Bush administration refuses to collect penalties for mine safety violations

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The death of 21 US coal miners so far this year is the tragic result of the systematic dismantling of the federal Mine Safety and Health Administration (MSHA). This process—carried out under both Democratic and Republican administrations—has accelerated to an unprecedented degree under the Bush administration, which has transformed MSHA from an agency that at least nominally enforced safety regulations into a "partner" with the mining industry.

Coal operators in America are literally getting away with murder, not to mention the maiming of hundreds of miners each year who fall victim to increased demands for productivity and corporate cost cutting. Over the last several years MSHA has sharply reduced the size of fines imposed for violating long-standing safety standards and has allowed hundreds of thousands of dollars in fines to go uncollected.

In addition, the Bush administration has stacked MSHA with former coal managers who have unashamedly tailored the agency's policies to meet the profit needs of the operators. All the while the number of mine inspectors in the field has been cut, those considered too aggressive have been punished and proposals to improve mine safety have been repeatedly delayed or scuttled altogether.

Many of the mines where fatal accidents occurred this year had been repeatedly cited for unsafe conditions, yet federal and state authorities allowed them to continue to operate and only imposed minimal fines on their owners. The Sago Mine in West Virginia, where 12 miners lost their lives after a January 2 explosion, had been cited over 200 times in 2005 alone, including 96 citations categorized as "serious and substantial," the most severe MSHA violation. Despite this record, the total amount the mine's owner—International Coal Group—was fined was just over $25,000, or less than $150 per violation.

USA Today noted that of all government agencies MSHA consistently imposed among the lowest fines for violations of its rules. The Federal Communication Commission, the Environmental Protection Agency and the Securities and Exchange Commission can all issue fines of over $1 million for a single violation, the newspaper said. The top fine that MSHA can hand out is only $60,000, and that fine is rarely imposed.

"The federal government levied a larger fine—$550,000—for the 2004 Super Bowl showing of Janet Jackson's breast than it did for the 2001 deaths of 13 Alabama miners," stated the February 11 article. The newspaper also noted "the $435,000 fine against mine operator Jim Walter Resources was cut by a judge to $3,000."

Even when a mine is fined, it largely goes unpaid. If the operator corrects a particular violation after the fact the fine is automatically reduced. Outside of taking coal operators to court MSHA has no authority or means to collect the fines it issues. Since 1999, the agency has collected only 28 percent of the fines levied against coal companies.

A study of MSHA records by the *New York Times* found that the agency has not reported a single delinquent case to the Treasury Department for collection, as it is supposed to do after 180 days. The coal operators can also appeal and negotiate the amount of a fine down. The same *New York Times* report found that since 2003, of major fines—those over $10,000—about 85 percent either go unpaid or the amount is reduced.

For the coal operators, these fines are considered little more than the cost of doing business. The 10 largest coal companies reported profits of $2.4 billion on $24 billion in sales last year.

Since coming to office, the Bush administration has stacked the agency with former mine bosses. Upon taking office, Bush appointed David Lauriski, an executive at Energy West Mining of Utah, to head MSHA. Lauriski is perhaps best remembered at MSHA for attempting to push through a change in regulations governing coal dust levels that he proposed and lobbied on behalf of as a senior executive with Energy West.

In addition to Lauriski, other top posts in MSHA were staffed with other coal managers, including John Caylor and John Correll, deputy assistant secretaries, who held management positions at Amax Mining, Cyprus Minerals and Peabody Coal Company. Mark Ellis, Special Assistant, was legal counsel to the American Mining Congress, and Melinda Pon, appointed to Chief of Health for Coal, worked for BHP Minerals-Utah International.

Moreover, three of the five members on the MSHA's Review Commission—a body that decides disputes under the US Mine Act—were either top coal executives or heads of mining associations.

Placing these officials in prominent roles at MSHA has had a direct impact on the number and amount of fines issued against the coal companies. The median amount of proposed major fines has fallen from over $47,000 to under $28,000, a drop of 43 percent. The number of maximum fines issued in all of 2004 was just 12.

One of the rule changes MSHA imposed was to allow top MSHA officials to override local inspectors. After a major accident or death, before the local office is ready to impose fines, all materials, including inspector's notes, are sent to MSHA headquarters for review.

The Bush administration and Congress have imposed severe budget cuts that have resulted in the number of coal mine inspectors being reduced from 1,233 in 2001 to 1,043 in 2005.

MSHA inspectors were also disciplined if they were considered too aggressive in enforcing safety standards. In several documented cases, Lauriski personally had inspectors reassigned to different jobs after coal operators complained to Lauriski that they were being too tough.

One of Lauriski's first acts upon assuming his post at MSHA was to remove and delay proposed regulation changes affecting miners' safety. In all, he withdrew 16 proposed regulation changes affecting miners' safety and postponed implementation of two other regulations. These included proposals to require the distribution of additional oxygen respirators throughout the mine and better training in the use of these devices, also known as Self-Contained Self-Rescuers or SCSRs. He also scuttled proposals to lower the levels of coal dust and other airborne particles such as lead and cyanide that miners are exposed to, and to increase the number of hours for training on many more vital safety regulations.

In 11 of the 16 regulations withdrawn, MSHA gave the exact same reason: "MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities." Whose "constraints" was the agency concerned with? It is obvious MSHA was speaking for the coal operators, who largely consider outlays for safety as an illegitimate tax on their bottom line. What were the "changing safety and health regulatory priorities?" MSHA was referring to the priorities of the coal operators, not the miners.

Speaking before the Northwest Mining Association's annual meeting in December 2001, shortly after tossing out many of these proposals, David Lauriski boasted, "Earlier this week, the Department of Labor announced its new regulatory agenda for the coming year. If you have seen it, you will notice that it is quite a bit shorter than some past agendas."

Lauriski resigned his post at MSHA shortly after a Labor Department Inspector General report confirmed that under his direction the agency had improperly awarded no-bid, single-source contracts, including to two companies that had ties to Lauriski and one of his assistants.

President Bush has since nominated Richard Stickler to take his place. Stickler worked as a manager for three decades at Beth Energy Mines and briefly for Massey Energy before becoming chief of Pennsylvania's Bureau of Deep Mine Safety. The two mines Stickler managed for Beth Energy had accident and injury rates nearly double the national average for several years.

Indicating that the Bush administration will not make any lasting changes following the tragedies in 2006, Stickler stated during testimony before Congress earlier this month that he felt MSHA regulations were "adequate," and he would continue the Bush policy of relying upon the mine operators to police themselves.