

Correcting the Record:
Massey Continues to Put Communities at Risk

On April 4, 2004, CBS News' *60 Minutes* ran a story about Jack Spadaro and the devastating October 2000 coal slurry spill at a Massey-operated impoundment in Inez, Kentucky. Following the airing of the report, Massey Energy issued a response to "correct," in Massey's words, the report's "many significant inaccuracies."¹ Several of Massey's claims, however, include factual inaccuracies that have been contradicted by both government reports and news articles. Instead of correcting the record, Massey's response illustrates a continued unwillingness to take responsibility for its actions that put the health and safety of miners and coalfield residents at risk.

- *MASSEY:* *Massey declined to be interviewed by 60 Minutes when they called on January 20, 2004 because we are unaware of the facts regarding the relationship between Mr. Spadaro and his employer and the disciplinary action taken by MSHA. Massey did not hear from 60 Minutes after that time.*

The *60 Minutes* story noted that "Massey Energy declined to talk to *60 Minutes*," an accurate account according to Massey's own admission.² In addition to declining to be interviewed for the *60 Minutes* piece, Massey Energy has denied involvement in Jack Spadaro's disciplinary actions and declined to comment in a number of national news stories regarding Jack Spadaro and the Martin County Spill, including *The New York Times*, *USA Today*, and *Salon*.³

- *MASSEY:* *The coal slurry released at Martin County was no more toxic than the dirt outside one's home. Slurry is nothing more than coal fines, clay, shale and other rock. It is natural material, containing no more "hazardous chemicals" (such as arsenic and mercury) than are generally found in earth and soil.*

Massey Energy's coal slurry disaster in Martin County, Kentucky, emptied over 300 million gallons of coal waste and sludge into Appalachian streams. The sludge flood, which the U.S. Environmental Protection Agency called the worst environmental disaster ever in the southeastern United States, suffocated wildlife and resulted in a "total kill" of fish and aquatic life as it flowed through streams.⁴

A 2001 report by the Agency for Toxic Substances and Disease Registry (ATSDR), an agency of the US Department of Health and Human Services, listed the presence of heavy metals "above the level of health concern." In samples of coal slurry, ATSDR found that "copper, vanadium, manganese, barium, arsenic, and cobalt were above levels of health concern." The report also indicated a slightly elevated level of copper in the raw (untreated) water at the Martin County Water Plant in Inez. The report went on to state that "in some forms, barium, arsenic, and vanadium can produce health effects by skin contact. In most cases, these effects can occur after prolonged exposure lasting a year or more. Like most heavy metals, all of these compounds affect the digestive system, the kidneys (except manganese), and the liver (except vanadium). Many of these compounds produce effects on the central nervous system and some of them produce effects on the cardiovascular system."⁵ Other reports listed concentrated amounts of mercury in the slurry.⁶ To suggest, then, that the concentrated levels of heavy metals in coal slurry are "no more toxic than the dirt outside one's home" is irresponsible and threatens the health and safety of affected residents.

- *MASSEY:* *The allegation that Massey management knew after 1994 that another spill was "inevitable" is completely false.... Massey and its engineers could not have foreseen the breakthrough or its magnitude and, if we had, we would obviously have done whatever was necessary to prevent it. This is just common sense.*

In 1994, an engineer with the U.S. Mine Safety and Health Administration (MSHA) inspected the impoundment in Martin County. He wrote a memo describing its deplorable condition, including major fractures and major leaks, and called a disaster "very possible." He recommended nine improvements to the impoundment, which were mostly ignored by Massey Energy.⁷

Martin County Coal's own engineering firm was aware that another breakthrough after the May 1994 accident was "virtually inevitable," according to testimony given to the accident investigation team. Scott

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Ballard, an engineering consultant for Martin County Coal testified in 2001 that “this design...was never intended to prevent a breakthrough in any form or fashion.”⁸ At least five Martin County Coal executives were aware of the risks their compromised impoundment posed to miners and the surrounding community.⁹

This type of mismanagement of dams is consistent with Massey Energy’s record. The Brushy Fork impoundment in Whitesville, WV, poses a threat to the community it towers above—it is slated to top 950 feet—as the only evacuation route is the road toward the dam. Nonetheless, Massey has been negligent in its maintenance. The rock formations under the dam have not been checked for fractures, and Massey has been cited by the state at least 37 times for permit violations, such as failure to monitor the reservoir, failure to control erosion, failure to control sediment, and failure to control pollution.¹⁰

• **MASSEY:** *There is no truth to the allegation that Massey managers intentionally misled regulators as to the thickness or quality of rock and coal underlying the Martin County impoundment.*

In 1994, an MSHA engineer warned Massey that the company’s mine maps inaccurately inflated the size of the rock barrier between the bottom of the impoundment and the roof of the underground mine.¹¹ Armed with this knowledge, along with the engineer’s warnings of a major impoundment failure, Massey continued to pump slurry into the impoundment until it broke through the roof of the underground mine and into streams in October 2000.

• **MASSEY:** *Massey does, like many corporations in America, contribute, from time to time, to political causes. However, our criteria for contributions are based on support for the coal industry and policies that benefit our employees and the states within which we operate, as well as promoting the overall energy security of our country.*

In addition to \$10,000 in individual contributions to Republican candidates in this election cycle, Massey Energy donated \$100,000 to the National Republican Senatorial Committee in 2002 and \$15,000 in 1998.¹² The chair of this committee from 1997 to 2000 was Senator Mitch McConnell, husband of Secretary of Labor Elaine Chao, who oversees MSHA.¹³

Furthermore, Massey Energy Board Member James H. “Buck” Harless is a major fundraiser for the Bush administration, having collected more than \$275,000 during the 2000 election, \$100,000 for the Bush Inaugural Celebration, and more than \$100,000 for Bush to date for the 2004 election cycle. “We were looking for friends, and we found one in George W. Bush,” Harless told the *Wall Street Journal* in 2001.¹⁴

• **MASSEY:** *Massey has long demonstrated its commitment to safety by the adoption of safety standards and procedures that exceed state and federal regulations at all of its operations.*

Massey has a poor health and safety record for miners - The United Mine Workers of America (UMWA) says Massey has "the nation’s worst fatality record" among coal companies. Massey’s CEO says the UMW is picking on his company because Massey is primarily non-union. But even a former assistant U.S. Secretary of Labor pointed to Massey as a problem company in mine safety. Davitt McAteer, former head of MSHA, reported to WV Gov. Bob Wise last year that Massey Energy Inc. was responsible for nearly half of the state’s 13 coal mine fatalities that year.

Massey avoids responsibility for miner deaths and injuries - Former MSHA chief McAteer said Massey tries to mask its poor safety record by reporting fatal and nonfatal accidents under the names of contract mining companies, allowing Massey to "claim that its safety record is much better than it actually is."

If the dead were contract workers, Massey doesn’t have to claim them. "This year [2001] Massey Energy has on its official record two fatal accidents because only two of the six or eight men who have died on Massey property and in Massey mines were Massey employees," McAteer wrote.

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Massey fired a worker who pointed out safety problems - In December, former Massey electrician James Stafford won a \$2.5 million decision against Massey for wrongful dismissal. Massey fired Stafford after he reported safety problems to federal regulators.

"We were getting people hurt. I felt I had no other alternative," Stafford told *The Charleston Gazette*. "There were ventilation problems and high concentrations of methane gas."

Stafford said the mine's escape passages were often covered with water. Conveyor belts were so overloaded and poorly maintained that they sometimes caught fire. MSHA records show Rocky Hollow, a Massey subsidiary, was cited 788 times for safety violations during the previous three years.

"The best thing would be if people who work for Massey today would start to speak up," Stafford told the *Gazette*. "The company is run like a dictatorship."

Lawsuit says Massey damaged wells, then provided tainted water - A lawsuit filed by residents of the Mingo County town of Delbarton alleges they received contaminated water from Massey's Delbarton Mining Co. The company was ordered to provide residents with a temporary water supply after its mining destroyed their natural water supply. The lawsuit claims the water the company provided, stored in plastic containers, was contaminated with bacteria, including e-coli.

Massey's CEO makes millions while he cuts wages and lays off workers - AFL-CIO's "CEO Paywatch" Web site reported Massey Energy CEO Don Blankenship earned \$4.4 million in salary and bonuses alone. *The Charleston Gazette* reported that when you factor in additional money he earned in stock options, payouts from stock of Fluor (a former parent company) and payments to his deferred compensation account, that number jumped to \$16 million. That made him the highest paid WV executive in *The Gazette's* fourth survey of executive pay. Massey is 97 percent non-union. It has asked the few UMW members working at two of its coal preparation plants to agree to drastic cuts in wages and benefits. Blankenship recently told investors that Massey Energy will lay off 400 to 600 employees in the near future in its effort to "right size" the company.

Massey illegally blanketed a small town with coal dust - Massey's Elk Run Coal Company was cited repeatedly by the DEP for not controlling dust from its operations in the Boone County town of Sylvester. Sylvester resident Pauline Canterbury told reporters the dust is stifling, even for people accustomed to it. "We're coal mining people, and we can handle a little dust. What we've got now is ungodly."

Massey avoided paying millions in workers' compensation - For much of the past decade, Massey fought attempts by WV officials to collect workers' compensation premiums not paid by the company's subcontractors. When the company finally settled this year, the total payment was \$8.9 million.¹⁵

Massey repeatedly pollutes waterways - These are too numerous to list entirely. Last year, *The Charleston Daily Mail* reviewed five years of environmental enforcement actions against WV coal companies and found Massey to be the state's clear leader with 531 violations. Even the WV Department of Environmental Protection (DEP), notorious for its lax enforcement, could no longer look the other way. DEP took action against three Massey companies. The crackdown resulted in permit suspensions for all three. Below is a sample of recent violations. All the coal companies mentioned are associated with Massey.

- April 11, 2002. A Massey Energy operation spilled at least 135 thousand gallons of slurry into a tributary of the Tug Fork of the Big Sandy River. Officials from the town of Kermit reported an eight- to 10-mile slug of slurry in the river. City and company workers downstream closed water intakes from the river.
- Feb. 22, 2002. State Mining regulators charged Omar Mining Co. with allowing coal slurry into a Boone County creek for at least the third time in seven months. The black slurry covered a half-mile of the stream.

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- Aug. 1, 2001. Band Mill Coal Corp, Logan County. An estimated 50,000 gallons of slurry spilled into tributaries of the Guyandotte River.
- July, 2001. Citations were issued to various Massey operations for inadequately handling runoff during rain storms.
- June, 2001. Liberty preparation plant, Uneeda, Boone County. About 30,000 gallons spilled into Robinson Run and Pond Fork.
- May 2001. Over a 12-month period DEP inspectors cited Green Valley Coal for five violations of water quality limits for acidity and iron concentrations.
- Feb. 12, 1999; March 3, 1999. Massey subsidiary Elk Run Coal Company near Sylvester, Boone County. About 1,500 gallons of blackwater spilled into Little Elk Creek. Another discharge discolored 2,200 feet of Little Elk Creek.
- Feb. 23, 1999. Massey subsidiary Goals Coal Company. Shumate Creek operations near Naoma, Raleigh County. An unknown amount spilled into Marsh Fork of the Coal River.

Massey Energy apparently believes its public relations spin can cover up its mega-messes. People who suffer from Massey Energy's bad behavior are here to set the record straight.

Compiled by Friends of the Mountains:

Appalachian Voices, Coal River Mountain Watch, Citizens Coal Council, Delbarton Environmental Community Awareness Foundation, Ohio Valley Environmental Coalition, Sierra Club-WV Chapter, Stanley Heirs Foundation, WV Citizen Action Group, WV Environmental Council, WV Highlands Conservancy, and WV Rivers Coalition.

¹ "Massey Energy Responds to 60 Minutes." www.masseycoal.com

² "A Toxic Coverup?" *Sixty Minutes*. 4 April 2004: <http://www.cbsnews.com/stories/2004/04/01/60minutes/main609889.shtml>.

³ Dao, James. "Mine Safety Official Critical of Policies Faces Firing," *New York Times*. 9 Nov 2003; Associated Press. "Ex-official: Bush administration covered up Ky. spill." *USA Today*. 3 April 2004: http://www.usatoday.com/news/nation/2004-04-03-coal-sludge-white-house_x.htm; Babich, Phillip. "Dirty Business," *Salon*. 13 November 2003: http://archive.salon.com/tech/feature/2003/11/13/slurry_coverup/.

⁴ Hannah, Jim. "Spill heads down Ohio: Officials prepare for unknown," *Cincinnati Enquirer*. 20 October 2000.

⁵ "Petition Health Consultation," MARTIN COUNTY COAL SLURRY RELEASE, INEZ, MARTIN COUNTY, KENTUCKY, EPA FACILITY ID: KYN000407233 APRIL 22 2003. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Public Health Service, Agency for Toxic Substances and Disease Registry, Division of Health Assessment and Consultation, Atlanta, GA 30333.

⁶ "Massey Impoundment to be Tested," *Charleston Gazette*. 30 June 2001.

⁷ Williams, Ted. "Sludge Slinging," *Audubon*. May: <http://magazine.audubon.org/incite/incite0405.html>.

⁸ "A look at testimony in slurry spill investigation," *Lexington Herald-Leader*. 28 April 2004: <http://www.kentucky.com/mld/heraldleader/news/opinion/8537049.htm>

⁹ Babich, Phillip.

¹⁰ Williams.

¹¹ Ward, Ken, Jr. "Massey sludge spill probes still unfinished," *Charleston Gazette*, 11 October 2001.

¹² Center for Responsive Politics: <http://www.opensecrets.org/softmoney/softcomp1.asp?txtName=massey>

¹³ Mitch McConnell Biography: <http://mccconnell.senate.gov/about.cfm>.

¹⁴ Donnelly, David. "Special Interest Spotlight 2.9." Campaign Money Watch. 22 April 2004: http://www.campaignmoney.org/spotlight/sis04_21_04.htm.

¹⁵ Excerpted from Young, Jeff. "WV's Own: Massey Energy," *Graffiti*. May 2002.