

Public Comment
Greene County Watershed Alliance
Fourth Act 54 Assessment (2008-2013)
Citizens Advisory Council to DEP
California District Mining Office
March 30, 2015

The 1994 Act 54 legislation, created exclusively to allow for damage during the longwall mining process, changed the framework of how underground mining is regulated by the Pennsylvania Department of Environmental Protection PADEP). Voted into legislation by the Commonwealth of Pennsylvania, no longer did the law focus on the “protection of environmental resources,” but opened the door to allow for increased damage to structures, water supplies, and the natural environment as long as the impacts were not irreparable and could be fixed.

During the Fourth Act 54 assessment period:

- There were 230 cases (96% associated with longwall mining) of damage to homes and buildings, and despite a reduction in the amount of surface acres undermined by longwall mining; the number of reported effects did not decrease.
- The average time to resolution for the reported structural effects was 169 days. Fifty-nine of the reported structural effects were unresolved as of August 2013. Of the fifty-nine unresolved cases, nine of the cases occurred during the third Act 54 assessment, (2003-2008) Table IV-2 “Company Liable” of the report reveals the shortest wait time on resolution of effects is “Company Purchased Property” (40 days). The reported effects with the longest resolution times are those that required repairs from the company. For those who want repairs/replacement or choose to negotiate for damages through pre-mining or unspecified agreements, the wait time for resolution increases. When classifying the average time to resolution by mining type, the University found that the longest average time to resolution occurred in inactive mines where an agreement/compensation was required to mitigate the effect. Because the coal panel has been mined-out, there is no incentive for the coal company to promptly fix the “Company Liable” damage. *The DEP should issue enforceable orders for repair or replacement of structures when the company is found liable for the effect.*
- Although there was an 18-percent drop in the number of acres mined, the water supply effects increased by approximately 25-percent. More disturbing is that a significant number of impacts were “Company-Liable” impacts that took place OUTSIDE of Act 54’s current Rebuttable Presumptive Zone (RBZ). *The effects outside of the RBZ reflect how the law and DEP regulations are inadequate and underestimate the extent of damage from longwall mining using the current method of calculating the angle of draw/Rebuttable Presumptive Zone.*
- All underground mine-related stream impacts reported (100%) were associated with longwall mining including those effects associated with continuous mining development.

This report mentions “Of the 10 cases in the 3rd assessment period that took over five years to resolve, eight of the cases involve streams that the PA DEP ruled have not recovered from mining.” (VIII-5). The list of 8 cases includes 7 different streams the DEP has determined are irreparably damaged from longwall mining. Since the DEP has determined that these 7 streams will not recover to their pre-mining condition, the DEP is looking to off-site stream mitigation instead of increased protections. *Off-site stream mitigation usually in the form of stream bank fencing, stream bank stabilization, or installing riparian buffer on another stream, or in another watershed, away from the impact, does not restore the flow or biological community of the impacted stream.*

- Longwall mining accounted for approximately 51 miles of stream undermining and resulted in the flow loss, pooling, or both of more than 39 miles of streams. Only 23% of streams undermined during this period escaped significant flow loss or pooling (that we know of because of limited or confusing data). According to the University of Pittsburgh- “Currently, stream investigations are only used by PADEP to track impacts that occurred before the 2008 TGD 563-2000-655. For impacts occurring after this point, PADEP no longer requires a formal investigation to determine if the changes in flow are climate or mining related, instead, the mine operator is automatically assumed liable for impacts occurring at the time of undermining. Once an impact occurs, a record is made in BUMIS and in the SSA stream data logs and the operator is given three years to mitigate the impact and submit data to PADEP for review.”

During that three-year timeframe, and under Act 54, a landowner has a right to enter into a private agreement with the coal company for the sale of the property or financial compensation for damage to their streams, springs, and groundwater wells. But, a sale or private agreement that includes an impacted stream gives a false impression that the stream did not experience flow loss, pooling, or contamination within the PADEP database. The database only shows a damage claim as “resolved,” when in fact, we don’t know what the condition of that stream may be.

If a stream (waters of the Commonwealth) is damaged by underground mining activities, and the landowner has sold or entered into a private agreement for water resource damage, the private agreement should not exempt the coal company from liability for stream impacts and should be identified “Company Liable-Have not recovered from mining” until proven otherwise by the coal company.

- Today, over 50% of the available coal for mining in Greene County lies under Special Protection, High-Quality waters with several streams tucked within designated as Exceptional Value. These Special Protection waters are also located within Environmental Justice areas. The Special Protection waters and residents who rely on them are to be afforded special consideration in the regulatory and permitting process. In western Greene County, smaller headwater streams of the South Fork Ten Mile High-Quality watershed function to maintain downstream water quality. Now, more than ever the preservation and protection of these streams is paramount for the over-all health and future of Ten Mile Creek.
- The report informs the reader that very little is known about the hydrologic balance of a watershed premining and less is known postmining. What we do know is that the remains

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of the postmining panels have the potential to hold an abundance of water. Inactive mines like Gateway, Blacksville #1, and Humphrey are flooded. These flooded mines have a discharge to reduce mine pool levels and have to be treated forever. This a hydrologic disaster that sucks good clean surface and groundwater into inactive mining panels polluting the water and changing the hydrologic balance of many watersheds, as well as foreseeable uses for that water for individuals, businesses, and communities.

After twenty-years of insufficient information to assess the effectiveness of Act 54, the fourth assessment is more informative given the University's challenge of locating and disseminating often-mismatched data, and provides a list of recommendations that are appropriate and in-line with current technology. The recommendations, when implemented, will help the Department become more organized, efficient, and transparent. The DEP also needs to improve their own internal policies for following the PA Code and their own Technical Guidance Documents for the collection of pre- and postmining data. We ask the CAC to advocate for policies, staff, and resources to implement the reports recommendations, and request a review of the regulations of the longwall mining process for better surface and water resource protection.

Thank you,

Terri Davin
President