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US Labor Department's MSHA cites corporate culture as root cause of Upper Big Branch Mine disaster

Massey issued 369 citations and orders with \$10.8 million in civil penalties

ARLINGTON, Va. – The U.S. Department of Labor's Mine Safety and Health Administration today announced that it has imposed a fine of \$10,825,368, the largest in agency history, following its investigation into the April 2010 explosion at the Upper Big Branch-South Mine, which was operated by Performance Coal Co., a subsidiary of Massey Energy Co. The investigation followed an explosion that killed 29 miners and injured two – the worst U.S. coal mining disaster in 40 years. A report concludes that Massey's corporate culture was the root cause of the tragedy. MSHA has issued Massey and PCC 369 citations and orders, including for an unprecedented 21 flagrant violations, which carry the most serious civil penalties available under the law.

Secretary of Labor Hilda L. Solis, Solicitor of Labor M. Patricia Smith, MSHA Assistant Secretary Joseph A. Main and MSHA Administrator for Coal Kevin Stricklin met with families today to share the agency's findings.

“The tragic explosion at Upper Big Branch left dozens of families without husbands, fathers, brothers and sons,” said Secretary Solis. “I made a pledge to the families of those we lost, and the entire mining community, to conduct the most complete and thorough investigation possible in order to find the cause of this disaster. The results of the investigation lead to the conclusion that PCC/Massey promoted and enforced a workplace culture that valued production over safety, and broke the law as they endangered the lives of their miners. By issuing the largest fine in MSHA's history, I hope to send a strong message that the safety of miners must come first.”

The agency's presentation of findings follows a non-prosecution agreement reached today among the U.S. Attorney's Office for the Southern District of West Virginia, the U.S. Department of Justice, Alpha Natural Resources Inc. and Alpha Appalachia Holdings Inc., formerly known as Massey Energy Co. The agreement – which includes nearly \$210 million for remedial safety measures at all Alpha mines, a trust fund for improvements in mine safety and health, payment of outstanding civil penalties for all former Massey mines and restitution payments for the victims' families – resolves criminal liability for Alpha but does not provide protection against criminal prosecution of any individuals.

“This agreement can go a long way toward changing a safety culture that was clearly broken at Massey's mines,” said Secretary Solis. “Although this agreement is significant, it in no way absolves any individuals responsible for this terrible tragedy of their criminal liability. We will continue to cooperate with the U.S. Attorney's Office to ensure that the responsible parties will be brought to justice.”

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MSHA concluded that the 29 miners died in a massive coal dust explosion that started as a methane ignition. While the investigation found the physical conditions that led to the coal dust explosion were the result of a series of basic safety violations at UBB, which PCC and Massey disregarded, the report cites unlawful policies and practices implemented by PCC and Massey as the root cause of the explosion – including the intimidation of miners, advance notice of inspections, and two sets of books with hazards recorded in UBB’s internal production and maintenance book but not in the official examination book. The investigation found that the operator promoted and enforced a workplace culture that valued production over safety, including practices calculated to allow it to conduct mining operations in violation of the law.

“Every time Massey sent miners into the UBB Mine, Massey put those miners’ lives at risk. Massey management created a culture of fear and intimidation in their miners to hide their reckless practices. Today’s report brings to light the tragic consequences of a corporate culture that values production over people,” said Main. “The secretary and I are committed to improving the health and safety of America’s miners. To honor the memory of the lives lost at UBB, we will use the lessons learned from this terrible tragedy to fulfill that commitment.”

MSHA issued PCC and Massey 12 citations and orders deemed contributory to the cause of the accident, and nine of those violations were assessed as flagrant, which carry the highest possible penalties. Violations include illegally providing advance notice to miners of MSHA inspections; failing to properly conduct required examinations; allowing hazardous levels of loose coal, coal dust and float coal dust to accumulate; failing to adequately apply rock dust to the mine; failing to adequately train miners; and failing to comply with approved ventilation plans and approved roof control plans. MSHA also issued 357 citations and orders to PCC and Massey that did not contribute directly to the explosion, including 11 assessed as flagrant. Additionally, MSHA issued two contributory and two non-contributory violations to David Stanley Consulting LLC – a contractor that supplied examiners and other miners to work at UBB – for its examiner’s failure to properly conduct examinations. These violations carry penalties of \$142,684.

MSHA conducted its investigation under the authority of the Federal Mine Safety and Health Act of 1977, which requires that authorized representatives of the secretary of labor carry out investigations in mines for the purpose of obtaining, utilizing and disseminating information relating to the causes of the accidents.

MSHA conducted the underground investigation in coordination with the West Virginia Office of Miners’ Health Safety and Training, the Governor’s Independent Investigative Panel and Massey Energy. The United Mine Workers of America participated in the investigation in its capacity as a representative of miners designated pursuant to the Mine Act, as did Moreland & Moreland l.c.

The accident investigation report, along with supplementary documents, is available on the agency’s UBB single source page at <http://www.msha.gov/PerformanceCoal/PerformanceCoal.asp>.

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