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FILED

2013 JUL 31 A 9:24

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 CHESAPEAKE CLIMATE ACTION
17 NETWORK, FRIENDS OF THE EARTH,
18 SIERRA CLUB, WEST VIRGINIA
19 HIGHLANDS CONSERVANCY, CENTER
20 FOR INTERNATIONAL ENVIRONMENTAL
21 LAW and PACIFIC ENVIRONMENT,

22 Plaintiffs,

23 v.

24 EXPORT-IMPORT BANK OF THE UNITED
25 STATES and FRED P. HOCHBERG, in his
26 official capacity as Chairman of the Export-
27 Import Bank of the United States,

28 Defendants.

NC

CV. 13 3532

COMPLAINT FOR DECLATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Chesapeake Climate Action Network, Friends of the Earth, Sierra Club,
West Virginia Highlands Conservancy, Center for International Environmental Law, and Pacific
Environment (collectively, "Plaintiffs") challenge the Export-Import Bank of the United States'
("Ex-Im Bank") approval on May 24, 2012, of a \$90 million loan guarantee in support of Xcoal

1 Energy & Resources, LLC (“Xcoal”), without complying with the National Environmental Policy
2 Act (“NEPA”), 42 U.S.C. §§ 4321-4370(h).

3 2. The \$90 million loan guarantee facilitates a commercial loan between Xcoal and PNC
4 Bank, N.A. and supports Xcoal’s mining, transport, and export of coal. Ex-Im Bank’s financing
5 enables Xcoal to broker an estimated \$1 billion in sales of coal for export from mines in Appalachia;
6 transport that coal by rail to port facilities in Baltimore, MD, and Hampton Roads, VA; unload, store
7 and otherwise handle that coal in port; and then transport that coal by ship to clients in China, Japan,
8 South Korea and elsewhere.

9 3. These activities have significant adverse effects on human health and the
10 environment. For example, coal mining, transport by rail in open cars, unloading from rail cars to
11 storage piles at port, and reloading onto ships, all emit large quantities of coal dust. This coal dust is
12 concentrated in mining communities, along rail lines, and around export terminals. Coal dust
13 contributes to lung disease, asthma, and cardiopulmonary problems. Trains and ships used to
14 transport coal also emit diesel exhaust and other harmful air pollutants, which worsen respiratory
15 conditions like asthma and bronchitis and can cause lung damage and premature death. Coal mining
16 contaminates water, soil, and air, causes acid mine drainage, harms fish and wildlife populations,
17 and produces large volumes of contaminated wastewater, among other harms.

18 4. Ex-Im Bank’s failure to consider these health and environmental impacts before
19 approving the \$90 million loan guarantee violates NEPA. Plaintiffs request that this Court (i)
20 declare that Ex-Im Bank’s approval of a \$90 million loan guarantee to Xcoal for coal exports
21 without conducting any environmental review violates NEPA, and declare that such approval is
22 therefore void; (ii) order Ex-Im Bank to rescind the \$90 million Xcoal loan guarantee; and (iii) order
23 Ex-Im Bank to comply with NEPA by preparing an environmental impact statement (“EIS”), an
24 environmental assessment (“EA”), or otherwise analyzing and disclosing to the public all the
25 environmental impacts of Xcoal’s coal exports before providing financial assistance for such
26 activities.
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1 **JURISDICTION**

2 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action
3 arising under the laws of the United States) and the Administrative Procedure Act (“APA”), 5 U.S.C.
4 §§ 701-706.

5 6. An actual controversy exists between the parties within the meaning of 28 U.S.C. §
6 2201(a). This Court may grant declaratory relief and additional relief, including an injunction,
7 pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706.

8 7. Ex-Im Bank’s failure to comply with NEPA is arbitrary, capricious, and not in
9 accordance with procedures required by law, and is thus subject to judicial review under the APA. 5
10 U.S.C. §§ 701-706.

11 8. Ex-Im Bank’s failure to prepare an EIS or an EA as required by NEPA also
12 constitutes agency action that is unreasonably delayed and/or unlawfully withheld as provided by
13 section 706(1) of the APA and is thus subject to judicial review. 5 U.S.C. §§ 701-706.
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15 **VENUE AND INTRADISTRICT ASSIGNMENT**

16 9. Venue lies in this judicial district under 28 U.S.C. § 1391(e) because Plaintiffs
17 Friends of the Earth, Pacific Environment, and the Sierra Club reside in this district.

18 10. Assignment to the San Francisco Division of this judicial district is proper under Civil
19 Local Rule 3-2 (c)-(d) because Plaintiffs Pacific Environment and the Sierra Club reside in San
20 Francisco County.

21 **PARTIES**

22 11. Plaintiff CHESAPEAKE CLIMATE ACTION NETWORK

23 a. Plaintiff Chesapeake Climate Action Network (“CCAN”) is the first
24 grassroots, nonprofit organization dedicated exclusively to fighting global warming in Maryland,
25 Virginia, and Washington, DC. CCAN was founded in 2002 and has its headquarters in Takoma
26 Park, Maryland and an office in Richmond, Virginia. CCAN’s mission is to build and mobilize a
27 powerful grassroots movement in the region surrounding the nation’s capital to call for state,
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1 national, and international policies that will put the United States on a path to climate stability.

2 CCAN advocates for a domestic energy policy that prioritizes clean energy sources, such as solar
3 and wind power, and phases out dirty fossil fuels, such as coal.

4 b. CCAN brings this action on behalf of itself and its members. CCAN has over
5 90,000 members in Maryland, Virginia, and Washington, DC. CCAN members live and recreate
6 adjacent to and near the rail lines and port facilities in Maryland and Virginia that will see increased
7 activity due to Ex-Im Bank's financing of Xcoal's coal exports. These members' health, property,
8 and recreational and aesthetic interests will be harmed by increased air pollution from coal dust,
9 diesel exhaust and other pollutants, increased noise, and traffic disruption. CCAN and its members
10 are also concerned about the local impacts of a rapidly warming global climate due in large part to
11 increased use of fossil fuels such as coal. These impacts include sea-level rise, increased frequency
12 and intensity of storms and floods, and warming sea-surface temperatures in the Chesapeake Bay.

13 c. Ex-Im Bank's failure to prepare an environmental impact statement or
14 otherwise comply with NEPA also harms CCAN and its members' procedural and informational
15 rights to participate in and benefit from the NEPA process. Ex-Im Bank's failure to analyze the
16 environmental impacts of and alternatives to Xcoal's exports deprives CCAN and its members of the
17 opportunity to participate in the development of such environmental analyses and alternatives, and
18 thereby influence decision-making related to federal financing of coal exports. Ex-Im Bank's failure
19 to comply with NEPA further deprives CCAN and its members of information about these coal
20 exports that they would likely use in their advocacy and public education efforts.

21 d. The declaratory and injunctive relief CCAN seeks will redress these injuries
22 to CCAN and its members by requiring Ex-Im Bank to rescind its financing for Xcoal's coal exports
23 until it has considered the environmental impacts of its actions in accordance with NEPA. The relief
24 that Plaintiffs request would also require Ex-Im Bank to provide CCAN and its members with
25 information about the environmental impacts of Xcoal's activities, as well as the opportunity to
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1 comment on and otherwise participate in the process leading to Ex-Im Bank's approval of the loan
2 guarantee to finance such activities.

3 12. Plaintiff FRIENDS OF THE EARTH:

4 a. Plaintiff Friends of the Earth, Inc. ("FoE") is a national, non-profit
5 environmental advocacy organization founded in 1969 and incorporated in the District of Columbia,
6 with its headquarters in Washington, DC and an office in Berkeley, California. FoE is the US voice
7 of Friends of the Earth International, the world's largest grassroots network of environmental groups
8 working in 76 countries on today's most urgent environmental and social issues. FoE's mission is to
9 defend the environment and champion a healthy and just world. One of FoE's main programs, its
10 Climate and Energy Program, promotes policies and actions to reduce greenhouse gas emissions,
11 avoid irreparable climate change, and end the world's unhealthy dependence on dirty energy sources
12 including coal. One approach taken by FoE is to end government financing, tax, and subsidy
13 policies that provide incentives for fossil-fuel use. FoE also works in a variety of ways to promote
14 the widespread adoption of clean, efficient, low-greenhouse gas technologies.

15 b. FoE brings this action on behalf of itself and its members. FoE has more than
16 10,000 members and 150,000 activists in the United States. More than 100 FoE members live,
17 work, or recreate near the ports in Hampton Roads and Baltimore from which Xcoal ships its coal
18 abroad, or near rail lines linking those ports to the Appalachian coal mines where the coal originates.
19 These members face harm to their health, property, and aesthetic and recreational interests due to
20 increased air pollution, noise, traffic, and other adverse effects of Ex-Im Bank's financing of Xcoal's
21 coal exports activities. FoE's members include senior citizens, people with young children, and
22 people with respiratory conditions. These members are particularly vulnerable to harm from
23 exposure to particulate emissions, including coal dust, and other harmful air pollutants caused by the
24 transportation, handling, and shipping of coal for export from these ports.

25 c. Ex-Im Bank's failure to prepare an environmental impact statement or
26 otherwise comply with NEPA also causes FoE's members procedural harms by depriving them of
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1 NEPA's assurance that Ex-Im Bank consider the environmental impacts, alternatives, and possible
2 mitigation measures related to the coal exports it finances before approving such financing. Ex-Im
3 Bank's failure to conduct environmental review deprives FoE and its members of the opportunity to
4 receive information about the potential harms of the coal export projects that Ex-Im Bank funds, and
5 to provide comments or otherwise influence Ex-Im Bank's decision to finance such projects. This
6 hinders FoE's ability to further its Climate and Energy Program and to fulfill its mission of effecting
7 policy change in defense of the environment and a healthy and just world. Ex-Im Bank's failure to
8 comply with NEPA further deprives FoE of information about these coal exports that they would
9 likely use in their advocacy and public education efforts.
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11 d. The declaratory and injunctive relief FoE seeks will redress these injuries to
12 itself and its members by requiring Ex-Im Bank to rescind its financing for Xcoal's coal exports until
13 it has conducted the environmental review that NEPA requires and allowed FoE and its members to
14 participate in the process leading to Ex-Im Bank's decision whether to approve the loan guarantee.
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16 13. Plaintiff SIERRA CLUB :

17 a. Plaintiff Sierra Club is a nonprofit corporation incorporated and headquartered
18 in California. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the
19 Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to
20 educating and enlisting humanity to protect and restore the quality of the natural and human
21 environment; and to using all lawful means to carry out these objectives. One of Sierra Club's
22 significant conservation campaigns is the "Beyond Coal Campaign," which aims to reduce local and
23 global dependence on dirty, nonrenewable energy sources, such as coal, along with their harmful air
24 and water pollution impacts.

25 b. Sierra Club brings this action on behalf of itself and its members. Sierra Club
26 has approximately 600,000 members nationwide, including approximately 30,000 members in West
27 Virginia, Virginia, and Maryland. Sierra Club members live, work, and recreate in communities
28 near the mines, railroad tracks and export terminals that will see increased activity due to Ex-Im

1 Bank's loan guarantee to Xcoal. Increased coal export activities harm these members' health,
2 economic, and recreational and aesthetic interests. These members include people with asthma and
3 other individuals who are especially vulnerable to harm from exposure to coal dust and other
4 harmful air pollutants emitted during coal export activities, and individuals who live and recreate
5 near waterways impaired by mining.

6 c. Ex-Im Bank's failure to prepare an environmental impact statement or
7 otherwise comply with NEPA also causes procedural injury to Sierra Club and its members by
8 depriving them of NEPA's guarantee that the environmental impacts of, alternatives to, and
9 mitigation measures for Xcoal's coal exports are carefully evaluated and considered prior to Ex-Im
10 Bank's decision to finance them. Ex-Im Bank's failure to prepare an environmental impact
11 statement or otherwise analyze the environmental impacts of and alternatives to Xcoal's exports also
12 deprives Sierra Club and its members of the opportunity to participate in the development of such
13 environmental analyses and alternatives, and thereby influence decision-making related to financing
14 of these coal exports. Ex-Im Bank's failure to comply with NEPA further deprives Sierra Club of
15 information about these coal exports that they would likely use in their advocacy and public
16 education efforts.

17 d. The declaratory and injunctive relief Sierra Club seeks will redress the injuries
18 to itself and its members by requiring Ex-Im Bank to rescind its financing for Xcoal's coal exports
19 until it has conducted the environmental review that NEPA requires and allowed Sierra Club and its
20 members the opportunity to participate in the process leading to Ex-Im Bank's decision whether to
21 approve the loan guarantee.

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23 14. Plaintiff WEST VIRGINIA HIGHLANDS CONSERVANCY:

24 a. Plaintiff West Virginia Highlands Conservancy ("WVHC") is a nonprofit
25 membership organization incorporated in West Virginia with its headquarters in Charleston.
26 Established in 1967, WVHC is one of West Virginia's oldest environmental advocacy organizations.
27 For over four decades WVHC has been a leader in citizen efforts to protect West Virginia's people,
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1 land, and water resources from the harmful effects of coal mining. WVHC is dedicated to protecting
2 the air, water, forests, streams, and mountains in the Appalachian highlands of West Virginia, as
3 well as the health and welfare of the people living or recreating there.

4 b. WVHC brings this action on behalf of itself and its members. Most of its
5 approximately 1,600 members reside in West Virginia or recreate in the Appalachian highlands.
6 WVHC members face harm to their health, property, and recreational and aesthetic interests due to
7 increased air pollution, water pollution, noise, and other adverse effects of Ex-Im Bank's financing
8 of Xcoal's coal export activities. WVHC's members include senior citizens, people with young
9 children, and people with respiratory conditions. These members are particularly vulnerable to harm
10 from exposure to air and water pollution.

11 c. Ex-Im Bank's failure to prepare an environmental impact statement or
12 otherwise comply with NEPA also causes WVHC's members procedural harms by depriving them
13 of NEPA's assurance that Ex-Im Bank consider the environmental impacts, alternatives, and
14 possible mitigation measures related to the coal exports it finances before approving such financing.
15 Ex-Im Bank's failure to conduct environmental review deprives WVHC and its members of the
16 opportunity to receive information about the potential harms of the coal export projects that Ex-Im
17 Bank finances and to make comments or otherwise participate in Ex-Im Bank's decision to finance
18 the export of Appalachian coal. This undercuts WVHC's ability to advance its mission to protect
19 West Virginia's land, water, and people from the harms of coal mining. Ex-Im Bank's failure to
20 comply with NEPA further deprives WVHC of information about these coal exports that they would
21 likely use in their advocacy and public education efforts.

22 d. The declaratory and injunctive relief WVHC seeks will redress these injuries
23 to itself and its members by requiring Ex-Im Bank to rescind its financing of Xcoal's coal exports
24 until it has conducted the environmental review that NEPA requires and allowed WVHC and its
25 members to participate in the process leading to Ex-Im Bank's decision whether to approve the loan
26 guarantee.

1 15. Plaintiff CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW:

2 a. Plaintiff Center for International Environmental Law (“CIEL”) is a non-profit
3 organization founded in 1989 and incorporated in Washington, DC. CIEL uses the power of law to
4 protect the environment, promote human rights, and ensure a just and sustainable society. With
5 offices in Washington, DC and Geneva, Switzerland, CIEL’s attorneys provide legal counsel,
6 research and analysis, education, training, and capacity building on international environmental
7 issues.

8 b. As part of this work, CIEL is active in efforts to reduce reliance on
9 environmentally damaging energy sources, and to promote public access to information and
10 transparent democratic processes with respect to decisions affecting the environment. The United
11 States’ energy policies and the decision-making processes through which such policies are
12 developed and implemented are highly relevant to CIEL’s work.

13 c. Ex-Im Bank’s approval of a \$90 million loan guarantee to increase coal
14 exports without considering the environmental impacts of that decision frustrates CIEL’s efforts to
15 promote environmentally sustainable energy policies and ensure the public’s right to participate in
16 decisions affecting their health and environment. Ex-Im Bank’s failure to comply with NEPA’s
17 environmental review requirements deprives CIEL of the right to information about the
18 environmental impacts of Ex-Im Bank’s decision to finance an environmentally damaging energy
19 source, and its right to participate in that decision.

20 d. The declaratory and injunctive relief that CIEL seeks will redress these harms
21 by requiring Ex-Im Bank to conduct the environmental review that NEPA requires and allow CIEL
22 to participate in the process leading to Ex-Im Bank’s decision whether to approve the loan guarantee.
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24 16. Plaintiff PACIFIC ENVIRONMENT:

25 a. Plaintiff Pacific Environment is a non-profit organization founded in 1987 in
26 California with its headquarters in San Francisco. Pacific Environment works to protect the
27 environment and peoples of the Pacific Rim by strengthening local communities and grassroots
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1 movements, and with sophisticated policy advocacy at international finance and governance
2 institutions. Together with their partners, Pacific Environment has shielded tens of thousands of
3 acres of old growth forest; won protections for endangered species; forced oil, gas, mining, and
4 timber companies to heed local concerns; closed polluting factories along rivers; and changed the
5 way some of the world's most powerful financial institutions work by advocating for more robust
6 accountability mechanisms. Pacific Environment has fought to strengthen environmental policies in
7 financial institutions including the Export-Import Bank. Since 1997, Pacific Environment has
8 sought to require financial institutions to adequately assess the environmental, social, and human
9 health impacts of the fossil-fuel projects they support.
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11 b. Much of Pacific Environment's finance institution reform work has focused
12 on Ex-Im Bank's social and environmental policies, including climate-related policies. Pacific
13 Environment is a designated plaintiff in the *Friends of the Earth et.al. v. Larry Spinelli* settlement
14 agreement with Ex-Im Bank, which requires Ex-Im Bank to increase its support for renewable
15 energy and to conduct more robust, transparent environmental review of fossil fuel-intensive
16 exports. Pacific Environment mentors, trains, campaigns, builds networks, and provides direct
17 financial support to activist leaders and non-governmental organizations to help them protect their
18 communities from environmental and health threats. Pacific Environment's support also helps these
19 leaders and organizations to hold governments, corporations, and financing institutions accountable
20 for their policies and actions. Much of Pacific Environment's work has focused on environmental
21 and health threats from fossil fuel-intensive energy projects, such as coal mining, transport, and
22 combustion.

23 c. Ex-Im Bank's failure to consider the environmental impacts of its decision to
24 finance Xcoal's coal exports harms Pacific Environment by impeding its objectives of requiring
25 financial institutions to increase their accountability and improve their environmental policies. Ex-
26 Im Bank's failure to comply with NEPA also deprives Pacific Environment of the opportunity to
27 provide comments to Ex-Im Bank on its decision to finance Xcoal's coal exports, and of information
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1 about the impacts of these coal projects, which Pacific Environment would use in its advocacy and
2 public education efforts.

3 d. The declaratory and injunctive relief Pacific Environment seeks will redress
4 these injuries by requiring Ex-Im Bank to conduct the environmental review that NEPA requires and
5 allowing Pacific Environment to participate in the process leading to Ex-Im Bank’s decision whether
6 to approve the Xcoal loan guarantee.

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8 17. Defendant EXPORT-IMPORT BANK OF THE UNITED STATES:

9 a. Defendant Export-Import Bank of the United States is an independent federal
10 agency. Congress established Ex-Im Bank with the Export-Import Bank Act of 1945, 12 U.S.C. §
11 635-635t, and identified Ex-Im Bank’s objectives and purposes as “to aid in financing and to
12 facilitate exports of goods and services, imports, and the exchange of commodities and services
13 between the United States ... and any foreign country ..., and in so doing to contribute to the
14 employment of United States workers.” *Id.* § 635(a)(1).

15 b. To meet its objectives, the Export-Import Bank is authorized “to provide
16 guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are
17 fully competitive with the Government-supported rates and terms and other conditions available for
18 the financing of exports of goods and services from the principal countries whose exporters compete
19 with United States exporters.” *Id.* Ex-Im Bank’s authority to provide loan guarantees requires a
20 judgment by the Board of Directors that “such guarantees would facilitate expansion of exports
21 which would not otherwise occur.” *Id.* § 635a-4.

22 c. In carrying out these duties, the Ex-Im Bank must comply with applicable
23 requirements of NEPA and the APA.

24 18. Defendant FRED P. HOCHBERG is Chairman of Ex-Im Bank and is sued in his
25 official capacity.

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FACTUAL BACKGROUND

Ex-Im Bank's Financing of Xcoal's Coal Exports

19. Ex-Im Bank provides guarantees, insurance, and lines of credit to finance and facilitate US exports. *See id.* § 635(a)(1). Ex-Im Bank categorizes its loan guarantees as long- or medium-term loan guarantees, or as “Working Capital Guarantees.” Through its Working Capital Guarantees, Ex-Im Bank provides financial support directly to US exporters for activities related to the production or supply of items within the United States for subsequent export.

20. Xcoal, headquartered in Latrobe, PA, supplies low-, mid-, and high-volatile coking coal from mines in Appalachia to customers throughout the world. Xcoal manages the entire supply chain from the mine to its customers’ overseas port facilities, shipping coal primarily from the CSX and CNX port terminals in Baltimore and Lambert’s Point port terminal in Hampton Roads. In 2010, Xcoal exported approximately eleven million tons of metallurgical coal via ports in Baltimore and Hampton Roads, making it the largest coal exporter in the United States that year. Xcoal also funds coal mine development, promotes expansions of coal preparation plants, and develops bulk terminal projects, among other coal-related infrastructure projects.

21. On May 24, 2012, Ex-Im Bank approved a \$90 million Working Capital Guarantee to Xcoal to finance coal exports. This loan guarantee supports an estimated \$1 billion in coal export sales.

22. Xcoal’s \$90 million loan guarantee was approved by the Ex-Im Bank Board of Directors. The Ex-Im Bank Act authorizes the Bank to approve such loan guarantees only when the Board finds that the guarantee “would facilitate expansion of exports which would not otherwise occur.” *Id.* § 635a-4.

23. Ex-Im Bank did not prepare an EIS, and EA, or otherwise comply with NEPA before approving the Xcoal loan guarantee.

1 **Environmental Impacts of Xcoal's Coal Exports**

2 24. Xcoal's federally-funded coal export activities involve brokering sales of coal from
3 mines in Appalachia; transporting coal by rail from those mines to export facilities in Baltimore and
4 Hampton Roads; unloading, storing, and loading coal onto ships at the ports; and shipping coal from
5 these port terminals to its customers' port facilities. Each step of this export process causes
6 numerous adverse effects on human health and the environment.

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8 25. Trains that transport coal from mines to export terminals pollute the air along rail
9 lines and at rail terminals with coal dust. Coal trains in the United States are not covered. Each
10 open car carrying coal from mines in Appalachia to the port terminals in Hampton Roads and
11 Baltimore releases coal dust into the air, water, and soil in the communities through which it travels.
12 Coal dust blows off the tops of these cars, especially during changes in temperature, humidity, and
13 wind speed. Coal dust may also escape through holes in the bottom of the cars. When a train arrives
14 at the Hampton Roads or Baltimore terminals, it may wait for days in a train yard at the port before
15 its coal is unloaded. Alternatively, a train arriving at a port terminal may dump its coal into an open-
16 air storage pile or holding silo. These waiting train cars and open-air coal piles are significant
17 sources of coal dust at port terminals. When a ship is ready for loading, conveyor belts transport the
18 coal from the train car, silo, or coal pile, and dump the coal onto the ship, thereby releasing
19 additional coal dust into the air.

20 26. Fugitive coal dust that is 10 micrometers or less in diameter is classified as PM10.
21 Fugitive coal dust that is 2.5 micrometers or less in diameter is classified as PM2.5. The trains and
22 ships that transport the coal also emit significant amounts of PM2.5. According to the EPA, both
23 PM10 and PM2.5 can travel deep into the lungs and into the bloodstream, causing premature death
24 in people with heart or lung disease, heart attacks, decreased lung function, and increased respiratory
25 effects, including irritation of the airways, aggravated asthma, coughing, and breathing difficulties.
26 Both PM10 and PM2.5 are associated with respiratory-related infant mortality, even at the relatively
27 low exposure levels that are commonly experienced in the United States. Groups that are most at
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1 risk of such effects of PM10 and PM2.5 exposure include children, older adults, low-income
2 communities, and individuals with asthma or preexisting heart and lung disease.

3 27. PM10 and PM2.5 also have adverse environmental impacts. Particles of these sizes
4 in the air contribute to haze and reduce visibility. When PM10 or PM2.5 lands on water, it can alter
5 the acidity of lakes and streams and can change the nutrient balance in coastal waters and large river
6 basins. When PM10 or PM2.5 lands on the ground, it can deplete nutrients in soil, damage sensitive
7 forests and farm crops, and affect the diversity of ecosystems.

8 28. Coal dust also contains toxic substances with well-documented adverse effects on
9 human health and the environment. Coal dust from Appalachian mines contains toxic trace elements
10 such as arsenic and mercury.

11 a. Inorganic arsenic, as found in coal dust deposited in soil near coal export
12 terminals, is a human carcinogen. Human exposure to inorganic arsenic by inhalation has been
13 strongly associated with lung cancer and ingestion has been linked to skin, bladder, liver, and lung
14 cancers. Chronic inhalation has been associated with irritation of the skin and mucous membranes,
15 as well as effects in the brain and nervous system. Gastrointestinal effects, anemia, peripheral
16 neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage have resulted from chronic
17 oral exposure to elevated levels of inorganic arsenic.

18 b. Coal from northern Appalachia contains high levels of elemental mercury.
19 Both coal dust and coal stockpiles can emit elemental mercury vapors into the air at normal
20 temperatures. According to the Centers for Disease Control and Prevention, exposure to elemental
21 mercury at low vapor concentrations over a long time can lead to neurological disturbances, memory
22 problems, skin rash, and kidney abnormalities. When elemental and inorganic mercury compounds
23 enter soil or water (such as when coal dust deposits into waterways), bacteria convert these into an
24 organic mercury compound, methyl mercury, which accumulates in the food chain. Chronic
25 exposure to elemental mercury in humans affects the central nervous system, and chronic exposure
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1 33. To achieve this purpose, NEPA requires a federal agency to analyze the
2 environmental impacts of a particular action before it proceeds with that action. *Id.* § 4332(2)(C). In
3 addition, the agency must notify the public of its proposed actions and allow the public to comment
4 on the fully-disclosed environmental impacts of those projects. 40 C.F.R. § 1501.2.

5 34. The cornerstone of NEPA is the EIS. NEPA requires a federal agency to conduct an
6 EIS for all “major Federal actions significantly affecting the quality of the human environment.” 42
7 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. “Federal actions” include “new and continuing activities,
8 including projects and programs entirely or partly financed, assisted, conducted, regulated or
9 approved by federal agencies.” 40 C.F.R. § 1508.18(a). “‘Major Federal action’ includes actions
10 with effects that may be major and that are potentially subject to Federal control and responsibility.”
11 *Id.* § 1508.18.

12 35. To determine whether a federal action will result in significant environmental impacts
13 and requires an EIS, the federal agency may first conduct an EA. 40 C.F.R. § 1501.4. An EA must
14 “provide sufficient evidence and analysis for determining whether to prepare an environmental
15 impact statement or a finding of no significant impact.” *Id.* § 1508.9. If a federal agency makes a
16 finding of no significant impact, it may avoid conducting an EIS. *Id.* § 1501.4.

17 36. The goals of an EIS are to “provide a full and fair discussion of significant
18 environmental impacts” associated with a federal decision and to “inform decision-makers and the
19 public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the
20 quality of the human environment.” *Id.* § 1502.1.

21 37. Accordingly, in an EIS a federal agency must: (1) “rigorously explore and objectively
22 evaluate all reasonable alternatives” to the proposed action, 42 U.S.C. § 4332(2)(C); 40 C.F.R. §
23 1502.14; (2) identify and disclose to the public all direct, indirect, and cumulative impacts of the
24 proposed action and each reasonable alternative, 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16,
25 1508.7 – 1508.8; and (3) consider possible mitigation measures to reduce such impacts to the
26 environment, 40 C.F.R. § 1502.14(f).
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that Defendants Ex-Im Bank's and Fred P. Hochberg's approval of the Xcoal loan guarantee without preparing an EIS, an EA, or otherwise conducting adequate environmental review violated NEPA and its implementing regulations, and declare that such action is therefore void;

B. Order Defendants Ex-Im Bank and Fred P. Hochberg to rescind the \$90 million Xcoal loan guarantee;

C. Order Defendants Ex-Im Bank and Fred P. Hochberg, pursuant to 42 U.S.C. § 4332(2)(C), to comply with NEPA by preparing an EIS, an EA, or otherwise analyzing and disclosing to the public all environmental impacts of the Xcoal guarantee before undertaking any action in furtherance of Xcoal's coal export activities, including the approval or provision of any financing;

D. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees; and

E. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted,

Dated: July 31, 2013


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