

Help us protect state water quality authority

We are continuing to fight the expansion of fracked-gas pipelines that threaten our lands and waterways and that stand to heighten our use of climate-altering methane gas. As our latest legal challenge against Mountain Valley Pipeline developers moves forward, we are keeping an eye on the courts and Congress to help keep construction of the Atlantic Coast Pipeline at bay. We are also partnering with communities near the proposed route of MVP Southgate and near the terminus of the Atlantic Coast Pipeline to educate landowners about their rights and build a strong movement to defeat these projects.

The Trump administration is working to weaken protections in the Clean Water Act. The EPA has proposed a new rule that would limit the ability of states and tribes to deny unnecessary and destructive fracked-gas pipelines based on potential impacts to waters in their jurisdictions. The EPA has a comment period open until Oct. 21 to hear from the public. **Sign on to our comment to the EPA asking the agency to uphold the critical role of states and tribes in protecting their own waters and not implement these changes. Visit [appvoices.org/401-rollback](http://appvoices.org/401-rollback) to take action.**

## Member Spotlight Waltr Lane: The greenneck poet

By Molly Moore

"I write to say things, not to be talked about," the poet says.

Waltr Lane began writing when he was 11, but the habit truly took off after his first poems were published in 1985 by the Appalachian Journal.

A resident of Eastern Kentucky, Waltr has also been published in Appalachian Heritage and the Journal of Kentucky Studies, among others. His poems are frank, decrying abuses of land and water while also condemning society for preventing people from fishing with dynamite, as he says his grandfather used to do. His work also comments on the "hillbilly" stereotype, a label that he proudly reclaims as a self-described Hillbilly Poet. While much of Waltr's writing carries an environmental theme, he shies away from the term "environmentalist."

"I'm just a person who has an interest in a lifestyle capable of supporting my family and supporting the

life of the people around me without having to suffer from cancer, without having to breathe the dust of the road, without having to get in trouble for expressing opinions," Waltr says. "I don't consider myself an environmentalist, I consider myself a 'greenneck.'"

"I can be writing about a kid's story and the environmental issue will crop up in it because I worry about my grandbabies and what kind of life they're going to have," he adds.

He describes the Tug River in West Virginia running black from coal pollution when he was a child, and struggling to breathe while driving past a coal-fired power plant in the 1950s when the emissions exacerbated a headcold. Waltr comments that the establishment of the U.S. Environmental Protection Agency has made a big difference, but he doesn't think environmental protections are being adequately enforced. "I feel like the regulations are a hoax," he says.

Waltr's experience is personal; his former house was threatened by

an old, unstable mine slope. Now, he says, kids aren't allowed to play on the hill because of the sinkholes. One day, he and his wife came home to find that the ceiling had fallen in on their bed, a fact that he attributes to underground mining nearby.

According to Waltr, many people share his concerns, even if they don't feel comfortable speaking out.

He distributes several dozen copies of each issue of The Appalachian Voice, and says he is "having a happy second childhood and am a paper boy." In addition to bringing copies to locations like libraries and a medical clinic, he also hands them out to individuals as an entry point for conversations about environmental issues.

"The important thing is, if we don't stand for something, we fall for everything," Waltr says. "And if we make a dent in life for a better purpose then we've accomplished more than some people do. The purpose is to leave things better after we're gone."

## Poems by Waltr Lane

### Before I Was Hungry

Before I was poor  
the fish from the creek  
were supper  
the water from our well,  
spring and creek were  
clear in a drinking glass.

Before I was poor  
there were no air filters  
on our furnace,  
you couldn't see the  
air in the road in front  
of our house.

Before I was poor,  
I was never hungry  
for the past –

The time  
before the bulldozers  
stripped away the natural  
rights of  
fishermen,  
farmers.

### Appalachian Wildlife

The Conservatives said  
we shouldn't buy birdseed  
because feeding the birds  
made them lazy like us.

"They" strip-mine the flowers,  
the trees, the gardens, the fields,  
blacktop the worms' homes.

What are the birds to do?  
And, us wildcats, too?

### The Hillbilly Poet (search for place)

The hillbilly poet can't die  
He has no place to go.  
The coroner buried a stranger's child  
In the hillbilly poet's burial plot.  
A hillbilly isn't even uncouth  
Enough to evict a child from  
His grave.

The Library of Congress ruled  
The hillbilly poet can't copyright  
His imagination unless he writes a book.  
His keyboard person/typist says  
She won't type his book,  
That would make her a professional.  
She is an ombudsman—almost a real man.

The hillbilly poet wasn't allowed to participate  
In the Mountain Dream Library Folk Festival  
Because he has no book to sell.  
Being published a hundred times  
In academic publications does not count  
As much as once by Vanity Press,  
a nationally advertised subsidy publisher.

**Appalachian Voices**  
**BUSINESS LEAGUE**  
New & Renewing Members  
August/September 2019  
**Neighborhood Yoga**  
Boone, N.C.  
To join our Business League, visit [AppVoices.org](http://AppVoices.org)  
or call 877-APP-VOICE

## Save the date for Appalachian Voices' annual membership meeting on November 7!

We will host simultaneous events at our four offices in Boone, N.C., Charlottesville, Va., Knoxville, Tenn., and Norton, Va., on Thurs., Nov. 7 from 5:30 - 8 p.m. Come meet our staff and hear updates about our work. Food and drinks will be provided. Find more details at [appvoices.org/membership-meeting](http://appvoices.org/membership-meeting) or call (434) 293-6373.

Appalachian Voices is committed to protecting the land, air and water of the Central and Southern Appalachian region. Our mission is to empower people to defend our region's rich natural and cultural heritage by providing them with tools and strategies for successful grassroots campaigns.

## Organizational Staff

Executive Director ..... Tom Cormons  
Deputy Executive Director ..... Kate Boyle

### OPERATIONS & ADVANCEMENT

Director of Finance and Operations ..... Maya Viknius  
Operations Manager ..... Shay Boyd  
Director of Strategic Advancement ..... Brian Sewell  
Advancement Manager ..... Leigh Kirchner  
Operations and Outreach Coordinator ..... Meredith Shelton  
Membership and Advancement Associate ..... Maggie Stokes

### PROGRAMS

Director of Programs ..... Matt Wasson  
Senior Legislative Representative ..... Thom Kay  
Senior Energy Analyst ..... Rory McIlmoil  
Central Appalachian Program Manager ..... Erin Savage  
Central Appalachian Field Coordinator ..... Willie Dodson  
Central Appalachian Environmental Scientist ..... Matt Hepler  
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Tenn. AmeriCorps Stewards Member ..... Jack Meyer  
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## The Appalachian Voice

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Ken Barrett's "Beauty of Wilson Creek" was a finalist in the 2018 Appalachian Mountain Photography Competition's Landscape category. Barrett made this image in North Carolina's Pisgah National Forest surrounded by an autumn palette. To participate in the 2019 competition, submit your photographs by 5 p.m. on Nov. 22. Finalists will be announced on Dec. 6. To learn more, visit [appmntnphotocomp.org](http://appmntnphotocomp.org).

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Founded in 1997, Appalachian Voices brings people together to protect the land, air and water of Central and Southern Appalachia and to advance a just and clean energy economy. We are able to do this work thanks to the support of individuals like you. Join us today to be part of these important efforts and to receive a year of *The Appalachian Voice* delivered to your home.

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