

**TESTIMONY  
Of  
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**Before the  
PENNSYLVANIA CITIZENS ADVISORY COUNCIL**

**October 4, 2011**

**Regarding: Act 54**

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## **Introduction**

Good evening. My name is George Ellis and I am President of the Pennsylvania Coal Association (PCA).

PCA is a trade association organization representing bituminous coal operators – both underground and surface – as well as other associated companies whose businesses rely on a thriving coal economy. PCA member companies produce over 80 percent of the bituminous coal annually mined in Pennsylvania (over 60 million tons in 2009), and all of the coal produced by the longwall mining method (almost 40 million tons).

We thank the Council for this opportunity to provide our perspective on Act 54 and on the third five-year report, which studied the effects of underground bituminous coal mining on surface structures, features and water resources for the period August 2003 to August 2008.

Since I testified at the CAC's April hearing on the five-year report, my comments tonight will focus on the intent and evolution of Act 54.

## **Genesis of Act 54**

Before one can analyze and comment on the five year report, one must fully understand the genesis and objective of Act 54.

Act 54 was the culmination of more than eight years of discussion and debate among a vast array of legislators, citizen and environmental groups and industry representatives.

It does not represent the full ideals of any one point of view, but was designed to balance the viewpoints of different stakeholders in the often contentious area of private property rights.

The law was intended to reconcile the interests of mineral rights owners and surface owners. These were primarily issues of competing private property interests where mine operators acquired sub-surface rights to minerals, and surface owners acquired surface rights to their land. Both of these interests can be

regulated and limited by the legislature in the public interest, but neither interest is compellingly superior to the other.

The legislature, in unanimously enacting Act 54, made a conscious public policy decision to balance these competing ownership interests more than they had been in the past.

The fundamental principles of Act 54 were actually developed by an environmental mediation panel that was referred to as the Deep Mine Mediation Project (DMMP).

At the initiation of John Oliver, then President of the Western Pennsylvania Conservancy, the DMMP was convened in 1986 by Arthur A. Davis, who was then Goddard Professor of Forestry at Penn State University.

The Project was designed to bring together representatives of the deep mine industry and environmental, agricultural and public interest organizations to discuss and attempt to reach consensus on a set of public policy considerations related to the regulation of deep mining in the Commonwealth.

Invitation to participate in the Project was extended only by the convenor to several organizations perceived to have an interest in the subject matter of the Project. The following organizations accepted that invitation, participated in the Project and endorsed its final product:

- BethEnergy Mines, Inc.
- Consolidation Coal Company
- League of Women Voters of Pennsylvania
- Pennsylvania Coal Association
- Pennsylvania Environmental Council, Inc.
- Pennsylvania Farmers Association
- Rochester & Pittsburgh Coal Company
- USX Corporation
- Western Pennsylvania Conservancy

One organization, Citizens Against Water Loss Due to Mining (CAWLM), initially participated but withdrew midway through the Project. Another participant, the Pennsylvania Federation of Sportsmen's Clubs (PFSC), was involved throughout the entire negotiation process, but withdrew after a final proposal was drafted. The

PFSC withdrew after determining that the final proposal primarily addressed a balancing of property rights, rather than environmental standards, which were its principal interest.

Central to the interests of all participants in the Project was a dissatisfaction with the existing statutory framework in Pennsylvania relative to deep mining as contained in the 1966 subsidence law and a desire to recommend changes to the status quo, albeit for varied reasons. Hence, it was the objective of the Project to bring together diverse interest groups to facilitate dialogue, to determine common ground, and to endeavor to reach consensus on a set of recommendations of how best to amend the 1966 Act with specific statutory language that would make the law more responsive to contemporary mining and its impacts on surface owners.

### 1966 Act

Essentially, the 1966 Act required operators to mine so as not to cause damage to the following limited class of structures in place as of April 27, 1966:

- Dwellings,
- Public buildings or noncommercial structures customarily used by the public,
- Cemeteries.

DEP implemented this provision by requiring that 50 percent of the coal had to be left in “support pillars” beneath this list of structures and if structural damage occurred, the operator was liable. This requirement impeded the use of full extraction mining technology.

The 1966 law provided no remedy to any surface owner whose source of water was affected by underground mining. These cases were often addressed by a company’s “Good Neighbor” policy.

The law also offered no remedy from subsidence damage to owners of structures built after 1966 (while the 1966 law did allow owners of post-1966 structures the right to purchase coal pillar support from the operator, this right was rarely exercised because it was too costly). Therefore, if subsidence damage occurred to post-1966 structures, the law did not hold operators liable for repairs.

## **DMMP Recommendation**

After more than three years of fact finding and negotiations, the DMMP reached a consensus on what constitutes appropriate policy choices to improve the state's underground mining program.

In recognizing that full extraction mining is more efficient, safe, and less environmentally damaging in the long run than other forms of coal mining, the proposal removed the statutory impediments to this mining technology.

It allowed operators to extract a higher ratio of coal in a responsible manner after receiving a permit from DEP, while being liable for any damage that the activity caused to overlying structures and any water supplies regardless of when they were built. It also expanded the class of structures afforded these protections to include commercial, industrial and agricultural structures and water supplies.

Essentially, it created a replacement and repair remedy for damage caused by subsidence; it did not create a subsidence prevention standard. This became the framework of the legislative solution for balancing the rights of the landowner and coal operator. Therefore, in determining whether implementation of the Act is meeting legislative intent, as is the purpose of the five-year report, one must evaluate the industry's response to subsidence damage and water loss claims to see if those claims have been adequately resolved under the remedies provided in the law.

Incidentally, the remedies in both the DMMP consensus proposal and Act 54 provide more for the property owner and for the farming community, in terms of structural repairs or compensation and water replacement, than the corresponding federal standard or the standard imposed in other coal producing states where longwall mining operations are conducted.

## **Act 54**

The DMMP's consensus proposal was introduced in both the House and Senate chambers of the General Assembly in the early 1990's where it underwent intense public scrutiny.

Legislative committee hearings were held on the measure and three separate amendments were made to the bill by the House Conservation Committee (none altering the basic agreement of the consensus proposal.)

The House of Representatives debated the measures for over two hours on the House floor, considering eight amendments but only adopting one (an agreed-to amendment which clarified that the proposal did not intend to change state and federal requirements to preserve the hydrologic balance.)

Two amendments, which were considered by the House but which failed overwhelmingly, would have significantly changed the basic component of the DMMP proposal.

One amendment would have retained the Section 4 provision of the 1966 Act (i.e. preventing subsidence damage to pre-1966 structures.) The amendment was defeated by a 42-154 vote.

Another amendment would have extended the Section 4 subsidence prevention provision to all homes, regardless of when they were built. That amendment failed by a 45-149 vote.

The bill was subsequently adopted in the House by a 195-0 vote and the Senate by a 48-0 vote. It was signed into law in August 1994 as Act 54 by then Governor Robert Casey.

By reviewing the legislative history of Act 54, it is clear that Act 54 was an attempt to tailor Pennsylvania's subsidence law to meet the Commonwealth's specific needs.

### **Five Year Report**

Based on data collected and studies conducted to date, including the more recent five-year report, it is clear that Act 54 is working as it was intended, operators are meeting their repair/restoration obligations in accordance with the law, the mandates required by Act 54 are being met and there is no trend or pattern of violations or claims being neglected by operators.

According to the University of Pittsburgh report, of all the structures, water supplies and land properties undermined between 2003-2008:

- 88 percent of the structures recorded no impacts
- 75 percent of the water supplies recorded no impacts
- 97 percent of the land properties recorded no impacts

Those that were affected for the most part have either been resolved or have a plan in place to resolve them.

### **Conclusion**

PCA and its member companies recognize that there are fundamental and legitimate property owner concerns about the impacts of mining. My testimony should not in any way be construed as industry's indifference towards these concerns or an attempt to marginalize them. We fully understand the apprehensions that people may have when they learn that their home will be undermined and we make every effort to work with them to return their home and lifestyle to normal after subsidence. While mining impacts are temporary and not a permanent disturbance, there still can be a significant impact on people's lives during the mining and post-mining process. As such, we are both mindful of and sensitive to these concerns.

Finally, when reviewing the background of Act 54, the Council should keep in mind the intent of the law, which was to provide a replacement or restoration remedy for damage caused by subsidence. This was the legislature's solution for balancing the rights of the landowner and coal operator. The intent was to balance the disparate rights of surface owners under the antiquated 1966 Subsidence Law, allow the use of modern mining technology and correct surface impacts from subsidence, not to prevent subsidence.

Within this context, PCA believes that the third five-year assessment report on Act 54 confirms that this law is working as it was intended and its damage repair and water restoration strategies are being carried out as intended.

Thank you for this opportunity to provide our perspective on the report.