

01 EXAMINATION UNDER OATH
02 OF
03 JEFFREY KEITH TOLER
04
05
06 Taken pursuant to Notice by Miranda
07 D. Elkins, a Court Reporter and
08 Notary Public in and for the State of
09 West Virginia, at U.S. Bankruptcy
10 Court, 324 West Main Street, on
11 Wednesday, January 18, 2006, at 9:30
12 a.m.

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NUMBER	DESCRIPTION		IDENTIFIED
One	Map of Mine		59*
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* Exhibits not attached

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01
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06

P R O C E E D I N G S

MR. GATES:
My name is Richard
Gates, and I am a District
Manager with the Mine Safety &
Page 6

07 Heal th Admi ni strati on, an
08 agency wi th the U. S.
09 Department of Labor. Wi th me
10 i s James B. Crawford from the
11 Sol i ci tor' s Offi ce, Doug
12 Conaway wi th the West Vi rgi ni a
13 Offi ce of Mi ners' Heal th,
14 Safety & Trai ni ng, and Dave
15 Stuart wi th the same State
16 offi ce.

17 Representi ng
18 Internati onal Coal Group i s R.
19 Henry Moore and Sam Ki tts.
20 Also, representi ng the mi ners
21 of Sago Mi ne are Gary Trout
22 and Ron Bowersox.

23 I have been assigned to
24 conduct an i nvesti gati on i nto
25 the acci dent that occurred ---

9

01 MR. TOLER:

02 I s now ---?

03 ATTORNEY MOORE:

04 Wait a mi nute. We' ll
05 raise that at the appropri ate
06 poi nt. It' ll be a mi nute or
07 so, Jeff.

08 MR. GATES:

09 I' ve been assigned to
10 conduct an i nvesti gati on i nto
11 the acci dent that occurred at

12 the Sago Mine on January 2nd,
13 2006, in which 12 miners died
14 and one was injured. The
15 investigation is being
16 conducted by MSHA and the West
17 Virginia Office of Miners
18 Health, Safety & Training to
19 gather information to
20 determine the cause of the
21 accident, and these interviews
22 are an important part of the
23 investigation.

24 At the time of the
25 accident investigation --- at

10

01 this time, the accident
02 investigation team intends to
03 interview a number of people
04 to discuss anything that may
05 be relevant to the cause of
06 the accident.

07 After the investigation
08 is completed, MSHA will issue
09 a written report detailing the
10 nature and causes of the
11 accident. MSHA accident
12 reports are made available to
13 the public in the hopes that
14 greater awareness about the
15 causes of accidents can reduce
16 their occurrence in the
17 future.

18 Information obtained
19 through witness interviews is
20 frequently included in these
21 reports. Your statement may
22 also be used in other
23 enforcement proceedings. I'd
24 like to thank you in advance
25 for your appearance here. We

11

01 appreciate your assistance in
02 this investigation.

03 The willingness of
04 miners and mine operators to
05 work with us is critical to
06 our goal of making the
07 nation's mines safer. We
08 understand the difficulty for
09 you in discussing the events
10 that took place, and we
11 greatly appreciate your
12 efforts to help us understand
13 what happened.

14 This interview with
15 Jeffrey Toler is being
16 conducted under Section 103(a)
17 of the Federal Mine Safety &
18 Health Act of 1977 as a part
19 of an investigation by MSHA
20 and the West Virginia Office
21 of Miners' Health, Safety &
22 Training, into the conditions,

23 events and circumstances
24 surrounding the fatalities
25 that occurred at the Sago

12

01 Mine, owned by International
02 Coal Group in Buckhannon, West
03 Virginia on January 2nd, 2006.

04 This interview is being
05 conducted at the U.S.

06 Bankruptcy Courthouse in
07 Clarksburg, West Virginia on
08 January 18th, 2006.

09 Questioning will be
10 conducted by representatives
11 of MSHA and the Office of
12 Miners' Health, Safety &
13 Training. After MSHA and
14 State officials have finished
15 asking questions, the
16 representative of the mining
17 company and representative of
18 the miners may ask
19 clarification questions only.

20 This is not an adversarial
21 proceeding. Therefore cross
22 examination will not be
23 permitted.

24 Mr. Toler, the
25 interview will begin by my

13

01 asking you a series of
02 questions. If you do not

03 understand the question,
04 please ask me to rephrase it.
05 Feel free at any time to
06 clarify any statements that
07 you make in response to the
08 questions. After we finish
09 asking questions, you will
10 have an opportunity to make a
11 statement and provide us with
12 any other information that you
13 believe may be important.

14 If at any time after
15 the interview you recall any
16 additional information that
17 you believe may be useful,
18 please contact me at the phone
19 number or e-mail address
20 provided to you.

21 Your statement is
22 completely voluntary. You may
23 refuse to answer any question,
24 and you may end your interview
25 at any time. If you feel you

14

01 need a break for any reason,
02 please let me know, and we
03 will take one.

04 A court reporter will
05 record your interview and will
06 later produce a written
07 transcript of the interview.

08 Please try and respond to all
09 questions verbally, since the
10 court reporter cannot record
11 non-verbal responses. Also,
12 please try and keep your voice
13 up. Copies of the written
14 transcripts will be made
15 available to you at a later
16 time.

17 If any part of your
18 statement is based not on your
19 own firsthand knowledge, but
20 on information that you
21 learned from someone else,
22 please let us know. Please
23 answer each question as fully
24 as you can, including any
25 information you have learned

15

01 from someone else.

02 We may not ask the
03 right questions to learn the
04 information you have, so do
05 not feel limited by the
06 precise question asked. If
07 you have information about a
08 subject area of a question,
09 please provide that
10 information.

11 At this time, Mr.
12 Conaway, do you have anything
13 you would like to add on

14 behal f of the State of West
15 Vi rgi ni a?

16 MR. CONAWAY:

17 Yeah. Jeff, we
18 appreci ate you appeari ng here
19 wi th us today. I hope we can
20 get the facts surroundi ng ---
21 the ci rcumstances around thi s
22 acci dent.

23 I 'd just l ike to make a
24 statement. The West Vi rgi ni a
25 Offi ce of Mi ners' Heal th,

16

01 Safety & Traini ng i s
02 conducti ng thi s i ntervi ew
03 sessi on joi ntly wi th the Mi ne
04 Safety & Heal th
05 Admi ni strati on. And we are i n
06 agreement wi th the procedures
07 outli ned by Mr. Gates for
08 these i ntervi ews that wi ll be
09 conducted here today. But the
10 Di rector reserves hi s ri ght,
11 i f necessary, as outli ned i n
12 West Vi rgi ni a Code to call or
13 subpoena wi tnesses or requi re
14 producti on of any record,
15 document, photograph, or other
16 releva nt materi als necessary
17 to conduct thi s i nvesti gati on.

18 Mr. Gates wi ll do the

19 initial questioning, and then

20 I'll follow up with additional

21 questions.

22 MR. GATES:

23 Mr. Toler, you're

24 permitted to have a

25 representative with you during

17

01 this interview, and you may

02 consult with your

03 representative at any time.

04 You may designate any person

05 to be your representative. Do

06 you have a representative with

07 you?

08 MR. TOLER:

09 No, sir.

10 ATTORNEY MOORE:

11 And I think this would

12 be the appropriate forum to

13 raise the issue.

14 MR. GATES:

15 Okay. Do you have any

16 questions regarding the manner

17 in which this interview will

18 be conducted?

19 MR. TOLER:

20 I would prefer to

21 conduct this interview without

22 the presence of the UMWA.

23 MR. GATES:

24 And Mr. Bowersox and

25 Mr. Trout, how do you respond,

18

01 or how will you respond to the
02 interviewee requesting that
03 you not be present during this
04 interview?

05 OFF RECORD DISCUSSION

06 MR. GATES:

07 Gary, could you please
08 respond to my question a
09 little louder, please?

10 ATTORNEY TROUT:

11 Yes. We would prefer
12 to stay. We have no reason to
13 leave, but we will respect the
14 witness' wishes, and we will
15 leave.

16 MR. GATES:

17 Thank you. Could we go
18 off the record, please?

19 OFF RECORD DISCUSSION

20 MR. GATES:

21 Let the record indicate
22 that Mr. Bowersox and Mr.
23 Trout have left the courtroom.
24 And the court reporter, can
25 you please swear in Mr. Toler?

19

01 -----
02 JEFFREY KEITH TOLER, HAVING FIRST
03 BEEN DULY SWORN, TESTIFIED AS

04 FOLLOWS:

05 -----

06 BY MR. GATES:

07 Q. Mr. Toler, or do you prefer
08 Jeff?

09 A. Jeff's fine. Thank you.

10 Q. Jeff, would you please state
11 your full name and spell your last
12 name?

13 A. Jeffrey Keith Toler,
14 T-O-L-E-R.

15 Q. Please state your address and
16 telephone number.

17 A. Post Office Box 148, Canvas,
18 West Virginia, 306 Toler Lane, Ward
19 Road. It's 26662. And the telephone
20 number is 304-872-5477.

21 Q. And do you have an e-mail
22 address that you'd be willing to
23 share with us?

24 A. Jtoler62@yahoo.com.

25 Q. Okay. Jeff, and are you

20

01 appearing here today voluntarily?

02 A. Yes, sir.

03 Q. How many years of mining
04 experience do you have, Jeff?

05 A. About 24, 25 years.

06 Q. Okay. And could you give a
07 brief description of that employment
08 history?

09 A. Right out of high school into
Page 16

10 the mines. I worked --- my father
11 operated the coal mines in Boone
12 County. I was there roughly long
13 enough to get a black hat. I then
14 went to work for my uncle, who
15 operated the contract mines for
16 Brooks Run, and worked for him for 18
17 years. In 2001 Brooks Run bought the
18 contract mines out and made it a
19 company mine, and I just stayed on
20 with Brooks Run. I worked for Brooks
21 Run up until August of this year and
22 came to work for International Coal
23 Group then.

24 Q. Okay. How much of your
25 employment has been spent at the Sago

21

01 Mine?

02 A. Since August the 1st of 2005.

03 Q. And what is your present
04 position at the Sago Mine?

05 A. Superintendent.

06 Q. Superintendent. And did you
07 hold that same position on January
08 2nd, 2006?

09 A. Yes, sir.

10 Q. Could you describe your ---
11 the general duties on that particular
12 day?

13 A. I don't know. Just run the
14 mine, you know. A little

15 administrative, a little underground.
16 Q. Do you recall anything
17 specific about that day that would
18 have been any different as far as
19 your duties going into the day?
20 A. No.
21 Q. And how long have you been the
22 superintendent at the Sago Mine?
23 A. Since --- it was roughly five
24 months.
25 Q. And have you held any other
01 positions at the Sago Mine?
02 A. No, sir.
03 Q. Jeff, do you have any state or
04 federal mining certifications?
05 A. Yes, sir.
06 Q. And could you just briefly
07 describe what those are?
08 A. Of course, certified
09 underground miner, certified
10 underground mine foreman, certified
11 shop fireman, EMT, certified dust
12 sampler.
13 Q. And those state certifications
14 that you mentioned are all with the
15 State of West Virginia?
16 A. Yes, sir.
17 Q. Any other states that you have
18 ---
19 A. No.
20 Q. --- certifications?

22

21 A. Only West Virginia.

22 Q. Okay. And Jeff, who's your

23 immediate supervisor at the Sago

24 Mine?

25 A. It would be Raymond Coleman.

23

01 Q. And how long has Raymond been

02 your supervisor?

03 A. Since the day I started at

04 Sago.

05 Q. Okay. Since August ---?

06 A. August 1st. Yes, sir.

07 Q. Okay. And what time does your

08 normal shift begin?

09 A. I typically arrive at the

10 mines at around 5:30, 5:35, somewhere

11 in that range.

12 Q. And were you working at the

13 Sago Mine on January 2nd, 2006?

14 A. Yes, sir.

15 Q. And starting at the time you

16 arrived at the mines on January 2nd,

17 could you just describe what you did

18 during the course of that day and

19 just kind of tell the stories you

20 remember with details and times?

21 A. I'll do the best I can on

22 times, but I probably --- I arrived

23 at the mines around 5:35 that day.

24 Typically, and that day was no

25 exception, I go in and speak to the

01 section foreman, just check on what's
02 being called out from the fire boss,
03 just make sure we're ready to go more
04 or less. I went to my office,
05 started my computer. I typically
06 will start my day checking e-mail,
07 and I'll usually go in and download
08 our daily direct mine costs just to
09 see how our mine costs ran the day
10 before.

11 Look over timesheets that's
12 been left on my desk over the weekend
13 and make sure everybody's being paid
14 that needed to be paid before I file
15 them away. Basically, that's pretty
16 much how I would spend a typical
17 morning. That morning was no
18 exception. Like around 6:25 we had
19 been talking about the storm coming
20 through, very unusual to have a
21 lightning storm in January. And my
22 safety director, his office is across
23 the hall. He had even stuck his head
24 in my door and said, you know, the
25 old timers probably have an old

01 saying about this, lightning in
02 January is bound to mean something.

03 And I have a mine phone in my
04 office, and I was communicating with
05 the dispatcher, Bill Chi sol m. His

06 dispatch office, he has a window. I
07 don't have a window in my office, but
08 he was commenting on the storm as
09 well. He commented on a flash of
10 lightning, and immediately followed
11 by some loud thunder.

12 The CO alarms I could hear
13 over the mine phone. I could hear
14 the CO alarms going off on the belt
15 boss. My first thought, and that of
16 --- I'm thinking of my chief
17 electrician, because he kind of got
18 on the phone at this time, too. Our
19 first thought was that the lightning
20 had just shorted something out on the
21 CO alarms. They'll blow fuses on
22 them. And I told Mr. Chisolm to
23 radio the crews that were en route to
24 the section. I had him radio the
25 crews just to have him check all the

26

01 sensors that were going off and see
02 what was going on with them.

03 And when he tried to radio
04 them the only crew that he could
05 raise was the crew on the One Left
06 section. And of course, me being on
07 the phone with him, I was overhearing
08 their conversation. The foreman was
09 on the phone, Owen Jones, and Owen
10 just said that --- he said, you know,

11 something's happened. There was a
12 big rush of air that came from inby
13 toward the Two Left panel. He said I
14 don't know what it was, but it was a
15 very strong --- you know, a lot of
16 air, and he said there's a lot of
17 smoke in the air. And myself and my
18 maintenance chief Dick Wilfong were
19 both on the mine phone at that time,
20 and I think we both told him, you
21 know, get the men into the intake.
22 You know, if there's smoke, get the
23 men into the intake and start exiting
24 the mines.
25 And my thoughts were, you

27

01 know, we hadn't talked to the Two
02 Left crew at all. So I jumped up and
03 started putting my gear on. I
04 hollered at my safety director across
05 the hall, I said, Al, let's get
06 ready. Let's go. And probably
07 within ten minutes Al and myself and
08 my maintenance chief, Dick Wilfong,
09 were down in the pit ready to get on
10 a mantrip and go underground. We
11 were joined by one of Dick's
12 assistants, maintenance chief, Vernon
13 Hofer. So the four of us got on a
14 mantrip and started underground.

15 We got roughly two to three
16 breaks underground and encountered

17 one of the belt examiners, Fred
18 Jami son. He was working his way out.
19 I just hollered --- I just basically
20 just asked him if he's all right. He
21 said, yeah. And I said just go ahead
22 and head on outside. And we started
23 on in, I would say within ten minutes
24 after whatever happened we were ---
25 within 10 to 15 minutes, we were on

28

01 our way underground. It probably
02 took us 15 minutes to 20 minutes to
03 get --- we were going on the down
04 line.

05 When we went by the one
06 section on there, we called the old
07 one First Right panel. One of mine
08 examiners was standing there beside
09 the track, and we just, for a second,
10 stopped and spoke to him. That was
11 John Boni. I asked John if he was
12 all right, and then John was fine,
13 and he was likewise, you know,
14 heading out of the mines.

15 So we started on in --- if I'm
16 guessing the times here, I would say
17 that by 15 'til 7:00 we started
18 underground, and probably about 7:00
19 we were --- or shortly thereafter we
20 were going down Number Four belt line.
21 And somewhere around 25 block, 30

22 block along there, we passed a
23 telephone right beside the rail, a
24 mine phone. So we stopped there to
25 see if they had ever gotten ahold of

29

01 the Two Left crew. I think Mr.
02 Wilfong was the one that made that
03 phone call.

04 And while we were talking to
05 them, the One Left crew had been
06 working their way down the intake.
07 They heard us coming up the rail, and
08 one of them stuck their head through
09 --- I think there was a man door
10 right there, and one of them stuck
11 their head through and said that the
12 electrician on that crew, he's older
13 and a bigger man, and not in very
14 good condition. They said Hoy is
15 having a hard time getting out. So I
16 said there's no smoke or anything in
17 that area, we just said, well, get
18 all the men over here and we'll put
19 them on this mantrip and send them
20 out on the mantrip.

21 And we got all the men over
22 there, and I think somewhere at this
23 point the dispatcher put me through
24 to Johnny Stemple, and Johnny asked
25 me what was going on. And I said I'm

30

01 not sure, but I think we need to
Page 24

02 notify Mine Rescue, at least start
03 trying to get ahold of Mine Rescue.

04 We got all that crew over
05 there, and all of them were right
06 there except for the foreman, Owen
07 Jones. And up the track at 41 block,
08 there's another telephone beside the
09 track, and Owie was by that phone.

10 And Mr. Wilfong, very colorfully,
11 told Owen to come down there to where
12 we were at. But Owen was fine. I
13 mean, he wasn't hurt or anything, so
14 I told Mr. Wilfong, go ahead and take
15 what men he had and go on out, we'd
16 keep Owen in there with us, as we
17 went on in to look for the other
18 crew.

19 Everyone went out, except for
20 myself and my safety director, Al
21 Schoonover, and Owen Jones. And when
22 Owen got down there I noticed he
23 didn't even have a hard hat. He had
24 lost his hard hat in that --- in
25 whatever had happened. So I told

31

01 Owen to just stay right there by that
02 telephone. The One Left crew had
03 told us there had been stopping
04 damage. They had noticed some
05 stopping damage as they were coming
06 down. And I told Owen to stay there

07 by the phone, that me and Mr.
08 Schoonover would --- me and Al would
09 go up and assess some of the damage.
10 And we went up to 32 wall,
11 that's we noticed the first stopping
12 out. And walked on up to --- I think
13 the next one, it was all the way up
14 to 42 wall before we saw another one.
15 So seeing that there was more than
16 one wall down, and not knowing what
17 we might see on deeper in the mines,
18 I went to that phone there at 41 wall
19 and I called back outside, and I said
20 that when Mr. Wilfong got the One
21 Left crew outside to get curtain,
22 nails, boards, saws, all of the
23 detectors that we had and Owen Jones
24 a hard hat. And have Mr. Wilfong and
25 Mr. Hofer bring that stuff back to

32

01 us.
02 And we walked back down to
03 where Owen was at, at the other
04 telephone and just waited on there.
05 When they got there --- again, I have
06 no idea on times at this point. When
07 they got to that point, we were all
08 on the track --- on the track jeep.
09 We rode up to 32. We put a piece of
10 curtain up there and blocked that
11 wall off. We trammed on in by the
12 42, and started picking up some ---

13 the CO alarms --- some of the CO
14 alarms was starting to go off. So we
15 made the decision to leave the
16 mantrip there. We de-energized it.
17 And thought it would be best if we
18 got into the intake and advanced
19 ourselves into the intake.

20 So from 42 we were on foot,
21 and I don't have any idea how many
22 stoppings we repaired. You might
23 repair two and then one would be
24 intact. But we gradually worked our
25 way in, keeping the fresh air on our

33

01 backs. When we got to 49 wall, 49
02 wall was down. That is the location
03 of the belt going onto One Left
04 section. That is the location where
05 One Left crew was at when the
06 explosion happened. And that's where
07 there was a telephone there that I
08 knew was a functioning telephone that
09 they'd called out from.

10 So I stepped over into the
11 track entry. There wasn't any smoke
12 in the air at that point. If there
13 was, it wasn't a significant amount
14 that it would catch my attention, but
15 the CO level was high at that point.
16 I stepped over toward the belt head
17 and cut the cable for the mine phone,

18 going toward that belt head. I
19 didn't want to cut the phone line
20 going in by toward Two Left. So I
21 just --- I cut it going toward that
22 belt head and worked the slack over
23 and put it in the intake and moved
24 that telephone into the intake.

25 We also had an EMT station at

34

01 that point, too, so I moved all the
02 EMT supplies into the intake at that
03 point, too. We repaired that one and
04 worked our way up to just maybe a
05 break or two where the air split.

06 The intake split to go to One Left.

07 I noticed the overcast at that
08 point was damaged, so --- and I knew
09 that everybody that we were looking
10 for was on Two Left. So we just put
11 a solid curtain up there as well to
12 try to direct all of the air current
13 toward the Two Left panel. That's at
14 49.

15 We continued to work our way
16 in, and the discussion got --- we
17 started noticing just a little bit of
18 smoke, taking just a little longer
19 for the CO to --- when we would put a
20 curtain up, we would wait for the CO
21 levels to drop, for the fresh air to
22 dissipate it, before we would move on
23 into the next one. And we noticed

24 that taking more and more time. We
25 also felt that the velocity was

35

01 probably not what it should have
02 been. And my thoughts were that
03 maybe we had missed something coming
04 in, because we were kind of helter-
05 skelter until we got to where that
06 one --- where we met up that One Left
07 crew, maybe we had missed something.

08 My thoughts were maybe another
09 damaged overcast at the Two Right
10 area. And I asked --- well, I asked
11 Owen and Vernon Hofer if they would
12 go outby --- get a roll of curtain
13 and go down there and check and see
14 if we maybe had missed something
15 there.

16 Those two went on out, and
17 that left me and Dick Wilfong and Al
18 Schoonover. And we worked our way up
19 another --- probably another break or
20 so from beyond that point. We got to
21 57 block, and put a curtain up at 57
22 block, and I just walked up to 58 to
23 see if --- just check and see if it
24 was intact or if it was out, and it
25 was out. But the smoke at this point

36

01 was extremely dense.

02 And in our eyes, it seemed

03 that the smoke was just kind of
04 swirling, that it wasn't wanting to
05 dissipate, but knowing now what I
06 know, I think what it was, it was
07 dissipating, but it was just
08 continuing to roll out of that panel,
09 and it was dissipating.

10 So Dick Wilfong and Al
11 Schoonover both have some mine rescue
12 training in the past. And the
13 discussion got to the point that, you
14 know, if there is --- if there is
15 something in here that could still --
16 - the potential to still explode, we
17 may be pushing fresh air overtop of a
18 possible explosion and creating
19 another explosion.

20 We kind of stayed in that area
21 for a long time and kicked this
22 around. We would listen. You would
23 hear something fall, and when I did I
24 would go and just yell as loud as I
25 could in that direction. Maybe we

37

01 were hearing somebody moving and just
02 listening to see if we could hear
03 anything.

04 I don't have any idea how long
05 we stayed there and wrestled with it,
06 but finally we just made the decision
07 that this was as far as we needed to
08 go. That we'd probably need to back

09 out and let the professionals come
10 in, people that were trained in this.
11 So we made the decision to leave the
12 mines. And I stopped by the phone on
13 the way out, that we had moved into
14 the intake to let people outside know
15 that we had decided to leave.

16 We worked our way down and we
17 actually caught up with Owen and
18 Vernon right in that Two Right area.
19 And we did notice some damage to a
20 couple of the overcasts there, the
21 wing walls were blown out on the
22 overcasts. And really didn't have
23 anything to work with at that point,
24 we just --- I think Owen and Vern had
25 maybe put a curtain up before we got

38

01 there, but there was nothing else to
02 work with, so we just continued on
03 out of the mines.

04 I had no idea what time we
05 even got out of the mines. I've been
06 told --- I was told by someone later
07 that it was around 10:30 when we got
08 outside.

09 Q. I appreciate that, Jeff. And
10 would you like to take five minutes?

11 Are you ---

12 A. I'm fine.

13 Q. --- good to go?

14 A. Yes, sir.
15 Q. And there is some --- there's
16 a pitcher of water here, too, and
17 some cups. I should have offered it
18 to you earlier.
19 A. Thank you.
20 MR. GATES:
21 At this time, Jeff, I'm
22 going to step back, and Dennis
23 Swentosky is going to continue
24 with some of the questions.
25 Denny?

39

01 MR. SWENTOSKY:
02 Thanks.
03 BY MR. SWENTOSKY:
04 Q. I wonder if we can just kind
05 of step back and, you know, kind of
06 go through this again. And maybe I
07 can ask some specific questions ---
08 A. Okay.
09 Q. --- if you don't mind. Okay.
10 Again, what time do you begin your
11 shift normally on the day of the
12 accident?
13 A. I arrive at the mines --- that
14 day I arrived around 5:35. I'm there
15 between, usually around 5:30, 20 'til
16 6:00 every day. I'm thinking it was
17 about 5:35 that morning.
18 Q. Okay.
19 A. And my shift begins when I get

20 out of the truck.

21 Q. Can you kind of describe,
22 again, just a little bit of what you
23 did on the surface prior to entering
24 the mine that day?

25 A. Like I said, I went in, I

40

01 spoke to both foremen. Actually,
02 joked around with --- the foreman on
03 the Two Left panel is --- was my
04 uncle. And I had missed the Monday
05 before. It was the day after
06 Christmas, and I took the day off,
07 and he was joking with me about not
08 expecting to see me there today. And
09 I have a refrigerator in my office,
10 and every evening he would come in
11 and steal a Coke out of my
12 refrigerator. And I told him that he
13 --- I said, well, you probably better
14 get your Coke this morning, because
15 I'll probably get out of here before
16 you get out this evening.

17 Then I went in my office. I
18 started up my computer. Like I said,
19 I'll typically check my e-mail, and I
20 like to check the daily direct mine
21 costs just to see how we did the day
22 before. Timesheets are just
23 typically on my desk. I'll go ---
24 that would have been after a weekend,

25 so there would have been a few more

41

01 timesheets than normal on my desk.

02 So I would have looked over the

03 timesheets before I filed them away.

04 And that's pretty much a typical

05 morning, and that morning was no

06 different.

07 Q. How many shifts does the mine

08 operate?

09 A. We operate three shifts.

10 Q. How many production --- is all

11 three shifts production shifts?

12 A. No. Two shifts --- Monday

13 through Thursday we produce coal,

14 dayshift and afternoon shift, and the

15 third shift is maintenance.

16 Q. Monday through Thursday.

17 A. And Friday, Saturday and

18 Sunday we work what we call the

19 weekend warrior. We have two crews

20 on the weekends. We have a

21 production crew that works a 13-hour

22 shift and then we have a maintenance

23 crew that works a 13-hour shift on

24 Friday, Saturday and Sunday.

25 Q. But you don't produce any coal

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01 on that shift?

02 A. They produce on the dayshift,

03 on Friday, Saturday and Sunday.

04 Q. And the other two are

05 maintenance?

06 A. And the nightshi ft is
07 maintenance on Fri day, Saturday and
08 Sunday. There's only two on the
09 weekends.

10 Q. How many peopl e are empl oyed
11 at the mi ne?

12 A. On the morni ng of January 2nd,
13 I thi nk my staffi ng chart woul d have
14 total ed out to 148.

15 Q. Was that a normal ---?

16 A. It's probably a li ttle hi gh,
17 but we had a few extra men that ---.
18 Well, we had shut down the Spruce
19 Mi nes a few months pri or that we had
20 moved a few men over to the Sago
21 Mi nes to just gi ve them a home unti l
22 the next mi nes was opened up for
23 them.

24 Q. Can you expl ai n the management
25 structure?

43

01 A. From what poi nt? From my
02 poi nt?

03 Q. Yes.

04 A. Well, I'm the superi ntendent.
05 Underneath me is a mi ne foreman, Carl
06 Crumri ne, mai ntenance foreman, Di ck
07 Wil fong, and safety di rector, Al
08 Schoonover. Those are probabl y the
09 three men that I rely on to make

10 decisions day-to-day in running the
11 mines. Carl, in turn, we have shift
12 foremen underneath that fall under
13 Carl, and then the section foremen
14 fall under the shift foremen. Mr.
15 Wilfong has assistant maintenance
16 chiefs under him, and then, of
17 course, all of the maintenance
18 personnel underneath that. All
19 basically report directly to Mr.
20 Wilfong.

21 Q. Okay. Who did you mention who
22 was your supervisor?

23 A. Raymond Coleman is my
24 immediate supervisor.

25 Q. And how long has he been your

44

01 supervisor?

02 A. Since the day I started with
03 ICG, which is August 1st. Five
04 months.

05 Q. What is his position?

06 A. He is mine manager.

07 Q. Where's his office located, if
08 you can tell me, please?

09 A. His office is in the --- well,
10 I like to think Raymond has two. He
11 has an office at the Buckhannon
12 office, for International Coal Group,
13 and then his pickup truck.

14 Q. Okay. How many sections are
15 at the Sago Mine?

16 A. We produce coal in two
17 sections.

18 Q. And could you describe that
19 process? I mean, do you have, as an
20 example, like a super section or
21 anything like that?

22 A. We run what we call a walking
23 super section. We run eight ---
24 typically run eight entries. We have
25 two miners on the section at all

45

01 times, but we only mine coal with one
02 miner at a time. The other miner is
03 setting up --- while one miner is
04 cutting, the other miner is setting
05 up. We also have two bolt machines,
06 a bolt machine really chasing each
07 miner. And we have three shuttle
08 cars on the section, but we only run
09 two at a time. We have a shuttle car
10 designated on each side, side dump
11 off our feeder, which is a three-way
12 dump, and we have one on the end
13 dump.

14 The operator on the end dump,
15 his shuttle car will travel to
16 whichever miner is running. The
17 other operator will, depending on
18 which miner is cutting, will
19 determine which shuttle car he runs.
20 He may park the left shuttle car and

21 get on the right shuttle car to go to
22 the right miner.
23 Q. Okay. Could you describe the
24 mine ventilation system with the
25 miner?

46

01 A. A blowing system with --- all
02 face ventilation is on blowing as
03 well. The intake's on the right side
04 of the section so line curtains will
05 typically run up the right rib.

06 Q. You said you used blowing
07 ventilation, but did you ever use any
08 exhaust ventilation?

09 A. It's been a few years ago, but
10 yeah, I have used some exhaust.

11 Q. Could you describe the mine
12 roof support system, please?

13 A. Our base roof control plan,
14 we're setting six-foot fully grouted
15 resin bolts. On the Two Left panel
16 we are --- in intersections we're
17 installing ten-foot cable bolts. I
18 think we had six --- I think we're
19 putting six cable bolts per
20 intersection, unless they're ---
21 provided if they're anchoring --- if
22 the resin bolts were anchored in
23 sandstone, we don't have to set the
24 cable bolts.

25 We also put, for span control,

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01 we put --- 5 to 15 feet is the size
02 of the mesh screen we're bolting
03 against the roof, and we'd screen our
04 --- our primary escape way we screen,
05 our track entry we screen, and our
06 belt entry we screen.

07 Q. Do you ever screen any other
08 particular entries, or ---?

09 A. We will screen --- my bolt
10 crews can put a piece of screen up
11 anywhere where they feel there's any
12 adverse roof that they would put a
13 piece of screen on.

14 Q. Did you ever put any screen on
15 the ribs?

16 A. No, sir.

17 Q. Who was all at the mine when
18 you were there that day?

19 A. Well, I know that Al
20 Schoonover, Dick Wilfong and Martin
21 Toler and Owen Jones, and --- I know
22 that they were there, but as far as
23 --- and the dispatcher, Bill Chisolm,
24 I spoke to him, but as far as going
25 back into the bathhouse and seeing

48

01 what men were there, I didn't do
02 that.

03 Q. Okay. There were some men
04 already at the mine?

05 A. Yeah. I would say most of the

06 crews were already there when I got
07 there.
08 Q. Did the mine operate on the
09 day prior to the accident?
10 A. No, sir.
11 Q. Was there any examiners or
12 anything ---?
13 A. Examiners --- I had examiners
14 scheduled to start at three o'clock
15 that morning.
16 Q. That morning the ---.
17 A. The morning of January 2nd.
18 Q. Okay. But the day prior
19 to ---
20 A. The day prior to?
21 Q. --- was there any examinations
22 made or anything like that?
23 A. I'm not aware if there --- I
24 don't know.
25 Q. When was the last time that

49

01 anyone was at the mine prior to the
02 morning of the accident?
03 A. I don't know. The last --- I
04 know I had some men that worked
05 Saturday, but I don't know if anyone
06 was there throughout the night or
07 Sunday.
08 Q. Okay. So then Saturday would
09 be the last time that you were aware
10 of anyone ---
11 A. That I'm aware of, yes.

12 Q. --- working at the mine? Did
13 the fan operate continually during
14 the weekend preceding the accident?

15 A. I haven't heard --- as far as
16 I know, yes.

17 Q. You routinely just leave the
18 fan on ---

19 A. Yes.

20 Q. --- for 24 hours?

21 A. Yeah. Routinely, yes.

22 Q. Was the underground power
23 de-energized during the holiday
24 shutdown?

25 A. I don't know.

50

01 Q. Okay. Who would know that
02 possibly?

03 A. I don't know, possibly Mr.
04 Wilfong.

05 Q. What records did you review
06 that morning, you know, your routine
07 there? What records did you --- on
08 that particular morning, what were
09 the records that you reviewed?

10 A. Probably what I've already
11 detailed. This happened so quick, I
12 probably didn't have any time to look
13 at anything but maybe the timesheets.

14 Q. You didn't review the ---

15 A. No, sir.

16 Q. --- prior to the ---

17 A. No, sir.
18 Q. --- the record books and any
19 sort of underground paperwork?
20 A. No, sir.
21 Q. Did you happen to notice
22 anything on the --- or did you look
23 at the CO monitor?
24 A. No, sir.
25 Q. Did you hand any specific

51

01 assignments out that morning prior to
02 the accident?
03 A. No, not ---. I didn't have
04 anybody available to hand the
05 assignments to at that point.
06 Q. And again, you weren't in the
07 mine prior to the accident?
08 A. No, sir.
09 Q. I think you've already said
10 that. How and when were you notified
11 of the underground problem? I know
12 you --- just kind of go through that
13 again.
14 A. Like I said, I was on the
15 phone with the dispatcher, and when
16 he commented on the flash of
17 lightning and I heard the thunder,
18 and then I could hear the CO alarms.
19 Q. Where are the CO alarms, or
20 the ---
21 A. They're in the dispatch ---.
22 Q. --- CO monitors?

23 A. It's in the dispatcher's
24 office.

25 Q. In the dispatcher's office?

52

01 A. Yes.

02 Q. It was within the same
03 building that you were in?

04 A. No. Actually, he's in a
05 trailer right now, which is separate
06 from our building.

07 Q. Okay. When you say right now,
08 I mean, on the day of the accident.

09 A. On the day of the accident, it
10 was --- he was in a separate trailer.

11 Q. In a separate trailer. And
12 you say you heard the alarms going
13 off ---.

14 A. Well, I could just hear ---
15 they just make a beep, and with him
16 being on the phone talking to me, I
17 could I hear it in the background.

18 Q. Oh, in the background?

19 A. Yeah.

20 Q Okay. And at that time then
21 you realize what --- did you realize
22 what the extent of the problem was?

23 A. No, sir. Probably not until
24 Owen Jones got on the mine phone and
25 told us about the big rush of air

53

01 that he felt.

02 Q. And just again, what
03 information did you receive?
04 A. Owen --- like I said, we had
05 got on the phone to try to --- we
06 weren't aware that anything had
07 happened underground. And we were
08 just trying to get ahold of the crews
09 to have them check their CO alarms.
10 And Owen was the first person that
11 responded, and he informed us that he
12 had felt a big rush of air coming
13 from inby toward the Two Left
14 section.
15 Q. Did he say anything else?
16 A. Not that I can recall.
17 Q. Okay. And then after your
18 notification then you had said that
19 you had spoken to Mr. Schoonover, I
20 believe?
21 A. Schoonover (corrects
22 pronunciation).
23 Q. Schoonover.
24 A. I yelled at him, actually.
25 Q. And who all entered the mine

54

01 then?
02 A. Myself, Al Schoonover, Dick
03 Wilfong and Vernon Hofer.
04 Q. Were you actually the one that
05 was like planning the operations at
06 that time?
07 A. I don't think anybody was

08 planning anything at that point. We
09 were just wanting to get in there and
10 see what had happened.

11 Q. Okay. Was this a joint
12 effort, or were you directing the
13 operations at that time?

14 A. I just hollered at Al to go
15 with me, and Mr. Wilfong and Mr.
16 Hofer going along with me was just
17 --- you know, they were available and
18 wanted to go.

19 Q. Just again, what instructions
20 did you give those guys?

21 A. I don't know that I gave any
22 instructions. After I told Mr.
23 Schoonover to get his gear on these
24 guys just followed me.

25 Q. Okay. What agencies --- was

55

01 there any agencies notified at that
02 time?

03 A. Not at that point, no.

04 Q. Okay. When were they
05 notified?

06 A. I was underground. I have no
07 idea.

08 Q. Okay. And you had mentioned
09 about when you --- to notify the Mine
10 Rescue team. That was during your
11 exits from the mine?

12 A. No. That was when we were ---

13 when we had hooked up with the One
14 Left crew. They patched me through
15 to Johnny Stemple, and just in our
16 conversation I told --- Johnny was
17 just concerned whether we should ---
18 whether I felt like --- and at this
19 point, I still hadn't seen any
20 damage. But I just told Johnny that
21 we probably ought to go ahead and
22 notify them.

23 Q. Do you know what time those
24 teams were notified?

25 A. No, sir.

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01 Q. Do you know if all the teams
02 that were called, did they respond?

03 A. I have no idea.

04 Q. Do you know who those teams
05 are?

06 A. I have no idea.

07 Q. Would there be a list that you
08 could provide us, or someone provide
09 us of the teams and what time they
10 responded or were contacted?

11 A. I'm sure there's a list exists
12 somewhere.

13 ATTORNEY MOORE:

14 I thought that at this
15 point the teams themselves
16 that responded had been
17 identified to the agencies.
18 If that's not correct, then

19 we'll gather that information.
20 My understanding is that the
21 information is fully available
22 to MSHA at this point. And
23 you've also requested
24 identification of all of the
25 mine rescue personnel who were

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01 there. And we're compiling
02 that list, and we'll produce
03 it if there's suitable
04 guarantees of confidentiality.

05 MR. SWENTOSKY:

06 We're just wanting as
07 much information as we can get
08 to help us in our
09 investigation.

10 ATTORNEY MOORE:

11 We don't have any
12 problem with that, but I
13 thought we had --- you already
14 were provided with the
15 information as to what teams
16 responded.

17 MR. SWENTOSKY:

18 Okay.

19 BY MR. SWENTOSKY:

20 Q. Getting back when you entered
21 the mine, what equipment and supplies
22 did you take with you?

23 A. I had a belt and my hat.

24 Q. That's a good start.
25 A. Yeah, and a light.

01 Q. Okay. At that point there,
02 you don't recall any --- do you
03 recall anything else that you might
04 have taken with you?
05 A. No, sir. I can't recall
06 anything in specific that I would
07 have picked up.
08 Q. Okay. What instruments did
09 you take with you?
10 A. None. Myself, none.
11 Q. You didn't have a methane
12 detector or ---
13 A. No, sir. No, sir.
14 Q. --- anything? Okay. Did
15 anyone else with you take ---?
16 A. I don't know. I don't know.
17 Q. How did you travel into the
18 mine?
19 A. We were on one of our track
20 rail --- piece of rail equipment, one
21 of the mantrips.
22 Q. And who was in the mine when
23 you entered?
24 A. Well, everybody that was
25 supposed to be underground at that

58

01 point. Nobody had exited the mine at
02 that point.
03 Q. Okay. Nobody had come out

59

04 yet. And you don't know where they
05 were?

06 A. Well, like I said, we passed
07 Fred Jamison. He was on the belt.
08 He's the belt examiner. We passed
09 Fred Jamison just a couple breaks
10 under portal, heading toward the
11 surface.

12 Q. And where approximately was
13 that?

14 A. Three breaks in by the drift in
15 the track entry.

16 MR. SWENTOSKY:

17 We have a map over here
18 that we'll mark Exhibit Toler
19 Number One.

20 (Toler Exhibit Number
21 One marked for
22 identification.)

23 BY MR. SWENTOSKY:

24 Q. Can you mark where you saw him
25 using --- use a blue marker?

60

01 A. I can only approximate. I was
02 up to right here, and then ---.

03 Q. You placed a blue mark by the
04 third portal, third block on the
05 portal of entry?

06 A. Yes, sir.

07 Q. Okay. What was he doing at
08 that point?

09 A. He appeared to be exiting the
10 mines.
11 Q. Okay. Did he have a SCSR on,
12 or ---
13 A. No.
14 Q. --- anything on?
15 A. No. He was on foot. We
16 probably slowed, and I asked him if
17 he was all right. He said yeah, and
18 I maybe told him to just keep going
19 on out.
20 Q. Okay. Did the dispatcher
21 report any CO alerts and alarms to
22 you?
23 A. After the ---.
24 Q. I know you had heard it going
25 off.

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01 A. That was it.
02 Q. And you don't know what those
03 CO levels were?
04 A. No, sir.
05 Q. Did you personally check the
06 levels?
07 A. No, sir.
08 Q. Okay. I'm going to hand you a
09 copy of the readout, and I just
10 wondered if you would identify that.
11 Is that the readout off the CO
12 monitor?
13 A. It appears to be. I can't ---
14 I mean, ---.

15 Q. That's the type of readout,
16 and that's the readout that you
17 recall at your mine?

18 A. It would appear to be. As far
19 as the CO alarms go at that mine, I
20 never went beyond just looking at the
21 computer screen. So that would
22 appear to be it. I'm not sure.

23 Q. Who would know?

24 A. Probably Mr. Wilfong.

25 Q. Mr. Wilfong?

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01 A. Yes.

02 Q. Was the power de-energized
03 from the underground portion of the
04 mine before you entered?

05 A. Before we entered the mines,
06 no, we didn't take the time to
07 de-energize. I've been told later
08 that when Mr. Wilfong and Mr. Hofer
09 brought the One Left crew to the
10 surface they de-energized the
11 underground power at that point.

12 Q. Okay. So it wasn't
13 de-energized?

14 A. No, sir.

15 Q. Okay. Were the belt lines
16 operating when you entered the mine?

17 A. I have no idea. They had
18 been, but I don't know if they went
19 down when this happened or not.

20 Q. How do you know that they had
21 been?

22 A. I was told.

23 Q. Somebody told you. You didn't
24 observe them?

25 A. I didn't observe them, no,

63

01 sir. I was told they all had been
02 running.

03 Q. What types of communication
04 are used at the mine?

05 A. Well, we have the hard line
06 telephone system, and ---.

07 Q. Is that like a Bell line? You
08 know, a regular-type telephone, when
09 I say Bell.

10 A. It's just like a page box.

11 Q. A pager phone?

12 A. Yeah.

13 Q. Okay. Do you have any Walkie-
14 talkies or anything like that that
15 you might use?

16 A. Yes, sir, we do.

17 Q. Are those of a permissible
18 type?

19 A. Not permissible, but I think
20 the term is non-synthetic (sic).

21 MR. STUART:

22 Intrinsically safe.

23 A. Intrinsically safe. That's
24 what I'm looking for. Thank you,
25 Dave.

01 BY MR. SWENTOSKY:

02 Q. Okay. Who carries those
03 walkie talkies?

04 A. I have them on --- certain
05 people that work on the sections
06 carry those. Miner operators will
07 have them. The foremen will have
08 them. Shuttle car operators will
09 have them.

10 Q. When you use those --- I mean,
11 do they just use them to communicate
12 back and forth ---

13 A. On the section.

14 Q. --- on the section?

15 A. That's just on the section,
16 yes.

17 Q. Do you have any other type of
18 --- additional types of communication
19 devices?

20 A. The mantrips have trolley
21 phones on them.

22 Q. I see. Do you have trolley
23 wiring in the mine?

24 A. No, we don't have trolley
25 wire. We just refer to it as a

01 trolley phone. I'm sorry.

02 Q. Oh, okay. That's just like a
03 battery-type telephone?

04 A. It's a battery-type telephone,

05 and you have an antenna wire running
06 down the track to bounce the signal
07 off of it.

08 Q. I see. And I heard you
09 mention before that you used a pager
10 phone to try and communicate with the
11 missing miners?

12 A. Yes, sir.

13 Q. What did you say or ---?

14 A. Well, I wasn't the one doing
15 the calling. It would have been the
16 dispatcher.

17 Q. Oh, the dispatcher then was
18 actually trying to contact the
19 miners?

20 A. Yeah. He constantly was
21 trying to get ahold of them.

22 Q. What is the dispatcher's job,
23 is that his job to contact the miners
24 underground? He's the --- okay. Go
25 ahead.

66

01 A. Typically, ---.

02 Q. He's the one that contacts
03 those people?

04 A. He's as close to a secretary
05 as I've got.

06 Q. Is he the responsible person
07 as described in the Fire and
08 Evacuation Plan? Is that his duties?

09 A. I haven't reviewed the Fire
10 and Evacuation Plan to that point, so

11 I'm not sure.

12 Q. I see. Did you ever see the
13 Fire and Evacuati on Pl an?

14 A. I have briefly looked over
15 every pl an we have.

16 Q. I see.

17 A. But to look at them in depth,
18 no, I haven' t.

19 Q. Okay. What we want to do is
20 go back over to the map. And using a
21 blue marker, if you could just kind
22 of draw a line on the map on Exhi bi t
23 One and show us the travel that you
24 did when you were entering the mi ne?

25 A. Can we take a short break?

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01 Q. Absol utel y.

02 SHORT BREAK TAKEN

03 BY MR. SWENTOSKY:

04 Q. Mr. Tol er, before we continue
05 on down my larger list, just --- I'd
06 like to ask some clari fyi ng
07 questi ons.

08 A. Okay.

09 Q. The CO alarm level, when it
10 went off, was that before or after
11 the l ightni ng?

12 A. After.

13 Q. After?

14 A. Yes.

15 Q. Was it --- can you gi ve any

16 time span or anything like that? I
17 know times are hard, but I just
18 wondered if you could ---.
19 A. I'll just sum it as just bang
20 bang.
21 Q. Bang bang?
22 A. Yeah. First one and then the
23 other.
24 Q. Okay. Thank you. These ---
25 the radio for the mantrips.

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01 A. Yes, sir.
02 Q. And you had mentioned that you
03 have an antenna wire ---
04 A. Yes, sir.
05 Q. --- that runs along the track?
06 A. Yes, sir.
07 Q. Okay. How far does that run?
08 Obviously, it goes from the surface,
09 but how far does it run underground?
10 A. Right at the end of the track
11 on each section.
12 Q. On each section?
13 A. Yes.
14 Q. Okay. And then using that
15 antenna at that position, the walkie
16 talkies in the section will operate?
17 A. You mean using that antenna?
18 Q. Yes.
19 A. No, sir.
20 Q. Okay. That's just for ---
21 A. That's just for the ---.

22 Q. --- the portal buses?

23 A. Yes, sir.

24 Q. Okay. Whenever you entered
25 the mine, you and the others, okay,

69

01 did you have a walkie talkie with you
02 or any type of radio with you at all?

03 A. No, sir.

04 Q. Was there one on the bus or
05 the transportation that you took in,
06 was there one of these radios?

07 A. No, sir. There was probably
08 one of the trolley --- the trolley
09 phone was on there, but one of the
10 handhelds, no.

11 Q. Okay. The trolley phone was
12 on there, but that was --- you're
13 saying that was all?

14 A. Yes.

15 Q. Okay. And you didn't have any
16 walkie talkies or anything else with
17 you?

18 A. No, sir.

19 Q. How often --- have you
20 received any nuisance, what we would
21 call a nuisance AMS system tripping,
22 or something, you know, that really
23 was a problem with the system that
24 has gone off?

25 A. You mean, on these ---?

70

01 Q. Have you ever experienced that
02 at all?
03 A. On what? What system are we
04 talking about?
05 Q. The AMS system, I'm sorry.
06 A. The CO alarm?
07 Q. The CO alarm, yes.
08 A. I don't know. Like I said,
09 that system is set up in the
10 dispatcher's office over there. He's
11 in his own office, in his own trailer
12 over there, and I don't know.
13 Q. Okay. Just briefly going back
14 to Saturday, and you had mentioned
15 you didn't know --- do you know
16 anything about Saturday, what
17 occurred ---
18 A. No, sir.
19 Q. --- just for clarifying?
20 A. No, sir.
21 Q. Was there ever any people
22 scheduled for Saturday?
23 A. Are there ever or that
24 particular Saturday?
25 Q. Ever.

71

01 A. Yes. We generally have people
02 there seven days a week.
03 Q. Seven days a week. Okay. And
04 it just happened to be --- and why
05 not this Saturday?
06 A. New Year's Eve.

07 Q. New Year' s Eve?

08 A. Yeah.

09 MR. CONAWAY:

10 Denny, before we go

11 back to your major list, would

12 it be okay if I pick up?

13 MR. SWENTOSKY:

14 Okay. Can I just ask

15 one more questi on?

16 MR. CONAWAY:

17 Sure.

18 MR. SWENTOSKY:

19 Thank you.

20 BY MR. SWENTOSKY:

21 Q. Was this your first

22 superi ntendent posi ti on?

23 A. No, sir. I was previ ously

24 superi ntendent at Brooks Run Mi nes in

25 the southern part of West Vi rgi ni a.

72

01 Q. Okay. And approxi matel y what
02 year was that?

03 A. It was in 2005.

04 Q. 2005.

05 MR. SWENTOSKY:

06 Okay.

07 BY MR. CONAWAY:

08 Q. Does Bi ll Chi sol m, the
09 di spatcher, have a ni ckname?

10 A. Flea.

11 Q. Okay. I just wanted to make

12 sure. You said the belt was running
13 earlier when you got there before you
14 entered the mine. You said somebody
15 told you that. Do you remember who
16 told you that?

17 A. It's probably something I've
18 heard after the fact. And I have no
19 idea who ---.

20 Q. Okay. I just thought you
21 might remember.

22 A. No. No, sir, I don't
23 remember.

24 Q. You were talking about a call
25 that you made to the outside, to

73

01 Johnny Stemple, and that was
02 approximately the time that you ---
03 when you entered the mine and you
04 encountered Fred Jamison, three
05 breaks in, and then you went on in
06 and you encountered the One Left crew
07 coming out?

08 A. Uh-huh (yes).

09 Q. Is that the time frame when
10 you had the call with Johnny Stemple;
11 do you recall that?

12 A. I'm thinking it was in that
13 time frame. I'm not sure.

14 Q. Okay. Do you have any feel
15 for --- you entered the mine, you say
16 just within ten minutes of ---?

17 A. I would say probably around

18 seven o'clock is where we encountered
19 the One Left crew, ---
20 Q. Okay.
21 A. --- because my understanding
22 was they were outside by 7:20.
23 Q. Okay. So about seven o'clock
24 is when you were on the phone with
25 Johnny. And what was that

74

01 conversation; do you recall that?
02 A. It was very --- just a few
03 quick words. It was just Johnny
04 asking if I thought we needed to get
05 the Mine Rescue, and I'm thinking I
06 told him that we at least needed to
07 have somebody on standby. We needed
08 to get ahold of somebody. But we
09 still, at this point, hadn't had any
10 idea of what had happened.
11 Q. Well, I'm just trying to get
12 the general time frame. You
13 mentioned that when you were at block
14 49, you said that you had CO levels,
15 that's when you went back ---?
16 A. In the track entry, yes.
17 Q. How did you know that?
18 A. I had a handheld with me at
19 that time.
20 Q. What did it say; do you
21 recall?
22 A. I think it was in excess of

23 700 parts per million at that point.

24 Q. Okay. Where you were standing
25 and taking the reading, it was ---

75

01 A. Yes.

02 Q. --- in excess of 700 parts per
03 million? What kind of detector was
04 that; do you recall?

05 A. I have no --- I don't know.

06 Q. Okay. I understand. I'm just
07 trying to get what you remember.

08 Also, do you recall any readings that
09 were discussed among your group? As
10 you were advancing forward, did
11 anybody ---?

12 A. No, sir.

13 Q. Were alarms going off on
14 detectors?

15 A. Yes. Yes, they were. I don't
16 recall any levels. I don't think
17 that --- it's just a guess, but I
18 don't think it was ever over 100
19 parts per million on the CO, I don't
20 think. But again, at a certain point
21 I turned off the detector I had. It
22 had a low battery on it. And I was
23 relying on the detectors the other
24 guys had.

25 Q. Okay. But you don't recall

76

01 somebody just occasionally taking a
02 reading and saying I've got 300 here,

03 I've got --- you don't recall?
04 A. No, sir, I don't recall.
05 Q. Okay. I'm just trying to get
06 a feel for who took readings and if
07 you had any idea of what the levels
08 were. You mentioned you have 148
09 employees at the mine. Do you have
10 any --- does that include any
11 contractors you may have?
12 A. Yes, sir, it does.
13 Q. It includes everybody ---?
14 A. That's everybody that's in the
15 mines.
16 Q. Okay. Do you know what
17 companies --- when I say contractors,
18 are they miners or are they service?
19 A. These are miners.
20 Q. Miners?
21 A. Yes, sir.
22 Q. And do you know how many,
23 roughly, you have, Jeff?
24 A. That day, I think I had --- I
25 have a total of five employed, and I

77

01 think three of them would have been
02 scheduled to work that day.
03 Q. Okay. Are they rank-and-file
04 hourly, or are they --- were they
05 management, or what's --- are they
06 all?
07 A. One of them has foreman

08 certification. I typically don't use
09 them as a foreman. And the other two
10 were red hats.
11 Q. And are they employed by the
12 same company?
13 A. They're all employed by
14 Garrett --- GMS, Garrett Mine
15 Service.
16 Q. Okay. You mentioned that the
17 last work before this shift ---
18 dayshift, or the first shift at six
19 o'clock on Monday morning, the last
20 shift was Saturday. Was that day,
21 evening, or do you recall ---?
22 A. It should have been day.
23 Q. It should have been day?
24 Okay. You said, to your
25 recollection, that the last time you

78

01 were aware that somebody was at the
02 mine would have been dayshift?
03 A. Yes.
04 Q. And do you have any idea what
05 those --- I mean, was it just kind of
06 maintenance protocol?
07 A. Yeah. It just --- just in
08 there doing some odd jobs.
09 Q. Okay. Just a good time
10 to ---?
11 A. Yes.
12 Q. When you were talking to Bill
13 Chi sol m, Flea, and you saw the flash

14 of light, did Flea say the light
15 when, where, did he just see it hit?

16 I mean, what ---?

17 A. I don't actually recall what
18 he did say. And I didn't see the
19 flash because my office has no
20 windows.

21 Q. Right.

22 A. But he said something that
23 gave me --- that I knew that it was a
24 flash of light. I just can't exactly
25 recall what his words were.

79

01 Q. He didn't specifically say it
02 hit ---?

03 A. He may have just yelled, for
04 all I know.

05 Q. Okay. When you talked to Owen
06 Jones, that was --- well, tell me
07 when you first ran into Owen.

08 A. Well, I talked to him from the
09 surface.

10 Q. Okay. He called out, and that
11 was ---?

12 A. Yeah. He responded to our
13 calls.

14 Q. At approximately what time?

15 A. 6:32. Within a minute or so
16 after this ---.

17 Q. Okay. And what did he tell
18 you? What was your recollection?

19 A. There was a big gush of air
20 and some smoke, and he didn't know
21 what had happened, but he felt that
22 it was something bad.
23 Q. Okay. I'll just ask you this.
24 We can get into this later. When did
25 you leave the property, or ---?

80

01 A. When did I leave?
02 Q. Yeah.
03 A. After that?
04 Q. Yeah.
05 A. Well, this happened on Monday
06 morning. It was approximately five
07 o'clock Wednesday morning before I
08 left the property.
09 Q. I think we've touched on this,
10 but the only thing you tried to
11 communicate with was the pager system
12 when you were underground?
13 A. Yes, sir.
14 Q. The trolley phone, you had
15 left your vehicle; is that correct?
16 A. Yes, sir.
17 Q. And you didn't have any walkie
18 talkies, so it was the pager. In
19 addition to you --- the dispatcher
20 may have been trying to contact you
21 as well?
22 A. Yes.
23 Q. One other question here. When
24 you were underground, did you have

25 any conversations that you recall

81

01 with people on the outside on a pager
02 or on a telephone; do you recall any
03 of those?

04 A. No. I wanted to keep
05 conversations limited to the surface
06 for fear of being told to withdraw
07 from the mines.

08 Q. Okay. Do you recall a
09 conversation you had with state
10 inspector John Collins at any time?

11 A. I think I may have talked to
12 John when I told him we were leaving
13 --- we were getting ready to exit the
14 mines. I may have talked to John
15 then.

16 Q. Okay. And you don't recall
17 what time that was?

18 A. No, sir.

19 Q. Do you recall anything else
20 about that conversation you may have
21 had? Did you describe any of the
22 conditions?

23 A. No, sir. If I do, I just ---
24 everything is just kind of a blur.

25 Q. Okay. I'm just trying to see

82

01 if you remember.

02 MR. CONAWAY:

03 Okay.

04 MR. SWENTOSKY:

05 Thanks, Doug.

06 BY MR. SWENTOSKY:

07 Q. You had mentioned to a
08 question Mr. Conaway asked that you
09 heard the handhelds going off. Did
10 you take any instruments underground
11 with you?

12 A. We didn't take any with us,
13 but when Mr. Wilfong took the One
14 Left crew to the surface, when I
15 called out for the ventilation
16 supplies I had told him to put some
17 detectors in there with him, and
18 bring the detectors back with him.

19 Q. Okay. Did you have one after
20 they came back?

21 A. After he came back, I had one.

22 Q. Okay. And did you make any
23 attempts to contact the missing
24 miners underground after you went
25 underground?

83

01 A. No. The only time that I was
02 communicating, it was with the
03 surface.

04 Q. Okay. If we can go over to
05 the map, and that would be Toler
06 Exhibit Number One. And use a ---
07 well, we can't use the blue anymore.
08 It doesn't work. Here's a purple.
09 And I would like for you to mark your

10 line of travel while entering the
11 mine. Just mark on the map, starting
12 at the surface and going underground,
13 and just mark on the map where you're
14 entering. That would be number four;
15 is that correct?

16 A. Yes, sir.

17 Q. The track entry?

18 A. Yes, sir. The track entry,
19 and we basically stayed on track at
20 this point. I'd say we had talked to
21 Fred, we passed Fred Jamison at this
22 point.

23 Q. If you would just describe
24 ---?

25 A. We went right down the track,

84

01 down Number One belt. We turned,
02 followed the track down Number Two,
03 turned, followed the track down
04 Number Three. Right in this area
05 here, that's around the One ---
06 that's that track spur --- a side
07 spur is going into the One Right
08 panel. Somewhere in this vicinity
09 here we passed John Boni, one of the
10 mine examiners. We just stopped for
11 a second, checked on him, and he was
12 fine, and he was also exiting the
13 mines.

14 Q. Okay. Did he have an SCSR on?

15 A. No, sir, he did not have an
16 SCSR on.
17 Q. Again, what was the extent of
18 the conversation?
19 A. I don't recall.
20 Q. He didn't indicate any type of
21 --- or what he thought had happened
22 or asked what was going on?
23 A. He may have, but I just --- my
24 intention was --- you know, once I
25 seen he was all right, my intentions

85

01 were focused toward ---.
02 Q. Did you mention to him --- you
03 told him to get out of the mine?
04 A. Yes. So we moved on up Number
05 Three track, and right there is Four
06 --- now we're on Four --- what we
07 called the Four Track. And this is
08 just a guess in this area, but
09 somewhere in this vicinity is one of
10 the mine phones is set up right
11 beside the track. Somewhere between
12 25 and 30 block. I'm not exactly
13 sure. I have no idea where it is
14 exactly.
15 Q. Did you call anybody at that
16 phone?
17 A. We stopped there, and Mr.
18 Wilfong called outside to see if they
19 had talked to anybody at that point,
20 if they had ever gotten ahold of

21 anybody.
22 Q. That' s anybody meani ng?
23 A. Anybody on the Two Left crew.
24 Q. Two Left crew?
25 A. Yes.

86

01 Q. Was that the extent of the
02 conversati on? Was there anythi ng
03 else sai d?

04 A. At that point, the One Left
05 crew was working their way outby in
06 the intake. They heard us. Wherever
07 this phone' s at, there must have been
08 a man door there, because somebody
09 stuck their head through the man
10 door, and basi cally sai d Hoy' s havi ng
11 trouble --- we' re havi ng trouble
12 getting Hoy out. So we started just
13 getting those men out of there and
14 into the track. We were going to
15 send them out on that track.

16 Q. Before you went underground,
17 did you know they were working their
18 way out?

19 A. Yeah. When I talked to Owen
20 right after the event, Owen called us
21 from right here. That' s where they
22 were at. That' s at 49 wall .

23 Q. Forty-nine (49) wall .

24 A. Yes.

25 Q. One Left swi tch?

01 A. Yes. Owen called us from this
02 point right here, and that's when he
03 had told us what had happened. And
04 our instructions to him was to get
05 into the intake and start toward the
06 outside.

07 Q. That was the extent of the
08 conversation?

09 A. Pretty much. Okay. At this
10 point --- like I said, we were
11 gathering those men up, and Mr.
12 Wilfong and Mr. Hofer, after we had
13 accounted for everyone, they started
14 toward the outside. Owen --- we have
15 another mine phone approximately
16 right here --- again, it's a guess,
17 but right around 41 block. There's
18 another phone right beside the track.
19 And we're down here. We can see Owen
20 and talk to him through the mine
21 phone, and I told him to just come
22 down here and join me and Mr.
23 Schoonover.

24 Q. Over the phone you told him?

25 A. Yes. Well, Mr. Wilfong, I

01 think, is actually the one that told
02 him to get down there. Owen traveled
03 down to where Al and I were at, and I
04 just had Owen stay there by the
05 phone, and Al and I started up on

06 foot, and we noticed stopping damage
07 at 32 wall.

08 Q. Any of the ventilation
09 controls, we'll use a red marker, if
10 we can.

11 A. Okay. So the first place that
12 we noticed the damage was --- would
13 have been here at 32 wall.

14 Q. Maybe you can move over here.

15 A. Okay. Yeah.

16 Q. Let's move on and we'll ---
17 this is the second map we'll label it
18 Exhibit Toler Two.

19 (Toler Exhibit Number

20 Two marked for

21 identification.)

22 BY MR. SWENTOSKY:

23 Q. And it's a blowup of the One
24 Left, Two Left section area slightly
25 outby. And if you could circle those

89

01 controls?

02 A. Okay. The first control that
03 we noticed was right here at 32 wall.

04 Q. Okay. Do you know which way
05 that was --- did you realize which
06 way that was blown?

07 A. I don't think I was really
08 paying attention to it at this point.
09 I just noticed that it was out. We
10 just started on in, and I'm not sure,

11 I think the next one that we
12 encountered, I --- for some reason 42
13 stands out in my mind that that was
14 the section. And then we made it
15 even ---.

16 Q. Do you know which way it was
17 blown?

18 A. Well, we probably went up and
19 looked at 43. It seemed that we had
20 three right there, that's what we
21 decided, and that --- that might have
22 been when I noticed that the
23 direction of them were blown on the
24 intake towards the track.

25 Q. Okay. The right to the left?

90

01 A. Yes, sir. It was blown from
02 right to left.

03 Q. What type of blocks were
04 those?

05 A. Most of those stoppings would
06 have been six-inch hollow cinder
07 blocks. There might have been a few
08 ---.

09 Q. All three blocks?

10 A. Yes. So there may have been
11 one or two of these stoppings that
12 were Omega blocks, but for the most
13 part they were cinder blocks.

14 Q. Okay. So you have these
15 Omega blocks in the mine for
16 stoppings?

17 A. Yes. So Al and I withdrew
18 down --- back down to where Owen was
19 at, at this phone and waited on Mr.
20 Wilfong to come back. Once he
21 got ---.

22 Q. And that furthest point that
23 you went to ---?

24 A. I don't think it was any
25 farther than 42, 43 wall, that's

91

01 about as far as we went in. Like I
02 said, we had no detectors with us at
03 this point, and didn't know what we
04 would be walking into, so we withdrew
05 from that point there.

06 Q. So then you came back to ---?

07 A. So we come back down wherever
08 this phone was at --- and again, I
09 cannot tell you what wall, what block
10 that phone's at. And waited on those
11 guys to come back in. When they came
12 back in, we rode the track up here to
13 32 wall and stopped there and put a
14 curtain up over --- a check curtain
15 up into place of where the stopping
16 was blown out.

17 Q. Okay. Let me have the pink
18 marker. Is pink okay? Just draw a
19 circle around the controls that you
20 re-established. That's on the way
21 in?

22 A. That's on the way in, yes. So
23 we fixed that one. Then we rode on
24 up to 42, and ---.
25 Q. Excuse me. Did you happen ---

92

01 did you use the transportation that
02 Wilfong came in with?

03 A. Yes, sir. Yes, sir.

04 Q. Okay. What did you do your
05 jeep?

06 A. That was the jeep that I was
07 on. See, Wilfong took --- used our
08 jeep to take the crew back outside
09 and got the supplies and came back
10 in.

11 Q. So at that point you didn't
12 have any transportation?

13 A. Right. Well, we were on foot
14 until he got back. So we rode up to
15 this point ---.

16 Q. And that's 42 wall?

17 A. That's 42. And we hung a ---
18 we repaired that one as well. I
19 think that's probably where CO alarms
20 started picking up some carbon
21 monoxide, so ---.

22 Q. Did you happen to notice the
23 parts per million ---

24 A. No, sir.

25 Q. --- or anything like that?

93

01 A. No, sir.

02 Q. What about methane or oxygen,
03 or anything like that?

04 A. Never did alarm on methane or
05 low oxygen.

06 Q. Did you happen to notice any
07 readings at all?

08 A. No, sir. So at that point we
09 decided --- we de-energized the trip
10 right there, and stepped over here
11 into the intake ---.

12 Q. I'm sorry. When you said
13 de-energize, you're just talking
14 about turning this switch off?

15 A. And we unplugged the
16 batteries.

17 Q. You unplugged the batteries?

18 A. Yes, sir.

19 Q. Why did you unplug the
20 batteries?

21 A. Because if there was something
22 coming down over, just try to prevent
23 another explosion. So then we
24 started on up through here on foot
25 into the intake, and I think that we

94

01 repaired one there. From 42 to 49, I
02 can't tell you how many we fixed and
03 how many were still intact. But I
04 know we fixed some and some were
05 intact.

06 Q. Okay. You just don't have any

07 numbers or ---?

08 A. I have no numbers.

09 Q. Nothing sticks out?

10 A. No, sir. You might fix ---

11 you know, this one may have been in,

12 it may be fixed too, and then maybe

13 --- I have no way of knowing.

14 Q. Can I ask you this then?

15 A. Yes, sir.

16 Q. Do you recall like which

17 direction they were blown?

18 A. Everything that we had seen

19 seemed to be blown from right to

20 left, from the intake toward the

21 track.

22 Q. Was the whole wall blown out,

23 or was it just partial wall ---?

24 A. The 32 wall, maybe two-thirds

25 of it was gone. As you got in here,

95

01 it was just about all of it. It was

02 different. Every one different. But

03 I think most of them, they were just

04 about all gone.

05 We worked our way up, like I

06 said, 49, and I knew there was a

07 functioning telephone right here,

08 because that's the one I had

09 initially talked to Owen when I was

10 on the surface, before I ever started

11 underground. This is where he had

12 called me from. So I stepped over

13 here.

14 Q. You were stepping over into
15 the track entry?

16 A. I'm stepping back into the
17 track entry. And like I said, the
18 phone line runs up the track entry.
19 I wanted to get us a phone over here
20 in the fresh air, but I didn't want
21 to cut the line going toward the Two
22 Left section. So I stepped over
23 toward this belt head and just cut
24 the phone line somewhere in that area
25 and just worked it back over and

96

01 tossed it back over into the intake.

02 We also had some first-aid ---
03 an EMT station set up right there,
04 and we put all those ---.

05 Q. When you say right there,
06 you're talking about the crosscut
07 between the track and the ---?

08 A. And the intake, yes. There
09 were two big EMT boxes and a
10 stretcher there, and we moved those
11 over into the intake as well. And I
12 can say for certain that that was one
13 that we repaired. I can say that
14 right here this overcast was ---.

15 Q. Right here, meaning ---?

16 A. At ---.

17 Q. Block 51?

18 A. Block 51. This overcast ---
19 Q. Over the track entry?
20 A. --- over the track was
21 damaged. It was an easy short
22 circuit for the air. My concern was
23 getting air up here where these guys
24 were at, so we just checked that off
25 totally.

97

01 Q. So there would be no air going
02 over towards --- a limited amount
03 going over the overcast ---

04 A. Exactly. Just what leakage
05 ---.

06 Q. --- on the section?

07 A. Only what leakage we would
08 have. Then we started working our
09 way on up through here. Again, I
10 can't tell you what we fixed and what
11 we didn't. I have no idea. I do know
12 that the last place that we repaired
13 a control was at 57.

14 Q. Fifty-seven (57) block, the
15 last control between the track and
16 the ---?

17 A. Yes. At some point along
18 through here, like I said, we noticed
19 --- we just didn't feel that we had
20 the velocity that we felt we should
21 have. I did start thinking that we
22 might have had some damage outby,
23 that we just missed as we was coming

24 in. So somewhere along through here,
25 that's when I had Owen Jones and

98

01 Vernon Hofer start out the escapeway,
02 checking the ventilation controls as
03 they went.

04 ATTORNEY CRAWFORD:

05 For the record, along
06 through here, what area do you
07 mean?

08 A. Do what, sir?

09 ATTORNEY CRAWFORD:

10 When you said along
11 through here ---.

12 A. I'm going to say 55, 56, 57
13 wall, somewhere in that area.
14 Because they started out to check
15 those ---.

16 BY MR. SWENTOSKY:

17 Q. They were in the primary
18 escapeway?

19 A. They were in the primary
20 escapeway, yes. And that's me, Dick
21 Wilfong, and Al Schoonover. I walked
22 up to this point here ---.

23 Q. This being?

24 A. The 58 wall.

25 Q. The 58 block between the track

99

01 and the primary?

02 A. Yes. And I do know that that

03 one was --- that one was damaged. I
04 do know that one was --- I got up
05 there to see if that was damaged, but
06 as we were sitting here the CO ---.
07 Q. Sitting there meaning roughly
08 between 58, 57 block?
09 A. Yeah. More towards 57. We
10 were just sitting there just watching
11 the smoke that --- you could see the
12 smoke up in this area. Inby 58, the
13 smoke was very thick, very dense.
14 Q. What color was it?
15 A. I don't know. It was smoke.
16 We just sat there and watched it, and
17 you would hear something, I don't
18 know, fall maybe over in this
19 direction, and I would go to this
20 point and yell, or you might hear
21 something over here and I would yell
22 just in the general direction of
23 where I'd hear something fall.
24 Q. Does it sound like something's
25 falling, like a roof falling?

100

01 A. No, not a roof fall, just
02 something small. It could have been
03 a person stumbling for all I knew.
04 Q. Okay.
05 A. I'm reaching at this point.
06 Q. I understand, sir.
07 A. So at that point, that's where
08 we decided --- you know, we didn't

09 feel like we could push on any
10 further.

11 Q. Did you happen to take any
12 methane or CO2 readings?

13 A. I didn't, no.

14 Q. Did anybody else, or did you
15 see anybody else?

16 A. We had a detector, but whether
17 --- we were constantly monitoring the
18 CO. And all I can tell you is that
19 it was still ---

20 Q. Beeping.

21 A. --- beeping, but I didn't ask
22 what the levels were or anything.

23 Q. And you mentioned the velocity
24 in the air was less at that point at
25 the outby?

101

01 A. I'm not going to say less now,
02 but I just probably --- less than
03 what we felt like we should have at
04 our backs at that point. You know,
05 we had just pretty much diverted all
06 of the air flow toward this one
07 section. We felt like we should have
08 more wind to our backs than what we
09 did. And that just --- we started
10 questioning that maybe we had missed
11 something.

12 Q. Okay. And then at that point,
13 what did you do after your

14 conversation at 57?
15 A. Well, we waiting there, I
16 don't know how long at that --- we
17 just finally --- the three of us
18 agreed that it would be best if we
19 just go ahead and get out of the
20 mines and let the professionals come
21 in at this point.
22 Q. Okay. On the way out then,
23 did you re-establish any ventilation
24 controls or do anything on your way
25 out?

102

01 A. I did stop back at this phone
02 and called outside to tell them ---
03 let them know that we were coming
04 out.
05 Q. At this phone meaning?
06 A. At 49.
07 Q. Forty-nine (49) wall.
08 A. The one I placed in the
09 intake, 49. I think I may have
10 talked to John Collins at that point
11 and informed him that we would be
12 heading out of the mines.
13 Q. Again, did you make any
14 ventilation controls --- or changes
15 in the ventilation controls?
16 A. No, I didn't.
17 Q. Did anybody else?
18 A. I don't know that --- there
19 was some ventilation control damage

20 that I noticed. When we got to this
21 point right here, at the Two Right
22 panel, it looks to be around 12 block
23 on Four belt. We actually --- they
24 were traveling what we had marked as
25 the primary escapeway.

103

01 Q. What do you mean they were
02 traveling?

03 A. That would be the other ---
04 Dick and Al. And I had them move
05 over to this one, and I stayed here.

06 Q. This one being the extreme ---

07 A. Extreme right, yes.

08 Q. --- extreme right entry
09 against this column?

10 A. Yes. I had them coming down
11 that one, and I stayed in this one.

12 Q. That would be the primary ---?

13 A. That would be the third from
14 the right. The one right adjacent to
15 the ---.

16 Q. Right next to the track?

17 A. And I was just --- I wanted to
18 check these stoppings down through
19 this entry and have them check it
20 through here. And this is where they
21 caught up with Vernon and Owen. And
22 Vernon and Owen ---.

23 Q. When you say there meaning
24 right at --- to your right?

25 A.

Somewhere in that vicinity.

104

01 And Vernon and Owen have since told
02 me that they had hung the curtain
03 there, but I have no idea what ---
04 where they hung it, or what they did.
05 We didn't --- you know, me, Dick and
06 Al didn't know. But we walked on
07 through here and we all got back
08 together once we got out by this and
09 just followed the primary escapeway
10 onto the surface.

11 Q. Whenever you joined up that
12 was around ---?

13 A. That would have been --- maybe
14 around One or Two wall on Four belt.

15 Q. One or Two wall on the Four
16 belt?

17 A. Yeah. Somewhere in that
18 vicinity we were --- wall five when
19 we got together.

20 Q. Just draw a line over there.

21 A. It's only a guess.

22 ATTORNEY CRAWFORD:

23 And you're referring to
24 Exhibit Number One?

25 MR. SWENTOSKY:

105

01 Exhibit Number One.

02 BY MR. SWENTOSKY:

03 Q. Did you or anyone else don an
04 SCSR at any point?

05 A. None of the men with me donned
06 an SCSR.

07 Q. And none, that was you ---?

08 A. Me, Al Schoonover, Dick
09 Wilfong, Vern Hofer and Owen Jones.

10 Q. Did you have an SCSR with you?

11 A. Yes, sir.

12 Q. Did you store any additional
13 SCSRs underground anywhere in the
14 mine?

15 A. No, sir. None that I would be
16 aware of.

17 Q. At any time prior to the day
18 of the accident ---?

19 A. Not to my knowledge.

20 Q. Did you take any notes or
21 anything while you were underground
22 during that ---?

23 A. No, sir.

24 Q. Do you know if anyone else
25 took any notes?

106

01 A. Dick Wilfong just made a
02 notation that 57 was the last
03 ventilation control that we put up.
04 And he may have made a notation that
05 42 and 32 we put curtains up, but
06 that was --- he was jotting that down
07 on the way outside. As far as I know
08 that's the only ---.

09 Q. In a notebook, or something of

10 that sort?

11 A. I don't even know if he --- he
12 may have done it in his mind for all
13 I know.

14 Q. Is there anyone else that took
15 any notes?

16 A. Not that I'm aware of, no.

17 Q. Do we know if we can get a
18 copy of those notes?

19 A. I don't know that they exist.

20 ATTORNEY MOORE:

21 I don't know whether or
22 if any were made underground
23 or if they exist at all.

24 BY MR. SWENTOSKY:

25 Q. While you were underground,

107

01 did anybody take any quantity
02 readings? I know you've told me
03 about the quality readings, you've
04 told me ---.

05 A. No. No, quantity, no.

06 Q. No quantity. And the only
07 conversation that you had with anyone
08 on the surface on the way out was at
09 49 wall?

10 A. Forty-nine (49), yes.

11 Q. And who did you speak with,
12 again?

13 A. I think it was John Collins.

14 Q. John Collins. And that's the
15 state inspector?

16 A. Yes, sir.

17 Q. And I know we spoke about this
18 a little bit while we were at the
19 map, but what caused you to terminate
20 the rescue attempt?

21 A. The fact that the smoke just
22 didn't seem to be dissipating. And
23 Dick's experience and Al's experience
24 in mine rescue, and their concerns
25 that if we were forcing fresh air

108

01 over another potentially explosive
02 atmosphere we could create another
03 explosion. Those were some of the
04 things we talked about. The biggest
05 thing was just the fact that the
06 smoke just didn't seem to be going
07 anywhere.

08 Q. And a moment ago I asked you,
09 did you take any readings
10 underground, quantity --- did anyone
11 take any ---?

12 A. Not that I'm aware of.

13 Q. What time did you exit the
14 mine; do you have any idea?

15 A. I had no idea, but I have been
16 later told it was approximately 10:30
17 when we exited the mines.

18 Q. Okay. And I believe you did
19 say that --- how did you exit the
20 mine? You said you were on foot?

21 A. On foot.

22 Q. And you exited the mine on

23 foot to the surface?

24 A. To the surface, yes, sir.

25 Q. And you left that mantrip

01 underground?

02 A. Yes, sir.

03 Q. Using your green marker ---

04 we'll go back up. And we talked

05 about it, but we need to mark it for

06 the record. The route that you

07 traveled out of the mine. I know we

08 described it, but I'd like to have it

09 on the map if we could. That would

10 be on Exhibit One. You're using the

11 green marker to mark that.

12 A. This may not be exact. It'd

13 be nice if I had a better memory.

14 Q. Thank you. Did anyone go back

15 into the mine after you exited the

16 mine, or did you go back in, or ---?

17 A. Not that I'm aware of, no.

18 Q. Okay. What took place after

19 you exited the mine?

20 A. We just walked up out of the

21 pit to where the office building was

22 at. We were immediately escorted

23 into my office.

24 Q. Who escorted you?

25 A. I have no recollection of ---

109

01 everything from this point on to me
02 is a blur. I have no recollection of
03 --- I know that we were asked to go
04 into my office for a debriefing. And
05 I have no recollection of even who
06 was in there with us at the time. I
07 know that the guys that were with me
08 were in there with me, but I couldn't
09 tell you who was talking to us.

10 Q. Okay. When you exited the
11 mine --- I haven't been to the mine,
12 but I understand it's in a pit; ---

13 A. Uh-huh (yes).

14 Q. --- is that correct?

15 A. Yes, sir.

16 Q. Okay. When you got out, was
17 there anyone there to meet you?

18 A. Yeah, there were people there,
19 but nobody --- nobody jumps to mind
20 of who I've talked to or anything. I
21 couldn't tell you.

22 Q. Did anyone, or someone ask you
23 to come up, or ---?

24 A. Somebody had --- I think
25 somebody said they want to talk to

111

01 you up there, come on up. I know
02 that when I got to the office, to the
03 building we have a hose that we wash
04 --- a wash-down hose to hose mud off
05 our boots. And I went to wash the

06 mud off my boots, and they said no,
07 don't even do that, come straight to
08 the office.
09 Q. Were all the --- were the
10 other gentlemen ---?
11 A. We all exited the mines
12 together.
13 Q. Together?
14 A. Yes, sir.
15 Q. Were they also asked to ---?
16 A. Yes, sir. Yes, I'm sure they
17 were, because they were in the office
18 with me.
19 Q. So you all went together?
20 A. Yes.
21 Q. I was going to ask you who did
22 you report to on the surface,
23 but ---.
24 A. I'm not going to be much help
25 from here on; okay?

112

01 Q. I understand. I understand.
02 What's your assessment of the
03 situation, meaning how was it
04 handled, and what was your thought
05 process?
06 A. At this point?
07 Q. Yeah.
08 A. I can't --- I can't give an
09 answer on any of this, because the
10 next two days to me, I was no help to
11 anybody. I was very --- I gave what

12 input I could when asked questions,
13 but --- I really don't have much
14 recollection.

15 Q. Okay. What role did you play
16 in the rest of the rescue operations?

17 A. Just informative. If they
18 needed information from me, I'd
19 provide it.

20 Q. What information did you
21 provide?

22 A. I don't know. They may have
23 asked locations of --- of course, we
24 detailed what we had done, but if
25 there was specific questions about

113

01 his --- should there be a battery ---
02 where's battery-powered equipment
03 located in the mines. That was one
04 thing we were asked to try to
05 identify. Really very little input
06 to my recollection.

07 Q. I know you're saying it's a
08 blur, but what activities was going
09 on whenever you arrived on the
10 surface?

11 A. I'm not going to be any help
12 to you here at all. I'm sorry.

13 Q. Okay. Do you know exactly who
14 was directing those activities?

15 A. No, sir, I do not.

16 Q. Did you make any decisions on

17 the surface?

18 A. I sincerely doubt if I did. I
19 have no recollection of it.

20 Q. Did you record --- did anyone
21 record your debriefing?

22 A. Again, I couldn't tell you.

23 Q. When was the monitoring of the
24 mine atmosphere at the mine opening,
25 when did that commence?

114

01 A. I'm sorry, sir.

02 Q. Do you know who made those
03 decisions?

04 A. No, sir, I do not. You have
05 to understand that one of the victims
06 was a family member, so I'm ---.

07 Q. Yes, I understand. I'm
08 sensitive to that. Unfortunately, we
09 do have to ask these questions.

10 A. I understand that. I just was
11 very little help to anybody at this
12 point.

13 Q. Okay. I just do want to ask
14 you some of the questions ---

15 A. That's fine.

16 Q. --- maybe to jog your memory
17 with them or something like that.

18 After the command center was set up,
19 can you tell me anything about the
20 rescue efforts after that?

21 A. Not particularly, no. I was
22 drifting in and out.

23 Q. Do you happen to know when the
24 decision was made to drill boreholes?

25 A. No, sir, I do not.

115

01 Q. So then, I guess you don't
02 know who made the final decision?

03 A. No, sir, I do not.

04 Q. Okay. How familiar are you
05 with the old Two Left main seals?

06 A. With the seals themselves, or
07 just the area?

08 Q. Anything you know about those.
09 How familiar you are with that area?
10 Have you been around there?

11 A. Yeah, I was around there.
12 Just a little familiar.

13 Q. Okay. Do you know who built
14 them from start to finish?

15 A. The seals themselves?

16 Q. The seals themselves, yes.

17 A. I made a list of people that,
18 to my recollection that I know were
19 involved in the construction of the
20 seals.

21 Q. Okay. Would you be able to
22 provide us with ---?

23 ATTORNEY MOORE:

24 I don't know whether
25 you've seen the list, but we

116

01 can identify it. I believe

02 it's been given to MSHA, but
03 if not, I'll read it now.
04 James Scott from Garrett Mine
05 Services participated,
06 supervised the completion of
07 the seals with the two red
08 hats, was it George Brooks and
09 Casey ---.

10 A. Casey Short and George Brooks.

11 ATTORNEY MOORE:

12 Casey Short. But prior
13 to Mr. Scott being involved,
14 and his nickname is Skip, as I
15 understand it, Jeff Snyder,
16 who was a foreman, was
17 involved. And I'm not sure
18 who they had working for him
19 at the time when they did
20 that.

21 And we have provided
22 today to Mr. Harris of MSHA
23 and to Brian Mills of the
24 State, Mr. Scott's map that he
25 worked from as well as the

117

01 portion of the ventilation
02 plan related to the seals that
03 we had. Bill Patton was there
04 when he was building,
05 finishing the seals.

06 MR. SWENTOSKY:

07 And you're going to

08 provide us with that list?

09 ATTORNEY MOORE:

10 Why --- I just gave it
11 to you verbally. If there's
12 additional lists that were
13 missing, we'll add to it, but
14 those are the people involved
15 that we are --- that I'm aware
16 of at this point. And I don't
17 know whether Jeff is aware of
18 anybody else who worked with
19 Jeff Snyder, but if not, we'll
20 look for an additional list
21 and provide that to you at the
22 end.

23 A. I can throw --- I can provide
24 a few more names there. Marty
25 Conrad, Harmon Jordon, John Jackson

118

01 and Mike Triplett, they worked on the
02 seal some as well.

03 BY MR. SWENTOSKY:

04 Q. Who was in charge of building
05 the seals?

06 A. It was just whoever was ---
07 Mr. Snyder, when he was there, he
08 would have been. When Mr. Scott was
09 there, he would have been. Of those
10 other four that I mentioned, Marty
11 Conrad would have taken a lead in
12 that.

13 Q. They're foremen?
14 A. Yes, sir.
15 Q. All from Anker?
16 A. All but James Scott, George
17 Brooks and Casey Short. Those three
18 are Garrett Mines, the rest were
19 Anker employees.
20 Q. Let me just ask you, Garrett
21 Mine Supply, where are they located?
22 A. Maryland. Oakland, Maryland,
23 I think is their main office.
24 Q. You wouldn't have their
25 address?

119

01 A. Not off the top of my head,
02 no.
03 Q. Okay. How was the ventilation
04 plan submitted to the MSHA district
05 office?
06 A. That's done at the office, so
07 I don't know.
08 Q. Okay. Do you know who's
09 responsible for submitting the plans?
10 A. A couple people that could
11 have been responsible, but it would
12 have possibly been Joe Myers or
13 Johnny Stemple, Ty Coleman, one of
14 those three probably would have been
15 the one.
16 Q. Okay. Are you involved at all
17 in submitting those plans?
18 A. No. At this point, no. Joe

19 Myers and I have some history
20 together. We've worked together in
21 the past, and I'm familiar with the
22 process on Omega seals themselves.

23 So Joe --- it was just basically a
24 standard Omega seal plan.

25 Q. But whenever they submit the

120

01 plan, or whenever the decisions are
02 made to submit plans, do they speak
03 to you about them before they're
04 actually submitted to MSHA?

05 A. Yeah. They'll typically ---
06 it'll just be to touch base with me
07 to let me know. If it's something
08 significant, something I may not be
09 familiar with, they'll probably fax
10 me a copy over and let me know, hey,
11 just look it over, this is what we're
12 going to submit. But in this
13 particular plan --- like I said, I'm
14 familiar --- it was just basically
15 the same plan we'd use in the past,
16 Joe and I. He would have just ran
17 that through without referring to me
18 on it.

19 Q. Okay. Do you have approval in
20 your ventilation plan for preloaded
21 block seals? They're commonly known
22 as packsetter seals?

23 A. I think we do, because we have

24 a set of seals in the mines that I
25 think were packsetters.

121

01 Q. That was my next question.

02 A. I think that one of the sets
03 of seals we had were packsetters.

04 Again, that's just me.

05 Q. What location would that be?

06 A. That's near --- that's behind
07 the tail of Number One belt.

08 Q. What area would that have been
09 called?

10 A. I have no idea. It's just
11 some old workings from when another
12 company was mining in there.

13 Q. That would have been your
14 original set of mains?

15 A. Yes, sir. The original mains.
16 And again, I'm just going from memory
17 that I think those were packsetter
18 seals, but I'm not exactly sure.

19 Q. Have you ever been up there?

20 A. Yes, I have. I went by those
21 seals, but I don't recall if they
22 were packsetters or not.

23 Q. Do you know when they were
24 installed?

25 A. No, sir, I do not.

122

01 Q. In October a request was made
02 to use Omega seal construction of
03 --- and they were to be eight-foot

04 wide --- or excuse me, eight-foot
05 high and 20 feet wide. Being that
06 you had packsetter seals, do you know
07 why the decision was made to use
08 Omega seals, or submit that plan?

09 A. Just from my own standpoint
10 with my --- I have some history.

11 I've built a few seals in my career,
12 and if I'm building the seal, I would
13 prefer to build an Omega seal.

14 Q. Can I ask you why?

15 A. I don't know. I've built
16 several of them, and I'm real
17 comfortable with that seal.

18 Q. Well, where were those seals
19 built?

20 A. In the past?

21 Q. Yes.

22 A. When I was employed with
23 Brooks Run.

24 Q. The reason you like those
25 seals better than others, is it

123

01 because maybe they're a lighter
02 block, or ---? I'm just curious why
03 you like those better than others.

04 A. I'll just put it to you the
05 way I put it ---.

06 Q. Educate me.

07 A. As my rule of thumb, if I'm
08 the one doing the labor, I like the

09 Omega seal. If I'm bringing in
10 somebody from the outside, I like the
11 packsetter. But I like the Omega
12 seal. I felt like we got a better
13 seal, less leakage over time. I was
14 just --- once I built a few of them
15 --- I've built a couple different
16 types, and I was real comfortable
17 with the Omega seal.

18 Q. I know you had mentioned that
19 Mr. Stemple submits the plans, but do
20 you know where the information was
21 received that was submitted to MSHA?

22 A. No, sir.

23 Q. The information meaning the
24 drawings?

25 A. No, sir, I do not.

124

01 Q. Who is the manufacturer of the
02 Omega?

03 A. I think it's Burrell.

04 Q. Burrell (corrects
05 pronunciati on) ---

06 A. Burrell.

07 Q. --- Mining.

08 A. Okay. That's it.

09 Q. Okay. Burrell Mining
10 Products. Okay. Have you had any
11 discussion with their reps about the
12 Omega seals or the Omega blocks?

13 A. No, sir.

14 Q. You didn't speak to anyone
Page 102

15 from that company ---

16 A. No, sir.

17 Q. --- concerning these

18 particular blocks?

19 A. No, sir.

20 Q. Did Burrell Mining Products

21 provide any training or any data,

22 installation requirements, or did

23 they participate in the construction

24 of those?

25 A. No, sir.

125

01 Q. The Omega blocks that were

02 used, were they brand new blocks, or

03 did you re-use any of the blocks?

04 A. Recycle any?

05 Q. Recycle any, yes?

06 A. No, sir, they were all new.

07 Q. All new blocks?

08 A. Yes, sir.

09 Q. Okay. Later in October of

10 2005, there was approval granted for

11 Omega blocks and their redesigns.

12 And those redesigns --- and I believe

13 that was --- the approval was given

14 on December 8th, I believe, and it

15 was to use a 10-foot high by a

16 20-foot wide block, or a seal with a

17 pilaster. And then also, 12-foot

18 high by 20-foot wide by using a pier,

19 the seal was shown as eight-foot high

20 and the pier four-foot high.
21 A. Exactly.
22 Q. May I ask you why was that
23 submitted?
24 A. We have other panels that we
25 were wanting to seal, and we had a

126

01 concern that it --- it was just
02 basically trying to cover all the
03 bases here. If we had an entry that
04 was over eight-foot high, we would
05 need another approval to build the
06 seals a little different. And we
07 were just anticipating that.

08 Q. Okay. And you had mentioned
09 that another panel that you wanted to
10 seal, did I understand you correctly
11 that you also were going to use them
12 in the --- on the Two Left main
13 seals, or you thought you might need
14 them; is that ---?

15 A. Initially, I think there was
16 one entry that when the seal crew
17 came out there was a little
18 miscommunication. They said they had
19 a place nine-foot high, and that's
20 what initially started the discussion
21 between me and Joe Myers, that we
22 needed approval for --- that seal was
23 only good for eight foot, but they
24 actually located that seal at a point
25 where it was in the eight-foot range

01 when they --- actually when it was
02 time to construct that seal.

03 Q. So then all those seals that
04 we're speaking about, Two Left old
05 mains, are all those seals eight-foot
06 or less?

07 A. To the best of my knowledge.

08 Q. Okay. They didn't use any of
09 this ---?

10 A. No. They only built the
11 8-foot by 20, the first one we had
12 the approval on.

13 Q. Okay. And I know sometimes
14 you do things that do more, but were
15 there any pilasters ---?

16 A. No, sir. No pilasters.

17 Q. You used no pilasters in any
18 of those seals?

19 A. No, sir.

20 Q. Were any of them built with a
21 pier underneath?

22 A. No, sir.

23 Q. Okay. The seal in the Number
24 One entry, if you recall, it was at
25 an angle?

01 A. Yes, sir.

02 Q. Okay. Why was that seal
03 placed in that particular --- do you
04 want to look at the map?

05 A. Yeah.

06 Q. I think we can see it on

07 Exhibit Two. And that would be in

08 the Number One entry, the seal at an

09 angle.

10 A. Well, to come straight across,

11 it was a matter of getting --- kind

12 of staying in that 20 by 8 room. But

13 if you --- also one of the provisions

14 of this is these have to be ten-foot

15 in by this corner of this rib right

16 here.

17 Q. Okay. That's a rib on the

18 right corner ---

19 A. On the right corner, yes.

20 Q. --- of the seal?

21 A. Yes, sir.

22 Q. And that was the reason?

23 A. Yes, sir.

24 Q. And all ten of those seals are

25 Omega seals?

129

01 A. Yes, sir.

02 Q. Do you recall which of those

03 seals contained the water trap and

04 also the air sampling too?

05 A. The water trap was in the far

06 left seal, which would have been

07 Number One entry.

08 Q. That the angle seal?

09 A. That's the angle seal, yes.

10 The gas sampling pipe was in the far

11 right.

12 Q. Okay. Was there any water
13 coming out of the water trap?

14 A. Not when it was last examined,
15 no.

16 Q. Was there ever any water
17 coming out?

18 A. No, none that I'm aware of.

19 Q. Do you know who examines those
20 seals?

21 A. I'm not sure. It was probably
22 --- the last examination done, I
23 think it was John Boni that did it,
24 but that's just --- I'm not sure.

25 Q. Do you have a particular

130

01 person that ---?

02 A. John typically does it. John
03 Boni or Ron Grall, one of those two
04 would typically do that examination.

05 Q. Are you familiar with the
06 construction of those ---?

07 A. Yes, sir.

08 Q. Was the --- or did you review
09 the ventilation plan requirements
10 with the persons who were involved
11 with the construction of those seals?

12 A. Yes, sir. I --- again, this
13 is three months ago we're talking
14 about.

15 Q. I realize that. To the best

16 of your recollection.
17 A. To the best of my
18 recollection, yeah, I would have
19 reviewed that with them. And I would
20 think I would have probably given
21 them a copy of the plan that we
22 submitted that details the
23 construction of the seals.
24 Q. And you think you might have
25 done that?

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01 A. I think I would have.
02 Q. Okay. Would that have been
03 done before or during the
04 construction?
05 A. It probably would have been
06 done --- the day construction started
07 I would have probably been over to it
08 prior to construction starting.
09 Q. Could you describe that
10 construction?
11 A. In general or specifically
12 these seals, because ---?
13 Q. These seals here.
14 A. I didn't witness any of the
15 construction of them myself.
16 Q. Was this the first set of
17 Omega seals?
18 A. Yes, sir. In Sago, yes.
19 Q. And in the --- I called it the
20 One North, what we talked about
21 earlier, those first set of seals.

22 You said those were packsetter seals;
23 is that correct?

24 A. To the best of my
25 recollection.

132

01 Q. Okay. Do you know what date
02 the old Two Left main seals were
03 started?

04 A. The first load of blocks that
05 I ordered for those seals was
06 delivered on October the 26th, so
07 construction had started sometime in
08 that time frame right there.

09 Q. Do you know when they were
10 completed?

11 A. December 13th, I think is when
12 we completed construction on them.

13 Q. Was there any water in those
14 locations where the seals were to be
15 built?

16 A. No.

17 Q. You didn't have to redirect
18 any water out of there, or ---?

19 A. Not that I'm --- they didn't
20 tell me if they did. I'm not aware
21 of any.

22 Q. Do you remember seeing any
23 trenches or anything cut into the
24 ribs?

25 A. No, sir, I don't remember any.

133

01 I don't have any recollection of it.
02 Q. How thick are those Two Left
03 seals?
04 A. Forty (40) inches thick.
05 Q. Were they all the same
06 thickness?
07 A. Yes.
08 Q. What type of mortar --- and I
09 know you said that you weren't there,
10 but what type of mortar was used to
11 build those seals?
12 A. Block bond. It's in a blue
13 bag. I'm not sure --- that's the
14 only way I distinguish it, is it's in
15 a blue bag. At one point we had some
16 delivered in the green --- it comes
17 in a green bag and a blue bag.
18 There's different specs on what's in
19 each bag. And we had some green
20 delivered, and I wouldn't let them
21 use it on it. I told them we had to
22 use the blue bags on the seals,
23 because that's what it specified.
24 Q. Okay. I was going to ask you,
25 what was the reason you used the

134

01 blue?
02 A. One is block bond and one is B
03 bond. And it specifies block bond.
04 Q. Okay. And that was in what
05 color of bag?
06 A. Blue.

07 Q. Blue ---
08 A. Yes.
09 Q. --- was the block bond?
10 A. Yes.
11 Q. The mortar, what does it have
12 to be mixed with when you mix it?
13 A. Just water.
14 Q. Just water? Does the mortar
15 ever come in buckets? I mean, I know
16 you said you had it in a bag, but do
17 you get it in ---?
18 A. No, nothing --- I'm not aware
19 that you can get it in buckets. I've
20 never gotten anything but bags.
21 Q. Okay. Did you order the
22 supplies?
23 A. No, sir. I sign a requisition
24 to have them ordered, but I don't do
25 the ordering.

135

01 Q. Can you use any other mortar
02 --- any other type of mortar than
03 block bond?
04 A. No, sir.
05 Q. Whenever you build these
06 seals, does the mortar have to be
07 applied to the entire horizontal
08 joint?
09 A. To the entire horizontal
10 joint?
11 Q. Entire.

12 A. Entire? It doesn't actually
13 specify it has to be on the entire
14 joint, but we typically do.
15 Q. What about the vertical
16 joints?
17 A. It doesn't specify that it's
18 on the --- it has to be --- there is
19 a mortar joint there, but --- again,
20 I wasn't involved in the
21 construction, so I don't know.
22 Q. Yeah, I understand.
23 A. I'm just telling you how ---
24 when I've built them in the past, we
25 filled everything up with mortar.

136

01 Q. The entire surface?
02 A. Yes, sir. We filled
03 everything up with mortar. I have no
04 reason to believe that these would
05 have been done any different.
06 Q. Was B bond mortar ever used
07 for construction of Omega seals?
08 A. No. If it was I'm not aware
09 of it. Like I said, there was some
10 delivered. I remember when it was
11 delivered I told them they couldn't
12 use that on the seals. It had to be
13 block bond.
14 Q. Were there any sections of
15 track that ran through the seals?
16 A. No. The track was removed
17 prior to the seals being constructed.

18 Q. Okay. The track was
19 completely removed, ---
20 A. Yes, sir.
21 Q. --- not just broke, or ---?
22 A. No, it was completely removed.
23 We recovered it before we constructed
24 the seals.
25 Q. Well, were there any roof mats

137

01 present in the vicinity of the old
02 Two Left main seals?
03 A. By roof mats you mean?
04 Q. Meaning wire mesh.
05 A. Yes, sir. At least three of
06 the entries would have had screen
07 extending through them. I instructed
08 them to cut the screen down where the
09 seals were going to be constructed so
10 that the screen wouldn't be extending
11 through the seals.
12 Q. Okay. And do you recall what
13 three seals those were?
14 A. The seal that was in the old
15 belt entry, the seal that was in the
16 old track entry and the seal that was
17 in the primary escapeway would have
18 had screen through them.
19 Q. Okay. Do you know exactly how
20 that screen was --- well, it was
21 taken down, but the distance between
22 the screen that was left up and the

23 screen that was taken down, how much
24 of it in length was taken down?

25 A. Well, if the seal's 40 inches

138

01 thick they're going to at least cut
02 down 40 inches. But I would suspect
03 they would cut down more than that.

04 Q. Okay. So would I be correct
05 in saying that the mesh directly over
06 top of the seal was removed?

07 A. You'd be correct that I
08 instructed them to remove the mesh.

09 Q. Okay. I understand.

10 A. I have no reason to believe
11 they did not do that, but ---.

12 Q. Okay. How was this screen
13 attached to the roof?

14 A. With roof bolts.

15 Q. Roof bolts?

16 A. Yes. In most cases it's put
17 up on pattern as we're advancing the
18 faces.

19 Q. Were there any cables that
20 passed through the seals?

21 A. No, sir.

22 Q. Were there any pipes or
23 anything --- any other conductive
24 material or metallic material?

25 A. Only the water trap and the

139

01 gas sampling pipe.

02 Q. What was that water trap made
Page 114

03 of?

04 A. I think --- I'm sorry, I think
05 the water trap, I think it was PVC
06 plastic.

07 Q. PVC plastic?

08 A. I think so. So that would be
09 just the gas sampling pipe, and it
10 was two-inch steel pipe.

11 Q. Two-inch steel pipe?

12 A. Yes, sir.

13 Q. What was on the outby side
14 --- what was attached to the outby
15 side of that pipe?

16 A. Nothing attached to it, it
17 just extended through the seal.

18 Q. Okay. But I mean, did you
19 have a valve or anything?

20 A. Yeah. The pipe extended
21 through the seal is 40 foot inby the
22 seal, and then we had a half-inch
23 copper pipe going inside of the
24 two-inch steel pipe, and it had a
25 plug --- it sealed up with a plug,

140

01 and the copper tubing had a cutoff
02 valve on it that you could open for
03 the gas sampling.

04 Q. Okay. So the steel pipe acted
05 as a conduit to put the --- am I
06 understanding that correctly?

07 A. Yes, sir.

08 Q. And then extended 40 feet?
09 A. Forty (40) feet in by the seal,
10 yes, sir.
11 Q. How was it held to the roof?
12 A. A series of cribs were
13 installed. It kind of rested in the
14 cribs.
15 Q. Was it attached to any roof
16 bolts at any point, or anything like
17 that?
18 A. It's possible that when they
19 initially put it up they may have
20 hung it from the roof, supported it
21 from the roof and maybe never removed
22 it. I have no idea.
23 Q. Did you ever question --- or
24 in your own mind, did you ever
25 question whether those seals were
01 installed properly?
02 A. In my mind, no. They were
03 good men working on them.
04 Q. Okay. Did you ever question
05 the men that were working on them as
06 they were under construction about,
07 you know, how they were installing
08 them, or ---
09 A. No.
10 Q. --- question them in any way?
11 A. I would maybe have questioned
12 them on their progress. That would
13 have probably been about it.

141

14 Q. And I believe I asked you this
15 before, but if I didn't, who is the
16 company person that's responsible for
17 gaining approval from MSHA for
18 ventilation plans, which in this case
19 would have been the seals?

20 A. Again, it could have --- I'm
21 not sure. I would think that this
22 one would have been Joe Myers.

23 Q. And you are responsible for
24 --- are you responsible for the seal
25 construction selection?

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01 A. Am I responsible for it?

02 Q. Yes.

03 A. Solely? Are you talking about
04 type of seal, what we're going to
05 install?

06 Q. Yes.

07 A. I'm not solely responsible,
08 but I do have some input in that.

09 Q. Okay. Who else would have
10 been involved?

11 A. Again, Joe Myers and I ---
12 actually, Joe and I've worked
13 together a lot in the past.

14 Q. So you worked together on
15 that; is that correct?

16 A. Yes, sir.

17 Q. Have you ever examined the
18 seals at Two Left old main?

19 A. No, sir. I never actually
20 examined those seals myself.
21 Q. Did you ever walk by them or
22 observe them, or check them out after
23 construction?
24 A. Not after construction, no.
25 During construction, I breezed by

143

01 them a couple of times just to see
02 how the progress was going, but that
03 was ---.
04 Q. Was everyone --- or were you
05 satisfied with the procedures that
06 were being used at that time?
07 A. Yes. At that time, yeah.
08 Q. But you never examined the
09 seals ---?
10 A. After completion, no.
11 Q. Do you know the roof
12 conditions in that area?
13 A. The roof conditions seemed to
14 be all right in that area.
15 Q. There weren't any slips,
16 cavings, or ---?
17 A. None that I'm aware of.
18 Q. Do you know if anyone ever
19 detected methane around those seals,
20 or was there ever any methane that
21 was shown in the record book or
22 anything?
23 A. I think there was --- maybe in
24 the last examination, I think they

25 may have detected two-tenths of a

144

01 percent of methane. Again, I didn't
02 see that it was in the book, it just
03 seems to be in conversation I heard
04 somebody passing that information
05 along.

06 Q. Who would that be?

07 A. It would have been whoever
08 examined them the last time they were
09 examined. I think it was on the
10 Wednesday prior to January 2nd.

11 Q. And that was the only time
12 that --- do you recall anyone ever
13 mentioning any name?

14 A. No, sir.

15 Q. Did anyone ever mention, or
16 discuss with you or mention to you
17 anything concerning the seals
18 breathing in and out, or what they
19 may have, low oxygen, or ---

20 A. No, sir.

21 Q. --- anything like that?

22 A. These seals were only probably
23 examined two, maybe three times since
24 their completion.

25 Q. When was mining stopped in by

145

01 the seal area? And let me ask you
02 this. What area was that that you
03 referred to, was that Three Left?

04 A. No. We called that Two Left.
05 Q. Two Left?
06 A. Yeah.
07 Q. Is that why they refer to
08 these old Two Left main seals?
09 A. Yes, sir.
10 Q. Okay. Go ahead with your
11 answer before I ---.
12 A. Oh, that's all.
13 Q. When was mining ---
14 A. Oh, when was mining ---?
15 Q. --- stopped. Yes.
16 A. I'm not exactly sure.
17 Probably around the 1st of October,
18 somewhere in that vicinity there.
19 Q. Why did you choose to stop
20 mining up there?
21 A. Well, we were advance mining,
22 and toward the end of that panel, we
23 were having some roof conditions and
24 a lot of water coming in, a lot of
25 water.

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01 Q. In the face area?
02 A. In the face area, yes.
03 Q. How far back did that water
04 --- if you recall, how far back did
05 that water start, when you started to
06 see additional water?
07 A. Well, just at the point where
08 we stopped advancing, that's where
09 the water really started coming in,

10 but the panel was always a wet, muddy
11 panel. But the water got really bad
12 toward the end of that.

13 Q. Did you ever do any second
14 mining in that area?

15 A. Not second mining as far as
16 pillar extraction, but we had a ---
17 the bottom split of coal underneath
18 this, and we would retreat out of a
19 panel, we would mine that bottom
20 split as we backed out.

21 Q. Do you know if there was any
22 equipment left back in there?

23 A. None that I'm aware of.

24 Q. Batteries, ---

25 A. No, sir.

147

01 Q. --- old pieces of equipment,
02 miners, shuttle cars?

03 A. No, sir. You can't get away
04 with hiding something like that. No,
05 nothing that I'm aware of was left
06 back there. I thought that they did
07 a real good job of recovering
08 everything out of there.

09 Q. Belt structure?

10 A. The belt structure was out.

11 Q. Has there ever been any
12 history of methane problems at the
13 mine?

14 A. None that I'm --- since I've

15 been there, no.

16 Q. Okay. What type of methane
17 would you detect at the face
18 normally?

19 A. I wouldn't know.

20 Q. Did you ever see any methane
21 readings in the record books?

22 A. No, sir. Not that they're not
23 there, just none that I've skimmed
24 over or I had seen.

25 Q. Who reviews the record books?

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01 A. A mine foreman reviews the
02 record books.

03 Q. Do you ever review them?

04 A. On occasion.

05 Q. When you say on occasion ---?

06 A. If I'm --- on occasion I would
07 review them just to see what
08 condition the section was found in.
09 I don't recall ever really looking
10 and seeing anything about methane and
11 oxygen concentrations.

12 Q. Mr. Crumrine is a mine
13 foreman?

14 A. Yes, sir.

15 Q. Did he ever discuss any
16 methane detections with you at all?

17 A. No, sir. Not that I recall,
18 I'm sorry. Not that I recall.

19 Q. That's fine. Do you have any
20 history of roof control problems back

21 in that area?

22 A. We had a couple of falls in
23 that area as we were advance mining
24 in there.

25 Q. When you say a couple of

149

01 falls, length, height?

02 A. My goodness, I don't recall.

03 Two falls, one in --- Number One

04 entry, it was pretty good --- it was

05 a pretty long fall. I'm thinking it

06 went a crosscut, maybe two crosscuts

07 right down the entry, which would put

08 it in excess of 100-foot long,

09 probably six-foot high, at least.

10 And then the other one --- we had one

11 in the track entry that was about a

12 crosscut long. It fell out pretty

13 high.

14 Q. When you say pretty high what

15 ---?

16 A. I don't know, eight, ten-foot,

17 maybe higher.

18 Q. Okay. Above the roof line?

19 A. Above the roof line, yes.

20 Q. Was there any equipment near

21 the intersection of Two Left and Two

22 North mains, such as, you know, power

23 centers, charger stations?

24 A. Exactly where are you asking

25 me about, and ---?

01 Q. Okay. The intersection of Two
02 Left, the existing Two Left section,
03 and the Two Left old main seal, that
04 intersection where Two Left breaks
05 off the mains.

06 A. There's a power supply down
07 there near the belt.

08 Q. With a black marker there, if
09 you would, please, mark where that
10 equipment is located, please, on
11 Exhibit Two?

12 A. I'm not exactly sure, but I
13 think there was a power center
14 approximately right here. Again, I'm
15 not exactly sure.

16 Q. Can you draw a line over to
17 the right and identify what you have
18 there?

19 ATTORNEY MOORE:

20 Jeff, do you need to
21 take a break?

22 A. Yes, sir, I do.

23 ATTORNEY MOORE:

24 I think we all do.

25 SHORT BREAK TAKEN

01 BY MR. SWENTOSKY:

02 Q. Mr. Toler, when we just broke,
03 you were in the process of showing us
04 equipment that was at the
05 intersection of Two Left. Can we go

06 up to the map, again, Exhibit Two?

07 A. I know that there's a power
08 center --- the power supply that this
09 belt hits in this vicinity here.

10 There's a side spur on this track
11 that runs up through here.

12 Q. That's a track in by the Two
13 Left switch?

14 A. Yes, sir. And I'm --- well, I
15 don't know. I think there's a
16 charger there, a track jeep charger,
17 but I'm not sure.

18 Q. If you want to say possibly,
19 or if you're not sure or whatever you
20 know about that.

21 A. And as far as I know, I think
22 that's ---.

23 Q. Is there anything in by the ---
24 up next to the seal, the entry
25 between the seals and the stopping

152

01 that runs across?

02 A. No, sir. No, sir, not that
03 I'm aware of.

04 Q. Okay. Is there anything in
05 the primary escapeway coming from the
06 Two Left section?

07 A. Down through here?

08 Q. Down from the section, yeah,
09 toward that intersection of Two Left?

10 A. Nothing that I'm aware of, no.

11 Q. That's the only thing you're
12 aware of right there?
13 A. Yes, sir.
14 Q. I'd just like to ask
15 additional questions here about the
16 --- talk about those seals again. Do
17 you know if there was any rock dust
18 applied to the inby or outby end of
19 the Two Left seals at any time during
20 the construction?
21 A. I'm not aware of during, but
22 after construction there was --- I
23 can't give you the exact number,
24 there was quite a lot of rock dust
25 applied to the outby area of those

153

01 seals.
02 Q. Was there anything inby the
03 seals prior to construction?
04 A. I have no knowledge. I don't
05 know.
06 Q. Do you know if it was
07 required?
08 A. No, sir, I don't know.
09 Q. Prior to construction, did you
10 think about any squeezing, or were
11 you concerned about any squeezing in
12 that area?
13 A. No, sir.
14 Q. Was that taken into
15 consideration possibly whenever you
16 chose those seals or anything like

17 that?

18 A. No. I wasn't anticipating
19 anything in that area, no.

20 Q. Was there any additional roof
21 support installed inby or outby, at
22 the seals?

23 A. They were cribbed behind on
24 the inby and outby side of each seal.

25 Q. Do you know how many cribs?

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01 A. At least two on the inby of
02 each and outby of each.

03 Q. And was there any additional
04 roof bolting or anything?

05 A. None that I'm aware of.

06 Q. Was that part of the approval,
07 or was that required, ---

08 A. Yes.

09 Q. --- the additional cribs that
10 you're speaking about?

11 A. I'm not sure if it was
12 required or not. It's just something
13 we've always done.

14 Q. I know you said you weren't
15 involved in any of the construction
16 of them, but are blocks required to
17 be wet down before mortar is applied?

18 A. Not that I'm aware of, no.

19 Q. Was there anything on the bags
20 that --- instructions or anything
21 like that that might require ---?

22 A. I don't know.
23 Q. Have you ever taken gas
24 samples at the sampling tube that
25 runs through the seal?

155

01 A. No, sir, I haven't.
02 Q. Has anybody else? Has anybody
03 ever mentioned anything --- they had
04 mentioned that they had taken any gas
05 samples?
06 A. No. They haven't mentioned it
07 to me, no.
08 Q. Inby that seal area, I believe
09 it's about halfway up, or whatever,
10 there's a gas well up in that area?
11 A. Yes, sir.
12 Q. How close to that gas well did
13 you mine?
14 A. Well, I don't know --- I don't
15 have the exact number on that.
16 Q. Okay. Was there any --- did
17 anybody mention anything --- or were
18 you up in that area whenever that was
19 mined?
20 A. Yes, sir.
21 Q. Okay. Around the gas well
22 area at all?
23 A. I was around that area on
24 occasion when they were mining that
25 area.

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01 Q. Was there ever any additional
Page 128

02 methane, or was there any methane
03 detected, gas detected in that area?

04 A. Not that I'm aware of.

05 Q. Whenever that bottom area is
06 mined, I call it second mining, was
07 there any additional methane that may
08 have been detected during that
09 process at all or anything ---?

10 A. None that I'm aware of. None
11 that I'm aware of. No, sir.

12 Q. The faces of the seals, during
13 construction of those --- and I know
14 previously you had some experience,
15 but --- and I touched on this
16 previously, but the face of the Omega
17 blocks, what quantity of mortar would
18 be applied to those, or how much of
19 the block did you apply?

20 A. The quantity of mortar, well,
21 I think the plan calls for a quarter-
22 inch joint, but like I say, you know,
23 mortar joint is top to bottom. A
24 quarter-inch would be mortar joint.
25 When we applied, we filled every

157

01 cavity in with mortar. If there was
02 a quarter-inch mortar joint between a
03 block there, we would fill that
04 cavity also with mortar as well.

05 Q. Okay. Were the full face ---
06 was the full face of the block coated

07 with mortar?

08 A. Yes, sir. That was coated as
09 well.

10 Q. Was that the horizontal
11 joints?

12 A. Horizontal and vertical. The
13 whole surface was coated. Inby and
14 outby, it was coated.

15 Q. In regard to those seals, was
16 task training provided to the workers
17 assigned to the ---?

18 A. I don't recall.

19 Q. Who would know that?

20 A. Mr. Schoonover may know the
21 answer to that question.

22 Q. Was there any assurance that
23 the construction was done properly?
24 Or assurances made that they were
25 being constructed properly?

158

01 A. Just verbal assurances that
02 they were being constructed properly.

03 Q. And that was by you?

04 A. Basically. I mean, we
05 detailed how they were to be
06 constructed, and I have no reason to
07 think they didn't do it the way they
08 were told.

09 Q. Do you know when the last
10 annual training class was?

11 A. No, sir, I don't. I'm
12 assuming at Sago?

13 Q. Yes. What I was going to say
14 is ----.

15 A. I'm sorry.

16 Q. When was the last annual
17 training class that you participated
18 in?

19 A. I don't recall.

20 Q. Can you describe what was
21 covered during that training session?

22 A. It was just your basic annual
23 refresher.

24 Q. Like ventilation, roof
25 control, or ---?

159

01 A. Well, I wasn't employed by
02 Anker at that time. I was with
03 Brooks Run when that was done. And
04 yeah, ventilation, roof control.
05 Everything was supposed to be
06 covered.

07 Q. Okay. At this mine --- and
08 when did you start at this mine?

09 A. August 1st.

10 Q. August 1st of?

11 A. 2005.

12 Q. Okay. When you came to that
13 mine, did you participate in any
14 training at all?

15 A. Experienced miner training.

16 Q. Okay. What was covered during
17 that?

18 A. Roof control, ventilation,
19 escapeways. That just jumps to mind,
20 but ---.

21 Q. Was the mine emergency
22 evacuation, firefighting program or
23 instruction covered? Commonly known
24 as a firefighting evacuation plan?

25 A. Yes. Yes, I think it was.

160

01 Q. What did they cover during
02 that particular training?

03 A. I don't recall. That's been
04 several months ago.

05 Q. Do you know who the
06 responsible person is on the shift
07 when emergencies occur as it relates
08 to that plan?

09 A. Underground or on the surface?

10 Q. Well, ---.

11 A. The responsible person
12 underground is the section foreman.
13 On the surface it would be --- I
14 think it would be the dispatcher.

15 Q. Okay. But in the fire
16 fighting evacuation plan, who is the
17 responsible person that it refers to?
18 That's the person that in the case of
19 emergencies he is the one that
20 directs.

21 A. I think we --- the section
22 foreman is designated as the
23 responsible person.

24 Q. Are you familiar with the
25 location of the emergency materials?

161

01 A. What are you ---?

02 Q. Okay. Like a thousand feet of
03 boards?

04 A. Yes, sir.

05 Q. That type of material.

06 A. Yes, sir. I'm familiar with
07 where that's at.

08 Q. Where is that located?

09 A. It's alongside the track on
10 Four belt, I'm thinking approximately
11 at 44 block, between the belt and
12 primary.

13 Q. Forty-four (44) block?

14 A. I'm sorry, the track and the
15 primary.

16 Q. Between the track and the
17 primary at 44 block?

18 A. I think that's where it was
19 at.

20 Q. Are you familiar with the
21 evacuation procedures at the mine?

22 A. Right now, no.

23 Q. Have you ever reviewed the
24 mine emergency evacuation
25 firefighting program instructions?

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01 A. I have. As I said, when I
02 first came to work there, it was

03 covered, but I also took time and ---
04 I just took a little bit of time and
05 reviewed them all on my own to try to
06 get myself familiar with them, but I
07 am just drawing a blank right now.

08 Q. Were the escapeways covered as
09 part of the training that you
10 received?

11 A. Yes, sir.

12 Q. Have you ever participated in
13 escapeway drills?

14 A. Not actually underground and
15 evacuating through the escapeway, no.

16 Q. Have you ever traveled the
17 primary and secondary escapeway?

18 A. Yes, sir.

19 Q. When was that?

20 A. Just at different times.
21 We've been doing a lot of
22 rehabilitation work in the primary
23 escapeway, and to monitor progress, I
24 would travel that escapeway to ---
25 just to see how they were coming with

163

01 the progress. I'd say it's been at
02 least a month since I've traveled up
03 the ---.

04 Q. Who did you travel the
05 escapeway with, if you recall?

06 A. I don't recall.

07 Q. Was anybody with you?

08 A. Sometimes --- like I say, I

09 did it on more than one occasion.

10 I'm sure I had people with me, but

11 sometimes I'd be on my own.

12 Q. How are the primary and
13 secondary escapeways identified in
14 your mine?

15 A. Primary is identified with
16 green reflectors, and secondary is
17 identified with red reflectors.

18 Q. When you say reflectors, is
19 that --- what type of reflector are
20 you ---? There's just a stream
21 or ---?

22 A. No, it's a round --- a round
23 reflector.

24 Q. Okay. Have you ever
25 participated in any fire drills?

164

01 A. No, sir.

02 Q. Have you received any hands-on
03 SCSR training?

04 A. Yes, sir.

05 Q. Was the SCSR training part of
06 your re-training?

07 A. It's part of my re-training.
08 It's part of my experienced miner
09 training.

10 Q. And you received it at those
11 times?

12 A. Yes, sir.

13 Q. When did you receive your last

14 SCSR training?

15 A. That would have been when I
16 came to work for Sago on August 1st.

17 Q. Whenever that training's ---
18 do you put the SCSR on, or how do you
19 ---? When you receive that training,
20 how does that ---?

21 A. A little training model that
22 we go by, and they break it down and
23 go through the motions. You don't
24 actually put the mouthpiece in, but
25 ---. It's kind of hands-on and

165

01 verbal, both. You talk your way
02 through it while you're doing it.

03 Q. Was first-aid training ever
04 provided?

05 A. First-aid training was
06 provided at my last annual
07 re-training. I'm not sure if we
08 covered any first-aid training on the
09 experienced miner training or not.
10 I'm not sure.

11 Q. Do you recall what areas were
12 covered, or anything like that?

13 A. No, sir. I'm not going to be
14 much help on this.

15 Q. The roof control plan, was
16 that covered? I believe I asked you
17 that.

18 A. Yes, sir. Yes, sir.

19 Q. What areas of the plan were

20 covered? Can you kind of give me a
21 description, like what was discussed
22 during that ---?

23 A. Just --- I don't recall
24 exactly, but it was just basically
25 our bolt pattern, type of bolts that

166

01 were permitted set. Just the general
02 provisions of the plan.

03 Q. Was the ventilation plan
04 covered?

05 A. Yes, sir.

06 Q. Just a brief description of
07 it.

08 A. About the same. Just it was a
09 brief description of it.

10 Q. When changes in the
11 ventilation plan are made, are they
12 --- what do you do when you have a
13 ventilation plan change?

14 A. When a ventilation or roof
15 control plan changes, we'll have a
16 crew meeting and go over it with all
17 of the members of the mines.

18 Q. Okay. Is that done before
19 implementation of the plan?

20 A. Yes, sir.

21 Q. Do you feel the training that
22 you received was adequate?

23 A. More than adequate, yes.

24 Q. Just briefly going back to the

25 ventilation plan changes. What all

167

01 persons do you review that with
02 whenever you have a change in the
03 ventilation plan?

04 A. Give me an example of what you
05 mean on a ventilation plan change.

06 If it's something that affects space
07 ventilation, we'll cover it with

08 everybody in the mines. A

09 ventilation change and change in air
10 direction are something that may just

11 be reviewed with the people it

12 pertains to that are actually doing

13 the work.

14 Q. Have you ever been searched
15 for smoking articles?

16 A. Yes, sir.

17 Q. Have you ever observed anyone
18 smoking underground?

19 A. No, sir.

20 Q. Have you ever been found with
21 smoking articles underground?

22 A. No, sir.

23 Q. Has anyone offered you
24 anything or made any promise to you

25 in exchange for your appearing here

168

01 today?

02 A. No, sir.

03 Q. Do you have anything else that
04 you'd like to tell us that might be

05 relevant to this investigation, or
06 you know, say whatever you want or
07 anything like that?

08 A. I think I've said plenty. No,
09 I really have nothing else to say at
10 this time.

11 MR. SWENTOSKY:

12 Doug?

13 BY MR. CONAWAY:

14 Q. Jeff, I'll be brief. I know
15 it's been a long session. I just got
16 a few things I just want to touch on.
17 The walkie talkies you guys use on
18 those sections, do you know what the
19 range of those things are? Do you
20 have any feel for that?

21 A. It just depends on whether
22 they're in straight line
23 communication. They'll range farther
24 on that. I have seen them go as far
25 as close to 1,000 feet in a straight

169

01 line.

02 Q. A straight line.

03 A. Direct line. But on a
04 section, if you're a couple crosscuts
05 outby and over a couple entries, you
06 may not hear what somebody else says.
07 Typically they're real good right on
08 the section.

09 Q. Okay. I want to go back just

10 a minute. The vehicle, you rode in
11 on the vehicle as you guys went back
12 in the mine, and you walked out. Was
13 there any reason why you left that
14 vehicle?

15 A. Well, airflow on the track
16 entry would have been outby, because
17 of the normal blowing system. So all
18 the ventilation controls that we were
19 repairing was pushing the air down
20 the track. I didn't feel the air
21 quality would have been good enough
22 to step back in.

23 Q. Okay. Did you look back, and
24 did you see smoke or air?

25 A. On occasion we looked back in

170

01 a spot or two, and I don't think we
02 --- I don't know that we did or
03 didn't at 42 wall where we left the
04 mantrip. I'm not sure.

05 Q. But you had determined that
06 once you started directing air up in
07 there that it was going to come back
08 down?

09 A. I knew it would come back down
10 the track. That's why we stayed and
11 stopped where we stopped with the
12 jeep.

13 Q. Okay. So you were getting the
14 intended effect, ---

15 A. Yes, sir.

16 Q. --- or you knew what was ---?

17 A. Yes, sir.

18 Q. Okay. So that air was getting

19 worse --- when you originally went in

20 the track and it was starting to get

21 worse in the track entry as you

22 progressed through the time that you

23 were underground?

24 A. Well, it would have had to

25 have.

171

01 Q. Okay. Let me ask you this

02 question. When you're underground,

03 you know, obviously, you're assessing

04 what's going on, and you're trying to

05 process all that, what you see, and

06 understand --- at what point did you

07 make a realization of what you

08 thought happened? Putting everything

09 together you saw, did you ---?

10 A. I just don't know, Doug.

11 Q. I mean, did you think

12 explosion at any time? Is what I'm

13 trying --- I mean, what ---?

14 A. Initially, I probably thought

15 roof fall. When we started

16 encountering the smoke, that's when I

17 was thinking explosion. When we

18 started encountering the CO that we

19 were getting under there, that's when

20 I started thinking explosion.

21 Q. Okay. And that's as you were
22 pressing on through. I know you may
23 have touched this, I just want to be
24 clear, no one expressed any problems
25 doing seal construction, they didn't

172

01 say, we're having a problem with
02 this, a problem with that, that was
03 never expressed?

04 A. No, sir.

05 Q. When you were doing any
06 mining, since you've been there since
07 August 1st of last year, any mining
08 activity, encountered any uncharted
09 wells, any gas wells, any boreholes,
10 anything of that nature that you're
11 aware of?

12 A. Nothing comes to mind, no.

13 Q. You made one comment here that
14 you instructed someone to remove the
15 wire mesh. Do you remember who you
16 instructed to do that?

17 A. No, sir, I don't remember.

18 Q. But you've made that
19 instruction; correct?

20 A. Yeah, I did tell them that
21 needed to be done.

22 Q. Just a couple final thoughts
23 here. After all the things you
24 assessed here and you were
25 underground and saw a lot of things

173

01 there, what do you think happened?

02 What's your estimation?

03 A. I'll never believe anything

04 other than lightning ignited methane

05 behind a seal area. I'll never

06 believe anything other than that.

07 Q. Okay. And all that you've

08 seen here and taken place, any

09 thoughts or recommendations, or any

10 ideas of things we can do to prevent

11 a future occurrence?

12 A. Until we determine cause, I

13 don't know that I could.

14 MR. CONAWAY:

15 That's all. Thanks,

16 Jeff. Mr. Moore.

17 BY MR. MOORE:

18 Q. I have a couple clarification

19 questions if I may. When you talked

20 to Owen Jones when he called ---

21 A. Yes, sir.

22 Q. --- he called out, and I

23 believe you said he was --- he

24 described there was a rush of air.

25 Was there anything else that he

174

01 mentioned in that ---?

02 A. I think he said there was some

03 smoke in the air as well.

04 Q. Okay. Jeff, would you clarify

05 --- just estimate the amount of time

06 between the lightning flash --- I'm
07 sorry, not the lightning flash, but
08 the thunder you heard and the CO
09 monitor going off?
10 A. The same. It was just
11 instantaneous. I mean, ---.
12 Q. So they happened at the same
13 time?
14 A. As I said earlier, it was just
15 bang, bang. One happened and the
16 other and the alarms went off.
17 Q. Okay. Also, when you went
18 into the mine, who was operating the
19 mantrip?
20 A. Al Schoonover.
21 Q. And where were you positioned?
22 A. At the front of the mantrip
23 looking like a Dalmatian on a fire
24 truck looking ahead.
25 Q. I'm not sure I follow.

175

01 A. I was at the front of the jeep
02 with my head stuck out the side
03 looking ahead.
04 Q. Okay. You were inside ---?
05 A. In the inside compartment
06 looking out, looking ahead.
07 ATTORNEY MOORE:
08 Okay. Thank you, Jeff.
09 BY MR. CONAWAY:
10 Q. Did you hear the thunder, or
11 did ---?

12 A. I did hear the thunder.
13 Q. The dispatcher, did he tell
14 you about the thunder also?
15 A. I think most of the people in
16 Buckhannon heard the thunder.

17 Q. Okay.

18 MR. GATES:

19 Let's take a short
20 break.

21 SHORT BREAK TAKEN

22 BY MR. SWENTOSKY:

23 Q. Okay. I have a couple
24 clarifying questions, if I may. Mr.
25 Toler, did you ever consider donning

176

01 an SCSR at any time?

02 A. No.

03 Q. Why didn't you ---?

04 A. With us keeping fresh air with
05 us, I never felt like we were in a
06 concentration of CO that I felt that
07 I needed it.

08 Q. And the CO levels that you
09 observed, I believe you said you
10 observed some CO levels? Maybe I'm
11 mistaken.

12 A. No. No, I didn't observe
13 them, but somebody with me was
14 monitoring. I just don't recall.
15 But we stayed in fresh air until the
16 level was to a point that we could

17 move on.

18 Q. What were those --- you said
19 they told you the level, or --- what
20 were those levels?

21 A. No, I don't recall. I don't
22 think I gave numbers on those levels.
23 I don't think I recall what they
24 were.

25 Q. Back to the seals. Who

177

01 explained the guidelines for the
02 ventilation plan to the people, to
03 the miners that constructed those
04 seals? Who explained how to
05 construct those seals to those
06 people?

07 A. I don't recall for sure, but
08 it was probably me.

09 Q. You?

10 A. It was probably me.

11 Q. What instructions did you give
12 them? Can you explain those
13 instructions to us, please?

14 A. Not without looking at the
15 plan, and doing it off of that.

16 Q. Okay. Do you have anything
17 that you can recollect?

18 A. No, not specifically. I mean,
19 it's ---.

20 Q. If I show you a copy of the
21 plan, would that maybe refresh your
22 recollection?

23 A. I could possibly tell you how
24 I would want you to construct those
25 seals, but I can't tell you that

178

01 that's exactly the way I described it
02 to them in detail. So ---.

03 Q. Go ahead.

04 A. I mean, and then for that, I
05 would have to --- I'd have to see a
06 copy of the plan.

07 Q. Just a minute. I have a copy
08 of the guidelines for constructing
09 the 40-inch thick Omega block seal
10 construction plan. For use with
11 seals up to eight-feet high and
12 20-foot wide. There's two copies to
13 this --- or two pages to this
14 construction. I'll give that to you,
15 and if you could tell me what
16 that ---.

17 A. Well, this first page details
18 how your joints stagger. To get the
19 seal to be 40 inches wide an Omega
20 block, a standard Omega block, eight
21 inches thick, is 16 inches wide, 24
22 inches long. You have one course
23 laying this way, which gets you 24
24 inches of coverage. The other ---
25 well, you lay them side by side, give

179

01 you that of 16, the total of 40

02 inches.

03 Q. That would be the one laid in
04 one direction, and one laid the other
05 direction?

06 A. Yes, sir. And they lay right
07 across rib to rib. And that gives
08 you a total of 40-inch thick. When
09 you lay your next row, you reverse
10 the direction that you've laid the
11 blocks. This 24 would be here, and
12 the 16 would be here.

13 Q. You get a traverse type
14 construction?

15 A. Exactly. Now, when you're
16 laying the blocks, if you do it like
17 that, your total thickness of the
18 seal is going to be 40 inches thick.
19 We don't have to hitch, but we got to
20 stagger the joints. We have to have
21 a minimum of a quarter-inch thick,
22 mortar joint using block bond. You
23 lay them that way rib to rib, bottom
24 to top, when you get to the top, you
25 have to have three rows of wooden

180

01 planks run across the top of the
02 seal.

03 Q. For the record, you're reading
04 from the page two of the documents
05 I've provided to you?

06 A. Basically, yes. Yes, I'm
07 reading off of this. When you put

08 the wooden planks in and wedge them
09 down, the wedges shall be placed on
10 one-inch --- one-foot centers or less
11 with block bond used to fill the
12 gaps. And I recommended they place
13 them closer than one foot. And block
14 bond will be used to fully coat both
15 sides of the seal as they construct
16 it. So when you're finished, not
17 only are the joints mortared, but the
18 face of the seal is also covered as
19 well.

20 Q. Do you recognize this as a
21 copy of the plan that you reviewed
22 with those people?

23 A. This is a typical Omega seal
24 plan. This would be the same plan
25 that we utilized.

181

01 MR. SWENTOSKY:
02 Mark that Exhibit
03 Three.
04 (Toler Exhibit Number
05 Three marked for
06 identification.)

07 BY MR. SWENTOSKY:

08 Q. In addition to that, would you
09 clear the loose material away from
10 the seal, the construction area?

11 A. Yes.

12 Q. How far on each side of that

13 would you ---?

14 A. We would take a scoop and
15 clean the area completely through,
16 through that area. We would clean
17 that, get it down on solid bottom to
18 build, to start construction.

19 Q. Did you clean the ribs also?

20 A. Yes.

21 BY MR. CONAWAY:

22 Q. I've got just a few questions.
23 Have you had any other previous
24 experience with fires or any kind of
25 ---?

182

01 A. No, sir.

02 Q. None whatsoever?

03 A. No, sir.

04 Q. Any kind of burning? You guys
05 looked at the stopping there. You
06 looked at the intake and stopping
07 line. It was primarily your focus?

08 A. Yes, sir.

09 Q. You were getting air up there.
10 The blocks, they just seemed to be
11 fallen over or blown out some
12 distance?

13 A. Blown out.

14 Q. A pretty good distance?

15 A. Yes.

16 Q. And your airflow, when you
17 made the --- when you got up to it,
18 Jeff, to stop in there and --- how

19 was the airflow coming as your intake
20 was coming up through that stopping
21 line if you're on the track? Was
22 coming back towards you?
23 A. It would be coming back down.
24 Q. It was coming back down the
25 track generally?

183

01 A. Generally, yes.
02 Q. Okay. Do you have a set of
03 doors on the track?
04 A. Near the surface, yes.
05 Q. Yeah.
06 A. Yes, sir.
07 Q. And those were closed when you
08 came in?
09 A. Yes, sir.
10 Q. Okay. Did anybody look at the
11 return stop --- did anybody ---?
12 A. I did look through and noticed
13 that in most places where intakes
14 were blown, returns were blown as
15 well.
16 Q. Okay. But you looked, what,
17 maybe a couple times?
18 A. Just a couple times, and then
19 I really didn't care. I mean, I just
20 wanted to keep --- just maintaining
21 the one line was all I was worried
22 about.
23 Q. Okay. And you told us earlier

24 that you really didn't take too many
25 --- I mean, you were constantly

184

01 taking the methane reading with your
02 meters, but nobody really took an
03 actual ---?

04 A. I didn't.

05 Q. You didn't. Okay. And you
06 didn't hear anybody say it?

07 A. I didn't hear anybody else say
08 it.

09 Q. You unplugged your mantrip ---

10 A. Yes, sir.

11 Q. --- because it was a possible
12 ignition source, is that it?

13 A. Yes, sir.

14 Q. And what was you thinking that
15 the fuel might be, or what was
16 you ---?

17 A. Well, we had no idea what we
18 would be forcing back down on us.

19 Q. Okay. You didn't know if
20 there might be methane up there, CO,
21 or whatever ---

22 A. Exactly.

23 Q. --- could explode? Your old
24 seals, when you're making those
25 exams, has anybody detected any

185

01 methane or anything peculiar in those
02 that you're aware of?

03 A. I don't know, Doug. I'm not

04 aware of.

05 Q. Nothing's came to your
06 attention?

07 A. Yes, sir.

08 Q. The Saturday work that the
09 guys were doing, were there any
10 ventilation changes or anything of
11 that nature done that you might be
12 aware of?

13 A. Not that I'm aware of, no.

14 Q. Okay.

15 MR. CONAWAY:

16 That's it.

17 MR. KITTS:

18 I'm done.

19 MR. GATES:

20 A brief closing
21 statement here. On behalf of
22 MSHA, I would like to thank
23 you for appearing and
24 answering questions today.
25 Your cooperation is very

186

01 important to the
02 investigation, as we work to
03 determine the cause of the
04 accident. We ask that you do
05 not discuss your testimony
06 with any person who may have
07 already been interviewed or
08 who may be interviewed in the

09 future.
10 This will ensure that
11 we obtain everyone's
12 independent recollections of
13 the events surrounding the
14 accident. After questioning
15 other witnesses, we may call
16 you if we have any follow-up
17 questions that we feel that
18 may need to be asked. If at
19 any time you have additional
20 information regarding the
21 accident that you would like
22 to provide to us, please
23 contact us at the contact
24 information that has been
25 previously provided to you.

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01 The Mine Act provides
02 certain protections to miners
03 who provide information to
04 MSHA, and as a result are
05 treated adversely. If at any
06 time you believe that you have
07 been treated unfairly because
08 of your cooperation in this
09 investigation, you should
10 immediately notify MSHA.

11 If you wish, you may
12 now go over any answer that
13 you may have given during this
14 interview, and you may also

15 make any statement that you
16 would like to make at this
17 time.

18 A. Nothing to add right now.

19 MR. GATES:

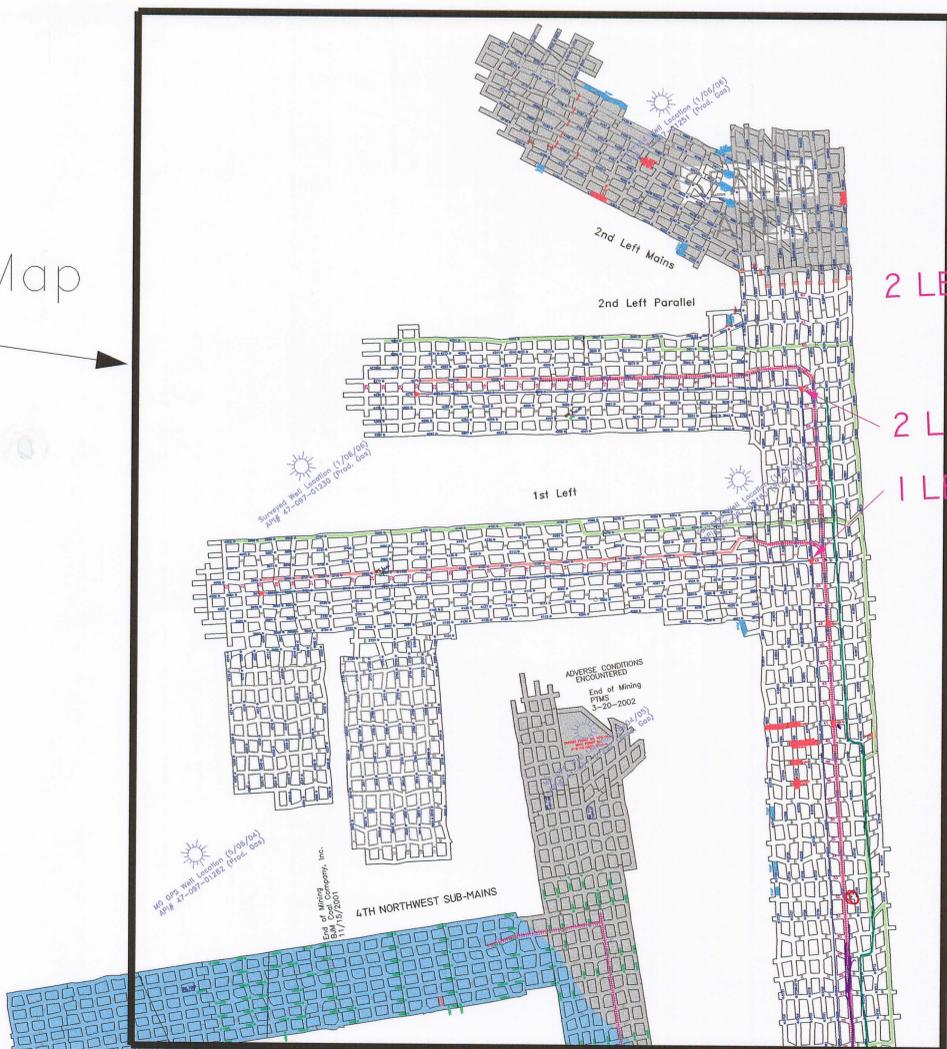
20 Again, I want to thank
21 you for your cooperation in
22 this matter.

23

24 ***SWORN STATEMENT***

25 ***CONCLUDED AT 1:00 P. M.***

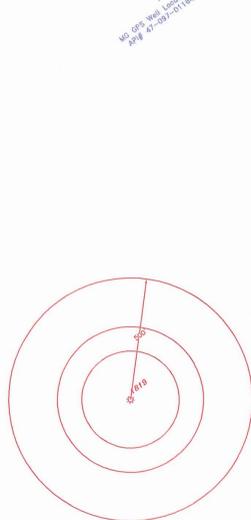
Area Shown on Map
Scale: 1" = 100'



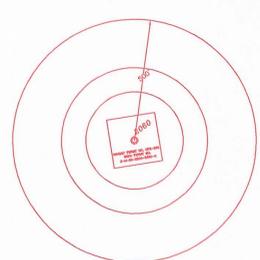
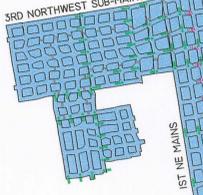
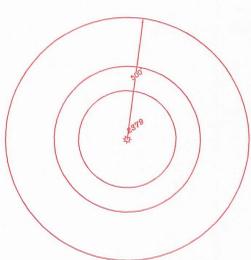
2 LEFT SEALS

2 LEFT DRIVE

1 LEFT DRIVE



End of Mining
FIMS
3-20-2002



2 RIGHT

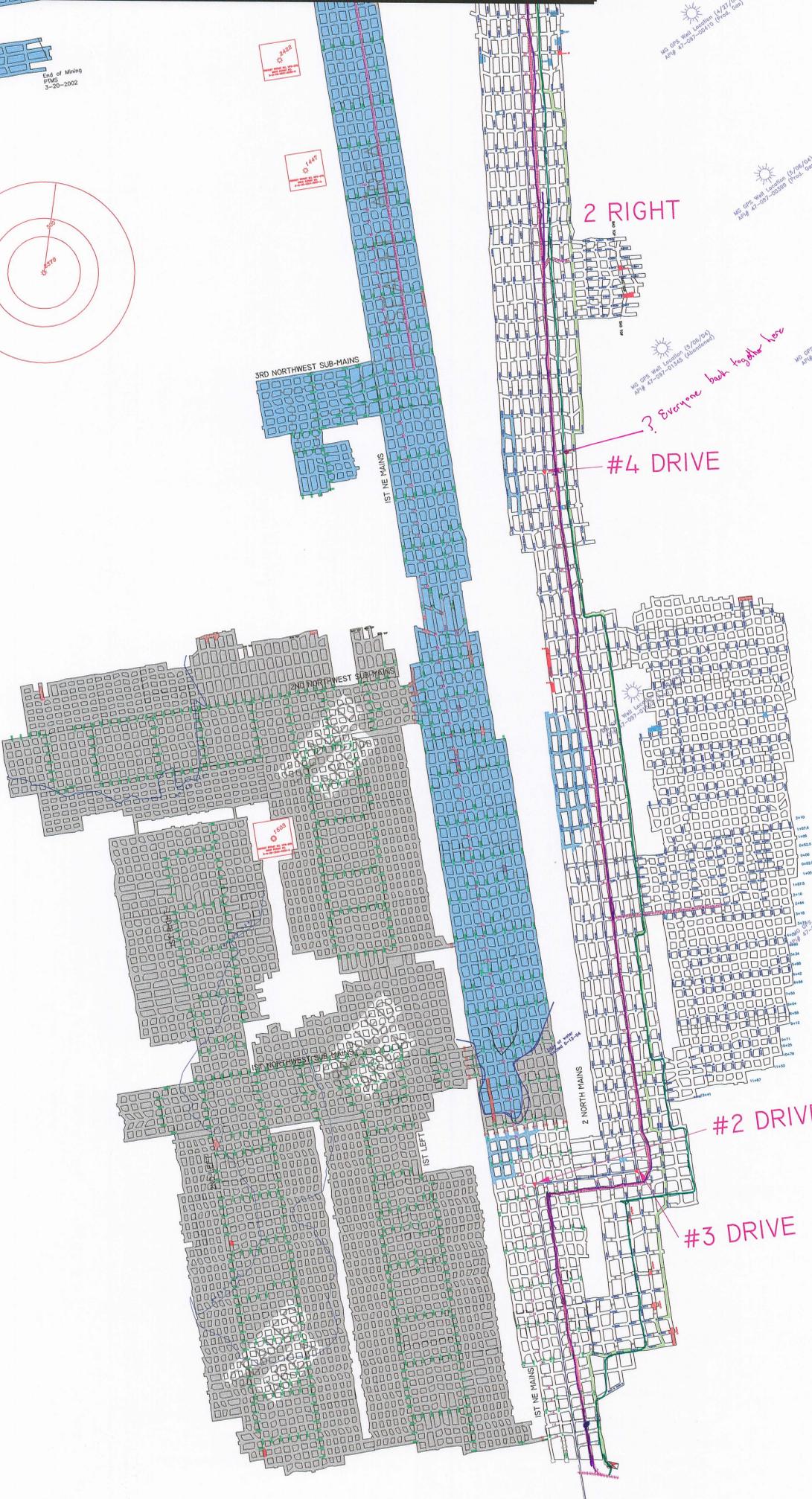
#4 DRIVE

? Everyone back together here

1 RIGHT

#2 DRIVE

#3 DRIVE



MS GPS Well Location (1/27/04)
Fig 47-297-2126A (Proposed)

MS GPS Well Location (1/28/04)
Fig 47-297-2111A (Proposed)

MS GPS Well Location (4/27/04)
Fig 47-297-2125A (Proposed)

MS GPS Well Location (5/27/04)
Fig 47-297-2121A (Proposed)

MS GPS Well Location (5/28/04)
Fig 47-297-2122A (Proposed)

MS GPS Well Location (1/28/04)
Fig 47-297-2123A (Proposed)

MS GPS Well Location (1/28/04)
Fig 47-297-2124A (Proposed)

MS GPS Well Location (5/27/04)
Fig 47-297-2127A (Proposed)

MS GPS Well Location (1/27/04)
Fig 47-297-2125A (Proposed)

MS GPS Well Location (5/28/04)
Fig 47-297-2124A (Proposed)

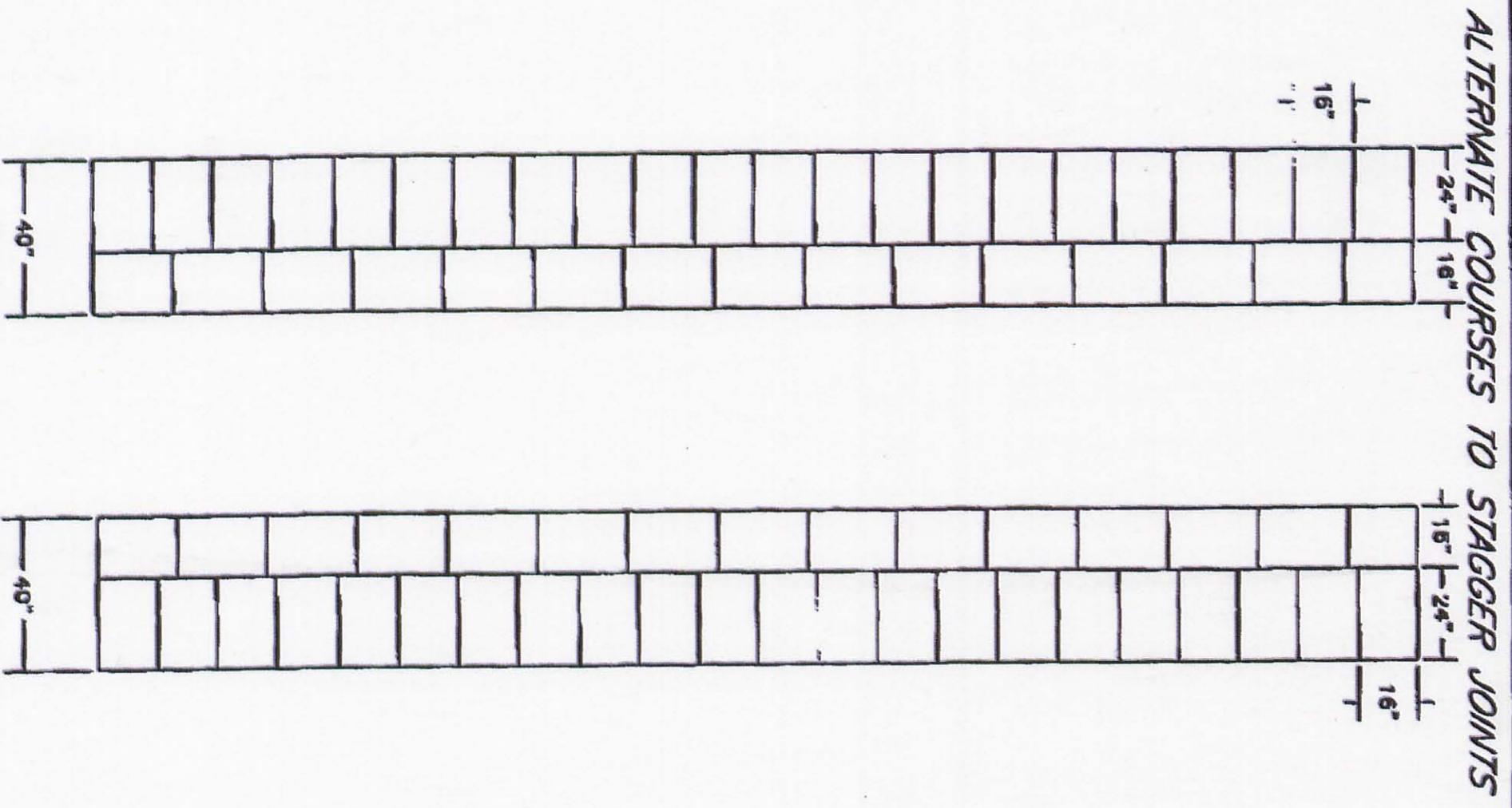
MS GPS Well Location (1/27/04)
Fig 47-297-2121A (Proposed)

MS GPS Well Location (5/28/04)
Fig 47-297-2123A (Proposed)

MS GPS Well Location (5/28/04)
Fig 47-297-2124A (Proposed)

MS GPS Well Location (5/28/04)
Fig 47-297-2125A (Proposed)

MS GPS Well Location (1/28/04)
Fig 47-297-2122A (Proposed)

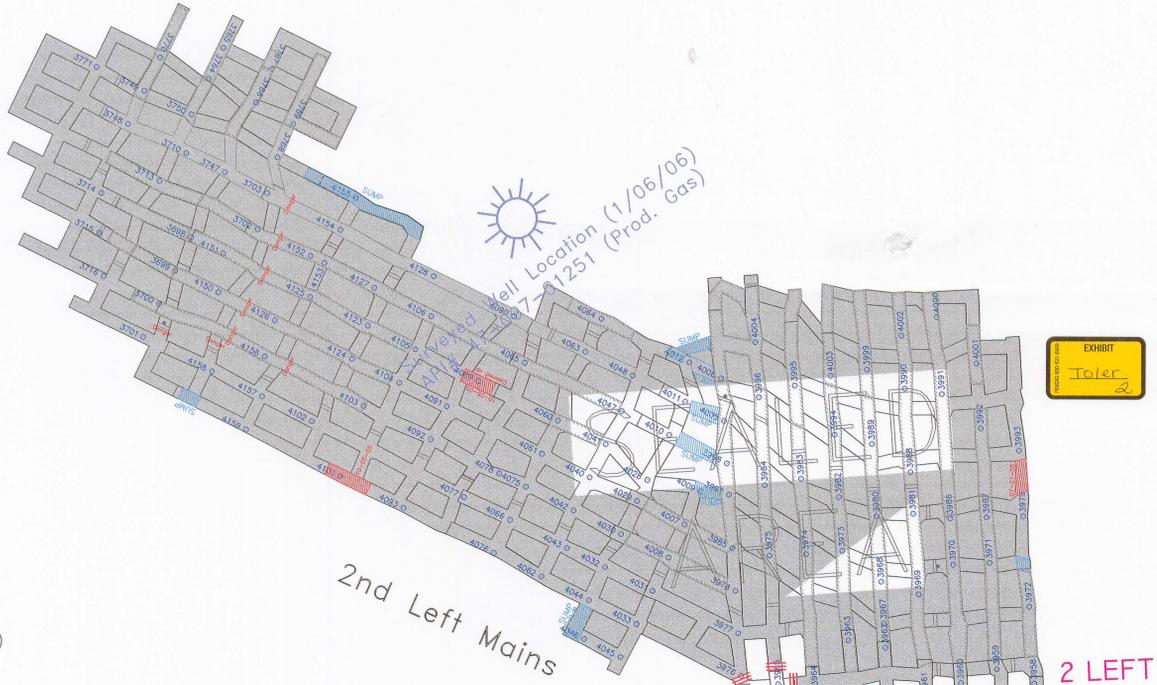


**40" THICK OMEGA BLOCK SEAL
CONSTRUCTION PLAN**

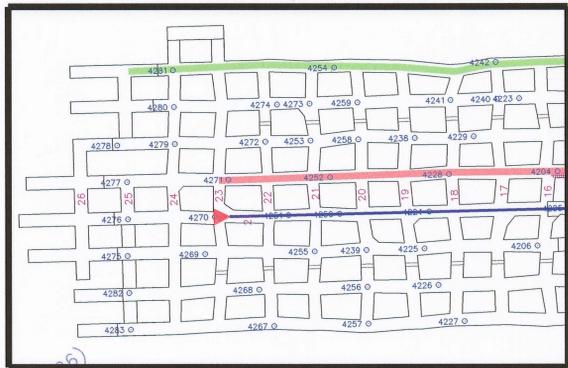
FOR USE WITH SEALS UP TO 8 FT HIGH BY 20 FT WIDE



Scale: 1" = 100'



Area Shown on Map
Scale: 1"=50'



2nd Left Mains

2 LEFT SEALS

2nd Left Parallel

Possible Layer(s)
P.C.C.

2 LEFT DRIVE

1st Left

Surveyed Well Location (1/06/06)
API# 47-097-01230 (Prod. Gas)

Surveyed Well Location (1/06/06)
API# 47-097-01230 (Prod. Gas)

1 LEFT DRIVE

ADVERSE CONDITIONS ENCOUNTERED

End of Mining
PTMS
3-20-2002

Surveyed Well Location (04/05)
API# 47-097-01230 (Prod. Gas)

MG GPS Well Location (5/06/04)
API# 47-097-01282 (Prod. Gas)

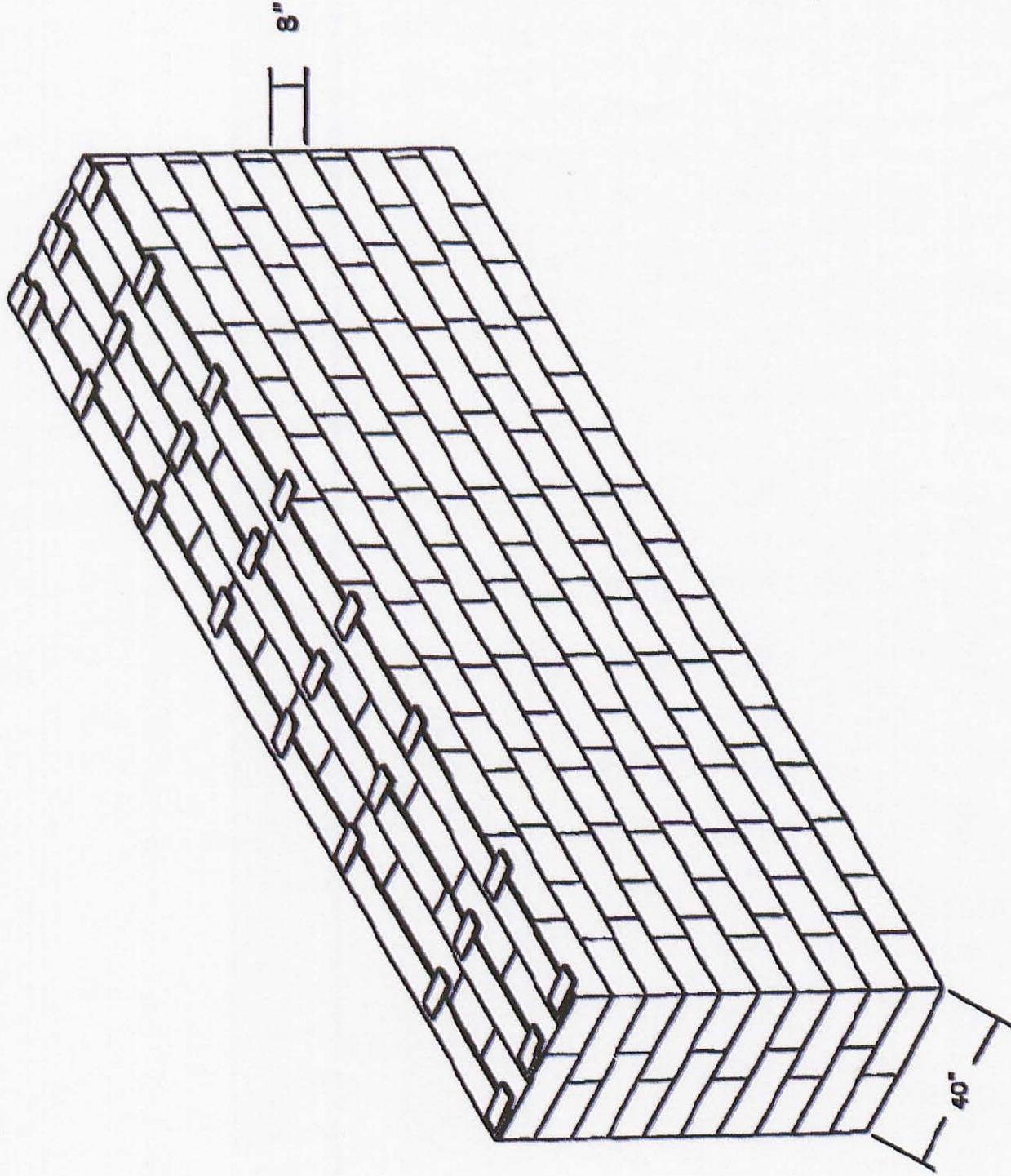
End of Mining Company, Inc.
BUM Coal Company,
11/15/2001

4TH NORTHWEST SUB-MAINS



40" THICK OMEGA BLOCK SEAL
FOR USE WITH SEALS UP TO 8 FT HIGH BY 20 FT WIDE
NO HITCHING REQUIRED

1. Total thickness of completed seal shall be 40 inches
2. No hitching required
3. Joints must be staggered
4. All joints shall be a minimum $\frac{1}{4}$ inch thick and be motored using "BlockBond"
5. Three rows of wood planks running the entire length of the seal shall be installed across the top of the seal
6. Wedges will be placed on 1' centers or less with "BlocBond" used to fill the gaps
7. "BlocBond" shall be used as full face coating on both sides of the seal.



- seals shall be at least 10 feet from the corner of the pillar
- Sampling pipes shall be installed as per 75.335