

**Testimony to the Citizens Advisory Council (CAC) on the Act 54 Report  
concerning The Effects of Subsidence Resulting from Underground  
Bituminous Coal Mining (2008-2013)**

**March 27, 2015**

**Department of Environmental Protection's California District  
Mining Office, Monongahela Conference Room, 25 Technology  
Drive, California Technology Park, Coal Center, PA 15423**

Good afternoon. My Name is Linda Mirkovich. I live in Franklin Township, Greene County. I appreciate the opportunity to testify before you today regarding the 4<sup>th</sup> Act 54 Report covering the time period from 2008-2013.

The impact of underground mining on water supplies in Pennsylvania is overwhelming. During the 4<sup>th</sup> assessment period there were 855 reported impacts to wells, springs and ponds. Longwall mining cause 393 of those reported impacts. Water loss represented the vast majority, 84%, of the reported impacts. A total of 201 reported impacts to water supplies were unresolved by the end of the fourth assessment period. Of the 654 resolved impacts to water supplies, 25% of those effects took between 1 and 4.5 years to resolve. The report further explains that the average time to replace an impact water supply with a permanent replacement supply can exceed two years. Imagine waiting two years to get your water back!

It has been three years since Emerald Coal Resource's longwall mining at the Emerald Mine resulted in the loss of our water supplies. Prior to March 2012, my husband and I relied on four springs to supply water to seven pastures in order to raise our horses. Unfortunately, three years later, we still do not have adequate replacements supplies, Emerald has repeatedly violated the standards governing temporary water supplies, and there has been a persistent and lengthy failure by the DEP to enforce the law despite notices and requests to do so.

Two significant points I want to focus on:

**1. Lack of permanent water replacement**

It has been one year since the second failed attempt to install permanent water to four of my pastures. In June 2012, test wells were dug on our property with no success. Then in 2013 Emerald began installing a series of public water supply lines in order to supply water to each of our seven pastures. To the best of our knowledge, Emerald never engaged an engineer to develop and design the previously implemented public water replacement plan. Unfortunately, the public water replacement system that was installed in 2013-2014 does not deliver the amount of water necessary to meet our needs in three of our pastures and it *never* provided *any* amount of water to our upper pasture. Emerald left our property in May 2014 leaving ditches and un-reclaimed pastures from the construction making our pastures unusable and unsafe for our horses. Again the DEP has not issued an order or done anything to require Emerald to restore our property. As if that is not enough, here

is just one more example of the absurdity we have endured. None of the previously installed water lines were installed below the frost line. The SWPA water authority regulations, water contractors in general and just plain common sense dictate that water lines should be at least six inches below the frost line. Emerald argues it is not necessary to put them below the frost line. Once again, the DEP agrees with Emerald. I believe the water lines should be installed according to our water company, industry standards and common sense and cannot believe this is even being debated.

Emerald has a new plan for a third attempt, but we believe this plan is again inadequate. Emerald has repeatedly stated that they "stand behind this plan". This is not persuasive. We could not use our property for nine months during the previous failed attempt, so you can understand our reluctance to proceed with another plan without some assurance that it will work.

## 2. Temporary water

Despite the fact that our permanent water supplies have not been adequately replaced, I have been without temporary water for 471 out of 1,071 days. That is 44% of the time despite notification to Emerald and the DEP. Emerald stopped supplying temporary water in violation of Act 54 and the regulations on at least seven different occasions leaving us without water as follows:

2012 – 74 days without water  
2013 – 151 days without water  
2014 – 179 days without water  
2015 – 67 days without water

We promptly communicated each violation to the DEP and to Emerald. Despite that, we waited for anywhere from three days to four months before Emerald resumed the temporary water – at least until the next violation.

During each of these violations the DEP could have but did not enforce the law. This is unacceptable. Rather than enforcing these standards, the DEP decided to rely on voluntary compliance. In an e-mail dated December 2, 2014, Emerald made clear that voluntary compliance was no longer an option when it stated, “we are not obligated to supply top field location with temporary water through the winter, effective immediately.”

Shortly thereafter, we formally requested that the DEP issue an order compelling Emerald to immediately resume supplying temporary water because Emerald expressly refused to provide temporary water and because Emerald has failed to provide an adequate permanent water supply replacement. When we did not receive any response from the DEP, we filed a citizen compliant with the Office of Surface Mining (OSM). OSM issued a Ten-Day-Notice, the DEP responded, and OSM determined that the “PADEP acted in an arbitrary and capricious manner and abused its discretion in administering the approved Pennsylvania regulatory program.” Let me repeat that - “PADEP acted in an arbitrary and capricious manner and abused its discretion in administering the approved Pennsylvania regulatory program.” After this OSM finding, Emerald was finally “willing” to restore temporary water.

## **Conclusion:**

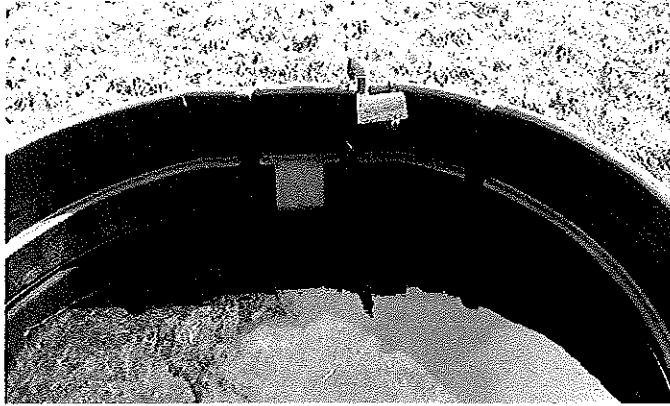
The DEP is the agency of the Commonwealth that is vested with the non-discretionary duty and authority to administer and enforce Act 54 and the related regulations. Our experience and the data included in the 4th Act 54 Report shows that DEP is failing to enforce the law. Therefore, I ask that the Citizen's Advisory Council demand more from the DEP. Specifically, I urge CAC to do three things:

1. Develop and recommend meaningful procedures for the DEP's review of mining permit applications.
  - First, pre-mining surveys submitted in the permit application must be adequate. Although flow rate is to be documented as part of the pre-mining survey, flow rates were not documented for three of our four springs. Instead, "no flow" was noted for these three springs despite the fact these springs fed 500-gallon troughs, which were full at the time of sampling. I raised this issue with Emerald and DEP. Although my objection was noted, flow rates were never measured. If the mining company cannot figure out how to measure pre-mining flow rates, it should not receive an underground mining permit.
  - Second, if an applicant anticipates impacts to private water supplies, the applicant should be required to explain in detail how it will restore or replace affected water supplies. The DEP should not issue an underground mining permit if an applicant cannot affirmatively demonstrate that impacted water supplies will be promptly replaced.
2. Develop and recommend procedures for the DEP that ensure adequate enforcement of the water supply replacement standards. These procedures must ensure water supplies are promptly replaced. The term prompt should be defined as no more than two years.
3. Establish clear, specific and substantial penalties for the DEP when there is non-compliance by an operator AND, just as important, procedures to ensure enforcement of these penalties

The benefit of the doubt should be given to the landowners. It is undeniable that longwall mining of coal results in the loss of private water supplies and surface damage to property. The landowner has everything to lose, but yet the very agency in place to enforce the laws designed to protect the landowner, the DEP, all too often sides with the coal company.

I thank you very much for the opportunity to address you and to express my concerns. I'd be happy to answer any questions or provide any further information after the hearing.

3/16/15 – Emerald stopped providing water – no flow into trough



8/10/14 – Emerald disconnected water trough when they refused to supply temporary water



8/25/14 – Result of Emerald disconnecting water supply to trough



3/1/14 – Ditches/holes from un-reclaimed pastures Emerald left after failed attempt at permanent water replacement



7/25/14 – 22” deep hole from un-reclaimed pasture Emerald left after failed attempt at permanent water replacement



3/1/14 – Loss of water to developed spring after Emerald’s longwall mining



5/1/13 - Emerald stopped providing water – no flow into trough

