

**CITIZENS ADVISORY COUNCIL**  
to the Department of Environmental Protection



**Report on the 2011  
Regional Meeting and Field Trip**

---

**Southwestern Pennsylvania  
October 3-5, 2011**

---

**Prepared by: Susan Wilson  
Executive Director, 2011**

**John Walliser  
Chairperson**

**Marjorie L. Hughes  
Executive Director**

## TABLE OF CONTENTS

Introduction.....	1
Panel Summary .....	1
Site Visits .....	5
Shields Herb and Flower Farm, Spraggs, Pennsylvania .....	5
Jones Farm, Wind Ridge, Pennsylvania .....	6
Ryerson State Park—Duke Lake, Graysville, Pennsylvania .....	6
Manchester Farm, Avella, Pennsylvania .....	7
Public Testimony .....	7
Evolution and Intent of Act 54.....	8
Fairness and Balance.....	8
Duke Lake Dam .....	12
Economics.....	12
Historic Resources .....	13
Water.....	16
Recommendations for Amending Act 54 .....	18

## DRAFT 2011 REGIONAL REPORT

### Introduction

The Citizens Advisory Council (Council) was legislatively created<sup>1</sup> in 1971 and charged with reviewing all environmental legislation, regulations and policies affecting the Department of Environmental Protection (DEP). It is mandated to review the work of DEP and make recommendations for improvement, to study major environmental issues facing Pennsylvania, and promote sound environmental legislation. The Council reports its recommendations to DEP, the Governor, the General Assembly, and the public.

Each year, Council holds a regional meeting in a different part of the state to hear from citizens in the selected region about environmental issues confronting that area and about DEP's work there. Since Council has been reviewing the latest 5-year report required under Act 54 of 1994, on October 3-5, 2011, Council held site visits and public meetings in southwestern Pennsylvania to see and hear from residents of this area about deep mining in the region.

This report summarizes what Council members observed and heard during the 2011 regional meeting, with the goal of bringing attention to the concerns raised. As noted in the conclusion, Council is developing a separate report responding to the latest 5-year report under Act 54.

### Panel Summary

To prepare for site visits the next day, Council organized a panel the evening of October 3 to better educate ourselves and our audience about issues related to Act 54.

1. **Tom Callaghan**, Director of DEP's Bureau of Mining Programs (formerly Mining and Reclamation), provided a history and overview of Act 54.

Pennsylvania property rights are divided into three estates: surface, mineral and support. All surface and mineral estate owners have property rights under the law; however, prior to 1966, owners of the mineral estate were not responsible for surface damage resulting from mining.

In 1966 at a Special Session, the General Assembly enacted the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA). The legislature found that damage from uncontrolled mine subsidence was seriously impeding land development, eroding the tax base and causing a clear and present danger to public health, safety and welfare. BMSLCA was enacted to protect public health, safety and general welfare while allowing the continued growth of the bituminous coal industry.

BMSLCA is in essence a limited prevention and liability standard. It established various requirements for bituminous underground mines such as permitting, mapping, protection

---

<sup>1</sup> The composition of the council and its powers and duties are outlined in Sections 448(p) and 1922-A of Act No. 275 (P.L. 834) known as The Administrative Code of 1929, as amended January 19, 1971; and in Sections 7.6 and 4.3(6) of Pennsylvania's Air Pollution Control Act, Act No. 1922-95.

of certain structures from subsidence damage, repair of subsidence damage to certain structures, and the right for surface owners to purchase support for their structures.

- Section 4 prohibited bituminous coal from being mined in a manner that would cause subsidence damage to homes, public buildings, noncommercial structures customarily used by the public (e.g. churches and schools) and cemeteries if they were in place on April 27, 1966.
- If Department-approved measures were unsuccessful and a protected structure was damaged by subsidence, then Section 6 required the operator to repair the damages within six months and satisfy all claims arising from the subsidence damage or to deposit with the Department, as security for the claim, a sum of money equal to the amount of damage. The law also authorized the Department to require operators to post a surety bond to cover future property damage.
- Section 15 provided certain owners the right to purchase the coal located beneath their property that was necessary to provide support to protect the structures from subsidence damage. This included structures erected before April 27, 1966 not otherwise protected (e.g. agricultural and commercial structures), and all structures erected after April 27, 1966.
- As enacted in 1966, BMSLCA did not contain any provisions addressing water supplies affected by underground mining.

In 1980, BMSLCA was amended to meet the minimum requirements of the federal Surface Mining Control and Reclamation Act so that Pennsylvania could maintain primacy for regulating coal mining within the Commonwealth. Among other things, there were changes to the provisions governing subsidence damage.

- Section 4, which provided protection to certain structures, was amended to allow the current owner of the structure to consent to subsidence damage, but the damage had to be repaired or the owner compensated.
- Section 5 was amended to require underground mine operators to adopt measures to prevent subsidence causing material damage to the extent technologically and economically feasible, to maximize mine stability and to maintain the value and reasonably foreseeable use of the surface.

In 1986, in response to dissatisfaction with the existing law, the Deep Mine Mediation Project (Project) was convened by Arthur A. Davis, then-Goddard Professor of Forestry and Environmental Resources at the Pennsylvania State University. The Project brought together deep mine industry, agricultural, and public interest organizations to reach consensus on changes to BMSLCA. Organizations that accepted the invitation and participated in the Project included Beth Energy Mines, Inc., Consolidation Coal Company, League of Women Voters of Pennsylvania, Pennsylvania Coal Association, Pennsylvania Environmental Council, Inc., Pennsylvania Farmers Association, Rochester

and Pittsburgh Coal Company, USX Corporation and the Western Pennsylvania Conservancy. In addition, Citizens Against Water Loss Due to Mining initially participated and then withdrew from the Project, while the Pennsylvania Federation of Sportsmen's Clubs withdrew after the final proposal was developed.

After three years, participants reached a consensus on a set of recommendations and specific statutory language to address water supply replacement, enhance remedies for structural damage and statutory changes to eliminate impediments to mining. The General Assembly approved the statutory amendments in 1992, but due to a procedural problem, the bill was not presented to the governor for signature; the amendments, commonly referred to as Act 54, were reintroduced and passed with unanimous votes in both the House and Senate in mid-June, 1994. The bill was signed by Governor Casey on June 22, 1994 and became effective 60 days later, on August 21, 1994.

The 1994 statutory changes eliminated impediments to mining by allowing mining under pre-1966 structures as long as the damages are not irreparable and are repaired. Irreparable damage can only occur with the consent of the owner. The 1994 amendments provide for water supply replacement and limit the number of structures protected from subsidence damage while expanding the class of structures which must be repaired by the mine operator. Instead of a limited liability and prevention statute, it became a replacement, compensation and repair statute.

The 1994 water supply replacement provisions:

- Mine operators must restore or replace public or private water supplies for homeowners and farmers where the underground mining caused contamination, diminution or interruption.
- There is a rebuttable presumption that underground mining caused the contamination, diminution or interruption of affected water supplies located above the mine.
- Where the presumption applies, landowners are entitled to a temporary water supply within 24 hours pending the completion of investigations and the restoration or replacement of a permanent supply by the mine operator.
- For the rebuttable presumption to apply, landowners must allow surveys to be conducted to determine the pre-mining quality and quantity of their water supply.
- Where the rebuttable presumption does not apply and the water supply has been affected, the mine operator is responsible to restore or replace the supply. However, if the operator contests liability, the burden of proving causation falls on the landowner or Department.
- Landowners and mine operators can execute voluntary agreements, under certain conditions, and of limited duration, which provide for alternate restoration,

replacement or compensation mechanisms when a water supply is affected. Notice of any such agreements must be given to subsequent purchasers of the property by reference in the deed of conveyance.

- If an operator does not provide for permanent restoration or replacement within three years, and the operator and landowner can't agree on terms for compensation, the landowner has two options: opt to have the operator purchase the property at its fair market value prior to the time the supply was affected, or have the operator make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and the time payment is made.

The 1994 revised structural damage repair provisions:

- Mine operators must repair or compensate for subsidence damage to any building accessible to the public (including industrial and recreational buildings), noncommercial buildings customarily used by the public (e.g. schools and churches), dwellings used for human habitation and permanently affixed structures and improvements, and certain agricultural structures.
- The structure owner or occupant is also entitled to payments for temporary relocation and other incidental expenses.
- In order for the structure owner to have the repairs made or to be compensated for the damages, he must allow the mine operator to conduct a pre-mining survey of the structure prior to beginning of mining.
- Structure owners and mine operators are authorized to enter into voluntary agreements specifying the terms and conditions for restoration of or compensation for subsidence damage. Notice of such agreements must be given to subsequent purchasers of the property by reference in the deed of conveyance.

2. **Bill Plassio**, Director of the California District Mining Office, which is in charge of implementation of Act 54, gave an overview of the information that is provided when underground mining is going to occur:

- Water Replacement/Subsidence damage pamphlet
- Sample letter—permit application notice
- California Office Mining seminar topics
- Informal conference regulations
- Methane gas venting procedure fact sheet

- Public conference—open house format
- Environmental Justice handout

He also described the duties of Surface Subsidence Agents (SSA or “Shadow Inspectors”), who visit all home owners who are going to be undermined to explain their rights and responsibilities under Act 54 and regulations enacted pursuant to the act. They also monitor and document conditions in areas impacted by longwall mining prior to, during and after mining has occurred.

He then went over some details and data regarding Water Supply and Subsidence Damage claims:

	Water Supply Claims	Structure Claims
2010	152 (50 outside RPZ*)	63 (11 requiring DEP investigation)
2011	85 (36 outside RPZ*)	56 (11 requiring DEP investigation)

*\*Water Supply Claims outside the Rebuttable Presumptive Zone (RPZ) must be investigated by CDMO Technical Section to determine liability*

3. **Holly Cairns**, Environmental Community Relations Specialist, SWRO, provided an overview of the Environmental Justice Public Participation Policy in coal communities.

DEP’s Office of Environmental Advocate (OEA) is charged with implementing Pennsylvania’s Environmental Justice (EJ) program. DEP’s Environmental Justice Public Participation Policy requires enhanced public participation in EJ communities and outlines steps DEP will take to ensure that these traditionally underserved communities are provided with ample opportunities to be informed and involved in environment decisions within the community.

She was pleased to note that coal companies themselves now generally initiate the early information and outreach meetings in EJ areas and she showed a map that identified EJ communities in Washington and Fayette counties, and noted that the map will be updated with newer demographic information from the 2010 census. In addition, she noted that certain mining permits trigger the EJ policy.

**Site Visits**

On October 4, Council toured a number of sites demonstrative of surface impacts of longwall mining.

**Shields Herb and Flower Farm, Spraggs, Pennsylvania**

In March 2001, Shields Farm was undermined by Consol’s Blacksville #2 mine. Subsidence continues and unresolved issues include propane as a replacement fuel for heating his greenhouses. He had an existing gas well, which helped him negotiate a pre-mining agreement.

At the time, Consol indicated that propane would be used to heat his business for a couple of months, and then he could go back to natural gas. He reported that Consol used old, leaking infrastructure and that DEP never reviewed any of the lines for safety. He filed a formal complaint to the PUC against Consol and Equitable (which had shut off its gas line), but the agency never formally responded. He has had to use propane in the interim, but Equitable is now putting in a new 4" line. His homeowners insurance was cancelled when the property was initially longwalled. There was no pre-mining survey of water because of the premining agreement. He stated that individuals are outgunned by company professionals; citizens need legal and professional assistance, information, and empowerment.

#### Jones Farm, Wind Ridge, Pennsylvania

Kim Jones stated that post-mining ground movement has caused structural damage to her barn, and stream and spring loss on the property. She stated that the Act 54 report erroneously indicates that there has been no mining damage at her location. They spent \$17,000 for legal assistance to appear before the EHB; they won the case but still have no resolution. The pre-mining survey was conducted in October 2003, but the company had already put a gate in by May 2003. They lost their gas well in 2003; a segment of the stream disappeared in 2004, but water loss in the stream is masked by stream augmentation.

#### Ryerson State Park—Duke Lake, Graysville, Pennsylvania

Duke Lake was drained in July 2005; Consol's Bailey Mine longwalled within 1,850 feet of the dam and 350 feet below the surface. Responsibility for the damage is still in litigation.

**Ben Stout**, Professor of Biology at Wheeling Jesuit University, discussed his on-going field work and sampling efforts in headwater systems. These systems are important to ecosystems and migratory animals; when dewatered, far ranging impacts occur. Many headwater streams show a 50% decline in the diversity of macroinvertebrates. Half go dry but streams pop back up somewhere else; the new streams often have more dissolved minerals, etc. They may have the same amount of water but less functionality. There may be impacts on bird populations, especially migratory birds.

Discussion points included:

- Whether mining should occur under special protection streams; the Clean Streams Law and Clean Water Act require permit applicants to demonstrate how they will protect for adverse impact. Yet High Quality and Exceptional Value streams, which are to be accorded increased protection, are being negatively impacted by mining.
- More and more people are forced onto public water as springs dry up.

**Terri Davin**, Green County Watershed Alliance, discussed how draining Duke Lake in 2005 has impacted the local community, from severe road damage to loss of a major recreational asset. She questioned the time frames for restoration required in Act 54, and asked "how long is a timely manner"?



## Manchester Farm, Avella, Pennsylvania

In 1797, Isaac Manchester and his family moved from Newport, Rhode Island, to Washington County, Pennsylvania, to establish a homestead. The house, built of bricks fired on the farm and timber harvested from its wooded acres, has been home to eight generations of the Manchester family. The family has meticulously preserved items from daily life, including 19th-century sewing patterns, looms and clothing, as well as letters and notes that reference everything from major historic events to day-to-day farm business. Tools, such as the mold in which the bricks for the house were made, the axes with which the lumber was hewn and the planes that produced the fine architectural details, all survive on the property.

In 1917, the family sold the mineral rights to most of the 400 acre farm, excluding only the three acres where their family home and outbuildings stood. Because that sale took place decades before longwall mining—a method of underground extraction that causes the land to drop between four to six feet at the surface—existed, the Manchester sisters could not have imagined the potential damage that would threaten their farm nearly a century later. While the mineral rights under the historic buildings are still in the family's hands, a coal company plans to mine within close proximity to the protected property, which also jeopardizes the farm's water supply. The proposal also includes infrastructure additions such as ventilation shafts and access roads, which threaten the farm's historic setting. There are alternative techniques such as the traditional room and pillar mining, which would provide better protection for the farm, while allowing mining to occur.

Alliance Resource is submitting a permit application to mine in the Avella area. The National Trust for Historic Preservation placed this 214-year-old farm on its 2011 list of America's 11 Most Endangered Historic Places.

On October 4, members split into two tours: some toured Cumberland Mine, courtesy of Alpha Resources, and observed the actual operation of a longwall mine. Others stayed on the surface and toured stream restoration and undermined sites above Alpha's Cumberland and Emerald mines, and observed examples of mitigation steps taken to address mining's surface effects in the area. The surface group also discussed biomonitoring requirements and protocols (pre- and post-mining), stream flow monitoring and stream condition monitoring. Alpha staff reported that in the five-year period covered by the current report, the company had undermined 162,000 feet of stream; of this, only 25% (40,000 feet) required some type of mitigation (gate cuts, grouting or temporary augmentation) but 75% of the streams undermined were either not adversely affected or recovered naturally, per DEP guidelines.

### **Public Testimony**

The evening of October 4, Council solicited comments regarding issues related to Act 54 and deep mining in the area, summarized below. ***Please note that the testimony summarized in this report does not necessarily reflect the views of the Council but captures the concerns/issues presented by the individual providing the testimony.***

## **Evolution and Intent of Act 54<sup>2</sup>**

Act 54 was the result of years of debate regarding balancing competing the property rights and interests between mineral owners and surface owners. Prior to Act 54, operators were required by law<sup>2</sup> to mine so as to not cause damage to a limited class of structures in place as of 4/27/1966. DEP implemented this provision by requiring that 50% of the coal had to be left in ‘support pillars’ beneath these structures, and if structural damage occurred anyway, the operator was liable. However, BMSLCA provided no remedy to any surface owner whose source of water was affected by mining; these cases could be addressed by a company’s “Good neighbor” policy, which varied from company to company and was voluntary in nature. It also offered no remedy to owners of other structures such as those built after 4/27/1966. (**George Ellis**, President, Pennsylvania Coal Association (PCA))

In 1982, four coal companies formed the Keystone Bituminous Coal Association, and filed a lawsuit seeking to stop DER from enforcing the 1966 Mining Act claiming that the requirement to leave coal in place for surface support constituted a ‘taking’ of their property without providing just compensation. After losing this case in the Supreme Court, they shifted their attention to changing the Pennsylvania law itself, leading to the passage of Act 54. (**Stephen P. Kunz**, Senior Ecologist, Schmidt and Co.)

In 1986, the Deep Mine Mediation Project, one of the first examples of environmental mediation in Pennsylvania, was convened to reconcile the interests of mineral rights owners and surface owners and brought together stakeholders from both sides to try to reach consensus on the issues. The resulting legislation, Act 54 was signed in 1994. Act 54 allows operators to extract a higher ratio of coal but holds them liable for any damage caused to overlying structures and any water supplies regardless of when they were built. It also expanded protection to include commercial, industrial and agricultural structures and water supplies. (**Ellis**)

### **Fairness and Balance**

*Testifiers weighed in on both sides of the issues of fairness and balance that Act 54 creates between mineral and surface owners—some feel it provides a just balance between competing property rights, and others feel it does not adequately protect surface owners and the environment.*

*Comments in support of Act 54 in its current form included:*

PCA and its member companies recognize that there are fundamental and legitimate concerns about the impacts of mining, and are sensitive to the apprehensions that people may have when they learn that their home will be undermined. They make every effort to work with them to return their home and lifestyle to normal after subsidence. (**Ellis**)

The intent of the law was to provide a replacement or restoration remedy for damage caused by subsidence, as a way to balance the disparate rights of the landowner and coal operator. Within this context, the purpose of the 5-year report required by Act 54 is to determine if

---

<sup>2</sup> Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) of 1966

implementation of Act 54 is meeting legislative intent by evaluating if industry has adequately resolved subsidence damage and water loss claims. PCA believes that the latest assessment confirms that Act 54 is working as intended; operators are meeting their repair/restoration obligations in accordance with the law; the mandates required by Act 54 are being met; and there is no trend or pattern of violations or claims being neglected by operators. **(Ellis)**

Under Act 54, damage is fixed and improvements are often achieved. From personal involvement with 215 affected structures over the past 5 years, only 5 structures remain unresolved and all will be fixed. Of 200 water supplies, 6 are unrepaired but plans are in place to replace those. The people they work with are their friends, families, coworkers, and neighbors, and they want to do right by them by following the Act. **(Jeremy Rafferty, Senior Land Representative for Alpha Land Resources)**

*On the other side of the coin, a number of testifiers identified flaws in and elaborated on the lack of balance provided by Act 54:*

Prior to passage of Act 54, there was balance; mineral owners were expected to extract their coal in a way that did not harm the surface owners, and surface owners could enjoy their surface property provided they did not damage the coal underground. Since the passage of Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels using less manpower. But there has been no change in the Act or DEP regulations to offset the increasingly adverse impacts that are occurring. The “balance” intended under Act 54 has gotten way out of whack. **(Kunz)**

Since passage of Act 54, significant subsidence damage has been occurring and the number of reported impacts has increased over time, with almost all of the recent subsidence damage caused by longwall mining. When repairs are NOT made to 90% of the two features that Act 54 specifically protects (structures and water supplies), other collateral damage goes unrepaired as well—aquifers, streams, farmlands, infrastructure, businesses, state parks, historic and archaeological resources, communities, etc.). Additionally, the latest report documents that resolution of mine subsidence damages is taking a very long time, and takes about twice as long for longwall related damages as for room and pillar related damages. **(Kunz; Mountain Watershed Association)**

Act 54 is NOT providing the intended balance **(Kunz)**:

- Act 54 did not intend to allow increasingly greater impacts to surface lands and surface landowners
- Act 54 did not intend that only 10% or less of damaged structures and water supplies would actually be repaired, or that other damages would not be addressed at all.
- Act 54 did not intend for landowners damaged by mining to wait years for some kind of resolution, a resolution which they typically must fight for and which all too often is woefully inadequate.

The cornerstone of nearly all environmental protection programs is avoidance and minimization of adverse impacts, consistent with the protection of people and the environment guaranteed by the Pennsylvania Constitution. Rather than avoiding and minimizing impacts, Act 54 allows impacts to occur, thereby removing all incentive to avoid or minimize damage all in order to allow for a single technology, longwall mining, used only by a few large companies. **(Kunz)**

A law that aims for full protection is going to fall short of that mark some of the time, given human frailties and imperfections. But a law that aims for partial protection is doomed from the start, and will never be aligned with Article 1, Section 27 of the Pennsylvania constitution. We need to reestablish a straightforward and reasonable standard of protection that prohibits damage to surface features by underground mining. It is the only way to achieve a true balance. **(Kunz)**

The current report showed that most damages are from longwall mining. This method of mining is responsible for 100% of the impacts to streams. If we continue to allow streams to be dewatered and impacted from longwall mining, we will begin to adversely impact our ecosystems. Act 54 is supposed to provide repair/restoration/compensation for all damages. Unfortunately, it is being implemented to deal only with damages to surface structures and water supplies. Protection of streams is not proactively and adequately considered and damage and degradation occurs. While remediation and/or compensation for aquifers, streams, wetlands, springs or lakes that are damaged by mining may be attempted or provided, it is not consistent with the letter or spirit of Act 54, which was to allow no irreparable harm. Mitigation of a dewatered stream by running chlorinated public water supplies through pipes, at some point dechlorinating it, then into a dry stream bed does not repair or replace a natural stream, nor do we believe Act 54 ever intended it to do so. **(Mountain Watershed Association (MWA))**

No Pennsylvania resource has had more of an impact than coal, both short and long term. Act 54 is deficient and requires significant improvement to provide justice to the citizens of Pennsylvania's coal mining communities. **(Tiffany Hickman, Western Pennsylvania Outreach Coordinator, Penn Future)**

Act 54 does not protect from pain and suffering and should be amended better to protect people's rights. **(Rebecca Trigger)**

The continued violation of Act 54 by Consol has resulted in the decimation of structures and water supplies. **(Anonymous, Wheeling Creek Watershed of Washington County)**

Hundreds of Pennsylvania citizens have been greatly impacted by damages to their property and water resources in this region; they feel unable to tell their stories as many of them are 1) under the direct or indirect block imposed by a confidentiality agreement with the mining company responsible for the damage to their property or water supply; 2) currently involved in a legal action involving the mining company responsible for damages to their property or water supply; 3) have given up on any assistance by DEP for a reasonable solution for reparation of structures or water supplies; or 4) simply are intimidated to act upon hearing of the growing number of stories associated with revenge and retaliation exacted by mining companies and/or representatives of the mining companies, from coercive tactics used to close claims and buy land, to reports of blatant contamination of water sources. **(Anonymous)**

Contrary to DEP reports, the majority of landowners have NOT received fair and equitable resolution of damages incurred from underground mining since the implementation of Act 54. Diminished water quality, cracked foundations, dewatered streambeds, demolished homesteads, overgrown farmlands, recurring subsidence, destruction of endangered natural habitats, and record number of treatments for cancer and other illnesses, are a few of the “benefits” the citizens of southwestern Pennsylvania have received thanks to Act 54 **(Anonymous)**:

- From the North Fork of Dunkard Creek in Greene County compromised by mining activity at Consol’s Bailey Mine to Crafts Creek in Washington County compromised by mining activity at Consol’s Enlow Fork Mine, thousands of feet of dewatered streams and impacted water sources caused by underground mining continue to go unaddressed by mining operators, and ignored by the DEP.
- Hundreds of temporarily placed water buffalos that have become permanent scars on the landscape in Greene and Washington counties, along with the hundreds of homes purchased and subsequently destroyed by Consol.
- Local water companies have become overnight millionaires toting potable water to local residents day in and day out, due to the inability (and sometimes refusal) of mining companies to restore water sources to homes and active farms.
- Consol has become one of the largest landowners in Washington County, involved in over 250 property transactions in East Finley Township alone; many of these properties are farms encompassing large tracts of land with significant access to water resources. The Act 54 restoration process preferred by Consol has been the complete destruction of the houses on these properties to a) reallocate the water resources for other company activities, b) to avoid having to restore water source to the dwellings, and/or c) to avoid paying property tax on the property to a poverty stricken school district.
- The situation has even become a public health and safety issue with a pandemic of cancers and other diseases documented in Pennsylvanians as a result of environmental conditions related to compromised water resources related to underground mining.

There is sufficient documented evidence accumulated to date to justify a comprehensive reassessment of Act 54 for improvement opportunities to more adequately and consistently benefit the industry, property owners, the DEP, and the environment. We are confident that an agenda of critical analysis, creative thinking, and innovative technological applications can result in a propitious outcome. Balancing the benefits and threats to public health and the environment is a politically, ethically, and morally challenging undertaking indeed. It will be an arduous task to reconcile the contradictions emanating from the emotional rhetoric, expert testimony, scientific evidence, and field examples surrounding Act 54 in general and longwall mining effects in particular. The unyielding defensive positions and fear mongering by both proponents and opponents jeopardizes the opportunity to objectively examine the benefits of the law as well as areas of divergence from its original intent to protect the health, welfare and safety of the citizens of the Commonwealth through consistent regulation, responsible oversight of industry

practices, and compliance enforcement. (**Judith Campsey**, Vice President, Buffalo Creek Watershed Association (BCWA))

The BCWA appeals to the CAC to aggressively advocate for a balanced review of the effectiveness of Act 54 in protecting homes and historic structures; preserving important surface water, ground water, and public water supplies; and, mitigating damages in a timely, responsible, and consistent manner. (**Campsey**)

### **Duke Lake Dam**

The Center for Coalfield Justice (CCJ) is a non-profit organization that works on social and environmental issues related to fossil fuel extraction. One of the greatest examples of the failures of Act 54 is the loss of Duke Lake, which occurred after longwall mining at Consol's Bailey Mine caused cracks in the dam, forcing the dam to be breached and the lake drained in 2005. For over six years, this has left Ryerson Station State Park without its 62 acre lake that once attracted over 160,000 visitors annually and helped support local businesses and the economy of western Greene County. CCJ is an intervener in the Duke lake lawsuit, representing the community's interests. (**Ada Gay Griffin**, Executive Director, Center for Coalfield Justice)

State agencies are still fighting after six years to hold our nation's largest underground miner of coal accountable for the devastation they caused to Duke Lake. If state agencies are unable to succeed, how can landowners of Greene and Washington counties hope to stand up for their rights? (**Emily Bloom**, Center for Coalfield Justice)

### **Economics**

*Regardless of their position on the fairness of Act 54, most acknowledged the economic benefits of the industry, but some cautioned that the future economy of the region is threatened by the property and environmental impacts allowed by the Act.*

Coal had a major role in the industrial revolution; in recent years, there has been a decline in the number of workers needed due to technological advancements that allow coal production to remain high. UMWA (representing 30,000 miners) supported passage of Act 54 and still does. It provides a just balance between mineral and land owners. (**Ed Yankovich**, United Mine Workers of America (UMWA))

Families Organized to Represent the Coal Economy (FORCE) is comprised of owners, employees, and families, whose livelihoods depend on the coal industry in Pennsylvania. Pennsylvania is the fourth largest coal producing state in the nation, with 41,500 coal-related jobs (9,000 direct mining jobs, mostly in southwestern Pennsylvania) and has the largest bituminous longwall mines in the U.S. Pennsylvania is also home to the largest mining equipment manufacturers. She stated that Act 54 works, and it is fair and balanced; it offers assurance and keeps good, family supporting jobs in Pennsylvania and helps keep Pennsylvania as an energy hub for the U.S. Affordable energy is needed and there are impacts from all forms of energy. (**Janeen Rainone**, manager of FORCE; **Tom Johnson**, Fayette County native and member of FORCE)

There are fundamental flaws in the law, its implementation; oversight, compliance and enforcement. The current report documents significant differences between the impacts from longwall vs. room and pillar mining, proving that Act 54 is a catastrophic failure. We must endeavor to improve the law and how it is implemented. For the economy of southwestern Pennsylvania, we have to change the way we allow mining to occur underground. (**Michael Nixon**, Pennsylvania Chapter of the Sierra Club, and Citizens Coal Council)

While it is still here, mining is an important aspect of the local economy, but we need to improve Act 54 and deep mining techniques to prevent further damage to streams, groundwater, etc. and provide for the future. Greene County needs its water for future economic growth once coal is gone; if we don't have water, we won't have communities. In response to a question, it was acknowledged that local legislators need to take the lead, as those outside of the area have no understanding of the issues and will not get involved. It is a complex issue, with local environmental and social impacts but statewide benefits (energy, tax revenue, employment, etc.). (**Terri Davin**, Greene County Watershed Alliance)

**Erin Hammerstedt**, field representative, Preservation Pennsylvania: The coal industry is critical to the economy of southwestern Pennsylvania, providing thousands of jobs and significant tax revenues. Preservation Pennsylvania understands and respects the strong ties between many families in the area and the industry.

However, coal is not the only economic driver in the region. In a recent study, *Economic Benefits of Preservation in Pennsylvania* (December 2011), Econsult concluded that historic preservation safeguards assets that are significant tourism attractions. They estimated that heritage tourism accounts for 32 million visitors and \$1 billion in visitor spending each year. When combined with direct expenditures associated with the ongoing operations of such destinations, the heritage tourism industry has a total annual economic impact of \$3 billion, supports 37,000 jobs and generates \$90 million in state tax revenues. These are not statistics to be taken lightly when considering the value of historic properties in the Commonwealth.

If extractive industries such as longwall coal mining destroy our natural and cultural resources, we will literally be undermining the basis of our state's economy.

## **Historic Resources**

Individual businesses and farmers who are harmed by longwall mining are struggling to remain economically viable, but feel that the deck is stacked against them because they are up against corporate interests with considerably more financial resources. Balance needs to be restored between competing economic, environmental and historic preservation interests. (**Walter Gallas**, Field Director, National Trust for Historic Preservation (NTHP))

Every year, the NTHP announces a list of America's 11 Most Endangered Historic Places, carefully selecting sites from all across the country that have significant ramifications. This year, Manchester Farm<sup>3</sup> in Avella, Pennsylvania, is on that list. When the coal rights were sold in

---

<sup>3</sup> See Site Visits for description

1917, the family retained three acres under the house and immediate outbuildings, but if the surrounding area is mined, it would impact outbuildings and water supplies (springs), and the ability to continue the historic farm operation. **(Gallas)**

Alliance Resource Partners recently indicated in writing that it would not longwall under the 400 acres of the Manchester Farm but the proposed mining plan for the Penn Ridge Mine shows longwall mining under approximately half of the farm. This could damage both historic structures and the spring fed water supply. In addition, there is the potential for adverse effects of mining infrastructure such as power lines and access roads cutting through the farm; ventilation shafts within the historic property, and the processing plant which will be immediately adjacent to the farm. **(Gallas)**

Pennsylvania has significant archeological sites that are thousands of years old. It is not possible for Native American cultural resources dating back as early as 7000 BC to be truly ‘repaired’ if they are harmed by longwall mining. Damage to prehistoric archaeological sites, or cracks in 18th century windows are irreparable. Instead, potential damage to these resources should be avoided. **(Gallas)**

Act 54 fails to provide for “the preservation of natural, scenic, historic and aesthetic values of the environment,” as is required in Article 1, Section 27 of the Constitution of Pennsylvania. Act 54 should be revised to *protect* our invaluable resources from destruction by prohibiting subsidence. Act 54 currently allows for the natural and cultural resources that define Pennsylvania—and make it a safe, attractive place to live, work and visit—to be damaged. The problem with Act 54 is it doesn’t prohibit damage, and historic resources are hard if not impossible to mitigate and repair without loss of historic value. **(Hammerstedt)**

The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) has been in place since 1966 in order to protect the public interest from damage caused by coal mining. The BMSLCA originally prohibited mining under homes, churches, schools, and other important buildings—including historic properties. As a result of Act 54, the Department of Environmental Protection (DEP) now commonly issues permits for longwall mining despite the clear potential for adverse effects to historic properties. Rather than truly considering alternatives that could avoid or minimize these harmful impacts, the agency allows mine operators to jump directly to mitigation, handling “planned subsidence” with “subsidence control and mitigation plans” that only provide for repair or compensation to the property owner for the damage. Only in very rare cases where it is determined that there will be “irreparable damage” to a historic property—and the property owner does not consent to that damage—does DEP consider withholding permits to mine. **(Hammerstedt)**

The Thomas Kent, Jr. Farm (Waynesburg, Greene County) is an example that clearly illustrates the harmful impacts of longwall mining, and the fact that the review process in Pennsylvania is broken. The 1851 brick farmhouse and its associated outbuildings and fields are listed in the National Register of Historic Places. The property was listed in “Pennsylvania At Risk” in 1999, as the property owners engaged in a multi-year legal battle to try to protect their farm. In 2001, the Advisory Council on Historic Preservation entered into a Memorandum of Agreement (MOA) with the federal Office of Surface Mining, Pennsylvania Historical and Museum



Commission, and DEP allowing longwall mining to proceed under the farm, provided that appropriate restoration be completed should damage beyond that provided for in the DEP-approved subsidence control and mitigation plan occur. In other words, despite a monumental legal battle to prevent damage to the farm, longwall mining was still allowed to occur, and the property was “restored” afterwards. **(Hammerstedt)**

It is fortunate that the MOA was in place, because the damage done to the Kent House was well beyond that repaired under a typical mitigation agreement. The property owners said that if they had not had enough money, hired the right attorney, been willing to battle with the coal company and dedicated all of their time to ensuring the proper restoration of their property, their house would have been destroyed. Even with 16 ropes and 5 cables to stabilize the house during mining, and monitoring the building every three hours, more than 15,000 bricks had to be removed and an entire corner of the house reconstructed. Large crews spent months working to repair the damage done by longwall mining, causing tremendous stress and frustration to the property’s owners. Today, the owners of the Kent Farm feel they “basically won” the battle to save their farm and say that the house “cosmetically looks restored,” although they still hear subsidence cracking and worry that the house is still in danger. They say it took a lot of work and cost a lot of money to preserve their house, and they feel badly for the people that aren’t able to save their own historic homes from damage or destruction. **(Hammerstedt)**

Manchester Farm in Washington County is the type of historic property that characterizes rural Pennsylvania. What makes Manchester Farm very unique and tremendously important is the intact collection of original buildings along with the tools, implements, letters, and other objects that tell the story of the lives of Isaac Manchester and his descendants. The farm is even more significant as an example of a working farm that successfully blends modern agricultural techniques with what is cherished of the past. **(Hammerstedt)**

This exceptional example of a Pennsylvania farm is now threatened by longwall mining. Act 54 and the resulting standard of permitting longwall mining as long as it does not cause “irreparable damage” gives no consideration to the workmanship that is embodied in the buildings or the significance that exists in the landscape features and water systems, or to the cultural significance of the authenticity that is captured by that property. These features that contribute to the integrity of the Manchester Farm are impossible to truly “repair.” If this farm, including the buildings, the pastures and fields, or the water supply is damaged, hundreds of years of hard work and stewardship by the Manchester Family will be destroyed. Even if their house survives, the legacy that they have diligently preserved for generations will be lost. The craftsmanship embodied in the buildings that were painstakingly constructed by Isaac Manchester, formerly a house builder in Newport, Rhode Island, and John McGowan, a master cabinetmaker who traveled from Philadelphia to assist Isaac Manchester, will be twisted and cracked, only to be “repaired” by modern men with modern tools and skills. The materials used to build the barn, granary, springhouse and distillery, which were made on site or hauled in on horseback, will be replaced by mass-produced items from the chain lumber store. Centuries of tending livestock and fields will sink into the earth and become a bog. The springs that were the impetus for originally settling this site will dry up. And with these changes, the spirit of the place will evaporate. Even if the farm is “repaired,” the integrity and authenticity that make Manchester Farms so special will be lost. **(Hammerstedt)**

In 2010, Preservation Pennsylvania included the Isaac Manchester Farm in Independence Township, Washington County in its *Pennsylvania At Risk* list. And in June 2011, the National Trust for Historic Preservation included Manchester Farm (Plantation Plenty/Isaac Manchester Farm) on its list of *America's 11 Most Endangered Places* because it is threatened by subsidence damage from longwall coal mining, in an attempt to draw national attention to the issue. Now Preservation Pennsylvania and the National Trust for Historic Preservation are working together with their partners to help protect Manchester Farm and other historic properties from the senseless destruction allowed by Act 54. The fate of Manchester Farm is not yet sealed. If the CAC recommends that DEP revise Act 54 to protect historic properties, this and many other historic properties will be preserved. **(Hammerstedt)**

## **Water**

**Emily Bloom**, Coalfield Projects organizer, Center for Coalfield Justice, read a letter from a resident of Whiteley Township, Greene County, who was undermined in February 2010. While they expected some water problems, they never expected it to be as bad as it has been. The stream filled in with silt and spread across the yard, which remains swampy. DEP and the coal company each said the other was responsible to take care of it and take the first step. After filing a complaint with DEP, they are finally going to fix the stream, once the Army COE signs off. The water has killed trees, caused mosquito problems, damaged their rental unit, caused stress and anxiety. At the time they signed a settlement agreement for subsidence damages to the house, the coal company assured them they were obligated to fix the creek; to date, they have not.

**Carol McIntire**, resident of Franklin Township, Greene County. Her home and farm are going to be longwalled. She always thought a valid sale came between a willing seller and a willing buyer, but she was told she had to come to terms or the company would seek injunctive relief under Act 54. Her aquifer was punctured and bentonite dumped in it. She needed a water buffalo. She doesn't want municipal water because of Marcellus Shale TDS in public water and it can't be removed. She also has to have methane vented from the well, so she contributes to global warming. Minerals should not be allowed to be severed from the surface unless they are actually extracted during the tenure of the seller, so the seller gets both the revenue and the impacts. Act 54 is not working for her.

**Rebecca Trigger**, owner of a 135 acre Green County Farm, moved here in 1994; she did not grow up in the area, had no idea about mining and thought she was protected since she has a historic property. She doesn't want jobs lost, but she does want mining done responsibly. Her house was undermined in 1999 and her house was very badly damaged. The company made it clear to her that if she didn't go along with them they will make her life hell. She had asked to have her house banded. Even when she offered to pay for it herself, the coal company told her if she did that they wouldn't be able to tell if damage was them or the band. She regrets not doing it; she had renovated the house prior to mining, and then had to do it again. She had a gas well that heated her house and others, when it was plugged, the others lost out and no one was compensated. Don't overturn Act 54, but do more to protect people's rights. It does not protect from pain and suffering.

An **anonymous** landowner with a farm property in Washington County reported his/her water supplies associated with Crafts Creek headwaters were impacted by underground mining activity at the Enlow Fork Mine in the fall of 2006 and the spring of 2007. The mining operator and DEP were notified that the creek was dewatered<sup>4</sup> after Panel E-15 was undermined in 2007. To date, the water in this section of Crafts Creek has not been restored. Stream augmentation projects have been implemented on two sections of Crafts Creek over the past 18 months, though one section of a restoration area is being addressed for the second time, while significant land subsidence directly above this augmentation zone has re-occurred for the third time.

The property's water sources are critical to farming operations. Underground mining has compromised these resources, impacting the environment and impacting my farming business. Act 54 needs to be amended to provide better protection for all Pennsylvanians, and eliminate the loopholes that allow the mining operators to continue mining without addressing the costly damages to the environment and the integrity of Pennsylvania's agriculture infrastructure.

### **Miscellaneous**

**Michael Nixon**, Pennsylvania Chapter of the Sierra Club, and Citizens Coal Council, stated that, under the Pennsylvania Constitution, DEP (and CAC) are both trustees of Pennsylvania's natural resources and environment. He stressed the role of CAC and acknowledged time, dedication and effort put forth by the CAC volunteers.

Under Act 54, DEP is to submit a report every five years regarding implementation and impacts of the underground mining program. Earlier reports were of lesser quality; the latest report includes much more complete and coherent data, but the data was not analyzed. In addition, he noted that the relatively recent water resource TGD has resulted in much better data.

***The following was referred to DEP for response; DEP's response is included following the statement:***

**Jaycie Carter** reported that she had filed an environmental complaint with the DEP about a portion of Templeton Run that is located in the Templeton Run Conservation Greenway that traverses a local park where there have been reports of people passing out for unknown reasons, with visual observations of bubbling water in the stream, and complete lack of birds or flies present in the park for weeks and months. An adjacent resident has fallen ill with doctors unable to diagnose the illness. It is possibly due to methane migration as a result of underground mining since there is no drilling activity in the area at present.

Initial responses received from DEP inspectors in charge of water and air quality indicated that there would be no addressing of possible compromised water and air resources by longwall mining operations at this time. The response from a manager of DEP's Air Quality Division, stated that he is "short on inspectors for such a minor complaint, but if there was a compressor station on the property, that would be another story". This response unfortunately has become

---

<sup>4</sup> The Schmid and Company report prepared for Citizens Coal Council in July 2010 provides details of the dewatering of Crafts Creek, beginning on page 104 and continuing through page 116.

very representative of our state's environmental protection agency, and symptomatic of a compromised agency that at times forgets who and what they are charged with protecting—the people and the environment, not the industry that is creating the damage and destruction.

In conversation with the inspector, she relayed that an adjacent resident was fearful that his well contained methane. He responded with, “They all say that.” So, if the CAC still wonders why people don't trust the industry, or even attempt to contact state agencies, and prefer to take their chances with the federal agencies, this inspector's attitude would be one very good reason.

Therefore, for the citizens of southwestern Pennsylvania, it is imperative that the CAC recommend revision of Act 54 to include greater degree of oversight and enforcement by state agencies, while lessening the loopholes in the law for the mining industry.

It appears to be both a legal and ethical duty of CAC to recommend to the Governor and the General Assembly the need for reformation of Act 54 to protect all that lies on the surface of Pennsylvania, and not simply continue to protect the status quo of incredible profits of the coal seams that lie below.

***DEP response: Surface Subsidence Agent Ben Dillie investigated the allegations on October 28, 2011 that unknown gases at the East Finley Township Park may have caused three people to pass out. Ben took readings in the park and along Templeton Fork stream, which runs through the park, for three gases that could be a problem: carbon monoxide, hydrogen sulfide, and methane. Ben also took readings for the oxygen concentration. He did not detect any of the three gases of concern and oxygen concentrations were normal. There was no evidence of gases bubbling up through the stream or ground during this investigation. California staff had observed methane gas venting from the ground and stream in the area of park at the time of undermining in 2004-2005, but it stopped shortly thereafter.***

***Township officials that were contacted during the investigation were aware of the ‘rumors’, but had no knowledge of this actually occurring. No emergency calls were ever placed by the Township for this type of incident at the park, nor has the Washington County Hazmat Team ever responded to any such incidents.***

***DEP's findings were sent to Ms. Carter and no further questions or complaints were received.***

#### **Recommendations for Amending Act 54**

Testifiers made a variety of recommendations for amending Act 54:

***Room and pillar vs. longwall:*** Supporters of longwall technology argue that room and pillar causes subsidence many decades after the mining is done and the operator is gone, while longwall causes almost immediate subsidence that must be fixed right away. According to the

latest 5-year report, less than 10% of the damaged homes and wells actually are being repaired<sup>5</sup>, and a lot of other damage is occurring that isn't covered by Act 54. On the other hand, according to records of the Pennsylvania Mine Subsidence Insurance (MSI) Programs<sup>6</sup>, of an estimated 1 million homeowners statewide at risk of damage from subsidence from abandoned coal mines, in 2009, there were only 58,000 MSI policyholders and the average annual premium was only \$109. From 2000-2009 there were a total of 160 MSI claim payouts, which averages 16 damages per year from all abandoned mines throughout all of Pennsylvania (by comparison, the Act 54 report says there were on average 91 structures damaged by active mines each year, 85 from longwall mining and 6 from room and pillar). These data clearly contradict one of the central arguments used to justify the need for Act 54, that subsidence from abandoned room and pillar mines is a serious problem. **(Kunz)**

- *The Pennsylvania Mine Subsidence Insurance Program should be revamped and expanded to cover damages from active underground mines.* The MSI Program is accumulating a huge and ever increasing fund balance because subsidence damage from abandoned room and pillar mines is minimal across the Pennsylvania coalfields. It should be expanded to cover damage from active underground mines, and to water supplies in addition to structures. Payouts should be made only for actual repair/restoration, and not simply as cash compensation. Mine operators should be required to pay the annual premiums for every property that they propose to undermine. By expanding the number of participants in the MSI Program, the average cost of premiums will remain low. If widespread mining damage occurs, resulting in numerous claim payouts, the premiums paid by coal operators will rise; this incentivizes them to avoid and minimize impacts.

### *Standards*

Implementing the following recommendations into law will create a strong incentive for mine operators to improve mining technology in ways that will both maximize coal extraction and minimize environmental impacts and community disruption, providing the balance needed on this issue. **(Kunz)**

- *“No damage to surface structures” should be an established standard.* Act 54's allowance for damage to one property owner by another is not working, and may even be unconstitutional. The prior standard of protection—no damage to surface structures—should be reestablished and include all structures in place at the time a mine application is made no matter when it was built.

---

<sup>5</sup> According to the current report, of 300 damaged structures for which mining was found liable, the resolution whereby the structure was 'repaired' occurred in only 6% of the cases (page V-14). Of 269 damaged water supplies for which a mining company was deemed liable, the resolution 'recovered/repaired' accounted for only 9% of the cases (page VI-6).

<sup>6</sup> MSI covers damage caused by subsidence or mine water breakouts from abandoned mines; compensation for valid claims is based on the actual cost to repair or replace covered damages, up to the total value of the coverage purchased.

- “No damage to water supplies” should be an established standard. By prohibiting damage to all surface structures (see above), water supplies will largely be protected as well; it would be better to specifically prohibit damage to water supplies and structures.
- *Require immediate assessment and correction of all impacts if damage occurs to protected structures, water supplies or streams as a result of underground mining.* When a structure and/or water supply are damaged by underground mining, other less obvious damages often occur as well, including damages to nearby streams, springs, wetlands, land, aquifers, etc. Going forward, whenever a structure, water supply or stream is directly damaged by mining, the operator should be required to immediately assess all direct and indirect damages that have occurred. Damages to structures and water supplies should be required to be repaired within 6 months<sup>7</sup>; damages to streams within one year. If these timeframes are not met, the operator should be required to cease operation of the mine until all of the damages have been successfully repaired. Damages resulting from underground mining should be limited to those instances which are truly accidental, and then should be repaired expeditiously.
- Prohibit longwall mining under historic properties. **(Hammerstedt)**
- Taxpayers should never have to cover the costs of any damages caused by mining operators’ longwall mining activities, i.e., Duke Lake, Interstate 79. **(Carter)**
- Room and pillar mining techniques required to be used in all environmental justice, agrobusiness, and shallow seam areas, along with other high-impact areas, to avoid irreversible impact to water resources and surface structures. **(Carter)**
- Require DEP Subsidence Agents to meet with all landowners to be impacted by underground mining to discuss issues associated with potential impact and damages prior to any communication between landowner and mining operator agent/representatives. **(Carter)**
- Require DEP to conduct educational seminars in local communities prior to underground mining activity to inform residents about the options provided them in Act 54, especially in Environmental Justice areas. **(Carter)**
- Percentage of permit fees to fund premiums for subsidence insurance for all landowners undermined. **(Carter)**
- Percentage of permit fees, or establishment of state-funded grant program, to provide for citizens’ legal assistance when citizens, who owned their properties prior to 1994, are forced to file an Act 54 claim in the court system when regulatory avenues have not rectified the issues associated with damages defined in the Act. **(Carter)**

---

<sup>7</sup> According to the report, the average time to final resolution for structures impacted by room and pillar mining was 3.5 months; for water supplies it was 4.7 months. Thus, 6 months should be an achievable timeframe. Temporary assistance should be made available immediately upon damage, and should continue until final repairs are complete.

- Percentage of permit fees to provide funding resources for community conservation projects in all areas impacted. **(Carter)**

Section 6 needs to be rewritten with a significantly narrowed focus, limiting pro-industry interpretations of law by regulatory agents, and providing for fewer loopholes for mining operators to avoid reparation compensation and/or restoration: **(Carter)**

- Require mining operators to hire only bonded and licensed contractors for reparation and restoration activities.
- Require estimates for reparation work be provided by a third party reputable expert selected by property owner.
- Require full bonding deposits. Eliminate all self-bonding of mining activities by all mining operators.
- Bonding values to be determined by total risk to surface areas, structures, and all water sources, to include surface and underground flow. Values of replacement to be made available upon request by citizens to be impacted by specific permit activity.
- Values of replacement of surface areas, structures, and water supplies to be determined by third party assessor, and noted in mining permit application.

DEP's regulations should seek to achieve a healthy and sustainable balance between the impacts and benefits of underground mining. However, Act 54 does not successfully achieve this balance, and should be revised to protect our natural and cultural resources by prohibiting subsidence, while still allowing underground mining. **(Hammerstedt)**

Section 6 of Act 54 allows the mining operator to continue operations with any number of violations. CCJ supports the analysis and recommendations prepared by Schmid and Company<sup>8</sup> on the third report on behalf of Citizens Coal Council. **(Griffin)**

CAC should recommend that Act 54 be reexamined based on the data gathered over the last 17 years, and that the state legislature convene hearings to address Act 54's deficiencies. **(Gallas)**

CAC should work with DEP to prohibit longwall mining under historic properties. **(Hammerstedt)**

There are many examples of unacceptable impacts and 'solutions', some of which Council saw on its site visits. For example, the dewatered stream at the Jones property that has been 'augmented' with three public water lines for four years. Another example is the situation at

---

<sup>8</sup> "The Increasing Damage from Underground Coal Mining in Pennsylvania: A Review and Analysis of the PADEP's Third Act 54 Report," April 17, 2011.

Ryerson Station, which everyone warned about at the very onset. (**Aimee Erickson**, Executive Director, Citizens Coal Council)

At a recent Congressional hearing in Charleston, a representative of Consol asserted that it has undermined 172 square miles in West Virginia and Pennsylvania with NO hydraulic impacts. In actuality, there are studies (e.g. by USFWS) documenting dewatering that is occurring. Citizens need to be heard. CAC should go to the General Assembly and request changes to Act 54 to protect coalfield citizens in southwestern Pennsylvania. (**Erickson**)

Require a greater degree of oversight and enforcement by state agencies and lessen the loopholes in the law for the mining industry. (**Carter**)

A full investigation of the application of Act 54 should be a requirement of the Act 54 law, and not simply in a 5-year report generated by an industry-subsidized academic institution, and automatically filled with unqualified and inadequate data presented by a self-monitoring industry, and an understaffed regulatory agency. If that investigation needs to be directed by the Citizens Advisory Council, the Office of the Inspector General, or even the FBI, will need to be determined, but a completed and comprehensive investigation of mining operations and regulatory inspection activities related to Act 54 is long overdue. (**Carter**)

## **Conclusion**

Council thanks DEP and the many organizations and individuals who helped to organize the site visits and meetings, and who shared their time, their concerns and their stories. We appreciate the strongly held feelings on the multiple sides of these issues and hope that we have accurately captured all perspectives.

As noted in the introduction, Council is developing a separate report specifically responding to DEP's most recent 5-year report under Act 54. We recognize the complexities and challenges involved in deliberating and reconciling competing recommendations and approaches. Many of these issues identified during the regional meeting are part of our deliberations, including:

- Staffing
- Communication with affected parties
- Timeliness of damage response
- Water impacts
- Historic properties
- Cumulative impacts
- Property rights and responsibilities

This Regional Report as well as the expected separate report responding to DEP's most recent 5-year report under Act 54 will be posted on Council's website located at [www.depweb.state.pa.us/cac](http://www.depweb.state.pa.us/cac).





## INFORMATION REQUEST FORM

### Pennsylvania Constitution Article I, Section 27

*The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.*

If after reading this report you would like to receive more information about the Council *or* would like to be added to our electronic mailing list, please use the form provided below and send it (i.e. mail, fax or electronic mail) to:

**Citizens Advisory Council**  
13th Floor RCSOB  
P.O. Box 8459  
Harrisburg, PA 17105-8459  
Fax No. (717) 772-5748  
Email: mahughes@pa.gov

---

YES, I would like to receive more information about the Council or a particular issue.

I am interested in \_\_\_\_\_  
\_\_\_\_\_

YES, I would like to be added to the CAC's electronic distribution list. My address is:

Name \_\_\_\_\_ Organization \_\_\_\_\_

Internet/other electronic mail address \_\_\_\_\_