

E&E Greenwire



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GREENWIRE | The Interior Department told West Virginia last month that its coal mine reclamation program is in violation of federal law after environmental groups sued over the state’s wobbly cleanup fund.

West Virginia’s reclamation fund has drawn scrutiny since ERP Environmental Fund Inc., a coal company, abruptly laid off its workers and halted operations at its mines in March 2020.

The reclamation fund relies on a system of shared risk where permit holders pay a fraction of total cleanup costs into a bond pool. As a holder of more than 100 permits in West Virginia, ERP’s insolvency threatened to sink the entire fund.

The West Virginia Department of Environmental Protection sued the company last year in an effort to prevent ERP from crippling the bond pool ([Greenwire](#), March 30, 2020). ERP had accumulated 160 environmental violations. A state judge appointed a special receiver to manage ERP to keep the company out of bankruptcy.

However, West Virginia did not propose strengthening financial requirements for mine cleanup, nor did Interior’s Office of Surface Mining Reclamation and Enforcement demand changes to the state’s program.

Three environmental groups [sued](#) OSMRE in May to try to force the bureau to conduct closer oversight of reclamation in West Virginia ([Greenwire](#), May 18).

The litigation prompted acting OSMRE Director Glenda Owens to send a [letter](#) to WVDEP Secretary Harold Ward ordering changes to the state’s coal program last month, more than a year after problems with the reclamation fund came to the forefront.

“We have determined that West Virginia is required to submit a program amendment that will ensure tracking of existing reclamation liabilities (including water treatment) at mining operations,” Owens wrote.

The West Virginia Legislative Auditor's Office found that the state's reclamation funds — including separate vehicles for water treatment — were woefully insufficient in a [study](#) released in June. The funds' total balance is about \$190 million, or less than 40 percent of the estimated liability over 20 years ([Greenwire](#), June 9).

Environmental activists have lauded the audit as a model that other states that operate reclamation bond pools should follow.

Activists also praised OSMRE's decision to require West Virginia to take proper accounting of coal mine reclamation costs.

“Although there is more that OSMRE can and should do to address the deficiencies in West Virginia's program, we hope that West Virginia will respond to this initial determination by requiring prompt reclamation and ensuring that the coal mining industry bears responsibility for cleaning up its own mess,” Jim Kotcon of Sierra Club's West Virginia chapter said in a statement.

Ward did not reply to an email or voicemail requesting comment on WVDEP's plans. Terry Fletcher, acting communications director for WVDEP, said the state agency has not yet submitted an amendment to its coal mining program. It has until Oct. 22 to submit an amendment or a description of one.

OSMRE declined to comment because the litigation is still ongoing. The agency's letter to WVDEP is expected to be the last substantive part of the lawsuit.

Tom Clarke, the nursing home operator who started ERP Environmental Fund, could not be reached.