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 brought up for a vote. 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. One need only look at the recent coal industry chemical spill in West Virginia where over 300,000 people had their drinking water contaminated because of lax regulatory oversight and undue corporate influence at the expense of citizens and watersheds. (See http://www.washingtonpost.com/blogs/wonkblog/wp/2014/01/21/five-big-questions-about-the-massive-chemical-spill-in-west-virginia/). A vote for SB411 would invite similar disasters in Pennsylvania – and then immunize the responsible parties from liability. Such legislation violates the public trust and threatens the health and wellbeing of Pennsylvanians.

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
Altoona Watershed Protection, Wayne E. Nelms
Anacostia Watershed Society, Daniel C. Smith, Public Policy and Advocacy Director
Beaver County Marcellus Awareness Committee, Celia Janosik, Treasurer
Berks Gas Truth, Karen Feridun, Founder
Center for Coalfield Justice, Patrick Greter, Esq., Executive Director
Citizens for Clean Water, Susquehanna County, Pa., Vera Scroggins
Citizens for Water, Joe Levine, Director
Clean Water Action - Pennsylvнаia, Steve Hvozdovich, 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 PA Coalition for Abandoned Mine Reclamation (EPCAMR), Robert E. Hughes, Executive Director
Elk County C.A.R.E.S. (Citizens Advocating Responsible Environmental Stewardship), Mike Kamandulis, President
Environmental Action, Jesse Bacon, Field Organizer
Environmental Justice Committee, Thomas Merton Center, Wanda Guthrie, Chair
Food and Water Watch, Sam Bernhardt, Pennsylvania Coordinator
Friends of the Harmed, Dana Dolney
Gas Drilling Awareness Coalition, Carol Culver, Executive Board Member
Gas Truth of Central PA, Nathan Sooy, Founder
Green Party of Pennsylvania, Jay Sweeney, Chair
League of Women Voters of PA, Susan Carty, President and Betty Tatham, Vice President, Issues and Action

Lehigh Valley Gas Truth, Julie Ann Edgar, Organizer

Marcellus Outreach Butler, Diane Sipe, Director

Marcellus Outreach Middlesex, Dianne Arnold

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

Pennsylvania Certified Organic, Lee Rinehart, Director of Education and Outreach.

Pennsylvania Council of Churches, The Rev. Sandra L. Strauss, Director of Public Advocacy

Pennsylvania Interfaith Power and Light, Cricket Hunter, Executive Director

Pennsylvania State Division of the Izaak Walton League of America, Don Robertson, President

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

Save Our Streams PA, Laurie Barr, Founder
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