

The Kentucky Conservation Committee

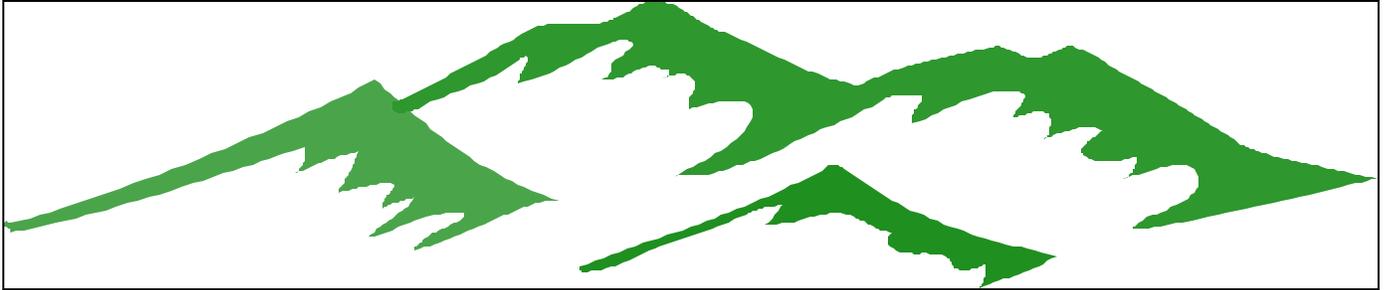
Guardian

A Review of Kentucky's Commitment to Protecting
Its Environment and Conserving Its Natural Resources



P. O. Box 1152, Frankfort, KY 40602

SPRING 1999



Agreement Reached on Black Mountain

On April 20, a "Letter Agreement" providing a framework for more complete protection of the northern hardwoods forested ecosystem on Big Black Mountain in Harlan County was signed between preservationists and industry. The preservationist were led by **Kentuckians for the Commonwealth** with support from intervenors **Appalachian Focus**, **Yellow Creek Concerned Citizens**, and **Chris Fleming**. Industry interests include **Arch Coal, Inc.**, **Ark Land Company**, **Apogee Coal Company**, **Lone Mountain Processing, Inc.**, **Harlan Reclamation Services, LLC**, **Penn-Virginia Corporation**, **Nally & Hamilton Enterprises, Inc.**, **Jericol Mining, Inc.**, and **Resource Development, LLC**.

A major component of the settlement is a special agreement with Jericol that imposes additional restrictions on the proposed and existing permits for Jericol's surface coal mining operations in Nim Hollow, Cloverfork, and Razor Fork watersheds. This special agreement specifies that:

- ◆ The hollowfill which had been proposed for Razor Fork will be reduced by over half, to 3 million cubic yards of material, and other design changes will be made to reduce the impact on the Razor Fork, including sloping the face of the fill more gradually, temporarily diverting and then reconstructing the stream channel, redesigning the sediment control ponds to keep the sediment on the mine bench, and to eliminate the use of an in-stream sediment pond except at the toe of fill.
- ◆ No in-stream ponds with permanent pools will be allowed except at the toe of the fill. This would prevent the construction of a downstream pond and the isolation and loss of the stream reach above such a pond. Only dry dam flood control ponds, which do not affect low-flow stream characteristics, will be allowed.
- ◆ The excess spoil material that would have gone into Razor Fork will be disposed of in the existing Nim Hollow fill and in the proposed Cloverfork fill.
- ◆ The sediment ponds for the operation will be redesigned to improve the sediment-trapping capacity and to assure no erosion or downstream flooding. No permanent sediment ponds will be allowed to remain. Temporary sediment control, such as silt fence or straw bale sediment barriers, will be installed prior to construction of roads and ponds in order to prevent sediment transport from the disturbed area. Those areas in which temporary sediment controls will be installed are:
 - Areas along the top of the natural berm on the Lowsplint seam in advance of the mining operation for the construction of roads and sediment ponds.
 - Areas immediately below the natural berm or the constructed berm on the mining bench in the event that the outcrop of

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KCC ANNUAL MEETING SEPTEMBER 18, 1999

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the Lowsplint coal seam has already been disturbed and a natural berm does not exist.

- Along the perimeter on the downstream side of the construction areas of the in-stream sediment ponds.
- Along the outside edge of sediment pond access roads #13 and #14.
- Along the perimeter on the downstream side of Hollowfill #4 and Hollowfill #5.

♦ Jericol Mining Inc. agrees that the post mining land use for the area will be forestland. It was a particular concern to Appalachian Focus that the permittee not be allowed to later change this to a "fish and wildlife" or "hayland/pasture" post-mining land use.

A revised mining and reclamation plan will be developed. Development of that plan will likely take a month or more, after which time the revision will be submitted to the Cabinet and to KFTC for review. No mining will occur until these additional protections have become part of the permit.

Having reached the agreement with Jericol, KFTC and the other intervenors must within 45 days of the "letter agreement" date, prepare a series of documents, including:

- A firm offer from the timber owners to sell to the state all timber above the 3,800 foot elevation contour plus a 200 foot vertical buffer zone below.
- A firm offer from Jericol to sell to the state the coal rights to the #14 seam, some of which is already under an issued permit and could otherwise be strip mined by Jericol.
- A Timber Conservation Easement Agreement between owners of timber rights and the Kentucky Nature Preserves Commission or other Kentucky state agency as may designated by the Heritage Land Conservation Fund, outlining sustainable forest practices and requiring best management practices to be employed. The conservation easement would cover the 20,000 acre area between the 3,000 foot contour interval and the timber purchase area.
- An access agreement, providing for the first time, access for scientific and inventory purposes, to the lands above the 3,000 foot contour (the "petition area") for state universities and state agencies, upon giving 72 hours notice.

If all of these documents are developed and signed, the Lands Unsuitable Petition would be resolved by incorporating these documents into a final order making them enforceable.

The agreement contains other clarifications regarding future mining. If the agreement is fully implemented, and the lands unsuitable petition is resolved, companies could apply for surface or underground mining permits within the "mineable area" which includes the Highsplint seam and seams lower in elevation. Under the agreement, the #14 seam rights would be given up by Arch, and Jericol's rights to that seam would be purchased. Mountaintop mining would not be permitted. It is recognized that underground mining will continue to occur and that limited disturbances for support facilities for underground mining may be developed within the timber purchase or conservation area.

The agreement recognizes that future mining of the Highsplint coal seam is a possibility, and KFTC reserves all rights to review and oppose such permits, and will receive advance notice of the filing of any permit applications at the pre-application stage.

Governor Patton met with counsel on April 10 and indicated the support of the Patton Administration for purchasing the coal and timber interests in order to protect Black Mountain. That support is an essential part of the agreement.

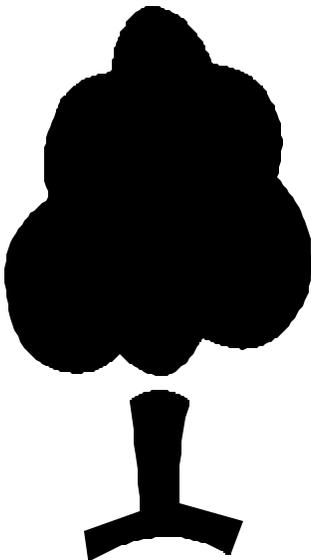
Forest Conservation Regulations Cut Down

Last April the Administrative Regulation Review Subcommittee rejected logging regulations proposed by the Natural Resources Cabinet. The regulations are required as part of the Kentucky Forest Conservation Act passed in the 1998 General Assembly. The act included a provision that a certified master logger must oversee all commercial logging operations. One of the rejected regulations would have added a continuing education requirement for master loggers.

The act also requires the use of "best management practices" in commercial operations. A second rejected regulation would have adopted the definition of "best management practices" from existing state law.

Some committee members objected, insisting the regulations should be delayed until the review board created by the Forest Conservation Act is in place to review them. However, some members opposed the Forest Conservation Act and would just as soon see it not take effect.

According to an April 16 editorial in the Lexington Herald-Leader opposition is coming mostly from small-scale loggers and property rights advocates. We can expect opponents to try to eliminate or weaken the law in the 2000 session.



Task Force Hears Recycled Arguments

In the 1998 General Session, House Bill 371, better known as the Container Recycling Bill, never made it to the house floor. After heavy lobbying by the beverage industry and retailer associations, it was directed to a special task force to study how a deposit on beverage containers, as provided by the bill, would improve litter abatement and recycling programs. Recommendations to the Legislative Research Committee are due by September 30, 1999.

Chaired by the Bill's sponsor, Greg Stumbo, the task force has met seven times. With members from both the beverage industry and environmental groups, the meetings have been as contentious as the original hearings. In the face of the most obvious evidence, common sense, and the experience of other states, these two special interest groups remain steadfastly opposed to any form of container deposits.

At the March meeting, task force member Ray Gillespie explained the findings of a report commissioned by the Kentucky Beverage Industry Recycling Program on litter in Kentucky. Mr. Gillespie is the program's executive director. Joining Mr. Gillespie in explaining the report was its principal author, Donna Watermann.

Funded by the beverage industry in response to HB 371, the report is immediately suspect. It focussed on roadside litter and concluded that HB 371 was unnecessary since intentional litter has decreased 71% since 1980. However, there does not appear to be a distinction between roadside dumping of garbage and littering nor did the study evaluate litter in waterways or account for clean-up programs. Finding drink containers in the streams and creeks initially inspired the Estill County High School students to propose the legislation. The need for a recently installed trash gate on the Cumberland River to collect refuse was not mentioned.

According to Mr. Gillespie, the most cost-effective method of reducing or eliminating litter is a well targeted advertising campaign. In general, the report seemed to obfuscate the container issue by aggregating all forms of litter.

Chairman Stumbo recently pointed out that evidence from states with bottle bills indicates that employment rises as increased recycling creates new employment opportunities. These deposit programs are also strongly supported by residents of these states. Combined with curbside recycling, 90% of recyclable materials can be diverted from the landfill. With all this, the market for recycled plastic remains strong.

Meanwhile, the students from Estill County High School continue to rake in awards for their efforts. In April, Brandon Campbell, now a Freshman at UK, accepted the Harry Caudill Award from the Kentucky Chapter of the Sierra Club and The President's Award from U.S. EPA's director Carol Browner in Washington D.C.

To track the Task force's progress visit their web site at <http://www.lrc.state.ky/tforces/cdeposit/990303.htm>.



Committee Ponders Utility Deregulation

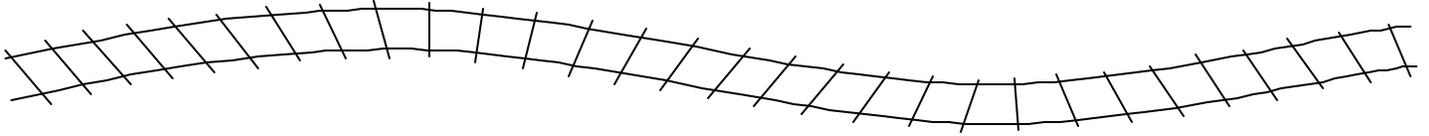
Following the lead of the long-distance telephone industry, the electric and gas utilities are headed down the path of deregulation. Leading the charge are States with high electricity rates, hoping that competition will drive down rates. This is an issue to carefully watch because the environment will be affected either positively or negatively by how deregulation is implemented.

1998 House Joint Resolution 95 directed a special task force to assess the desirability of deregulating and restructuring electric service delivery. A report to the Governor and the Legislative Research Committee is due by November 15, 1999. The committee held their seventh meeting in March.

Traditionally, electric utilities generate the electricity, and transmit the power to the utility's retail customers, or to other utilities. Under deregulation, generation is unbundled from other utility activities. Suppliers of electricity generation could include traditional electric utilities, independent power producers and merchant power plants. These suppliers would transmit power over the existing transmission grid. Retail customers then choose to buy electricity from the traditional electric utility, or from independent power marketers, brokers, or other power providers. Electric bills include separate charges for generation and delivery.

Generators can sell power directly to retail customers, or to default power providers, power brokers, and aggregators. Power

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Tracking the Rail Trail Task Force

1998 House Concurrent Resolution 77 directed a special task force to study the feasibility, benefit, and implementation of a strategy for a program that converts abandoned railroad right-of-ways to pedestrian and bicycle trails statewide. A report to the Legislative Research Committee and the Interim Joint Committee on State Government is due by July 30, 1999.

There has been a nationwide movement to convert abandoned railways to recreational trails. A national, non-profit organization, The Rail Trail Conservancy, has been promoting the movement and aiding member organizations that do the actual groundwork for 13 years. Kentucky, with seven miles of trails, ranks 47th out of the 50 states. Only Delaware, Alaska and Hawaii have fewer miles. The state affiliate is The Kentucky Rail Trail Council. There are currently about a dozen projects in the works with varying amounts of community support. The biggest of project is the 109 mile Lexington/Big Sandy Trail. The smallest is the 0.5-mile Madison County Wetlands Trail.

The task force held their third meeting in March and heard from the Kentucky Farm Bureau Federation, one of the major opponents of rail-trail conversions. There are two types of land involved: those corridors that are owned in fee simple by the railroad, and those for which there is an easement involved. The Farm Bureau argued for rights of farmers adjacent to railroads on abandoned easements. Land owned in fee simple can be donated or sold (which is usually the case) by the railroad. The law on other types of land is more complicated.

Railways once brought our communities to life. They brought commerce to town, enriched community culture and provided easy access to travel far and wide. These monumental infrastructure investments have existed a century or more. Footpaths, bikeways, horse trails, historic preservation, nature study and beautification are integrated with many corridor preservation plans. Rail-trails provide high-use, low-maintenance facilities that are popular with all ages and suited to all physical capabilities. These linear parks are popular community amenities that often enhance neighboring property values. They provide scarce natural habitat and often nurture endangered plant and wildlife species, even in urban settings. A linear park can be a living lab for nature study and education. Cross-country trails provide opportunities for food, service, lodging, rental and other businesses to remote towns and villages. Established trails are now generating hundreds of millions of dollars in economic activity. For more information on Kentucky Rail Trail projects, visit the Kentucky Rail Trail Council at <http://www.kyrailtrail.org/>.

Aliens Invade Kentucky

While urban sprawl and other development activity consume about 100 acres of Kentucky per day, a nearly equal amount of land is taken over by exotic-invasive plants. The term exotic-invasive is unheard of by most of the population but the environmental impact is significant.

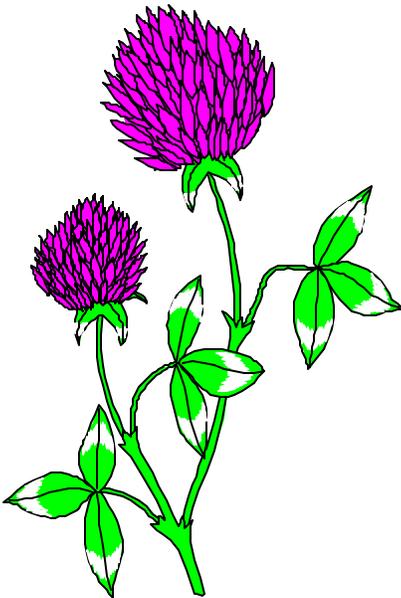
Most people are aware of Kudzu, how it spreads and takes over. Kudzu is just the tip of the iceberg. Exotic-invasive plants are imported species that have no local predators or native controls. They compete with and overpower the native vegetation, ultimately taking over large areas. The net result is a tremendous loss of bio-diversity. This is not just a loss of plant diversity, but a loss of creatures that depend on the native plants for food and shelter.

Some examples of exotic-invasive plants are Purple Loosestrife and Periwinkle, commonly planted ornamental flowers; Crown Vetch, used as a cover crop to prevent erosion; sweet white and yellow clovers; Japanese Honeysuckle and English Ivy, common landscaping plants; and Korean Lespedeza, often used as a food crop for wildlife.

Kentucky is behind other states in recognizing the threat of exotic-invasive plants and taking action to control them. Many western states have laws forbidding the sale and planting of specific listed species. Colorado, for instance, has a list of about 63 forbidden species and educational programs to inform the public about the problem.

There is a noxious weed law on the books in Kentucky, but it pertains to a small number of species that threaten farmers. Kentucky needs to establish programs to target this problem.

Anyone interested in working on this issue can contact Ray Barry, 606-223-0180. We will need to find a sponsor for legislation and work with the Legislative Research Commission to research programs in other states and formulate a program for Kentucky.



Lobbyist Needed

The Kentucky Conservation Committee is looking for an environmental lobbyist to serve for the year 2000 General Assembly. The lobbyist would serve under contract to KCC from mid-January to mid-April. Knowledge of the Kentucky Legislative process and environmental issues helpful. Duties include interpreting legislation, helping formulate legislative strategy, attending committee meetings, and educating legislators on environmental concerns. Contact Ray Barry 606-223-0180 for more information.

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marketers may or may not own their own generation facilities. Power aggregators are generally energy providers, who not only provide electricity, but gas and other services. Aggregators may be either for-profit or non-profit organizations and sell their power only to retail customers. Default providers provide electricity to retail customers who do not choose another service provider.

Kentucky has some of the lowest electric rates in the country because we burn a lot of local coal, so there currently is no rush to deregulate. However, with low generation costs, Kentucky generators have a competitive advantage in a deregulated market. While this opportunity might excite stockholders, Kentuckians could wind up with increased air pollution, and down-wind Eastern states with more acid rain as electricity exportation expands.

Confusion among consumers about how the deregulated market works is also a major concern. There are four key aspects to protecting consumer interests under deregulation. First, consumers need a uniform way to compare prices. If standards aren't set, the benefits of competition will not be realized. Second, information on environmental attributes of a utility needs to be readily available. Decisions based on price only benefit the high polluters. Third, information should be supplied by governmental agencies and not by the utilities themselves otherwise the spin doctors will rule. Fourth, consumers need detailed information regarding the electricity market structure. Fraud will be commonplace if consumers don't understand who is selling what, or what is regulated and what is not.

To follow the task force, visit their web page at <http://162.114.4.21/tforces/electric/homepage.htm>.

Hal Rodgers Driving I66

U.S. Congressional District 5 Representative Hal Rodgers is pushing hard for an East-West Interstate corridor across southern Kentucky to be known as I66. The project is being accelerated and some fear is starting to emerge that the Environmental Impact Studies will be abbreviated. This road is listed on the state's six year transportation plan and is officially in the scoping phase.

The Department of Transportation has drawn up three proposed routes connecting the Daniel Boone Parkway with the Cumberland Parkway. These routes cut across rugged undeveloped sections of the Daniel Boone National Forest. These areas have many sites with sensitive plant and animal species including Red Cockaded Woodpecker habitat management areas and high quality undisturbed cliff-line habitat. All proposed routes would construct a new bridge across the Rockcastle State Wild and Scenic Corridor and threaten extensive cave systems to the West.

State Highway 80 is an existing, straight link between the two parkways. It is not clear that a new route is needed, or that there is any need for Interstate level of service between these two roads.

The Department of Transportation claims KY 80 is a local use road and unsuitable. Hal Rodgers' office indicated he will soon hold public meetings on the proposed road.

To Do

Write to Hal Rodgers, and the Kentucky Transportation Cabinet. Question the need for Interstate level service. Ask why a new route is needed, what is wrong with KY80? Insist that a thorough EIS be performed.

Hal Rodgers
U.S. House of Representatives
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Washington, D.C. 20515-1705
202-225-4601

Secretary James Codell
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502-564-4890

Jim Wilson, Project Manager
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IMPORTANT CALENDAR DATES

June 1-5 - Microscale Organic "Green" Chemistry Workshop-Chemistry Bldg., Belknap Campus, UL, Louisville. Contact: Dr. Christine Rich, Chemistry Dept., 502-852-6609.

June 19 - Kentucky River Clean Sweep - Contact: Sue Ann Elliston, Ky. River Authority, 502-564-2866.

September 18 - KCC Annual Meeting

The Earth Needs a Friend in Frankfort

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