

December 9, 2009

Hon. Hilda Solis
Office of the Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Secretary Solis:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to ask you to remove a dark stain from the record of the U.S. Department of Labor. This stain involves one of the worst mining disasters in American history which took place on October 11, 2000 when a huge coal slurry impoundment atop an underground mine broke through to the shafts below and punched out the side of the mountain. More than 300 million gallons of toxic waste poisoned 100 miles of waterways, killing all marine life and most of the wildlife in Martin County, Kentucky.

This request concerns the role that the Labor Department's Mine Safety & Health Administration (MSHA) played in the events leading up and subsequent to the Martin County "impoundment failure." In addition, MSHA reports indicate that there are more than 200 coal slurry sites in the U.S. sitting atop underground mines (the same scenario that lead to the Martin County blow-out) and 400 slurry impoundments whose failure could cause loss of lives.

Shortly after the Martin County spill, the Clinton Labor Department initiated a review but that review team was reconfigured and redirected by the Bush administration before it could complete its work. One of its members, Jack Spadaro, filed whistleblower complaints (see attached) that were investigated by the Labor Inspector General. That report remained largely under wraps for more than six years, as the report fragments obtained via Freedom of Information Act requests filed by Ellen Smith of *Mine Safety and Health News* were incomprehensible.

Last week, a nearly complete version of that IG report (see attached) was finally released. This report answers few questions about what happened, but does provide backhanded support for Mr. Spadaro's charges that the Bush Labor appointees hamstrung the official investigation and subsequent enforcement. The newly released IG report confirms that –

- Charges against Massey Coal, the parent company of the Martin County impoundment operator, were watered down and narrowed. Many of the most

serious charges were nixed by Bush appointees. One of the only two surviving charges was thrown out, and the other had its penalty reduced to \$5,500.

- MSHA officials ignored warnings that the impoundment was unsafe. After the failure, MSHA specialists and an engineering firm were pressured to water down findings of agency complicity; and
- During the MSHA investigation, the investigative files were kept away from investigators who were asked to sign a report before being allowed to read it.

Despite citing mounds of evidence to the contrary, the IG report's final sentence reads: "No evidence was uncovered to substantiate any allegations relating to MSHA's Martin County Coal accident investigation."

This terse conclusion is both at variance with much of the evidence the report summarizes as well as subsequent events, including the embarrassing outcome of the Massey enforcement action, in which the total penalty for what many have called the biggest environmental catastrophe in the eastern U.S. amounted to a \$5,500 fine.

In addition, the report glosses over the MSHA role in the actions leading up to the Martin County spill. More significantly, it contains no lessons learned or suggestions as to what actions MSHA should take to prevent recurrence of similar spills at hundreds of vulnerable sites throughout the U.S.

Significantly, the Labor IG is still withholding a crucial 3-page segment of the report concerning the most serious remaining charge brought against Massey. Ms. Smith and PEER will separately pursue the release of the still-withheld segments of the report. PEER is also asking the Council of Inspectors General on Integrity and Efficiency to review the work of the Labor IG and why it was kept secret for so long.

PEER is asking you to undertake the following steps:

1. Direct MSHA to undertake a new review of the Martin County impoundment failure in order to determine any failures by the agency that may have contributed to the event and undermined effective enforcement against violations that occurred;
2. Commission an inquiry into the safety of other coal slurry impoundments, particularly those sitting atop underground mines, in order to determine what policies or practices that MSHA should pursue to prevent future impoundment failures and slurry spills; and
3. Determine whether conscientious employees, including Mr. Spadaro, were driven out of MSHA or otherwise retaliated against on account of their pursuit of faithful execution of the law, protection of public and worker safety and health, and a truthful account of the Martin County disaster.

We hope that you share our concern that a paltry \$5,500 fine is not the proportionate response to this ecological and safety disaster. In addition, in supporting President Obama's call for governmental transparency, we would also hope that you would want to help shed light on this murky episode in your department's history.

While it is important to set the record straight, the continued existence of hundreds of similarly vulnerable sites makes our request in this letter a forward-looking initiative whose main purpose is to ensure that the tragic mistakes of the past are not repeated.

Thank you for your attention to this matter. If you wish to obtain any additional information about this request, please do not hesitate to contact me.

Sincerely

Jeff Ruch
Executive Director

Cc. MSHA Assistant Secretary Joseph Main