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June 24, 2015

The Honorable Louie Gohmert
Chairman, Subcommittee on Oversight and Investigations
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Gohmert:

I write to urge you to conduct a bipartisan investigation into the practice of self-bonding by coal companies, focusing on the use of subsidiaries to meet self-bonding requirements. It is encouraging that we have a common interest in this issue, based on today's hearing about whether energy developers are setting aside enough money to cover their pollution cleanup costs in case they go bankrupt.

Coal mining companies are able to avoid purchasing the kind of reclamation bonds required for projects like wind, solar, oil and gas development by self-bonding if they can demonstrate they are in good financial health.^{1,2} Though only four companies qualified last year, there was an estimated \$3.5 billion in outstanding coal self-bonds.³

However, those large companies are facing declining demand for coal and divestment. A 2015 report by Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation entitled "Undermined Promise II" used publicly available data to demonstrate that three of the four biggest coal companies – Arch Coal, Peabody Energy Corporation, and Alpha Natural Resources – may not qualify for self-bonding anymore.⁴

¹ 30 CFR 800.12

² 30 CFR 800.23

³ Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation, *Fact Sheet for Undermined Promise II*

⁴ Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation, *Undermined Promise II*

In May 2015, the State of Wyoming, which has regulatory authority over the coal mines through SMCRA, notified Alpha Natural Resources that they no longer qualified for self-bonding. The state of West Virginia is also looking into Alpha's self-bonding qualifications, which covers about \$262 million in cleanup costs.⁵

The right to self-bond is unique to coal as an energy source and it amounts to a major subsidy. Self-bonding allowed Alpha "to avoid insurance or provisions of about \$400 million for cleanup of mines" in Wyoming.⁶ Cloud Peak Energy held \$200 million in self-bonds at the end of 2014.⁷ The conversion from paying surety premiums saved them \$2 million per year.⁸ Arch Coal held almost \$460 million in self-bonds and Peabody Energy Corporation held over \$1.3 billion in self-bonds at the end of 2014.

Because Arch and Peabody are unlikely to be able to qualify on their own for self-bonding, they are exploiting vague regulatory language⁹ to use their subsidiaries to meet financial fitness thresholds.¹⁰ The distribution of assets and liabilities between the parent company and its subsidiary that is necessary to pass the financial tests, may still leave the taxpayer at risk. Citizen oversight is difficult because SEC filings or other regulatory disclosures contain insufficient information to determine that distribution for the subsidiary.

If the mining sites owned by any of these companies are underbonded because the company will not be able to afford paying out-of-pocket for reclamation, the taxpayer will be responsible for cleanup costs. An investigative reporter for Reuters wrote "If pushed to bankruptcy, those coal companies could leave behind more than \$2 billion in cleanup liabilities and no clear custodian to cover the costs, other than state or federal agencies, according to industry officials."¹¹

Congressional oversight is clearly needed in this area. We must ensure taxpayer dollars are not needlessly put a risk to cover cleanup costs when this could be avoided. I stand ready to assist with this investigation and look forward to working with you.

Sincerely,



Debbie Dingell
Ranking Member
Subcommittee on Oversight and Investigations

⁵ <http://www.reuters.com/article/2015/04/27/us-usa-coal-exclusive-idUSKBN0NI21220150427>

⁶ <http://www.reuters.com/article/2015/05/29/alpha-ntrl-resc-insurance-idUSL3N0YK5AS20150529>

⁷ Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation, *Fact Sheet for Undermined Promise II*

⁸ Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation, *Undermined Promise II*, p11

⁹ 30 CFR 800.23

¹⁰ Western Organization of Resource Councils, the Natural Resources Defense Council, and the National Wildlife Federation, *Fact Sheet for Undermined Promise II*

¹¹ <http://www.reuters.com/article/2015/04/27/us-usa-coal-exclusive-idUSKBN0NI21220150427>