

October 12, 2003

**"Tale of sludge spill still untold - Too many questions, no accountability"**

[\[print as .pdf 60K\]](#)

Poke a stick into the bottom of Coldwater Creek, and something dark roils up like clouds before a storm. The black substance was dumped three years ago when a 60-foot-wide hole opened in an impoundment at Massey Energy's mountaintop removal strip-mine in Martin County.

The disaster was predictable and avoidable. Yet, three years later, no one has been held accountable. No coal company executives have been called to the witness stand. No government official has owned up to a single mistake.

Massey says the cleanup has cost \$58.8 million, most paid by its insurers. But the spill's path is not clean and never will be. Sludge still swirls when it rains, discoloring streams with blackwater. The spill's residue is widely visible on creek banks and the ground.

Massey at one point blamed the catastrophe on "an act of God."

But we recently obtained a transcript of confidential testimony to federal investigators by a consulting engineer who said that Massey fully expected another fracture after a large breakthrough in 1994. He said that U.S. mine safety officials also knew the '94 breakthrough was just a preview.

In testimony to investigators for the U.S. Mine Safety and Health Administration on Feb. 1, 2001, Scott Ballard, an engineer whose company worked for Massey's Martin County Coal Co., explained that a mere 15 feet of natural barrier separated an underground mine from the point where the impoundment broke in '94, dumping 100 million gallons of mostly water into the mine. Another breakthrough was virtually inevitable, he explained, given the mine's nearness.

So the company and its consultants designed a plan to strengthen the mine's seals and bulk up the impoundment using rock and sticky coal waste that was supposed to clog future breakthroughs. The goal was to minimize outflow and damage.

"It was never intended to prevent a breakthrough in any form or fashion," said Ballard. "In fact, the question was asked during the (MSHA) review process: Will this prevent it? And the answer was emphatically no. There's no guarantees. There's nothing here that will prevent a breakthrough."

Ballard named five coal company managers who were fully aware the plan would not prevent breakthroughs.

Why MSHA went along with such a risky plan, how far up the decision was made and why the agency ignored its own expert advice have never been answered.

After the 1994 spill, Larry Wilson, an engineer in MSHA technical services, advised closing the impoundment unless a "very conservative design" was employed to prevent breaks. The only sure solution, he said, was filling in the underground mine -- an expensive undertaking.

Also unheeded was a Kentucky permit reviewer's recommendation to close the impoundment. After the '94 break, he said no more waste should be added. Seventy feet had been added by Oct. 11, 2000.

That's when the flow of water within the impoundment finally ate a hole in the side. The clog strategy described by Ballard did not work; neither did the seals. Slurried waste poured into the old mine, blowing open two portals on opposite sides. A worker checking a belt barely missed being hit by the onslaught of slurry.

An estimated 306 million gallons of slurry poured from the impoundment. About 245 million gallons burst from the mine into Wolf and Coldwater creeks, tributaries of the Big Sandy River's Tug Fork. The spill visibly fouled 100 miles of waterways, devastated aquatic life for 70 miles and threatened water supplies in 10 Kentucky counties.

Davitt McAteer, MSHA's director, sounded the alarm about the dangers posed by 100 other coal impoundments in Appalachia built near underground mines and appointed a team to investigate the Martin County spill.

When President Bush took office in January 2001, Elaine Chao, Sen. Mitch McConnell's wife, became Secretary of Labor with responsibility for MSHA. David Lauriski, a Utah coal operator, became MSHA's director. Lauriski hired a McConnell staffer, Andrew Rajec, who attended the MSHA investigators' meetings and now works in Chao's office.

By April 2001, Jack Spadaro, an engineer and superintendent of MSHA's training academy, resigned from the investigation saying the team's work was being obstructed.

He filed a complaint with the Labor Department's Inspector General. The IG eventually concluded "that certain events, as reported by Mr. Spadaro, actually occurred" but did not constitute a coverup.

The IG also reported that the investigating team wanted to cite Martin County Coal for eight violations. A "contentious process," said the IG, reduced the violations to two for which the company was fined \$110,000.

An administrative law judge threw out one of the violations in August. MSHA is appealing. For now, the company stands guilty of just one infraction: failing to report a marked increase in leakage from the mine, a warning of the coming break.

One wonders if the six citations that the team wanted to issue were, as Spadaro claims, stronger and more substantive than the two finally lodged against the coal company. If the IG shed any light on that, it must be in the half of the 25-page report that has been withheld from the public.

MSHA brass have put more energy into punishing Spadaro than punishing any wrongdoing that might have contributed to the spill.

First he was accused of credit-card abuse, but the charge was dropped when the Mine Safety News reported that he had promptly reimbursed private charges while MSHA had written off \$82,787 in personal charges by 50 other employees never punished.

In June, he was again accused of breaking MSHA rules, put on paid leave and barred from his office at the agency's training center in Beckley, W. Va. Spadaro was fired last week. He is appealing the action as retaliatory.

MSHA's review of its own role in Martin County found weaknesses in the agency's performance but concluded these weaknesses were not a cause of the disaster.

Three years later, the streams are recovering. Hydroseeded vegetation gives them almost a landscaped look. Aquatic life is rebounding amazingly well, considering its habitat was smothered. After the twin traumas of the spill and cleanup by 350 pieces of heavy equipment, environmental officials decided the streams would be less damaged by leaving the remaining slurry than by digging it out.

Restoration work, scheduled this fall for the hardest-hit upper reaches of Coldwater, will remove some slurry residue, officials say. But the streams are never expected to be free of it.

Three years later, it's clear the impoundment should not have been permitted in 1985 and should have been closed after the 1994 breakthrough.

Kentucky, which Massey has paid \$3.5 million for environmental damages and costs, concluded that the company misrepresented the thickness of the barrier between the impoundment and underground mine.

That misrepresentation could be one of several fruitful lines of inquiry for a federal grand jury in Ashland that has subpoenaed Massey records related to the spill. That's if the coal-friendly Bush administration will allow a real investigation.

Three years later, it's also clear that government vigilance is really the only barrier between Kentucky creek bottoms and 8 feet of sludge. That's as long as industry puts the downstream population and environment at risk rather than disrupt coal production to shut down a dangerous operation.

Coming up: Martin County after the deluge, or the outrage no one noticed. Floods and failures in the coalfields.

- 1972: A wall of sludge and water roar down Buffalo Creek in West Virginia after a dam at a Pittston strip-mine collapses; 125 die, 4,000 are homeless.
- 1981: Sludge sweeps down on Ages in Harlan County from a Duke Power subsidiary, Eastover Mining. Nellie Ball Woolum, 65, is killed in her sleep.
- 1994: First breakthrough at Massey Energy's Martin County Coal Co. sends 112 million gallons of mostly water into an underground mine.
- 1996: Two impoundments in Virginia collapse into old mines, causing extensive environmental damage. MSHA alerts industry and surveys impoundments for breakthrough potential.
- 2000: Martin County breakthrough fouls 100 miles of waterway along Kentucky-West Virginia border.
- 2002: Nine Quecreek miners in Pennsylvania survive three days trapped in a flooded chamber after they cut into an old mine that was not shown on maps.