



Cop Off the Beat

It's now clear that a permissive regulatory environment aided the wave of corporate accounting scandals that came to light in the summer of 2002. There were insufficient protections to ensure independent, objective accounting, and little in the way of government oversight, with the Securities and Exchange Commission woefully underfunded and understaffed. This invited widespread claims of phantom profits, cheating shareholders out of billions.

Unfortunately, these same permissive conditions have crept into other areas of corporate governance – particularly protection of public health, safety, and the environment – and are now being exacerbated as the Bush administration has moved to cut resources for key agencies and curtail regulatory enforcement. For instance, the administration has cut EPA enforcement personnel by 12 percent; the average penalty for willful OSHA violations has fallen by 25 percent; FDA actions against misleading drug promotions have plummeted by almost 80 percent; and tests for mad cow disease were conducted at fewer than 100 of 700 cattle slaughterhouses between 2001 and 2003. With no cop on the beat, corporate abuses are bound to increase.

Lessons from the SEC

During the 1990s, many in Congress openly scoffed at SEC oversight, and the agency's budget was frozen. In 1995, Congress overrode a veto by President Clinton to restrict lawsuits against companies for misleading their investors, and later rebuffed a proposal from Clinton's SEC chief, Arthur Levitt, to bar accounting firms from both auditing and consulting for the same company. In June 2000, the SEC proposed a draft rule to clamp down on such conflicts of interest – which were later blamed for rosy financial statements – but encountered fierce opposition from the accounting industry and Congress, and ultimately backed down.

For the Bush administration, this situation was just fine. In fact, President Bush's choice to head the SEC, Harvey Pitt, a product of the accounting industry himself, took the job promising an even "kinder and gentler" approach. And at first, that's what he delivered, actually proposing to cut the SEC's budget and then, according to a bipartisan report by the Senate Governmental Affairs Committee,¹ ignoring clear warning signs of widespread accounting fraud that culminated in the collapse of Enron.

Enron's demise, of course, was followed by the discovery of numerous abuses at other prominent companies, including WorldCom,

Global Crossing, Tyco, Adelphia, and Rite Aid. Only then did the administration profess a change of heart. With a banner reading "Corporate Responsibility" as a backdrop, the president unveiled a proposal on July 9, 2002, that he claimed would restore integrity to corporate accounting, mostly by increasing penalties for executives found guilty of financial fraud.

At the time, many dismissed this as nothing more than window dressing, which failed to address systemic problems of oversight, enforcement, and conflicts of interest. Yet as evidence of corporate fraud grew and political pressure mounted, the president eventually came around, and on July 30, 2002, signed comprehensive legislation initiated by Sen. Paul Sarbanes (D-MD). Among other things, the Sarbanes bill directed new standards on conflicts of interest for accounting firms and securities analysts; authorized a 77 percent increase in the SEC's budget; and created an independent oversight board to oversee corporate audits, establish auditing standards, and investigate and enforce compliance by accounting firms.

Underpinning these measures were a series of lessons drawn from the Enron debacle. First, the federal government has an essential role in protecting the public from corporate misbehavior. This includes setting appropriate standards for conduct and

Mutual Fund Mess

The SEC did not act on tips of wide-ranging mutual fund abuses that came to light in the fall of 2003, and indeed, none of the cases against a dozen mutual fund firms were the result of SEC inspection.² Rather, New York Attorney General Eliot Spitzer, relying on the same tips relayed to the SEC, has been at the forefront of exposing these abuses, which cheated investors out of billions.

When the scandal became public, the SEC stepped in and, after barely 10 weeks of investigation, reached its first settlement with Putnam Investments – a deal Spitzer blasted as hasty and inadequate. "Whether

the commission recognizes it or not, the first settlement in a complex investigation always sets the tone for what follows," Spitzer wrote in a New York Times op-ed.³ "In this case, the bar is set too low."⁴

Having been forced into action by Spitzer, the SEC now appears to be set on minimizing damage to corporate offenders. William Galvin, who as secretary of the commonwealth of Massachusetts investigated the Boston-based Putnam, remarked, "They're not interested in exposing wrongdoing; they're interested in giving comfort to the industry."⁵

vigorously enforcing those standards. Industry self-regulation – which previously governed the accounting industry – is not enough. Second, the government must be provided the necessary resources to do the job. When this commitment is not made, oversight suffers, deterrence is lost, and industry, motivated by profits, will be tempted to ignore the rules. And third, corporate oversight must be free of conflicts of interests, ensuring sound, independent judgment that reflects the best interests of the public.

Of course, these lessons have broad applicability to all of government's regulatory activity, from ensuring a healthy food supply to protecting workplaces and the environment. Yet as documented below and throughout this report, the Bush administration has refused to learn. Indeed, even the Bush SEC has resisted (see box previous page).

Backing Off Polluters

Environmental enforcement has faltered as the Bush EPA has eliminated key positions, reduced inspections and referrals to the Justice Department, and curtailed fines for violations. From power-plant emissions to industrial discharges in the nation's water to cleanup of hazardous waste sites, the Bush administration has backed off corporate polluters.

Axing Enforcement Personnel

EPA has a backlog of more than 1,500 uncompleted investigations into suspected violations of environmental laws.⁶ Yet each year since taking office, President Bush has pushed to slash the agency's already inadequate enforcement budget.

This has included requests to eliminate 270 inspection and civil enforcement positions in FY 2002, 225 positions in FY 2003,⁷ and 54 positions in FY 2004.⁸ The Senate has resisted these requests, but the administration has gone forward with staffing reductions anyway by transferring enforcement positions to counter-terrorism efforts⁹ (even though Congress provided

separate funds for such purposes) and declining to fill vacancies created by staff departures. (This hiring freeze began in 2001 and has continued even though in EPA's FY 2003 appropriations, Congress ordered staffing levels restored.)

These tactics have reduced EPA enforcement personnel by 12 percent, bringing staffing levels in the Office of Enforcement and Compliance Assurance to their lowest point since establishment of the agency.¹⁰ Adding insult to injury, a number of special agents within EPA's Criminal Investigation Division were also diverted to former Administrator Whitman's personal security detail, where their tasks included personal errands, such as returning a rental car and holding a table at a restaurant.¹¹

Needless to say, none of this has helped the investigative backlog, and indeed, enforcement actions are in sharp decline.

Curtailing Enforcement Actions

The Bush administration is pursuing and punishing far fewer polluters than the two previous administrations, according to an investigation by the Philadelphia Inquirer.¹²

The newspaper obtained 15 years of environmental records for 17 different categories and subcategories of enforcement activity through Freedom of Information Act requests. In 13 of these categories, the Bush administration had lower average numbers than the Clinton administration, according to the Inquirer, and in 11 categories, the 2003 average was lower than the 2001 average, revealing a downward trend.

For instance, the monthly average of violation notices, which are a key enforcement tool, has dropped 58 percent since the Bush administration took office compared to the monthly average under President Clinton, according to the Inquirer. The Bush administration has issued an average of just 77 citations each month, well below the Clinton and Bush I administrations, which averaged 183 and 195 citations a month respectively.

Foxes In the Henhouse

John Peter Suarez, assistant administrator for EPA's Office of Enforcement and Compliance Assurance

Suarez, who oversees EPA enforcement actions, spent seven years as assistant U.S. attorney for the New Jersey district and prior to that served as assistant counsel to then-Governor Christie Todd Whitman. Not only does Suarez lack environmental law experience, there is nothing distinguishing in his record. In fact, while serving as a federal prosecutor, Suarez filed fewer cases, won fewer convictions, took more time and obtained shorter sentences than the average prosecutor in both his district and the country.¹³

John Ashcroft, attorney general

As Missouri senator, John Ashcroft repeatedly opposed funding for clean air and water as well as increased funding to cleanup toxic waste sites.¹⁴ He earned a lifetime rating of 5 percent from the League of Conservation Voters for votes on key environmental legislation from 1995 to 2000.¹⁵ He must now be counted on to prosecute environmental crimes.

Thomas Sansonetti, assistant attorney general for environment and natural resources

Sansonetti is responsible for defending the nation's environmental laws and defending legal challenges to the

government's environmental programs and activities. After the administration weakened power-plant emissions standards, he assured Congress that the action would not effect ongoing litigation initiated by the Clinton administration.¹⁶ However, this turned out not to be true. For example, in October 2003, the Justice Department backpedaled in the middle of a case against an Illinois plant owned by Dynegy Midwest Generation Inc. "In light of EPA's change of position as to its interpretation of the Clean Air Act," the Justice Department stated, "the United States does not rely on any prior statements it has made to this Court that a very narrow construction of the 'routine maintenance' exemption is required by the Clean Air Act itself."¹⁷

Previously Sansonetti worked for the law firm Holland & Hart, where he specialized in environmental law and lobbied on behalf of corporate mining interests, including Arch Coal, Peabody Coal, and the National Mining Association.¹⁸ Before that, Sansonetti worked with Gale Norton, the current Interior secretary, serving as Interior's associate solicitor in the 1980s. He also has been a member of the Federalist Society, a conservative legal network that staunchly opposes federal environmental regulation.

"It's a sign that this administration is flat-out falling down on the job," said Dan Esty, a deputy assistant EPA administrator during the first Bush administration and now director of the Yale University Center for Environmental Law and Policy.¹⁹

Other important indicators also show that the administration is neglecting enforcement. Specifically:

- On-site inspections by EPA dropped from an average of 21,807 per year over the last three years of the Clinton administration to an average of 18,036 over the first three years of the Bush administration.²⁰

- Civil investigations declined from 660 in FY 2000 to 344 in FY 2003.²¹

- In FY 2002, EPA recovered \$51 million in civil penalties compared to \$140 million in FY 1999, \$85 million in FY 2000, and \$95 million in FY 2001. Notably, two-thirds of the civil penalties collected in FY 2001 – the last eight months of which were presided over by President Bush – were the result of complaints lodged during the Clinton administration.²²

In 2003, Public Employees for Environmental Responsibility surveyed 120

EPA investigators and enforcement attorneys. Nearly 70 percent disagreed or strongly disagreed with the statement, "The EPA criminal program is headed in the right direction."²³

Covering Up Lax Enforcement

Disturbingly, the administration's enforcement record might be even worse than it appears. According to an investigation by the Sacramento Bee, the Bush EPA has misrepresented its record of criminal enforcement and overstated its successes in cracking down on polluters.²⁴

Specifically, in its 2002 performance report to Congress, the agency included 190 counterterrorism-related investigations in a count of criminal investigations. One-time phone conversations between EPA and FBI agents were considered criminal investigations for reporting purposes as well. As one EPA agent told the Bee, "I called the FBI and said, 'If you need us, give us a call.' That warranted a (criminal) case number. There was no investigation."

On top of this, agents are also being pressured to open cases that have little or no chance of prosecution instead of pursuing the most egregious violations, agency sources told the Bee.

EPA has also exaggerated the length of prison terms imposed on environmental criminals, boasting that offenders of environmental crimes were sentenced to 471 prison years in 2001 and 2002. However, in an email to top EPA officials, Mike Fisher, an attorney with the agency's Mid-Atlantic office, called this number "seriously misleading," saying, "The press and public deserve the truth about the Criminal Investigation Division's enforcement accomplishments." Specifically, the figure includes sentences stemming from other agencies' narcotics cases, where hazardous waste charges were brought against methamphetamine lab operators.

Dropping Action Against Power Plants

In the fall of 2003, the Bush administration decided to stop investigating 70 power plants suspected of violating clean air standards,²⁵ and

considered dropping 13 other cases that were referred to the Justice Department for action.²⁶

This followed the administration's decision to substantially weaken EPA's New Source Review (NSR) program, which governs power-plant emissions. Later, on Dec. 24, 2003, a federal appeals court intervened and temporarily blocked the administration's rollback pending the result of litigation.

The administration then announced it would resume cases against violators of the old – and now current – standard. Unfortunately, this decision appears to be contingent on whether the NSR rollback is struck down permanently. If it is upheld, the administration seems likely to revert as well, meaning that violations from years ago would be judged by the new, weaker NSR standards – even though these standards were not in place at the time.²⁷

Before making the initial decision to halt investigations, EPA had already notified roughly two-dozen plants under investigation that it had uncovered environmental violations, according to an agency official. Those plants would have been let off the hook if not for the federal appeals court. "I don't know of anything like this in 30 years," one EPA enforcement lawyer remarked at the time.²⁸

"First the administration weakens our clean-air law, and now it won't enforce it," responded Sen. James Jeffords (I-VT), the ranking member on the Senate Environment and Public Works Committee. "Instead of fighting pollution, this administration is at war with the Clean Air Act. Innocent bystanders such as children, the elderly and the infirm will be the principle casualties."

Ignoring Clean Water Violations

An internal EPA study, completed in February 2003 and leaked to the Washington Post, found that 25 percent of major industrial facilities are in significant noncompliance with permits issued under the Clean Water Act, and the majority of these facilities receive little or no disciplinary action.²⁹

The study focused on major facilities, defined as those that discharge at least one

Going Soft on Polluters

In December 2002, the Bush administration allowed Kentucky-based Addington Enterprises, one of the largest coal operators in the country, to continue mining despite its lack of a federally mandated reclamation bond. Such bonds are used to ensure that mining companies fix environmental damage caused by the removal of coal.

The Department of Interior first granted the company a 90-day grace period, and followed up with an additional three-month extension when the company failed to obtain the required insurance. Notably, Addington's CEO, Larry Addington, is a major Republican donor, having contributed \$500,000 to the National Republican Senatorial Committee between 1998 and 2000.³⁰

The Justice Department has also been faulted for cutting a deal with Koch Industries, the largest privately held oil company in the United States.

In September 2000, a federal grand jury in Corpus Christi, Texas, returned a 97-count indictment against Koch Industries, charging the company and four employees with environmental crimes – namely, the intentional release of large amounts of cancer-causing benzene from Koch's West Plant refinery near Corpus Christi, followed by an attempted cover up.³¹

However, this case was short-circuited when, on April 9, 2001, the Justice Department announced a \$20 million settlement with the company, boasting that it was "a record amount imposed in an environmental

prosecution."³² Yet some charge that this was actually a favor to Koch, which faced penalties of up to \$352 million if convicted.³³

Koch Industries' PAC and company employees donated \$800,000 to Republican candidates and organizations during the 2000 cycle, half of which came from David H. Koch, the company's executive vice president.³⁴

Fox In the Henhouse

Jeffrey D. Jarrett, director of Interior's Office of Surface Mining Reclamation & Enforcement

Jarrett is responsible for ensuring that companies involved in surface mining, such as Addington, comply with environmental rules. Previously, Jarrett served as deputy secretary for mineral resources management at the Pennsylvania Department of Environmental Protection. Before that, he worked for several coal companies (including Cravat Coal Co. and Drummond Coal), and from 1988 to 1994, served as deputy assistant director of the Office of Surface Mining, where former coal-industry lobbyist J. Steven Griles – now deputy secretary of Interior – was his boss for much of that time.

According to the Citizens Coal Council, Jarrett and Griles weakened environmental standards and citizens rights, harassed OSM staff who enforced the law and forced some out through early retirement or reassignment.³⁵ The Appalachian Focus Mining News also reported that an internal OSM memo explained that Jarrett is against enforcement or any state action that will increase requirements on operators.³⁶

million gallons per day. Of the 6,652 facilities examined, EPA found 1,670 in significant noncompliance. In 2001, 50 percent of violators exceeded the limit for toxics by 100 percent, and 13 percent were over by 1000 percent. For conventional pollutants, 33 percent of violators exceeded their discharge permits by 100 percent, and 5 percent by over 1000 percent.

Given the large number of violators, EPA's enforcement has been severely lacking. In 2001 and 2002, EPA took enforcement action against only 24 percent of those

in significant noncompliance, 27 percent in "repeat significant noncompliance," and 32 percent in "perpetual significant noncompliance." Less than half of these violators ended up paying fines, which averaged a paltry \$6,000.

U.S. PIRG similarly found widespread problems in a study that examined compliance rates of major facilities from January 2002 to June 2003.³⁷ Specifically, 60 percent discharged pollution in excess of their permit limits at least once over the 18-month

Facilitating Pesticide Use in Water

In guidance issued July 11, 2003, EPA declared that applying pesticides directly in or above U.S. waters for the purpose of controlling insects does not require a pollutant discharge permit under the Clean Water Act.³⁸ Rather, pesticide use must only meet the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

EPA issued the guidance after a couple sued the town of Amherst, N.Y., for not obtaining a permit for its application of pesticides to wetlands as part of a mosquito control program.³⁹ In response, the U.S. Second Circuit Court of Appeals ruled that EPA should articulate a clear interpretation of permitting requirements. Previously, the Ninth Circuit held that applying herbicide to canals without a permit was a violation of the Clean Water Act.⁴⁰

period; 436 exceeded their permit limits for at least 10 of the 18 reporting periods during this time; and 35 facilities exceeded their permit limits every reporting period.

"We need strong action to address this illegal pollution, but the Bush administration has instead proposed slashing the Environmental Protection Agency's enforcement budget and weakening critical Clean Water Act programs," said U.S. PIRG environmental advocate Richard Caplan.

Slowing Cleanup of Hazardous Waste Sites

The number of toxic waste sites cleaned up under EPA's Superfund program declined for three straight years under the Bush administration,⁴¹ leaving millions of Americans at risk.

In fiscal year 2003, EPA completed work at just 40 toxic waste sites, falling from 42 in FY 2002 and 47 in FY 2001. In the last four years of the Clinton administration, EPA completed an average of 87 cleanups per year.⁴²

Listings to the National Priorities List – which identifies the most dangerous sites for cleanup – have also dropped nearly 15 percent during the Bush administration.⁴³ "We

just have fewer dollars to start new projects," said Marianne Horinko, an EPA assistant administrator who oversees toxic cleanup.⁴⁴

The Superfund program, which was established to locate, investigate and clean up the nation's worst toxic waste sites, is funded primarily by an industry-financed trust fund. This fund – after which the program is named – was created through a tax imposed mainly on chemical and petroleum companies, the idea being that they should have to cover the costs of cleaning up their own pollution.

Since the tax expired in 1995, the program's funds have dwindled. Yet contrary to its predecessors, the Bush administration has opposed reauthorization of the tax, leaving Superfund strapped for cash. In fact, the trust fund was projected to run out of money in October 2003, according to the General Accounting Office.⁴⁵ President Bush proposed a \$150 million increase for the Superfund program in his FY 2004 budget request, but this falls well short of what is needed to rescue the program. Indeed, in January 2004, EPA's inspector general concluded that there was a \$175 million shortfall over the previous year for Superfund cleanups.

"We teach our children that they are responsible for cleaning up the messes that they make," said Carl Pope, executive

Fox In the Henhouse

Marianne Horinko, Assistant Administrator for the Office of Solid Waste and Emergency Response

Horinko is in charge of the Superfund program, and also served for a time as EPA's acting administrator following the departure of Christie Todd Whitman. Previously, she was president of Don Clay Associates, an environmental consulting firm whose clients included the Chemical Manufacturers Association, the Koch Petroleum Group and several other interests who benefit from the expiration of the Superfund tax.⁴⁶ Before that, Horinko was an attorney at Morgan, Lewis & Bockius, where she represented industry in Superfund and clean air cases.

director of the Sierra Club. "The Bush administration should demand no less of corporate polluters."⁴⁷

Jeopardizing Worker Health and Safety

The story is no different for worker health and safety. The Bush administration has pushed to cut funding for enforcement, eliminated enforcement personnel, spent less time on inspections, and curtailed fines for violations.

Workplace injuries and deaths have been steadily declining since the creation of the Occupational Safety and Health Administration in 1970⁴⁸ even as the workforce has expanded. However, the numbers still remain unacceptably high. In 2001, there were nearly six million workplace injuries and illnesses and 5,900 deaths,⁴⁹ not counting the estimated 50,000 to 60,000 workers who die each year from occupational diseases. OSHA's past success and the seriousness of the problem should encourage a greater commitment of resources; unfortunately, the administration is moving in the other direction.

Insufficient Resources

Less than 1 percent of all workplaces are inspected for safety and health violations each year. At current staffing and inspection levels, it would take OSHA 115 years to inspect each workplace (under federal jurisdiction) once. Nonetheless, the Bush administration has continually pushed to cut OSHA's budget. Congress has fortunately blocked this effort – and in fact, increased funding for FY 2002 and 2003 – but the administration still managed to eliminate 57 OSHA positions over its first two years.⁵⁰

In his FY 2004 budget request, President Bush proposed to cut OSHA's budget by \$3.2 million and eliminate an additional 77 positions⁵¹ – including 64 enforcement positions, 10 for developing new safety and health standards, and five for statistics; the president proposed to add two positions for providing regulatory compliance assistance

Foxes In the Henhouse

Michael F. Duffy & Stanley Suboleski, Federal Mine Safety and Health Review Commission (FMSHRC)

The commission is an independent agency set up to resolve legal disputes – mostly involving civil penalties – between MSHA and mining companies under the Mine Safety and Health Act.

President Bush appointed Michael Duffy to the commission on Dec. 2, 2002, and Duffy later became chairman on Feb. 12, 2003. Previously, Duffy served as the former deputy general counsel to the National Mining Association, which represents the interests of the mining industry. Duffy also served as senior counsel to the American Mining Congress, a predecessor of the NMA, from 1979 to early 1987.

Suboleski was appointed to the commission in June 2003. Previously, he served as executive vice president and interim chief operating officer for Massey Energy, a company with an abysmal record on worker safety, with at least 12 fatalities at Massey operations since 1997.⁵² In October 2000, a coal sludge spill at a Massey subsidiary (Martin County Coal in Kentucky) sent an estimated 306 million gallons of water and black coal slurry into the Big Sandy River and its tributaries – 28 times the amount spilled in 1989 by the Exxon Valdez.⁵³ In this case, higher ups at the Mine Safety and Health Administration – including the head, former mine-industry executive David Lauriski – allegedly cut off the agency's investigation and pressured investigators to produce an inaccurate report about the cause of the spill.⁵⁴

to industry.⁵⁵ The president also sought cuts of nearly \$8 million in worker safety and health training programs, which Congress has previously rejected. These cuts were largely offset (and masked) by proposed increases in compliance assistance.

Likewise, the president proposed to cut MSHA's coal enforcement activities by more than \$6 million. This came at a time when mining-related deaths were on the rise.⁵⁶

In one case, in January 2003, an explosion rocked the McElroy mine in Cameron, W.Va., killing three and injuring another three. The MSHA district manager for the area reportedly requested additional inspectors and resources, but was granted less than half of his request because of personnel shortages, highlighting the dire need for staffing increases.

“Between December 2001 and January 2003, when the McElroy Mine should have had six surface inspections, it had been inspected only once,” Sen. Robert Byrd (D-WV) said. “No underground inspections were performed.”⁵⁷ Unfortunately, the Bush administration has pushed cuts that would make matters worse.

Inadequate Inspections and Penalties

Although lacking in staff, OSHA’s recorded inspections under the Bush administration have been roughly on par with previous years – that is to say, still woefully inadequate.⁵⁸ However, inspections have become less thorough, potentially allowing violations to go undetected. Specifically:

- The average time spent on safety inspections decreased from 22 hours in FY 1999 and 2000 to 19.1 hours in FY 2002.

- The average time spent on health inspections declined from 40 hours in FY 1999 and 35 hours in FY 2000 to 32.7 hours in FY 2002.
- The number of citations issued for “willful” violations plunged from 607 in FY 1999 and 524 in FY 2000 to 392 in FY 2002.

The average penalty for willful violations also fell by 25 percent, while total penalties declined from \$86.5 million in FY 2000 to \$70.7 million in FY 2002.⁵⁹ Of course, OSHA has always been soft on willful violators. From 1982 to 2002, OSHA investigated 1,242 cases in which the agency concluded that willful violations resulted in workplace deaths; however, OSHA declined to seek prosecution in 93 percent of those cases, according to an investigation by the New York Times.⁶⁰ What’s more, at least 70 employers committed repeat willful violations resulting in scores of additional deaths, but were still seldom prosecuted. The Bush administration is making a bad problem worse.

This trend is particularly disturbing since low penalties reduce the incentive for companies to change their ways. Often, it

Tragedy in an Alabama Mine

In September 2001, a series of explosions in a coal mine in Brookwood, Ala., claimed the lives of 13 miners. An investigation into the tragedy revealed that MSHA’s failure to fully enforce mining standards permitted the hazardous conditions that led to the disaster.⁶¹

MSHA approved mining plans that were inadequate to control the mine’s roof (which fell), ventilation system (which was insufficient), and float coal dust (which fueled one of the explosions). Plans approved by the agency for emergency evacuation were also found to be deficient.⁶² Twelve miners, lacking proper direction and information, were killed when they attempted to rescue trapped co-workers.

Prior to this catastrophe, MSHA inspectors misleadingly cited serious violations as “non-significant and substantial” and failed to issue “unwarrantable failure” closure orders for repeated violations. The agency kept penalties against the company to a minimum by claiming that most violations threatened only one miner. MSHA also helped the company, Jim Walter Resources, avoid costly fines by failing to follow up on past violations to learn if they were corrected by MSHA-imposed deadlines.⁶³

MSHA found that eight safety violations contributed directly to the miners’ deaths and fined the company \$435,000, the maximum fine allowable. However, in June 2003, the agency discovered 18 new safety violations by the company, but issued a mere \$8,335 in fines.⁶⁴

may be cheaper for a company to pay a fine than implement the changes necessary to achieve compliance.

Consider, for example, McWane Inc., a company based in Birmingham, Ala., that is one of the world's largest manufacturers of cast-iron sewer and water pipe. Nine workers have been killed in McWane plants since 1995, and OSHA investigators have concluded that three of those deaths resulted directly from deliberate violations of federal safety standards.⁶⁵ According to current and former managers at McWane, company executives view penalty costs as far less burdensome than the cost of fully complying with health and safety standards.⁶⁶ Shortly after the death of a McWane employee, company budget documents revealed that McWane had calculated down to the penny the cost of OSHA fines.⁶⁷

Enforcement by the Bush Mine Safety and Health Administration has also been lax. In particular, MSHA's practice of "conferencing" – whereby MSHA officials informally meet with mine operators to review citations and frequently to reach settlements – has "neutered" enforcement, according to the United Mine Workers of America, leaving both miners and inspectors frustrated. In many cases inspectors are not even allowed to defend their citations during these meetings.⁶⁸

Not surprisingly, there has been a decline in tough enforcement actions (such as "significant" and "substantial" violations and "unwarrantable failure" citations⁶⁹) under the Bush administration – a hands-off approach that can have deadly consequences for workers (see box on previous page).

Neglecting Food Safety

Both the U.S. Department of Agriculture and the Food and Drug Administration, the main entities that oversee food safety, have failed to properly enforce federal standards during the Bush administration. USDA has looked the other way on mad cow disease

and unsanitary conditions at food production facilities, while FDA faces budget shortfalls – which the administration threatens to exacerbate – that prevent it from carrying out needed inspections. As a result, contaminated food continues to pose a significant risk to American consumers, causing an estimated 76 million illnesses each year, including 325,000 hospitalizations and 5,000 deaths, according to the Centers for Disease Control and Prevention.

Inaction on Mad Cow

For two and a half years, the Bush USDA virtually ignored the threat of mad cow disease (see box on next page) – which has killed 137 people, mostly in Great Britain – and then declined to significantly increase testing when, in December 2003, it was discovered in Washington state. Instead, Secretary Ann Veneman misled the public about the Washington case and the likely effectiveness of USDA's testing program in an apparent effort to prop up the meat industry, which has close ties to the administration.

At issue is whether the infected cow was a "downer," meaning that it was unable to walk. Contrary to Veneman's contention, three eyewitnesses say that the cow was able to walk and did not appear to be sick at all,⁷⁰ which is bolstered by the fact that the USDA veterinarian on the scene did not perform tests required for downer cattle, according to agency documents obtained by United Press International.⁷¹

This is of critical importance because USDA has based its testing and surveillance program for mad cow by sampling only downer and other sick animals, which account for a small fraction of the 36 million U.S. cattle slaughtered each year; in 2003, USDA tested just 20,000 downers for mad cow. At first, Veneman argued that the discovery of the infected cow was proof of the system's effectiveness, and that more expansive testing of healthy cattle was unnecessary. Instead, she chose to expand testing of downer cattle to farms and feedlots (in addition to those taken to slaughter), which would have doubled testing.

A Woeful Inspection Record

In May 2003, a case of mad cow was discovered in Alberta, Canada, close to the Washington border. However, USDA failed to respond through increased testing, performing no tests on commercial cattle in Washington from May through July, according to agency data turned over to the United Press International in response to a Freedom of Information Act request.⁷²

In fact, USDA did not test any commercial cattle in Washington state for mad cow during the first seven months of 2003. "This includes Washington's biggest slaughterhouse, Washington Beef in Toppenish – the 17th largest in the country, which slaughters 290,000 head per year – and two facilities in Pasco that belong to Tyson, the largest beef slaughtering company in the United States," according to UPI.

Nationwide, tests were conducted at fewer than 100 of 700 cattle slaughterhouses between 2001 and 2003, and some of the biggest slaughterhouses were not tested at all. Of cows tested, only 11 percent came from the top four beef producing states, which account for nearly 70 percent of cattle slaughtered each year.

Making matters worse, there are limited protections to stop the disease from spreading. In 1997, FDA banned cow bits from being fed back to other cows, which was commonplace at the time. However, enforcement of this standard has been lax, and it contains a number of loopholes in any case. For instance, cow bits can be fed to other livestock, which can then be fed to cows.

As a result, USDA's advisory committee of foreign experts concluded that cattle in the United States have likely been "indigenously infected" (the Washington cow was imported from Canada), despite the Bush administration's assurances to the contrary. "That was the pattern in Europe," said Dr. Michael Hansen, who studies food safety for Consumers Union. "Blanket denials, then you

find one, then once you go to widespread testing, you find more and more."⁷³

Donald Berry, chairman of the biostatistics department at the University of Texas Cancer Research Center in Houston, has estimated that two positives for mad cow out of 40,000 tests would suggest a total of about 1,750 infected animals in the United States.⁷⁴

In response to such claims, Veneman has assured the public that U.S. meat is safe regardless because there are necessary precautions in place to make sure that brain and spinal chord tissue – where the disease is found – do not enter the food supply.

However, many meatpacking plants now use "advanced meat recovery" systems

that cut close to the bone and spinal chord, which increases the chances that tissue from an infected animal's central nervous system could end up in hamburgers and other processed meat. In 2002,

USDA tested meat from plants that use such systems, and 35 percent of it contained central nervous tissue.⁷⁵ "Are they interested in making people sick? Certainly not," said Trent Berhow, a USDA inspector from Denison, Iowa. "But their main motivation is money. They are interested in getting every ounce of flesh off an animal."⁷⁶ Veneman has said the USDA would pursue a new standard for "verification testing" to ensure that nerve tissue doesn't get into processed meat, but so far there are only protections in place for animals under 30 months.

In the meantime, there are insufficient inspections to catch mad cow; there are inadequate protections to stop it from spreading among cows; and there is meat making it into the food supply that has central nervous tissue. This combination spells danger for the American consumer, especially given the Bush administration's cozy relationship with the meat packing industry, which gave the president \$76,000 for the 2000 campaign, and \$1.2 million to Republican candidates and committees (89 percent of its total contributions).⁷⁷

There are insufficient inspections to catch mad cow, inadequate protections to stop it from spreading among cows, and central nervous tissue is making it into the food supply. This spells danger for the American consumer.

Fox In the Henhouse

Jim Moseley, deputy secretary of Agriculture

Prior to joining USDA in 2001, Moseley was half owner of a hog farm, AgRidge Farms and Infinity Pork.⁷⁸ At USDA, he was in a position to influence the agency's testing policy over mad cow.

However, infected cattle frequently do not show any symptoms of mad cow. Indeed, European inspectors have found hundreds of infected cows without any symptoms.⁷⁹ This appears to have been the case in Washington as well.

A bipartisan investigation by the House Government Reform Committee found that USDA made its discovery only because of an agreement with the plant where the cow was slaughtered to accept samples from nondowner cattle.

"If the information we have received is true, a key premise of the USDA [mad cow] testing program is subverted," wrote Reps. Tom Davis (R-VA), chairman of the Government Reform Committee, and Henry Waxman (D-CA), the ranking Democrat, in a letter to Veneman.⁸⁰

This bolstered the case of importers of American beef, including Japan and South Korea, which have argued that USDA's testing program is insufficient, and should also sample seemingly healthy cows (something strongly opposed by the beef industry).

Likewise, a USDA advisory body, comprised of foreign experts who have dealt with mad cow, concluded in February 2004 that USDA's surveillance program "must be significantly extended in order to measure the magnitude of the problem," and that the agency should strongly consider randomly sampling healthy cattle,⁸¹ as other countries are currently doing. For example, France tests about half of the six million cattle it slaughters each year, and Japan tests all of its 1.3 million.⁸²

After substantial pressure, Veneman reluctantly announced in late February 2004 that USDA would begin testing some non-downer cattle. To that point, Veneman and other USDA officials had ignored information

that did not support their predetermined policy. On Jan. 6, 2004, the co-manager of the Washington slaughterhouse where the infected cow was discovered wrote to USDA to warn that the cow was not a downer; however, USDA continued to publicly insist that it was.

As a result, wrote Davis and Waxman, "public confidence in USDA may suffer. Confidence in the food supply requires that the public be able to rely on statements of USDA officials."

Meat Inspection Breakdown

The Bush administration claims it is seeking "record level support" for USDA's food safety programs in the FY 2005 budget.⁸³ In fact, the president's budget would rely on \$124 million in industry "user fees" to support a major portion of the meat inspection budget.⁸⁴ The year before, the president likewise proposed to cut direct federal funding by \$90 million in favor of industry "user fees."

Congress has repeatedly rejected such user fees – in which companies pay for inspections – out of fear that inspectors would become beholden to meat-plant owners as the source of their paychecks.⁸⁵ Indeed, USDA already has a too-cozy relationship with the meat industry, and is notorious for going soft on violators. This problem did not begin with President Bush, but the administration has done nothing to remedy the situation.

In 2001, USDA routinely allowed negligent companies to sell meat and poultry to American consumers, according to the General Accounting Office, undermining the new food safety regime – the Hazard Analysis and Critical Point (HACCP) system – established in 1998.⁸⁶

HAACP replaced the decades-old practice of "poke and sniff" inspections (which could only catch rotten or clearly damaged meat) with science-based standards and testing – requiring meat and poultry plants to develop comprehensive safety plans, and check for Salmonella and other dangerous bacteria. On its face, this should ensure a significantly safer food supply, but the Bush administration

has fallen far short in implementation. Among other things, GAO found:

- USDA did not suspend a plant's operations when violations were detected (even though Secretary Ann Veneman has pledged that the department would do so⁸⁷). Instead, suspensions were almost always put on hold, or "placed in abeyance," allowing the offending plant to continue production. This was the case for 57 of 60 administrative enforcement cases examined by GAO.
- USDA did not take necessary steps to eliminate repeat violations, "particularly

those relating to 'zero tolerance' for visible feces." Plants are required to take corrective action each time a violation is cited. However, "the number of repetitive violations in various plants – 109 in one plant alone – shows that [the department] has not ensured that recurring violations were eliminated."

- USDA did not require plants to take timely action to control Salmonella contamination. "At the plants that failed two consecutive sets of tests for Salmonella, an average of 20 months elapsed from the date of the failure of the first set until the plants completed and passed a third set," according to GAO.

Foxes In the Henhouse

Ann Veneman, secretary of USDA

Veneman previously sat on the board of directors for Calgene (merged into Monsanto in 1997, now Pharmacia), the first company to bring genetically engineered food to supermarket shelves.⁸⁸ As secretary, she has actively promoted Calgene/Monsanto's position on international trade of genetically modified food⁸⁹ while opposing consumer labeling.⁹⁰

While campaigning for President Bush before the 2000 election, Veneman assured California farmers that they would no longer be subjected to "unnecessary and burdensome" environmental regulations.⁹¹ She was also forced to recuse herself from the decision to triple logging in the Sierra Nevada range (see page 32) because of her prior representation of loggers.

Elsa Murano, USDA undersecretary for food safety

Murano has consistently downplayed the potential dangers of food irradiation since her days as director of the Center for Food Safety at Texas A&M University. The Center had a multi-million dollar research and development deal with the Titan Corporation, a military contractor seeking new uses for its "Star Wars" E-beam technology to irradiate food.⁹²

In March 2001, USDA announced plans to irradiate school lunches and stop salmonella testing instituted by the outgoing Clinton administration (which meat packers had opposed as too expensive).⁹³ However, after a public uproar, the plans were dropped; White House spokesman Ari Fleischer blamed the decision on "the lower level of the Department of Agriculture." Later, in May 2003, USDA published specifications for irradiating ground beef in school lunches, but made it voluntary and said testing would continue.⁹⁴ USDA's School Food Program (now run by Peter Murano, the secretary's husband) formerly banned irradiated foods from the nation's schools.

USDA has also moved to apply the HACCP model of industry self-testing to slaughterhouses, where the agency currently inspects carcasses. However, in December 2001, GAO reported that a USDA pilot program to test this system was too scientifically flawed and unreliable to justify replacing federal meat inspectors with plant employees. Murano disagreed and asked GAO to change the report's title from "Food Safety: Weaknesses in Meat and Poultry Inspection Pilot Should be Addressed Before Implementation" to "Meat and Poultry Inspection Needs Enhancement Prior to Implementation."⁹⁵ GAO declined.

- Inspectors did not document any HACCP violations in 55 percent of all plants during 2001. Department officials told GAO “they were surprised at the large numbers and said the absence of violations was unusual.”
- In about 91 percent of the plants GAO sampled, “inspectors had failed to document deficiencies in basic requirements,” including whether plants had “adequate documentation to support the analysis of hazards in their HACCP plans.” USDA “is not ensuring that all plants’ HACCP plans meet regulatory requirements and, as a result, consumers may be unnecessarily exposed to unsafe foods that can cause foodborne illnesses,” GAO concluded.
- Only about 1 percent of plants have been subjected to in-depth reviews to verify that HACCP plans are based on sound science.
- USDA has only about 6 percent of the consumer safety officers it needs; “managers in two large districts expressed concern that it may take years to assess the plans for all plants in their districts.”

As discussed below, this lax approach to food safety has permitted a number of serious outbreaks during the Bush administration.

Listeria Overlooked

USDA ignored repeated food safety violations at a Wampler Foods plant in Fraconia, Penn.,⁹⁶ and in 2002, listeria-contaminated turkey meat from the plant killed eight, sickened more than 50, and caused several miscarriages and stillbirths, prompting the recall of 27.4 million pounds of ready-to-eat poultry products, the largest recall in U.S. history.

The lead USDA inspector for the plant knew about listeria contamination and other filthy conditions prior to the outbreak, but the agency declined to take action, according to individuals who worked inside the plant.⁹⁷ On the contrary, USDA gave advance notice of listeria testing, which is supposed to be

unannounced, allowing the plant time to perform special cleanups.⁹⁸

Vincent Erthal, a USDA inspector who worked the night shift at Wampler, requested enforcement action in August 2002 and provided two years of documentation of widespread sanitary problems at the facility.⁹⁹ Unfortunately, agency higher-ups looked the other way.

Shielding ConAgra

In the summer of 2002, the meatpacking giant ConAgra Corporation¹⁰⁰ recalled 19 million pounds of ground beef – the third largest recall in U.S. history – after lab tests found E. coli O157:H7 contamination.¹⁰¹

USDA quickly announced that no contaminated meat had made its way to market, but the Centers for Disease Control and Prevention later contradicted this assertion, linking the ConAgra beef to at least one death and 35 illnesses during the first month after the recall.

From the beginning, USDA seemed more concerned with protecting ConAgra than the public. In January 2002, six months before the recall, John Munsell, owner of the family business Montana Quality Foods, Inc., alerted USDA that ConAgra had shipped him meat contaminated with E. coli. Yet instead of taking action against ConAgra, USDA blamed Munsell and ordered him to rewrite his HACCP plan 14 times while suspending his privileges to grind his own beef, according to an investigation by the Government Accountability Project (GAP).¹⁰² This placed Montana Quality Foods under tighter surveillance than any other plant in the beef industry, and Munsell was ultimately forced to sell his business.

As for ConAgra, USDA looked the other way. While Munsell was ordered to recall 270 pounds of ground beef, the agency declined to interfere with ConAgra even after February 2002 lab tests confirmed E. coli contamination in beef produced on Aug. 30, 2001, at ConAgra’s plant in Greeley, Colo.

At the time, USDA inspectors argued that the agency was ignoring the real public health threat; one expert in the agency’s

Food Safety and Inspection Service wrote to agency officials, "It would be a shame if an unsuspecting consumer got sick, or even worse, because we failed to take appropriate measures to prevent it... The chances are pretty good that ConAgra is the source and there's probably more of this 'suspect' product out in distribution like a ticking time bomb." Nonetheless, agency higher-ups in Washington, D.C., and at the district office with jurisdiction over the matter overruled action against ConAgra and came down on Munsell instead.

Contaminated School Lunches

In 2002, USDA failed to notify state and local officials about food contaminated by ammonia, and allowed dangerous beef patties, chicken tenders and potato wedges to be shipped to school lunch programs across the state of Illinois.¹⁰³

Forty-two children and teachers at an elementary school in Joliet, Ill., were sickened and rushed to the hospital in November 2002 after eating contaminated chicken tenders – which were found to contain 133 times the accepted level for ammonia, caused by an ammonia leak a year earlier at a Gateway Cold Storage in St. Louis.

A USDA inspector was stationed at the food storage facility at the time of the leak but did not inform schools or health officials of the incident. USDA officials maintained that it was Gateway's responsibility to notify affected entities.

State and local officials quarantined food shipments from the facility after cafeteria workers complained of conspicuous odors. However, these officials claimed their efforts were undermined because USDA allowed Gateway to continue shipping the ammonia-soaked products (an allegation the agency denied).

Cuts for the Food & Drug Administration

While USDA handles meat safety, FDA handles everything else, including seafood, eggs, and vegetables. In his FY 2004 budget request, President Bush called for a \$14

million cut from FDA's food safety efforts¹⁰⁴ even though the agency already lacks resources to adequately protect the public.

FDA receives just 28 percent of food safety resources, but is responsible for 78 percent of the food supply,¹⁰⁵ which accounts for two-thirds of recorded outbreaks of food-related illness.¹⁰⁶

Currently, the agency has 770 food inspectors for 57,000 plants, meaning a single inspector has responsibility for an average of 74 plants. As a result, FDA inspects food establishments under its jurisdiction just once every five years,¹⁰⁷ and tests only 2 percent of the estimated five million shipments of imported food each year, with a mere 150 inspectors devoted to the task.¹⁰⁸ By contrast, USDA has approximately 7,600 inspection personnel for about 6,500 meat and poultry plants,¹⁰⁹ which are inspected daily.

Backing Off Drug Companies

FDA enforcement actions against improper drug advertising have dropped dramatically during the Bush administration, coinciding with a policy issued at the end of 2001 that positioned the agency's Office of Chief Counsel as a clearinghouse for all notices of violations.¹¹⁰

From December 2001 to September 2002, FDA issued just 19 "notice of violation" or "warning" letters (an average of just two per month).¹¹¹ In the three previous years, FDA sent 253 of these letters to manufacturers, or almost 85 per year.

This decline came at the same time drug advertising skyrocketed. Ads aimed at doctors increased by nearly 20 percent in 2002, yet FDA actions directed at such promotions decreased by almost 80 percent.¹¹² Likewise, direct-to-consumer advertisements submitted for FDA review increased by 75 percent in 2002, yet FDA enforcement actions in this area decreased by nearly 50 percent.

Daniel Troy, FDA's chief counsel, explained this discrepancy by claiming the

Fox In the Henhouse

Daniel Troy, FDA's chief counsel

Enforcement actions against improper drug advertising plummeted after Troy made his office the clearinghouse for violation notices. Previously Troy worked as an attorney representing industry in cases against FDA. For example, in 1998, he won a fight with FDA that permitted drug companies to provide doctors with information about "off-label" uses of their drugs.¹¹³ Troy also successfully defended the tobacco industry against FDA's efforts to regulate tobacco advertising.

agency's oversight is focused on fewer, more complicated cases; however, when pressed by a Boston Globe reporter, he could not offer a specific example.¹¹⁴

Meanwhile, complaints submitted to FDA regarding false and/or misleading advertisements have remained relatively constant; the lack of enforcement seems to

have little to do with greater compliance with the law.

Indeed, in September 2002, four independent experts¹¹⁵ convened by the Democratic staff of the House Government Reform Committee found significant problems in their review of more than 100 direct-to-consumer television advertisements from the preceding year.¹¹⁶

"The advertisements I reviewed contained numerous problems (errors, omission or misleading statements/images) and ... as a group they are often intended to mislead a consumer about the drug's effectiveness or the seriousness of their medical condition (creating fear and concern over conditions that are ordinary and have no impact on quality or quantity of life)," wrote Dr. Michael Wilkes of the University of California, Davis. "I am also bothered by drugs that insinuate or actually claim they are better than other drugs or classes of drugs where there is no data to support such a claim."¹¹⁷