

Don L. Blankenship
Chairman and CEO, Massey Energy
Testimony before the Subcommittee on Labor, Health and Human Services and
Education and Related Agencies, Committee on Appropriations
United States Senate, May 20, 2010

Mr. Chairman, I appreciate the opportunity to appear before the Committee this afternoon to discuss the Upper Big Branch accident that took the lives of 29 valued Massey members. April 5th was one of the worst days of my life and in Massey Energy's history. But the grief we have felt since that day pales in comparison to the pain and loss endured by the family members who lost their husbands, brothers, sons, and grandsons that day. I was with the families in the week following the tragedy, and I have gained a profound respect for their faith and their love and commitment to the miners lost in the accident.

I have pledged that Massey Energy will do everything that is humanly possible to learn the cause of the explosion so that we can take every measure to prevent this type of accident from happening again. Massey is cooperating fully with state and Federal investigators and is conducting its own investigation into the accident as well so we can discover the truth. Furthermore, Massey Energy has joined with other stakeholders, including the United Mine Workers, in calling on MSHA to conduct its investigation of the Upper Big Branch mine explosion in the full sunlight of day, in front of the families of the miners, the mining community, and the American public.

Today, I want to address Massey's overall commitment to safety, discuss our interactions with MSHA regarding both inspections and appeals, and discuss ways that we can work together with MSHA to make mine safety and accident investigations more transparent.

From the day I became a member of Massey's leadership team 20 years ago, I have made safety my number one priority. I felt that other safety programs were too reliant on slogans and signs. So I designated safety as S-1: Safety First.

Massey has long been an innovator of safety enhancements and has introduced many safety practices that have later been adopted throughout the mining industry in the United States and around the world. Since the establishment

of our S-1 safety program, the innovation has increased. The following is a chronology of just a few of these Massey innovations:

- 1993 - Massey mandates the use of reflective clothing; Massey mandates use of metatarsal work boots for mining operations.
- 1994 - Massey implements seat belt policy for all mining equipment.
- 1995 - Massey designs, develops and implements ATRS flapper pads for roof bolters; Massey replaces ladders on large trucks with steps to reduce falls.
- 1996 - Massey requires the use of strobe lights on underground vehicles.
- 1999 - Massey installs lights on all belt line feeders; Massey adds submarine safety package on stockpile dozers and loaders.
- 2000 - Massey requires the use of reflective tape on all surface vehicles.
- 2002 - Massey adds submarine safety package on highwall excavators and shovels; Massey implements continuous miner radio remote safety precautions.
- 2003 - Massey installs safety cameras on surface haulage trucks.
- 2005 - Massey begins development of continuous miner proximity protection device.
- 2007 - Massey develops self-contained foam fire-fighting car.

Our next round of continuous miners will be the first in the world to have proximity devices on them that will shut down equipment if a coal miner is too close to them to be safe. And, we are near completion of a new hard hat design that we believe will be adopted by the entire coal industry.

Today, Massey Energy's safety program has more than 120 rules and equipment enhancements that exceed legal requirements. The result has been a 90 percent reduction in our lost time accident rate, which has been better – often dramatically better – than the industry average for 17 of the last 19 years. Our safety innovations have been adopted by our competitors and have been praised by MSHA. In fact, just last fall, MSHA honored Massey Energy with three Sentinels of Safety awards, the highest safety honor in the mining industry. No other mining company has ever matched that accomplishment.

So let me state for the record – Massey does not place profits over safety. We never have, and we never will.

No coal company can succeed over the long term without a total commitment to safety and a significant investment in necessary training, equipment and personnel. We strive to remain an industry leader in safety by developing new technologies and employing effective training programs to reduce accidents and improve safety for all of the hard-working men and women of Massey Energy.

Next, I want to talk about the issue of citations and appeals. Massey's approach to safety is simple. First and foremost, abatement is mandatory. If MSHA identifies a safety violation and issues a citation, abatement is also mandatory. That means that even if the company appeals the citation, the equipment at issue, or the area of the mine in question, does not operate until that cited hazard is fixed. The large majority of violations are corrected the same day, often immediately. For those that require more time to correct, a deadline is given by the inspector. The company has no choice in the matter, and must follow the direction of the inspector. This is process established by Congress in law.

We do appeal many of the citations, not to avoid correcting a problem, but because we disagree with the inspector's judgment or because we believe that a proposed penalty is unfair. The right to a fair hearing before a neutral factfinder is fundamental to our system, and Congress has guaranteed that coal mine operators, just like every other business and every individual share the right to due process of law. That means trial first, and punishment later, not the other way around. Since Congress made fundamental changes in the system in 2006, Massey's rate of appeals have been consistent with industry average. Just as important, through adjudications and settlements, the final penalties imposed are nearly 40 percent less than what MSHA proposed – a sure sign that our appeals are not frivolous nor are they taken for purposes of delay.

So as you can see, Massey Energy does not “game the system,” as some have insisted. Rather, we are exercising our rights to due process under the system that Congress has put in place. We do not benefit from a system in which appeals are backlogged for months or years and we urge Congress to appropriate the resources necessary to make the appeal process work fairly and expeditiously.

At the Upper Big Branch Mine, we worked together with MSHA to address citations and ensure that the mine remained safe. Between April and October 2009, 47 D orders, which are the most serious violations, were recorded at UBB. That presented a challenge that we would not tolerate and did not ignore. In response, Massey convened a Hazard Elimination Committee comprised of top managers and reduced these violations by 80 percent. In fact, MSHA held its quarterly close-out meeting a few days prior to the explosion, and determined that there were no major issues and that the mine was in “good condition.” Let me repeat that to make it clear. Just days before the April 5th explosion, MSHA certified that the Upper Big Branch mine had no outstanding major safety issues. It found the mine to be in “good condition.”

At Upper Big Branch, we complied with MSHA safety orders even when we strenuously disagreed with them and believed them to be detrimental to the health and safety of the mine. In particular, we disagreed with MSHA’s ventilation plan for Upper Big Branch mine. Against the advice of our own experts, MSHA required several changes since September 2009 that made the ventilation plan significantly more complex. This change in ventilation significantly reduced the volume of fresh air to the face of the longwall mining operation during this period. Our engineers resisted making the changes, in one instance to the point of shutting down production for two days, before agreeing to MSHA’s ventilation plan changes. We opposed the changes because our own engineers believed they made the mine less safe, not because they were more costly or because they interfered with production.

We do not know whether the ventilation system played a role in the explosion, and we do not know whether the modifications to that system demanded by MSHA played a role in the explosion.

But our disagreement with MSHA over the ventilation plan highlights what we believe is a fundamental flaw in the way the investigation of this accident is to be investigated. It is simply this: We do not think that MSHA should be able to investigate itself behind closed doors. How likely is MSHA to point the finger at itself if the evidence gathered in confidential interviews suggests that its actions contributed to the explosion? How do we know we’ll see all the evidence, or if all alternatives are aggressively explored if MSHA can investigate in secrecy?

Other safety agencies don’t work that way. After an aircraft accident, the independent National Transportation Safety Board conducts the investigation in

public. They look at both the airline operator as well as the federal regulator – in this case the Federal Aviation Administration. That is why we have called for an open, public and transparent investigation into the Upper Big Branch mine accident.

In conclusion, Mr. Chairman, Massey Energy continues to mourn the loss of our miners. We are caring for the families of those who lost their lives. And we are determined to find out what happened and make sure that it cannot happen again. I would be happy to answer any questions at this time.

Insert Charts Here