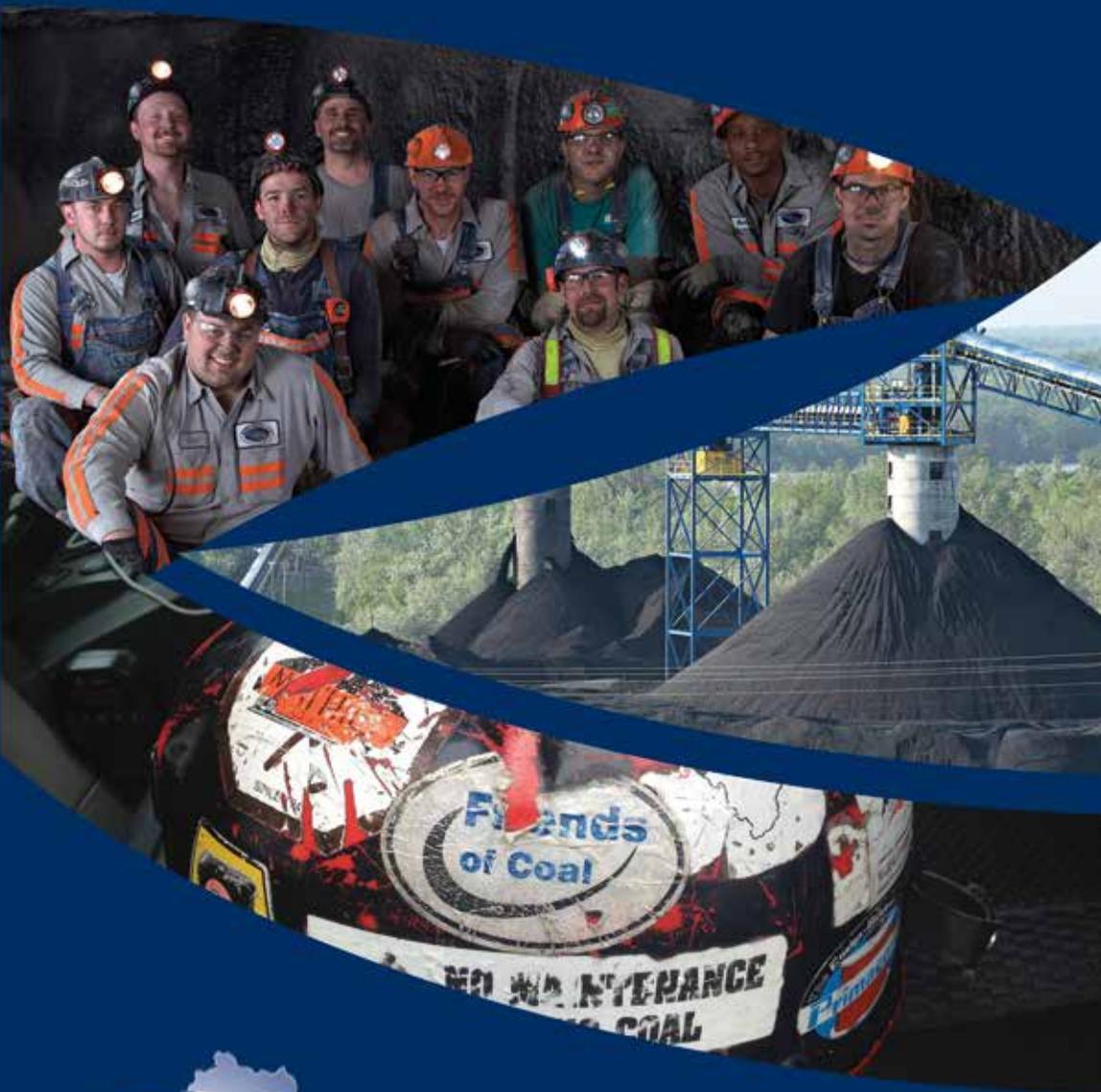


ENVIRONMENTAL ISSUES & KENTUCKY COAL





At the Kentucky Coal Association (KCA), we believe it is necessary to explain how President Obama and his Administration are thwarting job creation through an overreaching Environmental Protection Agency (EPA). This environmental booklet focuses on the continuation of KCA's lawsuit challenging EPA's Clean Water Act permit guidance, as well as explains the legal roadblocks that Kentucky coal mining has faced in Appalachia during the last several years.

KCA's challenge was successful before the United States District Court for the District of Columbia, and it is on appeal by EPA. We would like to thank the Commonwealth of Kentucky, most importantly Governor Steve Beshear, for his leadership and support in this important legal action.

For more than sixty years, KCA has been committed to continuing its tradition of telling the story of Kentucky coal. 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 allows the Association to 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.

Sincerely,

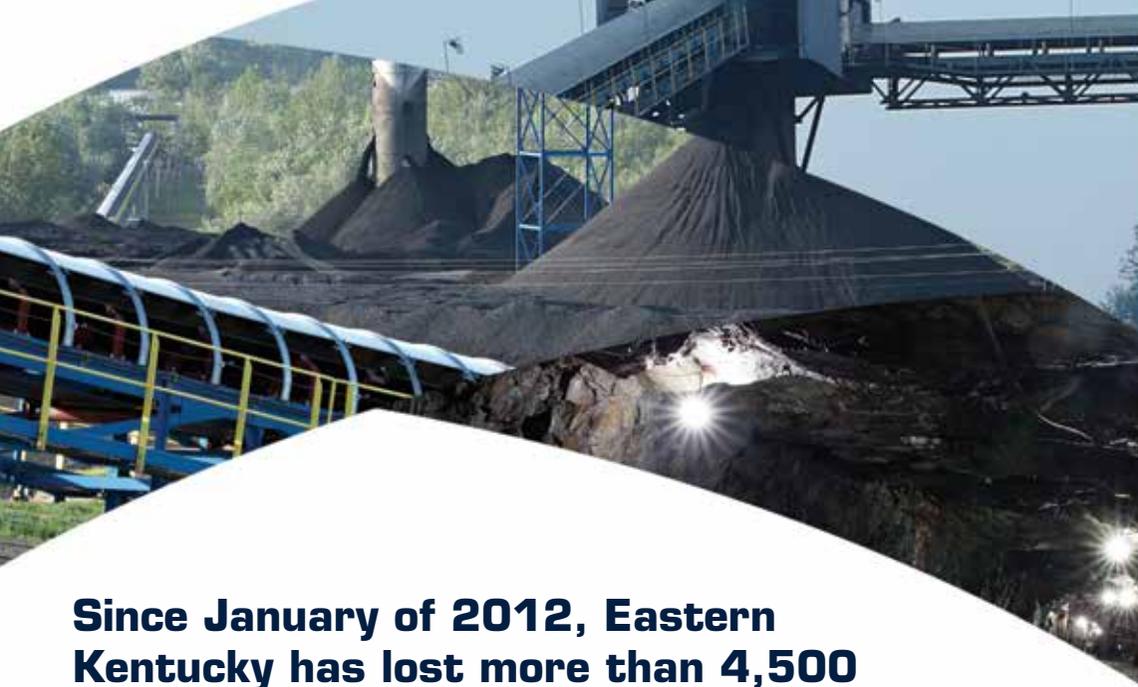
Bill Bissett, President
Kentucky Coal Association

As President Obama's 2nd Term continues, Kentucky's coal industry finds itself in difficult times.

While our coalfields in Western Kentucky have seen some increases in production and employment, our Eastern Kentucky coalfields have faced tremendous losses. Since January of 2012, Eastern Kentucky has lost more than 4,500 direct coal mining jobs. It is important to remember that for every one direct coal mining job lost, three other indirect jobs are also lost, some of which are located in the Lexington area. Production in Eastern Kentucky is also suffering, having dropped from 66 million tons to 49 million tons in one year.

Why is this loss of coal employment and production occurring in Eastern Kentucky? Traditional market forces, such as the price of Natural Gas and factors affecting electricity demand, have had a negative impact. However, the anti-coal policies of the current administration in Washington, DC have hit Eastern Kentucky the hardest. With this region and one industry – coal mining – selected for enhanced review or, as we call it, increased scrutiny, our Eastern Kentucky coal miners have found themselves working on an unfair playing field compared to the rest of the country.





Since January of 2012, Eastern Kentucky has lost more than 4,500 direct coal mining jobs

Below are some recent numbers that help explain the continued challenges facing Kentucky coal:

At the end of 2012, Kentucky coal production finished at **91,407,310** tons, the lowest amount of production since 1965.

Kentucky's coal industry lost **4,028** direct coal jobs in 2012. More troubling is for every one direct coal job lost, three other indirect jobs are lost, which brings the total of job losses to more than **16,000**.

The federal Environmental Protection Agency is holding up the processing of nearly 40 surface mining permits. These coal mining permits represent the potential to produce more than **125,000,000** tons of coal over the life of the operations, would have the potential to generate more than 3,500 jobs directly or indirectly, and contribute more than **\$120,000,000** in severance taxes to the support of state and local governments.

How Did We Get Here

On **April 1, 2010** the Environmental Protection Agency (EPA) issued Interim Guidance on Clean Water Act permit procedures for Appalachian surface mines. The guidance, issued without prior public notice or opportunity for public comment, was effective immediately and directed all Clean Water Act-permitting authorities in Ohio, Pennsylvania, Virginia, West Virginia, Tennessee and Kentucky to limit wastewater discharges from surface coal mining activities to achieve a benchmark instream conductivity level of 500 micro-siemens/CM. When the April 1, 2010 Interim Guidance was issued, EPA Administrator Lisa Jackson acknowledged that few, if any, mining valley fills would be able to comply with the new conductivity benchmark.

Subsequent to **APRIL 1, 2010**, the Kentucky Energy and Environment Cabinet proposed to issue 21 individual KPDES permits for new and expanded surface mines in Eastern Kentucky that did not include limitations based on the 500 conductivity benchmark but which, in all other respects, imposed limitations that EPA had approved

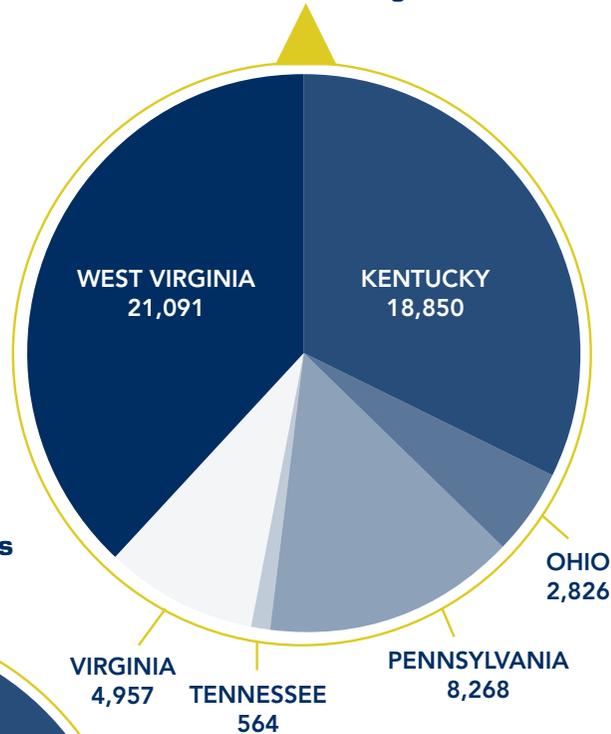
as recently as March 2010. In September 2010, EPA issued specific objections to Kentucky's issuance of the 21 individual KPDES permits thereby preventing their issuance.

In **OCTOBER 2010** the Kentucky Coal Association (KCA) filed suit against EPA in the United States District Court for the Eastern District of Kentucky – Pikeville Division contending that EPA's issuance of the Interim Guidance violated the Administrative Procedures Act and the Clean Water Act by ignoring public notice and comment rulemaking requirements and unlawfully usurping the state's role in establishing water quality standards under the Clean Water Act. Shortly thereafter the City of Pikeville and the Kentucky Energy and Environment Cabinet intervened in the KCA litigation in support of the Association's position.

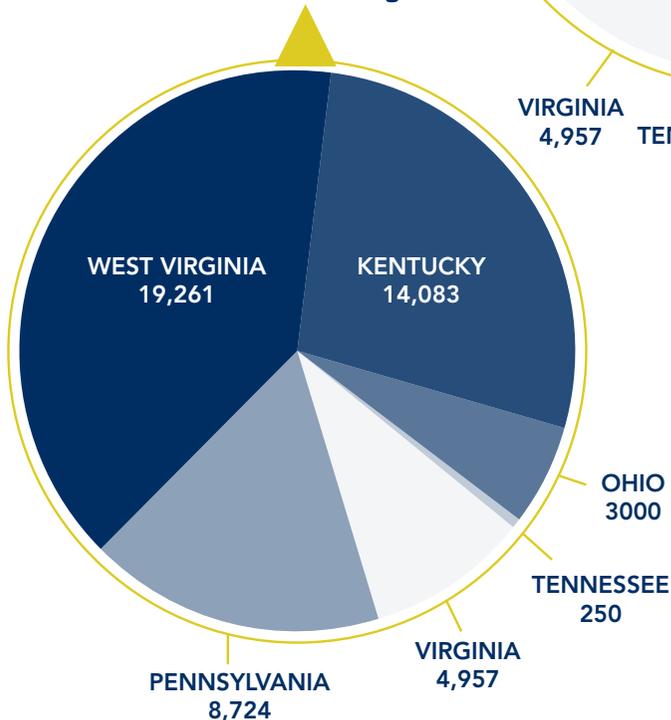
In **February 2011** EPA succeeded in having the Kentucky case and similar litigation that had been filed in West Virginia transferred to the Federal District Court in the District of Columbia for consolidation with litigation by the National Mining

Number of Coal Miners

Based on 2011 figures



Based on 2013 figures



Association (NMA) challenging EPA's Interim Guidance and procedures applied to the Corps of Engineers' issuance of Clean Water Act Section 404 permits.

On **July 1, 2011** the Kentucky Energy and Environment Cabinet proposed to issue more than 50 individual KPDES permits for coal mining activities. 19 of those proposed permits were for new or expanded surface mining activities in Eastern Kentucky. These proposed permits included a number of additional provisions to assure protection of aquatic life.

On **July 21, 2011** EPA withdrew its April 1, 2010 Interim Guidance and issued new Final Guidance on issuance of Clean Water Act permits. The Final Guidance suggested that the conductivity level should be 300 micro-siemens/CM rather than 500 but that Clean Water Act permit-issuing authorities had flexibility to apply other approaches such as biological assessment, toxicity

testing, and offsets in lieu of a numerical standard for conductivity. In response to comments by the Science Advisory Board, EPA limited the geographic applicability of its Final Guidance to West Virginia and Eastern Kentucky.

In late **September 2011** EPA issued a letter purporting to be a specific objection to all 19 of the proposed individual KPDES permits for surface mines in Eastern Kentucky. The letter did not specify the deficiencies associated with the individual permits and did not exercise any of the flexibility afforded it under the July 21, 2011 Final Guidance.

Since the **April 1, 2010** Interim Guidance that was challenged in the original KCA litigation had been withdrawn and replaced by the July 21, 2011 Final Guidance, KCA, the Kentucky Energy and Environment Cabinet and the City of Pikeville amended their complaint in October 2011 to include a challenge to the July 21, 2011 Final Guidance.



Individual KPDES Permits for New and Expanded Surface Mines in Eastern Kentucky

April 2010	September 2010	October 2010	July 2011	September 2011	July 2012	September 2012
EPA issues Clean Water Act guidance.	EPA objects to 21 Eastern Kentucky Mining Permits.	KCA files legal challenge to EPA Clean Water Act guidance and is joined by Kentucky Energy and Environment Cabinet, and City of Pikeville.	EPA issues revised Clean Water Act guidance.	EPA objects to 19 additional Eastern Kentucky mining permits.	Federal District Court rules in favor of KCA, Kentucky Energy and Environment Cabinet, and City of Pikeville.	EPA appeals Federal District Court decision to United States Court of Appeals for the District of Columbia.

In **October 2011**, the United States Federal District Court for the District of Columbia issued an order in the National Mining Association litigation invalidating EPA's procedures for the Corps of Engineers processing of Clean Water Act 404 permits for coal mining activities. The court held that EPA had failed to comply with the Administrative Procedures Act and had exceeded its legitimate authority under the Clean Water Act.

In **July 2012**, the Federal District Court ruled in favor of KCA, NMA, and the Kentucky Energy Environment Cabinet concluding that the EPA's issuance of the conductivity guidance was in violation of the Clean Water Act, the Surface Mining Control

and Reclamation Act, and the Administrative Procedures Act and that EPA had unlawfully infringed upon regulatory roles reserved to the states. EPA appealed the Federal District Court decision and the case is presently pending before the United States Court of Appeals for the District of Columbia.

In the meantime, EPA has allowed the Kentucky Energy and Environment Cabinet to issue only a single individual KPDES permit for a new or expanded surface mining operation in Eastern Kentucky since EPA's issuance of its Interim Guidance on April 1, 2010. The permits to which EPA objected in 2010 and 2011 remain in a state of legal limbo.



COUNTY LOCATIONS

**THE ECONOMICS LOST IN TRANSLATION
BY THE OBAMA ADMINISTRATION ***

Coal Severance Taxes	\$123,861,000
Coal Production	125,476,000 (Tons)
Total Employment	3,800 Kentucky Coal Jobs (direct/indirect)

*These numbers from this chart are derived from only the nineteen permits issued / objected to on September 28, 2011.

**Type of Permit Needed for
Surface Operations in Kentucky**

Issuing Agency

SMCRA (Permit To Conduct Mining Activity)	Kentucky Department for Natural Resources (Federal Office of Surface Mining oversight)
Clean Water Act Section 401 (certification that federal permitted activity will not violate state water quality standards)	Kentucky Department for Natural Resources
Clean Water Act Section 404 (permit to conduct stream dredge/fill activity)	United States Army Corps of Engineers (Federal Environmental Protection Agency oversight)
KPDES permit (authorization to discharge wastewater to waters of Commonwealth)	Kentucky Department for Environmental Protection (Federal Environmental Protection Agency oversight)
Safe Drinking Water Act UIC Permit (permit to inject fluids to underground)	Environmental Protection Agency
Air Emission Source Permit (permit to construct/operate air pollutant emission source)	Kentucky Department for Environmental Protection (Federal Environmental Protection Agency oversight)



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