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Transcript of the Testimony of Clyde Gray

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STATEMENT UNDER OATH
OF
CLYDE GRAY, JR.

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, May 11, 2010, beginning at 8:18 a.m.

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ATTORNEY WILSON:

My name is Bob Wilson. I'm with the Office of the Solicitor, United States Department of Labor. With me is John Godsey, an investigator with the Mine Safety and Health Administration. Also present here at the table are several individuals from the State of West Virginia. At this time I would ask that they state their appearance for the record.

ATTORNEY MCATEER:

I'm Davitt McAteer.

MR. FARLEY:

I'm Terry Farley with the Office of Miners' Health, Safety and Training.

ATTORNEY KOERBER:

I'm Barry Koerber. I'm Assistant Attorney General, but I'm assigned to represent the West Virginia Office of Miners' Health, Safety and Training.

MR. BECK:

I'm Jim Beck. I'm on the Independent team with Mr. McAteer.

ATTORNEY WILSON:

Thank you. Today is May 11, 2010. Mr.

1 Godsey and the other members of the panel here will be
2 doing the questioning. There are several other
3 members of the investigation team in the room. All
4 members of the Mine Safety and Health Administration,
5 accident investigation team and all members of the
6 State of West Virginia accident investigation team
7 participating in the investigation of the Upper Big
8 Branch Mine explosion shall keep confidential all
9 information that is gathered from each witness who
10 voluntarily provides a statement until the witness
11 statements are officially released. MSHA and the
12 State of West Virginia shall keep this information
13 confidential so that other ongoing enforcement
14 activities are not prejudiced or jeopardized by
15 premature release of information. This
16 confidentiality requirement shall not preclude
17 investigation team members from sharing information
18 with each other or with other law enforcement
19 officials. Your participation in this interview
20 constitutes your agreement to keep this information
21 confidential.

22 Government investigators and specialists
23 have been assigned to investigate the conditions,
24 events and circumstances surrounding the fatalities
25 that occurred at the Upper Big Branch Mine-South, on

1 April 5th, 2010. The investigation is being conducted
2 by MSHA under Section 103(a) of the Federal Mine
3 Safety and Health Act and the West Virginia Office of
4 Miners' Health, Safety and Training. We appreciate
5 your assistance in this investigation.

6 After the investigation is complete, MSHA
7 will issue a public report detailing the nature and
8 the causes of the fatalities in hope that greater
9 awareness about the causes of accidents can reduce
10 their occurrence in the future. Information obtained
11 through witness interviews is frequently included in
12 these reports. You should know that if you request
13 confidentiality, confidentiality will only be granted
14 on a case-by-case basis. Your statement may be used
15 in other enforcement proceedings. You may have a
16 personal representative present during the taking of
17 the statement and you may consult with that
18 representative at any time. I see that you are
19 appearing without a representative; is that correct?

20 MR. GRAY:

21 Yes, sir.

22 ATTORNEY WILSON:

23 Okay. A court reporter will be recording
24 the interview here today, so please speak loudly and
25 clearly. If you do not understand a question asked,

1 please ask that the question be rephrased. Please
2 answer each question as fully as you can, including
3 any information that you have learned from someone
4 else. I want to thank you in advance for being here
5 today. We appreciate your assistance in this
6 investigation and your cooperation is critical to
7 making the nation's mines safer.

8 Now, after we have finished asking
9 questions, we will give you an opportunity to make a
10 statement and provide us with any other information
11 that you believe may be relevant to the investigation.
12 If at any time after the interview you recall any
13 information that you believe may be useful, please
14 contact Norman Page at the telephone number that was
15 provided in the letter that I gave to you. At this
16 time I would ask that the court reporter swear in the
17 witness.

18 -----
19 CLYDE GRAY, JR., HAVING FIRST BEEN DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 -----
22 ATTORNEY WILSON:

23 Okay. I'll turn it over to Mr. Godsey.

24 EXAMINATION

25 BY MR. GODSEY:

1 Q. Mr. Gray, please state your full name and spell
2 your last name, please.

3 A. Clyde Gray, Jr. My last name is G-R-A-Y.

4 Q. And please state your address and telephone
5 number.

6 A. (b)(7)(C)

7 (b)(7)(C) . My telephone number is area code

8 (b)(7)(C)

9 Q. Okay. Are you appearing here today voluntarily?

10 A. Yes, sir.

11 Q. How long have you worked for MSHA?

12 A. Nine years. September will be ten years.

13 Q. Okay. You went straight to MSHA? You've never
14 went back to the industry or something and came ---?

15 A. No, sir. No, sir.

16 Q. What is your current duty station?

17 A. I'm at the District 4 headquarters in Mount Hope.
18 I'm a ventilation specialist.

19 Q. How long have you worked at that location?

20 A. Approximately almost two years now.

21 Q. And you've been a ventilation specialist, you
22 said ---?

23 A. Almost two years, yes. I was at the Madison field
24 office prior to that, CMI.

25 Q. Okay. Who is your current supervisor?

1 A. Joe Mackowiak.

2 Q. Has he ever traveled with you ---

3 A. Yes, sir.

4 Q. --- to Upper Big Branch Mine?

5 A. I don't think so at this time. I travel with Tom
6 Moore.

7 Q. Tom Moore. He traveled with you during this ---

8 A. Yes.

9 Q. --- period of time?

10 A. That day.

11 Q. Tell us about your mining history and your
12 experiences.

13 A. I got --- September it'll be 39 years as a coal
14 miner, supervisor for 25 straight years. I was in the
15 union for roughly almost five years and in the last
16 nine and a half years here with MSHA.

17 Q. Do you have any specialized training or
18 certifications?

19 A. Just underground and my --- I've been on the
20 surface, additional surface training.

21 Q. And do you have foreman papers?

22 A. Yes, sir. I've had them since 1975.

23 Q. What are your areas of responsibility as a
24 ventilation specialist?

25 A. To see that the mines is duly ventilated, that the

1 maps they submit or revisions they submit to us meet
2 the criteria, follows 30 CFR. If not, we, you know,
3 make sure the mine operator complies with 30 CFR.
4 That's my job.

5 Q. Do y'all ever make mine visits except for mine
6 submittals on plan submittals and stuff?

7 A. Yes, sir, as directed by the supervisor.

8 Q. Are you the authorized representative assigned to
9 the Upper Big Branch this quarter or ---?

10 A. No. No, I'm not a CMI.

11 Q. What were the days that you inspected Upper Big
12 Branch from January 'til March?

13 A. I went there, I believe it was in March. Then I
14 went --- I'm not exact on the date. I think it was a
15 Tuesday we went down on the spot ventilation review.
16 Then I went back with CMI Charlie Ward to run dust on
17 another part of the mines. That was about two weeks
18 later, prior to the accident.

19 Q. So you said on the inspection, on the first one,
20 you went there on a ventilation ---?

21 A. Yes, we went on a ventilation with CMI --- I mean,
22 supervisor Tom Moore, myself, Dennis Clark, Keith
23 Sigmon and Tom Moore.

24 Q. Did you all go there because of the ---?

25 A. We had an issue. We had an issue with making sure

1 that the mines was in compliance, that --- with the
2 CMI Keystone doing the mine. He had some issues he
3 wanted us to look at, so we discussed the day before
4 and --- what areas of the mine we was going to
5 participate in to see that the mines was duly being
6 ventilated as --- accordingly.

7 Q. Did y'all make assigned sections of the area that
8 you'd be going to?

9 A. We was informed on what areas we --- that we need
10 to go to. I went to 22 Headgate and that was my job,
11 but we didn't tell mine management nothing. It was
12 from our --- you know, looking ahead. Our intention
13 was to see that the mine was truly ventilated and if
14 it was not, cite appropriately.

15 Q. Okay. So how did it turn out then?

16 A. I cited --- the day I went to the mines ---. Like
17 I say, we arrived on the mine property with --- like I
18 say, with Supervisor Tom Moore and myself and some
19 other CMIs. We looked at the raw map, we looked at
20 the records. We informed mine management that we was
21 here on ventilation crew. Also we was on --- helping
22 on E01, was instructed to follow up on E01. I was
23 told there was some equipment I need to look at, if I
24 went up on this section, which I did, later I'll
25 explain it to you. Like again, we went told mine

1 management, give them time to make sure they had
2 people can go with us and --- because, you know, if
3 you're dealing with four people or five, they have to
4 arrange ---. You have to give them time to get
5 people. So my job was to go to 22 Headgate. Keith
6 Sigmon and Terry Moore went to the longwall and Benny
7 Clark went to the MUO 4 section.

8 Q. Okay. You said that you did go underground?

9 A. Yes, sir.

10 Q. And who was the company people that you met?

11 A. Terry Moore is one of the supervisors I know from
12 a previous job I had worked with him for Consol, and I
13 knowed him, but the other foreman, I'd seen, but I
14 really didn't know. But we informed mine management
15 that we was going underground, that we had an issue,
16 that we was going to look at their mines and also E01
17 inspection.

18 Q. Each group, do they have a representative from the
19 company?

20 A. Yes, sir.

21 Q. Did you have any representative ---?

22 A. Yeah, I had --- no --- our employees ---. We
23 always asked to have a miners' rep. And normally the
24 Massey operation they do not provide miners' reps or
25 we also tell the employees they have the right to

1 trail. That's the first thing we always tell them and
2 I think it's in my notes.

3 Q. Okay. When you were there on the section and the
4 citation --- did you take notes and also any
5 photographs or anything?

6 A. No, no photographs. I did not take ---.

7 Q. Did the company take notes or photographs or ---?

8 A. I'm not sure. I didn't see the mine management
9 writing any notes. I took my notes because, like I
10 say, I traveled underground. We all traveled together
11 and we split up and I traveled from the double doors
12 on this return all the way to this section. As I went
13 into this return, I picked up 0.5 tenths percent
14 methane. I proceeded all the way to the section
15 looking for air flow direction, date, times, initials
16 and controls. This mineas was wet, had several water
17 holes up in this area, nothing citable. It was
18 passable. And I arrived on the section.

19 ATTORNEY WILSON:

20 One thing, Clyde. When you're referring
21 to the map, when you say, you know, he had this or,
22 you know, ---

23 A. Right.

24 ATTORNEY WILSON:

25 --- you point to something, that's not

1 going to reflect on the record ---

2 A. Okay.

3 ATTORNEY WILSON:

4 --- when we get the transcript later. So

5 if you could just ---. When you're pointing to
6 something, sort of describe what it is that you're
7 pointing to.

8 A. Okay.

9 ATTORNEY WILSON:

10 And we've got markers here that you can
11 mark on the map if you need to.

12 A. Okay. Again, I arrived at the mouth of 22
13 Headgate. There's a set of double doors. It leads
14 over into the return off the track entry. I traveled
15 the return to the mouth of the section toward the
16 section, which the section is showing up a little
17 further than it was at the time I was. Well, like,
18 again, when I traveled up through, I'm looking at
19 date, times, initials, air flow direction, methane and
20 O2 concentration. I had 20.8. I had 0.5 tenths
21 percent methane in the return as I went up.

22 When I arrived up on the section, they was setting
23 a pump next to the last open crosscut. Okay? This
24 crosscut was more like --- this is not showing open.
25 It was open and bolted because I looked to make sure

1 it was bolted. And I proceeded across the section,
2 taking imminent danger run.

3 I later on took a LOB reading. They was in
4 compliance. The miner was in Number Two, the bolter
5 was set between Two and One and I went to the One
6 face. I checked all the faces for ventilation
7 controls in the section. The section was damp. They
8 wasn't running at the time. I met with Dino, the
9 section foreman. That's what they called him, which
10 was --- he's perished. I told him I was up here
11 checking his ventilation controls. Like, again, I
12 took an LOB reading. Their plan required 15,000 or
13 more. I think in my notes I got like I think 16,000
14 or 18,000 in their LOB, which I checked it. And I
15 asked him about fire protection for his pump. He
16 said, I'm installing the pump, I haven't yet got power
17 to it and I will put my fire protection.

18 So we told him --- I mean, I told him I said,
19 that's fine as long as you're getting your stuff over
20 there to where you get it ready in case when you
21 energize your pump that you'll be legal. So I went on
22 across, talked to the miner. The pin crew was between
23 two and one. I talked about roof control, you know,
24 don't go past roof support. I had a little safety
25 meeting with the pin crew. And then at that time I

1 told mine management I was also to check a piece of
2 equipment, which was outby two breaks, a scoop. Then
3 I wanted to make sure that the belt was not --- the
4 section not being ventilated with belt air, which we
5 had an issue and we told them, you know, they couldn't
6 use belt air. Which I traveled ---.

7 Q. Which ---?

8 A. That's the section belt. See, there's only three
9 entries, so I ---.

10 BY MR. GODSEY:

11 Q. Which way was the air traveling on the belt?

12 A. Outby.

13 Q. Outby.

14 A. So ---.

15 Q. And the belt is in what entry?

16 A. Number Two, Number Two.

17 Q. The intake's in ---?

18 A. Intake's --- return's in Number Three, intake's in
19 Number One. Okay? I checked the controls, LOB,
20 everything. They had two open crosscuts. At the time
21 management --- mine management told --- the upper mine
22 management told the section foreman he wanted an extra
23 stopping belt. Any time the crosscut went through, he
24 wanted an extra stopping belt. He wanted to keep it
25 tight because they were having the issue with

1 ventilation. They had good air that day. And he told
2 --- he stopped in, he said, I want you to start
3 building the stopping right now, which he was not in
4 violation because he had two open crosscuts. He had
5 his air.

6 So he stopped --- I said, I'm going to go to your
7 belt line and I'm going to check and make sure you're
8 not being --- using belt air in the face. I went
9 through a crosscut. Soon as I went through the
10 crosscut that mandoor outby the tailpiece, I issued a
11 citation for coal flow dust. It was black outby for I
12 think approximately 800 feet, according to my notes.
13 I issued a citation there and told mine
14 management ---. I said, how much time do you need?
15 And he said, I'm stopped right now. I'll get people
16 and we'll get dust up here. I said, in the meantime
17 I'm going to go check your scoop.

18 I went back down over here in Number Three,
19 started doing permissibility on their scoop, which was
20 three breaks outby the face in Number Three. I issued
21 him two citations on the scoop; one for needing
22 cleaned and one for transporting oxygen settling
23 cylinders not appropriately. The caps was not on.
24 And the tanks were empty. Somebody left the valves
25 open and I cited them anyway.

1 Q. Okay. How did they ventilate the --- from the ---
2 for the belt? How did they take air from the intake
3 into the belt ---?

4 A. Well, they had a regulator, which was dumping the
5 air into the belt outby. It was all --- it was all
6 going by.

7 Q. Outby the loading point?

8 A. Yes, sir.

9 Q. Okay. What size of regulators do they have
10 to ---?

11 A. They --- just enough to keep like maybe a block or
12 whatever it takes to ventilate the air to keep it from
13 going to the face, which it was traveling in the
14 proper direction.

15 Q. Okay. While we're up there, what about --- you
16 said it was damp or wet. Did they have any roof
17 problems with water or anything that ---?

18 A. No. Uh-uh (no). They was taking short cuts, too.

19 Q. What kind of roof supports were ---?

20 A. They were using regular tension rebar bolts.

21 Q. They weren't supplementing it with anything?

22 A. No. No, sir. No, they --- like I say, the pin
23 crew was not bolting. The bolter was sitting between
24 One and Two on the section. They really was not
25 running, but when he started firing up --- now, I did

1 take an air reading at the miner. And in time he had
2 people getting his rock dust survey --- I mean,
3 getting the --- so I can get that terminated because I
4 didn't want to leave the section until I had it
5 terminated.

6 Q. Uh-huh (yes).

7 A. And it took me a while to check the scoop --- time
8 we pulled shields and I done my field gauge and
9 everything. Like I say, I issued two citations. The
10 scoop was dead. They couldn't get it to where they
11 had to get it washed. I gave them enough --- ample
12 time to get enough charge, get it pulled wherever they
13 needed it. Then they was hollering and they told me
14 that they had the dust down. I went back through and
15 I terminated the citation on it.

16 Q. Okay. We'll go back just a little bit.

17 A. All right.

18 Q. Okay. What time did you arrive that day?

19 A. On the mines?

20 Q. At the mine site.

21 A. I think it's around ten o'clock. Is it 10:00 or
22 8:00? I have to look at my notes. Can I have my
23 notes again because I'm not sure? I always write down
24 the time.

25 Q. I got it here somewhere.

1 A. I should have it right on the front. I arrived at
2 the mine probably around ---.

3 WITNESS REVIEWS NOTES

4 A. Yeah. I arrived at 8:06. 8:06.

5 BY MR. GODSEY:

6 Q. And that's when all of y'all --- everybody ---?

7 A. Yes, sir. We all traveled and arrived
8 approximately --- it should be at the same time.

9 Q. Then you went to the mine office and
10 introduced ---?

11 A. Yes, sir. I went upstairs. Their office is
12 usually upstairs. Now, that's the first time I'd been
13 to that new portal.

14 Q. Oh, you --- what portal was this?

15 A. The new one. Which portal do I say it was? See,
16 I'm not real familiar with the mine because I come out
17 of Madison office. Which portal is it? The portal on
18 this side, the new one.

19 Q. M Portal?

20 A. L. The new portal, not the old one.

21 Q. Okay.

22 A. Because I went to the other portal when --- when
23 we run dust.

24 Q. Okay. And you already said you plan to go to
25 the ---?

1 A. Twenty-two (22) Headgate, 22 ---.

2 Q. And everybody else was assigned ---?

3 A. Yeah, Benny Clark was assigned to this section,
4 Tom Moore and Keith Sigmon went to the longwall.

5 Q. Okay. How long were you on the section that day?

6 A. I was up there a good probably --- at least a good
7 three hours or more.

8 Q. Okay. After y'all --- you went and you ---. What
9 did you do out on the surface or what all did you
10 check?

11 A. We checked raw map, the location where we was at,
12 we checked records, weeklies and pre-shifts, and belts
13 and fans. It should be on there.

14 Q. Okay. Did y'all check the fan chart or anything
15 before you went ---?

16 A. I did not check the fan chart, no. We just
17 checked the records to see that the fan had been made.

18 Q. Okay.

19 A. Okay.

20 Q. Then y'all gathered up and did y'all leave from
21 the same air belt, the same portal?

22 A. Yes, sir.

23 Q. What was the --- if you remember, what was the air
24 direction on the belt or the --- when you all went in
25 that day?

1 A. On the belt?

2 Q. Uh-huh (yes). I mean, y'all traveled which track?

3 A. We traveled track entry from outside, which, you

4 know, it splits, goes to the other part of the mine.

5 It comes up. It comes up and splits. And at the time

6 I don't know which way it was going, but anyway I

7 always check my methane detector and I was reading no

8 methane.

9 Q. And oxygen?

10 A. Oxygen was 20.0.

11 Q. Do they have any diesel equipment at that mine?

12 A. No, sir. All battery powered track equipment.

13 Q. As you traveled into the mine --- I noticed on the
14 map, there's several equipment doors?

15 A. A lot of air lock doors.

16 Q. Did you ever find any of that had been damaged or
17 left open or ---?

18 A. No, not at that time.

19 Q. Are they all electric or are they only manual?

20 A. Some are manual, some of 'em are electric.

21 Q. Okay. When you --- I think you go from the intake
22 into the --- I think one place into the neutral and
23 then back in to the intake. Is there much leakage at
24 these doors around these pressure areas?

25 A. It was flowing and, you know, you got some any

1 time.

2 Q. Yeah.

3 A. I had not seen an air lock door completely sealed
4 that you will have air flowing, so it was flowing from
5 the neutral to the return.

6 Q. You said you looked at pre-shift and on-shift
7 reports. When you arrived on the section, did it ---
8 did the conditions on the section reflect what was in
9 the report on a pre-shift?

10 A. Yes, sir. Yes. Like I say, the face in Number
11 Three was flush. It just then cut through. The miner
12 was sitting in Number Two. The bolter had just bolted
13 Number One and it was sitting between Two and One.
14 The bolter wasn't even running when I was up there.

15 Q. But I think you said when you went up there you
16 stopped outby --- I mean, the end of the track and
17 then you got on the headgate --- tail return?

18 A. I traveled the return.

19 Q. And you had --- you said something about the doors
20 over there?

21 A. Yes, sir, I had went through a set of doors and as
22 soon as ---.

23 Q. Was it a door or an air lock?

24 A. Air lock doors.

25 Q. And what condition were they in?

1 A. They was in good shape.

2 Q. Good shape. They were manualized ones?

3 A. They was manual, manual doors, where they brought
4 down supplies.

5 Q. As you walked up through there, what was the ---
6 you said zero methane or 0.5 or ---?

7 A. I had 20.8 on the O2. Air was flowing in the
8 proper direction. I had 0.5 tenths percent methane.

9 Q. Was there any water? Like you said, did ya'll
10 have water up through ---?

11 A. Water was right here (indicating).

12 Q. Okay. What about the rock dust applications,
13 where ---?

14 A. Rock dust appeared adequate at that time.

15 Q. And the stoppings' condition, were they ---?

16 A. The stoppings was all plastered.

17 Q. Were they plastered on both sides or were they
18 just plastered ---?

19 A. I didn't look on both sides. What was plastered
20 on my side visually was plastered and they was reamed,
21 with what --- if they done 'em opposite, they were
22 reamed. I had maybe one that might had a block that
23 looked like they'd run a hose through it ---

24 Q. Uh-huh (yes).

25 A. --- and they had people ---. He had people

1 working on his controls.

2 Q. And he had manddoors consistent about where he
3 should have them?

4 A. Yes, sir. Yes, sir.

5 Q. Okay. When you arrived on the section, you met
6 Dino, the supervisor?

7 A. Yes, sir.

8 Q. And they had the ventilation curtains. Exactly
9 what condition were there --- excuse me, were the
10 curtains in? Were they new curtains?

11 A. No, they was curtain that been previously used,
12 but nothing ragged or nothing to where it was --- you
13 know, I thought would be citable. Like, again, the
14 face of Number Three was flush, no curtains in it. It
15 was flush. Miner was in Number Two, bolter between
16 Two and One and one was inby. Okay?

17 Q. Okay. Let's go back out. I'll go look at it
18 myself again, but ---

19 A. Okay.

20 Q. --- as you traveled in the Ellis Portal ---

21 A. Uh-huh (yes).

22 Q. --- and what about the rock dust and stuff in that
23 area in the belt? Was it --- belt pretty clean
24 or ---?

25 A. What I could see of it because I traveled the

1 track myself. And seeing my --- Benny Clark both we
2 looked at each other. To be a new portal, you know,
3 it hadn't aged and the rock dust had been --- been
4 applied. It was clean, as far as no trash along the
5 track haulage road. And we both looked at each other.
6 And I said, you know, it don't look too bad. That's
7 all we said. Whether mine management heard me say
8 that or not, or somewhere along the line --- but
9 that's what I said. And both of us said the same
10 thing. I said, it don't look --- because I had never
11 been at that portal before ---

12 Q. Okay.

13 A. --- just traveling, you know, underground.

14 Q. And you said you didn't know which direction ---
15 you didn't ---

16 A. No, sir.

17 Q. --- check which direction the air was traveling?

18 A. Because, you know, we was in the mantrip, you
19 know, the wind hitting you in the face.

20 Q. Is the belt and the track in the same entry?

21 A. No.

22 Q. Did you look at the belt? The condition of the
23 belt line, was it ---?

24 A. What I could see of it from where I was at. See,
25 some of 'em ---.

1 Q. You didn't check on CO monitors ---?

2 A. No, sir. No, sir.

3 Q. What was the condition or the ventilation control
4 going up to the section?

5 A. All appeared adequate, what I saw.

6 Q. And you said oxygen and methane were ---?

7 A. 20.8.

8 Q. And ---?

9 A. And I always check my methane tickler. I turn it
10 on and I'm always grabbing it and looking at it.

11 Q. What about the roof and the rib, what conditions
12 --- did they have any areas of concern or ---?

13 A. I'd seen extra support set here and there ---
14 normal, just like, you know, normal mining.

15 Q. Well, do they usually use standard support or do
16 they use cable ---?

17 A. Well, I seen a supplemental like timbers and
18 cribs. And if they needed extra bolts --- which I
19 didn't check to see if they was using cable bolts, but
20 the bolting in ---. What roof support I seen was
21 adequate.

22 Q. Okay. You didn't happen to see accumulations of
23 any combustible material?

24 A. No. Just the one I cited on the beltline.

25 Q. What was the housekeeping like on the track?

1 A. Again, like I said, it was a new portal.

2 Q. Uh-huh (yes).

3 A. I didn't see no trash. Usually you see a lot of
4 trash, you know, as the mine ages and crib --- but,
5 you know, it appeared adequate to us because, like I
6 say, we made the statement ---. We looked over at
7 each other and said, it don't look bad.

8 Q. Did they have any pumps or anything, air pumps or
9 anything on the track or --- if the water ---?

10 A. I didn't see none. I didn't see none.

11 Q. You didn't see any water over the track or ---?

12 A. No. Uh-uh (no).

13 Q. You said you issued citations on the section, I
14 think for, what, a scoop?

15 A. Yeah, I issued three citations.

16 Q. Okay. Three citations. And you stated --- did
17 you --- how long ---? Did you watch them cut mining?

18 A. Yeah, they started mining in Number Three face, I
19 think I've got in my notes. Can I see my notes again?
20 Is that all right? I should have an air reading at
21 the miner.

22 WITNESS REVIEWS NOTES

23 A. Yes, sir. Yes, sir. The miner was in Number Two
24 face. I had 9,990 when he was loading and the O2 was
25 0.2 and the methane --- I mean, methane was 0.2 and O2

1 was 20.8. That was in the Number Two face. That was
2 at 10:30.

3 BY MR. GODSEY:

4 Q. Okay. Are these remote-control? These were
5 remote-control miners?

6 A. Yes, sir.

7 Q. They were taking, what, the ---?

8 A. They was taking short cuts, very short cuts.

9 Q. While you were observing 'em, did you ever see any
10 methane on the monitor, on the miner? Did it ever go
11 up or ---?

12 A. I didn't see no methane, other than what I
13 detected prior to starting.

14 Q. Okay.

15 A. Okay.

16 Q. And when they --- when they stopped and took their
17 gas check, did you --- did they ---? What did they
18 use to make their check?

19 A. A lot of 'em have a gizmo like a little magnet.

20 Q. Magnet?

21 A. Magnet.

22 Q. And you didn't notice anything on that one?

23 A. No.

24 Q. Did you take any photographs while you were up
25 there?

1 A. No, sir. No, I didn't take any ---.

2 Q. You didn't do anything ---?

3 A. No, sir. No, sir.

4 Q. Did anyone from the company make any statements or
5 comments about the conditions that you cited? Did
6 anybody get upset or any ---

7 A. No, sir.

8 Q. --- concern? They just corrected the conditions
9 or ---?

10 A. Mine management at the time, Terry Moore, who's
11 like the assistant mine foreman, he told the operator,
12 get the dust up there and let's get the citation
13 terminated now. And so we did. By the time I checked
14 the scoop, got back down there. I went over and they
15 did the dust, so I terminated it. And like I say,
16 again, I did not leave 'til I made sure they had it
17 dusted. I think I gave him a short abatement time on
18 that, too.

19 Q. Okay. Okay. Did you have any conversations with
20 the section workers or any of the mine management
21 concerning the conditions up there?

22 A. Just talked to the pin crew, again, about
23 observing roof and ribs, not going past roof support.
24 We talked to the miner operators, make sure they do
25 their proper examinations, methane checks, ventilation

1 controls. I mostly talked to pin crew a lot about,
2 you know, people going out past roof support and
3 things of that nature.

4 Q. So they were taking their gas checks, gas
5 examination ---?

6 A. The pin crew was not bolting.

7 Q. How did they take their --- when they made checks?
8 Do they have ---?

9 A. They have a probe.

10 Q. A probe?

11 A. Yeah. I checked the machine. They had a probe.

12 Q. Okay. What is the heighth of the coal up there?

13 A. It was about ---.

14 Q. Not the coal, but the mining height?

15 A. It was about eight foot. I have it right there,
16 seven and a half to eight foot.

17 Q. Okay. Does it have canopies on the equipment?

18 A. Oh, yeah.

19 Q. Okay.

20 A. Yes, sir.

21 Q. Have you ever been the authorized representative
22 assigned to the Upper Big Branch Mine?

23 A. No, sir.

24 Q. Have you ever conducted or assisted in any
25 inspection at this mine prior to the last court

1 Order, ---

2 A. No, sir.

3 Q. --- February through March?

4 A. No, sir.

5 Q. When was the last --- have you ever visited the
6 longwall panel?

7 A. On this mine?

8 Q. Uh-huh (yes).

9 A. I don't think so. I'm not sure. Now, I could
10 have been at the mines --- like I say, I have to
11 refresh myself. I can't remember going across the
12 wall.

13 Q. Okay. Had you ever been to any longwall panel in
14 this mine before, sealed or ---?

15 A. No, I don't think so.

16 Q. Have you ever heard any of your inspectors or
17 anybody, miners or something, talk about anything
18 about any methane on the floor of the longwall or
19 heard of any kind of a blower fan or something that
20 they've had ---

21 A. No. No, sir.

22 Q. --- no output ---? Are you aware of any
23 complaints that have been lodged against the mine, any
24 of the miners, or anybody you know of, make any
25 complaints against this mine for unsafe ---?

1 A. Not as I know of, no, sir.

2 Q. Are you aware of any conditions that has caused
3 the shift to be delayed or not mine today or sending
4 people home because of conditions at the mine?

5 A. None I'm aware of.

6 Q. This map shows that there's a three-year gap in
7 longwall production in some of 'em, and do you know
8 why? Do you have any ---?

9 A. No, sir.

10 Q. And also if you noticed on the map that they've
11 skipped --- longwall skipped areas. And do you have
12 any reason ---?

13 A. Probably the reason --- maybe some due to the
14 condition or production, again, could have caused the
15 top --- could have caused them to maybe run short.
16 Sometimes that happens, you know, you might run
17 'em out.

18 Q. Has any miner ever approached you during your
19 inspection with concerns regarding unsafe conditions
20 with the miner or ventilation problems or roof
21 problems or anything?

22 A. Not as I'm aware of. The electrician, as I
23 started down through here (indicating), he asked me
24 would I look at the roof, which was already supported,
25 okay, outby the power box probably three breaks. And

1 I brought it to Terry Moore's attention. I said,
2 Terry, it wouldn't hurt to have extra supports set in
3 there. They already had supports in there, but at the
4 time, I did not say electricians said anything to me
5 or to them to me about it. And it was already
6 supported. He said, I'll set extra supports.

7 Q. Okay.

8 A. Okay.

9 Q. Just a little follow-up on that. At any time
10 during this inspection did you have any --- while you
11 were up there or even after you talked with your other
12 inspectors when they came out, did y'all find anything
13 that was not right or had any concerns with, you know,
14 like on the longwall or Tailgate 22 or the section
15 about air fluctuations or air reversals or ---?

16 A. Now, when I got outside after I made --- you know,
17 I terminated and left the one citation pending, I met
18 back up with my colleagues. And at the time Keith
19 Sigmon issued a D order up here because of air or
20 methane, whatever it was, because Terry Moore, the
21 supervisor, was with him. Me and Benny had talked. I
22 think he had issued nine citations. We kind of talked
23 and I told him I'd issued three. And we both again
24 talked. What I seen I felt adequate with, ---

25 Q. Uh-huh (yes).

1 A. --- but up here they had some problems. Like I
2 say, I don't know what Keith issued, but he did issue
3 D orders up here because we was talking outside. And
4 I didn't know he issued 'til we got back outside.

5 Q. Okay. From January up until about March, you know
6 they've had several --- a few incidents where they've
7 had air reversals in different portions of the mine,
8 seals or a longwall tail entry. I think even you
9 cited a citation down on 067 section on --- the last
10 day you were there that had 7,000 or so in the last
11 open cross ---?

12 A. Yes, sir, that was the day we was up there running
13 dust.

14 Q. Okay. And you had a super section?

15 A. Yes, sir.

16 Q. And you have left side, right side?

17 A. Yes, sir.

18 Q. And you were on the right side?

19 A. Yes, sir.

20 Q. And left side was --- it was ---?

21 A. One out of the health group, Charlie Ward.

22 Q. When you took the air reading in the last open
23 crosscut and you had 7,000, did you check with Charlie
24 about what the ventilation was like on his side?

25 A. Yes. He had an increase of ventilation. He was

1 okay. My side was short.

2 Q. Okay. They didn't have any way where they were
3 regulating any of the returns to curtain or
4 anything ---

5 A. No, sir.

6 Q. --- to try to balance it?

7 A. Not at the time. Now midnight crew was up there
8 working. Like I say, now the pre-shift examination, I
9 don't know if my notes are for that day. They showed
10 proper air in the LOB for the right side, but when we
11 got up there --- because we traveled the mantrip,
12 because we was running dust. We traveled right in
13 with the mantrip.

14 Q. Well, what did they have to do to ---?

15 A. They adjusted --- they adjusted their controls ---

16 Q. Okay.

17 A. --- to fluctuate to make sure they had the air
18 over here. Again, midnight was up there, ---

19 Q. Uh-huh (yes).

20 A. --- we wasn't sure that they might have short
21 circuited something by them doing whatever ---. I
22 think they was trying to set a belt head at the time.

23 Q. Did you all check the intake to the longwall ---?

24 Excuse me. Pardon me. Intake to that section, the
25 total intake?

1 A. No, sir, I did not.

2 Q. And that way balance to see which ones ---?

3 A. Charlie might have, but I didn't. We both walked
4 down the intake to make sure the stoppings was up and
5 in compliance, and they were. And we had a question
6 on the one, but it was not in violation.

7 Q. And on the belt, on that area also, which way ---
8 goes on the belt on that ---?

9 A. It goes outby.

10 Q. In other words, ventilated like it is up on the
11 other ---

12 A. Yes, sir.

13 Q. --- section up there? Was there any other
14 concerns that --- on that, when you were running dust,
15 did you ever see ---? I looked away from this area,
16 but any methane or any oxygen problems or anything?

17 A. No, the oxygen was 20.8.

18 Q. Okay.

19 A. Now, I'd have to see my notes again. I'm not
20 sure. I can't --- recollect on the O2 --- I mean the
21 CH4 on that day.

22 Q. I think it starts on the right side.

23 A. Okay. This is the --- yeah, this is mine. Let's
24 see. I know there --- I had the ---. In the fire
25 boss report, it showed the right side at 20,480.

1 Q. So that's 13,000 less than what ---?

2 A. Than what it was when I took my air reading. The
3 miner was actually parked between the crosscuts there
4 also.

5 Q. What do they use to haul coal up there? I
6 mean, ---.

7 A. They had shuttle cars.

8 Q. Twenty-ones (21s) or ---?

9 A. No, they had tens.

10 Q. Big ones?

11 A. Yes, sir, 10SC. No, they didn't have any 21s.

12 Q. And what is the heighth of --- the mining heighth
13 on that?

14 A. Okay. That should be in my notes here. It was
15 high, too. It was probably seven and a half, eight
16 foot. Most sections high. You didn't have to bend
17 over. 7,000 --- had no methane, no methane. LOB was
18 0.0 and 20.8 on the O2. And they got it up to 13,353
19 and ---.

20 Q. How much is required on it?

21 A. Well, like I say, they had 73,339 when I took it
22 and that was at 7:40 and it was 8:34 getting
23 ventilation up ---. You have to have 9,000 or more.
24 73,000? Yep, that's what it was.

25 Q. And what was the condition on that section? Was

1 it ---

2 A. That section was ---

3 Q. --- dry?

4 A. --- damp. Damp. Damp.

5 Q. Was it coming from the floors? Was it just ---?

6 A. Yeah, mostly those type of mines are mostly damp.

7 It wasn't really dry.

8 Q. Was there any pumps or anything?

9 A. No, sir.

10 Q. And when you got there that morning, you said you
11 arrived and you signed your dust pumps and rode in
12 with a crew?

13 A. Yes, sir. We rode in with a crew.

14 Q. Did you have to pass through any doors or anything
15 when you ---?

16 A. Yes, sir. You have to pass through doors.

17 Q. And they were all ---?

18 A. They was all okay. None of them damaged, none of
19 them tore down, nothing that day.

20 Q. And what about the ventilation controls on the
21 main --- on the haul road on the ---?

22 A. Again, they appeared adequate, from what I could
23 see, riding in a mantrip.

24 Q. So you stayed up there all --- and you wrote just
25 that one citation up there?

1 A. I wrote one, Charlie wrote, I believe, two.

2 Q. Okay. Did he write any on ventilation?

3 A. He wrote one on the miners not being maintained.

4 Q. Uh-huh (yes).

5 A. And they was quite a while getting their miners
6 really set up to run. And when I got my side going,
7 they only loaded two cuts.

8 Q. Okay. What's the depth of the cut they do ---?

9 A. Short cut.

10 Q. Short cut. Were they showing any methane or
11 anything on 'em?

12 A. Not at the time.

13 Q. Not at the time.

14 A. Not at the time.

15 Q. So what was your overall opinion of both days you
16 were there, the 9th and the 23rd, of the ventilation
17 that you found on both sections? Did you feel it was
18 adequate or needed work or ---?

19 A. Well, the one --- the one crosscut Charlie cited
20 them for they had the curtain hung on the wrong side.
21 Okay?

22 Q. Uh-huh (yes).

23 A. The pin crew started it there and we cited 'em
24 because they failed to have it on the proper side.
25 They had it on the left side, it's supposed to be on

1 the right side. Now, he cited that. I was with
2 Charlie when he cited that. And he reviewed it with
3 him on that. Now, as far as their ventilation
4 controls were adequate. They added extra fly pads.
5 There was nothing tore down when we was up there.

6 Q. And it was all regular curtain, it wasn't all like
7 a new ---?

8 A. No, no. It was all just standard curtains being
9 used over and over. Nothing --- no rags, nothing of
10 that nature.

11 Q. Okay. And I was looking --- I think there was an
12 overmine in there and was it piled in the seam,
13 approximately 150 to 160 ---?

14 A. Something like that.

15 Q. Did y'all ever have any concerns as to water that
16 would be impounded in that area? Any over ---?

17 A. No, sir, not at the time.

18 Q. What about the --- you had different types ---? I
19 think maybe you had some longwall mine and some pillar
20 above it. Did they ever give you a section or do you
21 know of any time you had a problem on the roof
22 conditions in this mine?

23 A. You know, what I said --- like I say, I'd only
24 been there I think maybe two, no more than three times
25 and the ---. No, I didn't see nothing I feared that

1 was inadequate with what they was supporting with.

2 Q. And do you know why they were driving these
3 tailgate --- additional tailgate into the next ---?

4 A. For the next longwall setup? Normally that's
5 Massey's way of typical mining. They drive a headgate
6 and tailgate. So when this wall moves, he has a
7 chance to go to another part of the mine. Usually
8 there's three entries, sometimes four.

9 Q. Okay. Have you ever made the back end, towards
10 the end of town, fan of this return?

11 A. No, sir. No, sir.

12 Q. Okay. Once y'all came outside I guess you all
13 pallied or parlayed around and talked about the
14 conditions, what they found. And did any of them have
15 any more concerns about the ventilation or ---?

16 A. Not at that time. Again, when we arrived back out
17 on surface, we talked to mine management, told them
18 the citation. They had a conference right on any
19 citation we issued. Our concern, like I say --- now,
20 you're talking about the day --- the first time I was
21 up there or the second time?

22 Q. 3/9, when you were with the group.

23 A. Okay. With the group. No. We told them what
24 citations. We explained to mine management what they
25 had. I had the one --- it was going to be ---. It

1 has to be checked the next day, that CMI Keystone
2 would probably be back. I didn't know if I'd be back.
3 I said, I gave them ample time to get their scoop on
4 charge, to get it over.

5 The rock dust survey --- I mean, the rock dust was
6 applied and I terminated it. I told 'em. And then
7 the oxygen settling tanks, I terminated that one
8 because they got caps and properly put 'em on the
9 tanks.

10 Q. Okay.

11 A. But the one I left standing was the scoop to be
12 washed.

13 Q. Okay. Well, again --- go back, again, from
14 January 1st to March 31st they've had several air
15 reversals. They've had --- one time they had on one
16 section that air went from the return of one entry
17 into the secondary escapeway of an entry. You know,
18 it was just a very fragile system.

19 A. Right.

20 Q. They had air reversals on the seals. It took very
21 little --- I mean, it didn't take much to throw the
22 air off. I mean, it was not much control on it. Do
23 you know exactly when they started having these
24 problems with ventilation at this mine?

25 A. Well, you know, since I've been in the ventilation

1 part, this mine has had several revisions, constantly
2 they're up there --- they was, for a long time for
3 revisions, changing, wanting this changed and moving a
4 section.

5 Q. Uh-huh (yes).

6 A. My supervisor, myself we all know that this mine's
7 probably had a problem, that's the reason he sent us.

8 Q. Uh-huh (yes).

9 A. And, again, we reviewed everyone, we denied a lot
10 of revisions due to they just didn't happen to meet
11 our law. We denied it 'til they got 'em right where
12 we felt that they was --- then complied with the law.

13 Q. Did you ever ---? Well, maybe ---. Do you ever
14 see it or do any of your other specialists or
15 inspectors ever find that they've made ventilation
16 changes and not get 'em approved?

17 A. I think they might have. I'm not sure. I'd be
18 saying something maybe not right, but I'm not sure.
19 But I think Keystone, CMI the other inspectors had
20 cited 'em several violations due to ventilation.

21 Q. In other words ---? And I'm not trying to put
22 words in your mouth, but in other words, if they
23 wanted to change something, they would change it
24 and ---?

25 A. Like, again they submitted a lot of revisions to

1 us. Now, was they going ahead and doing certain ---
2 without permission? Possibly because a lot of times
3 they did catch 'em. They issued a lot of Orders ---

4 Q. Okay.

5 A. --- on certain things.

6 Q. On the mine maps, did y'all ever ---? This is
7 about the same thing. Did y'all ever find anything on
8 the mine map that y'all reviewed annually that was not
9 --- it's supposed to be one way, but the map showed it
10 being another way?

11 A. Pete Stone mostly does the annual maps. I'm
12 allowed on revisions. I do assist him at times. Yes,
13 sir, we do find where there is areas on the mine ---.
14 We pull out all revisions and we find that, that they
15 don't show what they say they're doing, or we find
16 that --- where something's been implemented and it's
17 not been put it. You know what I mean? And some
18 revisions not being complied with.

19 Q. Okay. When you find conditions like that and you
20 notify 'em, I guess you write them a violation,
21 whatever ---?

22 A. Well, we notify the supervisor first, that we see
23 an error in the map that ---. We bring it to his
24 attention, therefore, we notify the field office and
25 then appropriate action is taken. If we have to,

1 we'll issue a citation.

2 Q. Okay. Does the company usually come --- usually
3 come in with a plan to kill that change or ---?

4 A. Pretty much. Once they find out they're in
5 violation, it's not very long they're ready to submit
6 a plan to counteract either the citation or what we
7 find.

8 Q. Uh-huh (yes). Have you ever --- or maybe you have
9 seen or heard from another inspector. I don't know if
10 this is speculation or not, but were --- like they're
11 constantly making changes like stoppings, moving
12 stoppings around ---?

13 A. That I'm not sure.

14 Q. Maybe have a problem on one station and then
15 they'll go over and try to correct it by making
16 another correction on another section to rob Peter to
17 pay Paul?

18 A. I haven't heard 'em say that.

19 Q. Okay. Let's go to the April 5th accident. When
20 and how were you notified of the explosion on April
21 5th?

22 A. Okay. I was in town with my wife right around
23 three o'clock. Joe Mackowiak, my supervisor, called
24 me and told me that Upper Big Branch had had an
25 explosion, that I need to report back to our

1 headquarters. So I left Beckley with my wife, drove
2 to the headquarters. I left her there and my daughter
3 came and picked her up. I immediately went inside,
4 got with the supervisor, changed clothes and we
5 started getting maps and information at the time.

6 Q. Were you involved in any --- what was your
7 capacity or involvement in the rescue and recovery
8 efforts at the mine?

9 A. My job was --- I stayed on the surface. The first
10 night there I kind of manned the phone, where we was
11 getting reports from the Bandytown --- for the two
12 nights or maybe three. I stayed in the office there
13 and every --- every little bit, I got the information,
14 I transferred it to the supervisor out of Mount Carbon
15 office.

16 Q. Who would that be?

17 A. I'm blank right now. Oh, what is his name? God,
18 I'm blank.

19 Q. Well, maybe you'll think of it.

20 A. All right.

21 Q. Okay. And you said you dropped your wife off and
22 then ---?

23 A. I immediately went inside to change clothes, get
24 ready.

25 Q. Okay.

1 A. Met with the supervisor at the time. Benny Clark
2 had arrived, the other CMIs had arrived ---

3 Q. Okay.

4 A. --- that was in our ventilation department.

5 Q. And you left and came to the --- who came to
6 the ---? Did anybody travel with you?

7 A. To the mines?

8 Q. To the mine that day.

9 A. Myself, Joe Mackowiak. Let's see, Benny Clark, he
10 went because me and him mostly stay together that
11 night. We had Raymond Browning, but he stayed at the
12 headquarters because he had vacation. We communicated
13 back to him, and basically that was it.

14 Q. What time did you arrive there, do you remember?

15 A. It was I think right around ten o'clock. I think
16 my notes --- if they're here.

17 Q. I don't have those, so ---.

18 A. Okay.

19 Q. When you arrived there, who was in charge of the
20 mine, of the operation whenever you arrived at the
21 mine site?

22 A. Mine management, Chris Adkins from Massey was
23 there. I seen him and several of the mine management.
24 Some of them I didn't know. I'd seen their faces ---

25 Q. Okay.

1 A. --- and --- but I can't remember all of 'em
2 because ---. Then I seen Frank. Not Frank, but Gary
3 Frampton. He used to work with us and he was there.
4 Several other mine management people was there. Some
5 I can recognize the face, but I don't know their
6 names, but I know Chris Adkins was there.

7 Q. When you got there, who was in charge for MSHA
8 or ---?

9 A. Well, like I say, when we got there, Joe
10 Mackowiak, I was under his direct supervision at that
11 time.

12 Q. But I'm saying who was --- I guess I'll say in the
13 command center?

14 A. Command, at the time --- there was so many faces.
15 I think I'd have to see my notes because I was trying
16 to write down ---. We was told to go and get maps.
17 We spent a lot of time ---. I know when I got there,
18 we went back to their office there and we had 'em get
19 us some maps because Joe wanted some more maps at the
20 time.

21 Q. Did anybody, while you were there, any miner or
22 supervisor or anything, come to you and say anything
23 about these problems that they've had there?

24 A. No, sir. No, sir. Everybody was kind of quiet
25 and, like I say, there's a lot --- a lot going on

1 trying to find the other 29 miners. And they was kind
2 of talking, you know, just people back and forth, you
3 know, was hoping the people was alive, if they heard
4 anything. You know how you hear people talking?

5 Q. So you had --- who helped you during --- when you
6 went to Bandytown?

7 A. I had --- me and Benny Clark was together and we
8 went down and got extra maps. Joe Mackowiak wanted
9 extra maps so we had the mine management to draw up
10 extra because we know we was going to have a lot ---
11 which we wrote a lot of maps before we left, but they
12 wanted some bigger maps. And when we came back, I was
13 assigned to start monitoring the reports from
14 Bandytown plant, the CO and all that. Every little
15 bit I was giving then to the supervisor, so they could
16 report it and everything was getting set up at the
17 time. There was a lot of confusion, but it was still
18 being organized. I mean, didn't see nothing out of
19 the ordinary that it was ---. I think it was a pretty
20 good job there at the time --- you know, trying to
21 find the other 29 miners.

22 Q. I understand that. I have another question about
23 that. Who was in charge of --- do you know who was
24 accompanying Chris Adkins?

25 A. Chris Adkins and, like I say, Gary Frampton.

1 Those two, I knew well, were there.

2 Q. Okay. What about the State of West Virginia?

3 A. I seen state miners --- miner people there.

4 Q. Do you know any of the ---?

5 A. Some of those were underground at the time, I
6 think their people. I seen ---.

7 Q. But you don't know who was in charge for the State
8 there?

9 A. Not at that time.

10 Q. Okay.

11 A. People at the Danville office was there. A lot of
12 the State people were out of the Danville, plus the
13 Oak Hill office.

14 Q. Okay.

15 A. Steve Snyder. I know Steve Snyder. I talked to
16 Steve Snyder, ---

17 Q. Okay.

18 A. --- out of the Oak Hill office.

19 Q. So once you arrived there, they assigned you to do
20 that ---

21 A. Yes, sir.

22 Q. --- and that's what you did mostly all the ---?

23 A. For about two or three nights that was my job,
24 staying right there. We was shift changing and ---.

25 Q. What time did you change? I mean, ---.

1 A. I was on the midnight shift. I was assigned to
2 midnight all the time.

3 Q. Okay. Any of the miners or any of the
4 supervisors, section foremen, fire bosses ever
5 approach you after that, after April 5th, regarding
6 any concerns that they had had or any ---?

7 A. No, sir.

8 Q. Okay. Do you have anything that you would like to
9 add that may be relevant to this investigation?

10 A. No more than what I've just told you. I mean, I
11 think our people, State people and the peoples
12 involved was doing an outstanding job. And I'm well
13 pleased what I seen. But like I say, I was assigned
14 and I think our people, along with the State, the
15 company, the mine rescue teams, everybody was doing an
16 outstanding --- outstanding performance trying to get
17 those people, see if we had people alive. That was
18 the main cause for the few --- for the first few days.

19 Q. Okay. Let's just travel back just a little bit.
20 On these ventilation reversals or changes, you know,
21 and the low air. And I think one place there was a
22 citation written for belt air being used on the
23 section, I think not by you, but by someone else. Did
24 that throw up any red flags? Did the ventilation
25 department say, hey, we've got a problem?

1 A. Yeah, we was aware ---. Like, again, this mines
2 had had lots and lots of revisions. I'd even denied
3 one, I think, prior to even the explosion on a certain
4 part of the mine. They submitted a lot of revisions,
5 a lot of 'em been denied. We looked at 'em real close
6 to make sure, again, they was in compliance with
7 30 CFR, annual maps. Mostly Pete Stone looks at 'em
8 real close, along with us helping him.

9 Q. Uh-huh (yes).

10 A. We do, we really look at these mines and make sure
11 they're ventilating air in the proper direction, that
12 they're supplies --- with controls. We look at their
13 narratives and their revisions, see if they're
14 complying with what they're asking for. Okay?

15 Q. Uh-huh (yes).

16 A. If not, we deny 'em.

17 Q. Okay. Do they expect turnaround on their plan?

18 A. Sometimes they --- they call ---.

19 Q. They call ---?

20 A. Yes, sir, they do ---.

21 Q. Kind of force it or whatever you're ---?

22 A. They try to really make --- you know, if they get
23 in a bind, they --- well, how's my revision? Is it
24 getting through or ---? We tell 'em, it's under
25 review.

1 Q. Uh-huh (yes).

2 A. That's all we tell 'em.

3 Q. Do they stay in a bind on it most of the time?

4 A. I'm not sure on that because, like I say, there's
5 200 and some mines in this district and we work 'em as
6 close ---. We try to accommodate the operator, but,
7 again, it dictates how much --- what they're asking
8 for. If their narrative in their letter states what
9 they want, if it don't, it gets denied. Now, if
10 there's some things that could be tweaked, we might
11 tweak 'em, but other than that, it gets denied until
12 they come --- until it meets our supervisor, my looks,
13 all of our experience. We look at 'em and make sure
14 that the sections or whatever they're wanting to do is
15 complying with 30 CFR.

16 Q. Is any of the ventilations --- not ventilations,
17 excuse me, but CMIs or the health inspectors, do they
18 ever ---? Have they ever came to y'all and told y'all
19 that here we got concerns at this point, this point or
20 something in the mine? Have they ever filled out
21 2204, you know, plan accuracy, and submitted it to
22 you?

23 A. Oh, yeah, we look at those. And some of 'em ---.

24 Q. Have they ever submitted one that was inadequate,
25 for the plan, if it was inadequate?

1 A. I'm not sure on that because Joe goes through
2 those pretty close.

3 Q. Uh-huh (yes).

4 A. And, like I say, again, we're assigned to
5 revisions and annual maps. And we look and see,
6 again, if they're compliant.

7 Q. Do y'all periodically review the air analysis
8 report from Mount Hope about the ---

9 A. Methane?

10 Q. --- methane?

11 A. Yes, sir. Yeah, we look through what's been
12 provided by the CMI prior to that.

13 Q. Okay. Do y'all watch --- do y'all watch
14 barometric pressure to see, you know, the ups and
15 downs of what it's doing?

16 A. Uh-huh (yes).

17 Q. And do y'all notify --- in other words, on a steep
18 barometer drop do y'all notify any of the ---

19 A. Usually ---

20 Q. --- CMI ---?

21 A. --- it's pretty much standard. A lot of this mine
22 here, that's the first thing I looked at, too, because
23 the barometry that night was 28. something. I think I
24 might have put it in my notes, as I went straight in.
25 They had a barometer, so it was like 28. something. I

1 can't remember the point, but I know I've got it wrote
2 down.

3 Q. I noticed you weren't there on the --- you ended
4 up being on the longwall, but did any of the
5 inspectors go over ---? Did they talk about the check
6 curtains across the headgate, about the pressure going
7 back up to the inby towards the back end?

8 A. I know Keith and Tom Moore was talking. That's
9 when they issued the D order. They did have the
10 problem. That's the reason he issued to shut 'em down
11 there because they wasn't right. Now, they was
12 discussing that with mine management and I told them
13 what citations I had and Benny told 'em what citations
14 he had, and what was outstanding. That's all I can
15 remember. I know they talked quite a bit and I wasn't
16 involved in their conversations at that time.

17 Q. Did they talk anything about water in the tail
18 entry or ---?

19 A. That I can't remember, but I think in here
20 somewhere they did have some problems.

21 ATTORNEY WILSON:

22 When you say here, you're referring
23 to the headgate on the longwall?

24 A. Yes, sir. You can see the water problems.

25 BY MR. GODSEY:

1 Q. Yeah. I think and you were --- air pumps?

2 A. Uh-huh (yes). Yeah, this mine has air pumps.

3 Now, they might have some electric pumps outby, but

4 most --- a lot of it is in the inby area because

5 they'd have to power --- because they use air pumps.

6 MR. GODSEY:

7 That's about all I have.

8 A. And the supervisor's name is Fred Wills. I just

9 thought of it. Fred Wills.

10 ATTORNEY WILSON:

11 Okay. Are you okay? Do you want to take

12 a break or do you ---?

13 A. No, I'm fine. I'm fine.

14 ATTORNEY WILSON:

15 Terry?

16 EXAMINATION

17 BY MR. FARLEY:

18 Q. Mr. Gray, ---

19 A. Yes, sir.

20 Q. --- I'm Terry Farley ---

21 A. Uh-huh (yes), I know, Terry.

22 Q. --- with Miner's Health, Safety and Training. All

23 right. Just for clarification purposes, to make sure

24 I followed your testimony correctly here. You visited

25 the 22 Headgate ---

1 A. Yes, sir.

2 Q. --- on March 9th?

3 A. Yes, sir.

4 Q. Okay. And on March 23rd you visited what's called
5 the portal section?

6 A. Yes, sir.

7 Q. Okay. All right.

8 A. Yes, sir. I went to the other part of the mines,
9 the old part.

10 Q. I lost track of your dates there. In your duties
11 in approving ventilation plan submittals and
12 revisions, is that something you do personally or is
13 it something you have assistance with, or is that
14 something you work as a team with someone else?

15 A. Generally, it's a team, but mostly --- sometimes
16 individual. But mostly it's a team effort because we
17 work --- in the ventilation department, we work with
18 our supervisor, along with other CMIs and the
19 specialists.

20 Q. Uh-huh (yes).

21 A. And if we --- if we have a problem, we kind ---
22 all brief together. We look, again, at the operator's
23 submittal on his revision there and we base it to what
24 he's asking for on the map.

25 Q. Okay.

1 A. That's basically what we do. And if we do have a
2 question, one of us may --- we'll pull up the other
3 plans, or we make sure we pull the map out, see if
4 they're complying. And then if we happen to have a
5 problem, we call our supervisor in, Joe, this is what
6 we got.

7 Q. Okay.

8 A. We don't feel it's adequate and he gets in, looks
9 at it, we review it. If it don't meet, we deny it.

10 Q. Are you also involved in the MSHA process of
11 approving applications to a mine in the vicinity of
12 wells?

13 A. Yes, sir. We do have wells. Now, I have done
14 very few of those, but we have gas wells, you know,
15 there's --- a lot of us has done gas wells.

16 Q. Okay. Now, when --- on March 9th when you visited
17 22 Headgate, you indicated that you traveled from the
18 mouth of the section and traveled up the return in the
19 inby direction towards the section?

20 A. Yes, sir.

21 Q. Did you happen to be in this area, which would
22 have been south of there?

23 A. This area (indicating)?

24 Q. They call it the crossover or the connecting
25 entry.

1 A. No, sir.

2 Q. I'm not sure exactly what they call it. Do you
3 see on the map --- I can't read that spad number. You
4 see a pretty good size roof fall that extends for
5 approximately across a couple of crosscuts there.
6 Were you in that area ---

7 A. No, sir.

8 Q. --- at that time?

9 A. No, sir.

10 Q. Were any of the people on your team in that area,
11 that you know of?

12 A. None I'm aware of.

13 Q. Okay.

14 A. Again, I got out of the mantrip here, went to the
15 doors, up the return. I did not go between these
16 connecting crosscuts. I mean, these entries going
17 across.

18 Q. All right. Is it possible that some of the
19 fellows who were with you that day might have passed
20 by that area?

21 A. I don't think so.

22 Q. Okay.

23 A. No, because Supervisor Tom Moore and the other CMI
24 traveled to this (indicating), Benny Clark traveled to
25 this section, I traveled to this section.

1 Q. Okay. When you went to the section and you wrote
2 the violation on the section belt for not being
3 sufficiently rock dusted, ---

4 A. Yes, sir.

5 Q. --- when they abated that violation, did they ---
6 did they machine dust it or ---?

7 A. Hand dusted, bag dusted it.

8 Q. Okay.

9 A. What it was, coal flow dust where they let their
10 belt line run dry.

11 Q. Okay. Now, you indicated during your testimony
12 that Performance, Massey, Upper Big Branch had
13 submitted numerous ventilation plans ---

14 A. Yes, sir, they had.

15 Q. --- to the ---. Can you quantify that? Can you
16 put a number on that? Let's say, from the period of
17 September 2009 through the date of the explosion.

18 A. Several --- several ventilation violations --- I
19 mean revisions had been submitted. The exact number,
20 I'd have to get on MSIS to tell you, but I know it's
21 numerous.

22 Q. Okay. Do you think it would be in excess of a
23 dozen?

24 A. At least a dozen.

25 Q. Okay. Now, you also indicated that you think that

1 some MSHA inspectors may have cited some violations
2 because the miner operator had apparently implemented
3 the plan before it was approved?

4 A. Either that or they hadn't implemented it or they
5 done some changes without prior approval.

6 Q. Okay. Do you know how many times they were cited
7 for ---?

8 A. No, sir. No, sir.

9 Q. Okay. Now, when you traveled to 22 Headgate on
10 March 9th, you started from the mouth of the section,
11 were you in the area nearby known as the --- what they
12 refer to as the Glory Hole?

13 A. No, sir, the only thing I was near there would be
14 coming up the track, riding the mantrip to the
15 section.

16 Q. Okay. Was anyone else in your group in that area
17 that you ---?

18 A. Not as I'm aware of.

19 Q. Okay. And you didn't make it over to the
20 longwall?

21 A. No, sir. No, sir. I was up here (indicating).

22 Q. Have you had occasion or heard any --- to hear of
23 any stories about situations where the mine had some
24 type of methane liberation coming from the mine floor
25 in the form of some type of bleeder at this mine?

1 A. Not as I'm aware of. You know, I haven't heard
2 that.

3 Q. Okay.

4 A. And, like I say, it was my first day at the mine.

5 Q. Obviously, during the course of this investigation
6 there are a lot of ---.

7 A. Speculations?

8 Q. A lot of speculation, and rumors and innuendo.

9 And one of those things we heard about was possibly
10 there had been some instances where we had methane
11 liberation from the mine floor and the face in the
12 form of some kind of bleeder. You have no knowledge
13 of anything like that?

14 A. No, sir. Things do happen when you're pillaring,
15 you know. The bottom may move.

16 Q. Uh-huh (yes).

17 A. The bottom moves.

18 Q. Okay. Are you --- I know you indicated that there
19 were numerous ventilation plan revision changes
20 submitted. Do you specifically recall any that might
21 have been submitted early to mid December 2009?

22 A. Such as what?

23 Q. Anything in particular, anything at all.

24 A. They was constantly submitting plans.

25 Q. Uh-huh (yes).

1 A. These people are constantly submitting plans to
2 get revisions. They're constantly. Let's just put it
3 that way.

4 Q. Uh-huh (yes).

5 A. And it's just --- then we get a lot of calls
6 from --- how's my plan going again?

7 Q. Sure.

8 A. And, like I say, it's under review. A lot we
9 deny, some we've accepted.

10 Q. Uh-huh (yes).

11 A. Okay? But I know the last one I did, I denied it.

12 Q. Okay. When might that have been?

13 A. That was prior to me going down there that March.
14 Okay?

15 Q. All right.

16 A. Because it didn't need nothing. It was a ---
17 yeah, I know I denied that one, and I'd have to look
18 and see which one it was.

19 Q. Okay. I think their --- the UBB Mine operates in
20 what's called an Eagle seam?

21 A. Uh-huh (yes).

22 Q. Now, to the best of my calculation there are about
23 --- no less than three or four active mines and seams
24 above the UBB Mine, specifically Elk Run, Castle, ---

25 A. Yes, sir.

1 Q. --- Powellton, Black King Mine, Black Knight II.

2 Have you ever inspected any of those mines?

3 A. I was in the Castle Mine probably about three
4 weeks ago, two weeks ago. We was looking at the Glory
5 Hold area.

6 Q. Uh-huh (yes).

7 A. And it had been --- they had another hole drilled
8 down through, ---

9 Q. Uh-huh (yes).

10 A. --- okay? And they had it plugged. Again, where
11 the Glory Hole had been, it'd been sealed with it
12 looked like dirt. And the State people had already
13 been there, too, ---

14 Q. Okay.

15 A. --- at that area. We was not getting any --- they
16 had a communication line down in that area and they
17 had it foam filled, the one. Now, if you held your
18 detector down close, bottom, you could pick up
19 methane, nothing in the air, no --- but you could
20 still smell where the mines had come up.

21 Q. Okay. Thank you. You indicated that you're also
22 occasionally a part of the process of approving the
23 applications to mines with gas wells. Now, have you
24 had any reports at any time in the recent months or
25 recent years, for that matter, of any instances where

1 they may have encountered a gas well at this mine
2 unexpectedly?

3 A. Not as I'm aware of. Not as I'm aware of. And
4 they're indicated on the map?

5 MR. FARLEY:

6 Yes. All right. I'm done.

7 ATTORNEY WILSON:

8 Do you want to take a break or are
9 you ---?

10 A. No, I'm fine. I'm fine.

11 EXAMINATION

12 BY ATTORNEY MCATEER:

13 Q. Thank you for coming.

14 A. Yes, sir.

15 Q. The Glory Hole that you just spoke to Mr. Farley
16 about, ---

17 A. Uh-huh (yes).

18 Q. --- that was in the upper mine, is that the one
19 that is connected to this mine?

20 A. Yes, sir.

21 Q. Okay. And when you said you could take a sample
22 reading now --- near the ground, that suggested that
23 there was bad air had come up or that methane had come
24 up?

25 A. Well, what they done, there's a hole about this

1 big (indicating), okay, then your Glory Hole's a
2 pretty good size hole. It's filled full of gob, okay?

3 Q. Right.

4 A. All right. Like I say, State men had been there
5 for ---. He could not ---. He poked all around. He
6 could not find anything. Now, we was going to pull a
7 sample in the tube they had.

8 Q. Uh-huh (yes).

9 A. It was too long. Our pump bogged down. We
10 couldn't pull a sample, so we just --- we got real
11 close to the ---. Me and Keith Sigmon, we got close
12 to the hole. He did pick up methane, but nothing up
13 high, there was no methane. Now, you could smell
14 where the coal would burn. You could smell it. You
15 could see where the explosion came up through the
16 pipe.

17 Q. Right. Right.

18 A. You could see that.

19 Q. Okay.

20 ATTORNEY WILSON:

21 Just for the record, you referenced ---
22 you said the hole ---?

23 A. There's a communication hole. There was a
24 communication hole they --- it was probably four
25 inches down, no more than five. Okay. Then the

1 regular Glory Hole was just one crosscut inby. Okay?
2 I wasn't aware of that when we got up there. And that
3 was our intention, to go pull a sample because they
4 had stuck a tube down in --- down into this mines
5 (indicating) and we was going to pull a sample to
6 check it for CO and all that. And our machine would
7 not pull it at the time. So we just took a visual
8 examination of the air with our methane detectors and
9 we held it real close --- keep it very --- right where
10 they sealed it and we picked up methane, no CO or
11 nothing. Okay? At the Glory Hole, nothing.

12 BY ATTORNEY MCATEER:

13 Q. Now, on the 23rd ---? I'm going to try to go back
14 here. Use your words. You said you and the other
15 members of the group went to the mine because there
16 was an issue, a ventilation issue?

17 A. Yes, sir.

18 Q. What was the ventilation issue?

19 A. Again, it was due to the --- a lot of revisions.
20 We had the CMI Keystone boss' attention that the
21 possibility that this mine was not being properly
22 ventilated. And our intention was to make sure that
23 the mine was being ventilated and citations
24 appropriate according to what we found. Okay? That
25 was our instructions. If we found conditions not

1 being complied with 30 CFR, to cite what we saw.

2 Okay? And we were assigned to different areas of the
3 mines, along with the supervisor, Tom Moore, because
4 he was assigned to this mines.

5 Q. So you went to the 22 Headgate?

6 A. Yes, sir, I traveled 22 Headgate. I traveled the
7 return, from the mouth of the section to the last open
8 crosscut, which was bolted. I didn't think it was
9 bolted. It was bolted. They had several water holes,
10 damp conditions.

11 Q. And you cited one ventilation ---?

12 A. The what?

13 Q. You cited one dust problem?

14 A. Yes, sir. That was on the respirable --- I mean,
15 it was coal float dust, allowed to accumulate on rock
16 dust surface on the beltline. What they done, they
17 let their belt run dry.

18 Q. Okay.

19 A. Okay? They let their belt run dry, so I cited
20 that. And, like I say, mine management acted very
21 promptly. They got the dust up there. I checked the
22 scoop. I went back terminated that. The electrician
23 asked me about if I looked at that top, which they
24 already done set timbers and I asked mine management
25 to set additional timbers. There was nothing to me to

1 cite because they already had set timbers. They said,
2 no problem, I'll get the timbers up there right now.

3 Q. If I can go to the other members of the team. On
4 the wall was Terry Moore?

5 A. No, Tom Moore.

6 Q. Tom Moore. I'm sorry.

7 A. Supervisor out of the Mount Hope office. Him and
8 Keith Sigmon traveled to the longwall section. They
9 cited, they reissued the D orders for some --- the
10 problem they was having up on their wall. Benny Clark
11 traveled to this section (indicating), he issued nine
12 citations.

13 ATTORNEY WILSON:

14 Davitt, if I can just --- I believe you
15 said the date was March 23rd. It was actually March
16 9th; right?

17 A. March 9th. Right.

18 BY ATTORNEY MCATEER:

19 Q. I'm sorry. I did misspeak.

20 A. The 23rd was the day I think I run dust,
21 respirable dust.

22 Q. That was Mr. Wade ---?

23 A. Who?

24 Q. Ward or Wade?

25 A. Charlie Ward.

1 Q. Ward, yeah.

2 A. Charlie Ward, CMI. He's in the health department.

3 Q. Right. Okay. I'm thinking of him. Okay. So you
4 were --- and where was Benny Clark?

5 A. He was on this section, MMU 040. He was on this
6 section.

7 Q. Okay. And did he cite ventilation problems?

8 A. He cited nine citations. I don't think he cited
9 any ventilation violation. I'm not sure.

10 Q. And did they have air --- adequate air there?

11 A. On this section?

12 Q. Uh-huh (yes).

13 A. As far as I know they did.

14 Q. And then on the wall itself, where Sigmon and
15 Moore were, did they cite ventilation problems?

16 A. Yeah, they cited a D and it was because of the
17 blockage. There was a blockage.

18 Q. And to your recollection, was there any methane
19 detected at the wall at the time?

20 A. I'm not sure ---

21 Q. Okay.

22 A. --- because I wasn't up there and I can't
23 speak ---.

24 Q. Now, the four of you went out there for the
25 purpose of dealing --- looking at the ventilation

1 issue.

2 A. Yes, sir.

3 Q. Was there a conversation that the four of you had
4 afterwards which said, I think this is okay? I
5 don't ---? Did you address that question among
6 yourselves?

7 A. The only thing I said where I was at it appeared
8 adequate. Okay?

9 Q. Okay.

10 A. It appeared adequate. What controls I seen in
11 place, no new curtains, they was just normal curtains,
12 normal --- use every day. And that's all I said. It
13 appeared --- and like I say, the general condition
14 that we rode underground ---. It's the first time I'd
15 been to that portal. I didn't see no trash, it was
16 dusted. And I told Benny --- I said, Benny, it looks
17 okay. I mean, you know, it appears okay to me right
18 now from what I seen.

19 Q. Sure.

20 A. Okay. I mean, that's just normal speaking.

21 Q. And in the same way, did Benny or did Moore say to
22 you, we've got okay here or we got ---?

23 A. I didn't hear him say. Benny, me and him mostly
24 talked. I didn't talk really to Tom Moore that much
25 other than ---. When we got outside there, he told me

1 that Keith had issued the D citation. Okay?

2 Q. Did the company ever respond, to your knowledge,
3 to the D citation and to the other citation?

4 A. I wasn't aware of anything like that because they
5 had talked to them other --- I just told them what
6 citations I issued.

7 Q. Sure. Now, you testified that this company
8 submits a lot of ---.

9 A. Ventilation revisions.

10 Q. Who does that? Who's their ventilation team?

11 A. They got several down at their office there,
12 people that does that. It's not one specified
13 engineer. They got one engineer, Keith --- I forget
14 his last name. Anyway, Matt Mulker and he does a lot
15 for 'em, and there's about three of their engineers
16 out of their department submits the revisions to us
17 for this mines.

18 Q. Okay. In your experience with this mine and other
19 mines, is this a complex ventilation problem or
20 complex ventilation system?

21 A. Yes, sir, this is complex here.

22 Q. Uh-huh (yes).

23 A. It's big. It's a big coal mine, big coal mine.

24 Q. Now, is this --- I've heard it described as a
25 push-pull system?

1 A. Blowing, pulling exhaust.

2 Q. And can you show me how that works in this
3 instance?

4 A. You got your fan here and you have a fan --- it
5 should be at the portal, over here, at the old portal.
6 Air blows in. One exhaust is out. Okay?

7 Q. Okay.

8 A. Got a big fan here, return air shaft, and you got
9 your blowing fan, and this is the other portal. The
10 outcome at this portal, in that portal (indicating).
11 Is this some of it?

12 Q. Uh-huh (yes).

13 A. Okay. I'm trying to find the other portal.

14 Q. Uh-huh (yes).

15 A. You got one fan at the --- it's the blowing
16 fan, ---

17 Q. Right.

18 A. --- this is exhausting. Make sure --- I'm trying
19 to look to make sure I'm right. I traveled here.
20 Make sure what I'm looking at. Return shaft. Down
21 here. The fan ---. So this is exhausting out here
22 and it's blowing --- blowing, exhausting out ---.

23 Q. Is the capacity of the fans sufficient to clean
24 this area?

25 A. This size mine?

1 Q. Right.

2 A. They work hard to ventilate. They work hard.

3 Q. By that you mean they've got to ---?

4 A. They really --- yeah, the fans are laboring a
5 lot ---

6 Q. Right.

7 A. --- because the distance, resistance ---

8 Q. Uh-huh (yes).

9 A. --- and that's what I look at.

10 Q. Now, you said that they submitted --- and you can
11 sit down now.

12 A. Okay.

13 Q. I think that's it. You said that they submitted a
14 dozen or so more revisions. How does that compare to
15 somebody else?

16 A. This size mine?

17 Q. Uh-huh (yes).

18 A. Like I say, they change a lot. These people
19 change a lot. It's typical for this size mine. Okay?
20 And after a while it kind of slowed down, but they hit
21 us a lot with revisions for this mine. Just changing,
22 flip-flopping, changing air flow directions,
23 installing and moving controls to facilitate what they
24 want to mine, okay? And it takes a lot of thinking in
25 what they want to do because we have to go back,

1 again, and see what was previously submitted, trying
2 to figure out what they're going to do this time.
3 Okay? And it takes a little bit of time to think 'em
4 out ---

5 Q. Sure.

6 A. --- because, like I say, they're constantly flip-
7 flopping back and forth. In a mine this size you got
8 to be very careful what you submit --- or what they
9 submit to make sure this mine is being adequately
10 ventilated. It's a pretty good size mine. It takes a
11 lot of time, planning. You got to make sure their air
12 flow's in the right direction, the overcast they're
13 putting in. A lot of times they're changing air flow
14 directions, taking the intake to return, return to an
15 intake. That's what we basically look at when we're
16 listing a revision. Then we take the narratives in
17 their letter and compare it to what they put on the
18 map. And sometimes it don't match and that's the
19 reason they get denied.

20 Q. Okay.

21 A. You know, they submit it, but their revision don't
22 match what they put on the map. It's just vice-versa.
23 That's basically what we fight with, you know, with
24 'em on this. Some of 'em, they do good, some of 'em,
25 they don't and the majority of the time they get

1 denied. And the last one I did deny because it didn't
2 meet nothing they wanted to do and it wasn't
3 sufficient.

4 Q. Now, we get --- confront ourselves after these
5 disasters and are in kind of an awkward spot because
6 there's some things that have been said in the news
7 media and we don't know whether they're accurate or
8 not. But one of the issues has been that there was a
9 claim that there was a dispute between your office and
10 Massey's office on the ventilation systems, that they
11 --- they did things only because you made 'em. They
12 didn't want to do it that way.

13 A. Again, we made 'em comply with 30 CFR. Now,
14 that's our objective and that's what we want.

15 Q. But you also no doubt deal with the issue of, does
16 it make good sense from a ventilation standpoint?

17 A. As what?

18 Q. As a ventilation revision.

19 A. It depends, again, what they submit ---

20 Q. Right.

21 A. --- and what we see is complying with 30 CFR and
22 that's all we go by, the guidelines.

23 Q. Sure.

24 A. And if it don't, it won't get --- it won't get
25 passed.

1 Q. Now, the last one that you denied, when was that?

2 A. Prior to going down there. I'd have to look and
3 see. I'm not sure what date it was, but I know I
4 denied it due --- because it wasn't adequate. It
5 didn't meet 30 CFR.

6 Q. Okay. But that denial, was that before the 9th or
7 before the 21st?

8 A. Before I went down there, yes, sir.

9 Q. So it was before the 9th?

10 A. Yes. Yes, sir, the best I can recollect. Okay?
11 Again, I'd have to get up on MSIS to see what date it
12 was denied. Okay?

13 Q. And was there any discussion with them at the time
14 of your visit there about the denial?

15 A. No.

16 Q. You said they were taking short cuts?

17 A. Yes.

18 Q. What's the distance on that?

19 A. Twenty (20) foot.

20 Q. Twenty (20) foot. The finding of 7,000 feet ---
21 7,000 CFM, the fire boss report had shown 30,480?

22 A. No, I don't think so. It was 20 LOB.

23 Q. Okay.

24 A. Fire boss report was 20,480.

25 Q. 20,480. I'm sorry. And you found?

1 A. I found 7,000. And I took an air reading at the
2 miner and the LOB was 7,339. I had zero methane, 20.8
3 on the O2 and that was at 07:40.

4 Q. Okay.

5 A. Okay. And then at 8:34 they corrected it by
6 adjusting controls, adding more fly pads and they
7 raised it to 13,353, okay? But they still weren't
8 ready to run coal.

9 Q. And that adjustment then took how long?

10 A. It took from the time I cited them, 7:40, to 8:34.

11 Q. A little less than an hour.

12 A. They had a lot of --- they put additional fly pads
13 on the previous fly pads, okay, to help retain the air
14 because the left side of the mine was drawing cold
15 air, the left side.

16 Q. You described it as a fragile system, a fragile
17 ventilation system, in answer to the question. As
18 compared to other mines have a robust system or ---?
19 Can you speak to that issue?

20 A. In what respect, as far as ---?

21 Q. When you mean fragile, do you --- what do you mean
22 by fragile? That it had frequently encountered
23 problems?

24 A. Well, the mine of this size is very I say fragile
25 because any changes could short circuit because of the

1 amount of air lock doors or the amount of distance
2 that these fans are trying to pull and get air to
3 these sections. You know, if a person would change or
4 leave a door open, you could have a change
5 fluctuation, ---

6 Q. Uh-huh (yes).

7 A. --- in the controls up on this section or either
8 of the sections. If someone would leave the doors
9 open --- because it's air lock doors. It controls
10 ventilation.

11 Q. Sure.

12 A. And if they leave 'em open, sure, it'll short
13 circuit something. Something has to be short
14 circuited if it's not addressed. If you leave both
15 doors open, it's going to go the shortest route.

16 Q. Right.

17 A. And it'll starve whatever it needs to starve.
18 Right?

19 Q. Right.

20 A. And that's what I look at because, you know, you
21 take a mine this size --- you got three sections in
22 there, you got that longwall. And it's critical that
23 the controls in this mine stay absolutely right on the
24 money because if you don't, then something could
25 change. You could alter or short circuit to one of

1 the sections.

2 Q. Uh-huh (yes). Now, you helped Pete Stone look at
3 the annual --- you do revisions on an ongoing basis,
4 but then he annually reviews their plan?

5 A. He reviews the annual maps, mostly. We assist him
6 and I have done annual maps, too, but I'm mostly on
7 revisions. When we get into a complex mine like this,
8 we assist him in helping him pull the files out. We
9 go through all the revisions, see if they comply with
10 the revisions. And then if everything's up, then we
11 mostly pull the file down, put it back or if there's
12 only plans in there, then he supercedes a lot of
13 things. But it still stays on record.

14 Q. Sure.

15 A. If not, the files get big. We have to keep 'em up
16 to current. So the operator --- when he submits an
17 annual map, he should submit all revisions through the
18 year on the map. Then that way we --- before we even
19 go through to start looking at --- we're looking at
20 all revisions to see if he's complied with revisions.
21 And if he has --- if he hasn't, then we start throwing
22 flags and we call the supervisor, say, hey, this
23 revision has not been completed or it's not shown on
24 the map. Okay?

25 Q. Okay.

1 A. That's basically the routine we follow.

2 Q. And you found some of that in this instance?

3 A. I'm not sure on this one, but we have before on
4 different areas. Now, Pete, he does a real
5 outstanding job looking at the maps and seeing that
6 the revisions are complied with.

7 Q. Okay. And do you know Bill Ross?

8 A. Yes, sir.

9 Q. Does he work for Massey?

10 A. Yes, sir.

11 Q. And was he involved in the ventilation
12 submissions?

13 A. Uh-huh (yes). Well, now, he's --- I think they
14 hired him to help direct or oversee ---. They have a
15 lot of problems at their mines getting their
16 ventilation maps up. And I think he was hired to help
17 them curtail that, the best I can remember.

18 Q. You say getting their ventilation maps up?

19 A. Well, I mean, submit 'em in as accurate as
20 possible.

21 Q. Okay.

22 A. Okay? They have --- like I say, again, when we
23 review 'em, we find a lot of discrepancies and we mark
24 'em, go to the file and we cite what's not --- what
25 would be in compliance. And I think that was his job

1 to help the system in their --- in the ventilation of
2 their coal mines.

3 Q. And where did he work before?

4 A. Who, Bill?

5 Q. Uh-huh (yes).

6 A. He worked at the Mount Hope office.

7 Q. Okay. Do you know when he left?

8 A. Maybe two years ago, three at the most. He
9 retired from us and went to work for those people.

10 Q. Okay. Are the maps that they submit in your
11 files, are they kept on paper?

12 A. Do what now?

13 Q. Do you keep all the maps paper? Do you have
14 electronic maps?

15 A. These? They're all paper.

16 Q. In your office or ---?

17 A. Yes, sir. Yes, sir.

18 Q. Should we go to electronic maps?

19 A. If you did --- I think these are better right now.
20 Okay?

21 Q. I'm probably with you, but theoretically it'd be
22 easier to do it --- okay.

23 A. It's complex for us to --- when we do an annual
24 map, again, we pull out the old last year's map,
25 compare it for all revisions before anything is done

1 the mine that --- we look it all over real good, to
2 see all revisions has been complied with. Okay? And
3 then we start looking at the maps make sure controls,
4 air flow directions, that it's been a certified
5 engineer, that a mine foreman or someone is given the
6 information. Okay? All that's got to be on there, up
7 to scale, and we got a checklist we go by. Okay?

8 Q. Uh-huh (yes).

9 A. If there's any discrepancies, we don't check it.
10 We put a note there, so that way we --- if we have a
11 problem then they have to submit us an adequate map.

12 Q. Okay. And if this company's had trouble in the
13 past in other instances keeping their maps up to date
14 ---. I know at the Aracoma case they didn't have ---
15 didn't have adequate maps. Are the maps kept up to
16 date at the mine site?

17 A. Their maps, like on their 1200 map?

18 Q. Right.

19 A. Yeah, the foreman does his take-ups, or the mine
20 foreman.

21 Q. Okay. They keep them up ---?

22 A. Yes, sir.

23 Q. Okay.

24 A. That's the first thing we do. When we go to the
25 mines, we make sure their 1200 map --- see that it's

1 certified.

2 ATTORNEY MCATEER:

3 Uh-huh (yes). That's all I have right at
4 the moment.

5 ATTORNEY WILSON:

6 All right. Why don't we take a ten-
7 minute break. We're going to confer and then we'll
8 come back on the record and finish up.

9 A. Okay. All right.

10 SHORT BREAK TAKEN

11 ATTORNEY WILSON:

12 All right. Let's go back on the record.
13 John.

14 RE-EXAMINATION

15 BY MR. GODSEY:

16 Q. Okay. You stated --- I asked you a question about
17 the equipment doors, about the condition of 'em and
18 you said that you didn't see damage at the doors this
19 time?

20 A. Well, what I meant by that, you can tell that the
21 doors been frequently used, you know, just some could
22 have been bumped, but I didn't see none mangled, tore
23 up to where they'd be inadequate to be used, because
24 they'd have been cited if they had been.

25 Q. Have you ever seen before, like other visits

1 there, that ---

2 A. At this mine?

3 Q. --- they had been damaged or anything?

4 A. At other mines, I have, not at ---.

5 Q. Not at this one?

6 A. No, sir.

7 Q. And then you had said you also had been on the 067
8 unit when you were running dust on the 23rd that they
9 were taking short cuts. What reason were they taking
10 the short cuts?

11 A. I think they was in trouble with the respirable
12 dust, okay, on that section.

13 Q. It wasn't any roof conditions or ---?

14 A. No, no. Uh-uh (no).

15 Q. Do they have permission or plan to take deep cuts
16 down there on that 067 ---?

17 A. I think they have, but I don't know when. But,
18 again, like I say, they was taking short cuts at the
19 time.

20 Q. Cuts across the quartz or ---?

21 A. Quartz, whatever they're ---.

22 Q. Massey or whoever brings the plans in for
23 submittals for approval, do you have personal meetings
24 with him or does the supervisor have it, or how do you
25 all go about meeting with them. Is it an ADM on

1 technical and supervisor meets with Massey or does a
2 specialist --- engineers meet with him, too, also to
3 talk over the plans for these submittals, as many
4 revisions that they submit?

5 A. A normal submittal, they'll just mail 'em in, or
6 they'll bring 'em personally, okay?

7 Q. Uh-huh (yes).

8 A. And we tell them we'll review 'em, stamp 'em in
9 that we received 'em. And in due time we'll look at
10 'em. Because, again, we've got numerous mines that's
11 ahead of 'em, you know. We'll get to 'em as soon as
12 we can. And now certain --- certain cases they do ---
13 like to meet with Joe. They, like I say, well, we'd
14 like to maybe change a section or move an MMU, what do
15 we need to do or what do we need to change, what do we
16 need to submit? Sometimes that happens. They do meet
17 with ADMs, they do meet maybe Mr. Hardman at times.
18 If they have a condition, if we cited them or have
19 them down, okay, the normal submittal comes to us
20 directly. As far as them sitting down talking with
21 us, sometimes we might. They might ask us a question,
22 you know, would you look at this or we got a question.
23 Other than that, it's a normal cycle, we put it into
24 the system. We enter it and then it's handed out.
25 And we get 'em on a time basis, a cycle manner.

1 Q. Is there a certain time of week or day of week
2 they usually do that, like on a Thursday or Friday,
3 want to know if they can have it done by ---? Say we
4 got to have a ventilation change this weekend, we come
5 in on Friday, we got to have it done today?

6 A. That has occurred, but not as often, you know, as
7 they continuously have the revisions sent in.

8 Sometimes they might --- you know, we're going to be
9 down for --- you know, can you look at it? You know,
10 again, we tell 'em, if it's --- we'll try to review it
11 the best we can or get to the revision, ---

12 Q. Okay.

13 A. --- but I mean, we don't drop everything.

14 Q. But do they do that often? I mean, is it often or
15 seldom they do that? I mean, try to put the pressure
16 on you to have that plan approved?

17 A. No.

18 Q. Okay.

19 A. Okay. Now, we do get a call saying, do you have
20 any idea where our plan might be? Like, again, we
21 tell 'em it's under review, it could be down the hall
22 being signed off on. And then, again, they'll ask,
23 you know, and then we'll say, no, it's being reviewed.
24 That's all we can do.

25 Q. What extent of input do you have on those reviews

1 on those revisions? I mean, in your opinion

2 --- does it ---?

3 A. Oh, yes. We have a lot like -- again, when I
4 review a revision, again, it's ---. I look at their
5 submittal letter with what they submit with the map
6 and I compare that with what's on the map. Okay? If
7 I have any discrepancies, I generally go in and ask
8 Joe, the supervisor, again --- Joe, I said, would you
9 care to look at this? I've got a discrepancy. We
10 need maybe --- I need you to look at it with me. And
11 we'll both sit down and we'll go through the
12 narratives on their cover letter and then again we
13 look at their map, ---

14 Q. Uh-huh (yes).

15 A. --- see if it matches. And we say, no, this is
16 not going to work, or they need to redo their cover
17 letter to match what they're asking for. Generally
18 that's the way it usually works.

19 Q. Okay. Does anybody from higher up than say the
20 regular guy who submits the plans like call y'all and
21 say, how come my plan's not being approved, I need
22 this real quick, you know, anybody in higher
23 authority?

24 A. If they do, it's usually directed to Joe, directly
25 to him. We mostly deal with the engineers.

1 Q. Okay.

2 A. Sometimes upper mine management might call us, but
3 it's very rare. It's mostly the engineers that
4 submits the revision.

5 Q. Uh-huh (yes).

6 A. If the mine --- upper mine management usually
7 wants to talk to Joe.

8 Q. But you don't --- once they send those revisions
9 in, do y'all coordinate that with the field office
10 like the regular inspectors and the ADM inspection ---

11 A. Uh-huh (yes).

12 Q. --- and get their input on it before y'all approve
13 it or disapprove it?

14 A. Well, we generally do --- norm procedures is we
15 got to coordinate with the supervisor of the field
16 office or the CMI, directed to the mines. We tell 'em
17 we've got a plan, it's going to be approved or
18 disapproved and we tell 'em the discrepancies. And we
19 write a narrative in on their --- on the map. We
20 denote the discrepancies and tell the operator he's
21 going to be denied or the field office we're denying
22 this due to it don't meet 30 CFR, there's a lot of
23 discrepancies that's going to have to be corrected,
24 and that it don't match what the revision says.

25 Q. Have y'all had any plans approved that later a

1 field office supervisor or an inspector says, this
2 isn't right, it's not --- it shouldn't have been
3 approved? Have y'all approved anything like that
4 and ---?

5 A. Not as I'm aware of.

6 Q. Let's go back to the accident, the day of the
7 accident. Did you know of anybody who took any
8 company records that day?

9 A. At that time where I was at?

10 Q. Uh-huh (yes). Or any ---.

11 A. The dispatcher was writing down the same
12 information I was from the Bandytown ---. They kept
13 their own record. And there was another --- there was
14 a couple of people coming in and out getting
15 information for themselves. It didn't have no
16 reflection to what --- it was identical to what I was
17 writing down.

18 Q. Okay. On the Glory Hole, on the communication
19 hole, is that cased?

20 A. Glory Hole?

21 Q. Uh-huh (yes).

22 A. No.

23 Q. And do you know how --- what the ---?

24 A. The depth was?

25 Q. Yes.

1 A. I think it was 150 feet. It was 150 feet
2 separation between the two mines because we went over
3 to the smaller hole, they had it plugged off with a
4 plastic hose going down it. And we tried to pull a
5 sample and it just wouldn't pull. It was too deep.
6 So we told Joe we're going to have to go with a bigger
7 sample if we're going to pull one there.

8 MR. GODSEY:

9 That's all.

10 ATTORNEY WILSON:

11 Terry?

12 RE-EXAMINATION

13 BY MR. FARLEY:

14 Q. When you were in the 22 Headgate area on March 9th
15 of this year, ---

16 A. Uh-huh (yes).

17 Q. --- did you or any member of your party travel
18 north of there into the --- what's called the 8 North
19 section?

20 A. This section (indicating)?

21 Q. Yes.

22 A. No, sir, I did not. As far as I know, my other
23 colleagues didn't either.

24 Q. Okay. Have you ever been up there?

25 A. No, sir.

1 MR. FARLEY:

2 Okay. All right.

3 ATTORNEY WILSON:

4 Davitt?

5 RE-EXAMINATION

6 BY ATTORNEY MCATEER:

7 Q. Just a point of clarification. Was the
8 communication --- up in Glory Hole, was the
9 communication pipe, was that cased?

10 A. Communication hole, no, sir.

11 Q. I mean, the pipe --- you said there was a
12 small ---.

13 A. They had --- there's about a four or five inch
14 diameter hole drilled, ---

15 Q. Right.

16 A. --- okay, from the Castle Mine down to this mine.
17 Okay? It's just a regular --- it's like a bore hole.

18 Q. Okay.

19 A. Okay. A bore hole. They had a plastic tube,
20 hollow tube, for sampling purposes.

21 Q. You said that on a number of instances there were
22 times when this company did not comply --- I'm sorry,
23 or their submissions were inaccurate, the narrative
24 --- between the narrative and the map were not
25 accurately tied together. But then you also said that

1 they would on occasion make changes in the ventilation
2 before they were given approval or they made changes
3 that they didn't apply for. Is that right?

4 A. I'm not sure. I don't think I said that. What
5 I'm saying, they might have made some changes, ---

6 Q. Okay.

7 A. --- okay, that I'm not aware of, because the CMI
8 assigned to the mine ---.

9 Q. Would be the person ---.

10 A. Person for that. The only thing we can see is
11 when they submit an annual map and they might have
12 done something that don't reflect to a revision ---

13 Q. Right.

14 A. --- and that's how we catch it. Okay?

15 Q. Now, if you do catch something like that, is there
16 a citation system or do you have a --- is there a
17 penalty system or a way to get that corrected?

18 A. Yeah, an inadequate map is sent, we send --- we
19 violate it.

20 Q. Okay. And have you done that with this company?

21 A. I'd have to check, again, on the records. I'm not
22 sure it has been cited, but if it has, it's on record.

23 Q. Okay.

24 A. Okay?

25 Q. The records that you kept on the night of the

1 accident or the nights of the disaster, do you know
2 where those are?

3 A. I've got 'em.

4 Q. Okay. Can you make those available to ---?

5 A. Yes, sir.

6 Q. Okay.

7 A. Yes, sir. Sure can.

8 ATTORNEY MCATEER:

9 Okay. I think that's all the questions I
10 have.

11 ATTORNEY WILSON:

12 Any follow-ups? Okay. Mr. Gray, on
13 behalf of MSHA and the Office of Miners' Health,
14 Safety and Training, I want to thank you for appearing
15 and answering questions today. Your cooperation is
16 very important in the investigation as we work to
17 determine the cause of the accident. We require that
18 you not discuss your testimony with anyone else
19 because we will be calling other persons in for
20 questioning. After questioning those other witnesses,
21 we may call you back if we have any follow-up
22 questions that we feel we need to ask you.

23 If at any time you have additional
24 information regarding the accident that you would like
25 to provide to us, please contact Norman Page at the

1 contact number that was provided to you. At this
2 point, if you wish, you may now go back over any
3 answer that you gave during the interview or you may
4 make a general statement at this time.

5 A. I have nothing at this time to say.

6 ATTORNEY WILSON:

7 All right. Then, again, I'd like to
8 thank you for appearing here today.

9 A. All right. Thank you.

10 ATTORNEY WILSON:

11 Off the record.

12

13

* * * * *

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STATEMENT UNDER OATH CONCLUDED AT 10:04 A.M.

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CERTIFICATE

I, Brett Steele, a Notary Public in and for
the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Brett Steele