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Federal Cancellation of PA Mining Program Sought for Violations of Federal Law

U.S. Senate Urged to Reject Obama Nominee: PA DEP Mining Chief, Joseph Pizarchik a Bad Choice to head Federal Mining Office

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(Washington, PA) – United States Secretary of the Interior, Ken Salazar, received official notice of the Citizens Coal Council’s intent to file suit under the federal Surface Mining Control and Reclamation Act (SMCRA) against Interior’s Office of Surface Mining Reclamation and Enforcement (OSMRE). The legal notice is for failure to enforce SMCRA in its oversight of Pennsylvania’s federally-delegated responsibilities. Citizen lawsuits are permissible under federal SMCRA laws, if regulatory agencies fail to enforce the legal requirements or fail to perform their mandatory duties as required by federal law. In this case, CCC has notified Secretary Salazar of PADEP’s fundamental mining program failures, whereby he must take back direct control of the Pennsylvania mining program.

CCC’s legal notice cites Pennsylvania’s Department of Environmental Protection (PA DEP) for chronic and deliberate violations of SMCRA through PA DEP’s pattern and practice of disposing millions of tons of coal ash – also known as coal combustion waste, or CCW – into coal mines. Coal ash contains many hazardous chemicals and poisonous metals, such as arsenic and lead, in highly concentrated quantities.

”Despite longstanding citizens’ complaints and voiced concerns, PADEP has failed and continues to fail to implement, administer, enforce and maintain its approved state regulatory mining program in accordance with SMCRA and the federal regulations that implement that important landmark federal environmental law,” said CCC Board member, Michael Nixon, a public interest environmental lawyer and consultant.

In addition to the obvious public health threats and concerns about coal ash mine dumping, Council Coordinator, Aimee Erickson, also points out: “This is just one of the many reasons that President Obama’s nomination of PA DEP’s Joe Pizarchik to be OSMRE Director is unacceptable to so many people – in Pennsylvania and nationwide. The President needs to find the right person for such an important job.”

About Citizens Coal Council: The Citizens Coal Council is a national organization that works to protect people, homes, water, communities and the environment from coal mining damage, and cradle-to-grave public health threats from coal use and waste disposal.

(More: CCC’s Legal Notice of Intent to Sue OSMRE & backgrounder attached)

**Citizens Coal Council Background: SMCRA Notice to
US Department of Interior (DOI) Regarding Failures of PA DEP**

The numerous specific coal ash management violations cited by the Citizens Coal Council include:

PA DEP is engaged in a pattern and practice of failing to perform its legal duty to withhold approval of permit applications to deposit coal combustion waste (CCW) at coal mines without first performing a cumulative surface and ground waters impact assessment based on scientifically sound and reasonable baseline data;

PA DEP is engaged in a pattern and practice of failing to perform its legal duty to withhold approval of permit applications to deposit CCW at coal mines without first performing a cumulative surface and ground waters impact assessment based on scientifically sound and reasonable baseline data; and

PA DEP is engaged in a pattern and practice of failing to perform its legal duty to require, for each coal mine at which the agency authorizes placement of CCW, a performance bond sufficient to assure completion of the reclamation plan in the event of a permittee's forfeiture or financial failure.

With respect to the practice of depositing CCW in coal mines generally, the National Research Council ("NRC") assessed the inherent risks in a congressionally-mandated report ("NRC report").¹ Since publication of the NRC Report, CCC and others have repeatedly informed PA DEP of existing environmental damage caused by improperly regulated placement of CCW in Pennsylvania coal mines, often in direct contact with groundwater or surface water. In 2007 the Clean Air Task Force released a report extensively documenting groundwater and surface water contamination from numerous CCW deposits across Pennsylvania.²

The Pennsylvania Report provides substantial evidence, from PADEP's own files, showing or strongly suggesting that the practice of depositing CCW in coal mines puts the waste into contact with groundwater and that adverse impacts result from that contact. Water easily and quickly infiltrates the spoil left in mines where CCW is placed, and fractures from blasting become underground channels that allow polluted groundwater to flow rapidly offsite. As a result, toxic heavy metals and other CCW contaminants can and do leach into aquifers and connected surface waters.

(MORE)

¹ *Managing Coal Combustion Residues in Mines*, Committee on Mine Placement of Coal Combustion Wastes, National Research Council of the National Academies, 2006. http://books.nap.edu/openbook.php?record_id=11592

² See Clean Air Task Force, *Impacts on Water Quality from Placement of Coal Combustion Waste in Pennsylvania Coal Mines* (2007) ("Pennsylvania Report"). http://www.catf.us/projects/power_sector/power_plant_waste/paminefill/

As the Pennsylvania Report states in its Executive Summary (at p. v):

For over 20 years, the Pennsylvania Department of Environmental Protection (PADEP) has been promoting the placement of large volumes of coal combustion waste (CCW) in active and abandoned coal mines as a method of addressing acid mine drainage, increasing soil fertility and filling mine pits and voids. There is growing concern, however, that placement of CCW in mines may be contaminating groundwater and surface waters with harmful levels of toxic chemicals, including *aluminum, chloride, iron, manganese, pH, sulfate, total dissolved solids and toxic levels of trace elements such as arsenic, nickel, selenium, lead, mercury, molybdenum, cadmium, copper, chromium, antimony, boron and zinc*. Congressional concern about potential adverse impacts of coal ash in mines lead to the recent study of this issue by the National Academies of Science. Many have raised concerns that CCW contamination could result in water quality that is more deteriorated than the adverse conditions created by acid mine drainage. [emphasis added].

The Pennsylvania Report shows that pollution levels in affected waters down gradient and downstream of certain CCW deposits in Pennsylvania now exceed applicable water quality and Safe Drinking Water Act standards. Worse yet, the full extent of ongoing water contamination in Pennsylvania is unknown due to inadequate monitoring of CCW deposits and the streams that they affect. The Pennsylvania Report presents compelling evidence and analyses of serious environmental damage at five separate coal mines in four different Pennsylvania counties at which CCW has been used as mine fill. The Pennsylvania Report also found substantial evidence of pollution that appears to be attributable to CCW at five additional mines.

Following release of the Pennsylvania report, CCC and other organizations embarked on a lengthy effort to persuade PADEP to implement the Commonwealth's approved state regulatory program under SMCRA in a manner that effectively regulates CCW placement in surface coal mining and reclamation operations. In two April 2009 letters to PADEP, representatives of CCC and other organizations formally called the agency's attention to the Pennsylvania Report, summarized its findings, and laid out the legal requirements that the approved Pennsylvania state program and other laws impose on PADEP with respect to regulation of CCW placement in coal mines.

PADEP responded by miss-characterizing positions that CCC and other organizations had taken and by avoiding the questions those organizations had raised. PADEP attempted both to discredit data taken from its own files and to distort the organizations' interpretation of the data. Despite the longstanding problems with PA DEP's coal ash policies, Mr. Nixon notes that:

“We do appreciate that over the past year the new PA DEP Secretary, John Hanger, has directed that DEP staff enter into a direct dialogue now in progress with groups concerned about DEP's coal ash policies. But, we need actual and enforceable regulations protective of the public health and our environment and not just the usual half-baked technical guidance documents unduly influenced by industrial coal ash producers, biased agency insiders, and their self-serving avoidance and pseudo-scientific fictional assumptions.”

(More: CCC's Legal Notice of Intent to Sue OSMRE, Attached)