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"Reckless disregard: Settlement doesn't clear coal firm, MSHA"

Editorials
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It was probably the last chance to hold anyone accountable for the massive coal waste spill that fouled 100 miles of Eastern Kentucky waterways.

And, once again, Massey Energy subsidiary Martin County Coal wriggled out of any blame -- thanks to the federal government and Circuit Judge Daniel Sparks.

Sparks relied heavily on a whitewashed federal report in reaching his decision to disallow punitive damages for owners of property that was buried under sludge when the company's coal waste impoundment broke on Oct. 11, 2000.

Sparks said he found no evidence that Martin County Coal showed a reckless disregard for those who lived downstream from the company's slurry pond. Sparks' ruling left the company liable for actual damages only.

We understand that legal definitions sometimes differ from common understandings. But by most common understandings, Martin County Coal's actions epitomize reckless disregard:

- Dumping an additional 70 feet of waste into the impoundment after it broke in 1994, in a preview of what was to come six years later.
- Misrepresenting the thickness of the barrier between the impoundment and an underground mine from which 245 million gallons of slurry exploded when water ate a hole in the pond.
- Disregarding warnings from individual government regulators that the impoundment was unsafe.
- Ignoring a doubling of flow from the impoundment in the year before the break, a sign that a rupture was imminent.

Despite all that, Sparks found that the company followed "standard industry practice" by hiring a consultant to advise on repairing the impoundment and then following the advice.

If that's the highest standard to which the industry can be held, people who live downstream from coal operations are in a world of hurt.

The whitewashed report on which the judge relied was issued by the U.S. Mine Safety and Health Administration, over protests by MSHA engineer Jack Spadaro that the agency was covering up for the company. A member of the investigating team, Spadaro was eventually driven from the agency.

The judge accepted as fact MSHA's questionable conclusion that the company did not mislead regulators about the thickness of the barrier, even though the state of Kentucky concluded the company did mislead.

U.S. attorneys were unable or unwilling to obtain any indictments in the case, despite a criminal investigation by the U.S. Environmental Protection Agency and grand jury hearings.

U.S. attorneys were on hand at the Martin County Courthouse last week -- not to be sure all the facts came out, but to try to block testimony by Spadaro and a government-hired private engineer who discovered that only 5 feet of earth, not the 70 feet claimed by the company, buffered the impoundment in places.

With the judge and federal lawyers against them, the property owners decided to take the confidential settlement offered by the company rather than let a jury hear their case.

The company was probably thrilled to pay the plaintiffs and avoid more embarrassing disclosures or an appeal of the judge's limit on damages.

But most of all to avoid accountability. The five-year statute of limitations ends next month -- a disgraceful ending to a disaster that should have been avoided.