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PADEP Citizens Advisory Council
c/o Michele Tate, Executive Director
Rachel Carson State Office Building
P.O. Box 8459
Harrisburg, PA 17105-8459

In re: Comments on PADEP's Revised Brochure entitled: "*Water Supply Replacement and Subsidence Damage Repair*"

Dear Ms. Tate:

At the April meeting of the Citizens Advisory Council, Holly Cairns (DEP Office of Environmental Advocate) handed out a draft brochure intended to update a similar fact sheet that outlines citizens' rights and responsibilities under Act 54. Ms. Cairns said the Department is seeking CAC input on the draft brochure. On behalf of the Citizens Coal Council¹, I offer the following comments and suggestions for Council's consideration as it prepares its own comments and input on the brochure.

- The subtitle of the brochure should probably be revised slightly and become the title: "A Guide to Information, Rights, and Responsibilities Under Act 54". That would more accurately describe what it appears to be trying to provide.
- This document is meant to replace the 1-page double-sided foldout of the same name and number (5600-BO-DEP4054) which was last revised during August 2012. It is described in the CAC minutes as a draft new "brochure", and it was presented as such. Several times in the text, however, it refers to itself as a "fact sheet". Since its appearance and layout are that of a brochure, and those changes are mainly what distinguish it from the previous document (which referred to *itself* as a "fact sheet"), it might make sense to replace "fact sheet" with "brochure" wherever it is written in the current document.
- It is commendable to have a brochure such as this to help landowners understand their rights and responsibilities. However, to be truly useful, additional details will need to be provided, as discussed below.
- The brochure, and indeed Act 54, relate to *underground* coal mining in general, and are not specific to one type or method of mining (even though it is commonly understood that Act 54 was adopted to legitimize longwall mining, and the brochure describes damages and the need for replacement/repair

¹ The Citizens Coal Council (www.citizenscoalcouncil.org) is based in Bridgeville, PA. Its mission is to inform, empower, and work for and with communities nationwide affected by the mining, processing, and use of coal.

which are primarily the result of the longwall mining method). Yet in 3 separate places the brochure specifies "longwall" instead of the more generic "underground mining". (First, in the figure under "Overview", then twice under "Surface Owner Rights At-A-Glance".) This gives the reader the impression that the rights and responsibilities described in the brochure may apply only to landowners above longwall mines. If the Rebuttable Presumption Area and the other provisions described in the brochure apply equally to room-and-pillar mines, specific references to "longwall" should be deleted. If and where there are differences in how the two mining methods are regulated, those differences should be pointed out.

- The brochure mentions in the "Overview" section that the law allows damage resolution through "private negotiations". It should elaborate on the consequences to a landowner of entering into a private agreement with a mine operator. For example, the law requires an operator to "repair or replace" a water supply damaged by mining. If a landowner agrees to monetary compensation instead, however, the operator no longer is required to "repair or restore" the water supply. Distinctions such as this should be pointed out.
- In the "Overview" section of the brochure is mention of the 30-degree angle of draw used to determine which landowners receive notification of a permit application under review, presumably because those landowners are at potential risk of damage from the operation if the permit is approved. Yet there is a 35-degree Rebuttable Presumption Area (which encompasses more land) that is used to identify which water supply impacts are presumed to be caused by underground mining. Should not the notification area also be 35-degrees? The brochure should at least highlight this discrepancy to make landowners aware.
- The brochure should alert landowners that if they are *near* a proposed new mine but are *outside* the 30-degree or 35-degree angle areas, they are responsible for conducting their own pre-mining inventories of structures, well water quantity and quantity, and other features. Otherwise, there will be no baseline information against which to compare in the event that they believe they have experienced mining-related damage.
- The section Water Supply Impacts and Losses discusses "structures" almost as much as it does water supplies. Either the green-highlighted heading should be changed, or all discussions of structures should be deleted from this section and moved to the green-highlighted section "Structure Impacts".
- Under Water Supply Impacts and Losses (1st paragraph) it states "DEP requires mine operators to restore or replace....", but in fact, is it not Act 54 (rather than DEP) that requires that?

- Under Water Supply Impacts and Losses (3rd paragraph) it states that "Mine operators must provide landowners with the results of pre-mining surveys within 30 days". In order to complete that thought, a new sentence should be added immediately after that one to state: "Landowners should carefully review the surveys and advise the mine operator and DEP as soon as possible of any discrepancies or inaccuracies in the survey." Otherwise, the legal implications of the survey may not be apparent to landowners.
- Under the subsection "Rebuttable Presumption Area", the graphic is unclear. What does the white vertical line represent?
- Under Water Supply Restoration/Replacement, it states that DEP will investigate landowner complaints to determine whether the effects were caused by underground mining. It should be made clear that merely being within the "Rebuttable Presumption Area" does not guarantee that a landowner's water supply damage will be compensated in some way by the mine operator - it only means that the burden of proof is on the mine operator. If a mine operator can demonstrate that its mining did not damage a landowner's water supply, and DEP concurs, a landowner will not be compensated even if located within the "Rebuttable Presumption Area".
- The main section Structure Impacts has a subheading "(Minimization of Subsidence Damage)". Yet only the first 2 paragraphs in that section apply to minimization; the other subsections do not (and one subsection discusses land impacts, not structure impacts). The subheading should be deleted.
- There should be some discussion regarding how the Mine Subsidence Insurance Program relates to structure damages. The MSI Program is authorized to insure homes from damages from "abandoned" mines. Does it apply to mines operated and abandoned since passage of Act 54? Does it apply equally to abandoned longwall mines and room-and-pillar mines? These relevant matters are important to landowners and should be mentioned in the brochure.
- There should be some discussion of landowner rights or mine operator responsibilities regarding repair or restoration of streams, wetlands, ponds, and other water resources damaged as a result of subsidence. Even if these impacts are not directly covered by Act 54, they are covered by other Commonwealth legislation such as the Clean Streams Law and the Dam Safety and Encroachments Act. Act 54 states that it does not supersede those laws nor "standards related to prevailing hydrologic balance contained in" SMCRA. Impacts to streams and other water resources are rightfully being addressed (more so recently) in the Act 54 5-Year review reports, and at minimum it would be appropriate to mention them in this brochure.

- Under "DEP's Role in Resolving Damages", timeframes are given for notifying DEP about water loss and structure damage claims. Timeframes for notification of stream, wetland, or other water resource damage claims also should be specified, or if there are no such timeframes, that should be pointed out.
- Typos:
 - The word "Losses" is misspelled as "Loses" in the heading of the section Water Supply Impacts and Losses.
 - In the subsection "Land Damage" under the section Structure Impacts, the word "its" should be spelled "it's".
 - The fourth bullet-point in the outline on the second page should read "Surface Owner Rights At-A-Glance" to match the actual section heading.

On behalf of the Citizens Coal Council, thank you for the opportunity to provide this input on the draft brochure.

Yours truly,

A handwritten signature in black ink that reads "Stephen P. Kunz". The signature is written in a cursive style with a large, stylized 'S' and 'K'.

Stephen P. Kunz
Senior Ecologist

cc: Aimee Erickson (Citizens Coal Council)
Kimberly A. Morewood (PADEP Office of Environmental Advocate)