
Dear Chairman Bingaman:

August 3, 2009 marked the 32nd Anniversary of the signing of the federal Surface Mining Control and Reclamation Act (SMCRA), however, for nearly all of its existence, this important law has not been enforced. Sadly, lack of enforcement has had a profound affect on the lives of coalfield residents in Pennsylvania – on the water we drink, our rights as property owners, our safety from blasting, landslides and floods.

SMCRA is the law Mr. Pizarchik will be called upon to enforce as the Director of the Office of Surface Mining Reclamation and Enforcement (OSM). His record, however, has demonstrated a consistent pro-industry bias, and an unwillingness to enforce the law when it conflicted with mining interests.

The following policies and regulations have been implemented during Pizarchik's tenure as PA Department of Environmental Protection (PA DEP) primary regulatory counsel to the mining program and then Director of the Bureau of Mining and Reclamation (since 2002):

- ✓ Mr. Pizarchik has promoted valley fills. In 2001, as primary regulatory counsel, Pizarchik supervised the drafting of PA DEP regulations implementing Act 114 that weakened the state's stream buffer zone rule allowing the filling of stream valleys in PA.
- ✓ Mr. Pizarchik advocates the law should allow surface coal mines to be used as major dumping operations. An exhaustive three-year study of fifteen mines receiving coal ash in Pennsylvania, *Impacts on Water Quality from Placement of Coal Combustion Waste in Pennsylvania Coal Mines (2007)*, by researchers and groundwater scientists for the Clean Air Task Force found that the PA DEP's monitoring data indicated the ash was contaminating nearby water supplies in ten of the mines. Mr. Pizarchik has aggressively defended the PA DEP program allowing power plant waste to be buried in unlined pits and old mines without regulatory safeguards, despite the threat to groundwater and the 2006 findings by the National Research Council. (NRC). The NRC concluded that this practice should be regulated with isolation requirements, comprehensive monitoring and cleanup standards.
- ✓ Pizarchik's PA DEP coal ash mine fill program found deficient by PA Law Judges and the Interior Board of Land Appeals (IBLA). Both administrative law judges for the state of PA (Hazleton decision, 2006) and more recently of the Interior Board of Land Appeals (June 2009) have found the monitoring and safeguards necessary to protect water supplies from coal ash are missing from permits issued under Pizarchik's mine ash placement program. And in the latter case, the IBLA found the public water supply of Tremont, PA is threatened by these deficiencies – a fundamental violation of surface mining laws. SMCRA requires the issuance of permits for surface mining to demonstrate, through effective monitoring and safeguards, that such damage will be avoided.

- ✓ Mr. Pizarchik has been resistant to citizen input. PA DEP mining policies under Mr. Pizarchik systematically removed the “public” from the federally required public participation. In direct contradiction to the citizen provisions of SMCRA - and the intent of Congress to encourage citizen participation – Mr. Pizarchik has actively discouraged public testimony. For selected mining permits: While the PA DEP and mine operators are given the opportunity to express their views in a public forum; citizens are not permitted to speak publicly. Instead, citizens are required to submit their questions or comments one-on-one, with no witnesses allowed to hear their testimony or the state’s response. For all mining permits: PA DEP Bureau of Mining and Reclamation policies require public hearings to be held during workday hours only – restricting access for working people. Evening hearings are not held. Citizens have diligently opposed these procedures since their adoption in 2006. And as recently as the winter of 2008, Mr. Pizarchik continues to advocate for these exclusionary policies.

- ✓ Mr. Pizarchik has shown little regard for SMCRA’s purpose to minimize harm. During an “Act 54” meeting about long wall mining – a process immensely destructive to homes, businesses, farms and surface water supplies - Mr. Pizarchik stated that people willingly sold their coal 100 years ago, and people in the coalfields should have known what they were getting into when they moved into the coalfields. This is a rationale frequently used by the coal industry to justify their most harmful practices. However, the focus of regulatory enforcement should be compliance with SMCRA laws and minimizing harm, not defending arrangements made 100 years ago.

These examples offer a disturbing picture of why Mr. Pizarchik is the wrong choice to be the Director of the US Office of Surface Mining. Quite clearly, Mr. Pizarchik’s record demonstrates that he has not viewed the protection of our property, health and environment as a priority to be treated with the same emphasis under SMCRA as the need to mine coal as easily as possible.

We believe Mr. Pizarchik will not effectively enforce SMCRA and therefore should not be confirmed as the Director of the Office of Surface Mining and Regulatory Enforcement (OSM) by the US Senate Energy and Natural Resources Committee.

We ask that the Committee fully consider Mr. Pizarchik’s record and that a panel of affected PA coalfield citizens be given the opportunity to testify at his confirmation hearing.

Thank you for your time and consideration.

Respectfully submitted,

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