

April 11, 2001

Mr. Gordon S. Heddell, Inspector General
Office of the Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5502
Washington, D.C. 20210

Dear Mr. Heddell:

On October 11, 2000, a coal slurry dam, owned by Martin County Coal Corporation, failed and discharged three hundred million gallons of coal slurry and water into two tributaries of the Tug Fork River bordering West Virginia and Kentucky. Later in October 2000, I was appointed by the Assistant Secretary Labor for Mine Safety and Health, along with several other very experienced engineers and geologists, to conduct an investigation of the Big Branch Coal Slurry Impoundment failure. The investigation continued from early November 2000 to January 2001. Nearly fifty witnesses were interviewed, Federal and state documents were reviewed and the accident investigation work appeared to be moving satisfactorily. In late January 2001, a new team leader, Timothy Thompson, was appointed. Since that time, there have been repeated attempts by Timothy Thompson, Michael Lawless, Deputy Administrator of Field Operations for Coal Mine Safety and Health; and Marvin Nichols, Administrator for Coal Mine Safety and Health to intervene regarding the scope and content of the accident investigation report. Mr. Thompson did not want to examine the role of the Mine Safety and Health Administration in the review and approval process that led up to the coal slurry dam failure. Specifically, Mr. Thompson stated early in his tenure as team leader that he "didn't want any arrows pointed in the direction of Marvin Nichols" or the District Manager who approved the impoundment plan.

In June 1994, following a previous slurry impoundment failure, a report of the Technical Support Division by the Mine Safety and Health Administration was completed, but the recommendations of the engineers were never fully implemented. Approval for continued slurry pumping was given by the District Mine Safety and Health Administration Office.

I have discussed this matter with other team members, all of whom have years of experience in investigating accidents, reviewing plans and specifications for coal refuse dams, and in conducting geotechnical analysis. We have learned that Martin County Coal Corporation submitted incomplete and inaccurate information to the Mine Safety and Health Administration over a number of years, but Mr. Thompson does not want to issue any violations to the company or to thoroughly discuss this shortcoming. He said in a meeting on April 3, 2001, that both Michael Lawless and Marvin Nichols had instructed him to avoid any discussion in detail regarding the review and approval process. After leaving the meeting room and having a telephone conversation with Michael Lawless, Mr. Thompson returned and ordered that two paragraphs referring to the MSHA technical review of plans for modification to the slurry

impoundment be removed from the accident investigation report. He said that Mr. Lawless did not want anything referring to MSHA's review and approval of the plan (which later failed on

October 11, 2000) and that those statements should be removed. He repeated "We're not doing an internal investigation" and attributed these instructions to Marvin Nichols and Michael Lawless. This statement was witnessed by eight other accident investigation team members.

I have chosen to resign from the investigation of the accident at Martin County Coal. I am very concerned that there is a concerted effort by Marvin Nichols, Michael Lawless and Timothy Thompson to leave unreported unexamined serious defects revealed during the investigation of Martin County Coal Corporation plan submittals and the Mine Safety and Health Administration review and approval process in reference to this impoundment. I do not believe the accident investigation as it is now being developed will offer a complete and objective analysis of the accident and its causes. I do believe that there is an unwarranted attempt to obstruct the gathering of information and a complete evaluation that will be necessary to prevent similar types of disasters from occurring in the future.

There are more than two hundred similar types of coal refuse impoundments in the United States that are constructed over top or adjacent to underground mine workings. There are an additional 400 or more other coal refuse impoundments consisting of water and slurry that, if a failure occurs, may create situations in loss of life. The Martin County Coal slurry impoundment failure on Big Branch Hollow could have killed at least one miner who was working in the mine only a few minutes prior to the inundation of mine workings by the coal slurry. In addition, on both Cold Water Creek and Wolfe Creek the general population of residents were at risk during the impoundment failure. Approximately one hundred people were at risk. I believe the potential hazards related to these structures is great and a thorough and complete analysis of the October 11 accident is imperative to prevent any future disasters.

I also want to discuss concerns about another accident on January 31, 2000 in which the investigation was obstruction by top management in the agency.

This accident involves a fatal roof fall at the Metal/Nonmetal mine at Sahuraita, Arizona near Mesa, Arizona. A miner had made reported complaints about unsafe conditions to the MSHA Field Office in Mesa, Arizona. The complainant wanted to remain anonymous so that there would not be retaliation from the company if MSHA conducted an investigation.

An inspector and supervisor in the Mesa, Arizona office were aware of the complaints and, according to reports, took little or no enforcement action to protect the miner's life. The complainant was killed in a roof fall accident on January 31, 2000 and two other coworkers were seriously injured. The complainant's family sued MSHA and the mine operator. The inspector who failed to respond adequately, was fired by MSHA. The supervisor who had full knowledge of the seriousness of the hazards was transferred out of the Metal/Nonmetal Division into the Coal Mine Health and Safety Division in Denver at the direction of Marvin Nichols, Administrator of Mine Safety and Health.

Mr. Nichols personally intervened in creating a position in Denver to find a "safe place" for James Kirk, the supervisor. I know this because Mr. Nichols called me and wanted me to hire Donald Gibson an electrical supervisor, who worked in the Denver office, so that he would have a position to which he could transfer Mr. Kirk from the Mesa, Arizona Field Office. Donald Gibson transferred from Denver, Colorado to Beckley, WV to make room for Mr. Kirk.

These are only two examples of the kind of obstruction and interference now taking place under the direction of Marvin Nichols and Michael Lawless. It is apparent that the main objective is to deflect or obscure any hint of Agency negligence that may have resulted in loss of life or serious injury to workers or threats to the public.

I believe, if you decide to conduct an investigation into these matters, you will find there are people within the Agency, other than myself, who would be willing to provide you with the necessary information.

I am writing reluctantly because I am certain there will be attempts at reprisal for my revealing these serious problems. I believe, however, it is my responsibility as someone who has thirty-five years of experience in mine health and safety. We should always keep in mind that our purpose is to do everything we can to protect the health and safety of miners and the public.

I trust you will keep this letter confidential. If you would like to have someone to discuss these matters with me, my phone number is (304) 256-3200.

Sincerely,



Jack Spadaro
Superintendent

National Mine Health and Safety Academy

April 16, 2001

Mr. Gordon S. Heddell, Inspector General
Office of the Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5502
Washington, D.C. 20210

Dear Mr. Heddell:

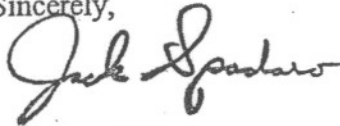
This is a follow-up to my letter dated, April 11, 2001, regarding the investigation of the coal slurry dam failure at Martin County Coal Corporation on October 11, 2000. I am enclosing a copy of two news articles that were written by an investigative reporter for the Charleston West Virginia Gazette. In these articles, you will see the conclusions I raised in my letter of resignation from the accident investigation team and in my April 11 letter to you are based on fact. The Technical Support Division from the Mine Safety and Health Administration warned two managers in the Coal Mine Safety and Health Division about the potential failure of the slurry impoundment. Top Mine Safety and Health officials including Marvin Nichols, Administrator for Coal Mine Safety and Health; Michael Lawless, Deputy Administrator of Field Operations for Coal Mine Safety and Health; Timothy Thompson, team leader (Coal Mine Safety and Health District Manager, Morgantown, West Virginia) have directed an effort to exclude evidence that is discussed in the news articles. I have now learned that Robert A. Elam, Acting Assistant Secretary of Labor for Mine Safety and Health was also included in this effort to exclude evidence.

On Friday, I was informed that Robert Elam and Marvin Nichols withheld from the accident investigation team a crucial memorandum that had been written by the head of the Technical Support Division. I also learned that Mr. Elam and Mr. Nichols plan to retaliate against me and anyone else who speaks out on this issue. Mr. Elam has indicated to others within the Agency that he intends to find a replacement for me in my position as Superintendent of the National Mine Health and Safety Academy and to terminate my employment. I intend to take my complaints regarding personnel actions to the Office of Special Counsel, Merit Support Protection Board.

I do believe, before Mr. Elam and Mr. Nichols seek to withhold any more evidence, that it is essential for an independent and objective review of these matters to be initiated as soon as possible.

Please contact me at (304) 256-3200 if you need any additional information.

Sincerely,



Jack Spadaro
Superintendent
National Mine Health and Safety Academy

- Enclosure 1: "Safety Expert Questions Agency Inaction, " The Charleston Gazette, April 12, 2001.
- Enclosure 2: "Agency Warned About Kentucky Dam Danger in 1999," The Charleston Gazette, April 15, 2001.
- Enclosure 3: "Mine Experts Fears Whitewash in Slurry-spill Probe MSHA Employee Requests to Quit Investigation Team," The Courier-Journal Louisville Kentucky, April 10, 2001
- Enclosure 4: "Engineer Faults MSHA in Probe of Slurry Spill, " The Courier Journal Louisville, Kentucky, April 11, 2001.
- Enclosure 5: "Federal Expert Seeks to Quit Team Looking Into Slurry Spill," Lexington Herald-Leader, April 11, 2001.
- Enclosure 6: "MSHA Inspector Hints at Cover-Up, Resigns from Impoundment Investigation", The Mountain Citizen, April 11, 2001.
- Enclosure 7: "Coal-Slurry Investigator's Resignation Cause for Alarm, " Lexington Herald-Leader, April 12, 2001.

March 4, 2002

Mr. Gordon S. Heddell, Inspector General
Office of the Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5502
Washington, D.C. 20210

Dear Mr. Heddell:

This is a follow-up to my letters to you of April 11 and April 16, 2001 regarding the investigation of the Martin County Coal Corporation's coal slurry discharge in Martin County, Kentucky on October 11, 2000 (see enclosure).

I thought it appropriate to provide you with additional information concerning MSHA's final report of that accident and provide you with additional information regarding a recent methane gas explosion at Jim Walter Resources No. 5 Mine in Alabama which caused the death of 13 coal miners.

Martin County Coal Investigation

The Mine Safety and Health Administration published the Agency's investigation report in October 2001. In the week preceding the publication, I was contacted by Dave D. Lauriski, Assistant Secretary of Labor for Mine Safety and Health, who had learned that I refused to sign the report for the reasons I explained to you in writing in my earlier letters. I told Mr. Lauriski that I couldn't sign the report because the investigation had been severely compromised by Tim Thompson, District Manager, Coal Mine Safety and Health District 3, and Mike Lawless, who is now Acting Administrator for Coal Mine Safety and Health. Mr. Lauriski stated, "I am in a hard spot here, and I need your signature on that report."

I continued to refuse to sign the report because it did not contain a sufficient explanation of both the mining company's prior knowledge of the hazards at the coal slurry impoundment nor did it contain a sufficient explanation of the Mine Safety and Health Administration's responsibility as an enforcement agency. I told Mr. Lauriski that Tim Thompson and Mike Lawless had previously obstructed the team members in the writing of appropriate citations for Martin County Coal and I could not, in good conscience, sign the report. Mr. Lauriski promised he would look into my allegations. He said that he was not aware of my complaints. I find this difficult to believe, since he had spoken to Mr. Thompson and Mr. Lawless on a regular basis regarding Martin County Coal prior to preparation of the report. Also, my concerns had become public knowledge in April and May 2001. Mr. Lauriski called me twice and insisted that I sign the report. I refused twice. My name was removed from the report.

I have since learned that another investigation team member who was reluctant to sign the report because of the weakness of MSHA's proposed enforcement actions was also contacted by Mr. Lauriski by telephone. That team member, I have learned, was coerced by Mr. Lauriski into signing the report. Another investigation team member told me that he, too, would not have

signed the report had he known that the official MSHA press release would distort the conclusions reached by the investigation team regarding the causes of the accident.

MSHA is conducting an internal investigation of the Martin County Coal slurry discharge, but the two people who will have final editorial review of the report are Mike Lawless, now Acting Administrator for Coal Mine Safety and Health and Dave Lauriski, Assistant Secretary of Labor for Mine Safety and Health.

Jim Walter Resources No. 5 Explosion

In September 2001, a methane gas explosion occurred at the Jim Walter Resources No. 5 Mine in Alabama. Thirteen coal miners died. An investigation team was put together. Some of the most competent professionals in the Agency are members of the team. The investigation is continuing and an internal review team has also been appointed. Listed below is a summary of some of the problems these two teams have encountered.

- Records of thirty-one (31) unabated violations issued to Jim Walter Resources No. 5 Mine in the weeks preceding the disaster were kept from public view for months. The persons in MSHA Headquarters who were responsible for disseminating the records pertaining to previous mine inspections were told not to release the records of the unabated violations.
- Additional records of more unabated violations were uncovered.
- John Caylor, Deputy Assistant Secretary for Mine Safety and Health, attempted to intervene in the investigation as recently as the week of February 8, 2002. He questioned the supervisor of the team members who were investigating the ventilation and roof control procedures that were in operation at Jim Walter Resources prior to the explosion and indicated the team members were being too aggressive.
- The accident investigation team and the internal review team have been obstructed by Mr. Mike Lawless and the Birmingham Alabama District Manager in the conduct of the investigation. It should be noted that Mike Lawless was District Manager in Birmingham, Alabama prior to being promoted to Headquarters. Frank Young, current District Manager, was Mike Lawless' assistant.
- A former MSHA supervisor in Alabama has revealed that, during his time as supervisor of inspectors he was often thwarted by the District Manager and Assistant District Manager in the inspection and writing of violations at Jim Walter Resources.

- The Jim Walter Resources No. 5 Mine explosion is the most severe disaster in our Nation's mines in the past 20 years. Thirteen miners have died. The investigation should not be compromised. I hope that your office can look into these matters.

Sincerely,


Jack Spadaro, Superintendent
National Mine Health and Safety Academy

Enclosure