

Federal investigation finds Upper Big Branch mine disaster “entirely preventable”

By Clement Daly
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The US Mine Safety and Health Administration (MSHA) released its final report last Tuesday on the Upper Big Branch (UBB) mine explosion. The federal agency concluded that the April 5, 2010 blast, which killed 29 West Virginia miners was “entirely preventable.”

“Massey routinely ignored obvious safety hazards and let conditions develop that allowed a small methane ignition to propagate into a massive coal dust explosion,” says the report. “The tragic deaths of 29 miners and serious injuries to two others at Upper Big Branch were entirely preventable.”

MSHA issued Massey and UBB operator Performance Coal Co. 369 violations—12 of which investigators say contributed directly to the explosion—and levied \$10.8 million in fines. Of the 12 contributing violations, nine were designated “flagrant”—the most serious violations the agency can issue. Two contributing violations were also issued to David Stanley Consulting, LLC, a contractor involved in conducting safety examinations at the mine.

The culmination of an 18-month investigation, at the cost of more than \$5 million, MSHA conducted 310 formal interviews—transcripts for 20 of which are still being withheld—and reviewed some 88,000 pages of documentary evidence.

The report expands on MSHA’s preliminary findings released in June and echoes the conclusions reached by investigator Davitt McAteer, who was appointed by then Governor Joe Manchin to conduct an “independent” investigation, and agrees with the findings of the United Mine Workers of America’s (UMWA) investigation. While the UBB was a non-union operation, the UMWA was allowed to investigate after surviving miners designated the organization as their official representation.

All three reports agree that the explosion was caused by a spark from the worn blade of a longwall shearer which ignited a small amount of methane. What should have been a minor ignition was transformed into a massive blast by excessive coal dust accumulations, inadequate rock dusting, inoperable sprinklers, and poor ventilation.

“The tragedy at UBB began with a methane ignition that transitioned into a small methane explosion that then set off a massive coal dust explosion,” the report explains. “If basic safety measures had been in place that prevented any of these three events, there would have been no loss of life at UBB.”

The MSHA report’s main departure is on the source of the methane gas, which investigators conclude was “liberated from floor fractures” after Massey “mined into a fault zone that was a

reservoir and conduit for methane.”

Because Massey failed to comply with its roof control plan, a lack of proper support contributed to a fall of the tailgate roof. The report explains that this restricted air flow, allowed methane to accumulate to combustible levels. Ventilation levels were already dangerously low due to Massey’s failure to comply with its ventilation plan.

However, what is significant about this explanation is that investigators believed the methane source was “the same fault zone associated with methane inundations at UBB in 2003 and 2004, and a 1997 methane explosion.” This raises the question of what MSHA knew about the geological fault in question and what steps it took to address the hazard.

Interviews released with the report revealed that US Labor department lawyer and MSHA investigation member Derek Baxter intervened to prevent McAteer’s team from looking into these questions, claiming they were inappropriate. Baxter insisted questioning as to what MSHA knew be conducted off the record and documents requested by McAteer’s team were never made available.

When MSHA released its preliminary findings, the *Charleston Gazette* reported that MSHA’s coal administrator Ken Stricklin said the agency had not found any evidence that Massey took recommended safety precautions following previous methane problems at the mine. Moreover, he claimed that there was no record of MSHA forcing the company to do so.

“It appears to me that we didn’t address it,” said Stricklin in a recent interview, “but I’m going to wait until they tell me that in writing.” Stricklin refers to the internal review MSHA is to conduct on its own role in the disaster.

Massey was also charged in the MSHA report to have “promoted and enforced a workplace culture that valued production over safety.” Management used intimidation and threats to ensure that miners did not raise safety concerns. The agency notes that in the four years prior to the explosion, “no safety or health complaints and no whistleblower disclosures were made to MSHA from miners” despite the “extensive record of ... safety and health violations at the UBB mine.”

Investigators accuse Massey of “systematic, intentional, and aggressive efforts ... to avoid compliance with safety and health standards, and to thwart detection of that non-compliance by federal and state regulators.” What MSHA does not address is how Massey was able to succeed in these efforts.

MSHA notes Massey's widespread practice of providing mine personnel with advance notice when federal and state inspectors arrived. It points to the conviction of UBB security chief Hughie Elbert Stover in late October for lying to federal investigators about the policy.

The report also draws attention to Massey's illegal double book-keeping practices in which an internal set of production books concealed hazards which were omitted from a second set open to inspectors. Investigators found that even when hazards were correctly identified, Massey often failed to take any corrective action. Moreover, the company misreported accident data to the extent that MSHA discovered the UBB had twice as many accidents as were actually reported in 2009.

Massey was issued four flagrant violations in connection with its failure to properly conduct pre-shift, on-shift, and weekly safety examinations which directly contributed to the explosion. According to the report, "examiners often did not travel to areas they were required to inspect or, in some cases, traveled to the areas but did not perform the required inspections and measurements."

Bound up with this was the fact that Massey "inadequately trained their examiners, foremen and miners in mine health and safety." Investigators concluded that this "left miners unequipped to identify and correct hazards at UBB."

MSHA concludes that "while violations of particular safety standards led to the conditions that caused the explosion, the unlawful policies and practices implemented by PCC/Massey were the root cause of this tragedy."

Family members still wait for any former Massey executive or board member to be held accountable for these "unlawful policies and practices." Federal attorney Booth Goodwin, whose office is conducting the criminal investigation, called a last-minute press conference to announce only hours before the MSHA release that a \$209.5 million settlement had been reached with Alpha Natural Resources which allows Performance Coal and Alpha Natural Resources to escape pleading guilty to any criminal charges. Alpha acquired Massey on June 1, 2011 in a \$7.1 billion deal and therefore assumed its legal liabilities for the 2010 disaster. (See, "Justice Department drops criminal charges against Massey for deaths of 29 miners")

Just as in the investigation of the BP oil spill, the Obama Justice Department has intervened in order to shield the corporation from prosecution and protect its profits. While Goodwin touts the deal as "the largest-ever criminal resolution in a mining investigation," it will in fact impose a limit on Alpha's liability and give the coal giant a clean slate to continue business as usual.

According to the settlement, "Alpha will pay in full all penalties owed to the Mine Safety and Health Administration (MSHA), including all penalties that arise from the UBB accident investigation, for a total of *up to \$34.8 million*." This includes \$10.8 million in fines associated with the UBB disaster.

While federal regulators try to present Alpha's takeover of Massey as some sort of departure, the families of those killed are not fooled by the name change. "There's no difference between Alpha and Massey, they're still doing the same things as Massey was doing," said Gina Jones, wife of killed miner Edward Dean

Jones. "They can say they're running right, but they're going to run the Massey way."

The families of the 29 killed miners and the two injured miners will receive restitution of only \$1.5 million under the settlement, half of the \$3 million Massey had already agreed to pay 11 families to resolve wrongful death suits.

According to Goodwin, the \$1.5 million was meant to "provide a floor," but it in fact works as a ceiling. The \$1.5 million would not be in addition to the \$3 million settlements already reached and would be counted towards any future settlements.

When questioned about why his office asked Massey to pay half of what it had already agreed to, Goodwin answered, "We did not undertake the complex and complicated judgments necessary to determine exactly what that amount should be."

"Necessarily," Goodwin added, "you always have to strike a balance and we tried to strike a balance here." Thus, when Goodwin placed the interests of the company in a balance with the interests of the miners' families, his scale tipped further against the miners than even Massey calculated.

According to the *State Journal*, "A part of that balancing act was finding an amount that would secure funding for programs to ensure miners can go to work safely without draining the corporation to the point of facing layoffs."

"It's always a balance," Goodwin said. "I don't think the victims would have wanted it to affect the jobs of their former co-workers. It had to be large enough to be fair and just. It had to be a wake-up call. It had to hit the company where it counts, but we had to recognize there is no more Massey."

When read through the lens of the bourgeois outlook, which equates corporate profits with jobs, it is clear that the state has intervened on behalf of the company to guarantee its continued profitability. Massey might be accused of putting production over safety, but the justice department has put profits over justice.

The \$80 million in "groundbreaking mine safety enhancements" called for in the settlement are safety improvements Alpha should have already been required to make by law. If these safety enhancements truly are "groundbreaking" and will provide more protection to miners, then MSHA and the coal industry stand exposed as negligent in safeguarding the health of miners.

Goodwin admitted as much when announcing the deal: "Collectively, these requirements will set a new standard for what can and should be done to protect miners." He also showed that there is no intention of the government mandating these new standards: "My hope is Alpha's adoption of the measures contained in this resolution will give the rest of the industry a strong push to follow suit."

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