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POLICY AND PRACTICE

2011 Report Card on Banks and Mountaintop Removal



INTRODUCTION



Mountaintop removal (MTR) coal mining is one of America's worst environmental crimes. Every day, across Appalachia, the coal industry literally blows the tops off the mountains: destroying forests, wiping out natural habitats, and poisoning rivers and drinking water. Not only are these mountains lost forever, but the heritage and the health of families across the region are being sacrificed also. For a mere seven percent of the nation's coal, the trade-off does not add up.

MTR is a mining practice in which explosives are used to remove the tops of mountains and expose the thin seams of coal that lie beneath. Once blasted, the earth from the mountaintop is typically dumped in the neighboring valleys. As a result, MTR mining poses significant threats to water quality in Appalachia, and undermines the objectives and requirements of the Clean Water Act. According to a 2005 environmental impact statement, nearly 2,000 miles of Appalachian streams have already been buried or contaminated.

Health problems such as cancer, liver and kidney disease, and skin rashes have been correlated with people who drink water from wells contaminated by coal mining. A 2010 article by Dr. Margaret Palmer in the journal *Science* concludes that mountaintop mining has serious environmental impacts that mitigation practices cannot successfully address. The damage is irreversible.

Banks and financial institutions are key sources of financing for companies that practice mountaintop removal. This report

examines ten banks—Bank of America, Citi, Credit Suisse, Deutsche Bank, GE Capital Corp, JPMorgan Chase, Morgan Stanley, PNC, UBS, and Wells Fargo—that make up the majority of financing for MTR. Since January 2010, the ten banks examined in this report card have provided financing for 16 loan and bond underwriting deals to companies practicing mountaintop removal coal mining, amounting to more than \$2.5 billion.

To prevent the environmental and health risks associated with mountaintop removal coal mining, it is critical that banks and financial institutions adopt a strict lending criteria for MTR coal operators. In addition, these policies are essential for protecting banks from the increasing regulatory, reputational, and financial risks associated with the devastating practice.

Several banks in the United States and Europe have adopted policies that limit, and even end, their financing of this environmentally devastating practice. However, what impact do these policies have in practice? In 2010, Rainforest Action Network and the Sierra Club took a first look at these MTR policies, analyzing and then grading them based on best practices. This year, we are taking a fresh look at these banks and their mountaintop removal policies to see how they've progressed from 2010 to 2011, and to see how policies stack up to bank practices. In this report card, we review each bank's current position on MTR coal mining and award a 'grade' based on the strength of the performance threshold, scope of due diligence, and public transparency.

WHAT DOES AN IDEAL MOUNTAINTOP REMOVAL POLICY LOOK LIKE?

Rainforest Action Network (RAN) and the Sierra Club are calling for the ten banks reviewed in this report card to strengthen their policies and cease their financial support for MTR. Our recommended "best practice" is a clear exclusion policy on commercial lending and investment banking services for all coal companies that practice mountaintop removal coal extraction.

POLICY GRADING METHODOLOGY

We have graded the publicly available policies of each bank that has an MTR policy, based on a standard A through F criteria. In addition, we have assessed each bank's compliance with the policies it has enacted—did the institution support companies involved in MTR coal mining within the last two years and did policies affect those relationships? After an initial scoring, RAN and the Sierra Club disclosed our policy assessment to each bank and requested their feedback and further clarification. We then reconsidered the grades, taking any new information into consideration.

Where a bank policy partially achieves elements of a grade, but does not meet the full criteria, its grade has been "marked down."

Grade A (Gold standard) ★★★★★

The bank has developed its own policy: complete sector exclusion (all MTR mining companies) in its lending and investment banking, as well as its asset management.

Grade B (Essential elements) ★★★

The bank has developed its own policy, to include all of:

- + Enhanced due diligence with a threshold performance standard: we will not fund companies whose surface mining activities are more than 5% of their total coal extraction activities in KY, TN, VA & WV.
- + Due diligence to include: a review of legal compliance and potential material legal abilities, exposure to litigation
- + Regular reporting with case studies
- + Policy publicly available, alongside other environmental policies

This must apply to its lending and investment banking, as well as its asset management.

Grade C (Half the essential elements) ★★

The bank has developed its own policy, to include all of:

- + Enhanced due diligence with an identified performance standard
- + Due diligence to include: a review of legal compliance and potential material legal abilities, exposure to litigation
- + Regular reporting with case studies
- + Policy publicly available, alongside other environmental policies

Grade D (Vague policy) ★

The bank has developed its own policy, but it is vaguely worded without clear commitments.

Grade F (Fail) ☹️

The bank is active in this sector but has no investment policy for this sector/issue.



REGULATORY RISKS OF MTR

This is a list of highlights of regulatory developments affecting the practice of mountaintop mining. This is by no means a comprehensive listing of relevant regulatory developments.

EPA Vetoes Spruce No. 1 Mine: EPA's Clean Water Act Dredge & Fill (404c) veto authority was exercised against an MTR mine for the first time in January 2011. This was a watershed moment for EPA. The agency was forcefully acknowledging for the first time the significant damage that MTR mines inflict on the waterways of Appalachia. The mine (Spruce No.1 Mine in West Virginia) was one of the largest surface mines ever proposed in Appalachia. The fact that EPA has demonstrated its willingness to use its veto authority increases the financial risk of investing in the permitting process for operators.

The Army Corps Suspends Rubber Stamp on Valley Fills: The Army Corps of Engineers suspended its "rubber-stamp" Nationwide Permit (NWP) 21 permit for valley fills of MTR mines in Appalachia until its expiration on March 18, 2012. The NWP 21 had long enabled the Army Corps to permit valley fills for MTR mines without any site-specific impact analyses. After a recent ruling by Judge Goodwin of the 4th Circuit Federal Court of Appeals in Richmond, Virginia, the Army Corps determined that there were more than minimal impacts to aquatic resources from the use of the NWP 21 permit. The new rule requires individual, site-specific permitting for all 404 permits, including for permit applicants who had already submitted their applications when NWP 21 was suspended. This will increase the cost and risk of permit applications for operators.

The Stream Buffer Zone Rule Revived: The Office of Surface Mining & Reclamation Enforcement (OSMRE) recently revived the Stream Buffer Zone Rule. The new rule would establish a 100-foot buffer zone for streams from mining, fill, and impoundments. This rule decreases the profitability of coal mines, because it places some coal off-limits for extraction.

OSMRE Pursuing Rule Rewrites for Coal Mining Industry: OSMRE is pursuing several rule rewrites for coal mining, which will make investments in coal mining more costly and more financially risky.

Some highlights:

- a. *Requiring operators to keep fill out of streams "where practicable" This would ostensibly include **sludge impoundments**, or if keeping the fill out of the stream is not "practicable," the requirement would be to avoid "material damage" to receiving streams outside of the permit area.*
- b. *Giving OSMRE new authority to designate high-quality streams as off-limits to fill.*
- c. *Increasing the financial bonds that operators would have to post to ensure funding for any acid mine drainage that may occur despite plans to prevent such runoff. Also, requiring new financial bonding for "any parameter of concern" with regard to water quality.*
- d. *Beefing up water quality monitoring requirements for operators.*
- e. *Denying mining permits to operators based on their presence on the "repeat violator system" list in their state.*

SCIENCE CONFIRMS

DAMAGING EFFECTS OF

MOUNTAINTOP MINING

On September 28, 2010, the U.S. Environmental Protection Agency's (EPA) independent Science Advisory Board (SAB) released its first draft review of EPA's research into the water quality impacts of valley fills associated with mountaintop mining. In the draft review, the SAB supports EPA's scientific research and agrees with EPA's conclusion that valley fills are associated with increased levels of conductivity (a measure of water pollution for mining practices) in downstream waters, and that these increased levels of conductivity threaten stream life in surface waters.

"This independent review affirms that EPA is relying on sound analysis and letting science and only science guide our actions to protect human health and the environment," said EPA's Assistant Administrator for Water Pete Silva. "We will continue to follow the science and solicit input from all stakeholders as we safeguard water quality and protect the American people."

The SAB reviewed EPA's draft report "*A Field-Based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams*," which uses field data to derive an aquatic life benchmark for conductivity. The benchmark is intended to protect 95 percent of aquatic species in streams in the Appalachian region influenced by mountaintop mining and valley fills. Based on that science, EPA released guidance in April 2010 designed to minimize irreversible water quality impacts caused by mountaintop mining.



REPUTATIONAL RISK:

THE PUBLIC OUTCRY AGAINST MTR

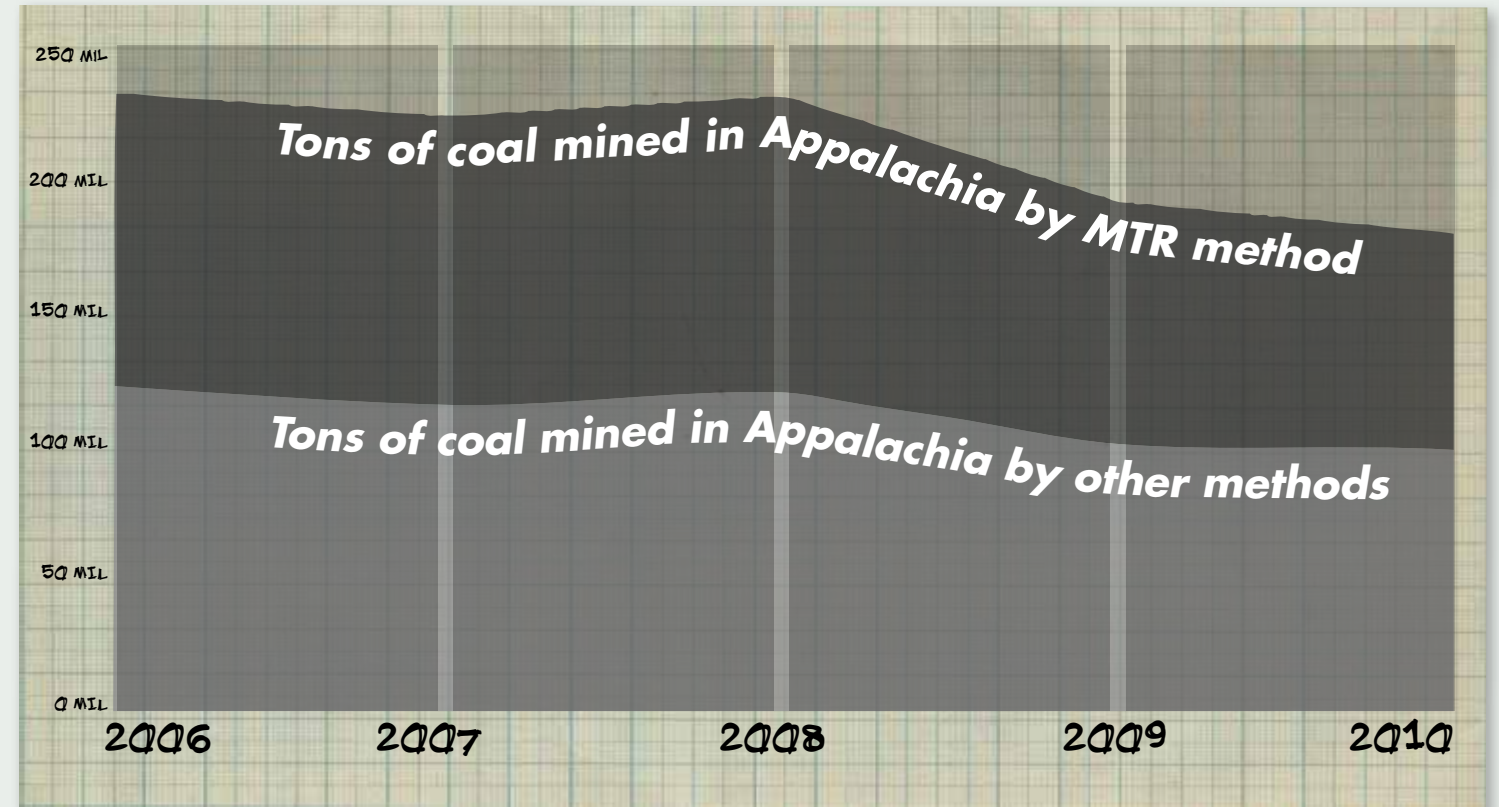
APPALACHIA RISING

The movement to stop mountaintop removal came together last September in Washington, D.C., with Appalachia Rising, a mass mobilization calling for the abolition of the mining practice. Thousands of coalfield residents and supporters converged in Washington for a mass march and action that had people rallying in front of banks, regulatory agencies, and the White House.

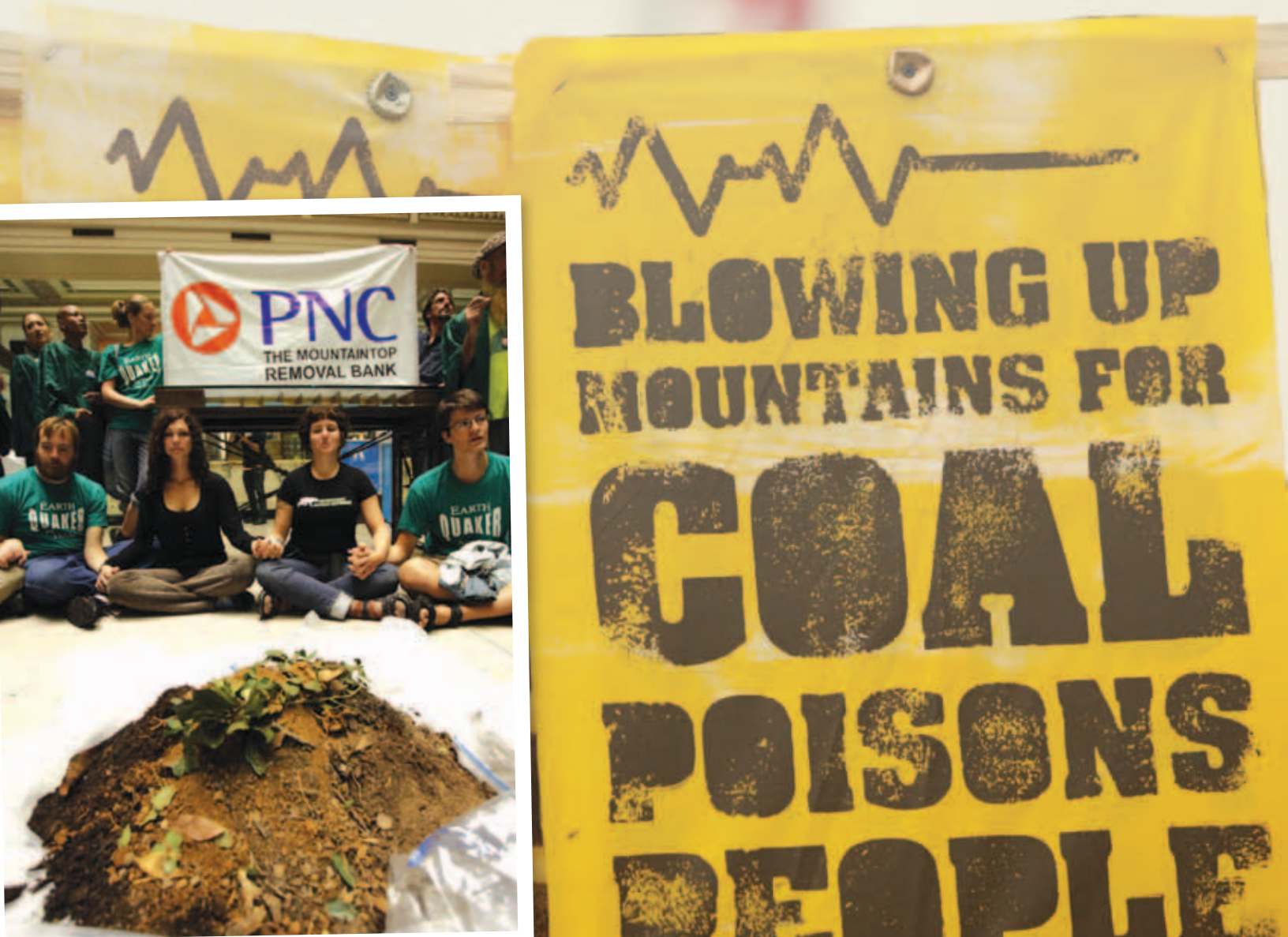
The event culminated with a march and rally from Freedom Plaza to Lafayette Park, where more than 100 activists, retired coal miners, and faith community leaders joined renowned climate scientist James Hansen and Appalachian residents in a dramatic sit-in in front of the White House. The group was demanding that President Obama follow his own science and end MTR. In addition, four people were arrested earlier in the day during a similar sit-in at PNC Bank, protesting the bank's financing of coal companies engaged in MTR.

This growing public opposition to mountaintop removal coal mining has made the issue increasingly controversial, and thereby elevates the reputational risk for any company associated with the devastating practice.

TRENDS AND STATISTICS

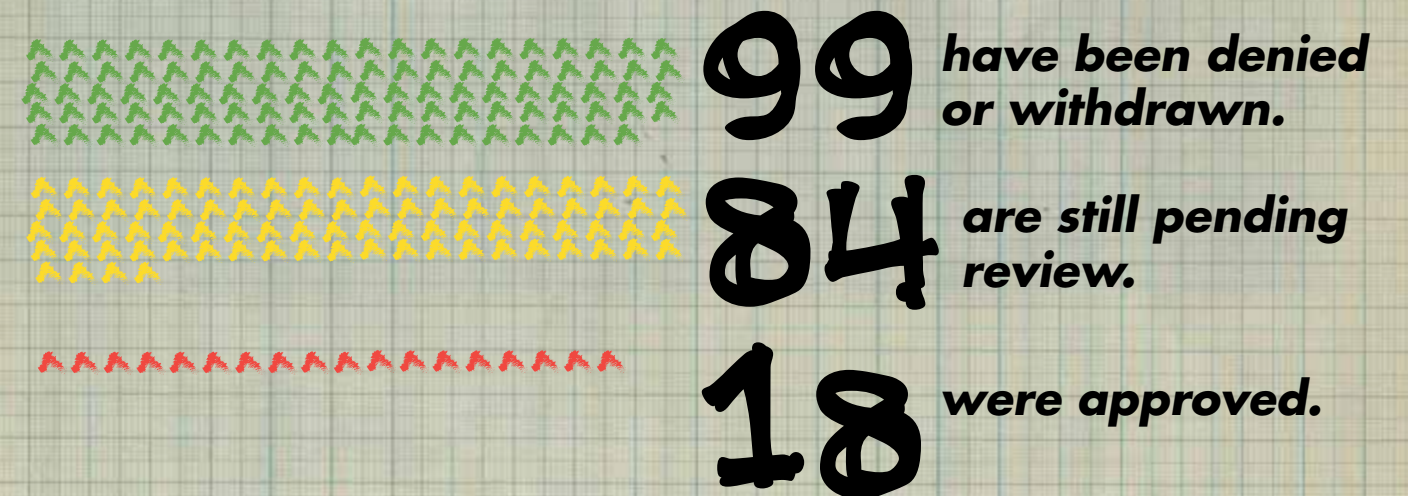


DATA source: OpenSourceCoal.org



Last year, the EPA ramped up its review of pending mining permits in Appalachia.

Of the permits it identified. . .



DATA source: ILoveMountains.org



PROFILES
of the top
MTR companies
that banks should be
avoiding

Massey Energy Company

Market Capitalization*: \$6.67 billion
Tons of coal from mountaintop removal (2010): 14,624,944
% of Central Appalachian coal from mountaintop removal: 47.6

The largest producer of coal from mountaintop removal mining in the country, Massey has a long history of environmental and social irresponsibility - including one of the largest slurry spills ever to take place in the United States, a \$1.5 million fine from the Mine Safety and Health Administration, and the tragic explosion at Upper Big Branch mine. In 2008 the company was fined \$20 million for Clean Water Act violations after the federal government documented more than 4,600 cases of pollutants being illegally dumped into local waters by Massey and its subsidiaries. Incredibly, Massey's violations have increased in frequency since its settlement with the federal government. Massey is currently in the process of being acquired by Alpha Natural Resources after nearly 50% of shares were voted against incumbent board members last year and Don Blankenship resigned as CEO.

Patriot Coal Corporation

Market Capitalization*: \$2.19 billion
Tons of coal from mountaintop removal (2010): 7,058,522
% of Central Appalachian coal from mountaintop removal: 55.5

Patriot is the second largest producer of coal from mountaintop removal, doubling its Appalachian production base in 2008 through the purchase of Magnum Coal. In the most significant judicial decision to date to address selenium pollution from coal mines in Appalachia, a federal judge ordered Patriot Coal to prepare \$45 million in secured credit to cover the costs of treating the pollutant at two of its coal mines in West Virginia. Selenium, a toxic element that causes reproductive failure and deformities in fish and other forms of aquatic life, is discharged from many surface coal mining operations across Appalachia and presents a significant financial liability for companies like Patriot.

Alpha Natural Resources LLC

Market Capitalization*: \$6.86 billion
Tons of coal from mountaintop removal (2010): 5,595,502
% of Central Appalachian coal from mountaintop removal: 36.4

Alpha Natural Resources is the third largest coal company in the United States. It has been aggressively expanding through a merger with Foundation Coal in 2009 and a planned acquisition of Massey Energy this year. Last year, property owners in West Virginia sued the company for subsidence damage and ruined groundwater due to "reprehensible, intentional, and grossly negligent" conduct in mining operations.

International Coal Group

Market Capitalization*: \$2.26 billion
Tons of coal from mountaintop removal (2010): 4,097,446
% of Central Appalachian coal from mountaintop removal: 51.6

One of the newer coal miners, International Coal was formed in 2004. The company quickly found itself immersed in controversy due to hundreds of safety violations leading to the death of 12 miners at the Sago coal mine in West Virginia. International Coal was fined hundreds of thousands of dollars by the State of Kentucky for falsifying pollution discharge records this year and thousands of violations of the Clean Water Act. International Coal executives have also been involved in communications about opposing "anti-coal" candidates in the wake of the Citizens United Supreme Court case.

Arch Coal, Inc.

Market Capitalization*: \$5.60 billion
Tons of coal from mountaintop removal (2010): 3,664,831
% of Central Appalachian coal from mountaintop removal: 33.8

Arch is the second largest coal company in the United States, behind Peabody. In March of 2011, Arch was fined \$4 million for dumping excessive amounts of pollutants into the waterways of Virginia, West Virginia, and Kentucky. Last year, the Environmental Protection Agency vetoed a permit for Arch's proposed Spruce mountaintop removal coal mine, which would have been the largest destructive mine in West Virginia, after the company rejected proposed environmental improvements costing just \$0.55 per ton of coal.

CONSOL Energy Inc.

Market Capitalization*: \$12.18 billion
Tons of coal from mountaintop removal (2010): 2,503,020
% of Central Appalachian coal from mountaintop removal: 30.4

CONSOL is a major producer of both coal and natural gas, and has been sharply increasing its capital investment in natural gas production over coal. CONSOL was fined nearly \$6 million in March of 2011 for destroying water quality and for pollution violations in Pennsylvania and West Virginia. The company also had permits suspended at two other mines in West Virginia. CONSOL also has 7 of the top 20 mines with the most safety citations, including the McElroy mine in West Virginia with the second most safety violations of any mine in the country.

TECO Energy

Market Capitalization*: \$3.9 billion
Tons of coal from mountaintop removal (2010): 2,395,064
% of Central Appalachian coal from mountaintop removal: 47

Primarily a utility company based in Florida, TECO also operates coal mines in Kentucky, Tennessee, and Virginia. In 2009, the company was fined \$250,000 for illegally mining without a permit in Pike County, Kentucky.

ArcelorMittal

Market Capitalization*: \$54.98 billion
Tons of coal from mountaintop removal (2010): 1,526,729
% of Central Appalachian coal from mountaintop removal: 60

ArcelorMittal is the largest steel producing company in the world. Since coal (or natural gas) is a critical component of steel-making, ArcelorMittal has increased its purchase of coal assets, including three mountaintop removal coal mines in West Virginia.

James River Coal Company

Market Capitalization*: \$655.31 million
Tons of coal from mountaintop removal (2010): 631,190
% of Central Appalachian coal from mountaintop removal: 10.96

James River is a small coal company based out of Virginia, with most of its mining operations in Kentucky. In 2010, the company was notified of a pattern of safety violations at one of its mines.

*As of March 22, 2011



FINANCIERS OF MTR COAL

This table illustrates the ten banks that we examine in this report and their financial relations**** with the top producers of MTR coal in Appalachia. Each coal mining company was "weighted," based on the percentage of total MTR coal that it was responsible for mining in 2010.

Company Name	Massey Energy	Patriot Coal	Alpha Natural Resources	International Coal Group	Arch Coal	CONSOL Energy	TECO Energy	Arcelor Mittal	James River Coal Company	% **	2010 Rank
Weighting %***	17.7	8.5	6.8	5	4.4	3	2.9	1.8	0.8		
PNC	X	YES		X	YES	YES				38.6	1
Citi	YES	YES	YES		YES					37.4	2
UBS	X	YES		X	X				X	36.4	3
Morgan Stanley		YES		X	YES					17.9	4
Deutsche Bank	YES									17.7	5
Bank of America		YES			YES	YES				15.9	6
GE Capital Corp				YES					YES	6.8	7
JPMorgan Chase					YES					4.4	8
Wells Fargo						YES				3	9
Credit Suisse										0	N/A

YES Transaction took place between company and bank after January 1, 2009

X These transactions took place after January 1, 2009, but predate the banks' adoption of a policy on mountaintop removal

** Percentage of Appalachian MTR coal production by all companies financed by each bank

*** MTR produced in Central Appalachia divided by total MTR produced by all coal companies in Central Appalachia. 2009 figures from opensourcecoal.org

**** Transaction information available online; source: Bloomberg.

THE GRADES

REPORT CARD

BANK	2010 GRADE	2011 GRADE
Bank of America	C	C-
Citi	C-	D
Credit Suisse	A-	A-
Deutsche Bank	N/A	F
GE Capital Corp	F	F
JPMorgan Chase	F	C+
Morgan Stanley	C	C
PNC	F	C-
UBS	F	D
Wells Fargo	B+	B+

CREDIT SUISSE **A-**

(Policy adopted October 2010)
https://www.credit-suisse.com/citizenship/doc/policy_summaries_en.pdf

Extraction from policy

"Credit Suisse will not finance or provide advice on operations to extract coal or other resources where mountaintop removal mining practices are used."

Since the adoption of this clear policy, Credit Suisse has not provided financing to any company that practices MTR coal mining. We consider this policy and performance to be the best of the banks reviewed in this report card.



WELLS FARGO **B+**

(Policy adopted July 2010)
<http://tinyurl.com/wellsfargoenvironmentallending>

Extraction from policy

"We recognize the significant concerns associated with this practice, as well as the heightened risks related to companies engaged in MTR mining. At the same time, it is important to acknowledge the significant investments made by our coal customers in their mine operations, which were entered into in good faith and in accordance with applicable regulations. As a result of our deliberate approach, and the broader movement of the industry toward other mining methods, our involvement with the practice of MTR is limited and declining."

In 2010, Wells Fargo communicated to the report authors that "we have published internal guidance for our lending and credit personnel involved in coal mining transactions which states Wells Fargo's intention to disassociate itself from the practice of MTR." However, the bank has continued to provide financial support for CONSOL Energy.

JPMorganChase **C+**

(Policy adopted May 2010)
http://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/cr_full_report_10-0604.pdf

Extraction from policy

"Consequently, the firm considers an enhanced review to be appropriate until such time as the key controversies surrounding MTR are thoroughly addressed. The enhanced review is informed by the regulatory, legal and public discourse on this evolving issue."

This policy has no clear performance standard or reporting mechanism. However, this bank's performance has improved noticeably. Since this policy was adopted, JPMorgan Chase has only supported Arch Coal and it is notable that Chase has not participated in deals with several companies that they have a history of financing, including Massey Energy. This represents a significant reduction in the bank's exposure to MTR coal mining.



Bank of America **C-**

(Policy adopted December 2008)
http://webmedia.bankofamerica.com/environment/pdf/RPT-06-10-0774_Report_9-10_WEB.pdf

Extraction from policy

"Bank of America is particularly concerned about surface mining conducted through mountain top removal in locations such as central Appalachia. We therefore will phase out financing of companies whose predominant method of extracting coal is through mountain top removal."

This policy has a clear, identified performance standard, which is that Bank of America will not continue to do business with companies whose "predominant method of extracting coal" is mountaintop removal. While we think the logical approach is to assess "predominance" of this mining method within a company's operations in Appalachia, Bank of America appears to be assessing predominance across U.S. operations. It is unclear whether this policy has had any material impact, as the bank has not produced any reporting on its implementation and has provided financing for Patriot, Arch, and CONSOL.

Morgan Stanley **C**

(Policy adopted April 2010)
www.msdlw.org/global/Environmental_Policy.pdf

Extraction from policy

"We will not finance companies for which a predominant portion of their annual coal production is from MTR activities as an extraction method. We will periodically disclose the process by which we are implementing these commitments including case studies of the types of effect the due diligence process has on transactions."

This policy has a clear, identified performance standard and a commitment to regular reporting, with case studies, which we have not yet seen in practice, although Morgan Stanley has informed the report authors that "During Summer 2011, Morgan Stanley will begin reporting with respect to its financing activities for which MTR is a consideration." While we think the logical approach is to assess "predominance" of this mining method within a company's operations in Appalachia, Morgan Stanley appears to be assessing predominance across U.S. operations. It is unclear whether this policy has had any impact on financing decisions; since adopting this policy, the bank has slightly less exposure to MTR companies, but has still provided financing to Patriot Coal and Arch Coal.

PNC **C-**

(Policy adopted October 2010)
<http://tinyurl.com/pnccorporateresponsibility>

Extraction from policy

"MTR is the subject of increasing regulatory and legislative scrutiny, with a focus on the permitting of MTR mines. While this extraction method is permitted, PNC will not provide funding to individual MTR projects, nor will PNC provide credit to coal producers whose primary extraction method is MTR."

This policy has an identified performance standard, "coal producers whose primary extraction method is MTR", although it is unclear whether this refers to a company's performance in Appalachia, or across the United States. Prior to adopting this policy, PNC had substantial exposure to MTR companies, and the youth of the policy means we are waiting to see whether it has an impact on financing decisions. PNC has communicated to the report authors that this policy is currently under review and likely to be revised in 2011.





(Policy adopted August 2009)
<http://citizenship.citigroup.com/citi/citizen/finance/environment/mrcm.htm>

Extraction from policy

"Citi has implemented a robust MTR Environmental Due Diligence Process that has been fully incorporated into our credit risk policies and procedures. The Diligence Process is triggered when engaging any client that uses MTR as an extraction method, and includes an MTR Risk Assessment Questionnaire that Citi will discuss with relevant clients as a part of our transactional due diligence."

Citi's policy lacks an identified performance threshold. In 2010, Citi reported on the number of MTR company transactions that have been through its "enhanced due diligence process" and the number of transactions that were approved and closed. This tells us that there is at least one MTR company Citi is not prepared to do business with, although it is not clear why (MTR due diligence is one part of due diligence and other factors may have come into play). However, this policy has not reduced Citi's exposure to MTR coal. Since the policy was adopted, Citi has provided financing for Massey, Patriot, Alpha Natural Resources and Arch Coal, more than doubling the percentage of MTR coal that the bank provides financing for.



(Policy adopted November 2010)
http://www.ubs.com/1/e/about/corp_responsibility/news.html?newsId=187507

Extraction from policy

"As part of this review, we assess to what extent companies rely on MTR mining for their revenue generation, and we need to be satisfied that the client is committed to reduce over time its exposure to this form of mining."

While a statement like this acknowledges the issue of MTR and is a small step in the right direction, there is still no clear commitment from UBS to stop funding any of the MTR coal companies. Behavior to date suggests this policy is of little substance. Immediately after this policy announcement at UBS, the bank acted as advisor on the Massey-Alpha combination deal, which created the largest single mountaintop remover in the country, responsible for fully 25% of coal production from MTR mines.

Deutsche Bank



Deutsche Bank does not appear to have a policy that addresses MTR coal mining. Deutsche Bank has communicated to Rainforest Action Network and the Sierra Club that they are currently examining the issue.



GE Capital Corp does not appear to have an environmental policy and has not responded to our communication.

CONCLUSIONS

We urge all private banks involved in commercial lending and investment banking services for the mining sector to end their relationships with companies who practice mountaintop removal coal mining in Appalachia.

Our recommended 'best practice' is a clear exclusion policy on commercial lending and investment banking services for all coal companies who practice mountaintop removal coal extraction.

Where banks choose to maintain relationships with this sector, we recommend a publicly available policy, with a clearly identified performance threshold and regular reporting on policy implementation.

The Charlotte Observer
Duke rethinking options on use of mountaintop coal
Other mining methods can cost more - but are less politically controversial.

By Bruce Henderson
 Saturday, Jun. 12, 2010

Duke Energy made an unusual request of its coal suppliers last month: Quote the price of coal mined without blasting Appalachian mountaintops.

With that, the nation's third-largest utility in power sales hinted that it might cut ties to the environmentally destructive and politically explosive practice.

Mountaintop-removal mining, or MTR, opens coal seams by removing the earth over them, and dumps the rock and dirt into valleys below. About 25 percent of coal in the central Appalachians, where most of North Carolina's fuel comes from, is mined that way.

...with trying to adjust to the ground shifting beneath its corporate feet.



RAN.org



BankTrack.org



SierraClub.org



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Special thanks to: Appalachian Voices and Perrin De Jong

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