

# TWENTY-YEARS OF ADVOCACY

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The pages that follow highlight the Council's major accomplishments during the last twenty years. The following list represents a condensed inventory of KRC's many campaigns, cases and successes, distilled from thousands of issues and cases on which the Council has worked to effectively protect Kentucky's natural resources and the people who rely on them. The Council's work would not have been possible without the unwavering support and encouragement of the Council's membership, the Board of Directors, and particularly from the individuals and foundations who have assisted us in our endeavors. The Board of Directors and staff of the Council are deeply appreciative of the support of those who have sustained our work. Their faith in our mission and our ability to bring positive change to individuals and communities in need has helped sustain our work and has enabled our continued success.

# MINING

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**Groundwater Protected:** The Council successfully brought about major reform in the state's permit requirements for groundwater protection during mining operations. Specifically, in the 1985 case *Little v. National Mines*, the Council challenged the state's failure to require mine permit applicants to properly identify and monitor groundwater resources that could be impacted by mining. The suit challenged both the specific permit and the statewide policy, affecting thousands of proposed and already-issued mine permits. As a result, the state of Kentucky reopened over 1,000 mining permits and required the installation of water monitoring wells and the collection of both pre-mining and during-mining groundwater samples.

**Broad-Form Deed Mining Stopped:** 1985 marked the beginning of the end for the broad form mineral deed. This deed, which was held by the Kentucky courts, allowed the state to authorize strip mining permits, despite the fact that the deed had been executed at the turn of the century, before the method of strip mining had even been invented. In 1984, the state adopted a law limiting mining under the deeds to those methods commonly employed, unless specific intent to use strip-mining was expressed in the deed. Despite this law, the state agency continued to issue mine permits that violated both state and federal regulations. The Council served notice on the state of this problem, and ultimately sued to end the practice. Success came in February 1985, when an injunction was entered in federal court revoking all permits since June 1984, and prohibiting further permit issuance. As a result of the ruling, the Kentucky state court voided the 1984 law that limited strip mining, while the federal injunction remained in effect until June of 1988. In November 1988, the state adopted a constitutional amendment that incorporated the same requirements as the voided law, protecting landowners from the broad form mineral deeds. That state amendment was upheld against a coal industry challenge in 1993, with the Council's arguments forming the core of the landowner's brief in support of the amendment and for reversal of the 1956 court decision upholding the use of the broad form mineral deeds.

# MINING

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**Kentucky Mining Program Changes Ordered:** When Kentucky received approval from the federal government to administer the 1977 federal mining law, a number of protections required by federal law were not required of Kentucky. KRC successfully challenged the approval, securing changes to assure the public's right to intervene in mining permit and enforcement cases, and to assure that the right to close mines in imminent danger situations was given to all field inspectors.

**Pattern of Non-Enforcement Reformed:** The Council successfully challenged the state's mining program in regards to non-enforcement of state regulations in 1987. A settlement in the suit resulted in a comprehensive agreement to reform the enforcement of the laws in the state. In addition, Congress appropriated 13 million additional dollars for extra personnel, training, increased inspection capability, and improved equipment necessary to properly enforce the law at the thousands of mine sites in the state.

**Drinking Water Provided:** The Council's efforts in both the Butler County and Laurel County abandoned mine land projects in the mid-1980's resulted in bringing drinking water to hundreds of families who had been without dependable flowing water in their homes for years. With the approval of these water projects, the Council saw the success of its efforts to force the federal agency to grant higher funding priority to mine-related water loss through the Abandoned Mine Land Fund.

**Weakening of Mining Regulations Averted:** The Council Director, as part of a litigation team with two of the nation's top public interest lawyers, represented coalfield citizens groups in litigation concerning over 150 changes to the national surface mining regulations proposed by the Reagan and Bush Administrations during the 1980's. The lawsuits were successful in overturning many extreme proposals, which sought to erode both substantive protections of the 1977 law on surface mining, as well as protections concerning public participation in assuring that the state regulatory programs were properly implemented and enforced.

# MINING

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**Pineville's Water Supply Protected:** In 1987, the Council drafted the first successful Kentucky petition to designate an area off-limits to mining under the 1977 mining law. This petition, drafted for the City of Pineville, protected the watershed of Cannon Creek Lake, the city's water supply.

**Mine Leaching Toxic Drainage Must Be Closed:** Working with the Tennessee citizens organization Save Our Cumberland Mountains (SOCM), KRC succeeded in obtaining an enforcement order directing Rith Energy to close and reclaim a surface mine pit that had been leaching acid mine water. The litigation clarified and strengthened the requirement to reclaim contemporaneously with the mining of coal seams.

**UK's Robison Forest Protected from Mining:** In 1989, the Council succeeded in obtaining a state declaration that the largest contiguous tract of mature forest then known to be remaining in the Cumberland Plateau coalfields of eastern Kentucky was unsuitable for mining. This petition marked the second time in Kentucky history that an area had been restricted as off-limits for mining activities. This 10,000-acre tract comprising of the research forest for a state university succeeded in protecting 95% of the area that had been petitioned, and brought about major changes in the mining plan for those areas where mining was allowed at the forest's edge. In 2003, when the University began to consider reversing the earlier decision not to mine the forest in order to fund college scholarships, KRC served notice that it would oppose any such effort. UK decided to affirm its earlier decision and to protect the forest from mining.

**Coal Tipples Must Be Regulated:** The Council succeeded in 1990 in protecting hundreds of communities from the adverse effects of coal tipples by challenging federal regulations that would have de-regulated coal tipples located away from coal mine sites.

# MINING

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**Protecting Homes and Parks From Mining:** The Council worked with other groups in 1993 to successfully counter a federal proposal to open up national parks and buffer zones around homes and cemeteries to underground and strip mining.

**Middlesboro's Water Supply Is Protected Again:** In 1993, the Council filed a successful Lands Unsuitable Petition in an effort to designate an area off-limits to mining. This petition protected the watershed of Fern Lake, which supplies drinking water for the City of Middlesboro, Kentucky and lies within the visual horizon of the Cumberland Gap National Historic Park - the route of the European migration into Kentucky. The dual petitions filed in Tennessee and Kentucky resulted in the protection of Fern Lake in Tennessee and significant limits on mining in the watershed in Kentucky. Subsequently, federal funds have been made available to purchase the mineral rights and the lake for permanent protection.

**National Support Offered To Coalfield Citizens:** In 1994, recognizing the lack of national legal and technical support for coalfield citizens grappling with coal mining issues, the Council introduced the National Citizens Coal Law Project, a project that reorganized the mining-related work in an effort to better focus and improve the level of service to coalfield citizens groups across the nation and in Kentucky on mining-related environmental issues.

**Lilley Cornett Woods Off-Limits To Mining:** The Council assisted Eastern Kentucky University in a 1994 effort to oppose Southeast Coal Company's plan to mine beneath one of the only publicly protected tracts of old-growth remnant forest in Kentucky, the famed Lilley Cornett Woods. The Council provided the legal framework and worked with the University's counsel to develop the testimony and strategy for presentations by experts in opposition to the proposed underground mining operation, and the concern that mine subsidence or fracturing of the rock strata overlying the mine workings might dewater the aquifers and lead to vegetative stress and timber loss. The state denied the mining permit, and revoked a previously issued permit that had authorized undermining the forest.

# MINING

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**A Helping Hand In Oklahoma:** In 1994, the Council worked effectively on behalf of L.D. and Norma Roller after they were unsuccessful in defeating a mining permit in Oklahoma. Following the case, the Oklahoma state regulatory agency head assessed the attorneys' fees for the coal company against the Rollers, in spite of the clear prohibition in the state and federal regulations against imposing such a penalty on the public. The Council interceded for the Rollers and the federal government demanded that the state recant the order against the Rollers.

**Landslide Damage Repaired:** In 1994, the Council successfully imposed responsibility for replacement and repairs on J & H Coal Company following a landslide that threatened the homes of David Norris and Ollie McCoy. The administrative action followed the failure of the federal Office of Surface Mining (OSM), which had released the coal company from any accountability. After an independent review of the OSM report concurred with the Council's demand for additional testing, and the agency's data revealed a direct connection between the mine and the land slippage, enforcement action followed.

**Limestone Mine Permit Reversed, Mine Never Opens:** When the Olive Hill Investment Corporation permitted a property in rural Olive Hill, KRC challenged the permit as being underprotective of land and water resources and the rights of neighbors. The successful permit challenge led the state to substantially revise and improve regulations for controlling the impacts of limestone, sand and gravel operations across the state. (1995). As in the Olive Hill case, KRC has worked over the years to represent other communities adversely affected by non-coal mines. In the Steele Bottom community of Gallatin County, KRC represents residents opposed to a sand and gravel quarry located in a residential and farming area. In historic West Point, Kentucky, KRC has opposed opening of a limestone mine near an historic civil war fort and historic river town.

**Notice of Intent To Sue Filed, Reforms Follow:** KRC successfully obtained a number of reforms of the Kentucky mining program's handling of mine spoil after serving notice of an intent to sue the state regulatory agency. Among the improvements was an end to wing-dumping waste into valley fills, permitting of the area between the mining pit and the sediment ponds, and enforcement of protective buffer zones around streams. (1999)

# MINING

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**Pine Mountain Settlement School Protected:** In 1999, KRC successfully represented Harlan County's Pine Mountain Settlement School in its efforts to secure reclamation of a coal tippie site directly upstream from the school property and to end the release of substandard drainage from that property into downstream waters. In 2002, KRC again represented Harlan County's historic Pine Mountain Settlement School in a successful effort to designate the viewshed from the school property as unsuitable for all forms of surface coal mining operations, thus protecting the school and its outdoor environmental education program from the visual, blasting and water pollution impacts of mining.

**Coal Company Damages 70 Water Wells:** KRC began a multi-year effort in 1999 to hold Golden Oak Mining accountable for the destruction of the water supply of the Camp Branch community of Letcher County. The coal company and its successor have both sought protection from bankruptcy laws from their responsibilities. As part of a settlement of a related private suit, money has been set aside for replacement water supplies.

**Mable Hunt Receives Replacement Water Supply:** 1999 saw the beginning of a successful multi-year effort to force Clintwood Elkhorn Mining to replace her damaged water supply.

**Community of Ary Spared Coal Traffic:** KRC represented Daisy Luster and Pauline Stacy in a successful challenge to the use of a small county road by a coal company for haulage and access. The administrative agency decision forced the company to either use a different road to haul coal or to permit the road they were using. As a result, the company now bypasses the Ary residents and uses a haul road it constructed and permitted elsewhere. (1999-2000).

**Klines Receive Settlement In Landslide Case:** In 1999 KRC began a multi-year effort to secure abatement of a landslide that affected the yard of Nancy and Arthur Kline in Toler, Kentucky. The effort ended with a settlement in which the Klines were compensated for the damage and the parties agreed to further investigation to demonstrate conclusively that abandoned mines were responsible for the damage.

# MINING

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**Kentucky's Highest Mountain Peak Protected:** KRC authored and filed a Petition to Designate Harlan County' Black Mountain as Unsuitable for Mining on behalf of KRC and Kentuckians for the Commonwealth and represented KFTC in negotiating a comprehensive settlement that provides permanent protection for the summit and its' northern forested ecosystem on the state's highest mountain peak. (2002)

**Outlaw Coal Operators Blocked:** After a federal court invalidated the federal mining agency's efforts to block issuance of new permits for all owners and controllers of companies in current violation of mining laws, KRC succeeded in maintaining that prohibition in state law. Kentucky's prohibitions remained in place as part of the budget process for a number of years until 2004.

**Demanding Accountability For Coal Waste Spill:** KRC authored a detailed report on the Martin County Coal Slurry release of October, 2001, and worked to maintain public pressure to conduct appropriate investigations of the causes of the failure. KRC also worked with private counsel who pursued private lawsuits against the company for damages caused to private and public properties, and issued follow-up reports on the inadequacy of federal investigations of the waste release.

**Protecting Neighborhoods From Coal Truck Traffic:** KRC has represented Rebecca Boggs, a community spokesperson in the Partridge community in eastern Kentucky, in successfully ending routine use of the small road in that community for coal haulage. Bringing administrative appeals to all permits issued in the area that might use that road, KRC and Ms. Boggs have forced changes to state regulatory practice resulting in coal companies constructing dedicated haul roads rather than using small community roads as their industrial truck route.

**Preventing Coal Company Overreaching:** Much of eastern Kentucky land is owned by family members as joint tenants where each has equal right to use the land. Coal companies often purchase a fractional interest and then seek to mine the land even over the objections of other landowners. KRC has challenged this practice on behalf of the Kirtley family and is seeking to clarify Kentucky law to protect the rights of non-consenting joint landowners.



# RESTORING RECLAMATION BOND FUNDS

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After KRC served a notice of intention to sue the state of Kentucky for diverting \$3.8 million dollars from a mining reclamation bond fund to offset general state revenue shortfalls, the Governor of Kentucky restored the money to the reclamation fund, where it is available to reclaim mined lands if operators default on their reclamation obligations.

**Keeping The Faith On Remining:** After years of careful negotiations, the coalfield communities agreed to amend the water pollution standards for remining abandoned mine operations, allowing some flexibility in discharge limits during mining in order to assure long-term improvement and to encourage remining of these abandoned areas. Over a decade after the federal law was changed to allow this limited exception, EPA published rules that ignore the limits and intent of the law. KRC sued in the Sixth Circuit Court of Appeals to overturn the rules, and the case is pending.

**Protecting Groundwater Supplies:** When Lick Creek resident Roy Mullins succeeded in petitioning to protect his neighbors and his wells from damage by Clintwood Elkhornsproposed underground mine, the company sued to void those protections. KRC represents Roy and his neighbors in upholding the protections that Roy won for their water supplies.

# WASTE MANAGEMENT

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**Kandfill pollution avoided.** The Council successfully defeated efforts to site a landfill atop a limestone cave system that supplied the water for the town of Livingston, Kentucky. 1985-1986

**Citizen's Guide To Right-To-Know Law Published:** The Council published What's in Your Backyard, a citizen's guide to Title III of the Superfund Amendments and Reauthorization Act. This guide explained the community right-to-know aspects of the law regarding the storage and release of hazardous chemicals. The document succeeded in reaching a wide audience when it was reprinted and distributed by the state. (1987) Long, but successful fight to oppose hazwaste incinerators begins. In 1987, the Council began a long relationship with the Concerned Citizens Coalition by successfully opposing a commercial hazardous waste incinerator in their area. The Coalition, a group of residents from southwestern Jefferson County, resisted the proposed location because it would have been directly upwind from Louisville, on the river side of the Ohio River floodwall.

**Better Controls On Army Disposal Of Nerve Gases.** In 1988, the Council drafted model legislation reforming the regulation of nerve agents by including them on the inventory list of toxic waste. This inclusion required that nerve gas be regulated as a hazardous waste and that additional tests be undertaken to prove the safety of destruction methods. It also required that adequate emergency response plans be developed and adequately funded.

**Improving Our Waste Management To Avoid Being Regional Dumping Ground:** The Council began a multi-year effort to address the threat of large-scale importation of garbage from the Northeast that began in 1988. The Council responded to the public's concern over groundwater contamination by poor quality landfills, a vital concern considering that 31% of the state relies on groundwater as its source for drinking water. Responding to a legislative request, the Council wrote three bills that became law in 1988: the first required that all landfills be upgraded and limiting disposal of exempt hazardous wastes in solid waste landfills; the second, requiring expanded public notice and comment opportunities for new or expanded landfills, and the last, allowing counties to tax all waste disposal and authorizing the hiring of local inspectors.

# WASTE MANAGEMENT

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## **Assisting Communities In Addressing Unneeded Garbage Incinerators and**

**Landfills:** The Council successfully assisted numerous local groups around the state in their efforts to prevent the inappropriate siting of solid waste landfills designed to dispose of large volumes of out of state waste. KRC also assisted in efforts in several communities to oppose large-scale solid waste incinerators. The Council's efforts resulted in the state imposing a moratorium on permitting solid and medical waste incinerators pending a revision to state regulations. (1988-9).

**Defining State's Contamination Policy:** In negotiations with the state and industrial interests, KRC crafted the state's hazardous waste pollution goals that have remained intact to this day the remedy for contamination must be protective of public health and the environment, and must consider a wide range of factors assuring protection of public health and the environment if any wastes are to remain in place.

**Dayhoit Residents Helped:** Working with local activist Joan Robinett, KRC began pressing for an investigation into widespread contamination of land and groundwater resources by National Electric Coil Company in the Harlan County community of Dayhoit. The site was subsequently listed as a federal Superfund Site and has been subject to private lawsuits seeking compensation for injuries to workers and local residents from exposure to toxic chemicals.

**Negotiating Comprehensive Waste Law Reforms:** The Council Director, at the request of the state Senate leadership, served as negotiator for the environmental and grassroots community in a special legislative session on solid waste. The result was a bill that brought about significant changes in the way the state deals with waste. Specifically, it substantially upgraded solid waste management, setting recycling goals, increasing state procurement of recycled materials, requiring local communities to plan for solid waste needs and granting authority to limit volumes of waste disposed within the planning area, requiring background investigations of applicants for solid waste permits, and capping expansion of substandard landfills and requiring closure within 5 years. (1991)

# WASTE MANAGEMENT

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**Helping Communities Draft Host Agreements:** The Council brought long-term improvements to the numerous communities it assisted in opposing unneeded landfills and incinerators. Out of this work, the Council developed strong solid waste management plans and host community agreements, which could be used by any community facing the threat of new landfills and incinerators. The model agreement formed the basis of the Estill, Franklin, Jefferson, Grant and Trimble County agreements. In the intervening years since enactment of comprehensive waste management legislation in 1991, during which KRC served as lead negotiator for a coalition of five community organizations, KRC has assisted Hopkins, Trimble, Grant, Pendleton, Madison, Clark, Jefferson, Franklin and other counties in negotiating host agreements or developing solid waste siting and operation ordinances.

**Managing Asbestos:** The Council effectively opposed the deregulation of asbestos-containing floor tiles during housing demolition, which was a significant health issue for the area near the 1,300 homes slated for demolition near the Louisville airport (1991)

**Opposing Hazardous Barrel Plant:** At the request of rural Glencoe in Gallatin County, KRC drafted an ordinance to close a regulatory gap and bring better controls on the cleaning of hazardous waste barrels (1991).

**Environmental Injustice In Drakesboro Ended:** The Council succeeded in closing down a facility that processed aluminum wastes (dross) and emitted hydrogen sulfide gases that had caused a nuisance in a poor African-American community in the town of Drakesboro. The Council also succeeded in securing reversal of a landfill permit to allow land disposal of those same reactive wastes in rural Muhlenberg County (1992).

**No to NYC Sewage Sludge:** When Muhlenberg County residents became concerned with a proposed to spread thousands of tons of New York City's sewage sludge onto formerly-mined lands, KRC investigated and developed comments on the potential concerns with metals contamination in soil and runoff. The project was withdrawn by the proponent.

# WASTE MANAGEMENT

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**Contaminated Soil-Cooking Plant Defeated:** The Council closed a loophole in regulations regarding contaminated soils. The Council responded to the problem when a Pike County state representative requested that the Council's Director draft a bill to prevent soils with hazardous levels of gasoline constituents from being treated merely as a solid waste and burned without proper precautions. The bill, which was enacted during the 1992 state legislative session required local approval of facilities proposing to thermally treat petroleum-contaminated soil, thus closing the loophole in federal regulations. (1992)

**Barrel Plant Closes Rather Than Upgrading:** After years of enduring fumes and odors from a barrel cleaning plant in Portland, residents asked KRC to help. After several years, the Council's efforts gave the company a choice of upgrading or closing, and the company chose to close the antiquated plant and to move operations to a more appropriate location with new pollution control equipment. Working with the company and neighbors, a site plan for reuse of the property for light (and non-polluting) commercial or industrial uses was agreed-upon and adopted; thus preventing the site from becoming a blighted brownfield property. (1993).

**No Hazwastes In Cement Kiln:** The Council, working with the Concerned Citizens Coalition, succeeded in opposing the burning of hazardous wastes in a cement kiln located in southwestern Jefferson County. After six years, Kosmos Cement Company has abandoned efforts to burn hazardous waste fuels in its cement kiln. The victory capped six years of Council efforts, including administrative appeals and the development of local ordinances to block the burning until proper environmental studies were performed (1993)

**Mercury Contamination:** The Council succeeded in having new standard conditions imposed on water discharge permits and other permits, associated with natural gas wells and pipelines to allow for detection of mercury contaminants and PCBs. Manometers, or flow meters, used with wells and pipelines, sometimes contain pounds of elemental mercury that can be toxic to wildlife and humans.

# WASTE MANAGEMENT

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**ANo To Chicken Factory:** The Council provided extensive support in the successful effort by the residents of Franklin, Kentucky to oppose a chicken processing facility there, due to groundwater, surface water and other concerns. The chicken industry has significant waste and wastewater management problems, and provides what the Wall Street Journal recently described as dangerous, dead-end jobs. (1994)

**Sewage Conditions Curbed:** The Council successfully represented Teena Halbig, activist and founder of the Floyd's Fork Environmental Association, in her effort to end the sludge dumping and third world conditions associated with the malfunctioning Birchwood Sewage Treatment Plant. The appeal resulted in an agreement by the Metropolitan Sewer District to take over the malfunctioning plant until 2001, when MSDs sewers were extended to take the plant off-line.

**Deal On DOE Waste Cleanup Challenged:** When the Department of Energy and state signed two Agreed Orders that allowed hazardous wastes to be disposed of in solid waste landfills and otherwise proposed to cut corners on cleaning up hazardous and radioactive waste contamination at the Paducah Gaseous Diffusion Plant, KRC filed a court challenge to the Agreed Orders, which is pending and has survived the first effort by the federal defendants to dismiss the suit. KRC has also challenged any expansion of the on-site landfill because of the presence of geologic faults beneath the site that may extend to close to the surface.

# WASTE MANAGEMENT

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**Addressing Oilfield Radioactive Contamination:** The Council successfully brought the spotlight to the issue of radioactive contamination of the state's oil fields. The Council's efforts brought attention to the failure of the Natural and Human Resources agencies of the state to demand that the oil industry begin a clean-up of contaminated soil and surface/groundwater resources contaminated by radioactive material deposited from oil production. By writing an extensive and highly publicized letter to the Governor demanding action to address this long-ignored problem, the state began to address oilfield radioactivity for the first time. Actions spurred by the Council's efforts included: the development of an interagency memorandum of agreement and work group to begin drafting regulations governing the management of NORM (naturally-occurring radioactive material) wastes; an agreement to initiate a health assessment of communities potentially impacted by exposure to NORM; the development of a plan to systematically review and sample areas in the other oil fields of the state, to determine whether the contamination found in the Martha oil field is typical of other areas; and a commitment by the state to demand adequate and protective levels of removal of the contaminated material. (1993-4)

**Residents Oppose Landfill, Prevail In SLAPP Suit:** The Council successfully aided the residents in Magoffin County as they challenged the actions of the local governing body. Despite strong citizen opposition, the local governing body had developed a plan that would allow 14 million tons of garbage to be disposed over the course of 10 years in a community that would generate only 110,000 tons of its own waste in that period. The Council's extensive research on remedies for breaching this contract, which bargained away the public's interests to a private landfill concern, convinced a Special Circuit Judge that the local franchise was unconstitutional and therefore released the community from any obligation to allow the landfill. The Courts later rejected an attempted SLAPP suit brought against the citizens.

**No Coal Ash On Farmland** When a coal company proposed to dump coal combustion ash on farm lands in Bullitt County, KRC interceded, representing adjoining landowners in a successful challenge to an attempted rezoning of the land to support the ash disposal. The application was withdrawn and the ash instead is being disposed in a secure location where groundwater is not at risk.

# DEVELOPMENT & LAND CONSERVATION

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**Drilling In Wild Rivers Corridors Averted:** The Council successfully opposed oil and gas drilling in designated wild river corridors. In addition, the Council secured additional conditions on other oil and gas drilling projects within wild river corridors (1984).

**Scenic Gorge Protected:** The Council successfully appealed the swap of a wildlife management area containing the scenic McCammon Gorge and waterfall for a piece of previously strip-mined land. In addition, the Council also successfully facilitated an agreement to cease federal timber sales within a corridor of state-protected wild and scenic rivers (1987).

**Farmland Protected From Unneeded Lake Working:** With two farm families in Pendleton County, KRC helped convince county officials to discard a planned 1600 acre lake that would flood the lands of scores of local farmers.

**Proposal for High Dam On Kentucky Averted:** The Council successfully opposed a proposal to build a high dam on the Kentucky River through public testimony and public educational and awareness campaigns. Water supply concerns were instead addressed by working toward a reduction of peak water demand, rather than new dam construction. (1987-1988)

**Red River Becomes Wild And Scenic:** River The Council successfully assisted community efforts in drafting a bill to designate the Red River Gorge as a part of the federal Wild and Scenic River system. KRC worked to resolve local landowner concerns regarding river access, resolving opposition that cleared path for Congressional designation. (1992)

**No Mining Under Lilley Cornett Woods:** The Council assisted Eastern Kentucky University in successfully opposing efforts by a coal company to undermine one of the only protected old growth forest remnants in eastern Kentucky (1994-5).



# DEVELOPMENT & LAND CONSERVATION

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**Protecting State Nature Preserves:** The Council's detailed comments to the Secretary of the Natural Resources Cabinet aided in the successful effort to oppose infringement of a highway onto a state nature preserve. When the Kentucky Department of Transportation requested that the Kentucky State Nature Preserves Commission give up a portion of the state park Blackacre, for a four-lane highway extension, the Council worked on behalf of the park to protect its integrity. (1993)

**No Wood Chips Mill In Lyon County:** The Council's extensive assistance to HAWK (Help Alert Western Kentucky) in their effort to stop the development of a wood chip mill on Lake Barkley in western Kentucky resulted in success when the local port authority withdrew its proposal to modify the port to accommodate the chip mill. Wood chip mills typically result in extensive clear cutting of timber within a 75-mile radius "sourcing area" for chipping of the wood for glossy paper stock and mulch. HAWK opposed the use of wood for this purpose, rather than for sale to "value-added" uses such as veneer, furniture and other finished products, and opposed the additional barge traffic on the lake. (1994)

**Protecting Wetlands From Development:** The Council effectively fought for modifications of a riverfront development and marina proposal in Jefferson County that would have destroyed wetland habitat along the Ohio River (1998).

**Radio Tower Must Be Removed:** The Council represented the Irish Hill Neighborhood Association in opposing the grant of a belated land use permit for a radio antenna tower in their neighborhood one that had been represented as being needed for emergency responders yet had been leased to a commercial cell phone tower provider instead. A 2004 Court of Appeals decision upheld the denial of the permit and requires the removal of the 200-foot high structure. (2002-4)

**Protecting Landowner in Forced Pooling:** Under state oil and gas conservation laws, a landowner can be forced to accept a pooling of their interests in oil and gas beneath their property and that of another landowner seeking to locate a well. KRC represented Sheryl Bolling in her successful effort to require that the oil company protect her well water supply, including pre-and post-drilling testing of her water well and an obligation to replace it if damage occurs.

# DEVELOPMENT & LAND CONSERVATION

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**PFERC Orders Mitigation For Power Line Location:** When Dan and Carol Turley's dream home was disrupted by relocation of a high voltage line directly in front of their home, KRC secured an order from the Federal Energy Regulatory Commission demanding that the company mitigate the harm or relocate the line. A financial settlement was entered between the parties compensating the Turleys for the harm done by relocating the line.

**Protecting Neighborhoods Near Malls Working:** With the Bashford Manor Area Association, KRC negotiated numerous improvements in the site redevelopment plans for an older commercial mall adjacent to the Bashford Manor neighborhood in Jefferson County. The negotiations require stormwater improvements, improved design and lighting controls, and neighborhood notice. Working with BMAA, KRC also secured negotiated agreements concerning development of athletic fields on the mall property.

**KRC also represented OAK, the Okolona Area Keepers:** A neighborhood coalition of residents of the Okolona area of southern Jefferson County, in a ten-year process to halt development of a new commercial mall in a flood-prone, traffic-constricted area. While unsuccessful in a third-effort to defeat the mall rezoning, KRC has appealed that decision and is opposing a proposal for relocation and shortening of an interstate highway ramp to accommodate the project.

**Industrial Development Bonds Opposed Working:** On behalf of a local resident, KRC opposed issuance of county-backed industrial development bonds intended to finance development of an industrial park in a fragile, karst plain area near Mammoth Cave National Park in western Kentucky. KRC continues to work with state and local organizations concerned with this controversial development. As a result of the bond challenge (one of the first under that law in 40 years) KRC worked with the state Department of Local Government to enact legislative reforms to the bond law appeals in 2003.

# WATER QUALITY

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**Strengthening Water Quality Standards:** The Council successfully opposed legislative amendments that would have weakened state regulations on the water quality standard review process in an effort to prevent the reduction of stream protection criteria. This effort, brought forward by a unified coalition of environmental organizations, also led to the state's strengthening of water quality protection provisions within the review process. (1984)

**Oil Brine Discharges Curbed:** The Council succeeded in protecting Kentucky's surface water and headwater streams from oil brine discharges and saline discharges. This effort required that the Council secure federal intervention to fight the state's exemption from water pollution regulations (1986).

**Indian Hills Gets Sewers:** Maxine Gordon asked KRC Director FitzGerald to be an expert witness in a health department administrative case on whether the community of Indian Hills should be required to hook onto available sewers because of geologic constraints making use of on-site septic systems unhealthy and a threat to groundwater and surface streams. FitzGerald ended up withdrawing as a witness and becoming co-counsel in a successful bid to require sewer hookups.

**Landfill Monitoring Improved, Becomes Soccer Park After Closure:** The Council successfully challenged the closure and groundwater monitoring plan of the Edith Avenue Landfill, seeking better groundwater monitoring. A settlement was reached, whereby the City of Louisville agreed to install and monitor additional wells to assure that lead did not contaminate groundwater in Louisville's alluvial aquifer occurs. If such contamination is detected, action to remedy the contamination is required. A year after the settlement, KRC was asked by the city to review and advise on a plan to cap the former landfill and to create a soccer park, which is now a popular and safe venue for area residents.

# WATER QUALITY

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**Federal Antidegradation Rules Proposed After KRC Threatens Suit:** Bowing to industry pressure, Kentucky has failed in two efforts to adopt rules sufficient to protect Kentucky's higher quality streams from degradation due to pollution. When EPA failed to move forward to adopt a federal standard for Kentucky, several state organizations, represented by KRC, served a notice of intent to sue in federal court to force such a federal rule to be proposed. EPA agreed to do so, and those same parties are now poised to go to federal court to force a final publication of those rules by EPA.

**Unneeded Dam in Wild and Scenic Study River Opposed:** KRC continues to oppose construction of a dam in the headwaters of a candidate national wild and scenic river in Jackson County, Kentucky. The stream contains a higher degree of diversity of species than most other streams in the state.

# AIR QUALITY

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**Improving Asbestos Monitoring In Schools:** The Council convinced Jefferson County Public School officials to conduct more precise but expensive air monitoring. This effort assured that schools that had floor tiles removed were free of asbestos fibers (1993).

**Curbing Toxics From Welding Operation:** KRC assisted private counsel in efforts to successfully recover damages against a welding operation in northern Kentucky that exhausted toxic air pollutants onto the property of Charles and Reva Cornett. The settlement allows them sufficient funds to relocate and build a new home.

**Cox Interior Withdraws Waste Burning Proposal:** KRC assisted residents of Taylor County in a successful campaign to oppose the use of municipal solid waste and sludges to fuel the boilers at the Cox Interior wood products plant. Residents concerns included elevated levels of air toxics likely to be in the emissions from combusting mixed solid wastes. Vehicle Testing Program Shutdown Ruled Illegal When Jefferson County shut down its vehicle emissions testing program without first seeking federal approval for ending the pollution control program, KRC sued. A federal court ruled in 2004 that KRC was correct in asserting that a pollution control measure that is part of a state or local governments' plan to meet air quality standards cannot be ended absent prior federal approval. The Court awarded a \$100,000 fine to KRC, which will be used for air toxics control advocacy.

# LEGISLATIVE ADVOCACY

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For 20 years, KRC has been an effective lobbying force in the state legislature, working to advance and protect environmental laws, defend agency budgets, and craft new protections for community health and environmental quality.

**Home Rule Protected:** The Council's significant input in the legislative process led to the defeat of a 1994 bill that would have stripped local governments of their home rule ability to regulate environmental problems such as garbage, stream pollution, etc.

**General No More Stringent Policy Averted:** In 1994 and again in 1998 the Council's work helped defeat an amendment that would have required all of Kentucky's environmental regulations to be no more protective than the bare minimum federal regulations in waste, air, land and water pollution, as well as those relating to workplace safety.

**Little Reforms Funded:** In 2002, KRC worked closely with the House Majority Floor Leader to negotiate a comprehensive solid waste law providing new funding to cleanup roadside litter and to close and remediate former solid waste landfills.

# MERCHANT POWER PLANTS REGULATED

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In 2002, KRC negotiated with merchant and regulated power representatives, a comprehensive siting process designed to assure that the local and environmental impacts of new proposed power plants are fully considered and mitigated before siting is allowed. Since 2002, KRC has represented citizens in opposing or seeking better mitigation from each of the four power plants that have applied for siting board approval: Thoroughbred Energy in Muhlenberg County, Kentucky Pioneer Energy in Clark County, Kentucky Mountain Power in Knott County, and Estill County Energy in Estill County.

**Underground Storage Tank Fund Extended:** In 2002, 2003 and 2004 sessions, KRC has fought to extend the availability of funds to reimburse landowners who remove leaking underground gasoline storage tanks and remediate the contamination.

**Voluntary Remediation And Brownfield Law Passed:** From 2001-4, KRC acted as chief negotiator for the public on a comprehensive bill establishing a voluntary program by which owners or contaminated properties can seek to remediate contamination and receive limited protections from state enforcement. After enactment of the legislation, KRC worked as a participant in a Governor's Task Force On Brownfields to develop a consensus set of cleanup standards, adopted in 2004, which assure protection of future and adjoining landowners and the public.

**Industry Bill Cutting Off Liability For Lead Poisoning Opposed:** KRC successfully opposed and alerted others to oppose paint-industry sponsored bill that would have cut off the rights of renters to sue for lead poisoning damage.

**Comprehensive Coalbed Methane Bill Adopted:** After the state's environmental agency had signed off on a coalbed methane development bill that provided no protections for landowners, KRC negotiated a series of changes that provide notice, assure protection of groundwater and liability for any damage, require reclamation plans, and provide for appeals by injured landowners making the bill the strongest in terms of public protection in the nation.

# MERCHANT POWER PLANTS REGULATED

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**Tri-Vision Billboards Remain Unlawful:** Working with and advising a statewide organization opposed to billboard expansion, KRC succeeded in defeating a bill that would have authorized cutting of public trees in order to assure billboard visibility, and would have made lawful the electronic three-message rotating boards that have proven so distracting in states that allow them.

**Local Regulation Of Oil and Gas Prohibited But Industry Pays The Price:** When the oil and gas industry moved to prohibit local regulation in order to prevent one county from controlling the location of oil gathering pipelines, KRC worked with county officials and citizen groups to craft a statewide mandate for a comprehensive program regulating all environmental and landowner impacts of each aspect of oil and gas production and transmission. The first component of that program, addressing gathering lines, has already been adopted.



# ACHIEVEMENTS & RECOGNITION

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**Lifetime Achievement Award Given On Earth Day, 2002:** The Kentucky Environmental Quality Commission recognized the work of the Kentucky Resources Council, Inc. Director Tom FitzGerald with a Lifetime of Service Award.

**Public Service Award Received:** KRC Director FitzGerald received the Henry R. Heyburn Public Service Award from the University of Kentucky's College of Law in 2003.

**KRC Received the 2003 Biological Diversity Protection Award** from the Kentucky State Nature Preserves Commission.

KRC received awards from the Kentucky League of Women Voters and a Coalfield Justice Award from Kentuckians for the Commonwealth.