



April 8, 2020

Sent via e-mail

Pennsylvania Department of Environmental Protection
Attn: Patrick McDonnell, Secretary
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105

Re: Pre-mining and Post-mining Surveys during COVID-19 Crisis

Dear Secretary McDonnell,

On behalf of the Mountain Watershed Association (“MWA”) and Center for Coalfield Justice (“CCJ”), we are writing to express our concern regarding the health and safety of coalfield communities and ongoing coal mining operations during the COVID-19 crisis. MWA and CCJ are non-profit membership organizations dedicated to protecting public and environmental health in southwestern Pennsylvania. It has come to our attention that coal mine operators are continuing to perform pre-mining (and potentially post-mining) surveys of resident’s homes despite warnings from public health officials. We understand that coal mining operations have been deemed “essential” and we believe the Department of Environmental Protection (“Department”) should immediately issue temporary guidance to better protect residents that may be undermined during the COVID-19 crisis.

Section 89.141 of the underground coal mining regulations requires coal mine operators to identify the structures, facilities or features that may be damaged by mine subsidence in their permit application. 25 Pa. Code § 89.141(d). Operators are required to conduct pre-mining surveys of structures that may be impacted by underground coal mining operations. 25 Pa. Code § 89.142a(b), (f). The pre-mining survey must document the existing conditions of each structure and must be completed prior to the time that a structure falls within a 30-degree angle of draw of underground mining operations. 25 Pa. Code 89.142a(b)(1)(i)-(ii). To the extent that underground mining operations cause damage to overlying structures, the operator is required to repair such damage post-

mining. A coal mine operator will not be required to repair a structure or compensate a structure owner for damage if the landowner denied the operator access to the property upon which the structure is located to conduct a pre-mining survey or a post-mining survey of the structure and surrounding property. 25 Pa. Code § 89.144a(a) – (b); *see also* 25 Pa. Code § 89.142a(b)(2) (A coal mine operator will be relieved of its duty to conduct a pre-mining survey if the landowner refuses access to the site.)

We strongly believe pre-mining and post-mining surveys should be safely conducted for landowners if coal mining operations are to continue during the COVID-19 crisis in order to protect residents' homes and water supplies. However, coal mine operators often conduct pre-mining surveys many months or years prior to undermining. These pre-mining surveys can be and should be conducted in a manner that better balances the protection of public health and the protection of coalfield residents' homes and water supplies.¹

Therefore, we urge the Department to issue temporary guidance that includes the following:

- Pre-mining surveys of structures and water supplies that do not fall within a 30-degree angle of draw of anticipated underground mining operations in the next six (6) months should be delayed. In other words, pre-mining surveys should not be conducted immediately if underground coal mining operations will not impact a resident's home or water supply in the next six (6) months. We believe delaying unnecessary pre-mining inspections reduces the risk of exposure and is consistent with the recommendations by public health officials.
- To the extent that pre-mining surveys of structures and water supplies located within a 30-degree angle of draw of anticipated underground mining operations in the next six (6) months have not yet been completed, those pre-mining surveys should be conducted in a manner that protects the health of the landowner and the surveyors. To that end, the Department's temporary guidance should require surveyors to wear a mask and gloves. Coal operators should also ensure that surveyors do not have any symptoms of COVID-19 *and* have not been exposed to anyone with symptoms of COVID-19 at any time prior to the survey.² Finally, pre-mining inspections should be conducted using the fewest number of surveyors needed to complete a thorough yet efficient pre-mining survey. We believe 2-3 surveyors can complete most, if not all, pre-mining surveys.

¹ Surveyors did not wear protective gear (e.g. gloves or masks) during recent pre-mining surveys of residents' homes.

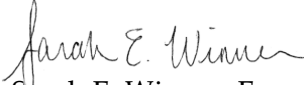
² We now know that some individuals exposed to COVID-19 are asymptomatic. Therefore, we believe that if an individual surveyor has had potential exposure to the virus they should not conduct pre-mining or post-mining surveys regardless of whether or not they are showing symptoms.

- Post-mining surveys of damaged structures should be completed as soon as practical so that necessary repairs to residents' homes are not unduly delayed. Again, those post-mining surveys should be conducted in a manner that protects the health of the landowner and the surveyors.

In this global health crisis many coalfield residents are understandably worried about having to allow a pre-mining or post-mining survey, which necessitates strangers to enter and inspect all parts of their homes. If a resident wishes to delay their pre-mining or post-mining survey until a safer time, the coal mine operator should not interpret such delay as a refusal. The Department should not allow coal mine operators to use this global health crisis to alleviate their responsibility to repair structures and water supplies that are damaged by underground coal mining operations. Therefore, particularly we also urge the Department to establish and publish a point contact within the Department for those residents that may have questions, concerns or complaints related to pre-mining and post-mining surveys while Department offices are closed.

Thank you for your consideration. CCJ and MWA would be willing to meet with the Department (and respective counsel if necessary) via phone or video conference in order to discuss what more can be done to ensure the minimum level of protection required for coalfield communities during this challenging time. If you have any questions, please contact us anytime.

Sincerely,



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Sam Robinson, Deputy Chief of Staff
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John Stefanko, Deputy Secretary, Office of Active and Abandoned Mine
Operations