



# **Know Thy Enemy:**

**AN UPDATE ON THE SIERRA CLUB**





On behalf of the Kentucky Coal Association (KCA) and its member companies, we would like to thank Adam T. Goebel and Travis A. Crump with the law firm of Stoll Keenon Ogden PLLC, for their review of the legal and financial strength of the Sierra Club, a national group of environmental activists focused on moving the United States away from the production and use of coal. At KCA, we believe that it is important to look inside anti-coal groups as well as their overall agenda and how it relates to the coal industry. The Sierra Club is clearly well funded and has in recent years created subordinate groups, such as the Beyond Coal campaign to help influence public opinion against the coal industry. But what other items are on their agenda? This white paper looks at other legal actions that the Sierra Club has supported in the last several years in their efforts to end fossil fuel use and development.

KCA is committed to continuing its 60 plus years tradition of telling the story of Kentucky coal and coal mining. The representation of our membership includes Eastern and Western Kentucky operations, as well as surface and underground production. This statewide membership creates a diverse but representative perspective on issues involving our coal industry. This diversity helps the Association build a consensus approach in problem solving and addressing the complex challenges facing our industry today.

Please contact me at KCA with any questions or comments in regards to the compilation and distribution of this publication at 859/233-4743 or by email at [bbissett@kentuckycoal.com](mailto:bbissett@kentuckycoal.com).

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Bissett", with a long, sweeping horizontal line extending to the right.

Bill Bissett  
President

# Know Thy Enemy:

## AN UPDATE ON THE SIERRA CLUB

■ ADAM T. GOEBEL & TRAVIS A. CRUMP

*Stoll Keenon Ogden PLLC*

One of the Sierra Club's expressly stated goals is to shut down the coal industry by stopping new coal-fired power plants, phasing out existing plants, and keeping the U.S. coal reserves in the ground and out of international markets. As such, the actions and developments of the organization should be of interest to those at all levels of the industry, from the miners to the end user and even coal ash recyclers. In February 2012 the Sierra Club celebrated the announcement of the 100th coal-fired power plant retirement as a major milestone in its goal to retire one-third of the nation's aging coal plants by 2020. Because electric power plants accounted for 94 percent of all Kentucky coal sold in 2009, it goes without saying that such a rate of retirement should be of great interest to those in the Commonwealth and the Kentucky Coal Association.

This update will provide information about the Sierra Club including its substantial funding and local and regional hiring. It will also discuss some of the strategies employed by the Sierra Club—from attacking the coal industry through its public relations efforts to its legal challenges designed to reduce both supply and demand for coal. This may shed some light on the Sierra Club's future activity in Kentucky and illustrate the impact on the coal industry.

## FUNDING, GROWTH AND DIRECTION

The Sierra Club is a large and very well-funded organization. It employs nearly 600 staff members and has about 625,000 paid members. Locally, the Sierra Club is hiring. Within the last six months it has advertised

### ANNUAL BUDGET 2011

#### Sierra Club

**\$86,868,726**

#### Other Organizations

##### Natural Resources Defense Council

**\$96,971,952**

##### Earth Justice

**\$23,143,420**

##### Alliance for Climate Protection

**\$16,374,635**

##### United Mine Workers of America

**\$39,092,161**

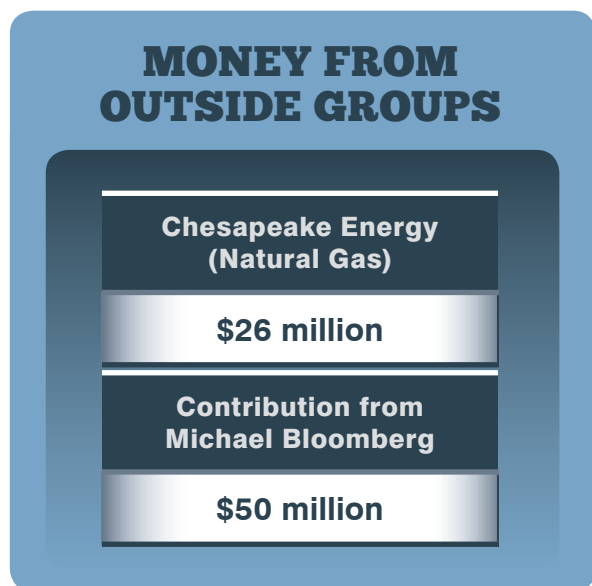
open positions in Kentucky, Virginia, Indiana, Ohio, Pennsylvania and North Carolina for, among other things, positions in its “Beyond Coal” campaign. The “Beyond Coal” campaign is a push by the Sierra Club to tend “the coal rush” as it calls it, and replace coal-fired electric generation plants with solar and wind. The Sierra Club also recently hired Trey Pollard, former communications director for Kentucky Representative John Yarmuth, in a senior position for political communications.

In July 2011 the Sierra Club’s “Beyond Coal” campaign secured a \$50 million donation from Bloomberg Philanthropies, New York Mayor Michael Bloomberg’s philanthropic arm. The \$50 million pledge will fund a significant portion of the campaign, which is projected to spend \$150 million by 2015. The pledge allowed the group to expand its 15-state “Beyond Coal” campaign to 45 states and double the size of the staff that works on the campaign, from 100 to 200 full-time workers.

These dollar figures are certainly noteworthy, but for an organization that is as well-organized and well-funded as the Sierra Club, what is most

startling is how the dollar amounts compare to the overall budget. In a 2011 interview with the New York Times, the Sierra Club’s Executive Director, Michael Brune, said the organization had just approved its largest annual budget ever, about \$100 million for 2012, up from \$88 million in 2011. Related entities have significant financial resources as well. The Sierra Club Foundation, a 501(c)(3) organization that awards grants to the Sierra Club and other organizations, had over \$100 million in total assets in 2010 based on available audited financial statements. Also, an entity that began as the Sierra Club Legal Defense Fund in 1971 is now known as Earthjustice. It describes itself as independent from the Sierra Club, but it serves as a legal advocate for the Sierra Club as well as hundreds of other clients. Based on its 2009 tax filings, Earthjustice had total assets worth over \$38 million.

Coal is not the Sierra Club’s only focus in the region. In early February 2012, the organization admitted that it took \$26 million from one of the nation’s largest natural gas companies while it was promoting natural gas as a clean, green energy source and an alternative to coal. In 2010 the Sierra Club decided to end the financial relationship, forgoing an additional \$30 million in funding — an amount equal to the organization’s budget for only about a quarter of the year. In a blog post Brune explained the relationship stating, “the idea was that we shared at least one common purpose — to move our country away from dirty coal.” However, Brune now says the Sierra Club no longer supports natural gas as an alternative fuel due to concerns about the impact of hydraulic fracturing. The group is calling for natural gas to be phased out by 2050 — about 20 years after it wants coal eliminated. Despite advocating for natural gas



previously, as of early March 2012 the Sierra Club now claims:

The natural gas industry is dirty, dangerous, and running amok. Government loopholes exempt natural gas drillers from the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act — and at the same time, don't require them to disclose the frequently toxic chemicals they use in hydraulic fracturing, or "fracking," the violent process they employ to dislodge gas deposits from shaleroack formations. The closer we look at natural gas, the dirtier it appears; and the less of it we burn, the better off we will be...we must do all we can to ensure that, by 2050, we'll no longer be dependent on any fossil fuel — including natural gas.

Similar to its coal strategy, the Sierra Club has now filed formal objections with the Department of Energy against the export of domestic gas produced from hydraulic fracturing. The Sierra Club claims that exports would raise gas and electricity prices nationally and expand destructive natural gas fracking. This and other strategies are expected in the Marcellus Shale region.

## **PUBLIC RELATIONS**

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In January 2012, as a part of an initiative to end the use of coal-fired boilers on college campuses, the Sierra Club sponsored men's basketball games at both the University of Kentucky and Indiana University.

Also, in March 2012 following the EPA's proposed rules to limit carbon emissions from new power plants, the Sierra Club's Executive Director praised the efforts of environmental groups such as the Sierra Club to stop additional coal fired power plants from

being built, and indicted the coal industry as follows: For more than a hundred years, our country has relied heavily on coal to generate electricity. Along the way, we somehow learned to live - and die - with the problems that burning coal brings - from unhealthy air to environmental devastation. We've blasted mountains, destroyed communities, and polluted watersheds. Our babies have been poisoned by mercury, our children have struggled with asthma, and our parents have died prematurely from respiratory disease, both from working in coal mines and also from breathing dirty air once that coal is burned. Our climate is already changing - with once in lifetime unsettling weather events coming one after another.

In late March 2012, the Sierra Club introduced its first major national video campaign to promote its Beyond Coal initiative. The New York Times reported that the video campaign, which has a \$300,000 budget, features five videos that spoof popular television programs from the 1970s and 1980s with messages about the dangers of coal. The Sierra Club continues to look for ways, like the new videos that are aimed at youths, "to highlight the absurdity of continuing to burn coal in the 21st century, when there are such better solutions available and affordable, like solar and wind," said Michael Brune, executive director of the Sierra Club. He also said it was "very important for us to have fun with the ads. The topics we deal with can be pretty grim and dark. We wanted to find a way to bring a little life into something that can be pretty depressing.... We wanted the ads to be an antidote to that, to be serious fun."

All five videos feature a fictitious coal executive, portrayed by John Ennis, a star of "Mr. Show

with Bob and David,” a 1990s comedy series, making fake commercials about the coal industry. One video in particular focuses on coal mining. It uses film from “The Joy of Painting.” The instructor, Bob Ross, paints a landscape with a mountaintop using a scraper and palette. Speaking with a Boston accent provided by Mr. Ennis’s character, he says: “Everyone knows things are better when they’re topless, especially when they’re covered in paint, which I put on the end of this thing. Now you can see where we’ve blown the mountaintop exposing the coal. Scrape-y, scrape-y, goodbye lake-y, and all the rivers and creatures as well. Goodbye boring nature! Coal-da-lay-hee-hoo!” The video concludes with a message stating: “Over 500 Appalachian mountains have been destroyed by coal mining,” while the voice-over says, “Coal companies will say anything to make you think coal is safe. Let’s move beyond coal.”

## **SIERRA CLUB’S ACTIONS AGAINST COAL SUPPLIERS**

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The Sierra Club is attacking both coal supply and coal demand. With respect to coal supply, the Sierra Club has turned its resources on filing legal challenges against mining companies. The following are a sample of recent results from some of those cases as well as anticipated or recently filed cases.

### **1**

#### **Recent Results Of Litigation Initiated By Sierra Club**

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***Sierra Club v. Fola Coal Co.,  
No. 2:10-cv-1199 (S.D. W.Va.)***

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Fola Coal Co. agreed to pay more than \$343,000 to settle a lawsuit over alleged pollution from a West Virginia surface coal

mine, and it will take steps to reduce pollution under a consent decree. The consent decree was filed November 30, 2011 in the U.S. District Court for the Southern District of West Virginia by the Sierra Club, the West Virginia Highlands Conservancy, and Fola.

The lawsuit was based on water monitoring results from Boardtree Branch near the company’s Surface Mine No. 3 in Nicholas County. The groups alleged that the pollution level was high enough to violate two of the company’s permits, one under the Clean Water Act and one under the Surface Mining Control and Reclamation Act. The settlement was the first time that such monitoring results were used to establish violations of West Virginia’s narrative water quality standards.

Regarding the settlement, Cindy Rank, of the West Virginia Highlands Conservancy, said “The mining companies are now on notice. This is just the tip of the iceberg, and we will keep pressing until the mines clean up their messes and all of our streams meet the water quality standards.”

Fola Coal agreed to pay a \$25,000 civil penalty to the federal government, \$200,000 to the nonprofit group West Virginia Land Trust to fund a supplemental environmental project, and more than \$118,000 in attorneys’ fees for the plaintiffs.

The company agreed to remove a coal stockpile in the drainage area and agreed to remediate the stream bed below the discharge point. The company will have to restore approximately 3,000 feet of Boardtree Branch from the bottom of a “valley fill” waste rock pile to the boundary of the permitted mine site, a restoration that will include creation of a

# Sierra Club's Attack Plan on All Proposed Kentucky Power Plants

**V** VICTORY **A** ACTIVE **P** PROGRESSING **U** UPCOMING

Status	Developer	Name	Size (MW)	Technology/ Plant Type	Fuel Type	Finance**	Estimated Annual CO <sub>2</sub> *** Output (tons)
<b>V</b>	Sky Energy	Kentucky - Bell	600				4,200,000*
<b>A</b>	Buffalo Creek Energy, LLC	Kentucky - Buffalo Creek		Coal-to-Liquids			
<b>A</b>	Erora Group	Kentucky - Cash Creek IGCC	770	Integrated Gasification Combined Cycle (IGCC)	Bituminous		5,149,507
<b>A</b>	Chisolm Energy, LLC	Kentucky - Chisolm Energy		Coal-to-Liquids			
<b>V</b>	Coal Synthetics, LLC	Kentucky - Coal Synthetics		Coal-to-Gas			
<b>V</b>	Estill County Energy	Kentucky - Estill County Energy Partners	110	Circulating Fluidized Bed (CFB)	Waste Coal		1,045,133
<b>V</b>	Fuel Frontiers, Inc.	Kentucky - Fuel Frontiers, Inc.		Coal-to-Liquids			
<b>V</b>	Kentucky Mountain Power (EnviroPower)	Kentucky - Kentucky Mountain Power (EnviroPower)	600				3,850,000*
<b>A</b>	Secure Energy Kentucky, LLC	Kentucky - Secure Energy Paducah Gasification Plant		Coal-to-Liquids			
<b>V</b>	East Kentucky Power Cooperative	Kentucky - Smith 1	278	Circulating Fluidized Bed (CFB)	Bituminous	Bank of America JP Morgan Chase Merrill Lynch Wells Fargo Credit Suisse	984,799
<b>V</b>	East Kentucky Power Cooperative	Kentucky - Smith 2	278	Circulating Fluidized Bed (CFB)	Bituminous	Bank of America JP Morgan Chase Merrill Lynch Wells Fargo Credit Suisse	984,799
<b>P</b>	East Kentucky Power Cooperative	Kentucky - Spurlock	268	Circulating Fluidized Bed (CFB)	Bituminous	JP Morgan Chase	1,709,730
<b>V</b>	Peabody Energy	Kentucky - Thoroughbred	1500	Circulating Fluidized Bed (CFB)	Bituminous	Bank of America Citi Credit Suisse JP Morgan Chase Morgan Stanley Wells Fargo	8,518,211
<b>P</b>	LG&E & KU Energy	Kentucky - Trimble	750	Supercritical	Bituminous		5,088,833
<b>U</b>	Black Stallion Energy Center	Kentucky-Black Stallion Energy Center	660	Circulating Fluidized Bed (CFB)	Appalachian Coal and Waste Coal		4,620,000*
<b>A</b>	Kentucky Syngas (Conoco Phillips & Peabody Energy Corp.)	Kentucky-NewGas Energy Center		Coal-to-Syngas	Bituminous		

\* Estimated Annual Carbon Dioxide Output based on sources other than Carma.org

\*\* Info provided by Rainforest Action Network

\*\*\* Info provided by Carma

Source: Sierra Club

floodplain and wetland. Fola will also conduct monthly monitoring of discharges at the site, where it will monitor for total dissolved solids, total suspended solids, specific conductance, temperature, dissolved oxygen, pH, total alkalinity, bicarbonate alkalinity, sulfate, chloride, calcium, potassium, total and dissolved aluminum, total and dissolved iron, total magnesium, and total manganese. The company also will have to conduct acute and chronic whole effluent toxicity tests and West Virginia Stream Condition Index sampling at least twice a year.

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***Ohio Valley Environmental Coalition v.  
Patriot Coal Corp.,  
No. 3:11-cv-115 (S.D. W.Va.)***

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On March 15, 2012, the U.S. District Court for the Southern District of West Virginia approved a consent decree filed by Patriot Coal and three environmental activist groups to resolve charges that Patriot subsidiaries were violating 10 of their National Pollutant Discharge Elimination System permits issued by West Virginia under the Clean Water Act.

The Ohio Valley Environmental Coalition, the West Virginia Highlands Conservancy, and the Sierra Club filed a lawsuit that resulted in the agreement, which requires Patriot to install treatment technology at 43 locations to bring selenium discharges within acceptable limits.

As a part of the settlement, Patriot and its subsidiaries, Apogee Coal Co., Catenary Coal Co., and Hobet Mining, did not admit to any of the allegations. The settlement requires the defendants to pay \$6.75 million to the West Virginia Land Trust to fund an environmental project and \$750,000 to the federal government. However, the largest cost

is likely to be in controlling selenium from the 43 outflow points. The Sierra Club issued a statement saying an earlier agreement by Patriot to install new controls at only four outflows cost almost \$100 million by Patriot's estimate.

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***Ohio Valley Environmental Coalition v.  
Independence Coal Co.,  
No. 3:10-cv-0836 (S.D. W.Va.)***

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Alpha Natural Resources agreed to spend about \$50 million to reduce selenium runoff from three West Virginia mountaintop removal mines. The settlement resolved a citizens' lawsuit brought by the Sierra Club, the West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition, and Coal River Mountain Watch. The plaintiffs alleged that the mines, formerly owned by Massey Energy Co., repeatedly violated the Clean Water Act by discharging selenium in concentrations exceeding their West Virginia and National Pollution Discharge Elimination System permit limits. In addition to cleanup costs, Alpha will pay \$450,000 in civil penalties and \$4 million for a supplemental environmental project directed by the West Virginia Land Trust.

The statewide trust will use the funds to restore riparian areas and preserve land within the area impacted by the runoff, primarily the Kanawha River watersheds. The consent decree calls for Alpha to install treatment technology to bring selenium discharges within acceptable levels.

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***Ohio Valley Environmental Coalition v.  
Coal-Mac Inc., No. 3:10-833 (S.D. W.Va.)***

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In this case Arch Coal Inc. agreed to a settlement that required it to install selenium

treatment technology at six West Virginia mines, pay a \$200,000 civil penalty to the federal government and contribute \$1.8 million to West Virginia University's College of Law to develop the Land Use and Sustainable Development Law Clinic at West Virginia University. The settlement also requires weekly monitoring of selenium treatment at the Logan County sites run by Coal-Mac Inc. and the Mingo-Logan Coal Co.

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### Recently Filed Litigation

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#### ***WildEarth Guardians v. EPA, No. 1:11-cv-02064 (D.D.C.)***

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The Sierra Club and other environmental groups filed suit to force the Environmental Protection Agency to establish new source performance standards for emissions of methane and other pollutants from coal mines. The environmental groups filed the complaint on November 17, 2011 asking the U.S. District Court for the District of Columbia to compel EPA to act on a June 2010 petition seeking regulation of alleged air pollution from coal mines.

The environmental groups said in their complaint that emissions of methane, particulate matter, volatile organic compounds, and nitrogen oxides from mines can harm public health. The complaint alleges mines account for 10 percent of methane emissions in the United States and that they release 17,000 tons of particulate matter each year. It further alleges that emissions of volatile organic compounds and nitrogen oxides are also problematic because they react to form ozone. The groups petitioned EPA in June 2010 to begin a rulemaking process to establish performance

standards to control coal mine air pollution. EPA did not respond to the petition, and the lawsuit followed.

The National Mining Association and others have moved to intervene in the case. EPA filed an answer in early March. EPA's position is that it did not have enough time to respond to the Sierra Club's petition seeking regulation of alleged air pollution from coal mines.

### ACTIONS TO REDUCE COAL DEMAND

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The Sierra Club's attack on the coal industry also includes steps to eliminate the demand for coal. The main attack on the demand of coal is the Sierra Club's practice of filing lawsuits against every coal-fired power plant in the United States that is issued permits either to expand or build. The senior vice president of communications for the National Mining Association, Carol Raulston, has said "They [Sierra Club] are very proud of this strategy." Ann Woiwode, director of the Michigan chapter of the Sierra Club, verified that her organization does file a lawsuit on every permit issued to a coal-fired power plant. As mentioned above, coal-fired electric power plants account for 94 percent of all Kentucky coal sold in 2009. The Sierra Club is also attacking the disposal and reuse of coal combustion byproducts. The following are a sample of some of its recent efforts.

#### ► **EME Homer City Generation LP**

In February 2012, the Sierra Club announced its intention to file a Clean Air Act citizen lawsuit against EME Homer City Generation LP for alleged violations of sulfur dioxide emission limits at a coal-fired power plant in western Pennsylvania. In the notice of intent to sue the Sierra Club and Earthjustice said that

modeling of sulfur dioxide emissions from the three coal-fired generating units at EME Homer City Generating Station found widespread sulfur dioxide concentrations exceeding the one-hour standard. According to the notice, the emissions violate the power plant's Clean Air Act Title V permit, which said the proposed lawsuit will seek to enjoin violations, ensure future compliance, impose penalties, and recover litigation costs.

In April 2012, after a public hearing, the Pennsylvania Department of Environmental Protection approved plans to install a \$725 million pollution control system at the Homer City Generating Station. The Sierra Club and other environmental groups have claimed that the pollution controls are not sufficient to meet stricter proposed federal standards. It is unknown what impact, if any, the approval will have on the announced intention to sue.

## ◆ Coal Ash

On January 18, 2012, the Sierra Club, Earthjustice and several other environmental organizations announced their intent to sue the Environmental Protection Agency in an effort to force the agency to issue a final rule on coal ash. They claim EPA failed to "perform nondiscretionary duties" by not reviewing and revising regulations since 1980. The group says Section 2002(d) of the Resource Conservation and Recovery Act ("RCRA") requires EPA to review and revise regulations every three years.

In May 2010, the agency proposed regulating coal ash either as special wastes subject to regulation under subtitle C of RCRA, when destined for disposal in landfills or surface impoundments, or under subtitle D of RCRA, the section for non-hazardous wastes. The

proposed rule received more than 450,000 public comments, and the agency held eight public hearings on the proposed rule. A final rule is expected by the end of the year. The notice was sent on behalf of the following national and local environmental groups: Appalachian Voices, the Chesapeake Climate Action Network, the Environmental Integrity Project, French Broad Riverkeeper, Kentuckians for the Commonwealth, the Moapa Band of Paiutes, the Montana Environmental Information Center, Physicians for Social Responsibility, the Prairie Rivers Network, the Sierra Club, and the Southern Alliance for Clean Energy.

Also, in its March 1, 2012 solicitation for donations from its members, the Kentucky Chapter of the Sierra Club informed its members they are "fighting" to stop the expansion of "coal ash plants" in Jefferson and Trimble counties. Presumably, this is a reference to the potential expansion or creation of coal combustion residue landfills or other storage at two Louisville Gas & Electric Company facilities in those counties.

## CONCLUSION

The Sierra Club's funding and staff are growing, as are its continued efforts against coal. It is actively targeting every permit for a new or modified coal-fired power plant, and it is using water monitoring data, among other things, as the basis for legal action against mining companies. In addition, the Sierra Club is taking aggressive action against the EPA in an effort to implement greater and more restrictive regulation of mining operations under the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act. Notably, these efforts have been described as just the tip of the iceberg.



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