

## Dodgy Deal:

# Mountain top removal coal mining

United States



### update

This dodgy deal is updated regularly  
last update: Feb 28, 2012

### banktrack contact

Amanda Starbuck, Rainforest Action Network, United States

## Description

Mountain top removal mining is a form of strip mining in which coal companies use explosives to blast as much as 800 to 1000 feet off the tops of mountains order to reach the coal seams that lie underneath. The resulting millions of tons of waste rock, dirt, and vegetation are then dumped into surrounding valleys, burying miles and miles of streams under piles of rubble hundreds of feet deep. Mountaintop removal mining harms not only aquatic ecosystem, and water quality, it also destroys hundreds of acres of healthy forests and fish and wildlife habitat, including habitat of threatened and endangered species, when the tops of mountains are blasted away.

Throughout the Appalachian region of the Eastern United States, hundreds of mountains have been flattened – first by clear-cutting forests, then by blowing off the top layers of rock with powerful explosives. Giant cranes (draglines) expose buried coal by scraping billions of tons of dirt off the mountain. The debris is then dumped into neighboring valleys and streams. Rather than remove coal from the mountain, MTR removes the mountain from the coal.

## what must happen

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. Banks should withdraw from any on-going financing relationships with clients that practice MTR, divest and place MTR on their financing exclusion lists.

## Social impact

Coal companies use MTR mining methods because it allows for almost complete recovery of coal seams while significantly reducing the number of workers required compared to conventional methods. The coal-bearing counties of Appalachia are some of the poorest in the nation, despite the fact that some of the greatest wealth is being extracted from them.

For marginalized coalfield resident communities, MTR has meant the loss of thousands of jobs and growing health risks. Poverty has increased in MTR regions, even as corporate profits soar.

Once coal is extracted, it is then washed and treated, resulting in waste water called coal sludge—a mix of water, coal dust, clay and toxic chemicals such as arsenic, mercury, lead, copper, selenium and chromium. Billions of gallons of this toxic soup is then stored in vast, unlined impoundments or injected for storage in abandoned underground-mines.

Impoundments are often held in place by mining debris or earthen dams, making them unstable. Sludge dams have been known to fail. In October 2000, residents of Martin County, Kentucky suffered 306 million gallons of slurry entering their water supply. The disastrous spill was over 30 times the size of the Exxon Valdez spill.

## Environment

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.

## Human rights

After blasting has occurred, waste from mining operations is systematically dumped into nearby valleys, burying streams. This waste then releases toxic metals, killing life in streams and polluting ground water. Health problems such as cancer, liver and kidney disease and skin rashes have been found in correlation with people who drink water from wells contaminated by coal mining. The problem was exacerbated in 2002 when the Bush Administration changed rules in the Clean Water Act to allow waste material to be considered "fill," effectively legalizing the dumping of toxic mining waste directly into Appalachian waterways.

## Other issues

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The expansion of mountaintop removal mining is fuelled by the fact that the U.S. is in the midst of a coal rush. Currently, more than 150 new coal-fired power plants are in various stages of development around the country, and our government is relaxing laws in order to allow even more coal mining that destroys communities and ecosystems. These new power plants will emit 600 million tons of carbon dioxide annually - which is tantamount to doubling the number of cars on our roads! Coal is the single biggest obstacle to curbing global warming as well as destructive coal mining practices.

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## applicable policies

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**Bank of America** (Policy adopted December 2008)

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."

**Citi** (Policy adopted August 2009)

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.

**Credit Suisse** (Policy adopted September 2009)

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."

**JPMorgan Chase** (Policy adopted May 2010)

Extraction from **policy**: JPMorgan "has undertaken an enhanced review of all proposed banking transactions for companies engaged in MTR. This enhanced review is in addition to the customary diligence employed for companies in the extractive industries and includes considerations of a company's regulatory compliance history, as well as exposure to future regulatory changes and litigation risks, particularly as they relate to valley fills and water quality issues."

**Morgan Stanley** (Policy adopted May 2010)

Extraction from **policy**: "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."

**Wells Fargo** (Policy adopted July 2010)

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."

## Updates

**Jan 31, 2010**

On-going financing of destructive operations.

## financial institutions involved

### banks

#### Bank of America -

- Credit to Alpha Natural Resources for Aquisition - October 2005
- General corporate finance: Arch Coal - 2004 and 2009, International Coal - July 2007, Massey Energy - August 2006, Magnum Coal Company (owned by Patriot Coal) - October 2007, International Coal Group Inc - June 2006, Alpha Natural Resources - 2004 and 2005, Ashland Inc - 2008, CONSOL Energy Inc - 2004 and 2005
- Issuing of bonds: International Coal - June 2006, Ashland Inc - 2002, TECO Energy Inc - 2001 and 2002, Arch Coal Inc - 2009
- bonds issue: US\$168 million, of which US\$61.49 directly supporting Mountain Top Removal coal mining to Arch Coal  
*source: Mtr Banks Financial Overview.pdf*
- shares/bonds underwriter or manager: \$250 million (03/15/10)  
Bank of America Securities LLC underwrote a \$250 million offering of TECO Energy notes  
*source: TECO Energy Prospectus Supplement dated 3/6/10*
- corporate loan: \$522.5 million (second amendment dated 5/19/08)  
Bank of America, NA served as one Lender among 18 banks in a \$522.5 million credit agreement with Patriot Coal  
*source: Bloomberg 4/28/10*
- corporate loan: \$1.23 billion (4/15/10)  
Bank of America served as Co-Documentation Agent in a \$1.23 billion credit agreement between 5 banks and Alpha Natural Resources in its second amended and restated agreement  
*source: Bloomberg 4/28/10*

#### BMO Financial Group

#### BNP Paribas -

- General corporate finance: Arch Coal - 2006

#### Citigroup -

Citi have provided share and bond issuances.

- Credit to Alpha Natural Resources for Aquisition - October 2005
- Issuing of shares: Arch Coal - October 2004, Alpha Natural Resources - 2005 and 2006
- Issuing of bonds: Massey Energy - August 2003, Magnum Coal Company (owned by Patriot Coal) - 2008, Alpha Natural Resources / Foundation Coal - 2004 and 2008, TECO Energy Inc - 2003, 2005 and 2008, Arch Coal Inc - 2004 and 2009
- General corporate finance: Arch Coal - 2004 and 2009, Alpha Natural Resources - May 2004, Ashland Inc - 2008, TECO Energy Inc - 2004, CONSOL Energy Inc 2004 and 2005
- shares/bonds underwriter or manager: \$250 million (3/15/10)  
Citigroup Global Markets Inc. underwrote a \$250 million offering of TECO Energy notes  
*source: TECO Energy Prospectus Supplement dated 3/6/10*
- shares/bonds underwriter or manager: \$300 million (3/15/10)  
Citigroup Global Markets Inc. underwrote a \$300 million offering of TECO Energy notes  
*source: TECO Energy Prospectus Supplement dated 3/6/10*
- credit agreement: \$1.23 billion (4/15/1)  
Citicorp North America, Inc served as Administrative Agent and Collateral Agent in a \$1.23 billion credit agreement between 5 banks and Alpha Natural Resources in its second amended and restated agreement  
*source: Bloomberg 4/29/10*
- credit facility: \$1 billion (3/12/2010)  
Citicorp North America, Inc. served as one Lender among 22 lending banks to a \$1 billion credit facility for Consol Energy in its second amendment  
*source: Bloomberg 4/30/10*

#### Crédit Agricole -

- General corporate finance: Through Crédit Agricole CIB: Arch Coal - 2006

#### Credit Suisse Group -

- General corporate finance: Alpha Natural Resources - May 2004
- bonds issue: TECO Energy Inc - 2001 and 2002, Arch Coal Inc - July 2009
- offering of Sernior notes: \$600 million (7/28/09)  
Credit Suisse Securities (USA) LLC purchased over \$5 million in Arch Coal securities in a \$600 million offering of senior notes  
*source: Bloomberg 4/30/10*

#### Goldman Sachs -

- Issuing of bonds: International Coal - June 2006
- Issuing of shares: International Coal - December 2005

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## JPMorgan Chase -

- Issuing of shares: Arch Coal - October 2004, International Coal - December 2005
- Issuing of bonds: International Coal - June 2006, Massey - June 2004 and August 2008, Ashland Inc (Hercules Inc) - September 2004, TECO Energy Inc - 2001, 2002, 2003 and 2008, Arch Coal Inc 2004 and 2009
- General corporate finance: Arch Coal - 2004 renewed 2006 and 2009, International Coal - July 2007
- shares/bonds underwriter or manager: \$250 million (3/15/10)  
.P. Morgan Securities Inc. underwrote a \$250 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10
- shares/bonds underwriter or manager: \$300 million (3/15/10)  
J.P. Morgan Securities Inc. underwrote a \$300 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10
- credit facility: \$800 million (3/19/10)  
JPMorgan Chase Bank, N.A., acted as co-syndication agent in an \$800 million credit facility between 19 banks and Arch Coal in its fifth amendment  
*source*: Bloomberg 4/30/10
- credit facility: \$1 billion (3/12/2010)  
JPMorgan Chase Bank, N.A. served as one Lender among 22 lending banks to a \$1 billion credit facility for Consol Energy in its second amendment  
*source*: Bloomberg 4/30/10

## Lehman Brothers

- bonds issue: Magnum Coal Company (owned by Patriot Coal) - May 2008

## Mizuho -

## Morgan Stanley -

- shares/bonds underwriter or manager: \$50 million (3/16/10)  
Morgan Stanley & Co. Incorporated underwrote \$50 million of \$100 million in convertible senior notes 3/16/10 for International Coal Group  
*source*: Bloomberg 4/30/10
- shares/bonds underwriter or manager: \$90 million (3/11/2010)  
Morgan Stanley underwrote \$90 million and served as Lead Manager for \$200 million in senior secured second-priority notes for International Coal Group  
*source*: Bloomberg 4/30/10
- shares/bonds underwriter or manager: \$126 million (7/28/09)  
Morgan Stanley & Co Incorporated purchased \$126 million in Arch Coal securities in a \$600 million offering of senior notes  
*source*: Bloomberg 4/30/10
- shares/bonds underwriter or manager: \$250 million (3/15/10)  
Morgan Stanley & Co. Incorporated underwrote a \$250 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10
- shares/bonds underwriter or manager: \$300 million (3/15/10)  
Morgan Stanley & Co Incorporated underwrote a \$300 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10
- credit facility: \$18.1 million (5/9/07)  
Morgan Stanley Bank committed \$18.1 million served as Lead Arranger for a \$200 million revolving credit facility between 12 banks and TECO Energy as of the most recent amendment 5/9/07. The credit facility matures 5/9/12.  
*source*: Bloomberg 4/30/10

## PNC Bank -

- bonds issue: \$60 million (8/5/08)  
PNC Capital Markets LLC underwrote \$60 million of a \$690 million bond offering from Massey Energy  
*source*: Prospectus Supplement filed by Massey Energy 8/6/08.
- bonds issue: \$200 million (part) (5/21/08)  
PNC Capital Markets served as a Lead Manager on a \$200 million bond issue by Patriot Coal  
*source*: Bloomberg 4/28/10
- bonds issue: \$250 million (part) (4/1/08)  
PNC Capital Markets served as a Co-Manager on a \$250 million bond issue by Alpha Natural Resources dated  
*source*: Bloomberg 4/28/10
- Securities: \$20 million (3/11/2010)  
PNC Capital Markets underwrote \$20 million and served as Lead Manager for \$200 million in senior secured second-priority notes for International Coal Group  
*source*: Bloomberg 4/30/10
- Securities: \$40.5 million (7/28/09)  
PNC Capital Markets LLC purchased \$40.5 million in Arch Coal securities in a \$600 million offering of senior notes  
*source*: Bloomberg 4/30/10
- Credit agreement: \$522.5 million (part) (5/19/08)  
PNC Bank, National Association served as one Lender among 18 banks in a \$522.5 million credit agreement with Patriot Coal in the second amendment  
*source*: Bloomberg 4/28/10
- Credit agreement: \$1.23 billion (part) (4/15/10)  
PNC Bank served as Co-Documentation Agent in a \$1.23 billion credit agreement between 5 banks and Alpha Natural Resources in its second amended and restated agreement  
*source*: Bloomberg 4/29/10
- Credit facility: \$800 million (part) (3/19/10)  
PNC Bank, National Association acted as administrative agent in an \$800 million credit facility between 19 banks and Arch Coal in its fifth amendment  
*source*: Bloomberg 4/30/10
- Credit facility: \$1 billion (part) (3/12/2010)  
PNC Bank, National Association served as one Lender among 22 lending banks to a \$1 billion credit facility for Consol Energy in its second amendment  
*source*: Bloomberg 4/30/10

## Royal Bank of Scotland -

- General corporate finance: Arch Coal - 2006
- Credit to Alpha Natural Resources for Aquisition - October 2005  
inherited from take over ABN Amro
- shares issue: (Alpha Natural Resources - 2005)  
inherited from take over ABN Amro
- corporate loan: (Arch Coal - 2006)  
Inherited from take-over ABN Amro

## Société Générale -

- Credit to Alpha Natural Resources for Aquisition - October 2005

## Sumitomo Mitsui Banking Corporation -

- Credit to Alpha Natural Resources for Aquisition - October 2005

## UBS -

- General corporate finance: Arch Coal - 2006, Alpha Natural Resources - May 2004, International Coal - July 2007, Massey Energy - August 2006
- Issuing of shares: Alpha Natural Resources - 2005 and 2006, International Coal - December 2005
- Credit to Alpha Natural Resources for Aquisition - October 2005
- Issuing of bonds: International Coal - 2006 and 2007, TECO Energy - 2005, Alpha Natural Resources - April 2008, Massey Energy - 2005 and August 2008, James River Coal Company - November 2009
- shares/bonds underwriter or manager: \$50 million (3/16/10)  
UBS Securities LLC underwrote \$50 million of \$100 million in convertible senior notes for International Coal Group  
*source*: Bloomberg 4/30/10
- shares/bonds underwriter or manager: \$90 million (3/11/2010)  
UBS Securities LLC underwrote \$90 million and served as Lead Manager for \$200 million in senior secured second-priority notes for International Coal Group  
*source*: Bloomberg 4/30/10
- credit facility: \$125 million (part) (2/22/10)  
UBS acted as a collateral agent for a \$125 million senior secured facility between 3 banks and International Coal Group  
*source*: Bloomberg 4/30/10

## Wachovia

- bonds issue: \$250 million (4/1/08)  
Wachovia served as a Co-Manager on a \$250 million bond issue by Alpha Natural Resources  
*source*: Bloomberg 4/28/10
- bonds issue: \$800 million (3/19/10)  
Wachovia Bank acted was a syndicate participant in an \$800 million credit facility between 19 banks and Arch Coal in its fifth amendment  
*source*: Bloomberg 4/30/10

## Wells Fargo -

- bonds issue: Alpha Natural Resources / Foundation Coal - April 2008
- General corporate finance: Arch Coal Inc - August 2009
- shares/bonds underwriter or manager: \$250 million (3/15/10)  
Wells Fargo Securities, LLC underwrote a \$250 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10
- shares/bonds underwriter or manager: \$300 million (3/15/10)  
Wells Fargo Securities LLC underwrote a \$300 million offering of TECO Energy notes  
*source*: TECO Energy Prospectus Supplement dated 3/6/10

## investment funds

### Merrill Lynch

- Issuing of shares: Arch Coal - October 2004, Alpha Natural Resources - 2006
- bonds issue: International Coal Group Inc - October 2006, TECO Energy - 2001 and 2003

By the summer of 2010 Citi, JPMorgan Chase, Bank of America, Credit Suisse, Morgan Stanley, Wells Fargo and UBS have all publicly confirmed that they are moving away from bankrolling the destruction of America's mountains.

## applicable policies

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## companies

Alpha Natural Resources

# BANKTRACK

## Arch Coal

Arch Mineral Corporation was founded in 1969 as a partnership between Ashland Oil (now Ashland, Inc.) and the H. L. Hunt family of Dallas, Texas. Ashland Coal, Inc. was formed in 1975 as a subsidiary of Ashland Oil. The privately held Arch Mineral Corporation merged with Ashland Coal, Inc. in July 1997, creating the present-day company. Arch's Dal-Tex mining operations above the town of Blair, West Virginia were the subject of a 1998 US News and World Report story "Shear Madness" by Penny Loeb. The story documented the impacts of mountaintop removal on communities close to the mines and their subsequent depopulation. A landmark 1999 lawsuit brought by the West Virginia Highlands Conservancy, Bragg v. Robertson was the first successful citizen lawsuit to stop Arch's proposed mountaintop removal valley fill. The fill would have buried several miles of stream at Pigeon Roost Hollow near Blair, West Virginia. In his ruling for the plaintiffs, Judge Charles H. Haden stated that "If there is any life form that cannot acclimate to life deep in a rubble pile, it is eliminated. No effect on related environmental values is more adverse than obliteration...Under a valley fill the water quality of the stream becomes zero. Because there is no stream, there is no water quality." Arch Coal's West Virginia mining operations in the Appalachian Mountains were the subject of a critical documentary in 2002 on Now with Bill Moyers on PBS. On October 16, 2009, the EPA announced that it planned to use its authority to halt the permit for Mingo Logan Coal's Spruce No. 1 mine, which is owned by Arch Coal. The agency said it was acting on its authority for the first time since the Clean Water Act was enacted in 1972. The project at issue would be the largest authorized mountaintop removal operation in Appalachia. In a letter to the Army Corps of Engineers, EPA Regional Administrator William Early said the action "reflects the magnitude and scale of anticipated direct, indirect, and cumulative adverse environmental impacts associated with this mountaintop removal mining operation." However, on January 5, 2010, a federal court in West Virginia agreed to extend a deadline for discussions with Arch Coal Inc.'s Mingo Logan Mining Co. about the mine's permit, which was halted in October.

## Ashland Inc

MTR producer

## CONSOL Energy Inc

CONSOL Energy Inc. (NYSE: CNX) is the largest producer of high-Btu bituminous coal in the United States. CONSOL Energy has evolved from a single-fuel mining company into a multi-energy producer of both high-Btu coal and gas.

## International Coal Group (acquired by Arch Coal in 2011)

## James River Coal Company

James River Coal Company mines and sells bituminous, steam and industrial-grade coal through six operating subsidiaries located throughout Eastern Kentucky and Southern Indiana. They are the sixth largest coal producer in Central Appalachia and the third largest in the Illinois Basin.

## Massey Energy (acquired by Alpha Natural Resources in 2011)

## TECO Energy Inc

TECO Energy is an S&P 500 energy company headquartered in Tampa, Florida. TECO Energy's four business units include Tampa Electric, a regulated electric utility serving nearly 667,000 customers in West Central Florida; Peoples Gas System, Florida's largest natural gas distribution utility; TECO Coal, producer of coal in Kentucky and Virginia; and TECO Guatemala, owner of two power plants and an interest in Guatemala's largest distribution utility. TECO Energy is traded on the New York Stock Exchange under the symbol TE.