

Citizens Advisory Council

WATER COMM

to the Department of Environmental Protection

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July 8, 2002

Mr. Harold Miller, Chief
Underground Mining Section
Pennsylvania Department of Environmental Protection
PO Box 8461
Harrisburg, PA 17105-8461

Dear Mr. Miller:

The Citizens Advisory Council (Council) appreciates the opportunity to comment on the draft *Technical Guidance Document for Surface Water Protection – Bituminous Underground Mining Operations (Guidance)*. We commend DEP's effort to prevent future damage to surface waters caused by longwall mining.

The input Council has received over the years indicates that longwall mining has adversely affected aquatic resources in southwestern Pennsylvania. Council and numerous others have long raised these concerns and advocated the need to protect our aquatic resources in the context of underground mining. We are grateful that DEP has responded by undertaking this and other recent efforts to better understand potential impacts and protect our resources from these impacts. We support the intent and direction of the *Guidance* in clarifying application of the underlying legal and regulatory structures to protect our valuable water resources.

Policy Questions and Comments:

1. **Impact Analysis.** The *Guidance* and its impact analysis should clearly state the impacts, both positive and negative, on the regulated community, on the environment, and on those impacted by the activity. While the *Guidance* more appropriately tracks the authority laid out in the relevant regulations, it is in fact a change in how DMO staff have historically approached surface water protection in underground mining areas and the costs and benefits of this change should be clarified.

The impact analysis may understate the potential financial burden the *Guidance* places on the regulated community. We have been told that the costs for the additional data collection required by this guidance may be on the order of \$200,000 per longwall panel; the expected costs should be carefully evaluated and reported. In addition, the *Guidance* may adversely affect the development of the resources of the Commonwealth as it is possible that some coal reserves may become unrecoverable. This should be clarified in the impact analysis section.

The impact analysis also does not address, at all, the environmental or community impacts of this approach. An impact analysis should evaluate



both the pros and cons of the proposal, as well as the pros and cons of not proceeding (i.e. the opportunity costs).

If the costs are deemed to be excessive in relation to the value of the product obtained, then we need to evaluate how best to approach a solution. Environmental protection is part of the cost of doing business, and needs to go hand in hand with economic development. The *Guidance* appears to more closely track the authority laid out in the relevant regulations than has historically been taken by the DMO. It clarifies an approach that many believed would be taken when Act 54 was originally negotiated, and delineates how stream impacts will trigger action under the antidegradation program.

2. **Definitions:** Council has previously advocated changing the mining program's flow-based definition of perennial stream to a biological definition, as used in the water programs. We support the change outlined in the *Guidance* as it is consistent with that used in other environmental protection programs.

Since "continuously flowing perennial stream" is maintained as a separate definition, it appears that a different level of protection is afforded to "continuously flowing perennial stream" and "perennial stream"? Why does the *Guidance* differentiate between them?

It also appears that terms are used inconsistently throughout the document. For instance, different categories of surface waters are protected differently; the description of Chapter 89 (page 4 line 44) indicates that surface waters in Chapter 89 is more limited than defined in the *Guidance*; what is the effect of this? Why not include all surface waters? Does Chapter 89 only address continuously flowing perennial streams? (Also see page 9 para 3 and 5) Terminology should be clarified and used consistently.

3. **Wetlands.** Why does the *Guidance* exclude constructed wetlands from the definition of surface waters (Page 4 line 12)? Does this include wetlands constructed for AMD treatment, too?
4. **Interoffice cooperation.** Why doesn't the *Guidance* require participation and sign-off by the water depute (page 13 para 5)? This is a clear opportunity for improved performance in environmental outcomes through inter-depute communication, an ongoing concern of the Council.

Clarifications:

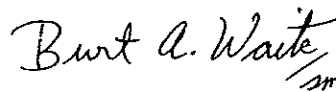
1. Page 1 line 22—What is a "short-lived" impact?
2. Page 8 and page 15—The document appears to overstate the findings of the Anderson and Bartsch paper. In the Anderson and Bartsch study the term of monitoring is limited to six months after under-mining. It may be inappropriate to conclude that the loss or reduction of flow in headwater

springs and seeps is a permanent hydrologic impact based on the findings of this paper.

3. Page 8 line 27—For fairness it should also be noted that flow losses as a result of mining in hillside springs that feed headwater streams and wetlands have also been observed to recover in the post-mining phase.
4. Page 19—The flow chart is a useful tool to illustrate the Department's approach to regulating impacts to surface waters. Additional diagrams and charts would be useful in clarifying other sections as well (e.g., Page 11 line 22, Page 11-line 26, and Page 15-line 22 -24 are all confusing and unclear).
5. Page 11-line 31—This is a relatively new technique attempted in a limited number of cases. While the technique may have value, the technical data is not currently available to make this a requirement (see also page 12-line 4).
6. Page 11-line 33—It should be stated that grouting will not be required for stream segments that were losing water prior to undermining.
7. Page 11 line 46—"Feeder streams" should be defined.
8. Page 13 line 46—What is the justification/rationale for the 1,000 foot threshold?
9. Page 14 lines 17-18—Why not require baseline information rather than simply recommending it?
10. Page 14 para 3—What if there's another measure that's more effective? Is the company required to evaluate alternatives?
11. Page 15 line 24—Who determines what is an appropriate comparison site to demonstrate that they can safely mine at a lesser depth under a stream?
12. Page 16 line 3—Does aquatic life include riparian life?
13. Page 16 line 19—What parameters define the "documented time frame"—how open ended is this?

We thank you for your efforts to address this issue and for the opportunity to provide comments. We commend DEP's effort to prevent future damage to surface waters caused by longwall mining. Should you have any questions, please contact Sue Wilson, Council's Executive Director, at 717-787-4527.

Sincerely,



Burt A. Waite
Chairperson