



Act 54 4th Five Year Report
Comments of Davitt Woodwell
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to the PA Department of Environmental Protection Citizens Advisory Council
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Good afternoon. My name is Davitt Woodwell, and I am President and CEO of the Pennsylvania Environmental Council (PEC). I want to thank the Citizens Advisory Council (CAC) for the opportunity to provide comments on the most recent five year report on the effects of underground coal mining. We believe that the development of this most recent report is a marked improvement over the prior assessments, and commend the Department and University of Pittsburgh on this effort.

While the report raises and defines a number of serious concerns around the efficacy of data collection, storage, and dissemination related to underground mining in the Commonwealth, we defer comment on these aspects of the report other than to endorse the report's recommendations with respect to data collection, reporting and analysis. We encourage the CAC to work with DEP on the agency's continuing efforts to collect and manage data not only with respect to underground mining, but within all of its programs.

In regards to the report, PECs focus today is on the fundamental effectiveness of Act 54 to protect our state's aquatic resources. Based on the findings of the report, we have real concerns about that effectiveness and the overall ability of Act 54 to offer real conservation, protection, and stewardship of waters of the Commonwealth. Some of the findings that stand out and provide the basis for concern are that:

- Despite an 18 percent drop in the number of acres mined during the 4th Assessment Period, the number of reported water supply effects increased by approximately 25 percent. Furthermore, a significant number of those impacts – 25 percent -- occurred outside of DEP's current Rebuttable Presumption Zone. Even if this were simply due to increased reporting, the impacts are concerning.
- Of 96 miles of stream identified as undermined during the 4th assessment period, 40 percent (39 miles) experienced mining-induced flow-loss, pooling, or both. Even with this number, the report acknowledges that, due to lack of data and analysis,¹ it could very well have underestimated the actual miles of streams undermined. In addition, existing protocols make it difficult to quantify the impacts and their ultimate resolution.

¹ Page VII-15

- Even though only nine stream investigations were initiated during the 4th Assessment Period, almost half (four) of those investigations were unresolved by the end of the report period, and one of the “resolved” determinations was that the stream was not recovered and compensatory mitigation was required. Of the 14 stream recovery reports submitted by operators during this same time, three cases remain unresolved and two cases have determined that the streams are not recovered and that compensatory mitigation is required.
- These are not isolated trends. Of the 55 stream investigations initiated in the 3rd Assessment Period, the current report determines that the average time for resolution was three and a half years. Four investigations from the 3rd Assessment Period still remain unresolved.
- Most troubling of all – 16 percent (8 out of 51) of the “resolved” investigations from the 3rd Assessment Period deemed that the impacted streams were not recoverable.
- The report notes that analysis and reporting on underground mining effects on wetlands is “still in its infancy”,² with the majority of existing permits containing insufficiently detailed wetland inventories. Given that Act 54 has been in place now for more than 20 years, this is inexcusable. Nonetheless, the report notes an overall loss in the quality and diversity of wetland functions.

These few examples are but a portion of the report’s findings, pointing out an overall failure to account for, not to mention prevent or prohibit, impacts to aquatic resources.

We do not question the economic importance of underground mining to Southwest Pennsylvania. But it can be equally said that in today’s regulatory climate, we would not accept these impacts from newer extractive industries or practices like unconventional shale gas development. It begs the question: why do we continue to effectively give the mining industry a pass?

For PEC, most of the programs, projects, and policies on which we work are aimed at ensuring a positive conservation and environmental legacy. We were involved in the Deep Mine Mediation that led to Act 54. Our goal was a regulatory program that balanced the economic realities of full extraction mining with the anticipated impacts of that mining, with the goal of reducing and managing those impacts as much as possible. What we have witnessed over the last twenty years has led us to question whether Act 54 was possibly meeting our goals for it. While it is very late for these revelations, the fourth five-year report finally gives the evidence to allow us to say that Act 54 needs to be seriously revisited and Pennsylvania’s waters better protected.

Act 54 was an attempt to strike a balance between competing landowner interests, but it did not erase the responsibility of mine operators to protect aquatic resources. Act 54 expressly states that it does not amend, modify, or otherwise preempt protections or standards related to surface and ground water resources pursuant to the Clean Streams

² Page XI-7

Law or other applicable authority. The Department has clear responsibility and authority to prevent, identify, and remedy impacts to aquatic resources.

We are at the start of a new administration in Harrisburg, and that presents a clear opportunity to work on fixing Act 54. PEC calls on the Department to promptly undertake a complete and critical analysis of its existing oversight of underground mining, and to promulgate a series of regulatory amendments that will fully protect aquatic resources as required by law.

Thank you for your consideration.