

November 9, 2003

"Mine Safety Official Critical of Policies Faces Firing"

By James Dao

[\[print as .pdf\]](#)



Micky McCoy and his wife, Nina, by Rock Castle Creek, which was filled with sludge by a spill in 2000.
photo by Randy Snyder for The New York Times

WASHINGTON, Nov. 8 - The Bush administration has notified a mine safety official who has sharply criticized federal mining policies that it intends to fire him, according to documents and the official's lawyers.

The official, Jack Spadaro, the superintendent of the National Mine Health and Safety Academy in Beckley, W.Va., has been an outspoken critic of a federal investigation into a huge spill of coal sludge in eastern Kentucky three years ago. The accident, at the Martin County Coal Company, is considered one of the biggest environmental disasters in the Appalachian

region.

Mr. Spadaro accused political appointees in the Mine Safety and Health Administration of cutting the investigation short, playing down the coal company's culpability and not holding federal regulators accountable for weak oversight. He was a member of the team investigating the spill before he resigned in protest in 2001.

Mr. Spadaro has also raised questions about no-bid contracts that he contends were awarded to friends and former business associates of David D. Lauriski, the assistant secretary of labor for mine safety and health, and other senior mine safety officials. His complaints led to an investigation by the Department of Labor's inspector general.

The dispute has become a flashpoint between the Bush administration and critics of its mining policies, who contend the administration has tried to weaken environmental and safety regulations to help big coal companies that contribute heavily to the Republican Party. Mr. Spadaro's firing, the critics contend, is retribution for his outspokenness.

"I would have to say flat out that Jack would not be in the spot he's in if he had not been a whistle-blower," said Joseph Main, the administrator of health and safety for the United Mine Workers Union.

Rodney Brown, a spokesman for the mine safety and health administration, said on Friday that the agency would not comment on a personnel matter. But federal officials have in the past said that the Martin County investigation was tough and thorough, and denied any improprieties with the no-bid contracts.

In a 10-page complaint sent to Mr. Spadaro on Oct. 2, mine safety officials accused him of abusing his authority, failing to follow orders and proper procedures and misusing a government credit card by taking unauthorized cash advances that cost the government \$22.60 in bank fees.

"I have considered your 26 years of service, recent satisfactory performance ratings, and the fact that you have had no prior disciplinary action taken against you in determining the level of discipline to propose," a senior mining official, Frank Schwamberger, wrote in the complaint. "However, these factors do not outweigh the seriousness of your actions."

The complaint says that Mr. Spadaro can be terminated at any time 30 days after its receipt.

Mr. Spadaro's lawyer, Jason E. Huber, argued in a response that the complaints, even if proved, were too trivial to justify firing.

Mr. Huber also said that several of the complaints against Mr. Spadaro involved labor-management disputes that had been resolved through grievance procedures. And he cited newspaper reports that dozens of other mine agency officials had used their government cards to make personal purchases without repaying the government. He said Mr. Spadaro had repaid his advances.

"It is readily apparent that Mr. Spadaro's proposed termination is not a result of meritorious complaints regarding how Mr. Spadaro dispatched his duties," Mr. Huber wrote, "but is rather the Department of Labor, Secretary Elaine L. Chao, Senator Mitch McConnell and the Bush administration's retaliation against Mr. Spadaro for whistle-blowing activities."

Ms. Chao as secretary of labor oversees the mine safety agency. Senator McConnell, Republican of Kentucky, is her husband. Mr. Spadaro has asserted that Mr. McConnell has tried to protect Martin County Coal and its parent, the Massey Energy Company, because they are major campaign contributors.

A spokesman for Mr. McConnell declined to comment.

The Martin County spill occurred on Oct. 11, 2000, when a portion of a huge lagoon of coal slurry - a thick black byproduct of the processing of coal from strip mines - broke through the earth into an abandoned underground mine.

More than 300 million gallons of the black wastewater spewed through the mine and into local streams, killing hundreds of thousands of fish, flooding homes, polluting wells and blackening waterways all along the Kentucky-West Virginia border.

The spill was twice as large as its biggest forerunner, in Buffalo Creek, W.Va., more than 30 years ago, which killed 125 people. The Martin County spill caused no casualties, mainly because it poured into two separate hollows, diminishing its impact.

The panel that investigated the spill found that the coal company and federal regulators had been aware of potential problems at the slurry impoundment for years, Mr. Spadaro and other panel members said.

For example, after a similar slurry spill at Martin County Coal in 1994, a federal mining engineer recommended nine measures to bolster the slurry lagoon. But federal regulators allowed the company to expand the impoundment, which at the time of the spill contained 2.2 billion gallons, without completing the safety measures, panel members said.

An engineer for the coal company also told investigators that the company was aware years ago that the natural barrier separating the impoundment from the abandoned mine was as thin as 15 feet, less than what was required by law. Investigators said the company did not take action to strengthen the barrier.

Mr. Spadaro and some other panel members said they wanted to issue eight violations against Massey Energy, impose heavy fines and hold federal regulators accountable for inadequate oversight. But the final report recommended only two violations, carrying total fines of \$110,000.

After resigning from the panel, Mr. Spadaro filed a complaint with the inspector general asserting that senior mine safety officials, including Mr. Lauriski, had interfered with the investigation and tried to punish him for refusing to sign the report.

The inspector general's report, released in January, concluded that while "some retaliatory events" against Mr. Spadaro "may have occurred," they were not related to his role in the investigation.

A federal grand jury in Kentucky is now looking into possible criminal charges relating to the spill. Massey Energy has declined to comment.

Mr. Spadaro was placed on administrative leave from his \$108,000 a year job in June when the mine safety agency opened an investigation of his management of the academy.

In the tiny Martin County village of Inez, which was hardest hit by the spill, slurry still bubbles up in creek beds on rainy days. Some homeowners have received monetary settlements from Massey Energy to cover damages caused by the sludge. But many remain bitter, saying it was just by chance that the 2000 accident was not as deadly as Buffalo Creek.

"It's changed my view of the company," said Glenn Cornette, a 68-year-old retired miner whose home on Coldwater Creek was one of the first hit by the wave of sludge. "They just lied to me so much."

Nina McCoy, a biology teacher at the local high school, said many people in this low-income hamlet now bought bottled water because they believed that the slurry had poisoned their water supply. Slurry contains heavy metals, but state officials have said the area's water is fine.

"I think people hold less against the company than they do against the agencies who are supposed to protect us," Mrs. McCoy said. "They knew that this things was going to bust. And yet they let it go."

[New York Times](#)