



### ***Mining the Data:***

## ***Pizarchik's Decisions Have Been Contrary to Fact, Overturned by Administrative Law Judges, and Detrimental to Pennsylvania***

Joseph Pizarchik, Director of the Bureau of Mining and Reclamation in the Pennsylvania Department of Environmental Protection (PADEP) has been nominated to be Director of the U.S. Office of Surface Mining Reclamation and Enforcement (OSM). Mr. Pizarchik has championed a program to dump coal ash into Pennsylvania coal mines as “a beneficial use” despite the fact that it waives safeguards such as liners, leachate collection, and cleanup standards that scientists believe are necessary to protect groundwater and surface water from contamination by the ash. At his Senate confirmation hearing, Mr. Pizarchik categorically denied that this practice endangers water supplies, stating: “*we have not had any evidence of pollution of groundwater caused by the use of coal ash at these mine sites.*”

**THE TESTIMONY<sup>1</sup>:** “[T]he use of coal ash at these mine sites in Pennsylvania is not polluting the groundwater and has not polluted the groundwater.”

**THE FACTS:** Pizarchik’s minefilling program has caused extensive contamination of groundwater.

- The Clean Air Task Force’s (CATF) review of the impacts of coal ash minefilling in Pennsylvania found that contamination of groundwater was greater *after* ash placement at 10 of the 15 minefill sites studied.<sup>2</sup>
- These conclusions of extensive contamination from coal ash minefilling were corroborated by three Pennsylvania scientists: two hydrogeologists and a professor of chemistry versed in coal chemistry.<sup>3</sup>

**THE TESTIMONY:** “*In each of those cases that we have looked, we have not had any evidence of pollution of groundwater caused by the use of coal ash at these mine sites.*”

**THE FACTS:** At the PADEP, Pizarchik has dismissed evidence verifying contamination from minefilling as “outlier data,” yet his refusal to objectively review undesirable facts does not eliminate the overwhelming evidence of contamination.

- PADEP simply dismissed high data values in the CATF Pennsylvania minefill report as “outliers” without following procedures outlined in Pennsylvania guidance as well as federal guidance for assessing and verifying outliers or extending the “outlier” label to any data values that were low.<sup>4</sup>

**THE TESTIMONY:** *“As far as being open-minded . . . I don’t go off and do things for one particular interest group or another. That would be contrary to the law which I am charged with executing.”*

**THE FACTS:** Pizarchik has consistently supported and lobbied on behalf of weaker environmental standards to benefit coal mining interests.

- Pizarchik, in his official capacity with PADEP, unsuccessfully lobbied the EPA to weaken Effluent Limitations Guidelines for manganese for the coal mining point source category.<sup>5</sup>
- PADEP opposed federal standards for regulating minefills, stating that federal regulations were not needed for the minefilling of coal ash. These are the very regulations he would be charged with enforcing as the head of the Office of Surface Mining Reclamation and Enforcement.
- A panel of scientists and legal experts from the National Research Council reached a consensus that the safeguards enforced by PADEP and other states for ash minefilling were not adequate and that a national regulation was needed to set minimum enforceable standards for all states to follow.<sup>6</sup> In June, 2009, Pizarchik proposed a regulation (Chapter 290 to Pennsylvania’s residual waste regulations) that includes loopholes to allow PADEP to continue ignoring key recommendations of the NRC to isolate ash from water in mines and monitor it sufficiently.

**THE TESTIMONY:** *“There are monitoring wells that are put in place to monitor the groundwater to make sure the ash does not leach any contamination out onto the site.”*

**THE FACTS:** Monitoring plans approved by the Pennsylvania Department of Environmental Protection (PADEP) under Pizarchik have been ruled incapable of detecting offsite migration of contaminants by administrative law judges.

- Holding that PADEP “acted unlawfully and unreasonably by approving the Project with a deficient groundwater monitoring plan,” Pennsylvania’s Environmental Hearing Board stated:
  - “The system is simply not capable of detecting contaminants that leave the site. If the Project results in groundwater pollution, no one will know it. The monitoring plan merely creates the illusion of protection, which is arguably worse than no monitoring at all. This is truly unacceptable, and the Department acted unreasonably and in violation of the law in concluding otherwise.”<sup>7</sup>
- Similarly, the U.S. Interior Board of Land Appeals just ruled that PADEP’s failure to properly monitor ash contamination threatened public water supply wells in the Borough of Tremont.<sup>8</sup>

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<sup>1</sup> Joseph Pizarchik, Confirmation Hearing Before the Senate Environment & Public Works Comm. (Aug. 6, 2009).

<sup>2</sup> *CATF, Impacts on Water Quality from Placement of Coal Combustion Waste in Pennsylvania Coal Mines* vi (July 2007).

<sup>3</sup> The three scientists are Charles H. Norris and Robert A. Gadinski, two hydrogeologists are registered as professional geologists in the state of Pennsylvania and W.D. Richey, a Professor Emeritus of Chemistry from Chatham College who also studied coal chemistry at the U.S. Department of Energy's laboratories now known as the National Energy Technology Laboratories near Pittsburgh. *See id.* at Certification Seal 1, Certification Seal 2, and Subject Matter Expert Statement.

<sup>4</sup> *See* PADEP, Statement Regarding the Clean Air Task Force Report (Nov. 9, 2007) (on file with author), *and* PADEP, Bureau of Watershed Management, *GROUNDWATER MONITORING GUIDANCE MANUAL*, December 1, 2001, page 42, and Office of Solid Waste, Permits and State Programs Division, US Environmental Protection Agency, Washington, D.C. *Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities, Addendum to Interim Final Guidance*, July 1992, pages 82 & 83.

<sup>5</sup> EPA, Response to Comments for the Preliminary 2008 Effluent Limitations Guideline Program Plan - DCN 06109, at 170-72 (Sept. 2008), available at [www.regulations.gov](http://www.regulations.gov) (Document ID No. EPA-HQ-OW-2006-0771-1812).

<sup>6</sup> *See generally* National Research Council, *Managing Coal Combustion Residues in Mines* (2006).

<sup>7</sup> *Citizen Advocates United to Safeguard the Environment, Inc. v. PADEP*, EHB Docket No. 2006-005-L (consolidated with 2005-329-L) (issued Nov. 2, 2007) at 1, 40, 41.

<sup>8</sup> *Robert Gadinski*, 177 I.B.L.A. 373 (2009).