

June 13, 2012

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Dear «Formal_Sal»:

The Citizens Advisory Council¹ (CAC) to the Department of Environmental Protection (DEP) has been reviewing and discussing DEP's most recent five-year report pursuant to Act 54 of 1994,² *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining on Surface Structures and Features and on Water Resources, 2003-2008*, over much of the last 18 months. Our efforts included various discussions with DEP, several discussion panels and a regional meeting focused specifically on the effects of deep mining in southwestern Pennsylvania. **As a result of our deliberations, we concur that, as we approach the 20th anniversary of Act 54 of 1994, it is time to assess the oft-requested need for its reform.**

Pennsylvania needs to objectively examine the benefits of the law as well as threats to the health, welfare and safety of the citizens of the Commonwealth and its environmental resources. We recognize that balancing the benefits and threats to public health and the environment is a politically, ethically, and morally challenging undertaking, and that the property rights of both mineral and surface owners must be upheld.

¹ The Citizens Advisory Council to DEP is a legislatively created advisory committee charged with reviewing all environmental issues, legislation, regulations, policies and programs relating to Pennsylvania.

² Sections 18.1(a), (b) and (c) of Act 54 state:

"a. The department shall compile, on an ongoing basis, the information contained in deep mine permit applications, in monitoring reports and other data submitted by operators, from enforcement actions and from any other appropriate source for the purposes set forth below.
b. Such data shall be analyzed by the department, utilizing the services of professionals or institutions recognized in the field, for the purpose of determining, to the extent possible, the effects of deep mining on subsidence of surface structures and features and on water resources, including sources of public and private water supplies.
c. The analysis of such data and any relevant findings shall be presented in report form to the Governor, the General Assembly and to the Citizens Advisory Council of the department at five-year intervals..."

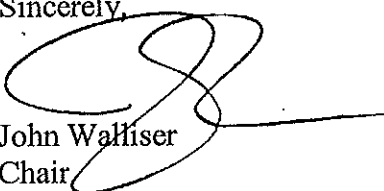
Specific areas to address include the following:

- The original 1966 Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) prohibited bituminous coal from being mined in a manner that would cause subsidence damage to certain protected structures; there was no provision addressing affected water supplies. It was amended in 1980, and again by Act 54 in 1994. This 1994 amendment was intended to provide balance between the disparate rights of the landowner and coal operator by providing a replacement or restoration remedy for damage caused by subsidence. **Do the tradeoffs implemented nearly 20 years ago by Act 54 provide the intended balance?**
- Since the passage of Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels causing greater areas of subsidence. **Has Act 54 and its regulations kept up with technology, or are changes needed to accomplish better balance? Similarly, has Act 54 and its regulations kept pace with development of surface land and aquatic resources restoration techniques?**
- **Should archeological and historic properties be given special consideration and/or protection given the potential for loss of historic value?** Pennsylvania's Constitution requires that we protect natural, scenic, historic and aesthetic values of the environment. Pennsylvania has significant archeological sites that are thousands of years old as well as significant historical resources. Those concerned with the protection of cultural and historic resources raise some very compelling points regarding the special concerns of such resources and the need for special precautions and protections. Should the goal for historic properties be protection (vs. reparation) since the historic value is compromised once it is damaged?

For your further information, we have enclosed a summary of our comments to DEP, specific to the five-year report and to the current program. Also enclosed is our latest regional meeting report summarizing what Council members observed and heard during the 2011 regional meeting to southwestern Pennsylvania to see and hear about deep mining in the region. As always, CAC strives to provide a collective and balanced view of the public interest; the enclosed report includes testimony representing all sides of the issues and is only a fragment of the information we have received regarding this issue.

We recognize that it will be an arduous task to reconcile the contradictions emanating from the emotional rhetoric, expert testimony, scientific evidence, competing property rights and field examples surrounding Act 54, a task requiring dedicated resources and political support. We ask that a legislative committee or task force be formed to evaluate these and related concerns and ensure that Pennsylvania is achieving the best balance possible.

Sincerely,



John Walliser
Chair

Enclosures: Summary of Comments to DEP
Report on the 2011 Regional Meeting and Field Trip

CITIZENS ADVISORY COUNCIL TO THE DEP
SUMMARY OF COMMENTS TO THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MAY 15, 2012

Below are our comments on the latest report, on needed analysis, and on related program issues.

Comments on Latest Report:

Regarding the latest report we would like to reiterate the following comments, delivered during previous discussions and informal exchanges:

- There has been steady improvement in the quality and quantity of the data collected with each successive report. The latest report continues this positive trend and the Department of Environmental Protection (DEP) and the authors are to be commended.
- We note, however, that the report emphasizes data gathering rather than data analysis.

In order to be in compliance with Section 18.1(b) of Act 54, DEP needs to analyze the data and determine the total effects of deep mining subsidence on surface structures and features, and on water resources including sources of public and private water supplies.

Future reports should go beyond data gathering and provide a review and at least a preliminary analysis of these issues.

- The Citizens Advisory Council (CAC) fully supports DEP's plan to initiate data collection and analysis for the next report during the reporting period rather than after it ends. We trust that this change, once started, will be initiated even earlier for succeeding reports. We hope that the program was successful in contracting for the next report and that the task descriptions for the contractor included long term impact on streams and wetlands and groundwater surface water interactions as opposed to structures and damage.
- Questions were raised regarding ownership and availability of data used to prepare the current report; unless data is proprietary, data collected under a state contract should be the property of DEP and made publicly available. While we understand that some information may contain personal information and thus should be kept confidential, most of the resource and structure impact data should be made public and utilized by DEP for further analysis.
- We would like to confirm that new data collected and utilized for the reports (such as the data now collected under Technical Guidance Document 563-2000-655, which established protocols for assessing biological health and for determining when a stream was impaired/repaired) is being used to update relevant databases.

Needed Analysis:

As stated above, Section 18.1(b) of Act 54 requires that DEP analyze the data provided. Some specific areas of concern that should be addressed include the following:

- Schmid and Company was commissioned by a coalition of citizen groups to analyze the latest report. Their analysis (*The Increasing Damage from Underground Coal Mining in Pennsylvania: A Review and Analysis of the PADEP's Third Act 54 Report*) raises numerous concerns about the impacts of deep mining and response times over the reporting period that need to be responded to and addressed. For example, their analysis contends that, according to the latest five-year report, less than 10% of damaged homes and wells actually are being repaired¹. If correct, these figures alone demonstrate a lack of balance between resource and surface owners.
- Each of the succeeding reports provide five year snapshots of data rather than assess cumulative impacts and trends in damage reporting, resolution times, etc. since reporting started. The cumulative impacts question is critical to assessing the effects of deep mining. Specific questions to be answered include:
 - What are the cumulative impacts in each category over all four reporting periods?
 - What trends can be discerned in the extent of damage and impacts in each category?
 - What trends can be discerned in resolution times over the whole time period?
- Regarding water impacts, the focus in the reports has been on water supplies and stream segments, rather than an assessment of cumulative hydrological impacts.
 - Do reported claims capture impacts to natural resources (e.g. losing a spring versus damage to aquifer), as well as consider the duration of impact (temporary versus long term)?
- Are there data gaps? Is DEP collecting the right data to be able to predict/minimize impacts? Is DEP using the data to do so?
- After studying the successive reports:
 - Do we now understand the geological and hydrogeological systems well enough to predict impacts and act to prevent/minimize them?

¹ Of 300 damaged structures for which mining was found liable, the resolution whereby the structure was 'repaired' occurred in only 6% of the cases (page V-14). Of 269 damaged water supplies for which a mining company was deemed liable, the resolution 'recovered/repaired' accounted for only 9% of the cases (page VI-6).

- Can we document that we are doing a better job at predicting and minimizing impacts and at resolving in a timely fashion those that do occur?
- Are there any conclusions we can reach re: room and pillar versus full extraction? There are pros and cons to room and pillar extraction versus full extraction—Act 54 presumes that predictable subsidence and timely damage repair is better than unpredictable and delayed subsidence, even if greater in magnitude. Others argue the reverse and suggest changing how we implement Mine Subsidence Insurance to better address future subsidence from current mining.
- What does the Commonwealth face going forward? Based on the resource location and technology advancements, is deep mining moving towards more and more populated and built up areas? If we are moving towards more developed areas, issues will most certainly escalate. How does the growing presence of shale gas drilling in the area affect deep mining?

Related Program Issues:

After reviewing the information received during the various panels and meetings convened on the issue of Act 54, we also raise the following points and concerns regarding implementation of the program:

- We heard conflicting reports regarding program staffing. Is staffing adequate to the workload?
- Is communication with potentially affected landowners adequate and timely?
 - We heard claims from impacted surface owners that they had never been contacted by a DEP Surface Subsidence Agent (a.k.a. shadow inspector); however, the program's records indicated that shadow inspectors did visit the specific properties in question.
 - We also note that the 2001 Environmental Justice (EJ) Workgroup report included coal communities as defined EJ communities. As a result of that designation, all coal communities should be receiving the extra outreach and attention provided under EJ policies.
 - CAC staff has had some initial discussion with DEP staff on rewriting relevant fact sheets in a more "plain language" style to ensure outreach is clear, consistent and effective. CAC is interested and available to assist in completing these reviews.
 - While not an obligation or responsibility of DEP, there is a seller's disclosure obligation under state law to fully disclose the severance of subsurface/mineral rights whenever property is transferred. Based on anecdotal reports, diligence in

meeting this obligation can vary and may leave potential buyers shortchanged. DEP should bolster relevant fact sheets and outreach materials on this front.

- Damage claims and response times:
 - Some of the problems brought to our attention are likely the result of different cultures from company to company. While outside the purview of DEP regulation, perhaps DEP can encourage companies to adopt good neighbor practices and cultures to better assist impacted landowners.
 - Included in the range of issues brought to our attention are problems that seem to result from a mine operator either not following up on repairs or hiring sub-standard subcontractors to mitigate/repair. One solution might be to require mining operators to hire only bonded and licensed contractors for reparation and restoration activities.
 - We question the acceptability of ‘responses’ such as the use of piped-in public water to augment dewatered streams; we observed one such “stream” at our regional meeting that has reportedly been ‘augmented’ with three public water lines for a period of four years.
 - There may be a need for greater oversight of operator responses to impacts to ensure more timely compliance.
- Pennsylvania has significant archeological sites that are thousands of years old as well as significant historical resources. It is not possible for Native American cultural resources dating back as early as 7000 BC to be truly ‘repaired’ if they are harmed by longwall mining. Damage to prehistoric archaeological sites or cracks in 18th century windows are irreparable. Those concerned with the protection of cultural and historic resources raise compelling points regarding the special concerns of such resources. There may be a need for special precautions and perhaps even prohibition of mining under such irreplaceable resources.
- Since the passage of Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels and as a result, causing greater areas of subsidence. For example, the width of panels has become so wide that we now have a category of “supercritical” where the ratio of the panel width to the depth of overburden is great enough that it causes maximum impacts. If narrower panels produce subcritical subsidence characteristics, then consideration should be given to the merits of limiting panel width as a means of controlling surface damage. Narrower panels probably leave more coal unrecovered, but it would be useful to know how the value of the coal left compares to the cost of the damages caused.