

Oral Comments to the *Citizens Advisory Council*, 4 October 2011

by: Stephen P. Kunz¹

Statement:

First, I want to thank you -- the CAC -- for what you do and what are doing on this regional visit. If we have any hope to protect and preserve our precious air and water resources here in Pennsylvania, it **has** to be done at the State level. Because when you look at what's happening at the national level, the short-sighted attempts to gut or eliminate US-EPA and other regulatory agencies, it's clear we can't afford to rely on the feds. And that's why it's so important that you are looking out for the rights guaranteed to all of us by Article 1, Section 27 of the Pennsylvania Constitution.

Comment:

The cornerstone of any environmental protection program is the avoidance and minimization of adverse impacts. And indeed, that is the focus of most PADEP programs.

Before Act 54 -- for 28 years under the 1966 Mining Act -- damage to surface structures from underground mining was prohibited. It was a simple standard, and it made sense. And even though only structures were directly protected, if the mining avoided structures, it also avoided their water supplies and other surface features.

Act 54 changed that. Act 54 **removed** the prohibition on damage. Act 54 ALLOWED damage to occur, intentional damage. You've been told that the 1966 Mining Law only protected homes built before 1966, not after. And that's right. But to correct that flaw, is it reasonable to allow all homes to be damaged, no matter when they were built. If that weren't so insensitive, it would almost be funny.

The simpler solution would have been to extend the same protection to homes built after 1966 as to those built before -- the protection being "a prohibition on damage".

But the industry argued that that would be the same as prohibiting longwall mining. It's not a fair balance, they contended².

But it's not about longwall mining, which after all is just one method of mining -- a method that has only come on the scene relatively recently in the 250-year history of

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² Henry Ingram, a prominent attorney for the PA Coal Association for almost three decades, was a guiding force in the passage of Act 54, which came seven years after Mr. Ingram lost his US Supreme Court case [Keystone Bituminous Mining Co. vs. DeBenedictis 480 U.S. 470 (1987)] in which he helped argue that PA's 1966 Mining Act requiring coal companies to leave pillars of coal for surface support and to prevent subsidence amounted to an unconstitutional "taking" of the coal companies' mineral property. The Court found a valid public purpose behind the 1966 Act and determined that the Act did not make it impossible for the miners to profitably conduct business.

coal mining in Pennsylvania. No, it's not about longwall mining. It's about **protection** – protection of people and the environment. Protections that are guaranteed by our Constitution.

Industry often complains that environmental laws and regulations are too stringent and too onerous – that they dictate without giving room to innovate. Okay. So it should not be unreasonable to set a standard of protection – no damage to surface structures or features – and let industry figure out the best way to achieve it. It doesn't say you have to use one method and not another – you're free to extract as much or as little coal as you can provided only, that in the process, you do no harm to the surface owners.

For over 200 years coal has been mined profitably by the room-and-pillar method. It still is mined that way today. 36 of the 50 mines active during the latest Act 54 5-year review period were traditional room-and-pillar mines, and even longwall mines use R&P methods in 30% of their area. For 28 years under the 1966 Mining Act the standard of protection – no damage from underground mining – worked just fine, fine for everyone, it seems, except the few large and wealthy coal companies who could afford the expensive longwall mining technology and were itching to use it.

Act 54 stands the whole concept of environmental “protection” on its head. The concept that should be to avoid and minimize impacts as much as possible -- under Act 54 became one where impacts are allowed (if there is some agreement to do something afterwards to deal with some but not all of the damage).

By itself, that's bad enough. But because impacts are expressly **allowed** under Act 54, there has been no incentive to even try to avoid or minimize impacts. Why should I try to avoid damaging a water supply if I'm allowed to impact it? If I'm a mining company, why should I spend any money trying to prevent damage to structures that I am allowed to cause?

It is said that you can't stand in the way of progress. But the “progress” in this case has all been one-sided. For the last 17 years under Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels using less manpower. But there's been no change in Act 54 or the PADEP regulations to offset the increasingly adverse impacts that are occurring³. The balance that the legislature hoped to create or thought they were creating in 1994 has gotten way out of whack. This is one of the biggest problems with Act 54 that must be fixed.

³ Schmid & Company, Inc., Consulting Ecologists. 2011. The increasing damage from underground coal mining in Pennsylvania, a review and analysis of the PADEP's Third Act 54 Report. Prepared for the Citizens Coal Council. Media PA. 50 p. www.schmidco.com/17April2011SchmidAct54Analysis.pdf