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Transcript of the Testimony of **Joseph Mackowiak**

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Case:

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STATEMENT UNDER OATH

OF

JOSEPH MACKOWIAK

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, May 17, 2010, beginning at 1:08 p.m.

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P R O C E E D I N G S

ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson. I am with the Office of the Solicitor, United States Department of Labor. We're here with Joe Mackowiak. Today is May 17, 2010. With me is Richard Stoltz, an accident investigator with the Mine Safety and Health Administration. Also present are several persons with the State of West Virginia. I ask that they state their appearance for the record.

MR. BECK:

I'm Jim Beck. I work for Davitt McAteer on the independent team.

MR. FARLEY:

Terry Farley, with the West Virginia Office of Miners' Health, Safety and Training.

MR. O'BRIEN:

John O'Brien, with the Office of Miners' Health, Safety and Training.

ATTORNEY WILSON:

There are several members of the investigation teams also present in the room today. All members of the Mine Safety and Health Administration Accident Investigation Team and all

members of the State of West Virginia Accident Investigation Team participating in the investigation of the Upper Big Branch Mine explosion shall keep confidential all information that is gathered from each witness who voluntarily provides a statement until witness statements are officially released. MSHA and the State of West Virginia shall keep this information confidential so that other ongoing enforcement activities are not prejudiced or jeopardized by a premature release of information. This confidentiality requirement shall not preclude investigation team members from sharing information with each other or with other law enforcement officials. Everyone's participation in this interview constitutes their agreement to keep this information confidential.

Joe, government investigators and specialists have been assigned to investigate the conditions, events and circumstances surrounding the fatalities that occurred at the Upper Big Branch Mine-South on April 5th, 2010. The investigation is being conducted by MSHA, pursuant to Section 103(a) of the Federal Mine Safety and Health Act and by the West Virginia Office of Miners' Health, Safety and Training. We appreciate your assistance in this

investigation.
After the investigation is complete, MSHA will issue a public report detailing the nature and causes of the fatalities in the hope that greater awareness about the causes of fatalities can reduce their occurrence in the future. Information obtained through witness interviews is frequently included in these reports. You should know that if you request confidentiality, confidentiality will only be granted on a case-by-case basis. Your statement may also be used in other enforcement proceedings.
You may have a personal representative present during the taking of this statement and you may consult with that representative. Do you have a representative with you?
MR. MACKOWIAK:
No, I do not.
ATTORNEY WILSON:
You may refuse to answer any question and you may request a break at any time. This is not an adversarial proceeding. Formal Cross Examination will not be permitted, however, clarifying questions will be permitted as appropriate. The court reporter will record your interview. Please speak loudly and clearly. If you do not understand a question, please

ask that the question be rephrased. Please answer each question as fully as you can, including any information that you may have learned from someone else.

Again, I would like to thank you in advance for appearing here. We appreciate your assistance in this investigation. Your cooperation is critical in making the nation's mines safer. After we have finished asking questions, you will be provided an opportunity to clarify any of your previous answers and to provide any type of a statement if you choose to make one. After the interview, if you recall any additional information that you believe might be useful, please contact Norman Page at the contact information in the letter that I'm providing you now. At this time I'll ask the court reporter to swear you in.

JOSEPH MACKOWIAK, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

ATTORNEY WILSON:

Richard Stoltz will start out with the questioning.

EXAMINATION

BY MR. STOLTZ:

Q. Joe, would you please state your full name and spell your last name, please?

A. Joseph Charles Mackowiak, M-A-C-K-O-W-I-A-K.

Q. Would you please state your address and telephone number?

A. I reside at (b) (7)(C) , (b) (7)(C) . And I'm sorry, what was the second part of the question?

Q. Telephone number, please?

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

Q. Are you appearing here today voluntarily?

A. Yes, I am.

Q. How long have you worked for MSHA?

A. Nine-and-a-half years.

Q. What is your current duty station?

A. Mount Hope, West Virginia, District 4.

Q. How long have you worked at that location?

A. Since 2004.

Q. What is your present position?

A. Ventilation supervisor, however, my title is supervisory mining engineer.

Q. How long have you been in that position?

A. Since June of 2008.

Q. How many people do you supervise?

A. Six plan reviewers and one secretary, seven.
Q. Who is your current supervisor?
A. Richard Kline.
Q. Could you please tell us some of your mining history and experience?
A. Sure. I started working for A.T. Massey Coal Company in the summer of my sophomore year of college, and worked for them until --- that began in 1992, and worked for that company through college. Upon completion of college, I worked for them through January 2000, approximately seven years.
Q. What did you do while at Massey?
A. I did mining engineering, surveying, AutoCAD while in school. Upon graduation, I worked underground at various underground coal miles along the Route 3 area. For a period of time I did various construction projects, and additionally, some mining engineering in the Route 3 area, and then again in the Summersville area.
Q. Basically a lot of your experience was engineering experience?
A. Well, about two-and-a-half years of underground experience followed by mining engineering.
Q. Do you have any specialized training or certificates?

A. Yeah. I'm a Certified Impoundment Inspector with the Mine Safety and Health Administration. I'm a certified dust --- certified with dust pumps with the Mine Safety and Health Administration. I am both a surface and underground instructor with the State of West Virginia, as well as with the United States Department of Labor, Mine Safety and Health Administration. I have a Bachelor's of Science degree in Mining Engineering from West Virginia University. I am a Registered Professional Engineer in the State of West Virginia. I am a Certified Underground Mine Foreman --- Assistant Mine Foreman. I'm also a Certified Underground Miner. I have a Master's of Science in Safety from Marshall University. I think that's it.

Q. Okay. In your current position, what is your primary areas of responsibilities?

A. Primarily to process ventilation plans for District 4 and to supervise plan reviewers in the processing of ventilation plans and to work collaboratively with the district field offices for issues that may be raised during inspections related to ventilation.

Q. Is ventilation plans your only area of responsibility?

A. Well, we occasionally assist on EO1 regular inspections, quarterly inspections. My guys --- I'll go out occasionally as well. I occasionally help with the editing of fatal accident reports for the district. I've also served on various committees, including SCSR, Bleeder and Gob Committee. And that's essentially it for right now. Now, in the past I've done several other things. I don't know how broad of a question you want answered.

Q. That's good. How many active underground coal mines are currently in the district?

A. I don't keep a day-to-day count of it. The last I heard from the district manager, Robert Hardman, was 245.

Q. And you would be responsible for all the vent plans for ---

A. Yes, sir.

Q. --- all those?

A. Yes.

Q. Could you go over the standard operating procedures for reviewing a submitted ventilation plan?

A. Sure. When a ventilation plan comes into the district, it is date stamped upon receipt to show what --- you know, when it arrived. It goes through clerical person's hands in being input into our MIS,

mine tracking. It's a plan tracking software. And then it essentially gets put into a series of bins that are holding bins spread --- based on the type of plan that they are. I will assign that plan to a plan reviewer and they will conduct a review of the plan. Upon their completion, they attach an approval or denial letter to it, and they submit it to me for secondary review. I conduct that review. If --- depending on what --- whether we agree or not depends on whether it goes to Mr. Kline for a third-level review. And if I agree with the conclusions of the plan reviewer, whether it be approved or denied, then I will sign it and pass it on.

Now, one of the steps that occurs prior to it coming to me is that plan is reviewed with the field office, preferably the supervisor or the inspector assigned to the mine, to ensure that it's applicable to the mining conditions and that it will function as desired. Frequently we require their input on everything from mining near gas wells to ventilation map revisions, where a mine operator wants to turn an air course, or to plan revisions themselves, like a face sketch wants to be changed or something similar to that. But we always take everything through the field office, either verbally, by explaining item by

item what's in the plan, or you know, we like to also send 'em --- scan 'em and send 'em to the field office.

Now, once I agree or disagree with their conclusion, it goes to Richard Kline, who does an additional review. He's the Assistant District Manager of Technical Programs. And upon his review, he forwards it to the Assistant District Manager of the Enforcement Division, who actually manages all the field offices for them to review it and either concur or disagree, at which time --- at any time they disagree it comes back to me. And then we'll contact the mine operator and work on whatever plan details are necessary to make that plan acceptable.

And then finally, from the Assistant District Manager, Enforcement Programs, it ends up at the District Manager's desk. Now, we are all making recommendations, from my plan reviewer through the Assistant District Manager of Enforcement, making recommendations, but the final determination is made by the District Manager, as to whether to approve or deny a plan.

Let me add just one more. The final process is it comes back to the district, to my office, for transmittal to the mine operator and to the field

office, and at which time a copy is sent --- two copies are sent to the field office, one for the residing inspector, whoever is there at the time, one for their records in the uniform mine file. The additional copy goes into our records in the Ventilation Department for the purpose of reviews. We re-review all of those upon each annual map to assure that they're still applicable.

Q. Who normally submitted plans for the Upper Big Branch Mine?

A. Several people submitted plans for the Upper Big Branch Mine. Normally, it would be Eric Lilly, an engineer that worked for Performance or Route 3 Engineering. I believe he told me verbally he worked for Route 3 Engineering. However, when he submitted plans, he did it on Performance Coal Company letterhead. And occasionally plans were submitted within six months prior to the accident also by Bill Ross, Chris Adkins and Chris Blanchard.

Q. Did you have any meetings with upper mine management personnel concerning submitted or proposed plans? Please give me the name and titles.

A. Prior to approval or after approval?

Q. Prior or after.

A. There were several meetings.

Q. And the purpose of the meetings?
A. Okay. There were several meetings. It's a broad question, so it's difficult. But let me start --- one that stands out is the mine received approval to reverse belt air on December 18th. After implementation in the days following that, Bill Ross and Chris Adkins, who I believe is vice-president of Massey Energy, came to my office the morning of December 23rd requesting a plan to change the December 18th plan due to difficulties encountered during implementing. They hand delivered a plan with them. We looked at it. We being --- and I'm not absolutely sure on the meeting attendees, but I'm sure I had a plan reviewer there, which one I'm not sure of, Rich Kline and possibly Luther Marrs. But I'm not really exactly sure. There's some notes on that. Well, I don't think I took notes that day, actually. But they described that due to the influence of the bleeder fan on those neutral air courses in the Number One entry of the headgate, that they were unable to turn the belt air from approximately the panel two crossover, which is mining from headgate --- the active headgate towards Headgate 22, inby to the area here shown December 2009, which is approximately crosscut 49 or 50, in that general

area. And subsequently, their plan stated that the neutral air course would split and a portion of it from the crossover, at about crosscut 28 would go inby and 28 would go outby to a regulator located at approximately crosscut 12, in that general area. But the specifics of that plan are on the December 23rd plan. And basically they described the influence of the bleeder fan was too great for them to turn the entire thing.

A portion of that plan also described upon their submittal, in their submittal letter, that the --- they would have a long-term plan to change the belt air around. Now, I had several meetings prior to that during previous plan reviews. I don't know the exact dates of 'em, in which we had requested ---.

Q. Would it be helpful for that plan to go --- I guess lay out each plan and go over each of the approved plans and then talk about denials? Would that be ---?

A. If we can do that in chronological order from all --- that would be very helpful.

Q. And it sounds like what you're saying is a lot of your meetings pertained to either approvals or denials of plans ---

A. Yes.

Q. --- and the various accompanying officials?
A. Yes, one of which, which really didn't have to do with approvals and denials, in mid-January Wayne Persinger, I believe, was transferred to the mine and he came to our office without any company engineers and met with Link Selfe, I believe Rich Kline, Jim Humphrey from the district, who was acting as a field office supervisor at the time, and just to basically get to know one another. He described what he was doing at the mine, why he was there, due to compliance challenges. And we basically gave him our current status of the mine with regard to past citations and orders issued. There was also a meeting for that. It really didn't have much to do with plans, per se, but it did have to do with mine conditions.
Q. I guess how do you know when a plan has been implemented?
A. That's very difficult. The only way to know that a plan has been implemented is to talk to our MSHA employees who have been into the mine. There is no reporting requirements by the operator.
Q. Moving on, I was going to talk a little bit about the Belt Air Rule. And the Belt Air Rule was effective on December 31st, 2008. Underground coal mines were required to have a plan to the district by

March 1st. Could you please explain or discuss the effect of the regulation on the mines in your district?

A. By and large, the mines in my district were not prepared for the Belt Air Rule. They didn't fully understand the requirements of it. Several meetings with some of the mine operators, they were fairly resilient to change. And it took multiple requests on the part of the district to basically get them to turn in their belt air requests, either a justification for the belt air they were currently using or the request to use it or the request to change it. Under 370, the mine ventilation plan has to be developed and submitted by the mine operator. It requires them to have a fundamental understanding. So we gave out copies of the Final Rule and discussed it with them. I kept a notice on the whiteboard in the district within my office so all mine operators could see that there was a requirement. And despite that, we still had to send out multiple letters in order to prompt that. Now, it being a new regulation, we weren't extremely punitive in its application initially. We wanted to more or less educate the mine operators and get that --- get that ball rolling, so to speak. Some mine operators turned right around and gave a

justification that was subsequently approved. It generally took several submittals to get an approval because the mine operators weren't familiar with the new regulations, and there wasn't a whole lot of guidance within the regulation itself with regard to like a checklist. There wasn't a checklist in the regulation with regard to what would be necessary for that plan.

This mine, in particular, with regard to belt air, was very difficult to deal with in that it took multiple notifications. They had a base plan --- they got approval for use of the longwall, I believe it was August 6th, 2009. On that approval for the longwall contained a face sketch which showed belt air being used. Now, due to the influence of the bleeder fan, that was fairly normal. The bleeder fan would want to pull the neutral air courses that way. At that time, it was requested from them verbally from me that they address the belt air issue. Again, we were fairly lenient with the application of the new regulation because it was new. We asked for it then.

We addressed it again approximately November 20th in a plan correspondence for this issue to be addressed, either justification for its use or its elimination, as required by the regulation. We

requested again December 3rd, via plan correspondence, December 4th via plan correspondence, I believe again on December due to plan correspondence.

I'm trying to hold to those dates. Again, I'm going off memory. But I believe within either the approvals or denials, it was in a plan letter. We did that several times.

Just prior to December 9th, the company engineer, Eric Lilly, stated to me that he did not have a copy of the regulations. So you'll see within that letter that requested --- it states in there that a copy of the regulations did accompany that. Now, he picked that up in my office from my secretary and attached it accordingly on that day, on that morning. And that essentially, I guess, got the point across that they either needed a justification or removal pursuant to the regulations. And they submitted and was approved to get off of belt air on December 18th. However, again, as I previously stated, they had difficulty implementing that revision, and they revised that revision on December 23rd. And that was the meeting with Bill Ross and Chris Adkins.

Q. I'm now going to, I guess, move on to the --- basically try to walk you through the approved ventilation plans.

MR. STOLTZ:
But before I do that, Terry or Jim, did you have anything --- follow-up questions, I guess, on what was initially covered?
MR. FARLEY:
Very quickly.
EXAMINATION
BY MR. FARLEY:
Q. Mid-January Wayne Persinger met with Link Selfe, Rich Kline, Jim Humphrey, et cetera. What was Persinger's job? What was his position?
A. I don't know his exact title. He was transferred to the mine in order to address their compliance issues. They received numerous orders from the Mine Safety and Health Administration. And in particular, he talked about some things that he had observed and seen with regard to doors or access via scoop down here in the southern part of the mine. It's off the map that's on the table, but it's --- and I don't know the exact area because he briefed us very quickly, but somewhere down there an acting, producing section that was driven off from near the South Portal. He talked about that and just trying --- explained that he was trying to get to know the mine and was walking the areas and traveling with people, trying to get an idea

as to, you know, how to help --- how to help the area, how to help the mine.
Q. Okay. Earlier on you indicated that UBB plans were normally submitted by Eric Lilly, also Bill Ross, Chris Adkins, and you mentioned Chris Blanchard.
A. Yes.
Q. Anything in particular that came from him?
A. That was not the norm that it was received from Chris Blanchard. However, he did submit one or two. Now, I can't quote to you which ones they are, but they tended to have his signature on their submittal letter.
Q. Okay. Was there anything different about his submittals as opposed to others? Was it ---?
A. Generally if he submitted a plan, he wanted a quick turnaround as much as possible. And when he turned it in, he wanted to meet with one of my group, either a plan reviewer or myself. And that's frequently done by mine operators throughout the district, that they want you to sit down and look at their plan upon submittals to tell them if there's any issues with it and get a pre-review, so to speak. And the reason being is we're a large district. We have volumes of submittals. And that's one way that the mine operators tend to, it appears to me anyway, try

to circumvent the waiting period in order to get a quick response, to kind of compensate for lack of proper planning or an extreme situation that --- like say a section hits rock ---. And it didn't happen in this mine, but I'm going to give you an example, where they hit rock and they have to move and they need a quick turnaround or they're going to suffer a loss in production. That's one way that they try to get their plan above the rest of 'em. You know, currently --- last week I had 136 or 139 outstanding plans. So you can see where that would be advantageous to the operator.

Q. Okay. Let's see here. You indicated in 2009, after the Belt Air Rule became effective December 31, 2008, that UBB required multiple notifications?

A. Yes.

Q. Can you quantify multiple?

A. November --- August 6th, verbal, November 20th, December 3rd, December 4th, and again on December 9th, that's five notifications with no response.

Q. Okay.

MR. STOLTZ:

Jim?

EXAMINATION

BY MR. BECK:

Q. Mr. Mackowiak, you said there were 245 coal mines in District 4?
A. Roughly.
Q. Roughly. Is that all underground mines?
A. Those are underground coal mines. I think the total number of mines in the district is in excess of 400 or hovers around that area.
Q. Would District 4 be the largest MSHA district in West Virginia?
A. It would certainly be in West Virginia. Geographically, it's --- I don't know if it's any larger. But as far as the volume of mines, yes.
Q. You mentioned Bill Ross. Did he formerly work with MSHA?
A. He did. He's an MSHA retiree.
Q. Where was his duty station when he retired, do you recall?
A. He was a ventilation supervisor for District 4. He had my current position prior to me.
Q. Do you know his job with Massey right now?
A. As I understand it, he works for Massey Coal Services, which is a technical management group. I've never really had it explained to me, but that's essentially what they do.
Q. Okay. And when Wayne Persinger came to visit you,

did he express any concerns about ventilation? Was that one of his issues?

A. Nothing in particular stands out, other than he said he was traveling the mine --- excuse me, traveling the mine in order to gain familiarity.

MR. BECK:

That's all.

RE-EXAMINATION

BY MR. STOLTZ:

Q. Okay. Joe, I'm going to, as I said, walk you through some of the various plans, starting from the August 6th, 2009 plan. And I guess I'd ask you to just go over and provide us some of the details on each of the plans as we go through 'em. The August 6th, 2009 plan was the One North longwall startup plan submitted in July, which it was revised --- I know it says in the approval note three times prior to being approved. Could you just kind of walk us through what basically the plan entailed?

A. Yes, I will. The plan is comprised with --- initially on the cover it's initialed by me, J.M., 8/6. That's the date that I saw it from the reviewer. And it's just basically an initial in the lower right-hand corner stating that I was in agreement with the writing of the letter and the wording used within

it. The mine operator doesn't receive a copy of that. What he sees is page two in this packet, which doesn't have my initials in the lower right-hand corner. It only has a signature by Robert Hardman. Then there is a cover letter submitted by the company that's required on all plans, dated July 28, 2009. However, those dates are important that the operator puts into it because they don't always correspond with the date on which we received it. This one, in particular, in the lower right-hand corner, was logged in received on August 6th, 2009. So the total lapse time that we would have had, it would be from August 6th to August 6th. So you can see that this was a same-day process. The letter initiates --- consists of three phases. Phase one is a ventilation scheme during development of the north district coal reserves ---.

COURT REPORTER:

Wait a minute.

MR. STOLTZ:

Yeah, slow down.

COURT REPORTER:

You need to slow down.

A. I'm sorry.

COURT REPORTER:

Thanks.

A. The revision consists of three phases. Phase one is the ventilation scheme during development, prior to the exhausting fan being placed into service. The panel one crossover will be mined under the approved ventilation revision. Once the exhausting fan is placed in service, the vent scheme for mining crossover will reflect what is shown in the attached phase one map.

Phase two is a ventilation scheme for further development of the northern district and startup and activation of the longwall panel, establishment of bleeder evaluation checkpoints, the surface EP at the top of the bleeder return shaft, and the necessary ventilation controls being installed, removed. Also shown in phase two, as the sequence of mining panel two and three crossovers as well as sequencing for mining Headgate Two and Three.

It goes on for phase three. Shows the ventilation scheme for mining Headgate Two and Headgate Three once the panel two and three crossovers are completed. At this time the panel three crossover will be ventilated by return air in the Number Four entry and neutral in the One, Two and Three entries. The air from all four entries will enter the right return in the section mining Headgate Number Two. A description of the

bleeder system, including a line diagram, I had actually requested this to assure that the mine operator understood the requirements of 75.364, where air --- specifically (a)(2)(iii), where air exits the worked-out area and enters the bleeder air course. So that they knew prior --- or during development that they would have to travel the back of these longwall panels, the bleeder system, to the vent shaft, including the outlets from the worked-out area, for the entire ventilating district. And the reason that's of pertinent importance is if you go back to the 2005 face plan for this base plan for this mine, they were not required to travel the bleeder air courses in their entirety. Subsequently, they did not capture quantity, quality and direction for the air that exits the worked-out area. That's why the line diagram is in there, to assure that that portion of the regulations could be followed long term. It includes general safety precautions for water control, roof control, the bleeder system evaluations, dictates what they're to do. And the page numbers aren't marked, but there is a map that is sideways that shows a plan view of the longwall and it includes MPA, MPB, EP Longwall One and EP Longwall Two. And those are the required items for 75.364(a)(2)(i),

where air enters the worked-out area. Additionally, it has a bleeder outlet point at the rear of the longwall, two regulators denoted on EP LW3, EP LW1 picked up, set of temporary check curtains in the headgate to direct air across the longwall face, a set of temporary regulators in the Number One and Number Two entries in the back of the longwall connector to assure that air, as they started the longwall, would go across the longwall face, and an additional outlet EP, just called EP TG1, which is everywhere where air exits the worked-out area on the tailgate side. It also shows in the plan view that there is a --- in the Number One entry of the tailgate, a return air course that is isolated from a bleeder system or from the worked-out area, heading back towards the return shaft at Bandycreek --- not Bandycreek but Bandytown. It shows an additional face sketch with a four-entry headgate, and that was for subsequent panels as they were laying out. It didn't apply for the first panel.

BY MR. STOLTZ:

Q. But that would be for a future panel?

A. That's for future panels. As you see on the left-hand side, it shows gob, which would be for the previously-mined longwall panel. It has an additional

one for --- this is for the second longwall panel. And again, the page is not marked, but it has Three --- Three entry tailgate, because it was mined on the first panel at Three entry headgate, followed by Four entry headgate. And then as the longwall went to the third panel in the district, it would have a four-panel tailgate with a four-panel headgate. And because --- it was required to be defined on each separate one because all the entry numbers varied from panel to panel. I wanted to make sure that they had addressed that properly.

Q. So that would be a typical face sketch for ---?

A. For longwall mining?

Q. Yes.

A. Right.

Q. Okay.

A. And those would survive in the plan from here on out, unless the operator had requested a change.

Q. Several of the face sketches you talked about MPs and EPs. What would be the difference between an EP, or evaluation point, or an MP, measuring point?

A. An evaluation point is in lieu of travel. It is quantity, quality and direction. It is a requirement. It's a nomenclature that exists within the district prior to my arrival, but it is essentially the points

required by 75.364(a)(2)(i), (ii) and (iii), which would be where air enters a worked-out area and exits a worked-out area and measuring point location sufficient to assure that the bleeder is functioning effectively.

An MP is a measuring point. It has a different frequency. It is in addition to travel, not in lieu of travel, and so it would also be quantity, quality and direction. Now, in this particular requirement in this plan, I believe that it requires MPA and MPB to be a daily check, that they would always check air going into the worked-out area. And then the EPs at the active longwall face would check air entering the worked-out area. And then the EPs on the bleeder, where air exits a worked-out area, into the bleeder air courses, is the area where weekly you --- you're required to check where air exits the worked-out area.

And then on to the maps ---.

Q. I have another quick question.

A. Sure.

Q. Your MPs on your face sketches, MPBs, you show basically a location, could be three or four entries. Would that requirement then --- that measurement would have to be made in each of those entries?

A. I agree, yes. They would need to be.

Q. Back to that plan then. Basically that plan provided --- allowed the longwall to go on line and start up, so it did, and the development of the future gate entries, Headgate --- HG 22 or HG 23; is that true?

A. Yes. This plan actually requires something in and above the regulation. It's something I had asked for verbally. And at the bottom of the --- I guess it's the page --- at the top it says Northern District Longwall Bleeder System. At the bottom it described MP will also be established along the headgate entries, starting at the setup face and at intervals of approximately 2,000 feet. And what that is, is these MPs were to survive until the second panel had pulled past them. They showed in this plan that they would maintain --- and I turn to the face sketch here --- typical longwall face ventilation. They're showing that they're going to maintain a return stopping line in the Number --- between the Number Two and Number Three entry at the headgate. And what those MPs are for is, they're strategically placed every 2,000 feet. So as they're mining the subsequent panel, they can cross that into the center entry and check that for methane accumulation, to assure that the previously mined-out panel is not having a

substantial methane accumulation adjacent to the active longwall. And that's a safety enhancement in and above that that I --- that's required in the regulation. Again, it's described on the page that says Northern District Longwall Bleeder System, at the bottom of the page and the top of the following page.

This plan also has several large maps with it. Depicted the crossover mining. Here it's entitled panel two crossover and panel three crossover and also the mining of the Headgate Two North, Headgate Three North, and gives a sequence of mining. The primary and secondary escapeway is marked in green and in yellow. We look at these routinely to assure that they are isolated, that we don't have any potential issues with regard to the escapeway.

It looks like a portion of these maps are actually cut off. The title blocks are missing.

Q. I apologize if they are.

A. It doesn't look like it's going to interfere with what we're doing here today. However, let me --- nope. I stand corrected. I'm sorry. They're actually accurate. The mine operator submitted them this way.

And I'm looking at phase two, starting longwall, which shows opposed exhausting fan locations, 300,000

cfm. According to the verbiage in the plan, that was to be on line prior to the starting of the longwall. It shows the neutral air courses in the tailgate as well as an isolated return off of the panel one crossover mining. And it is shown with dash projections, which comes down, across the set of overcasts near the longwall stop point, and along the Number One and Number Two entries, up the tailgate, isolated from the tailgate system in its entirety, all the way back to a regulator, which describes 30,000 cfm, which would be air coming from the panel to crossover development mining, separate from the longwall mining system, which is something that we had had discussions about with the operator. We did not want to commingle return air from any development section with the tailgate or the headgate air from the longwall due to potential contamination concerns. And this plan shows it as being isolated.

And there's an additional map in here that shows the sequence of mining for the longwall, which is hatched in green. It shows the location of MPB, EP LW2 and MPA. A 30,000 cfm regulator from the air coming off of panel one crossover is also shown, still isolated in its entirety from the longwall to assure that contamination does not occur. It also shows, via

red numbers one, two, three, two and four on the upper end, the sequence of mining for development of the longwall headgate panels --- or headgate development entries. They were showing a four-entry system at the time, which changed at a later date. It also shows the MP at Crosscut 58 and an MP at Crosscut 36, which are supplemental to the requirements of the regulation, to assure that air is moving in the proper direction; quantity, quality and direction.

MR. STOLTZ:

Terry, instead of going over every plan, maybe after each plan ---?

MR. FARLEY:

Okay.

RE-EXAMINATION

BY MR. FARLEY:

Q. The map you just had out here, you showed some of the future longwall gate entry development projections. And you said that initially the projections said three-entry development that was later changed --- initially showed four and was later changed to three.

A. Uh-huh (yes).

Q. Any particular reason?

A. I never received a reason on that. It's certainly

the operator's choice as to what he needs to do. I can only guess that is to assure the development would be faster. It's certainly quicker to mine three entries than it is to mine four. But again, I've never been given that from anyone.

ATTORNEY WILSON:

Jim?

RE-EXAMINATION

BY MR. BECK:

Q. Basically the question I had in mind about what determined or who determined three or four entries, and you answered it. But I guess one question I would have is, which one would provide a more stable ventilation system?

A. It really depends on the nature of the coal mine. Certainly more entries are more passageways for air. However, it depends on the characteristics of the mine as to whether or not those entries will be stable and the long-term stability. I would leave that best up to the mine operator because they have more experience in that coal seam than any regulatory agency.

Q. Most mine operators probably would lean towards the three entry because it's faster, can develop it faster?

A. Officially, less entries sometimes are more stable

with regard to large blocks. There's a lower extraction ratio. There could be a lower extraction ratio. But certainly it would take less time to develop.

MR. BECK:

Okay. That's all.

RE-EXAMINATION

BY MR. STOLTZ:

Q. I guess if I heard you right then, that provided the opportunity for the operator to put the longwall --- start the longwall. Bandytown fan then was started sometime before the longwall was in operation?

A. Yes. I visited the mine while the headgate was being developed because they had air issues to resolve, orders issued by the field office. And I traveled the headgate --- intake of the headgate development prior to connection with the Bandytown fan, I don't know, it was sometime prior to August. And I traveled it myself. I took a team of inspectors. As a matter of fact, specialists from within my division. And we --- I had people travel the tailgate, the tailgate connector that's diagonal. It's on the upper left inby the start of the longwall. I also had people on the crossover section, as I recall. And the reason for low air was they had

reached essentially the limits of the pushing ventilating fan at North Portal. And any leakage that they had in the air courses going up to the working section was of importance because they were also having --- rumored to have methane issues. And I believe those have been cited by the field office. So I traveled those in its entirety. We issued several violations that day, just maybe one or two. There wasn't a whole lot going on, and I don't recall that the working section actually ran. We did take last open crosscut measurements.

I visited this mine additionally September 1st of 2009, again, with several of my ventilation --- actually, I believe I had one, Michael Haynes, with me. And the longwall change was supposed to have occurred. That is, the regulators that were to be tailgate EPs for air exiting the worked-out area and the headgate EPs for air exiting the proposed worked-out area. The longwall had not started mining yet. The Bandytown fan was on line.

I visited the mine. The regular CMI, or coal mine inspector, was Joey Athey. And the reason I went there was due to ---. He had issued several orders throughout the regular inspection, and we talked on a regular basis, and he would tell me his concerns about

the mine. And prior to the startup of the longwall, I wanted to assure that the air was correct. I traveled to approximately Crosscut 80. At that time there was a double door which separated the Number One and Number Two entry or the Number Two and Number Three. I'm uncertain which one. But the track, I believe, came up to the Number Two entry at that time, yes.

I traveled through a double door, and soon upon traveling through the double door, the air hit me in the face, where it should have hit me in the back, and the system was reversed. I issued a violation, an actual (d) order, pursuant to 75.324, intentional changes in mine ventilation. The changes, as required by the August 6th plan, had not yet been completed. However, working areas of the mine with reactivated power was in those areas where the mine was operating. There were two Joy miner reps, miner operators, allowed to come underground with me, unbeknownst to me that their air change wasn't completed until I found this condition.

Additionally saw an electrician working on a stage loader, with a longwall coordinator, I believe was his title at the time, Jack Roles. I asked Jack what was going on. I asked Jack what was going on. He replied that his air was all messed up.

After traveling that area and taking air measurements at the stage loader in the Number One and Number Two shields, I tried to look behind the longwall to examine the evaluation points that would become EP TG1. And the two temporary regulators, all the controls had not been constructed. I came back and I issued a mine-wide Withdrawal Order pursuant to the (d) order written with 75.324 --- written to 75.324.

Jack Roles called the company president, Chris Blanchard, and I informed him of the mine-wide withdrawal. We came outside and reduced our citations to writing and hung a red tag over the drift mouth. The mine was down four days in order to complete the required air changes and come in compliance with the August 6th revision.

Q. I guess Bandytown was on line at that time?

A. Bandytown was on line at that time, yes, sir. And it was prior to the longwall startup.

Q. It took four days for them to abate that citation?

A. Yes, sir.

Q. Doesn't that seem kind of lengthy?

A. I think it goes to substantiate the --- it goes to substantiate the existence of the citation itself, that there were substantial changes yet to be made.

The longwall was not operating at that time, ---
Q. Yes. It was in the setup mode.
A. --- but there were people up there working and they were not working on ventilation controls. And that's in defiance of that reg, which requires only persons necessary to change the ventilation.
MR. FARLEY:
Can I interrupt one second? Did you say air was hitting you in your face as opposed to at your back?
A. Yes, sir.
MR. FARLEY:
I'm sorry.
A. It was flowing from the longwall tailgate towards the longwall headgate, as opposed to headgate to tailgate.
BY MR. STOLTZ:
Q. Were they close to being able to fire up the wall at that time?
A. It appeared they were. The stage loader was in place. The shields were in place. The pan line was in place. However, power was disconnected and --- exactly how far --- of course, there's a lot of small things on the longwall that need to be in place prior to starting. And not being a longwall electrician, I

can't tell you what minor things were there, but I just heard there was an electrician up there working, doing non-ventilation-related work.

Q. Do you know when the wall was actually --- longwall was started?

A. It was started approximately September 4th, whenever that (d) order was terminated. And there was a subsequent (d) order issued for improper controls by Michael Haynes, and that was also on September 1st. There were two (d) orders issued, one by me and one by my employee.

Q. Okay. Well, I'm ready to move on to the September 11th plan. I guess if you could just kind of explain the September 11 approval, which was an annual ventilation map which incorporated, I guess, several revisions.

MR. BECK:

What date is that?

MR. STOLTZ:

September 11th, 2009. And this is the second submittal of the annual ventilation map.

BY MR. STOLTZ:

Q. If you read it, it incorporates those.

A. I had requested an additional face plan due to numerous revisions which were in existence. Their

base plan went back to 2005. It was somewhat dated. The revision of August 6th didn't necessarily agree with their previous base plan in that it required additional safety enhancements, additional evaluation points, measuring point locations. So in order to essentially hit the reset button on the ventilation plan at this mine and get one document that contained it all, I had requested this ventilation plan. It was, again, approved on September 11th, and it was specific to the requirements of 75.370, as well as the requirements of 75.371.

And this ---. I don't have a review sheet with this one, interestingly enough, that shows who processed it within the district, but I require if it contains a map, we have a checklist, pursuant to 75.372, which is checked off within the district.

Q. Back up. There probably was additional maps with it, but I did not copy all the maps. I'm sorry.

A. Oh, okay. Yeah, there's no large annual map with them. But we would do a checklist to make sure it complies with all the requirements of 75.372, with relation to boreholes, gas wells, air courses, air readings, et cetera.

Additionally, we have a checklist, pursuant to 75.371, which is for the plan content, which is

typically shown in these eight and a half by 11 sheets of paper that you've given me. This one appears that the plan was worked on by Matt Walker, who is an additional person who worked on the plan to add to that previous statement that I had given. And they also have another engineer called Heath Lilly, who may occasionally work on plans. But they all three work for Route 3 Engineering, as I understand it. The title page for this or submittal page says Eric Lilly, but within the body of the plan it says individual submitting the plan information was Matthew Walker. And it goes through general plan requirements. It has sections of the regulations with regard to the company's submittal, how they'll determine ambient level of carbon monoxide, typical face sketches for development of multiple entry development sections, typical face sketching for pillaring. And of course, this would be in areas that aren't longwall mined. Page five, six --- starting on page seven, extending through --- extending through page 20, is the evaluation of pillared, worked-out areas with regard to remove pillars. Starting on page 21, it's the evaluation and bleeder typicals for non-pillared, worked-out areas. That extends to page 29. And then from page 30 through 36 includes the items specific to

the longwall, including page 36 is the line diagram which shows inlet and outlet EPs for each worked-out panel, including the panel which the accident occurred, Number One North, as denoted on page 36, through panel five. And it was my understanding from the mine operator that that is the total amount of panels that would be mined on that district.

Q. So it's my understanding then basically it took the August 6th, 2000 mine plan, that revision, and you incorporated it into this plan here?

A. Yeah, one single base plan that would replace the previous plan. Now, there is a plan that, prior to this, as a result of a letter that I had written to the mine operator, and that plan is not to be superseded or marked, do not supersede, within our files here in the district with regard to the water in the adjacent sealed area and the barrier necessary to assure that an inundation could not occur. And that's not part of this, but that was still outstanding in their file at that time and would stay that way.

MR. STOLTZ:

Okay. Terry, questions?

RE-EXAMINATION

BY MR. FARLEY:

Q. Let me go back over this order you wrote on

September the 1st, '09.
A. Yes, sir.
Q. If I understood you correctly, that condition existed because of some controls over on what was to be the tailgate side had not been completed yet?
A. Yes.
Q. All right. But it did occur --- your order was issued before the longwall actually commenced operation?
A. Absolutely. And at that time we issued that violation with a high degree of negligence but a low degree of likelihood because we didn't measure any methane that day.
Q. Okay.
A. No dangerous amounts, I mean, very minimal. I don't remember the amount, per se, but certainly my notes for September 1st would show that, as well as the notes of Michael Haynes. And that's why we issued it non S&S.
Q. Okay.
A. And the longwall wasn't operating, so it was giving credit for that.
Q. Had not started up yet?
A. Sure. It's essentially the same as checking emissions in a car before the car has been started.

MR. FARLEY:
Okay. Very good. Thank you.
MR. STOLTZ:
Jim?
RE-EXAMINATION
BY MR. BECK:
Q. Do you know on these two orders if Massey contested 'em and they're tied up in litigation?
A. They actually were contested, and I was at one point notified of that from someone at the Solicitor's Department.
MR. BECK:
Okay. Before we move on, are you okay?
Do you want to take a five-minute break or ---?
A. Sure.
MR. BECK:
Okay. Off the record.
SHORT BREAK TAKEN
ATTORNEY WILSON:
Let's go back on the record.
RE-EXAMINATION
BY MR. STOLTZ:
Q. Before we continue, I have three follow-up questions, Joe. Did the company conduct a ventilation simulation prior to the installation of the Bandytown

fan?
A. I don't know.
Q. By that, I don't know, I guess ---?
A. I don't know if they did or not, ---
Q. Okay.
A. --- because they didn't submit anything to me.
Q. Okay. Were the other sections allowed to work during the correction of the --- to the ventilation citation?
A. No. I ordered a mine-wide withdrawal. The area and equipment affected was the entire mine. And my red tag, as placed at the mine drift mouth, was to prohibit that exact practice.
Q. Okay. So they were down for the entire time of the three or four days?
A. Yes. What I was seeking was full compliance with 75.324, which says that the entire mine will be evacuated and power would not be --- or power would be removed to the affected areas.
Q. Could you, I guess, talk a little bit about the --- I guess the water over the --- over mining --- over the mining of the --- in the Powellton seam, I believe?
A. I don't have a map, per se, of the water in the Powellton seam. Now, the water adjacent that I

mentioned earlier is in the old longwall panel, which according to this map, appears to have been mined March 2000 to November of 2000. And during either talking with the field office inspector assigned to the mine at the time or looking at a map, I can't really be sure, I recognized that they were mining precariously close to a water accumulation in this adjacent sealed area. And I became concerned with it, and I did not want a repeat of the Quecreek accident. So I submitted a letter to the operator, requesting that an immediate revision be conducted, which would limit the mining extraction in the area of this water and provide an engineered barrier to assure that there is no blowout potential due to the static load of the water on the mine barrier between the active and the inactive sealed area and to minimize seepage. And that letter is available in our files in District 4. I don't know if you received a copy, but I believe that it's been scanned for transmittal. And they did a revision pursuant to that. And I believe they also revised their projections, because it appeared that mining would have encroached upon that barrier had I not sent that letter in order to prevent an accident.

Q. Okay. I guess in follow-up to what I just

previously asked you, how does the district, I guess, handle, in this case where you have a mine that has potentially, what, five other mines above it? I mean, you've got areas that are sealed potentially that could accumulate water. You have active areas above. I mean, I guess ---.

A. How we handle it is that during the 75.372 annual ventilation map, as it's submitted, each year we look at the overlying mines to see if there is a problem with them. Some are active. Some are inactive. The inactive mines, you don't know as much about as, say, an active mine because they're also submitting an annual ventilation map. There's some local knowledge, you know, just from working within the district that you gain over time, and I rely upon that of my plan reviewers who have dealt with the mines for a period of time. And you look at that overlay map on an annual basis, but additionally a requirement under 75.1716 for mining under bodies of water, it is the mine operator's responsibility to make MSHA aware of such potential and to get a plan approved prior to doing that.

Of course, with the intimate knowledge that the mine operator has of the mine, they should always be aware of any potential overlying bodies of water.

That's why it's their requirement.
Q. I'm ready to start on the next approved plan. This would be the September 18th, 2009 plan. It contains about constructing two regulators between breaks 33 and 34 in the tailgate One North. Would you just briefly go over it?
A. Okay. Looking at the plan review transmittal sheet, and it states 9/14. It was actually received on the 14th, reviewed by Specialist Mike Haynes on the 14th. He was one of the gentlemen who was with me on September 1st, so he had in-line knowledge. Additionally, he did the specialist supervisor review, which would normally have been done --- he did that for me on the 17th. Evidently I was out of town, and he would be the one that I would normally name acting in my place. So I have not done the review of this initially. Now, I have read it since it was approved. And the operator had submitted to install two regulators between breaks 33 and 34, tailgate One North. Regulators will be installed in entries Four and Five to limit the amount of neutral air going to the longwall tail. At the current time the Upper Big Branch Mine does not have a miner's representative. If you have any questions or concerns, call me, Eric Lilly, who submitted it. And it appears that they're

limiting the amount of air going to the longwall tail from the neutrals, which is actually off of an intake split --- or a neutral air course in the Number Three entry to 75,000, feeding these parallel neutrals, which would be near spad 22417. There's five neutral air courses along tailgate One North.

Q. And that was done before?

A. I think that was done because they were losing too much air in their neutrals or maybe having a possibility of a problem with their ---. One of the times that Mike Haynes and I went to the mine, and I don't know if it was --- I think it was September 1st, we checked the neutral air course at the intersection they call the Ellis Switch, and that's essentially where the North Mains --- the mains that run north/south meet this Number Five North belt. Do we have a larger map? Yeah, right in that general area where your finger is, and it would be where Ellis Mains meet --- it would be where the Ellis Mains meet the Number Four North belt area. There's a junction right there. And in particular, we traveled up by the seals, seat set 9, 10, 11, 12 and --- somewhere in the seal set 13 area we had issued a violation at an overcast. That was just off the intake, and the pressures were reversed here. It wasn't functioning

as specified in their approved ventilation plan, so we issued a violation here. It appeared that the neutral air courses weren't flowing properly.

And that was the company's fix, was to put controls up here on that plan, at the Tailgate One North. So those controls were in response to that violative condition. And there was a citation issued by, I believe, Mike Haynes on that.

ATTORNEY WILSON:

Just for the record, you're referring to a map on the wall which is a one inch to 500 foot scale. And the area you're referring to is where the North belt mains intersect the ---.

A. It's a set of mains running north/south.

ATTORNEY WILSON:

It's marked Number Three North belt?

A. Yeah, Three and Four North belt intersections.

ATTORNEY WILSON:

That's near the set 13 seals; is that right?

A. Yes. But it wasn't in that return air course. It was actually the neutral air course, which was another stopping line to the east. And there was a violation issued for that, for that area.

MR. STOLTZ:

Terry, any follow-up?
A. I want to point out, too, that this plan actually is just to put those controls in, and it estimates 75,000. There is no minimum requirement by the district. There is no actual number required by the district. And this control was not required by the district. It was just a means that the coal company used to abate the citation.
EXAMINATION
BY ATTORNEY WILSON:
Q. Let me just ask a follow-up here. In that plan revision, the regulators that you referred to, are they located on the map that's in front of you here?
A. No. They've since been changed. There is --- it's essentially totally different.
Q. Okay. Why don't we just --- let's get the green pen there and just in a large circle with the highlighter just circle the general area where those regulators are located, just so that we can compare on this map the plan. Okay. And let's put an arrow and put out here --- what was the date of that, 9/15?
A. September 18th, 2009.
Q. 9/18. Okay. So just put 9/18 plan.
WITNESS COMPLIES
(Mackowiak Exhibit One marked for

identification.)

ATTORNEY WILSON:

Okay. And that's on the map that's been marked Exhibit Mackowiak One, just so that we can have a large-scale reference to the plan that you were referring to.

MR. STOLTZ:

I don't have anything. Terry?

MR. FARLEY:

No.

MR. STOLTZ:

Jim?

RE-EXAMINATION

BY MR. BECK:

Q. Just a couple follow-ups. I need to back up a little bit. On your inspections on the longwall face you typically measure air quantities?

A. Yes. Typically in the methane dust control plan there's a requirement for the air quantity at the --- near the head. It will give a certain shield number and also at the tail. I never inspected this longwall while in operation, so I can't tell you exactly what their plan requirements are, but they're typically given in velocities in lieu of volumes because it's difficult to get a proper area across the longwall

face.
Q. Okay. And had you ever noticed any cracks in the roof or floor from undermining or overmining that may indicate or --- allow gas to come through?
A. During my travels in this area, I did not observe any of those. Now, again, I wasn't there as the longwall was operating. I did have specialists there after the fact.
Q. If I understood you right, you said that an operator had to have a plan if they were mining under a known body of water?
A. Yes. 75.1716 is a regulation which requires it.
Q. And what about if there wasn't a known body of water, just an abandoned mine or an active mine above it or below it, do they have to have a plan for that?
A. If it has a potential to impound water, yes.
Q. Only if that potential exists?
A. Correct. If it is dry, then the requirement would not be made. Now, when we evaluate the bleeder plan we take into consideration overlying mines as well, looking at that annual 75.372 map in order to determine if we would have active caving from one mine to the other that may impact the ventilation system. In the case of this mine, they had had extensive previous mining prior to me becoming a ventilation

supervisor. And one of the guys who was in --- who was a reviewer had knowledge of this area down here, mined prior to November 2000. And that didn't appear to be an issue, so of course it wasn't a concern of mine, ---

MR. BECK:

Thank you.

A. --- due to the history.

RE-EXAMINATION

BY MR. FARLEY:

Q. Joe, the regulator or regulators you just circled in green on the large map, does this large map match the September 18, 2009 ---?

A. No, it does not. No, it does not. But also this map has some --- well, it shows a door in that location in lieu of a regulator, which would decrease the volume of air going out to that area. Not a major concern initially to me, unless they were having problems within that air course. Only the mine operator would have this knowledge or someone who had just inspected the area.

But there's also another revision that would impact this later on, and it's showing the tailgate stopping line adjacent to the longwall, with respect to that. And I believe that is in response to a

violation issued December 1st --- no, back in January.

MR. STOLTZ:

You have several plans you've gone through.

A. Yeah. Yeah. We'll get to that, though. I'm not really sure of the date that this plan that changed these controls came into effect, so there's --- this is the first plan for controls in the tailgate, and there's a subsequent plan at a later date, which I believe you have. We'll get to it.

RE-EXAMINATION

BY MR. STOLTZ:

Q. Joe, if I heard you correctly when you answered Jim's question is that you all require velocities made along the longwall face on the head and tail?

A. Yeah, near the head and near the tail. The shield number should be specified in the methane dust control plan.

Q. Thank you. And then your intake air quantity, you require an intake air quantity?

A. I do require an intake air quantity. It's on theirs as well. The minimum required by 75.325 I believe is 30,000. At this mine I would expect it to be higher.

Q. That intake quantity, where would you commonly

take it? Where is it made? Is there a difference between when you're using belt air or not using belt air?

A. You would have to take that belt air into consideration. However, the belt air regs themselves require that the intake air supplied to the longwall panel will be less --- the air coming to the longwall panel from the belt air course would be less than 50 percent of the total, and that would be required. And it really depends on their methane dust control plan, what was specified in that, but you can certainly take it immediately outby the longwall face, in the Number One entry and also in the Number Two entry, where the crosscut --- as it's delivered into there. But it has to be taken outby these check curtains, as shown on this exhibit, Mackowiak One, that are shown in the One, Two and Three entries. They would have to be --- the actual air that enters the longwall face. So in this respect on this one, the crosscut immediately outby as well as this entry coming up the neutral, that has to --- that would encompass the intake air coming to the section.

Q. If belt ---?

A. If belt air was in use.

Q. If belt air was being in use, you'd add it. If

belt air is not being in use, you'd subtract from it?
A. Absolutely.
Q. Okay. I would like to, I guess, go over our plan that was approved then on September 24th, 2009. The plan was, I guess, to drill a 20-inch dewatering borehole, I'm gathering, here at --- this plan, apparently the wall had started sometime after September 1st --- well, you stated September 4th you believe the wall started. Then they must have encountered --- had some water problems and requested a dewatering hole.
A. In addition, I appear to have been off this day. It was assigned to Rick Kline for me, assigned by my supervisor. It is a plan --- an eight-inch pilot hole to be drilled initially and reamed out to diameter of 20 inches. That has a safety precaution for when the hole reaches within a hundred feet of the mine, a regulator to assure that the air is not interrupted. And it contains a listing of equipment that has automatic fire suppression. In addition with that --- I'm assuming that's because they put their track travelway to the section in their intake, therefore, it would be required to have automatic fire suppression. And it has a map attached to it, which shows the location of the longwall at that time, the

last open break or intake air quantity of 68,175 cfm and the location of a single 20-inch borehole at the rear of the panel near the Bandytown shaft.

Q. I guess the water problem they were encountering, do you know where it was at that point in time? Because they had to have water since they were putting a dewatering hole in.

A. Sure. To my knowledge, just through verbal communications with the inspectors and some of the plan personnel, that they had actually mined a sump back there, and this was to go into that sump and be countersunk into the floor. Now, again, I didn't approve this plan. But having read it here, it does not show any water accumulations anywhere, which would appear to misrepresent what was actually there, because you would certainly put a pump where a pump was needed. And therefore, you'd need water.

Q. Okay. That pump would be used, then, to get the water out of the mine, basically, a dewatering hole?

A. Correct. And I don't know --- this map also does not contain the elevations which would be pertinent for our use in determining where water accumulations are likely to occur.

Q. Okay.

MR. STOLTZ:

Terry? Jim?
MR. BECK:
I'll defer until later.
MR. STOLTZ:
Okay.
BY MR. STOLTZ:
Q. I guess the next plan would be an October 29th, 2009 plan. It's a two-phase plan consisting of the One Right Crossover and installation and removal of some vent controls in the One Right Crossover. Also, I guess a question as we get into it, do you know when Headgate 22 section --- or sometimes it's referred to as MMU 029 or 001 section, when it was started?
A. I do not.
Q. Okay.
A. That's something --- when you do plans, they don't necessarily have a time period in which to be enacted. So I don't know how far in the future the mine operator is proposing these changes. You just look at it for face value, for what you get, and determine whether they materially ventilate or not. This plan was again processed by inspector --- or specialist Mike Haynes. And typically I like to keep the plans with the people who understand the mines. So after his mine visit, I tried to make sure that --- the best

reviewers are the people who have actually walked the air courses.

This plan revision appears to have been required because they were mining off of the panel one crossover, which is located approximately tailgate entry 31 --- or 30, running north and south. It actually turned and went east into the One Right Crossover. And I had asked at this time why this was necessary, and I believe it was either Matt Walker or Chris Blanchard indicated that they needed it for air. And I said, well, why? Do you need more air? Well, no, but we're going to turn at the intake. So being that we reviewed ventilation plans, additional intake is never a bad thing. So we looked at it, it ventilated, and we processed it and approved it.

And the letter from the operator --- this plan also, let me state, had some of the MIS or MSIS system plan detail within it, which actually just shows a legal ID report, and that was something I implemented during the time. You may see this intermittently through some of your plan readings, just to assure that we send the mine's response --- our plan approval or denial to the right location, and that's what that's for. But the mine operator submitted --- phase one shows the ventilation while mining and cutting

through. It's cut through, will be isolated and controlled. Regulators will be built on the inby and outby sides of the cut-through. These regulators will remain open to ventilate the area until immediately prior to cut-through. Of course, the concern is they're cutting through into an intake air course, and the contamination needs to be eliminated, and that would be the requirement for that.

Phase two shows the installation and removal of controls for One Right Crossover to create additional intake once the cut-through is complete and the section moves. Headgate Three North will be mined under longwall ventilation revision dated August 6th. So this doesn't change the ventilation revision which allowed the implementation of the longwall. It only was to provide additional intake entries.

Q. Would that be something that's typical? Do you see that often?

A. No, I do not see it often. I actually don't see panel crossover mines often at all. And I have asked, through verbal conversation with Chris Blanchard several times, why these crossovers were necessary to be mined since they weren't recovery entries. Now, typically when you see that, they're recovery entries. The longwall will mine into them, they have heavy roof

support, and that's for the recovery of the actual shields and pan line, et cetera. These panel crossovers are not mined for that because the longwall stop points, as shown on all the maps that have been submitted, don't mine into them. So on several occasions I've asked Chris Blanchard what's the purpose of these, and I've yet to receive an answer. I don't know. I can only look at a map, and it ventilates, so therefore I can approve it.

Q. Yes.

A. And likewise, I believe the One Right Crossover was mined to get the additional coal that would have been left in this wedge between the 6 North belt and the longwall.

Q. Well, that's what it appears.

A. That's the only logical answer that I can come up with. I've never been told specifically why, other than they said they were converted to additional ---.

Q. I guess as long as the vent controls are constructed correctly then, it shouldn't pose a ventilation hazard?

A. Correct. This area specifically, if you follow the return air course, it comes out of the One Right Crossover, down the panel one crossover, across two overcasts and across a regulator, into that isolated

split, which is within the tailgate Number One and Number Two entries. So therefore, it is isolated from the longwall itself, should have no effect if constructed properly, and therefore is not a contamination issue.

Q. Okay.

MR. STOLTZ:

Terry? Jim?

RE-EXAMINATION

BY MR. BECK:

Q. Joe, can you just touch on --- this is what's called a push/pull system; right?

A. It is.

Q. I guess because air is being pushed from Ellis Portal ---?

A. No, sir. Air is being pushed at the North Portal with a blowing fan, and that ---.

Q. Pulled at Bandytown?

A. And being pulled at Bandytown. And the Bandytown fan was added to the system that was already in place. And it was used previously in these previous panels that were mined out. I believe they had --- there's a 12-foot ventilation shaft shown at the back end of this March 2000 panel.

Q. So how do you get that air to go --- how do you

control it going across the longwall face with that kind of system?
A. At some point you go from a positive pressure to a negative pressure past the zero point. And I'm assuming in this case, without putting a Mag-Gage on the stopping lines or taking a barometric pressure survey, that it occurred outby the longwall.
Q. Is this a --- would you consider this kind of a complex, unusual system?
A. Yes, it is complex and it is unusual. It has been used before. But certainly when you're doing a push/pull, things get more complex, yes.
Q. Do you know why MMU 040-0, why that started?
A. I'm sorry. Can you point to MMU 040-0? Oh, do I know why that started out?
Q. It just looks kind of odd sitting there.
A. It does. And it is odd. And I would like to point out that the projections --- and we'll get to that here in a moment, but the projections actually tie back into the existing longwall at approximately break 90. And I think right around December that will become evident, if you can just give me a little bit to get through that.
Q. Okay.
A. Because there's revisions involved, and that's

kind of an issue ---
Q. Okay. I got ahead of myself.
A. --- in and of itself. Yeah. Are we okay on One Right Crossover?

MR. STOLTZ:
I don't have any follow-ups.
MR. BECK:
I'm fine.
MR. STOLTZ:
Okay.

RE-EXAMINATION
BY MR. STOLTZ:
Q. Okay. I guess I'd like to go over then the approved November 13th, 2009 plan, which is for a panel two crossover to develop three entries for Headgate Two North.
A. Plan contains a portion of the legal ID, which we added to it. The actual submittal by the mine operator begins with the letterhead of Performance Coal Company, dated November 3rd, stamped received November 4th. It is a ventilation revision for the Upper Big Branch Mine for our review and approval. This revision is to show the ventilation scheme on the panel two crossover is completed, and mining begins on Headgate Two North. Now, the August 6th approval

actually had a sequence for the mining in the crossovers on the subsequent headgate panels. What this is, is essentially the mine operator changed their mind. They weren't going to follow that August 6th. So in lieu of following it, which was already approved and on the books and understood as to function, they're now going to what we consider a site-specific revision. And it isn't a revision to the ventilation plan, per se, but rather to the map, and it's to show the changes on the air course. And it shows the isolated return off the section via overcasts on the large map.

The intake is in the Number Two entry, the center entry, the belt, and neutral is in the Number One entry, and the return is in the Number Three entry. And they overcast that return across and down to this isolated --- this map is outdated currently, the Mackowiak One. It's a later map than this. But there was an isolated return entry in the Number Three entry, the headgate at that time, that traveled the length of the longwall all the way back to the bleeder shaft. And this was connecting to that. This return right here, which is the Number One entry in the panel two crossover, was isolated in its entirety, and it does show the neutral airs coursing outby or south on

this map, as well as shows the primary intake escapeway in a green arrow. They elected to remove an isolation stopping between the neutral and the intake on the right-hand side of the map, and they were going to compensate with that with double doors, which would be required for traveling from one air course to the other in pairs under 75.333.

And essentially that's it. I mean, it was just a change in the way they were going to mine that crossover. It also estimates that the last open break quantity would be 25,000 cfm on MMU 029, which shows a tie from our plans to the methane dust control plans that the inspector on site could make to assure that the two plans coincide with one another. That's what that number is really good for. We always try to get it on there. Additionally, the LOB requirement is 25,000. It is in excess of the minimum required by 75.325, which is 9,000. So it was approved on November 13.

Q. Okay.

MR. STOLTZ:

Terry? Jim?

BY MR. STOLTZ:

Q. I guess the next approved plan would be the December 18th, 2009 plan revision, request to route

the travelable return air course from the active MMU 040 and add a regulator.

MR. BECK:

What's the date on that?

MR. STOLTZ:

December 18th.

A. Now, between the date of November 13th and December 18th several items occurred at the mine with regard to the in-mine inspections. Specifically I believe the CMI is Kevin Lyall. He traveled this area around break 80 and cited bulging stoppings. And I don't know the exact citation number, but I believe it's somewhere around November 14th. He cited that, required those stoppings to be repaired. Additionally, I sent --- I believe it was Keith Sigmon to the area, who issued an (a) order on water in that area. They were --- the mine was requiring miners to travel chest-high water in order to set pumps and try to work on the condition. The ventilation controls had taken weight and there were some issues related to that.

And I believe they issued violations again on December 1st, possibly that (a) order right around there. Somewhere between December 1st and December 14th, I believe, is when Keith Sigmon issued that (a) order for the area shown --- and I'm going to say from

break 90 to break 70, in that general area, in the Number Three entry of the headgate. This water was impacting the isolated return air course off of MMU 029, which is the headgate section. Therefore, this December 18th revision was submitted. Additionally, this December 18th revision, I believe --- let me read it for a second.

WITNESS REVIEWS DOCUMENT

A. And he also states, the mine had submitted numerous plans prior to December 18th that may be of importance. And I have it here on a sheet of paper provided to me from you, Rich Stoltz. November 20th, December 1st, December 3rd, December 4th, three on December 4th. Again on December 9th and again on December 11th that were all denied. In fact, there were nine plans submitted that were all denied for various items across the entire mine. And the reason for denial of all these plans is listed on the plan itself and mailed back to the mine operator. We retain one for the record, and I believe we transmitted that to you as well. And I think at times those denials are of pertinent importance in that they show that the items that the mine operator would like --- steps that they would like to take that do not necessarily comply with the regulations or do not

materially ventilate the mine. And therefore, that is your two reasons to deny it, and we did do that.

Back to the December 18th revision.

BY MR. STOLTZ:

Q. If I heard you right, it was the vent controls that were separating the return air course to the gob was being compromised ---

A. Yes.

Q. --- and cited?

A. Yes.

Q. Okay.

A. Now, on December 14th, I received a citation from either the field office or my specialist, I'm not sure. And each time that our specialist would come back or I would send someone to a mine, I meet with them as soon as upon returning, sometimes late in the evening, sometimes the very next morning. They're required each time that they go to the mine to put a copy of the citations in my in box. I read them every time they come back to assure that we all understand everything. Because what goes on in a mine, if it needs a plan modification, the only way to get a good plan modification and to get quality within these plans is for me to understand that violated condition. And therefore, having discussions about it just only

helps for the abatement.
Furthermore, if someone issued a citation pursuant to an in-mine condition and a plan is required to abate it, I want to make sure that that plan, it meets their satisfaction. They saw the issue. They have the most intimate knowledge. So I did that each and every time that I had --- and I wasn't there, each and every time I had a specialist there.
On December 14th I received a citation for this area. And Specialist Keith Sigmon told me that, Joe, man, this area looks bad. And I said, how bad? Top, bottom, ribs? He said, yes. I said, will it --- could it satisfy the requirements of 75.384, longwall tailgate travelway, which is a means of emergency egress off the longwall? He said, I don't think so. So I immediately notified Chris Blanchard verbally, via telephone call, as soon as possible, that the conditions within this entry are not conducive to 75.384. That was based on the discussions I had with Keith Sigmon. That's the beginning of the introduction of this mining right here, which later becomes the mine operator's response to that. And I believe it's a January 22nd revision that allowed that tailgate entry to --- tailgate mining to commence.
Q. You're talking --- when you say right here, you're

talking about Tailgate 22?
A. Tailgate 22 development, which on this map, Mackowiak One, is denoted MMU 040-0. But that essentially began on December 14th. Now, what I did on December 14th to fully understand, I guess, the breadth of the situation was I took an overburden map of the area to roof control and I asked them politely to run ARMPS for me, which is a stability analysis. When they ran the stability analysis with no overmining, it showed stable. When they ran the stability analysis with overmining, which is the case due to the overlying Castle mines and maybe four or five others, it did not come back with the recommended long-term stability. Therefore, I picked up the phone and called Chris Blanchard to put him on notice.
Q. Basically you're saying the pillars were being done ---?
A. The pillars were too small, yes, which explains the bulging stoppings, as issued on November 14th by Kevin Lyall, and it explains the conditions issues by Keith Sigmon. Now, it doesn't explain the water. When looking at elevations of the mine map, you can see that there's as depression in the area and that water would be likely to accumulate.
Back to December 18th. The mine operator

submitted a change to the typical longwall face sketch in which it said stoppings will be removed at least every 600 feet to make entries common. Each stopping will be reconstructed to isolate the tailgate entry prior to mining second longwall panel. And the reason being is I believe that the mine operator no longer wanted to travel that air course in its entirety. That would be the return air course off of Headgate 22 down across these overcasts, which is near Tailgate 22, and along the Number Three entry of the headgate due to both the water issues and the degrading ground conditions.

Q. He wanted to make it common with the longwall top?

A. Yes. Now, this ventilation revision requires air to be evaluated where it enters a worked-out area, pursuant to 75.364(a)(2)(i), and where air exits the worked-out area, pursuant to (ii) and (iii). It also had typical face sketch for gate road development for the three-entry system.

And we had been asking for at several times --- and this was provided to me I believe from Matt Walker. Let me confirm that. Yes, Matt Walker submitted this plan. And I was asking for actual pressure drops and quantities at multiple locations to assure that this system would function for long term.

I did those verbally. And this page, which says Upper Big Branch and has a mine segment and gives distances, entries, areas, resistance, quantities, gains and losses, total head, to assure that we had enough head to functionally ventilate this area. And the operator did submit that and it was approved and included a fan chart, several fan charts, for the existing fan. This was to reroute the continuous miner return. Instead of exclusively along the Number Three entry of the headgate, it would allow a portion of that return to travel isolated along the Number Seven North belt, across the set of overcasts right here (indicating), where they estimate 35,000 cfm in this plan.

Q. When you say right here ---?

A. Right here would be at the beginning of Headgate One North. There's a regulator located with a green label that says estimating 35,000 cfm, across four overcasts, down along panel one crossover, across two overcasts, and back towards this isolated return split, which was the return for the area denoted on this map, MMU 040, which had 18,621 cfm at the last open crosscut. I think it's called the One Right Crossover mining. It was the one from the previous revision, that area right there at the mouth of the longwall panel, the mining in the wedge, that the

return off of this section would joint its section return and be isolated back towards the bleeder fan. But it also allowed a secondary return down the panel two crossover, which was isolated along ---. Let me read it. Just a second.

WITNESS REVIEWS DOCUMENT

A. Okay. I'm sorry. Let me stand corrected. I was getting ahead of myself. It actually allows an intake air course --- an additional intake air course to the longwall mining section along the Number Three entry to the longwall and to route this MMU 029 return air course down the mains and to join the MMU 040 return and into the Number One and Number Two entries of the return. And it's isolated back to the Bandytown fan. That's what it allowed.

BY MR. STOLTZ:

Q. The Headgate 22 return to join them?

A. Yeah. Headgate 22 return includes a face sketch for three entries.

Q. So it did away with the intake --- or the return coming up the Number Three entry ---

A. Correct.

Q. --- toward the allotted intake and rerouted to the return for that section?

A. Correct. Let me also state that it also reversed

the longwall belt air, which is of pertinent importance in that it's shown at break 52, coursing outby to a regulator located at Crosscut 11 and into that return as well, which would reverse and do away with the belt air requirement or basically come into compliance with the belt air regs promulgated December 31st, 2008.

MR. FARLEY:

You said the plan reversed the belt air?

A. Yes. And the longwall at that time is approximately at break 52.

BY MR. STOLTZ:

Q. Also of importance with this plan is the last line on the third paragraph for the mine operator, it says, this will also show the dewatering system in place ---.

BRIEF INTERRUPTION

A. The mine operator's plan on --- the third paragraph, the last sentence, also states, this will also show the dewatering system in place to handle future inflows of water and to keep ventilation uninterrupted. And they show two three-inch air pumps at approximately crosscut 123 in the Number Three entry, two three-inch air pumps at crosscut 100, one three-inch air pump at crosscut 88. Hatch indicates

shoreline elevation. No areas are roofed to impede ventilation or travel. And that's in direct response to the violative conditions and specifically the (a) order that had been issued by Inspector Sigmon. We wanted to assure that the air could flow and that there were no changes that could occur as a result of water accumulations. And that appeared to suffice, based on the evaluations. Also shows a single 20-inch diameter borehole with a vertical turbine pump, which is in a previous revision located at break 131. I'd like to also point out it shows the intake to the longwall being 57,951 cfm, which is in excess of the minimum 30,000 requirement by the regulation.

MR. STOLTZ:

Terry?

MR. FARLEY:

No questions.

MR. STOLTZ:

Jim?

MR. BECK:

This is not a question for Joe, but we talked about overlays sometime in the past. I think we talked about seams underneath. I'd like to request a copy of any overlays that MSHA or the State --- the

independent team, that we can get copies of those maps.

MR. STOLTZ:

Thank you, Joe.

BY MR. STOLTZ:

Q. Okay. The next one, Joe, would be the --- I guess it was approved on December 23rd, 2009. It was a plan to implement The December 18th plan for belt air reversal and limit the exposure to miners for belt air.

A. I was in the office that day when Bill Ross and Chris Adkins, who I believe is a senior vice-president, and Chris Blanchard, I believe --- well, maybe not. I believe Bill Ross and Chris Adkins for sure. I'm not really sure about Chris Blanchard having brought this in. And as stated on the mine operator's submittal dated the 23rd and stamped received on the 23rd, on December 21st and 22nd this plan was attempted to be implemented. Due to the influence of the longwall bleeder fan, it was not possible to make the approved changes. Please find attached an interim ventilation revision to allow the belt air to course towards the longwall face. Belt air will travel inby from near crosscut 25 on the Number One North headgate. The remainder of the belt

air will travel outby through a belt regulator and into the return.

The below procedures will be followed during the time while belt air is being utilized in the face at the One North longwall panel. The entire length of the belt conveyor system from the split point inby to the longwall face will be traveled every two hours. Results of this examination will be communicated to the longwall foreman at the end of each inspection. A box check will be installed to the longwall tailpiece and near 029-0 MMU belt drive to limit the quantity of belt air traveling inby. All personnel working on the One North longwall panel will be informed of this ventilation change.

In addition, within 30 days of approval, a long-term ventilation plan will be submitted to your office, which will show long-term solutions to allow belt air to travel outby as well as to open intake air courses. The safety precautions will ensure equal or greater protection for members working on the longwall section. This mine currently has no miners' rep. Again, ---.

Q. I guess what I just heard, Gerry (sic), is they tried to implement the December 18th plan where --- to have belt air go outby. And they were not --- they

could not do that, so they're requesting another plan on December 23rd now, with added safety procedures?

A. Correct. And it was hand delivered by Bill Ross, with Massey Coal Services, as well as Chris Adkins, senior vice-president of Massey Energy, which is quite odd to have such high-ranking individuals come in and hand deliver a plan and request an immediate meeting. So certainly that was granted. And we reviewed it on the spot. And I was there and I believe Rich Kline as well, and possibly Luther Marrs --- or Link Selfe. Excuse me, not Luther Marrs.

And we reviewed it and --- they had attempted the reversal, and it did not occur, so this was purely their plan. Eric Lilly was in attendance as well, as noted by his change on the map. And my only concern upon reviewing this was that they show compliance with the 50 feet per minute CO monitor rule, because CO monitors are in use in the mine. And any time you get less than 50 feet per minute, you get a reaction time issue to those sensors.

He added that, and it was subsequently approved.

It was --- and a plan was drafted, developed by the mine operator in response to the difficulties. And considering the fact that they had actually followed 75.324, as far as I knew, and implemented it and it

didn't function, then I think it was pertinent that we entertain it, you know, for safety of the miners.

MR. STOLTZ:

Terry? Jim?

BY MR. STOLTZ:

Q. You need a little break? Joe, you want a little break?

A. No, I'm okay. I'd like to also point that I'm not aware --- I was under the impression, of course, within the plan, on this December 23rd plan, that a long-term solution to allow belt air to travel outby as well as to open more intake air courses would be submitted. I don't recall we ever got that long-term solution submitted by the mine operator.

Q. Within the 30 days or ---?

A. Within or outside the 30 days. Additionally --- as far as their need for additional intake air courses, it wasn't conveyed to me during that meeting that they had any air problems. And the air volumes as shown on this map are nearly double the minimum required by Federal regs.

Q. Okay. The next plan would be the approved plan on January 5th, 2010, vent controls being installed and removed for shearing blocks for the new longwall belt to Headgate Two North.

A. A fairly small revision and purely shows an area that will be mined near crosscut 135, directly adjacent or to the east of the Number One Headgate 22 development section, which contains their belt neutral. And it shows where they're going to mine in order to connect the future longwall belt into the mainline belt, which is contained within Number Seven North belt, near the Glory Hole. And it was to show isolation controls to assure that return air from this mining doesn't course down the neutrals, which were going outby, over non-permissible equipment. And it required the construction of a box check to assure that that didn't occur, because it was mining in a new area and would subsequently require a primary and secondary escapeway, as well as isolation controls, to assure that contamination does not go from the mining area into the belt neutrals. That's the purpose of that plan.

And interestingly enough, phone calls with the mine operator, as I recall, they did not want to submit this plan. They indicated that this was construction. However, because mineral and coal would be mined and subsequently methane and coal dust would be generated, we were uncomfortable ourselves without having a revision, so we did a verbal request for

this.

MR. FARLEY:

Seven North or --- what did you say?

A. I said Number Seven North belt, which is the annual belt that terminates its angle near the base of Headgate 22.

RE-EXAMINATION

BY MR. BECK:

Q. Joe, back on that December 18th reading again, when Chris Adkins and Bill Ross and I think it was a Lilly that showed up, did you have any idea they were coming or did they just pop in or ---?

A. No. They just popped in.

Q. Just popped in. When they said that what they attempted to do didn't work and that's why they're coming in with a request for another revision, did that mean that the air still wasn't functioning right at the mine?

A. That that neutral --- they indicated that that neutral air course would not reverse.

Q. But they kept on mining under those situations?

A. No, sir. To my knowledge, they shut down pursuant to 75.324, which would be power off of the affected area and the entire mine evacuated.

Q. They weren't mining at all then ---

A. Correct.
Q. --- in that ---?
A. Correct.
Q. Just on the longwall or anywhere in the mine?
A. I didn't ask that specifically, other than that plan, in and of itself, I believe has a requirement --- and of course, the Federal regulations are always there, but I think it states explicitly that it must be done in accordance with 75.324. Let me find it.
MR. STOLTZ:
It would be considered a major air change, though, to change direction?
A. It is a major air change. 75.324 is required regardless of whether it's stated in here or not. I stand corrected. It is not contained within here, but it is a requirement because of the air change.
MR. STOLTZ:
Is it a change in direction or greater than 9,000?
A. Correct.
BY MR. BECK:
Q. So to the best of your knowledge, they weren't mining then?
A. Correct. Yeah. If I had knowledge that they were

mining, the first thing I would have done is to inform them of the requirements of 75.324, which would prohibit that practice.

MR. STOLTZ:

Anything?

MR. BECK:

That's all.

RE-EXAMINATION

BY MR. STOLTZ:

Q. I guess the next plan would be the approved plan on January 20th, 2010, reverse intake airflow outby 001 section or Headgate 22 section on the Number Two Crossover panel to break 12 on Headgate One.

BRIEF INTERRUPTION

A. There's two intake splits going to Headgate 22 at this time, one that goes up around this area called Eight North and comes back down and one that's coming up these --- along Number Four and Five entries of Headgate 22, along break 15 through 25. There's actually two intakes. And this plan was to reverse one of those intakes, which would take additional air to the longwall. And I asked exactly why this was needed because it's kind of odd to see an intake split go back towards outby, but however it joined back to the longwall. And that's indicative of that bleeder

fan's influence from Bandytown towards Headgate 22. And it appeared to me that that was a push/pull system and them trying to balance their air with regard to that.

Now, as far as me looking at it, I just looked at it, and yes, it does materially ventilate it. This area is not mined --- or has not ventilated a working section, and, therefore, it could be classified as intake air. But their intake air was coming here across two regulators, which is in this general area of break 135, just adjacent to the Glory North belt or the Glory Hole at the intersection of the mains and Headgate 22. And they indicated at that time that there was approximately 60,000 cfm at this overcast, near break 135 at the mouth of Headgate 22. And that 15,000 would be coursing towards the longwall, which would supplement the longwall air ventilation. An estimated 45,000 was coming to the ventilating section of Headgate 22.

And on the section they were showing that they estimated 20,000 to Headgate 22. Of course, all the quantities are much higher than what would be required in the regulations or even in the methane dust control plan. So it functionally ventilated on paper. The exact reason is not specified in the plan submittal.

RE-EXAMINATION
BY MR. FARLEY:
Q. Joe, ---
A. Yes, sir.
Q. --- help me out here if I'm missing something on Federal law, but any time there would be a ventilation plan change, wouldn't there be a requirement that it be reviewed with the miners or posted on the bulletin board?
A. It has to always ---.
Q. What would the requirements be?
A. It always has to be posted on the mine bulletin board and supplied to the miners' rep. There isn't a miners' rep at this site, as indicated by their letter.
Q. Okay.
A. But within their letter they state, the change in air direction will be discussed with the persons affected and will be recorded in a pre-shift exam book. Additionally, our ---.
Q. I'm sorry. Go ahead.
A. Additionally, our ventilation approval stated in bold letters, all ventilation changes will be made in accordance with 30 C.F.R. 75.324. That's fairly common now. During this period of time there have

been numerous 75.370(d) violations and 75.324 violations that have been issued. Within the back of my mind, September 1st, 2009 still existed, where they had a ventilation change in defiance of that regulation, and it begins to show up in plan correspondence to assure that the mine operator is placed on additional notice to comply with that reg, which would withdraw all persons, eliminate electrical power in the affected area, and the only people underground could be the people necessary to change the ventilation. And that's for protected measures. Additionally, 75.324 has an examination requirement where affected areas have to require --- have an examination to assure that nothing can be wrong or out of place for the safety of miners.

RE-EXAMINATION

BY MR. BECK:

Q. Joe, how did you get that plan? Did somebody bring that one to you also or ---?

A. No. We don't log in the method of delivery. This one says mail. But to be honest, we don't keep up with that so much. How we get it is a little less important than what's in it.

Q. And back on December 23rd, it was Chris Adkins who was Massey's Chief Operating Officer, and Bill Ross

came. Did Elizabeth Chamberlin or anybody higher than Chris Adkins come?
A. I don't recall that Elizabeth Chamberlin came for that.
Q. I mean, any --- come to talk to you any time about ventilation?
A. She comes intermittently for other issues. I know I've spoken to her with regard to other mines. I don't know if any discussions were had with her pursuant to this mine. It's not standing out in my memory.
Q. She's Massey's Vice-President of Safety; am I right?
A. I absolutely don't know their titles. I do know she's within their Safety Department and she is an attorney, but as far as what her exact title is, I don't keep up with it. Again, let me point out that having 245 coal mines within your district eliminates some of that intimate knowledge ---
Q. Oh, absolutely.
A. --- because you really are quite busy.
RE-EXAMINATION
BY MR. STOLTZ:
Q. Ready to move on? I'd like you to now go over the plan approved on January 22nd, 2010. That was the

plan to change intake air course on the Headgate One North panel to return air, show a ventilation scheme for the Number 22 Tailgate Panel or MMU 040, or sometimes it's even referred to as 02 section, show return air course on the North Glory Mains to intake, and change the intake air course in the Number Three entry on MMU 050, the longwall section.

A. It's indicated as received on our plan transmittal sheet on January 11th. It's dated by the mine operator January 8th. That frequently happens. Contains a map --- two maps. Ventilation revision, phase one. Ventilation --- Panel 22 Tailgate, phase two. And it shows the startup of Tailgate 22 mining, as well as the projections that this was anticipated to be developed. This is the plan pursuant to the December 14th ARMPS' analysis, which I conducted or had roof control conduct for me of the area --- of the headgate and tailgate on Headgate One North and Tailgate One North, as well as a result of the degrading conditions which were issued by the inspector in the break 70 to 90 area.

Mike Haynes also traveled that area. I believe he saw the degradation. And it shows the three-entry system for Tailgate 22 reconnecting approximately at break 90 into the headgate. I had a concern with the

plan, which was addressed by the mine operator, that prior to starting --- it's hand written on this. Prior to starting the second longwall panel, Panel 22, additional safety precautions will be submitted to address mining into entries. And that was to assure that there was a controlled cut-through. But additionally, as the longwall is mining in this panel, it will encounter these entries. And when it encounters those entries, you will be required to remove shields and pan lines, reposition your tail drives, in an effort to shorten your longwall phase, it won't be as wide, and to mine it.

I felt like that was a roof control concern of mine at a future time. Any time you mine into entries, you now have a larger span that has to be supported. And I wanted to assure safety at a future date, and I wanted to do that via a site-specific revision, so that it was detailed and engineered. And that was as a safety enhancement. There was at no time described to the mine operator what they would have to submit. That was something we would just basically cross at that future time. The startup ---.

Q. I guess a quick question on it then. This was proposed or submitted because of the degradation to the headgate entries. How much was --- how much of

that headgate entries was taking weight or hooving or whatever ---?

A. The extent of it?

Q. Yes.

A. That would be --- you would have to look on the previous citations issued. I mean, I believe it was at least ten crosscuts. But it appeared --- and according to Michael Haynes, our discussions with that was that it would continue to grow because all of the pillars were the same size. So if one pillar is too small, then they're essentially all too small, unless you get into a low cover area, at which time ---. I didn't do an overburden analysis. Again, I'm looking at ventilation. But certainly if it's at two crosscuts and inhibits travel, it doesn't maintain compliance with 75.384. Therefore, it can't be a tailgate travelway. So as far as the actual extent, it's kind of immaterial. If you can't travel one point, it's the same as not traveling all of them.

The revision is shown at two phases. Phase one shows the current ventilation and the controls being installed and removed to complete the ventilation change. Phase two map shows the ventilation after the changes had been completed.

The return off of 001 section, which is MMU 029,

will travel down the Number One entry of Panel One Crossover and mix with the return off of 002 section. That would mean immediately at the base of Tailgate 22. A portion of the belt air from 001 section, not all the belt air from 002 section, will enter the return. This return will split at Headgate One North. Now, this says a portion of the belt air coming into the return at this location, which is the mine operator's choice on how he's going to handle his belt air with regard to the December 31st, 2008 regulatory change, the Final Rule.

This return will split at Headgate One North. The travel return for the sections will flow outby the Panel Two Crossover and across the Panel One Crossover to Tailgate One North. And that's this area (indicating) across the overcast at Crosscut 13 --- 12, excuse me, and down along an isolated return, back to the return that was originally approved for the mining within the wedge area. And it's an isolated return.

Now, through discussions with virtually every mine operator in the district, when Robert Hardman became District Manager and I became Ventilation Supervisor, pursuant to the regulations it says under 75.364(b), that each return air course will be traveled in its

entirety. In the literal interpretation of that, we wanted each return air course traveled in its entirety. The reason for that is to assure that water doesn't complicate the return air courses to these mining sections. The top can't degrade or ribs can't --- or pillars can't degrade to the point that we lose an air course. Because losing the air course, if it happened in sufficient time, you wouldn't realize it until you lost air on the mining section. That could happen while mining was being conducted, and therefore would pose a hazard. That's why there's a necessity for an isolated return air course off of these sections. And we've maintained that requirement for all the district plans that have been approved through me and Bob --- recommended through me and approved by Bob Hardman. And that's their isolated return air course.

Now, they were also taking a portion of this return air through a regulator at crosscut 31 and it would remain isolated along the active intake escapeway to the section, and there would be a proposed evaluation point, EP-65, which would be the requirement for the weekly examination where air enters a worked-out area, pursuant to the Federal reg 75.364(a)(2)(i). That's where air enters the

worked-out area. That was in addition to that required by the longwall face sketch.

But that was that isolated --- or it's isolated for the period while it's adjacent to the intake escapeway until it goes into the worked-out area. So the air would actually be evaluated as this additional EP was added, and the EPs that were previously --- originally approved on August 6th remained. It did not drop those EPS. And although they're not labeled on the map, they are not dropped, because we limit the operator's request to exclusively what's in writing.

The regulator --- also in the plan, the regulator currently allowing neutral air from the longwall belt to enter the return at 11 Break will be relocated to 12 Break. They moved that regulator from --- one crosscut, back into a return. This relocation will allow intake to course over the overcast at 11 Break. The return entries along North Glory Mains will be converted into intake entries, which is this area along this wedge, adjacent to crosscut 115, along with Number Seven North belt, which is additional intake entries were added to supplement the loss of the intake entries along crosscuts 15 through 25 in the headgate. They rerouted their intake.

It appeared to satisfy the requirements of 75.380

for escapeways. With regard to being the most direct, it's as direct. It is practical, and therefore was approved.

Q. How do they normally regulate their sections?

A. Within their section typicals, there is a regulator shown on their typical face sketch, which is to be placed outby the section, in its section return. Each section return should be regulated independently from one another. Also, the Headgate 22 section is shown an estimated 20,000 cfm of ventilating air current, which is more than double the requirement. 002 showed an estimated 20,000 cfm of intake air, which is, again, more than double the 75.325 requirement. And the volume shown on the longwall, the operator is saying they estimate they had 90,000 at that time, which is three times the minimum required by Federal regs. So therefore, the ventilating air current is shown properly sufficient to assure ventilation.

Q. That split where you had return air either heading toward the --- inby, coming up the headgate return, ---

A. Uh-huh (yes).

Q. --- or the return that's going to go out around through the crossover, would that be controlled by

regulation then?
A. Yes, sir. It should be controlled by the regulator. There's actually a regulator here shown on that return at --- the first crosscut in the headgate --- or excuse me, Tailgate 22, there's a regulator shown there.
Q. Will that be controlling the section?
A. That would control a section return. This return air split, which goes from break 25 along the headgate back towards break 15, across the Panel One Crossover around the bottom end appears to me to be unregulated free split due to its great distance. You know, it travels a lot farther than the rest of them. Additionally, the longwall air is regulated of its own accord by EP Headgate One and EP Tailgate One just here on the outlet of the longwall itself. So each split appears to be regulated except for the unregulated free split, which would be the Number One entry that goes out to the Number Two entry along the Tailgate 22 --- 21, excuse me. On this map it's also shown as Tailgate One North.
Q. The addition of those tailgate entries, the new tailgate section, is that typical?
A. It is not typical at all.
Q. Something very unusual, isn't it?

A. Very unusual.
Q. Was there some sort of analysis performed? ARMPS helps. I see there's a small barrier between the sections, I mean, to allow so that the --- those new entries would not take the same weight that the headgate entries are seeing now?
A. I did not perform that analysis. However, their roof control plan should contain, and I'm sure it does contain, although I don't --- I can't tell you where, a requirement for stability of those entries. I did --- I asked Mr. Eric Lilly if they had done that, and he said yes.
RE-EXAMINATION
BY MR. BECK:
Q. Joe, back on --- I'm just jumping back a little bit. On December 23rd you got a letter from Chris Blanchard stating that within 30 days of approval, the plan back in that time frame --- well, they couldn't comply with the December 18th plan?
A. Correct.
Q. Within 30 days of approval, did they submit a long-term ventilation plan that would show long-term solutions to allow belt air to travel outby as well as to open more intake air courses?
A. Correct.

Q. Did they ever submit that plan within 30 days?
A. No, sir.
Q. Did they ever explain why they didn't?
A. No, sir.
Q. Okay.
A. It appeared to me that subsequent to this January 22nd plan, the emphasis at that time was the mining of the tailgate as soon as possible to limit the amount of time that the head --- that the longwall was parked. See, when this longwall finished, it had nowhere to go. Subsequently, there is an LBB Number Five Panel, which is very near the Ellis Portal. It is a panel where essentially the panel width and the panel length are about the same. It's extremely small. That is also very odd. That's the smallest longwall panel I've ever seen. And I believe that that --- those projections in that ventilation revision was submitted purely to prevent this longwall from slipping. And that's directly in relation to the failed headgate pillars and the conditions within the headgate, that they couldn't use the current headgate as the following tailgate.
Q. You said that one there would be what, a month's money, at best probably?
A. Sir, I don't know if I could answer that. Under

ideal conditions, possibly.
Q. I mean, just based on ---.
A. It really depends on their advancement.
Q. Just based on what you see what they did on other longwall panels in the mine.
A. Yeah. I mean, the month of October, according to this map, they did fairly well. The month of December, not so well. So it depends on conditions. Could be as few as.

MR. STOLTZ:
Okay. We'll move on.

SHORT BREAK TAKEN

ATTORNEY WILSON:
Back on the record.

RE-EXAMINATION
BY MR. STOLTZ:
Q. Okay, Joe. I guess I'd like to go over now the approved plan dated February 22nd, 2010. It was approved due to water accumulation. It relocated EP LW3 from break 85 to 90.
A. Basically is to relocate EP LW3 from a water hole to the shoreline. I actually got to speak to Eric Lilly about this, and he said literally they just didn't want to stand in the water to take an air reading. The mine map itself shows a water

accumulation at break 85, 86, 87, 88 and 89. However, it doesn't appear to be substantial to interrupt ventilation. And the ventilation scheme itself didn't change in that it actually only moved one three crosscuts and two other evaluation points four crosscuts. My primary concern with this was, are they taking air readings at all the entries to assure that they can compensate --- or meet the requirements of 75.364 with regard to quantity, quality and direction, therefore, you know, getting all three splits satisfies the quantity requirements. So I didn't have any issue with that, and I approved it.

It certainly doesn't state that the water is an issue or that it is impacting ventilation in any degree. And it was actually routed through Thomas Moore, the Field Office Supervisor at the time, and Link Selfe, who is also --- and Rich Kline. I mean, everyone seen all the plans for the mine up to this point, so it didn't seem to be an issue.

MR. STOLTZ:

Terry? Jim?

MR. BECK:

No.

BY MR. STOLTZ:

Q. Moving on, I guess the next plan would be the

approved March 11th, 2010 plan. It corrects the violation condition on the longwall tailgate and depicts the new tailgate isolated split.

A. This plan is a direct result of in-mine inspection which occurred immediately prior to that and which there was an order issued on the Tailgate one North area. And that order was issued by Keith Sigmon, who has traveled with Tom Moore. Keith Sigmon was in the mine with some additional specialists that work for me, and they went to the sections. And essentially I've been --- I routinely talk, especially about this mine and the vast number of revisions, I routinely had talked to Joey Athey several quarters before, which led to my September 1st visit. I talked to Kevin Lyall, which led to the visit to the headgate entries by Mike Haynes and, I believe, Keith Sigmon. And I was talking to the current inspector, which was Keith Stone. And he felt like he needed to get a feel for all the different areas all at one time. Now, one inspector can't do that, and we call it robbing Peter to pay Paul to see what the volumes are in several areas.

So I actually was supposed to go to that mine. I believe they went on either March 8th or 9th. And I was supposed to go there, but due to other issues,

like I had to take an online training course. I was going to be at another meeting the following day and I didn't want to be out and allow all these plans to build up. I can't leave the district unattended, so at the last minute I actually pulled out from going to the mine this day, which is not normal for me.

But at any rate, Keith Sigmon and Tom Moore crossed the longwall face and went into the Tailgate One North entries, at which time they found that the air has actually reversed and flowing outby or towards the mains instead of towards the bleeder for nearly its entire length, stagnated for a portion, and then turned around and near the Number Three entry was actually going towards the bleeder air course. It essentially had a large swirl.

What concerned me, as soon as Keith found it, he called me on the phone from the mine. And my primary concern was that they would pull gob air or air from the worked-out area that was caved behind the longwall panel across the tailgate drives, which would be a potential ignition source. Albeit they're permissible, you certainly don't want to see that risk taken, specifically ventilating that corner of the face when the longwall shearer cut out. Now, that's a significant ignition source. So any time you have

longwall air that's not going towards a bleeder and is actually reversed, regardless of the issue, there's a hazard there, and regardless of the methane content of the mine. And you're also concerned always with coal dust.

He issued that as an order. And subsequent to that, they had to do something to correct it. And I was told, via telephone call by one of the mine operator's agent, I believe it's the engineer, Matt Walker, who had submitted it --- it was either Matt Walker or Eric Lilly, that they tried to adjust this regulator that's here at crosscut 34 in order to increase the volume of air up this tailgate in order to compensate for that. But they were not successful, so they elected --- and I had asked for this several times previously. I guess I asked them, why don't you have a tailgate stopping line, which is typical. And you'll even see that within the typical bleeder plans and guidelines within the agency, the bag class that they give to ventilation specialists, that that is generally a necessary control. Now, Massey doesn't like to do that because there is some construction requirement with that and labor costs that would be associated with that. But they actually were going to --- submitted this to reconstruct that tailgate

stopping line. And they gave actual measurements on the regulators there that indicated they were putting 73,386 cfm up their tailgate.

Now, because they have five tailgate entries in this area, they're prone to losing the velocity. So you have to put a larger volume up there, which would spread across the larger area, and therefore decrease its velocity, and that would govern it. They actually took actual air readings at the tailgate and entries Three, Four, Five and Six and Seven, right there at the tailgate junction of the longwall face, and they're actually showing that they have 61,000 going across the longwall face, which would be significantly ---. At the outlet of the longwall face they have more than double what's required in the inlet.

So this plan doesn't show any intake problems, per se. It actually shows something contrary to that. It shows that even though they're losing air through the gob along the longwall face, near their tail, they still have 61,000. So that's a considerable amount of air. It's actually promising. And this was to abate that violative condition and then subsequently the order associated with it.

Q. I guess just a quick question. I guess up until a

point, they were able to pull the air back to the Bandytown fan?

A. Correct.

Q. So in your opinion, what happened to the system to cause the air now to reverse and, you know, then the resubmittal --- or the resubmittal of this plan? I shouldn't say resubmittal, submittal of this plan?

A. Submittal of this plan. I think that the small pillars in the tailgate, which were mined at approximately the same center as the headgate and also didn't satisfy the stability minimum recommended by ARMPS could have been a potential factor. Additionally, convergence along the side abutment zone along this panel could also make air difficult. And as they mined this panel out and it's gotten longer, you're looking at more resistance with regard to that return air course from the longwall face back towards the EP, where air exits a worked-out area. And additionally, they may have lost volume here when they put the tailgate section on. And subsequently, the system itself changed. So other changes in the mine could also affect the volume air going up that tailgate. I know at one time Mike Haynes went to the mine and came back. We did a line diagram. Now, this was

back approximately December, November, in that area. I actually had specialists there September, November, December, February and March. Five out of seven months I sent ventilation specialists to this mine. And my purpose for that was, I was talking regularly to the inspection personnel and we wanted to keep close tabs on it, particularly because they had a high volume of revisions.

So, you know, I didn't go to this exact area. One of my specialists did, as well as a field office supervisor. And I can only surmise that as the air course has increased, that it would be a little more difficult to ventilate. And the tailgate mining may have had an impact on it as well.

Q. I guess that's all I'm getting at. Since you're sending so many specialists out and you named them in the various months, that would be abnormal?

A. It's very abnormal. In fact, we visited this mine more than any other in the district. And we issued orders here. I issued orders when I visited there. There were --- my guys issued orders on the headgate. My guys issued orders on the tailgate. That's extremely abnormal.

Q. I guess my next follow-up question, the order was issued and they submitted a plan. Why do you think it

took greater than two days to fix the problem?
A. I believe on the 10th --- on the 10th, Keith Stone went to terminate the order. He's the regular CMI for the quarterly inspection. He called me from the mine and stated that they had built new controls, looked like everything was going fine, and the mine operator wanted him to lift the order. And I said, are all the controls installed, and is the air functioning as designed in this plan? His answer to both was no. I told him, therefore, the order still stands, period. According to the Mine Act, it must be totally abated, and that's what we were looking for.
They called the afternoon of December 11th --- or excuse me, March 11, requesting --- or stating that the mine was in compliance and requesting the order to be lifted. And that's frequently the case when an order is issued to a mine operator. They want it abated as soon as they've got it corrected. It can be after hours, and they will exert significant pressure to assure that it gets --- they get their abatement.
Keith Stone had already worked that day. He really didn't want to go back out. All of my guys were gone already. Keith Stone --- or excuse me, Keith Sigmon wasn't in. Keith Stone went in lieu of Keith Sigmon and essentially I cut a deal with him.

And that deal was, if you can go terminate Keith Sigmon's paper, my guys would run dust for you on the working sections, on the headgate and tailgate development sections. That's to tell him, you know, basically you help me, I help you.

But what Keith Stone didn't realize at the time, it was kind of a chess move on my part, it was a nice way of getting him to go out after hours for me, of course, but --- or for my guys, but I really hadn't got comfortable with their numerous changes yet. And what I really wanted --- because we'd already done these district-wide mine inspections for months. I wanted my guys on the working section for the entire shift. That's hard to do with a ventilation specialist because you're not a regular CMI. You have other duties.

So I was able to do that. And so what you see is Clyde Gray and Benny Clark ran dust, which is extremely out of the ordinary for a ventilation specialist to run dust pumps for an entire shift. And to be honest, they weren't that crazy about it, but it was necessary for me to understand and to have an on-site specialist for the entire shift to assure that the air is functioning properly at the face, where miners are exposed, where the risk for anything is the

highest, to assure that it was safe. And that's exactly why I did it. And you'll see that later in the inspection reports, that those ventilation specialists actually did that.

MR. STOLTZ:

Terry?

MR. FARLEY:

I don't have any more.

MR. STOLTZ:

Jim?

MR. BECK:

I'll wait until after the next one.

MR. STOLTZ:

Okay.

BY MR. STOLTZ:

Q. Ready to move on with the last approved plan here.

A. And to my knowledge, in a follow-up conversation with Keith Stone, this plan was successful. It abated the violative condition. There was no methane found and the air functioned as designed.

Q. I guess the last approved plan would be the March 22nd, 2010 plan. It's a revision to replace the typical longwall face sketch depicting ventilation controls along the remainder of the One North headgate.

A. Now, I requested this because when they crossed the Panel Two Crossover, I was concerned that this EP that was previously approved that was to be located --- I think the number was 65 in this Number Three air course of the headgate would no longer progress outby, that it would stop with this regulator that's located immediately off of Tailgate 22. And I wanted to assure, in compliance with the regulation 75.364(a)(2)(i), that everywhere where air entered the worked-out area, that that was an evaluation point that was approved by the district manager and that that evaluation point could not move. And that was to assure that the plan itself did not become outdated. And again, the reason to get quantity, quality and direction at evaluation points is so that you can understand the system, you can measure the system and you can make those changes as necessary, because the mine operator ---. It's the mine operator's responsibility for pre-shift, on-shift and weekly examinations to assure that they can abate any kind of hazardous conditions.

Q. So that would be basically a part of the weekly examination?

A. It would be part of the weekly examination, yes, sir. And it includes a submittal letter from the ---

Eric Lilly, the mine engineer, dated on the 10th, received on the 10th. And because the mine was progressing, the longwall was progressing outby and they were going to pass this area, I wanted to make sure that we expedited the review of this. Let's not get a plan after it's no longer necessary. Let's get the plans prior to being necessary so that, you know, things function correctly underground. And it shows MPA, MPB, the EPs on the longwall. And it also requires this stopping line will be kept intact to ensure separation of the gob air and the travelable return.

And what it was is that's the return air off the section being separate from the intake to the longwall, because there's a potential contamination issue if they lose that stopping line. So during a verbal request, I want to make sure that this stopping line is important. You have to keep it. And so they put that in the plan.

Q. So if I understand, that EP would --- was that in --- return air coming into the worked-out area?

A. Is return air coming into the worked-out area?

Q. It would be splitting? Some would be going inby ---?

A. No, sir.

Q. Not all traveled inby?
A. It split at the same split point as the January 22nd revision, which is the Number One entry, which is a return entry on Tailgate 22, immediately adjacent to the regulator, that that return air would go --- travel to the east, along Headgate 25 through 15 crosscut numbers. And then EP --- it doesn't have a number on it, but that EP would stay stationary. So that is a portion of the ventilating return air off the section going into the worked-out area, into the headgate. The other isolated return air course that was in the January 22nd revisions remained intact.
Q. Okay.
A. But the ventilating arrows are shown on the typical longwall face sketch. They call it typical, but it's really no longer typical. It's site-specific. But it would remain in effect until the completion of the longwall, at the longwall stop point, which is shown on this map, on Mackowiak One, as crosscut 14.
Q. And that was the only thing that changed --- that was changed on that face? Everything else, all the MPs and EPs stayed the same?
A. Yes.
MR. STOLTZ:

Jim?

RE-EXAMINATION

BY MR. BECK:

Q. Joe, from August 6th, I think it was, to March 22nd, I count 14 revisions that were approved. Is that right?

A. I never counted them. If you give me a minute, I can.

MR. STOLTZ:

There's probably even more.

ATTORNEY WILSON:

Well, Joe, the record will show how many there were.

MR. BECK:

I counted them.

A. Yeah, I can't --- it sounds about right.

BY MR. BECK:

Q. And you said five out of seven months you had specialists at the mine, and you, yourself, made a couple trips down there. So is it safe to say the red flag's up, we've got some major ventilation issues here at Upper Big Branch?

A. We were trying to prevent major ventilation issues due to the lack of trust ---.

Q. Well, what I was getting at, I mean, did anybody

ever go to Massey and say, look, you know, you're grasping for straws here, I mean, you're throwing all these plans out every couple days and you're even coming back with plans that --- revisions for plans that didn't work that you tried? It just seems like they were grasping for straws.

A. There was a lack of proper planning as far as the long-term perspective. Additionally, their engineers, Eric Lilly, Matt Walker and Heath Lilly, are very inexperienced. They're quite aggressive with regard to mining coal, and I think that the combination of those factors led to numerous revisions.

Q. Do you know if they ever made an air change without approval or prior to getting approval, major air change?

A. I believe they did, but I think you would be well served to pull the 370(d) violations. That would be the section of the regulation that would govern that. I can't give you that answer off the top of my head, but that data is available.

Q. Do you know if around 14 --- set 14 seals and 15, if there were ever any air samples taken in those areas?

A. I can tell you during each EO1 they should pump samples from within the sealed --- from within the

sealed atmosphere.
Q. If they did, then that data would be available?
A. It would be in the inspection reports, yes, sir. I don't receive inspection reports on a daily basis.
Q. All right.
A. But they should pull those. The mine operator also, I believe, has data concerning that.
Q. Okay.

ATTORNEY WILSON:
Let's go off the record.

OFF RECORD DISCUSSION

ATTORNEY WILSON:
All right. We had a discussion off the record. What we're going to do is stop Mr. Mackowiak's interview now, and it's 4:10 on Monday afternoon, and we will resume tomorrow afternoon at one o'clock. We're off the record.

* * * * * * * *

STATEMENT UNDER OATH

CONTINUED AT 4:10 P.M.

* * * * * * * *

STATE OF WEST VIRGINIA)

CERTIFICATE

I, Alison Salyards, 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.

Alison Salyards