

Dear Senator,

Many of the undersigned organizations have written to you in the past expressing our opposition to SB 411. We want to bring to your attention an important issue regarding this bill.

The activities that would occur as a result of the enactment of SB411 are far-reaching and require comprehensive analysis and yet the General Assembly has not conducted any study or analyses of the potential impacts. This is a consequential mistake that must be avoided.

The General Assembly would violate the Pennsylvania Constitution if it enacts SB411 without any environmental impact assessment. As the Pennsylvania Supreme Court made clear last month in the Act 13 litigation, the General Assembly has an obligation under Article I, Section 27 of the Pennsylvania Constitution to perform environmental impact analyses when it enacts legislation that affects the reserved environmental rights of Pennsylvania citizens and public natural resources. Performing investigation and analysis in advance of acting, and taking seriously the outcome of those analyses, is part of the General Assembly's obligation under the Constitution to avoid infringing on each citizen's right to a clean, healthy environment, and to act as a trustee (a fiduciary) of the people's public natural resources.

Article I, Section 27 declares:

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 trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

As the Supreme Court recognized, the General Assembly must “**consider in advance of proceeding** the environmental effect of any proposed action on the constitutionally protected features.” Robinson Twp., Washington Cnty. v. Com., --- A.3d ---, 2013 WL 6687290, *33 (Dec. 19, 2013) (*emphasis added*). Further, the General Assembly has fiduciary obligations as a trustee of public natural resources who must conserve and maintain those resources for present *and future* Pennsylvanians. The General Assembly must consider before acting whether the proposed legislation will lead to the “degradation, diminution, or depletion” of the people's public natural resources either now, or in the future. *Id.* at *38, *40 & n.46; see also 20 Pa.C.S. § 7203(a) & (c)(5); In re Scheidmantel, 868 A.2d 464, 492 (Pa. Super. Ct. 2005) (“trustee's action must represent an actual and honest exercise of judgment predicated on a genuine consideration of existing conditions”); 20 Pa.C.S. § 7773. The General Assembly must also consider whether the legislation places higher environmental

burdens on some Pennsylvania citizens than others, which violates a trustee's obligation to treat the beneficiaries equitably in light of the trust's purposes. Id. at *40, *59.

As you know, SB411 would amend the Environmental Good Samaritan Act (EGSA) and extend immunity for those involved in withdrawing Acid Mine Drainage (AMD) in connection with oil and gas operations and other uses offsite. SB411 would incentivize the spread of AMD-polluted water to other streams and watersheds in Pennsylvania. The bill does not promote the reduction and abatement of AMD pollution, which is the purpose of EGSA. In fact, SB411 would harm streams and communities where the AMD water is being withdrawn transferring water out of source watersheds, impacting water supplies upon which the people and economies rely in these areas. Voluminous withdrawals would deplete aquifers that sustain local water wells and healthy stream flows essential to the restoration of these vulnerable waterways that groups are struggling to bring back under the EGSA. There has not even been an analysis to show how much of this water could replace fresh water that is currently being used in well drilling and hydraulic fracturing, one of the rationales the bill is based on.

These are substantial impacts and important inquiries that require thorough analysis before SB411 is voted on. We ask you, as a Pennsylvania Senator who is bound to safeguard the public natural resources for our benefit and the benefit of future generations and who is bound to insure that all Pennsylvanians are treated fairly and equally, not disproportionately burdening some for the benefit of others, that you fully analyze the potential impacts of SB411 and not move ahead without that knowledge as the Senate is now poised to do. The Supreme Court has very recently reminded the General Assembly of this obligation in Robinson Twp., Washington Cnty. v. Com., please carefully consider their ruling and recognize the relevance to SB411.

We remain opposed to SB411 and we ask that SB411 be tabled immediately so the required environmental impact assessment can be conducted. If you do not table the bill, we urge you to vote no.

Sincerely,

Allegheny Defense Project, Ryan Talbott, Executive Director

Beaver County Marcellus Awareness Committee, Celia Janosik, Treasurer

Berks Gas Truth, Karen Feridun, Founder

Center for Coalfield Justice, Patrick Greuter, Esq., Executive Director

Citizens for Clean Water, Susquehanna County, Pa., Vera Scroggins

Citizens for Water, Joe Levine, Director

Clean Water Action - Pennsylvania, Steve Hvozdoch, Marcellus Shale Coordinator

Communities United For Rights and Environment, Kenneth Joseph Weir, President

Damascus Citizens for Sustainability, Barbara Arrindell, Director

Delaware Riverkeeper Network, Maya van Rossum, the Delaware Riverkeeper and Tracy Carluccio, Deputy Director

Earthworks, Nadia Steinzor, Eastern Program Coordinator

Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR), Robert E. Hughes, Executive Director

Environmental Justice Committee, Thomas Merton Center, Wanda Guthrie, Chair

Food and Water Watch, Sam Bernhardt, Pennsylvania Coordinator

Friends of the Harmed, Dana Dolney

Green Party of Pennsylvania, Jay Sweeney, Chair

League of Women Voters of PA, Susan Carty, President and Betty Tatham, Vice President, Issues and Action

Marcellus Outreach Butler, Diane Sipe, Director

Marcellus Protest, Briget Shields

Mountain Watershed Association, Beverly Braverman, Executive Director

NYH2O, Buck Moorhead, Chair

PA Forest Coalition, Richard A. Martin, Coordinator

Paradise Gardens and Farm, J. Stephen Cleghorn, PhD.

Peach Bottom Concerned Citizens Group, Maria Payan, Executive Director, York County, PA

PennEnvironment, David Masur, Executive Director

Pennsylvania Alliance for Clean Water and Air, Jenny Lisak, Co-director

Protect Eagles Mere Alliance, Shannon Baker, President

Protect Our Children, Diane Sipe

Protect Our Parks, Gloria Forouzan

Protecting Our Waters, Iris Marie Bloom, Executive Director and Coryn Wolk, Deputy Director

Responsible Drilling Alliance, Robert Cross, Board President

Shale Justice Coalition, John Trallo, Executive Committee

Sierra Club, Allegheny Group, Peter Wray, Chair, Conservation Committee

Sierra Club PA Chapter, Joanne Kilgour, Chapter Director

Upper Burrell Citizens Against Marcellus Pollution, Ron Slabe, Debra Borowiec, Co-founders

Westmoreland Marcellus Citizens' Group, Jan Milburn, President

Youghiogheny Riverkeeper, Krissy Kasserman

If you have any questions, please contact tracy@delawareriverkeeper.org