Massey's Actions Amount to ‘Industrial Homicide’

VICKI SMITH, Associated Press

MORGANTOWN, West Virginia (AP) — America's largest mine workers union accused Massey Energy Co. and its managers on Tuesday of "industrial homicide" for creating the conditions behind the April 2010 explosion that killed 29 men at a southern West Virginia coal mine.

In a scathing 90-page report on its own investigation into the Upper Big Branch disaster, the United Mine Workers of America called the company "a rogue corporation" that put profits first and safety last, and labeled the Montcoal mine "a bomb waiting to go off." Massey is now owned by Virginia-based Alpha Natural Resources.

The union demanded criminal prosecution of at least 18 Massey managers, including former Chief Executive Don Blankenship, who retired last December and has since vanished from public view.

It also recommends more than a dozen changes in state and federal laws and regulations to crack down on bad operators, from tougher penalties for illegal ventilation plan changes to stronger protections for whistleblowers reporting safety problems.

The UMW also rebuked federal regulators with the Mine Safety and Health Administration — and, to a lesser extent, their state counterparts — for what it called an "unconscionable" failure to use all the tools they had to shut down the long-troubled mine and prevent the nation's deadliest coal mine explosion in four decades.

Rather, the union charges, regional managers discouraged field inspectors who tried to strenuously enforce the law — one reason it also recommends Congress mandate independent investigations when mining accidents cause multiple deaths.

MSHA, which has yet to publish its final report, said it's reviewing the union report and will consider its recommendations. Director Joe Main said MSHA agrees that Massey maintained a culture that valued profits over lives.

"These findings underline the fact that MSHA can't be in every mine every shift, and that some mine operators take advantage of that," he said, adding that he has asked Congress for more tools to protect miners.

Alpha said it has yet to reach its own conclusions about what happened at Upper Big Branch but noted that since it took over Massey operations in June, it has launched a "Running Right" safety program and trained more than 7,500 people.

The union contends MSHA had plenty of opportunity to intervene: From Jan. 1, 2009,

until the explosion on April 5, 2010, it cited Upper Big Branch for 645 violations and imposed penalties of more than $1.2 million.

But those citations "were having no tangible impact," it says. Violations that are contested can't be used to increase enforcement efforts, and Massey contested 229 of its citations. At the same time, the union says, MSHA attorneys were routinely settling cases with lower fines.

MSHA could have conducted inspection blitzes, cited the company for flagrant violations and closed the mine, the union said.

Massey regularly treated MSHA's rules and inspectors with disdain, the union said, so the agency "should have realized it had to be even more protective of the miners."

Although Upper Big Branch was a nonunion mine, the UMW was designated a legal miners' representative after the blast and participated in much of the investigation.

An industrial homicide charge doesn't exist in either West Virginia, where the mine was located, or Virginia, where its owners are headquartered. Still, the UMW believes the government could prosecute Massey under other laws.

The accident is the target of continuing criminal investigations, but so far, only one Massey official has been indicted. Former security chief Hughie Elbert Stover went on trial in U.S. District Court in Beckley this week, charged with ordering a subordinate to destroy thousands of documents.

The union's theory of what caused the blast mirrors the conclusions of both an independent panel appointed by former Gov. Joe Manchin and MSHA, which has given several public briefings on its work.

All three investigations concluded that poorly maintained machines cutting into sandstone created a spark that ignited both a small amount of naturally occurring methane gas and a massive accumulation of explosive coal dust. Malfunctioning water sprayers allowed what could have been a small flare-up to become an epic blast that traveled seven 7 miles (11 kilometers) of underground corridors, doubling back on itself and killing men instantly.

The union also reiterated MSHA's position that the explosion could have been prevented or contained. Had the mine been sufficiently dusted with pulverized limestone to render the coal dust inert, the report says, the spark wouldn't have had the fuel needed to propagate.

In the year before the Upper Big Branch blast, the union noted, 70 ignitions occurred at U.S. coal mines, and none resulted in fatalities.

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Online: UMWA: www.umwa.org *[1]*

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