

US: Massey official charged with cover-up of Upper Big Branch mine disaster

By Clement Daly and Naomi Spencer
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The security chief at Massey Energy's Upper Big Branch coal mine has been charged with obstructing investigations into the explosion that killed 29 miners last year. Hughie Elbert Stover was indicted by a federal grand jury February 25, and faces arraignment March 15 on charges of obstructing justice and making false statements.

Stover is charged with lying to an FBI agent and a federal Mine Safety and Health Administration (MSHA) inspector about his ordering the destruction of thousands of security documents from the Upper Big Branch Mine.

The indictment also alleges that Massey routinely violated federal law by warning underground workers when regulators arrived for inspections. Advance warning of inspections are rampant in the coal industry and well known by regulatory agencies themselves. The practice allows for egregious health and safety violations to go on while operations avoid fines and citations.

The federal indictment notes that Stover denied such activity went on at the Upper Big Branch site and insisted he would have fired any security guard who warned below-ground foremen of inspectors. However, the indictment charges, Stover personally ordered security guards to notify mine personnel of the arrival of inspectors.

Massey Energy insists that the company notified the Justice Department "within hours" of discovering the documents had been destroyed, and claims to have taken steps to recover them for the investigation.

In the 11 months since the April 5, 2010 explosion at the Montcoal, West Virginia mine, Stover is the first person to face criminal charges in connection with the tragedy. In addition to overseeing Upper Big Branch mine security, Stover also managed security at two other Massey operations and served as personal security detail for Don Blankenship, former chief executive of the company.

Blankenship retired at the end of 2010—taking a golden parachute worth tens of millions of dollars with him—without facing criminal liability for the disaster or even speaking to investigators. At least 18 other top company officials, including Massey's safety head and the Upper Big Branch mine foreman, have also refused to speak to investigators. (See "Massey CEO refuses to testify at hearing into Upper Big Branch mine disaster")

That only a single, relatively low-level official from the company stands criminally liable for the worst US mining disaster in 40 years speaks to the legal impunity with which the coal industry does its business. Massey controls vast reserves of metallurgical coal in West Virginia and Eastern Kentucky, giving it international leverage over steel production and virtually complete political control in the coalfields region.

At every step of the investigation into the Upper Big Branch

disaster, MSHA has rejected calls for public hearings that would have provided safety officials the power to subpoena witnesses and call company heads to account. Instead, the federal regulatory body has ceded direction of hearings to the funding-starved and subservient West Virginia safety office. (See "MSHA's 'working theory' of explosion that killed 29 Massey miners")

Reflecting the inadequate state-level regulatory system that oversees the region including the Upper Big Branch and many other high-accident Massey operations, MSHA announced that it will create a new coal mining district in southern West Virginia by splitting the existing District 4 office located in Mount Hope, West Virginia. "[The] district 4 office ... currently has the most employees of all MSHA's 11 coal districts," a MSHA press release announcing the plan said. However, it also has "the most extensive work load with the smallest ratio of managers and supervisors to line staff."

To carry out the restructuring which is set to begin in the second quarter of fiscal year 2011, President Obama has allocated \$634,000 in his proposed budget. The sum is part of an approximately 5 percent proposed increase to MSHA's overall budget to \$394 million.

At the same time, the Obama administration is proposing to cut funding for the US Office of Surface Mining Reclamation and Enforcement (OSM) beginning October 1 by more than 10 percent to \$146 million. This would include slashing OSM's budget for regulating active mines—from \$127 million to \$118 million—as well as cutting funding to the Abandoned Mine Land program, which cleans up abandoned coal mines, from \$35.5 million to \$27.4 million.

In explaining the rationale for the split, MSHA said simply that District 4 "has become too large to effectively manage." The current District 4 includes field offices in Logan, Madison, Mount Carbon, Pineville, Princeton and Summersville, overseeing 400 of the nation's 2,100 coal mines. It is also "responsible for 27 percent of all mechanized mining units in the nation, compared to 14 percent in the next closest district."

The plan comes after nearly three decades of reports highlighting the insufficient resources of West Virginia's District 4. A report by the General Accounting Office as early as June 1982 found that "an inadequate number of mine inspectors" in southern West Virginia prevented the federally mandated quarterly inspections of mines from being completed. The report pointed to the 1978 federal hiring freeze by the Carter administration as the source of the problem.

Following a methane explosion on January 16, 1991 at the Fire Creek No. 1 mine in McDowell County in which two miners were killed, six company officials were charged with having falsified mine records to show that pre-shift safety checks had been conducted. MSHA's internal investigation found that inspectors failed to ensure

the safety checks were being conducted.

A 1996 MSHA report warned of District 4's disproportionate level of mining deaths compared to its level of coal production. The 76 coal-mining deaths between 1996 and 2006 gave the district the notorious distinction of being the deadliest in the nation. It far surpassed the second place District 6 in eastern Kentucky, which counted 48 deaths.

An Inspector General's report issued in November 2007 noted that nationwide that year, 147 required inspections had not been completed at 107 mines, affecting some 7,500 miners. The report specifically identified southern West Virginia where 85 of its 165 mines had missed one or more required inspections. Moreover, the report noted that the number of agency inspectors declined from 605 in 2002 to 496 in 2006 while underground mining activity had increased by 9 percent over the same period.

Investigations by the *Charleston Gazette* at the time revealed that MSHA in District 4 had begun replacing its mandated complete reviews with "enhanced spot inspections," as well as enlisting its technical specialists to assist with regular inspections, in an effort to overcome its resource problems. MSHA records showed that the policy had been in place since early 2006 and was approved by the highest levels of the regulation agency. The year saw 23 miners killed in West Virginia.

After the January 19, 2006 conveyor belt fire at the Alma No. 1 Mine in Logan County, an internal MSHA review found "significant deficiencies" in how the mine had been inspected. Coal miners Ellery Hatfield and Don Bragg died from smoke inhalation at the Massey-owned mine being operated by Aracoma Coal. The investigation report referred to a meeting in September 2005 when District 4 managers had met with the national MSHA staff and "inform[ed] them of a need for additional inspection resources."

A wrongful death suit was filed against MSHA by the miners' widows after the investigation found that at least 20 specific safety violations contributed to their deaths. The suit charged MSHA for failing to perform the necessary mine inspections that would have saved their husbands' lives. Last month the suit was dismissed by a federal judge on the grounds that in attempting to "impose a legal duty upon MSHA" the court would "directly conflict with Congress's decision to place the primary responsibility for mine safety on mine operators." In other words, no one is to be held accountable.

An Inspector General report issued in June 2010 criticized MSHA's handling of Pattern of Violation (POV) mines. POV mines are those singled out for increased regulation because of their "history of recurrent significant and substantial violations of mandatory safety and health standards that demonstrate a mine operator's disregard for the health and safety of miners."

The report refers to instructions issued in March 2009 by the Coal Mine Safety and Health (CMS&H) Administrator Kevin Stricklin to district managers that in identifying POV mines, "select no more than one mine on the initial screening list per field office and a maximum of 3 mines per district" on the grounds of "resource limitations." Of the 89 potential POV mines initially identified by MSHA in 2007, 21 were removed from the list for unknown reasons by the agency with no verification that their safety record ever improved. An additional 10 were removed by CMS&H citing specifically Stricklin's instructions.

Last week, West Virginia officials with the Office of Miners Health, Safety and Training (OMHS&T) released the findings of an investigation report into the death of William Roger Dooley. Dooley

was killed at the Kingston No. 1 Mine on October 11, 2010 when a 6-by-3-foot piece of the mine roof he was bolting collapsed on him.

The Kingston Mining Inc., a subsidiary of Alpha Natural Resources, was cited in the report for Dooley's death. The investigation found 13 violations at the Kingston No. 1 Mine including non-compliance with its roof control plan. Roof bolts were found spaced 8 to 11 inches further apart than called for in the section that collapsed. In addition to taking deeper cuts of coal than permitted, the mine was also found to be in violation of its methane and dust control plan. Inadequate ventilation and unsafe coal dust accumulations of up to 6 inches deep were reported.

OMHS&T's findings also found Medford Trucking responsible for the death of truck driver Charles Qualls at Massey Energy's Republic Energy Surface Mine on December 4, 2010. Qualls died when he lost control of his truck and it overturned. The investigation into the accident found that 4 of the 6 trailer brakes weren't working properly. One of the brake drums was worn, two of brake canisters were due for adjustment, and the right center brake was not functioning prior to the accident. According to the report, "Any one of these defects alone would constitute an unsafe condition."

The trucks at the Republic mine haul loads averaging 41 tons. Qualls, who had at least 10 years of mining experience and 3 years with Medford, lost control on a downhill portion of the haul road with an average slope of 10.3 percent, or 5.9 degrees.

A separate MSHA report issued February 23 cited CONSOL Energy for the death on Jesse Adkins. Adkins, like Dooley, was a roof bolter, but at CONSOL's Loveridge mine in Marion County. Last July he was crushed under a piece of mine wall, or rib, while waiting to install roof bolts. (See "Another West Virginia coal miner killed") MSHA's investigation concluded, "The accident was caused by a failure to effectively control the rib work area which exposed the victim to a hazardous condition." It was found that the mine's equipment wasn't even capable of installing the needed mine supports and "was thereby unsuited to current conditions."

What is the response to this bloody record? It is clear that the proposed restructuring will do little to address the longstanding problems of District 4. Corruption and collusion between the industry and political establishment ensure that regulatory bodies are declawed and subordinate to company profits.

Moreover, inadequate budgets for agencies and field inspections prevent any meaningful enforcement of existing regulations. The meager 5 percent increase to mine oversight proposed by the Obama administration, coupled with cuts in other regulatory agencies, testifies to the government indifference to the hazardous conditions in which miners must work.

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