

U.S. Department of Labor

Mine Safety and Health Administration
1301 Airport Road
Room D-200
Beaver, West Virginia 25813-9426

May 25, 2010

VIA UPS

Roger Toney
(b) (7)(C)

Re: Investigation of explosion that occurred on April 5, 2010 at
Performance Coal Company's Upper Big Branch Mine-South

Dear Mr. Toney:

As part of our investigation into the above matter, the Mine Safety and Health Administration (MSHA) will be interviewing certain persons with knowledge of the events and circumstances relating to the incident. This investigation seeks to determine the cause or causes of the disaster at the Upper Big Branch Mine-South on April 5, 2010. It is consistent with MSHA's statutory authority to investigate mine accidents and take appropriate enforcement action.

In order to facilitate this investigation, we are asking that you be present to provide an interview statement at the MSHA Mine Academy at 1301 Airport Road, Beaver, West Virginia on June 7, 2010 at 10:00 AM. The Mine Academy is located on Airport Road, a quarter mile north of I-64, exit 125. Your statement is completely voluntary, and if you request us to keep your identity confidential, we will do so to the extent permitted by law.

Your statement will be taken under oath by a court reporter. Questioning will be conducted by representatives of MSHA and the West Virginia Office of Miners' Health, Safety and Training. The interview will not be open to the general public.

You will have the right to have a personal legal representative of your choice present during the interview, or another personal representative if MSHA has permitted it, and may consult with your attorney or the representative at any time. If you plan to bring a personal representative, please call me before you attend your interview and let me know who your personal representative will be. Your representative, should you choose to have one, will be allowed to ask questions under appropriate circumstances for purposes of clarification only. This is not an adversarial proceeding; therefore, cross-examination will not be permitted. In addition, you will be given an opportunity at the conclusion of his questioning to clarify any answers you have given and to make any statement you wish to make.

We request that you refrain from discussing your statements with any other persons who have been or may be asked to give a statement in conjunction with this accident investigation since we would like to obtain the independent recollections of all persons concerned. Your statement may also be used in other law enforcement proceedings.

Should you wish to give any additional information to MSHA, you may do so by contacting me at the address below. A copy of your statement may be requested in writing and will be provided at a time in which provision of the statement would not prejudice ongoing enforcement activities.

Any statements given by miner witnesses to MSHA are considered to be an exercise of statutory rights and protected activity under Section 105(c) of the Mine Act. If you believe any discharge, discrimination or other adverse action is taken against you as a result of your cooperation with this investigation, you are encouraged to immediately contact MSHA and file a complaint under Section 105(c) of the Act. Remedies under the Mine Act include back wages and immediate temporary reinstatement to your most recent position with the company pending a complete investigation of your complaint. In order to file such a complaint, you should contact the MSHA District 4 office at 100 Bluestone Road, Mount Hope, WV 25880-1000 or by telephone at (304)877-3900. For more information concerning your rights as a miner under the Mine Act, please visit MSHA's web site at <http://www.msha.gov/s&hinfo/minersrights/minersrights2000.pdf>.

If you plan to bring a personal representative, please call me before you attend your interview. If you anticipate any difficulty in attending, or if you have any questions relating to this matter, please contact me at the Mine Academy or by telephone at (304) 256-3522.

Thank you for your cooperation and assistance.

Sincerely, (b) (7)(C)

(b) (7)(C)

Norman Page
Chief Investigator

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