POLICY AND PRACTICE

Report Card on Banks and Mountaintop Removal

Photo (c) Paul Corbit Brown

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: clear-cutting 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. For a mere seven percent of the nation's coal, the tradeoff does not add up.

MTR is a mining practice where 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 then 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 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 recent peer-reviewed report 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 nine banks—Bank of America, Citi, Credit Suisse, GE Capital Corp, JP Morgan Chase, Morgan Stanley, PNC, UBS and Wells Fargo —that make up the majority of financing for MTR. Since January 2008, the nine banks examined in this report card have provided more than $3.9 billion in loans and bond underwriting to companies practicing mountaintop removal coal mining.

It is critical in preventing environmental and health disasters as well as in limiting reputational risks, for banks and financial institutions to adopt strict lending practices when it comes to mountaintop removal. Several banks in the U.S. and in Europe have recently adopted policies that limit, and even end their financing of this environmentally devastating practice. However, how effective are these policies in practice? In this report card we review each bank's position on MTR coal mining and award a 'grade' based on: strength of performance threshold, scope of due diligence and public transparency.

Photo by Kent Kessinger courtesy of Southwings and Appalachian Voices.

WHAT DOES AN IDEAL MOUNTAINTOP REMOVAL POLICY LOOK LIKE?

Rainforest Action Network and the Sierra Club are calling for the nine 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 who 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. After an initial scoring, RAN and 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, their 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 commercial lending and investment banking services.

Grade 'B' (Essential elements)

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

- Enhanced due diligence with a threshold performance standard to the effect that the bank will not lend to or or 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, potential material legal abilities, and exposure to litigation
- Regular reporting with case studies
- Policy publicly available, alongside other environmental policies
- This policy must apply to both commercial lending and investment banking business.

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, potential material legal abilities, and exposure to litigation
- Regular public reporting with case studies
- Policy publicly available, alongside other environmental policies

Grade 'D'

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 and has no investment policy for this sector/issue.

THE GRADES

BANK	GRADE
Credit Suisse	A-
Wells Fargo	B+
Bank of America	C
Morgan Stanley	C
Citi	C-
JP Morgan Chase	F*
GE Capitol Group	F
PNC	F
UBS	F

Bank of America – Grade C
(Policy adopted December 2008)
http://environment.bankofamerica.com/articles/Energy/COAL_POLICY.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. Bank of America will not continue to do business with companies whose "predominant method of extracting coal" is mountaintop removal. However, their policy lacks regular, transparent reporting on its implementation. 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.

Citi – Grade C-
(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. Under certain circumstances, Citi may require an Independent Review.

- *Prior to new transactions, Citi will conduct appropriate due diligence and evaluate companies that engage in MTR extraction in Central Appalachia, utilizing the following four principles.*
- *Regulatory compliance - Citi will evaluate the company's compliance history over time.*
- *Exposure to future regulatory changes - Citi will evaluate the readiness of clients to meet changing regulatory requirements.*
- *Litigation risk - Citi will evaluate the company's exposure to litigation risk, including the status of existing lawsuits and historical judgments.*
- *Franchise risk - Citi will evaluate the company's profile and the extent to which the company is exposed to negative franchise risk.*

Citi commits to continuing dialogue with stakeholders and clients on this issue. Based on implementation experience, we will review and revise our MTR Environmental Due Diligence process over time and as regulations change.

Citi's policy lacks an identified performance threshold. Since 2010, Citi has reported on the number of MTR company transactions that have been through their 'enhanced due diligence process' and the number of transactions that were approved and closed. This tells us that there is some substance to the policy and that there is at least one MTR company Citi is not prepared to do business with.

Credit Suisse – Grade A-
(Policy adopted September 2009)
https://www.credit-suisse.com/citizenship/en/environment.jsp

Extraction from letter to RAN and the Sierra Club (4/28/10)
"Credit Suisse recognizes the vital importance of the mining sector, in all its diverse forms, for the global economy. However, given the potential impacts that mining operations may have, Credit Suisse seeks to promote responsible mining practices that protect the environment, ensure worker health and safety, and engage the public through consultation and disclosure."

Credit Suisse has confirmed that they "explicitly do not finance the extraction of coal in a mountain top removal setting." The publicly-available environmental policy on the Credit Suisse website does not explicitly reference mountaintop removal coal mining.

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

JPMorgan Chase – Grade F*
JPMorgan Chase's environmental policy does not reference mountaintop removal coal mining.
https://www.jpmorgan.com/cm/ContentServer?pagename=Chase/Href&urlname=jpmc/community/env/policy

* JPMorgan Chase has communicated to RAN that they will produce a publicly available statement on mountaintop removal coal mining in 2010. As of the date of this report, Chase has not made any statement publicly available or shared with RAN and the Sierra Club.

Morgan Stanley – Grade C
www.msdw.org/global/Environmental_Policy.pdf

Extraction from letter to RAN and the Sierra Club:

"We have implemented an enhanced environmental due diligence process on any transactions involving a client engaged in the practice of MTR as an extraction method. Our enhanced due diligence analyzes the company's policy framework regarding mining techniques, operating practices, and track record of legal compliance, reclamation and litigation.... 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. 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.

PNC – Grade F
PNC does not appear to have a robust environmental policy and has not responded to our communication. A review of their website shows no evidence of a CSR or environmental staff team covering their commercial lending and investment banking business.

UBS – Grade F
http://www.ubs.com/1/e/about/corp_responsibility/commitment_strategy/policies_guidelines/environmental.html

http://www.ubs.com/1/ShowMedia/about/corp_responsibility/commitment_strategy/policies_guidelines/environmental?contentId=86388&name=envpolicy05_english.pdf

UBS's Environmental policy references enhanced due diligence processes around risk industries, including mining. However, there is no specific reference to mountaintop removal mining.

Wells Fargo – Grade B+
https://www.wellsfargo.com/about/csr/reports

Extraction from Wells Fargo's "10-point environmental commitment":

"2. Improve environmental due diligence. Incorporated environmental assessments into our credit policies with an initial emphasis on our commercial lending to agricultural, coal and metal mining industries…10. Report annually on our progress."

In a letter to RAN and the Sierra Club, Wells Fargo states 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."*

Wells Fargo recently acquired a number of coal company relationships as a result of a merger with Wachovia. *"While some of these customers are involved in winding down legacy MTR operations… none is pursuing any new MTR projects. We have exited from relationships with customers that continue to pursue MTR."*

Wells Fargo has communicated to RAN and the Sierra Club that they will produce a publicly available statement on mountaintop removal coal mining in 2010.


Photo: Appalachian Voices.

FINANCIERS OF MTR COAL

This table illustrates the nine 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 they were responsible for mining in 2009.

	Massey	Patriot	Alpha	International Coal Group	Arch	CONSOL	TECO	James River Coal	% **	Rank
weighted %***	19.9	8.9	6.03	4.92	3.99	3.85	2.85	0.76		
PNC	YES	YES	YES	YES	YES	YES			47.59	1
UBS	YES		YES	YES		YES		YES	35.46	2
Chase	YES				YES	YES	YES		30.59	3
GE Capitol	YES			YES				YES	25.58	4
Bank of America		*	YES		YES	YES	YES		16.72	=5
Citi		*	YES		YES	YES	YES		16.72	=5
Wells Fargo			YES		YES		YES		12.87	7
Morgan Stanley				YES	YES		YES		11.76	8
Credit Suisse					*				0	N/A

* These transactions pre-date the banks' adoption of a policy on mountaintop removal and have therefore been discounted for this table.

** 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.

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.

We intend to publish a second report card next year and look to all the banks in this report to improve their grades.