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## Sago Puts Spotlight On Safety Strategy

U.S. Mine Agency Issues Citations, but Penalties Are Light

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Two winters ago, what had been a mediocre safety record at West Virginia's Sago Mine grew dramatically worse. Over 23 months beginning in February 2004, two dozen miners were hurt in a string of accidents, some of them caused by rock chunks falling from the mine ceiling. Federal safety inspectors slapped the mine with citations 273 times, or an average of once every 2 1/2 days.

Despite this record, the price paid by Sago's operators was light. Government regulators never publicly discussed shutting down the mine and never sought criminal sanctions. The biggest single fine was \$440, about 0.0004 percent of the \$110 million net profit reported last year by the mine's current owner, International Coal Group Inc.

Whether the mine's documented safety problems played a role in Monday's fatal accident is still unknown. But Sago's recent history illustrates what mine-safety experts say is a long-standing flaw in enforcement of federal mining regulations. While inspectors issue a blizzard of paper citations each year, these violations rarely translate into serious penalties, even for the worst offenders, according to government records and interviews with current and former regulators. Large fines are rare, and the most serious sanctions -- such as mine closure -- are almost never used, documents show.

This pattern has been even more pronounced under the Bush administration, which came into office with a promise to forge cooperative ties between regulators and the mining industry. During the past five years, the number of mines referred to the Justice Department for criminal prosecution has dropped steadily, from 38 in 2000 to 12 last year.

Meanwhile, inspectors who sought to impose large fines on coal companies have seen those penalties whittled down by agency negotiators and administrative law judges. Last year, the operator of a Brookwood, Ala., coal mine, where 13 miners were killed in a September 2001 explosion, saw its fine reduced from \$435,000 to \$3,000 -- a 99 percent reduction. The Alabama disaster was the nation's deadliest coal-mining accident in the past two decades, nearly equaled by Monday's Sago explosion that left 12 miners dead.

"There are simply not enough incentives for safety built into the regulatory and compensation system," said Emily A. Spieler, an occupational safety expert and dean of Northeastern University's School of Law. "Pressure on regulatory agencies to allow unsafe businesses to operate is enormous, and the incentives to comply with regulations are small if the regulatory agency does not issue large fines."

The chief enforcer of federal mining laws, the U.S. Mine Safety and Health Administration, defends its performance, pointing to a steady decline in the number of deaths and injuries in coal mines in recent years. Some of the decline has been attributed to increased mechanization, though both industry and union officials acknowledge improvements in safety practices.

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"While MSHA has also pursued cooperative health and safety partnerships with labor unions, mine operators and industry associations, it has consistently backed up those compliance assistance efforts with strong enforcement against unsafe operators," agency spokesman Dirk Fillpot said in a prepared statement. Reporters inquiring about the agency's record were referred to the statement.

MSHA contends that its oversight is at least as robust as that of previous administrations, but the record is mixed. The total number of hours spent by inspectors inside coal mines has gone up, but the percentage of violations classified by inspectors as serious -- "significant and substantial," in agency jargon -- has declined.

Comparisons with previous administrations are complex, because mining methods have changed and the number of underground mines has steadily decreased.

But agency critics, including several former MSHA officials, say relatively light sanctions, coupled with the current administration's more collegial approach to regulation, make it harder for inspectors to force noncompliant companies to change.

"There was a dramatic shift in MSHA's philosophy in 2001, with a new emphasis on cooperation by the enforcers," said J. Davitt McAteer, who headed the agency under the Clinton administration, "and it came at a cost of less enforcement of the statute."

MSHA enforces safety laws through the efforts of more than 350 inspectors who review safety plans for individual mines and conduct inspections to ensure the rules are followed. Penalties can range from a warning for minor offenses, such as incomplete paperwork, to fines for "significant and substantial" infractions. More serious violations can potentially result in escalating fines, criminal prosecution or even the shut-down of all, or parts, of a mine.

At the Sago Mine, near the central West Virginia town of Tallmansville, the increase in safety violations in early 2004 quickly drew the attention of agency inspectors. During the two years that followed, regulators dramatically increased their oversight, writing citations for such problems as falling rocks and excessive levels of highly flammable coal dust. The 273 violations recorded in two years included 16 that were labeled "unwarrantable failures," a designation generally reserved for the most serious safety infractions, or those for which the operator had previously been warned.

The operator of the mine during most of the period was Anker West Virginia Mining Co., which was acquired in November by International Coal Group Inc. ICG officials say they have worked with MSHA to correct safety problems since acquiring the mine. A spokesman declined to comment further, saying the company's focus remains the Sago accident.

According to agency records, federal inspectors issued a total of 18 "withdrawal records" against Sago, forcing the company to temporarily suspend some operations. But in each case, mining was allowed to resume after Sago officials took steps to correct the problems, MSHA documents show. Over two years, the company racked up more than \$24,000 in fines, although the individual penalties were all less than \$450, and many were \$60. The average fine was \$150.

Former agency officials say the MSHA regional office that oversees West Virginia mines was unusually aggressive and might eventually have forced the mine to clean up or face a shutdown. But ultimately the agency's response was too little, too late, said Jack Spadaro, a retired agency inspector and engineer in West Virginia.

"The mine should have simply been closed," said Spadaro, who was granted federal whistle-blower status after being demoted four years ago because of what Spadaro says were disagreements with MSHA officials over his aggressive enforcement of safety laws. "The fines were absolutely absurd, but that's all the

inspectors can do. The only other option they have is a closure order, and the managers in Washington won't let them close a mine."

Weaknesses in enforcement were the subject of criticism long before the Sago accident. In 2003, the Government Accountability Office faulted MSHA for failing to follow through when it found violations. Moreover, the agency's Washington leadership did "not provide adequate oversight" to ensure that inspectors were enforcing compliance, the GAO concluded.

Former MSHA officials and leaders of the United Mine Workers of America, which represents unionized coal miners, have accused the agency's Bush-appointed leaders of being too closely allied with the industry. They note that MSHA's first leader under President Bush, David D. Lauriski, was a former coal industry executive who advocated a less confrontational style and gave inspectors a less-intimidating job title: "compliance assistance specialists."

Under Bush, 17 of 26 regulations proposed by the Clinton administration were dropped or withdrawn, and the agency began a series of high-profile "cooperative alliance" agreements with industry to promote safety through education, posters and other voluntary programs. Bush-appointed officials leaders say they withdrew the Clinton proposals to pursue their own regulatory agenda.

The agency eliminated or scaled back programs favored by unions and watchdog groups that allowed public access to records related to safety performance and accident investigations. For example, MSHA halted the release of notes from mine inspections, which the agency had routinely released under the Freedom of Information Act for a quarter-century. It also shifted many routine accident investigations into closed-door proceedings, in some cases denying entry even to union officials and lawyers representing injured mineworkers, say union officials and former agency employees.

Joseph Main, a retired UMW health and safety official, said he worried that MSHA's investigation of the Sago accident would focus only on the source of the initial explosion -- instead of seeking answers to the broader questions about mine safety.

"The explosion is just one piece of it," Main said. "They should investigate all the factors that led to the deaths of these men, including the failure of the safety net that was supposed to be in place. If those other questions aren't answered, we will have more Sagos in the future."

*Staff writer Cindy Skrzycki, researcher Alice Crites and database editor Sarah Cohen contributed to this report.*

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