

**U.S. Department of Labor**

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

May 5, 2011

VIA EMAIL

Rick Nicolau  
c/o Mark L. French, Esq.  
Criswell & French, PLLC  
405 Capitol St., Suite 1007  
Charleston, WV 25301

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

Dear Mr. Nicolau:

As part of its 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 a voluntary interview statement at the MSHA Mine Academy, Room C-121, at 1301 Airport Road, Beaver, West Virginia on May 19, 2011 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, the West Virginia Office of Miners' Health, Safety and Training, and the Governor's Independent Investigation Team. The interview will not be open to the general public. 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. Your statement may also be used in other law enforcement proceedings.

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 you may consult with your attorney or representative at any time. 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 the 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. Should you wish to give any additional information to MSHA, you may do so by contacting me at the address above.

Finally, 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. In order to file such a complaint, you should contact the local MSHA office. 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>.

Thank you for your cooperation and assistance.

Sincerely,

(b) (7)(C)

Norman Page  
Chief Investigator