

BUSINESS

Blackjewel bankruptcy: 33 coal mine permits abandoned

James Marshall, E&E News reporter • Published: Monday, March 22, 2021



The North Fork mountaintop-removal coal mine, formerly owned by the now-bankrupt mining company Blackjewel, in Partridge, Ky. Charles Mostoller/Reuters/Newscom

Dozens of coal mines in Appalachia will soon be abandoned after a federal judge said he would approve West Virginia-based Blackjewel LLC's bankruptcy exit plan last week.

Blackjewel, which was once the sixth largest U.S. coal producer, filed for Chapter 11 in 2019. Without warning, 1,700 workers lost their jobs and coal mines from Kentucky to Wyoming fell into disrepair.

As part of the bankruptcy proceedings, Blackjewel also asked to walk away from about 200 mining permits. Mass coal mine abandonment could have severe ramifications for state coal mine cleanup funds, as well as insurance companies left exposed by the coal industry's decline.

The [deal](#), presented Friday to Judge Benjamin Kahn at the U.S. Bankruptcy Court for the Southern District of West Virginia, was the subject of intense negotiations among Blackjewel, the Kentucky Energy and Environment Cabinet, and the U.S. government.

Kentucky will revoke — and Blackjewel will effectively abandon — 33 mining permits in the state, accounting for about \$41 million in reclamation costs. Kentucky will take responsibility for ensuring mine cleanup and may call upon Blackjewel's surety bond providers to complete some of the work.

Blackjewel will also have six months to transfer another 171 permits in Kentucky, Tennessee, Virginia and West Virginia to potential buyers. Some transfers have stalled because purchasers haven't secured the surety bonds necessary to ensure mine cleanup, leaving open the question of whether these, too, will be left for states to deal with.

"It just seems like they're kicking the can down the road," said Mary Cromer, deputy director of Appalachian Citizens' Law Center, which represented a coalition of citizens' groups in the case.

"For some of these permits, it's pretty clear that it's unlikely that transfer is ever going to happen, so this just another 180 days where conditions continue to degrade."

With Blackjewel's severe financial distress, the revocation of permits is "the best possible solution," Cromer said. But Kentucky's reclamation fund and Blackjewel's surety providers will be under pressure for absorbing the cleanup costs.

Kentucky Energy and Environment Cabinet spokesperson John Mura said agency Secretary Rebecca Goodman and Gov. Andy Beshear (D) worked for the best possible outcome for Kentuckians.

"It is not acceptable for individuals to profit by bankrupting mining companies, putting miners out of work, and leaving Kentucky holding the bag for reclamation and environmental liabilities," Mura said in an email.

He noted that the court's confirmation order will allow the Cabinet to seek costs associated with reclamation at a later date.

The last remaining objector to Blackjewel and affiliate Revelation Energy LLC's overall confirmation plan was ousted CEO Jeff Hoops. He is the subject of litigation brought by Blackjewel accusing him of self-dealing. Whether creditors in the bankruptcy case get paid largely depends on the result of that litigation.

All 33 of the mines Blackjewel will leave to the state to clean up were acquired from previous coal company bankruptcies, according to an ACLC analysis.

Kentucky environmental regulators contend that idled Blackjewel mines pose ongoing threats to public safety. At one mine in Bell County, an inspector found ponds of acidic water polluted with iron and manganese pooling up.

The ponds, located on a hill above homes, a highway and a railroad, "could breach at any time," Marvin Keaton, the inspector, wrote in a February court [filing](#). The judge that month ordered Blackjewel to clean up the site ([Greenwire](#), Feb. 26).

Shaky reclamation funds

Taking on responsibility for reclaiming so many Blackjewel mines could impair the Kentucky Energy and Environment Cabinet's ability to clean up others should more companies default.

Kentucky doesn't require coal companies to obtain full cost bonding. The state, like others in Appalachia, relies on a bond pool system to supplement reclamation costs ([Greenwire](#), June 1, 2020).

Mine operators support the fund through payments like annual tonnage fees. If a company goes bankrupt — and its bargain bonds can't pay for cleanup — the

bond pool should make up the difference.

That system works well if a small company goes bust, said Peter Morgan, a senior attorney at the Sierra Club who closely follows coal bankruptcies. But when a large permit holder like Blackjewel abandons mines, it can threaten the solvency of the bond pool.

A public records request obtained by Appalachian Voices, a citizens' group, indicates the Kentucky Reclamation Guaranty Fund has about \$40 million available to spend on new permit forfeitures.

The cost to reclaim the land associated with 33 Blackjewel permits with no buyer is about \$41 million, according to a Kentucky Energy and Environment Cabinet **estimate**. The shortfall from Blackjewel's low-cost bonds for those mines is more than \$28 million.

That sum, as well as some reclamation costs resulting from failed permit transfers, could be shifted to the bond pool.

The Frasure Branch mine in Floyd County, Ky., for instance, will cost more than \$10 million to reclaim. But it has less than \$2 million in surety bonds. The mine has 10,000 feet of exposed highwall to be remediated, said Cromer of ACLC.

She noted that Blackjewel acquired Fraser Branch from James River Coal Co.'s bankruptcy.

"This shows that the last round of bankruptcies that happened in 2014 to 2016, those companies were able to shed a lot of their problematic permits," Cromer said. "Companies like Blackjewel, for whatever reason, determined that there was money to be made in buying up those permits."

'Crises looming'

Beyond mine abandonments affecting local communities and state reclamation funds, Sierra Club's Morgan said surety companies that backed the bonds might be exposed.

"I think there are a lot of crises looming in the coal mining world," Morgan said. "We're going to see more bankruptcies like Blackjewel with major numbers of permits being abandoned. The issue [is] what that does to the sureties and what cascading effects could follow once the sureties themselves start to fail."

Indemnity National Insurance Co., one of Blackjewel's chief sureties, has issued at least \$169 million in bonds to the coal miner to guarantee reclamation. Indemnity has also done business with another distressed coal company: ERP Environmental Fund Inc.

ERP has more than 100 mining permits in West Virginia. The state sued ERP last year alleging the company had racked up 160 environmental violations, laid off all its employees and idled its mines (**Greenwire**, March 30, 2020).

Indemnity has provided \$115 million in surety bonds to back ERP's West Virginia operations. The state **wrote** in litigation last year that it might have to forfeit the bonds, "potentially bankrupting the Defendant's principal surety." DeSmogBlog first **reported** on this dynamic.

A judge later appointed a receiver to take control of ERP, preventing the state from forfeiting the bonds.

When asked about the Blackjewel settlement, Indemnity responded that it speaks for itself and declined to comment further.

Five or 10 years ago, Morgan said, subsidiaries of large, diversified multinational insurance companies would provide bonding for coal mines. Those companies have been getting out of the coal business.

Filling that vacuum are smaller companies, like Indemnity, that saw a business opportunity, he said.

"The problem is, now that the coal industry is going through such significant and permanent distress, they're just underfunded when compared to the obligation that they have guaranteed," he said.

Creditors in the Blackjewel case will have to play a waiting game to see whether they can recoup money they're owed.

Blackjewel interim CEO David Beckman said at a hearing earlier this month that the company has around \$2 million in liquidity. Blackjewel hopes its lawsuit against Hoops, the former CEO, will earn it money to pay back lenders.

One creditor is the Interior Department. Blackjewel owes the federal government about \$27 million in unpaid royalties and fees from the firm's mines on federal land in Wyoming ([Greenwire](#), Feb. 23).

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