I always like to begin with full disclosure of my background so that you may appropriately discount all that will follow. As you may be aware, I am Director of the Kentucky Resources Council, a nonprofit environmental advocacy organization providing legal and technical assistance without charge to low-income individuals, to community organizations, and to local governments concerning air, waste, water, land use and resource extraction issues. My perspective on resource extraction, transportation, utilization and waste disposal issues is one that has been forged by twenty-six years of representing those who live downhill, downwind and downstream of mining operations. In that time, I have buried one friend and client who was crushed to death by slurry from a coal waste dam collapse, and I have seen the lives and peace of mind of countless others subject to avoidable injury and damage.

Those individuals and communities that I have had the privilege to represent have borne the brunt of our failure as a Commonwealth to require that the producers and consumers of the coal resource pay the full price for the commodity and for the energy produced through the combustion of coal. The price has been paid in life, in premature death due to occupational
illness and avoidable workplace accidents, it has been paid on the roads
where coal trucks, loaded by the producers, haul overloaded and overweight,
it has been paid in the loss of security for individuals whose homes have
been damaged by blasting, whose properties have been devalued and made
unlivable by loss of water supplies, and whose peace of mind has been taken
by fear of flooding made more likely and more severe by denuding of the
forested watersheds up stream, and the alteration of stream channels for
sediment control and mine waste disposal.

My first direct involvement in advocacy on mining regulatory issues was
in 1972, but I had read of the ecological damage and human misery inflicted
by strip mining even before that time. In the intervening 29 years since the
adoption of the 1977 Surface Mining Control and Reclamation Act, there
have been changes in mining practices, and some of the more blatant abuses
associated with surface coal mining have been halted – spoil over the
outslope, water damage without liability, routine flyrock damage to lands
from excessive blasting, disturbance of family cemeteries. We have during
those years periodically rediscovered that strip mining has jarring
consequences on the environment, and we are in the midst of another cycle
of rediscovery, yet our diffuse and unfocused concern over mining methods
all-too-quickly passes.
Even as the bar has been raised somewhat in what is expected of the coal mining industry in the management of the mining operations, we have failed and continue to fail to require anything approaching full accountability by the industry, in both ecological and human terms, and the short-term insular interests of the companies and their Boards in maximizing profit are yet allowed to trump the public’s interest. And we are, unfortunately, complicit in that failure.

The next fifty years will likely see dramatic changes in how coal is extracted, processed and utilized by the handful of coal companies that control the lion’s share of the resource. As the pressure inexorably builds to isolate and sequester carbon dioxide, and as gasification technologies are more widely deployed, underground mine-mouth gasification plants producing electricity as well as fuels and feedstock for other products may become more common. Surface mining of coal in the eastern Appalachian coalfields will decline as recoverable reserves continue to be depleted, and production will shift in the east to underground mining and possibly to in situ recovery, and to western coalfields. Global environmental conditions will demand a transition to energy sources and energy conversion processes that have a smaller ecological footprint in resource extraction, utilization and waste production and disposal.
The challenge for our Commonwealth today is to utilize existing tools in local, state and federal law, and where necessary to craft new tools, to demand full accountability from the industry during this transition period for the footprint it leaves on land and water resources and on community safety and health. We have raised the bar to a level where abysmal performance has been replaced by mediocrity in engineering design and reclamation planning, yet that is all too often accepted as being the norm. The footprint of coal extraction, in terms of area disturbed and land and water resources diminished, is much larger than it should or could be.

I appreciate the focus that has been given to the impacts of mountaintop removal. KRC views these issues in a different screen however – one of minimizing the footprint of all forms of mining – from the area mining operations in eastern and western Kentucky to the mountaintop removal operations, to strip contour, auger, and underground mines. We have failed – as a state, as a nation, to fulfill Congress’ vision – that mining would be a temporary use of land; that the mined land would be restored to beneficial uses; and that mining methods would be driven by proper planning and environmental protection rather than by profit.

When Congress enacted the federal Surface Mining Control and Reclamation Act of 1977, it was concerned with the damage done from the
dumping of earth and rock from mining benches into headwater streams in Appalachia.

In order to minimize the damage to land and water resources, and to restore the mined land to productive capability, Congress demanded that the earth and rock (called "spoil") be replaced on the mine bench and that the original contour of the mountain be restored.

An exception to this requirement to restore the approximate original contour was created, allowing the removal of all earth and rock material from over a coal seam (called "mountaintop removal") without having to restore the original contour if specific plans and commitments were demonstrated for development of the land for industrial, commercial, residential, agricultural or public use. Most of the mining operations that are today viewed as mountaintop removal are not technically categorized as such – they are mine plans that use a combination of point removal, area mining and deep contour cuts, and produce similar ecological consequences without the promise of beneficial post-mining uses of value to the community and environment. You could “ban mountaintop removal” tomorrow and the ecological footprint and visual impact would be negligibly different.

What has happened to Congress’ vision?
* Where the law contemplates that the approximate contour of land be restored both in elevation and configuration, the agencies have ignored the elevation requirement, and allowed significant amounts of spoil material to be disposed of off-site in valley fills that should have been replaced on the minesite.

* Where the industry norm was once the hauling and placement of spoil material in compacted fills, spoil material is now routinely disposed of in end or wing-dumped durable rock fills that are located lower in the watershed and are larger in area displaced than needed.

* Where the federal regulation provides for 100-foot stream buffer zones to protect intermittent and perennial streams from adverse effects of mining on water quality and habitat, the federal OSM has allowed the states to adopt disparate rules often ignoring those areas filled by spoil when applying buffer zones, and has proposed to further “enable” this destruction by eliminating the rule. While some may consider the upper reaches of these stream systems as “dry ditches” the filling of which is without ecological consequence, those with greater understanding of stream biology recognize that these ephemeral and intermittent stream reaches play a critical role in stream system health, providing valuable ecological goods and services (Meyer & Wallace 2001) including the provision of hydrologic retention
capacity (the loss of which increases frequency and intensity of downstream flooding and lower base flows); (Dunne & Leopold 1978); retaining sediments, (the loss of which leads to excess sediment transport downstream) (Waters 1995); providing for physical and biological processing of inputs of organic matter from the watershed, that when processed are important food resources for ecosystems downstream, (and the elimination of which can result in reduced inputs of fine particulate food resources for downstream ecosystems, and increased downstream transport of unprocessed nutrients with adverse results on biota and water quality); and providing unique habitats for aquatic biota, (the elimination of which from the landscape increases the vulnerability for extinction of aquatic invertebrate, amphibian, and fish species) (Morse et al 1993).

In 1977, Congress made a clear choice – that the choice of technology would follow, rather than dictate, environmental protection. Rather than utilizing smaller equipment more appropriate to the terrain and to careful management of materials, the industry has systematically replaced the workforce with larger machines, and has violated the spirit and letter of water and mining laws in order to, literally, move heaven and earth in order to maximize profit.
The change in leadership in the House offers a potential opportunity for a rededication to the principles of the 1977 mining law "to protect society and the environment from the adverse effects of surface coal mining operations" and to give effect to the mission of the Clean Water Act to "end water pollution". The state and federal regulatory agencies have the necessary tools to demand much more accountability in all forms of surface mine planning and performance with respect to mine planning, reducing the size and number of valley fills, reforming blasting regulations to better protect the public, restricting the appropriation of public streams for sediment control, eliminating new high and moderate hazard coal waste impoundments and requiring closure and dewatering of old ones; and broadening monitoring and pollution control obligations of coal companies.

To the extent that they lack the will to use those tools, Congress may have to act to restore the principles of the 1977 law that have been lost in the hands of a federal agency that has, for the better part of its existence, been largely captive to the wishes of the industry it regulates.

Beyond that, what can you do to effect positive change?

Just as we are each a part of the problem, you can be an important part of the solution. With the end use of most of the mined coal in Kentucky being coal-fired electricity, you can help cause positive change by helping to
change the rules to create incentives for ecological stewardship and excellence and energy efficiency. The current rate-setting formulas for utility companies favor the sale of power, not efficiency in the conversion and use of power. The formula favors the cheapest purchased fuel, which is typically coal, not the energy source that is most ecologically sound, nor even coal that is mined by the most responsible and least-impact methods.

Changes in the rate-setting formula for electric and gas utilities that more fully cost and account for environmental and social costs, will help to end the artificial subsidies that skew the market by allowing those costs to be excluded from consideration and make fuel choices that cost the environment and public dearly, seem inexpensive.

Another issue is the membership and focus of the Public Service Commission. The Governor is currently considering an appointment to the Public Service Commission, and an unprecedented coalition of labor, environmental, low-income and fair housing groups have asked the Governor to appoint an individual representing the public interest perspective who understands energy efficiency and energy policy issues.

Another issue is that of housing energy efficiency. Our state’s new housing stock, increasingly unaffordable to many of our state’s citizens, continues to be built and sold with little concern over the costs to
homeowners of heating and cooling, and less consideration of efficiency in choice of materials and design.

Fuel choices (so called green-power programs where energy derived from sources other than fossil fuels are made available to the consumer) are provided by many of the municipal and other utilities in the Commonwealth, yet not from LG&E and KU.

Your voice can help to make these changes a reality, as a consumer, as a voter, as a stockholder, as a candidate.

In closing, we have “cooked the books” on energy and fossil fuels for some time, and we are entering a period where we are reaping globally the bitter rewards of our ecological arrogance. We are at a crisis point during which our political will and our technological capacities will be sorely tested. I believe we are up to the task, but the first step is to recognize that our actions and our inactions are directly related to the continuation of the practices we find so disturbing in these graphics.

Thank you.