Federal regulatory system sanctions deadly conditions in US mines

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More questions are emerging as to why Mine Safety and Health Administration (MSHA) officials did not shut down Massey Energy's Upper Big Branch mine before the April 5 explosion which killed 29 coal miners.

Last year MSHA inspectors issued 515 citations for safety violations at the mine. In the first three months of this year, MSHA inspectors cited Massey for another 124 safety violations—a rate of 10 per week. Yet MSHA officials—who work for the Obama administration's Labor Department—never designated the mine as having a "pattern of violations," which would have given inspectors greater power to enforce safety standards, including ceasing operations at the mine.

Miners and the friends and families of those who were killed have been asking the obvious question as to why MSHA, the government agency mandated to ensure the safety of miners, allowed Massey to continue to put miners' lives at risk despite its flagrant disregard for the most basic safety requirements.

MSHA officials are now blaming their failure to enforce safety laws on a "computer programming error" that Greg Wagner, deputy assistant labor secretary for MSHA, said only affected the Upper Big Branch mine. According to Wagner, the program failed to pick up eight "unwarrantable failure" enforcement orders issued by MSHA inspectors, which he said were needed to issue the mine a "patterns of violation" letter. "Unwarrantable failures" are citations issued when the violations are so blatant and known to management that MSHA concludes mine officials purposefully ignored them.

The excuse was met with such disbelief that Obama's Labor Secretary Hilda Solis had to issue a statement saying the computer error "did not have an impact on this tragedy" just "the way information was provided to the public."

Under federal law, MSHA officials can take certain steps to close a mine they find unsafe. They can seek a federal court injunction to shut a mine if their inspectors can show that it "constitutes a continuing hazard to the health and safety of miners." MSHA officials never sought a court injunction against Massey despite ample evidence of impending disaster, including dangerously high levels of explosive methane gas and coal dust.

Even without a court order mine inspectors can issue a "withdrawal order" that requires all miners to leave the mine or a part of the mine until the problem has been resolved. A withdrawal order can be issued when inspectors find a situation threatens the immediate health and safety of the miners.

Safety inspectors had issued 54 such "withdrawal orders" at the Upper Big Branch mine in 2009, and another seven since the beginning of 2010. Withdrawal orders were being issued at the rate of one per week.

Designating a mine as having a "pattern of violations," would give safety inspectors greater power in enforcing safety compliance. Each time an inspector found a serious violation, that section of the mine could be closed.

However, MSHA has set an almost impossible standard for inspectors to establish such a pattern at a mine. MSHA, in deference to the coal operators' demand that production is never halted, has set 10 different criteria for inspectors to meet to demonstrate such a "pattern of violations."

Massey Energy's Upper Big Branch mine met 9 out of the 10 criteria. The one unmet criterion was that the mine had supposedly not been issued any withdrawal orders. In fact, Massey had been issued scores of such

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orders resulting in the temporary closure of all or part of the mine 61 times since the beginning of 2009, including seven times this year. However, the company and its lawyers appealed each one of the withdrawal orders, so they are not considered actual violations until the case in concluded, a MSHA official explained.

Since 2007, Massey and other mine operators have appealed the vast majority of citations, creating a mountain of backlogged cases for the ten MSHA officials who hear the cases.

Many of the withdrawal orders involved "poor ventilation and coal dust control," meaning inspectors considered that there was a danger of explosion. Another of the citations Massey is appealing involved having bad, ie., dust and gas-ladden, air blowing onto the face of the mine where a longwall machine was cutting coal—more than a sufficient source of sparks to ignite explosive gases. Another was for having an airflow half of what was needed to prevent the buildup of methane gas.

The exact cause of the explosion has yet to be determined, but most miners and investigators feel it was likely a methane explosion followed by a coal dust explosion. Many veteran inspectors have said they have never before seen an explosion of such magnitude that tore the mine apart and bent iron tracks like pretzels, according to one account.

So arcane are the regulations that even if MSHA officials determined that Massey violated all 10 of their criteria, they could not designate the mine as having a "pattern of violations" without first sending the mine operator a warning letter and giving the company 90 days to show a reduction in serious violations, avoiding the added scrutiny.

The ten criteria were established under the Bush administration in 2007 following the January 2006 disaster at the Sago mine, which killed 12 West Virginia miners. The Bush administration established the system as a means of deflecting criticism after MSHA was criticized for its failure to prevent the Sago disaster. This gave the appearance of increased enforcement and fines, but created a giant loophole that enabled coal operators to challenge safety violations and continue operating unsafe mines even when regulators concluded imminent dangers existed.

Since taking office, the Obama administration, which appointed longtime United Mine Workers of America safety director Joe Main to head MSHA, has not made any changes to this bogus regulatory system. At the same time Main has upheld other Bush-era measures that favor the coal companies, including unsafe limits on coal dust exposure, which produces deadly black lung disease. Just like his Republican predecessor, Obama—who was elected with the backing of southern Illinois coal interests—is sanctioning the continuing exploitation and killing of miners in order to boost the profits of the coal and energy conglomerates.

While most of the focus has been on the Upper Big Branch mine, federal records show that Massey Energy has been fighting safety standards, including ventilation problems and coal dust control, at several of its other mines. Two other Massey mines, one in Wyoming County, West Virginia, and the other in Pike County, Kentucky, have been cited by safety inspectors for numerous ventilation problems, including several "unwarrantable failures" for ventilation plans and coal dust control.

Massey was not the exception to the rule. On Wednesday, officials in Washington released a list of 48 mines identified by federal mine safety officials in August 2009 for increased scrutiny, but which were not targeted due to unresolved appeals filed by mine operators.

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