

4 February 2016

Public Comments to the CITIZENS ADVISORY COUNCIL

Good morning. My name is Stephen Kunz, and I am a Senior Ecologist at Schmid and Company, Inc.¹ I want to make a few comments this morning on the recently-released assessment by a Workgroup of the Department on the latest *Act 54 Report*. These comments were prepared on behalf of the Citizens Coal Council.²

1. Although the 4th Act 54 Five-Year Report was compiled by the University of Pittsburgh ("Pitt"), it was prepared *on behalf of* the Department, which by law (by ACT 54) is responsible for it.

This Workgroup assessment, an "internal review" of the *Act 54 Report*, in part takes exception to some of the things discussed in the Department's *Act 54 Report*; it disputes some of its findings and it rejects some of its recommendations.

So one important question is: Just how much oversight and involvement did the Department have in preparing its *Report*?

Here's an example: On page 12, the Workgroup *clarifies* that the main GIS mining database known as BUMIS only contains information about *impacted* features, not about *all features* undermined. This apparently was a significant misunderstanding on Pitt's part, and not only during this most recent assessment but during the 3rd Act 54 assessment which Pitt also assisted in preparing. Because the information in BUMIS has been crucial to these Act 54 reviews, this fundamental fact is something the Department should have straightened out long ago.

This raises another important question: Why didn't the Department become aware of this misunderstanding when it reviewed drafts of its *Report*? Four months elapsed between when Pitt delivered its final product to DEP in late August 2014 and when the Department released its *Report* in late December 2014. The kinds of important clarifications and corrections that this Workgroup raises should have been addressed before the *Report* was released to the public. Now a year later, it seems as if the Department's 4th *Act 54 Report* is inaccurate and still incomplete.

2. This internal Workgroup assessment gives the *appearance* of being a Comment/Response document, but clearly it is not. A typical Comment/Response document actually would have been much more useful.

Instead, the Workgroup has **combined and summarized** *some* of the comments and recommendations into its own list of "issues", and has **ignored** others, including some from the CAC.

3. Most of these Workgroup recommendations are very weak or vague, and none has a specific timetable for implementation.

This internal assessment gives the *appearance* that things are being done, when in

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reality, nothing much *is* being done. It has lots of hollow statements like:

- " *Consider* research into evaluating ____ "
- " *Consider* improvements in ____ "
- " *Examine* how to improve ____ "
- " *Plan* to *coordinate* action on changes "
- " *Encourage* the use of spreadsheets "
- " *Consider* more frequent stream sampling..."

Just buzzwords --- no teeth and no timetables.

Every recommendation should have a **specific action item** tied to it and a **specific time-frame**. Otherwise, none of the fundamental changes that are urgently needed to protect landowners, surface waters, and groundwater has any hope of being implemented any time soon.

4. One Workgroup recommendation is: "*Review the TGD on stream protection to assess changes that need to be made.*"

This is an excellent recommendation, but it was already made (even more forcefully) by Pitt, CCC, and others. Even so, there are two problems with it: (1) Formal changes to the TGD realistically could take 2 or 3 years to be adopted and then another year or two to be implemented. (2) As noted in the *4th Act 54 Report* nearly 10 years after the 2005 TGD was adopted, neither the mine operators nor the Department is consistently following its directives. So a new or revised TGD is not a silver bullet, especially if it is ignored. Likewise, the USGS/PADEP streamflow modeling study now underway isn't scheduled to be completed until September 2017; so any changes coming out of that will take several more years to occur.

5. We are now halfway through the 5th Act 54 study period (Aug. 2013-Aug. 2018).

The Workgroup (on page 3) says of its assessment:

[it] will be reviewed by DEP executive management to **consider** and **provide guidance** on development and implementation of a **work plan**. The next [Act 54] report will include an assessment on the extent to which DEP followed through on the **work plan**.

In effect, we now have one more round of proposed recommendations, but this effort has simply served to delay any real action or improvements by more than a year. That's just **not acceptable**. It's already too late to be able to evaluate the effectiveness of any of these recommendations in the *5th Act 54 Report*, even if they all could be implemented today, so we're looking at the *6th Act 54 Report* (coming out around 2024 or 2025) at the soonest.

There *should* be a Work Plan in place already, but there isn't, so it must be prepared ASAP. What's needed are specific timeframes set out to accomplish specific tasks. Plus, there needs to be an active, ongoing evaluation of progress --- the Department should update the CAC on its progress with specific Work Plan tasks every 2 or 3 months (at minimum).

We've now had four Act 54 Reports, covering 20 years, and yet documented longwall mine-related damages keep getting worse. The Department's weak response each time serves only to further delay any meaningful action, perhaps intentionally, until the remaining coal has been mined out --- something that Pitt points out is likely to occur in only a few more decades.

We need to work together to push the Department to make meaningful changes.

The Citizens Coal Council thanks the CAC for the work you do
and for the opportunity to provide these comments.