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Transcript of the Testimony of **Kenneth Farmer**

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STATEMENT UNDER OATH

OF

KENNETH FARMER

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, August 30, 2010, beginning at 12:57 p.m.

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24 ██████████

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A P P E A R A N C E S (cont.)

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

8*

Two

Return receipt

9*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is August
5 30th, 2010. I'm with the Office of the Solicitor,
6 U.S. Department of Labor. With me is Norman Page, an
7 accident investigator with the Mine Safety and Health
8 Administration, MSHA, an agency of the United States
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

13 I'm Terry Farley, with the West Virginia
14 Office of Miners' Health, Safety and Training.

15 ATTORNEY KOERBER:

16 And I'm Barry Koerber. I'm an Assistant
17 Attorney General, and I represent the West Virginia
18 Office of Miners' Health, Safety and Training.

19 MS. SPENCE:

20 And I'm Beth Spence, with the Governor's
21 independent investigation.

22 ATTORNEY BAXTER:

23 And there are also members of the
24 investigation team present in the room today. Mr.
25 Page, Mr. Farley and Ms. Spence will be conducting the

1 questioning today. Would you please swear the witness
2 in?

3 -----
4 KENNETH FARMER, HAVING FIRST BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS:
6 -----

7 ATTORNEY KOERBER:

8 Sir, would you please state your full
9 name for the record and spell your last name?

10 A. Kenneth L. Farmer, F-A-R-M-E-R.

11 ATTORNEY KOERBER:

12 And would you please state your address
13 and your telephone number?

14 A. [REDACTED] .

15 ATTORNEY KOERBER:

16 And do you have ---?

17 A. [REDACTED] .

18 ATTORNEY KOERBER:

19 Sorry. Sorry to talk over you. Do you
20 have your own attorney or personal representative ---

21 A. No.

22 ATTORNEY KOERBER:

23 --- that you're expecting to have here
24 today?

25 A. No.

1 ATTORNEY KOERBER:

2 Are you appearing here today as a result
3 of receiving a subpoena?

4 A. Yes, sir.

5 ATTORNEY KOERBER:

6 And would this be a copy of that
7 subpoena?

8 A. Yes, it would.

9 ATTORNEY KOERBER:

10 Okay. I'd like that to be marked as
11 Exhibit One.

12 (K. Farmer Exhibit One marked for
13 identification.)

14 ATTORNEY KOERBER:

15 And this, sir, is a copy of the return of
16 service filled out by the Deputy Sheriff or the
17 process server from Logan County that served you with
18 a subpoena on the 6th day of August, at 11:35 a.m.
19 And attached to that is a copy of the same subpoena.

20 A. Yes, sir.

21 ATTORNEY KOERBER:

22 If you'd mark that as Exhibit Two, I'd
23 appreciate it.

24 ATTORNEY BAXTER:

25 Okay.

1 (K. Farmer Exhibit Two marked for
2 identification.)

3 ATTORNEY KOERBER:

4 Sir, the statute that authorizes the

5 Director to subpoena witnesses requires the director
6 to offer to each witness subpoenaed a \$40 witness fee,
7 plus roundtrip mileage at the rate of 15 cents a mile,
8 plus reimbursement for any tolls that you may have had
9 along the way. In order to receive that money I have
10 two forms that must be filled out, one of which is an
11 IRS Form W-9, which is asking for your Social Security
12 number. If you would like to receive that money, then
13 those items must --- those forms must be filled out.
14 You are not required to fill out those forms, but if
15 you do not fill out the forms, you cannot receive the
16 money. Would you like to fill out those forms and
17 receive the money or would you like to decline?

18 A. Decline.

19 ATTORNEY KOERBER:

20 And I see we have somebody that just
21 entered the room. I'd ask that he identify himself
22 and who he represents.

23 ATTORNEY SILKWOOD:

24 This is Eric Silkwood from Allen Guthrie
25 & Thomas, counsel for performance and other Massey

1 entities during this investigation.

2 ATTORNEY KOERBER:

3 I have no other questions. Thank you.

4 ATTORNEY BAXTER:

5 All members of the Mine Safety and Health
6 Accident Investigation Team and all members of the
7 State of West Virginia Accident Investigation Team
8 participating in the investigation of the Upper Big
9 Branch Mine explosion shall keep confidential all
10 information that is gathered from each witness who
11 provides a statement until the witness statements are
12 officially released. MSHA and the State of West
13 Virginia shall keep this information confidential so
14 that other ongoing enforcement activities are not
15 prejudiced or jeopardized by a premature release of
16 information. This confidentiality requirement shall
17 not preclude investigation team members from sharing
18 information with each other or with other law
19 enforcement officials. The team members'
20 participation in this interview constitutes their
21 agreement to keep this information confidential.

22 Government investigators and specialists
23 have been assigned to investigate the conditions,
24 events and circumstances surrounding the fatalities
25 that occurred at the Upper Big Branch Mine-South on

1 April 5th, 2010. The investigation is being conducted
2 by MSHA under Section 103(a) of the Federal Mine
3 Safety and Health Act and the West Virginia Office of
4 Miners' Health, Safety and Training. We appreciate
5 your assistance in this investigation. You may have
6 your personal attorney present during the taking of
7 this statement or another personal representative, if
8 MSHA has permitted it, and may consult with your
9 attorney or the representative at any time. And for
10 the record, sir, do you have a personal attorney or
11 personal representative here today with you?

12 A. No, sir.

13 ATTORNEY BAXTER:

14 You may request a break at any time.

15 Your identity and the content of this conversation
16 will be made public at the conclusion of the interview
17 process and may be included in the public report of
18 the accident, unless you request that your identity
19 remain confidential or your information would
20 otherwise jeopardize a potential criminal
21 investigation. If you request us to keep your
22 identity confidential, we will do so to the extent
23 permitted by law. That means that if a judge orders
24 us to reveal your name or if another law requires us
25 to reveal your name or if we need to reveal your name

1 for other law enforcement purposes, we may do so.
2 Also, there may be a need to use the information you
3 provide to us or other information we may ask you to
4 provide in the future in other investigations into and
5 hearings about the explosion. Do you understand?

6 A. Yes, sir.

7 ATTORNEY BAXTER:

8 Do you have any questions?

9 A. No, sir.

10 ATTORNEY BAXTER:

11 After the investigation is complete, MSHA
12 will issue a public report detailing the nature and
13 causes of the fatalities in the hope that greater
14 awareness about the causes of accidents can reduce
15 their occurrence in the future. Information obtained
16 through witness interviews is frequently included in
17 these reports. Since we will be interviewing other
18 individuals, we request that you not discuss your
19 testimony with any person aside from your personal
20 representative or counsel.

21 A court reporter will record your
22 interview. Please speak loudly and clearly. If you
23 do not understand a question asked, please ask us to
24 rephrase it. Please answer each question as fully as
25 you can, including any information you've learned from

1 someone else. I would like to thank you in advance
2 for your appearance here. We appreciate your
3 assistance in this investigation. Your cooperation is
4 critical in making the nation's mines safer.

5 After we have finished asking questions,
6 you'll have an opportunity to make a statement and
7 provide us with any other information that you believe
8 to be important. If at any time after the interview
9 you recall any additional information that you believe
10 might be useful, please contact Norman Page of MSHA at
11 the telephone number or e-mail address provided to
12 you.

13 Any statements given by miner witnesses
14 to MSHA are considered to be an exercise of statutory
15 rights and protected activity under Section 105(c) of
16 the Mine Act. If you believe any discharge,
17 discrimination or other adverse action was taken
18 against you as a result of your cooperation with this
19 investigation, you are encouraged to immediately
20 contact MSHA and file a complaint under Section 105(c)
21 of the Act.

22 MR. FARLEY:

23 Mr. Farmer, on behalf of the Office of
24 Miners' Health, Safety and Training, I want to inform
25 you that the West Virginia Mining Regulations,

1 specifically West Virginia Code Chapter 22A, Article
2 One, Section 22, provides protection to miners who
3 participate in these type interviews against potential
4 discrimination. Should you experience any such
5 problems, you should contact the West Virginia Board
6 of Appeals. The Board is charged with hearing
7 complaints form miners on that subject. I would
8 caution you that should you have a problem, you should
9 --- you must file a complaint within 30 days of the
10 event.

11 EXAMINATION

12 BY MR. FARLEY:

13 Q. Mr. Farmer, we'll start with a little background
14 information, if you don't mind. How long have you
15 been a coal miner? How long have you worked in the
16 coal mining industry?

17 A. Thirty-five (35) or 34 years, somewhere in that
18 category.

19 Q. How long have you been with Massey?

20 A. Been with Massey for about 17 years.

21 Q. Okay. How long had you been at the UBB Mine as of
22 April 5th of this year?

23 A. Been at UBB Mine --- well, in and out a few times,
24 but mainly since January of '95.

25 Q. Fifteen (15) years, is that about ---?

1 A. At least somewhere in that category.

2 Q. The mine probably had only bee in operation a
3 couple, three years when you got there; right?

4 A. When I got there, the mine was in six breaks, had
5 been in operation for approximately two months.

6 A. You've been there from just about day one; right?

7 A. Right. I was held up at Marfork.

8 Q. Okay. What West Virginia coal miner
9 certifications do you have?

10 A. Technically all of them, I mean, you know, other
11 than electrical. I'm a certified foreman, certified
12 instructor, shot firer, all of these things.

13 Q. Okay. All right. What was your position, job
14 title, as of April 5th of this year?

15 A. I guess I was probably classified as a move
16 foreman, but I worked mainly outby on the main lines.

17 Q. What shift did you work?

18 A. Worked third shift.

19 Q. All right. Now, what area of the mine did you
20 have responsibility for?

21 A. Technically speaking, I worked all the mine from
22 Ellis punch-out to the longwall, up that way. I was
23 kind of on the switch at Ellis to the outby on the old
24 UBB. I didn't work in that area any.

25 Q. So your area of responsibility then would have

1 included the longwall?

2 A. I done a --- mainly on the longwall was making
3 sure that the Mother Drive was operating and the belts
4 was fine and the storage end was robbed and all this
5 kind of stuff to keep it up to the wall.

6 Q. Now, did the two miner sections in that part of
7 the mine, Tailgate 22 and Headgate 22, fall under your
8 area of responsibility?

9 A. I worked on mainly Headgate 22. I wasn't on the
10 Number Two section very much, but yes, I was one that
11 put the beltlines in for them and helped set the heads
12 and all that for that section.

13 Q. Now, would it be correct that you were a salaried
14 employee at that ---

15 A. Yes.

16 Q. --- time? Now, how long had you held that
17 position prior to April 5th?

18 A. I've held it ever since I've been at UBB.

19 Q. Fifteen (15) years?

20 A. Yeah. Ever since I've been with Massey, for
21 almost 17 years, I've been a foreman, salary.

22 Q. Now, has that always been on the midnight shift?

23 A. Basically other than just a few weeks stint or
24 something, filling in for somebody else or something.

25 Q. Okay. What was your actual title?

1 A. Probably, I think it was move foreman, probably is
2 what the listing was.

3 Q. Is that actually what it is or is that probably
4 what it is?

5 A. Well, move foreman moves the belt on the section.
6 But at the time of the explosion, I wasn't --- the
7 only time I went to the section is to fill in for the
8 Headgate 22 foreman so he could have a day off during
9 the week because we ran seven days a week. So I'd go
10 up to fill in for him so to give him a day off, and
11 then the rest of the time I was ---.

12 Q. Were you considered a shift foreman?

13 A. No. We had a so-called shift foreman, but ---.

14 Q. Who was that?

15 A. Walker. Sean Walker.

16 Q. Sean Walker. Okay. But you were a salaried
17 employee?

18 A. Yes, sir.

19 Q. Who was your immediate supervisor on the midnight
20 shift? Who did you report to?

21 A. I guess Sean Walker.

22 Q. Was he an evening shift foreman?

23 A. Yeah.

24 Q. Okay. How many other foremen were there on the
25 midnight shift as of April 5th or prior to April 5th,

1 other than yourself and Mr. Walker?

2 A. As far as I know, just the ones on the section.

3 We had a --- Headgate 22 had a foreman on it and then
4 the other headgates, so we had foremen on each
5 section. There was no other outby foreman.

6 Q. Who would have been the foreman on the Headgate 22
7 section?

8 A. Kyle --- let's see. What is his name? Kyle
9 something. Now, he didn't work the night of the
10 explosion. He was off.

11 Q. Okay. Now, of course, the explosion happened
12 around three o'clock on April 5th. What was your last
13 shift prior to the explosion?

14 A. The night before. I left there approximately
15 eight o'clock that morning.

16 Q. Okay. Does that mean you arrived sometime Sunday
17 evening on the 4th?

18 A. Right.

19 Q. What time did you arrive on Sunday evening, April
20 4th?

21 A. I was there by 11 o'clock.

22 Q. Okay. Was anybody there before you to do
23 pre-shift examinations of the mine?

24 A. Yeah. Yeah. We got fire bosses that pre-shifts
25 the mine.

1 Q. Do you recall who they were that night?

2 A. John Neely was one of them, I believe, and I can't
3 think who the other one might have been on that side
4 of the mines. Now, on the --- like I said, on the
5 other side of the mines we got different ones that I'm
6 not acquainted with.

7 Q. Okay. Now, where did you portal at that time?

8 A. I portalled at Ellis.

9 Q. Okay. All right. When you got there that
10 evening, at 11:00 p.m. or so, who did you see outside
11 the mine? What management people did you see outside
12 the mien when you arrived?

13 A. Sean was there and, I mean, like I said, the fire
14 bosses. I seen them. But that was the only other ---
15 I didn't see no others.

16 Q. Did you see any of the other management people
17 such as the mine foreman or superintendent?

18 A. No.

19 Q. Vice-president, president?

20 A. Not that I can recall.

21 Q. Okay. All right. What time did you enter the
22 mine?

23 A. We go in at 11:30.

24 Q. What do you recall that you were assigned to do
25 that night?

1 A. that night we went up and checked the Mother
2 Drive. I think we had to make a splice or so on the
3 longwall belt on the --- that fed the longwall
4 section. And then we might have had to change a
5 roller or something on a six-foot belt there. I don't
6 remember exactly. But I know that they was setting a
7 flow-through on the Ellis punch-out side, and the
8 foreman that was setting it was coming from the other
9 side and he was a younger foreman that wasn't familiar
10 with setting flow-throughs or what on the beltline, so
11 we went down and helped him ---

12 Q. Okay.

13 A. --- after we got done with the storage unit.

14 Q. Okay. Now, during that last shift, did your
15 duties involve making a pre-shift examination for the
16 oncoming dayshift?

17 A. No. John Neely made the pre-shift examinations on
18 the headgate sections. And I had talked to John
19 earlier and asked John if he had any --- if there was
20 anything out of the ordinary or what, and John said,
21 no, that he --- and he would make the pre-shift for
22 the dayshift because we was covered up outby. He
23 said, I'll take care of it. And as far as I know, he
24 did, ---

25 Q. Okay.

1 A. --- according to his statement.

2 Q. During that last shift there on the morning of
3 April 5th, did you advance any farther inby than the
4 longwall Mother Drive?

5 A. No, I don't think we did. I think that's as far
6 as we went.

7 Q. Okay. When you were in the vicinity of the
8 longwall Mother Drive during that April 5th shift, did
9 you notice anything unusual?

10 A. No.

11 Q. Anything at all?

12 A. No.

13 Q. Any unusual smells?

14 A. No.

15 Q. Any burning sensation in your eyes?

16 A. No. Nothing abnormal.

17 Q. Okay. Did you or anyone else happen to take a
18 methane examination test in that area?

19 A. Yeah. We kept methane detectors on us, me and
20 Sean. Sean had them, and we detected nothing.

21 Q. Okay. Now, was that your first work location
22 during your shift, the Mother Drive?

23 A. Yes, sir. I believe that's the first place we
24 went to.

25 Q. Now, after you made the splice, did you go

1 elsewhere? Back to Ellis?

2 A. Went back to Ellis. After we got done up there at
3 the Mother Drive, we went back to Ellis.

4 Q. When was the last time you would have visited the
5 Headgate 22 section prior to the explosion?

6 A. Well, it would have been in the face area on that
7 section. Would have probably been a week before.

8 Q. Okay.

9 A. Because generally speaking, like I said, I
10 generally don't go up there but maybe one night a week
11 on the main face area. Now, I'm outby there on the
12 belts or what, but I'm not ---.

13 Q. Okay. The last time that you went to Headgate 22,
14 did you happen to pass by the power center during that
15 shift?

16 A. Yeah.

17 Q. Okay. We understand there's a sign hanging at the
18 power center, a high voltage sign.

19 A. Yeah.

20 Q. Do you recall seeing that sign the last time you
21 were up there?

22 A. Well, I never --- as far as I know, it was there.
23 I mean, we always got a high voltage sign on it.

24 Q. But was the sign hanging limp and straight or was
25 it blowing back and forth?

1 A. Now, I wouldn't have paid any attention on that,
2 but it's usually hung to or what. It was sitting
3 there. And that's the main intake for that section,
4 so I'm assuming that probably would have been moving
5 somewhat, because the air comes up on Two section. So
6 it would have been (indicating).

7 Q. That's why I asked.

8 A. Yeah.

9 Q. What we understand, it was an indicator of how the
10 ventilation might have been.

11 A. Well, the honest truth is --- I'll be frank with
12 you. The honest truth is the ventilation on that
13 section has been better the last few times I took the
14 air reading up there than it has for a long time.

15 Q. Okay. Well, when do you recall the last few times
16 you took an air reading on the 22 Headgate prior to
17 April 5th?

18 A. I can't remember no dates, but I'm usually up
19 there like one day a week. But the last few times
20 that I took an air reading on the last open crosscut
21 on Headgate 22 was somewhere in the 20,000 range.

22 Q. Okay. Now, how much had it improved since
23 previous times that you had taken air readings on 22
24 Headgate?

25 A. Somewhere in the neighborhood of 10,000 feet.

1 Q. That much? Okay. Prior to April 5th, when was
2 the last time you would have visited the Tailgate 22
3 section?

4 A. Now, that one I'm --- I have no idea.

5 Q. Okay.

6 A. I would have been at the mouth of it, but I would
7 have not been up on the section. About as far as I go
8 on Headgate --- on that section would have been there
9 at the overcasts or the main belt head or what feeding
10 that section.

11 Q. Okay.

12 A. I was on the belt between the two sections quite
13 often. But I --- but as far as being up on the Two
14 section face area, I couldn't tell you when the last
15 time I was in that area.

16 Q. Okay. Now, we understand that there had been some
17 construction work going on here to install a new
18 Mother Drive here at the mouth of 22 Headgate, where
19 the 22 Headgate section belt dumps.

20 A. Yeah.

21 Q. When was the last time you were in that area
22 prior ---?

23 A. I was in that area basically every day.

24 Q. Okay. Was the --- as of your last shift, was the
25 construction still ongoing at that location?

1 A. No. Technically, we were basically done there for
2 the time being. I mean, they was going to have to put
3 a new storage unit in, but I don't think there was
4 anybody actually that I know of.

5 Q. Okay.

6 A. It was kind of in a --- you know, in a limbo.

7 Q. Now, were you involved in actually performing some
8 of the work at that site?

9 A. Oh, yeah.

10 Q. What did you routinely do there?

11 A. I helped do it all, put all the --- helped put all
12 the beltline in, belt structure, belt, all of that.

13 Q. Okay.

14 A. Helped set the head and tailpiece for the Two
15 section to dump on.

16 Q. About when did that project start at that new
17 Mother Drive location?

18 A. Oh, it probably started several months before.

19 Q. Okay. And had you been involved in working there
20 regularly since it had started?

21 A. Oh, sure.

22 Q. Okay. Now, during the time that you did the work
23 in that area, was it necessary to remove stoppings at
24 any time or ---?

25 A. No, not --- we didn't move any to put that in. I

1 mean, there might have been some ventilation changes,
2 you know, somewhere in the line, but as far as most of
3 the time I didn't --- we had a construction crew up
4 there on the dayshift or what, so anything like that
5 more or less off and on, different ones of them deal
6 with because I dealt mainly with the belts.

7 Q. Was it necessary to use a continuous miner in
8 there?

9 A. Yeah.

10 Q. Now, was a continuous miner used on your shift,
11 the owl shift?

12 A. Yeah, at times.

13 Q. Okay. Now, when you were operating the miner, was
14 it necessary to remove any stoppings or open any doors
15 in order to move the dust away from the mining
16 machine?

17 A. Now, that I would not know because when they was
18 operating the miner they had coal crew operators there
19 or what and they had different foreman from dayshift
20 somewhere up there, taking care of that.

21 Q. Do you know what impact this Mother Drive
22 construction site might have had on the 22 Headgate
23 ventilation?

24 A. Minimum, as far as I'm concerned.

25 Q. Would it possibly at times have disrupted the

1 ventilation to the 22 Headgate section?

2 A. I don't think so. It shouldn't have because the
3 air coming up come up and went around and come back
4 down. So whatever they was doing here was superficial
5 to the air that was going to the headgate section.

6 Q. All right. Now, prior to the explosion on April
7 5th, when is the last time you passed through this
8 crossover area from --- connecting Headgate 22 back
9 towards the longwall headgate entries?

10 A. Probably just a day or two.

11 Q. Okay. Did you notice any float dust in that area,
12 through the crossover?

13 A. Not really. They had dusted. When we came
14 through they had been dusting on the Headgate 22 part
15 here and they had been dusting in this area also, as
16 far as I can remember.

17 Q. When had they been dusting on Headgate 22?

18 A. Well, we was in there, and I had guys hand dusting
19 up through there just probably within a week or
20 something of the explosion.

21 Q. Okay. The map here indicates --- says a roof
22 fall.

23 A. Yeah. There was as roof fall right on the --- in
24 the track entry on it.

25 Q. Were you involved in cleaning up that fall?

1 A. Yes, sir.

2 Q. Okay. Was it necessary to shoot any rock?

3 A. No, not when I was there.

4 Q. Okay. Do you know if any ---?

5 A. No. I take that back. We did shoot rock there.

6 Q. Okay.

7 A. But all we shot was just the slope because we went
8 overtop the rock.

9 Q. Okay.

10 A. So what we done was drill holes just enough to
11 shoot the --- to make a transition.

12 Q. Where did you get your --- where did you acquire
13 your powder and caps to shoot the fall?

14 A. We acquired them from outside.

15 Q. Okay. Did you bring them in at the start of your
16 shift and take them out at the end? How did that
17 play?

18 A. Yeah. Well, we got --- the responsible person was
19 Glenn whatever. He's the one that takes care of the
20 magazine.

21 Q. Glenn?

22 A. I have a bad time with names here lately.

23 Q. Is he on the midnight shift every night?

24 A. Yeah. He's the midnight shift fire boss.

25 Q. Okay. Ullman?

1 A. Ullman. Ullman. Glenn Ullman.

2 Q. All right.

3 A. So Glenn, he brought the powder in and we drilled
4 it and shot it, and then he took care of the powder
5 afterwards.

6 Q. Are you aware of any powder and caps left in the
7 mine or stored in that crossover area prior to April
8 5th?

9 A. I know there was powder and caps up there, and
10 Glenn was supposed to have got them. Then after that,
11 I don't know.

12 Q. Okay. How often did you have occasion to travel
13 across the longwall face?

14 A. I hadn't been across the longwall. Never did I go
15 across the longwall face itself.

16 Q. Okay. All right.

17 A. As far as I goes up, to the stage loader or
18 whatever on the wall.

19 Q. So let's just say during the year 2010 at no time
20 did you pass along the longwall face?

21 A. No.

22 Q. Okay. All right. How often did you travel the
23 longwall headgate entries?

24 A. Quite often.

25 Q. Okay. The map here shows as couple sets of doors

1 here on either side of where the intake air splits,
2 where the air goes to the longwall and then travels to
3 the two miner sections. We understand these doors on
4 the inby side where the air splits there were
5 installed sometime around the 1st of March. Would
6 that be correct? Or if that's not correct, you know,
7 please tell me when it was ---.

8 A. I hate to say because they were putting doors and
9 stuff in there, you know, when the wall was a backing
10 up, so --- other people dealt with that, so it would
11 be hard for me to say exactly when they went in.

12 Q. Okay. Do you recall what these doors looked like,
13 particularly these two on the inby side of where the
14 air splits towards the longwall there?

15 A. As far as I know they were silver aluminum doors,
16 and they were in good shape as far as I can remember,
17 the ones going to the wall.

18 Q. The reason I ask, because I've been told that the
19 installation here that I'm pointing to, you had a door
20 crossing the track and then you had a side ---
21 partition to the side, which would have some number of
22 blocks left out to allow air to pass through. It
23 functioned like a regulator; would that be correct?

24 A. No. The two doors that I know of that fed to the
25 longwall were in good shape. They were regular doors

1 closed all the way around.

2 Q. But if this map is correct and this green line
3 represents intake air, now, if this map is correct
4 here, there would have to be some opening in these
5 doors in order to allow air to pass along the longwall
6 headgate. Am I correct or is the map wrong?

7 A. You've got two sets of doors. This set of doors
8 here is the set of doors that's first class.

9 Q. We've been advised that there are openings in
10 these ---

11 A. These doors here ---.

12 Q. --- two doors to allow air to pass through.

13 A. These doors here, now there might have --- yeah,
14 there was air that went up that way, but I'm trying to
15 remember how it went because, see, that's when we was
16 making some of the ventilation changes. See, we made
17 some major ventilation changes through there in that
18 time. We built stoppings, knocked stoppings, redone
19 the doors, built overcasts and all, so ---.

20 Q. If this map is correct ---.

21 A. I guess some were in there, but ---.

22 Q. It shows return air going across these overcasts
23 and then intake air passing underneath. Now, there
24 would have had to have been openings in these doors in
25 order to allow the intake air to go towards the

1 longwall, unless the map is wrong. And that's why I
2 asked, you know, is the map correct?

3 A. Well, now, like I said, the longwall part, you
4 know, I kind of stay away from something. On the
5 other --- but now these other doors here, I definitely
6 know that they were ---. But these doors here I'm not
7 for sure about. I can't remember.

8 Q. All right.

9 A. But I know the last time I was there, they had ---
10 they had strung some curtain or something across
11 there. Maybe they didn't have the doors in at the
12 time because there was curtain across that entry.

13 Q. When's the last time you passed through that area?

14 A. When we made that --- well, I might have come down
15 from this way down to do something. And just a day or
16 two before that there was a set of doors --- there
17 used to be a set of doors right in --- it might have
18 been here, one of these places here, and I just sealed
19 them, put a stopping in there, ---

20 Q. Okay.

21 A. --- right at the mouth of the wall.

22 Q. Do you recall when you did that?

23 A. I did that just about a week or so before in order
24 to keep the air up there. It was ---.

25 MR. PAGE:

1 At the Headgate One North. Is that where
2 you're talking about?

3 A. Yeah. It was right where the forklift charger is
4 set. Matter of fact, the forklift is sitting there
5 now or was after the explosion. It was right across
6 from that forklift is where we put some doors.

7 BY MR. FARLEY:

8 Q. Would you have changed many doors up here in this
9 area at the longwall?

10 A. In that area, I --- no, it would have been the
11 longwall men or whoever would have been fooling with
12 that.

13 Q. All right. Well, speaking of doors, would I be
14 correct that there were a considerable number of doors
15 throughout the UBB Mine prior to this explosion on
16 April 5th?

17 A. Oh, yeah.

18 Q. Now, how often did you come upon doors that had
19 apparently been left open or were open when they
20 should not have been?

21 A. Never.

22 Q. Never?

23 A. I never come up on them when they was hardly open.
24 The only problem we ever had on doors open was if they
25 was three or four mantrips going through and they

1 would want to maybe open both sets until they got
2 through, and then we always had to throw a fuss on
3 them and reprimand them and all this. But as far as
4 me coming up and doors being open, I don't never ever
5 remember coming up and finding doors open.

6 Q. Okay. Now, --- let me narrow this question down a
7 little bit. From let's say January 1 through April
8 5th, 2010, did you detect any methane in the UBB Mine
9 at any location?

10 A. The only place in UBB Mine that I ever detected
11 methane was in the face area of the Headgate 22
12 section.

13 Q. And when was that?

14 A. Probably the last shift I went up there.

15 Q. Okay.

16 A. It always ran anywhere from .1 to .3.

17 Q. Okay. And again, when was the last time you would
18 have visited ---?

19 A. It was probably a week before the explosion.

20 Q. Okay. did you ever detect any more than that
21 anywhere in the mine?

22 A. No. As far as the mine itself, I never detected
23 nothing. I worked inby --- I worked inby the longwall
24 when we was --- matter of fact, when we drove Two
25 section, which would have been right here, when they

1 were driving this headgate section here toward the
2 exhaust shaft. We always had --- in the face area of
3 this section we always had gas, you know, not much.
4 Here at Two section come right up the side, right
5 here.

6 MR. FARLEY:

7 He's pointing now at the longwall
8 tailgate entries ---.

9 A. I can't remember ever getting any gas up Two
10 section. I never got none going across this crosscut
11 here. And I never got none going across here. But
12 just as soon as I would get in the main headgate, in
13 the face area, I would detect ---.

14 MR. FARLEY:

15 He's referring to the area inby the
16 longwall, beginning at around Crosscut 90 and moving
17 inby towards the Bandytown fan area.

18 A. And then once we got the fan shaft built, I stayed
19 in here for probably weeks or maybe a month setting
20 them air pumps. And in there I never detected any gas
21 in the area that I worked all up and down through
22 here, inby the wall.

23 BY MR. FARLEY:

24 Q. Was that after the Bandytown fan went on line?

25 A. That's after the Bandytown fan went on line.

1 Q. Okay. Now, prior to April 5th, when was the last
2 time you would have traveled up the longwall tailgate
3 side back to that area?

4 A. They put another foreman up there, so I couldn't
5 say. I would have traveled up to here. I would have
6 probably been up to the end of the track probably just
7 a few days prior to --- well, which would have been
8 basically we done started pulling back, so the track
9 would have been here. We would have been ---.

10 ATTORNEY BAXTER:

11 You were at the end of the track at the
12 longwall tailgate?

13 A. Right. Right in here.

14 BY MR. FARLEY:

15 Q. You've got your finger here at about Crosscut 67
16 in the longwall tailgate; is that correct?

17 A. Yeah. That's where the end of the track should
18 have been. There was a belt head set in there.

19 Q. Okay. And that was --- when were you last there?

20 A. I was probably in there probably a week before the
21 explosion, I guess.

22 Q. Now, what does it look like in there? How many
23 entries at that time were actually passable? If you
24 wanted to walk --- if you wanted to travel that
25 tailgate back here towards the Bandytown fan, which

1 way would you have gone? How many of those entries
2 were actually passable?

3 A. Well, once you --- once you get up to the end of
4 the track right here, outby that track you can
5 probably travel one, two, three, four, probably five
6 entries mainly all the way back this way, but
7 then ---.

8 Q. From there outby?

9 A. There outby. But once you go inby, from the end
10 of the track you cross back over. And then typically
11 speaking, you could travel one entry all the way up to
12 here. And then this was opened up here where you
13 could travel to.

14 Q. You could travel --- from the end of the track you
15 could safely travel the Number One entry back to
16 the ---?

17 A. Back to where the longwall started.

18 Q. To where the longwall started.

19 A. And then when you go inby that, you could travel a
20 couple, three entries all the way. And then when you
21 get up here, you could travel three entries basically.

22 Q. Okay. Now, other than the week before, when was
23 the last time you were on the back end of the
24 longwall?

25 A. It was probably a month maybe or longer.

1 Q. Did you make it back far enough to see any water
2 in the area from 80 to 85 to 90 or 95?

3 A. Yeah, when I was in there, we always had water.
4 That's what I was in there doing, pumping.

5 Q. The last time you were there you'd say a month
6 before maybe?

7 A. Yeah, something like that. As far as I know, the
8 water was still probably three or four-foot deep in
9 there.

10 Q. Number Three entry?

11 A. Number Three entry.

12 Q. What about the Number Two ---?

13 A. Or Number Four.

14 Q. What about the other two entries, how deep was the
15 water there?

16 A. You could travel them. You could travel the track
17 all the way to the --- all the way to the exhaust
18 shaft.

19 Q. Okay. Now, you say the water in Number Three
20 entry at that time was how deep again?

21 A. I'd say down in this area down here it was
22 probably a couple, three foot deep or what. I mean, I
23 never did go all the way in there. I just ---.

24 Q. Did it appear to be roofed anywhere, as you can
25 recall?

1 A. No. The only place we had any trouble over the
2 roofing was up around 100 Break. And we had pumps set
3 there and we kept pumps on reserve.

4 Q. Okay. Was anybody with you the last time you were
5 in that area?

6 A. I'm sure there were. Probably Sean Walker was
7 probably with me, and then some of the other workers.
8 But like I said, they put Jeremy Burdoff in there as a
9 pumper. So he took over. when I left out of there,
10 he took over as a pumper.

11 Q. When did Jeremy take over responsibility for that
12 area?

13 A. Like I said, it was probably a month or something
14 before.

15 Q. About --- Jeremy would take it ---?

16 A. I'm saying at least a month, something in that
17 nature. I'm not sure.

18 Q. Okay. Now, if you ---.

19 A. When I'm there seven days a week, time just ---
20 you know, it don't ---.

21 Q. If you didn't see to the pumps in that area, how
22 long would --- how fast would that water build up?

23 A. It seemed to me like once we first got a handle on
24 it, when we first got in there on 100 Break, it didn't
25 seem to me like it went up very fast in that area. It

1 would have to be something ---.

2 Q. Okay.

3 A. Because they graded the bottom and we had pumps
4 set up near the exhaust shaft and --- so the main two
5 they worried about I think was the ones in One and Two
6 entries. They wanted just to make sure the water was
7 down so --- because them was the ones that always
8 filled up last. Usually if it would have filled up,
9 it would have been in this Number Four entry it came
10 up first and then Three entry, then Two, then One is
11 the way it would have.

12 Q. Okay.

13 A. But now the water down in here, as far as I know,
14 they still had water down in this way. It wasn't
15 roofed.

16 Q. You're pointing to the area between 85 and 90 ---

17 A. Somewhere in that area, yeah.

18 Q. --- Headgate? Three four --- two to three feet?
19 How deep was it the last time ---?

20 A. I would say it was probably somewhere in the
21 neighborhood of two to three foot deep in the one
22 entry.

23 Q. That's Number Three?

24 A. That would be the first entry over.

25 Q. Did it appear --- did the water appear to be

1 impeding the ventilation or the airflow?

2 A. Now, I mean, because the ventilation could come
3 all the way up this side here.

4 Q. What about wherever it might have been pulling
5 down the headgate?

6 A. Well, like I said, it come down there, then you
7 got all the gob area in here it's got to feed through.
8 But the air is supposed to go --- just typical
9 longwall ventilation.

10 MR. FARLEY:

11 Mr. Page, do you want to ---?

12 EXAMINATION

13 BY MR. PAGE:

14 Q. What is typical longwall ventilation?

15 A. Huh?

16 Q. What do you mean by typical longwall ventilation?

17 A. I'm talking about in the gob area. Actually
18 you've got squeeze areas in here and you've got roof
19 falls throughout, so air has got to pass through. You
20 know, it's going to be ---.

21 Q. Do you know who set this system up, what engineer?

22 A. No. No. No idea on that. But I do know that at
23 UBB, we are inundated by mine inspectors. There's
24 very seldom a day that we don't have State or Federal,
25 sometimes both, sometimes anywhere from probably ---

1 anywhere from one to four of them just about per day.
2 And everything that I know of that we done --- because
3 generally on the third shift, any ventilation changes
4 from the time the exhaust shaft went on like changing
5 doors around, getting overcasts on line, switching
6 doors, taking out doors, I was usually involved in and
7 usually done it through the direction of Federal and
8 State inspectors, plus company officials.

9 Q. They'd give you a copy of a plan or something ---

10 A. Right.

11 Q. --- to go by?

12 A. Usually Wayne Persinger or someone of that nature
13 from the company would be there, and then the mine
14 inspectors would be there and they would say --- pull
15 out a map and they'd say, Kenny, you need to go do
16 this and you need to go do that. Sometimes I might
17 have been questioned on something or maybe I wasn't,
18 but the thing about it was I didn't see the ---

19 Q. Sure.

20 A. --- I wasn't in the initial draw-up of it, so I
21 don't know what the ---.

22 Q. You're like me, you follow orders.

23 A. That's it. But as far as I know --- but I mean,
24 it was never ---.

25 Q. So do you do --- could you do any hiring or

1 firing?

2 A. No. Well, I could fire if I had to, but I can't
3 do no hiring.

4 Q. Okay. Did you work up there when they was
5 advancing this section? Did you set the belt up or
6 was you involved in it?

7 A. Yeah, I worked on that --- but I didn't work on
8 that section until --- see, I worked taking care of
9 this section here, driving up. And we drove across
10 here and drove into here, too, that section. Then
11 once we got to this section, in order to get out that
12 way, then I was extra. So I worked on it, you know,
13 when the other guys could have some days off.

14 Q. Prior to starting the wall up, did they have any
15 problems through here with the roof conditions or
16 anything?

17 ATTORNEY BAXTER:

18 Where are you indicating?

19 A. After the wall started, they started having roof
20 conditions in this area here, this Number One entry,
21 you know.

22 BY MR. PAGE:

23 Q. On the headgate? Up through here?

24 A. They started having problems in there. But now I
25 was never in there.

1 Q. It started after the wall started?

2 A. Yeah. I believe it was after the wall. And
3 that's how come once they done that, that's how come
4 they started the Two section down here.

5 Q. Because the headgate was having problems?

6 A. So they could drive up, so at this panel here they
7 would have an escapeway for the longwall boys once
8 they got that panel drove. So they started the Two
9 section here because they was limited on this one
10 here. Once they got this panel going, it would be
11 hard to travel some of this as an escapeway in that
12 panel.

13 Q. With your what, 34 years in the mines, ---

14 A. Yeah.

15 Q. --- would you think that driving this 22 Tailgate
16 up that close to the 21 Headgate would give them
17 adequate protection?

18 A. I say it should. I'm assuming they've got what,
19 200 --- 100 feet or so between the two and they
20 weren't but just going to ---.

21 Q. Well, it's falling in here.

22 A. Yeah, but I don't really see no problems.

23 Q. Okay. So where did they have problems on --- inby
24 the wall when you traveled up through there? You said
25 you was up there just what, a week or two?

1 A. Yeah. The only trouble we had inby the wall at
2 the time was just the water. We was just getting the
3 water squared away.

4 Q. So you came up through --- I believe Terry already
5 asked you and ---.

6 A. I mean, the rest of the time as far as I came was
7 down here at the end of the track, just recovering. I
8 think probably the last time I came up, I came up and
9 got a scoop somebody had left there.

10 Q. When was that?

11 A. Like I said, probably about a week.

12 Q. About a week before?

13 A. Yeah, something of that nature. I'm not sure.

14 Q. So you came up here?

15 A. Yeah. The wall was ---.

16 Q. The wall should have been about right here the
17 week before.

18 A. Yeah. Wherever the end of the track was I'd have
19 to get down ---.

20 Q. So the wall was down below outby the --- or right
21 at the cross --- where the crossover is from 21 to 22
22 --- or 22 to --- between the head and the tail; right?

23 A. It might have been. I might have been a little
24 bit longer than that, but I know I was ---.

25 Q. Which is the track entry?

1 A. Number Three, I believe.

2 Q. Number Three? Okay. So was that a separate air
3 carrying up through there?

4 A. Yeah. Yeah. Yeah, they've got a stopping line up
5 this way.

6 Q. Yeah. But where is the track at?

7 A. The track is in Number Three.

8 Q. Okay. They had overcasts down here where it comes
9 down this way.

10 Q. What did you ride up there?

11 A. I rode a mantrip.

12 Q. Okay. Non-permissible, I believe?

13 A. Huh?

14 Q. Non-permissible?

15 A. We've got permissible mantrips.

16 Q. Track?

17 A. Yeah. We've got the things on several of them.
18 We had to have them once before in different areas.

19 Q. Okay. What was the condition of the roof over in
20 that area, over at the tailgate entries when they
21 drove that up?

22 A. As far as I know, I ain't walked the airways back
23 down this way. I always came up the track.

24 Q. You just came up the track?

25 A. As far as I know, the airway was open. We had to

1 fall --- we had a fall in this area down here, in what
2 they call the Number Two entry, somewhere right close
3 to the end of the track, because we went around it,
4 but it didn't have anything to do with the
5 ventilation.

6 Q. You traveled on up the tailgate entry through the
7 crossover or through the 45?

8 A. Through the 45. But now like I said, I haven't
9 been in there since mainly Jeremy Burdoff took over,
10 so ---.

11 Q. Did you go up to the fan and take air readings,
12 the Bandytown fan?

13 A. I took methane checks when I was in there. They
14 usually took air readings, I think, at the top.

15 Q. They didn't take them underground?

16 A. I don't think. I think they took them up at the
17 top.

18 Q. Okay. When you was over there, did you ever make
19 the weekly over there?

20 A. No.

21 Q. Who did that?

22 A. Just ---.

23 Q. So you just took ---?

24 A. I think Charlie Semenske traveled it on the
25 weekly, and I don't know who else.

1 Q. Burdoff?

2 A. Burdoff was the one that was on the pumps at the
3 end, Jeremy.

4 Q. Okay. So you said that you was down --- the last
5 shift you worked, you was at the Mother Drive on the
6 longwall?

7 A. Right.

8 Q. Okay. Do you know if anyone had rock dusted belts
9 or anything up through there that night?

10 A. No, I don't. We had a rock dust crew that worked
11 every night rock dusting, but they worked from the UBB
12 side.

13 Q. Okay.

14 A. So I don't know if they dusted ---.

15 Q. Did you pre-shift that area through there?

16 A. No. No. We got fire bosses that does all the
17 pre-shifting.

18 Q. Who would have pre-shifted that if they did rock
19 dust it that night?

20 A. Like I said, the only one I can really remember
21 right off the top of my head that was there was John
22 Neely.

23 Q. Okay.

24 A. Because I know he fire bossed Headgate 22 section,
25 so ---.

1 Q. Was did you do around the Mother Drive that night?

2 A. We robbed the storage unit or made splices on it
3 or something on that Mother Drive.

4 Q. Okay. Did you leave the belt running when you got
5 through?

6 A. We always leave the belt switches on, but they
7 usually turn them off. That way they can start them
8 as they need to.

9 Q. What kind of condition were the belts in where you
10 was at as far as ---

11 A. They was in pretty good shape.

12 Q. --- 400s --- I mean, as far as accumulations or
13 float dust or anything?

14 A. No. Uh-uh (no). We always hand dust around the
15 Mother Drive while I'm there with them boys, so it was
16 all in pretty good shape.

17 Q. Okay.

18 A. Maybe a little sloppy. Most of the time the
19 Mother Drive, we'd get around that, it's just sloppy.
20 He was in water.

21 Q. You said you was involved in all of the
22 construction work down at the --- outby the head drive
23 for 22 Headgate?

24 A. Yeah, mainly on the belts. The cutting it and
25 this kind of stuff, they --- usually I think there at

1 the end, Terry Moore was probably the foreman. He was
2 the dayshift mien foreman or what at the time, so
3 Terry usually had a crew up there whenever they was
4 using the miner or what. And mine was mainly just the
5 beltline is what we dealt with.

6 Q. So if you was cutting with a continuous miner up
7 there, how would you ventilate that?

8 A. Well, that, like I said, I don't know because I'm
9 not --- I wasn't involved in it.

10 Q. So what part was you involved in?

11 A. I was involved in putting the beltlines in,
12 maintenance.

13 Q. So you wasn't there when they were cutting?

14 A. No. When they were cutting, I mean, if I was
15 there, I was just passing through and it wasn't
16 anything of mine.

17 Q. Do you know if within probably a week or so before
18 was there a crew in there? And Terry asked you some
19 of this. Was there a crew in there removing stoppings
20 and moving them and making changes in the glory Hole
21 area around in that construction zone?

22 A. There was a third shift crew.

23 Q. You don't recall whether there was a crew ---

24 A. I don't ---.

25 Q. --- while you was in there working on the belt?

1 A. I don't recall. I mean, most of the stoppings are
2 still there. If there was any stoppings --- because
3 like I said, we changed that so many times. See, when
4 they start something, they make changes in it. But
5 like I said, when we made the main ventilation
6 changes, we always --- we always done it according to,
7 you know, State and Federal. And Wayne Persinger and
8 them was there when we was making them changes.

9 Q. That's what I'm asking. You don't recall whether
10 Persinger ---.

11 A. But I remember --- the last time I really remember
12 making any changes was in this area down here. We
13 ventilated to get the air from this area here down
14 through this crosscut here some way and back around
15 and back over and down. But Kennedy stoppings or what
16 was put in --- sometimes Kennedy stoppings was put in
17 up there for a temporary or something for that work.
18 Then once they would get their ventilation changes,
19 sure, they might have took a Kennedy stopping out or
20 something that was put up for, you know, ---.

21 Q. But when you was in that area working ---?

22 A. But as far as anything being taken or took out,
23 there was nothing taken or took out that I know of
24 other than what we was ---

25 Q. Okay.

1 A. --- you know, according to plan.

2 Q. Okay. I'm not saying --- I'm not saying you did
3 anything, okay.

4 A. No. I'm just saying ---.

5 Q. I'm just asking you a question.

6 A. But I'm just saying --- but there's so much of it
7 that went on, it's hard for me to sit and tell you
8 exactly what ---.

9 Q. Just tell me the best you can. That's all I want
10 to know.

11 ATTORNEY BAXTER:

12 If you would just let him finish his
13 question, it might help her. I think her fingers are
14 going to start smoking. You guys are talking over
15 each other. Let him finish his question, then you
16 answer. And he'll do the same. It will go a little
17 smoother.

18 BY MR. PAGE:

19 Q. When you was working in the area, up here around
20 --- just outby the Mother Drive for the 22 --- or in
21 that area for the 22 Headgate, ---

22 A. Yeah.

23 Q. --- okay, and you said you did --- you was
24 involved in all the construction on that area ---.

25 A. Mainly on the belts.

1 Q. That's what I'm saying.

2 A. Not the cutting and ---.

3 Q. I'm not saying that. Do you recall anyone, Wayne
4 Persinger, May or anyone, having a crew over in that
5 area, taking controls out and putting them back in,
6 moving them and putting them back in at another
7 location? Because you was in there probably several
8 days.

9 A. Well, like I said, we've changed and moved --- we
10 --- in this area right here ---.

11 Q. The crossover?

12 A. Yeah. In order to put these overcasts on line or
13 to eliminate the overcasts when the initial stuff come
14 up, we built stoppings and knocked stoppings and done
15 this, but we done it under --- and that was basically
16 the same time when we was changing ventilation over
17 here.

18 Q. Reversed that air through there?

19 A. Whatever it was, like I said. So they was --- a
20 lot of that went on, but like I said, we had both
21 safety people in there. We had Wayne Persinger in
22 there. And we had --- all the time we had MSHA or the
23 State, they was either coming in or the next morning
24 to check it before we could go on line or ---.

25 Q. Are you saying that this air was reversed with the

1 approved plan?

2 A. I don't --- no, I'm not going to say it was
3 reversed because I don't know. All I know --- I was
4 just told to, Kenny, you got to knock this stopping
5 and you got to build this stopping and ---

6 Q. Yeah, I understand.

7 A. --- you got to this and ---.

8 Q. Because I know there was a (d)(2) Order issued for
9 that air being reversed there.

10 A. But as far as reversing or what, I have no idea.

11 Q. So I'm assuming they had to get a plan, ---

12 A. So ---.

13 Q. --- and that's probably what you followed.

14 A. So whatever. Yeah. I mean, whatever it is, I was
15 just doing what I was ordered.

16 Q. Yeah. I understand that.

17 A. But we've changed so much, you know, putting up
18 temporary and then the other, but it was all according
19 to plan that I know of.

20 Q. Right. And so did you do most of the changing on
21 third shift of the ventilation?

22 A. Yeah. I'd say most of the major stuff went on
23 third shift because we couldn't have anybody inby or
24 what.

25 Q. And you said that you always had --- usually you

1 had like Wayne Persinger or May or someone that ---

2 A. Yeah, safety people. I'd have ---

3 Q. --- would come out and show you the plan or ---?

4 A. --- Walker. Yeah, they'd come out and they'd have
5 it all down. And then a lot of times when we'd do
6 something like that, as soon as we got outside, then
7 maybe there would be Chris Blanchard and two Federal
8 men or State men going in to examine it to make sure
9 what we done was according to permit.

10 Q. Okay. Would you say the ventilation at this mine
11 was a well ventilated mines?

12 A. Well, I'll put this on you. This is my honest
13 opinion.

14 Q. Sure. That's all I want.

15 A. My honest opinion is the last time I took air
16 readings on Headgate 22, I had approximately a 10,000
17 cubic foot increase from the face. So I thought we
18 finally had a handle. I knowed it wasn't perfect, but
19 I thought we finally got a handle on ventilation. So
20 as far as the ventilation went to the coal producing
21 sections, I thought we were in better shape on the
22 sections at that time than we had been in months.

23 Q. And approximately when was that prior to the
24 explosion?

25 A. That was probably a week the last time I took an

1 air reading.

2 Q. So prior to that, you worked up there about once a
3 week?

4 A. About once a week.

5 Q. So what was your ---

6 A. In the face there.

7 Q. --- average readings?

8 A. The last two times or last three times I took an
9 air reading up there I was somewhere in the mid 20s in
10 the last open break.

11 Q. But prior to that you said ---.

12 A. Prior to that --- prior to that it would have been
13 15,000, 16,000.

14 Q. So you went from 15,000 to 16,000 up to 26,000?

15 A. Up to 24,000, 25,000, 26,000, somewhere in that
16 area, ---

17 Q. Okay.

18 A. --- from what we was making, from where these
19 changes and plans was coming about.

20 Q. Okay.

21 A. So I thought we finally were on the right track.

22 So naturally when they called me and said the mine had
23 blowed up, I was surprised.

24 Q. Before you went in or during the time frames that
25 --- on a routine basis if you knew you were going up

1 around the 22 section, maybe --- did you look at the
2 pre-shift books and stuff prior to going?

3 A. Oh, sure.

4 Q. So how much air was usually running on that
5 section?

6 A. They was --- like I said, as far as --- in the mid
7 20s there.

8 Q. No. I'm talking about prior to that.

9 A. Prior to that it was in around 15,000.

10 Q. And that's what you put down?

11 A. Yeah.

12 Q. Yours ---?

13 A. There was one time that it might have been ---.

14 Q. Your ---?

15 A. One time it might have been a little bit lower,
16 see, because we had --- you know, like I said, we was
17 in this air change and stuff because sometimes it
18 might have been a little bit better in 12 or what in
19 there.

20 Q. But yours fluctuated, your air readings? What I
21 mean, one day you would get 15,000, the next day you
22 may get 14,000 or --- you know, it would change. You
23 had --- it looked like you took good air readings is
24 what I'm trying to say.

25 A. Well, that all depends on the way they're mining.

1 See, on that three-entry system, the intake comes up
2 Two, and then they've got to get the air over. And
3 then if they're behind on --- if they haven't --- you
4 know, me, I like to keep my stopping line right up
5 through the last entry.

6 Q. What I'm doing is bragging on your ---

7 A. But anyway, on mine ---.

8 Q. --- readings.

9 A. Right. Well, I thank you. But ---.

10 Q. But your readings seemed to be what you got.

11 A. Yeah.

12 Q. Okay. Now, was you ever --- anyone told that you
13 should have a certain amount of air on the section?

14 A. Now, what do you mean by that?

15 Q. Was you ever told that you should always have at
16 least 20,000?

17 A. Massey policy is that they want 20,000, but I tell
18 them they get what they get.

19 Q. Yeah.

20 A. I mean, ---.

21 Q. But if you go back and look at the books, there's
22 a lot of books that's got 20,100, 20,150.

23 A. Yeah. But ---.

24 Q. And that's when you said you had 10,000 less.

25 A. So?

1 Q. I'm just making a statement here. So ---.

2 A. Yeah.

3 Q. What I'm saying is your readings probably were
4 pretty close.

5 A. Yeah.

6 Q. Okay. Now, you know and I know we could stand
7 there and take a reading together and we could
8 fluctuate. I may stand in the middle a little bit
9 longer than you do and they would fluctuate.

10 A. Right.

11 Q. Okay? Getting identical readings would be almost
12 impossible, but yours looked like they were good
13 readings.

14 A. Right.

15 Q. Now, a 50 CM change is not very much from one day
16 to the next; right?

17 A. Well, like I said, it also depends on the evening
18 shifts or whoever it is that hung the curtains or
19 whether they put a stopping in or what.

20 Q. Sure. But if you lose that, you can lose a lot.

21 A. Right. You can lose ---.

22 Q. But what I'm saying is you got 20,100, 20,150 or
23 you got 20,050. Not you, but there were a lot of
24 books like that. So that makes me kind of wonder how
25 can you get that close every day. And I'm not saying

1 anyone did anything wrong. I'm just saying it's very
2 difficult ---

3 A. Right.

4 Q. --- if you take an accurate reading. It would be
5 like yours. You've got 17,800. You've got 15,600.
6 You got 18,240.

7 A. Right.

8 Q. Those are probably pretty good readings, okay.
9 Then you had a 23,500. That's when you're going up.

10 A. That's how come I thought we had a handle on it,
11 when we started ---.

12 Q. But what you said is what ---?

13 A. 24,000 range, you know.

14 Q. I'm agreeing with what you're saying. I just have
15 an issue with getting 20,000 every time when it's a
16 Massey policy.

17 A. Uh-huh (yes).

18 Q. And I think you did --- probably was making a good
19 exam. So you was up in there about a month prior to
20 --- up in --- or a week prior to --- up in towards
21 Bandytown?

22 A. No, I wouldn't have been that far. The farthest I
23 would have been would have been down in here like a
24 week before.

25 Q. Okay.

1 A. As far as being up toward the exhaust fan, it
2 would have been prior to Jeremy Burdoff being in
3 there.

4 Q. Okay. And Walker would have been with you?

5 A. Probably the last time I was in there Walker ---.

6 Q. Up in that area, up in ---

7 A. Right.

8 Q. --- towards the Bandytown fan. Inby the ---

9 A. Inby the wall.

10 Q. --- cut-through?

11 A. Right.

12 Q. Okay.

13 A. Yeah, he would have probably been with me.

14 Q. Would that have been about a month or ---?

15 A. I'm just saying somewhere in that category.

16 Q. Okay.

17 A. I'm not for sure.

18 Q. Okay. Did you have other employees with you,
19 people that would go in and help set pumps, move pumps
20 or whatever, or did you just go check them yourself?

21 A. One of the last times we was in there, I think it
22 was more or less just me and him. We went in to check
23 the pumps. It was on a holiday weekend or a weekend
24 or something. So me and him went in to check them.
25 It seemed to me like we were by ourselves.

1 Q. And you portalled at ---

2 A. Ellis.

3 Q. --- Ellis? Did you ever hear of the evening shift
4 or other crews talking about the ventilation on the 22
5 head or 21 Tail, whether they had enough air or not?
6 Because they portalled out there, too.

7 A. No, not really, because ---.

8 Q. What do you mean not really?

9 A. The evening shift was still underground. And
10 since I didn't take the fire boss report or anything
11 for the evening shift, I generally didn't talk to that
12 production foreman.

13 Q. What about when you come out on third shift? What
14 about the dayshift, did you talk to the dayshift?

15 A. The dayshift, usually they was already underground
16 by the time I came out.

17 Q. Where did you all pass at?

18 A. well, like I said, I was working outby and they go
19 to the section.

20 Q. But when you was up there on the section?

21 A. Up on the section ---.

22 Q. You didn't talk to the third shift foreman --- I
23 mean, dayshift foreman?

24 A. Yeah. I might have seen him when I was on the
25 section. But like I said, I generally wasn't up there

1 but like once a week. So it was --- it probably
2 wasn't anything to ---.

3 Q. So you never id get much methane when you was up
4 there?

5 A. I always got methane across the faces, but it
6 would have been like a .1 to a .3. Maybe it might hit
7 a .4 for an instant and then just click right back
8 down. But generally speaking, that would be all ---
9 that would be in every entry in the face area on the
10 Headgate 22.

11 Q. Uh-huh (yes). You never did talk to Daniel Jones
12 about it? He never ---?

13 A. No, not --- I never --- he never said anything to
14 me about it.

15 Q. Had you heard ---?

16 A. I'd hear him call out sometimes and --- a couple
17 times I heard him call out and he talked to Everett.
18 He'd say --- he'd tell Everett, he'd say, I've got a
19 little bit low air. And Everett would say, well, you
20 got to make sure to check this or check that and all
21 this. Because they'd ask him when he's going to load.

22 Q. What do you mean by check this or check that?

23 A. Whether a set of supply doors was cracked open or
24 something of that nature down there.

25 Q. Did he ever tell him to open those doors?

1 A. No, not as I know. He told him just to do
2 whatever he had to take. He said --- he'd just tell
3 him what to check. If he didn't have 20,000 or if he
4 didn't have what he was supposed to have to run on
5 that end. But I never heard --- I never heard Everett
6 or anybody else say run it anyway or what. I've never
7 heard anything of that nature.

8 Q. Did they ever say anything to them? You've been a
9 foreman for 20-some years --- or 12 years, 14 years.

10 A. I've been a foreman ---.

11 Q. Well, with them.

12 A. With them? I've been with them for almost 17
13 years.

14 Q. Seventeen (17) years. And they never said
15 anything to you about the air, about not having
16 20,000, even though it was company policy?

17 A. No.

18 Q. They didn't ask you why you didn't have it ---

19 A. So ---.

20 Q. --- when you had 12,000 and 13,000?

21 A. Well, see, that's when that 20,000 come up, was
22 coming into effect, is when we put that fan on line.
23 So actually that 20,000 didn't come into effect until
24 typically about the same time that I told you I
25 thought we had a handle on the air readings, ---

1 Q. Well, now that ---

2 A. --- as far as I can remember.

3 Q. --- fan come on in September.

4 A. Yeah. But I'm talking about once we made the
5 ventilation changes when we started on the
6 headgate ---

7 Q. Oh, okay.

8 A. --- Headgate 22 section, ---

9 Q. Okay.

10 A. --- somewhere in that area I think is when they
11 come up and Massey required 20,000.

12 Q. And who did that come from; do you know?

13 A. I have no idea. But I don't think that was in
14 effect when we drove up this way. I don't think that
15 was on Massey policy. I think it came in more or less
16 when we started the Headgate 22 section.

17 Q. Okay. After the cut-through?

18 A. Yeah.

19 Q. I mean, after they put the fan on?

20 A. Yeah. That's after we was making the major
21 ventilation changes that we was making.

22 Q. When they were advancing the tailgate entry over
23 there, do you know what their intentions were when
24 they first started advancing that? Was it always set
25 up for longwall?

1 A. Yes, as far as I know. When they started this
2 one, it would have been for the wall.

3 Q. How long --- how wide is that face supposed to be,
4 any idea?

5 A. A thousand feet generally. I think this one over
6 here was 1,200 maybe, because that's what had made me
7 throwed off on this, where you was talking about this
8 barrier over here.

9 Q. Yeah.

10 A. Because I asked them the same thing.

11 Q. Yeah.

12 A. I asked them, I said, well, what about your
13 footage between? I said, if you got bad top up there
14 and you're driving through, ain't that going to make
15 you --- I said, you're going to have an awfully short
16 longwall panel because I was thinking a thousand-foot
17 longwall panel. And then finally the longwall
18 coordinator, one of them, he told me, he said, now,
19 Kenny, this is a 1,200 foot face. I said, okay. They
20 said it was 1,200 feet through there, so that gave
21 them an extra 200 feet to deal with on this tailgate.
22 I said, well, okay. Because generally we run a
23 thousand feet.

24 Q. Solid coal?

25 A. Solid coal.

1 Q. And this was 1,200?

2 A. I think it was 1,200 from over here this way.
3 From here to here I believe was 1,200, because I was
4 asking them about starting. I said, you're not going
5 to be able to run because I was thinking by the time
6 they started three entries ---.

7 Q. So they dropped that off about 800 feet?

8 A. Yeah. So when they went to that, I thought, well,
9 what is it? They said, no. They said, this is a
10 1,200 foot face. I said, oh, okay. You've got an
11 extra 200 feet to play with.

12 Q. Okay.

13 EXAMINATION

14 BY MS. SPENCE:

15 Q. Who was it that told you what to do in terms of
16 ventilation changes? When you were saying, Kenny, put
17 this stopping in or Kenny, knock --- who gave you
18 direct orders?

19 A. The last time when we made the major ones, it was
20 Wayne Persinger. There's been times when Everett
21 would say, you know, to seal this or seal that. And
22 then before that, when we were doing something, I
23 think maybe Jamie Ferguson might have told us to do
24 something, but ---. But this has been an ongoing
25 process, see, ever since we got the Bandytown fan on

1 line, see. So then when we did something over here
2 we'd say, well, we're going to have to change this or
3 change that. So it's been an ongoing process ever
4 since that fan went on line.

5 Q. Was anybody sort of over ventilation for this
6 mine, like in charge of ventilation planning?

7 A. I have no idea. That's why I said that a lot of
8 times I was curious about why we did something or why,
9 but I said, I didn't see it. I wasn't the one that
10 drew the plans up, so I didn't --- now, I wasn't
11 involved in it. I was more or less the one that was
12 just told to do it, so ---.

13 MR. PAGE:

14 I've been there.

15 A. So I wondered about certain things, and then
16 sometimes I'd find out that, you know, the reason why
17 and --- but ---.

18 ATTORNEY BAXTER:

19 We'll take a short break.

20 SHORT BREAK TAKEN

21 ATTORNEY BAXTER:

22 On behalf of MSHA and the office of
23 Miners' Health, Safety and Training, I want to thank
24 you for appearing and answering questions today. Your
25 cooperation is very important to the investigation as

1 we work to determine the cause of the accident. We
2 request that you not discuss your testimony with any
3 person aside from your personal representative. After
4 questioning other witnesses, we may call you if we
5 have any follow-up questions. If at any time you have
6 additional information regarding the accident that you
7 would like to provide to us, please contact us at the
8 contact information that was previously provided to
9 you.

10 If you wish, you may now go back over any
11 answer you have given during this interview. You may
12 also make any statement that you would like to make at
13 this time.

14 A. Well, like I said now, on the times, you know,
15 like I said, when I'm there so much, you know, it
16 could be ---.

17 MR. PAGE:

18 I understand.

19 A. I'm not familiar with that.

20 MR. PAGE:

21 Nobody is trying to hold you to that.

22 A. You know, so I mean, but ---.

23 MR. PAGE:

24 Well, we just ---.

25 A. Like I was telling her, I mean, my honest opinion,

1 I thought we finally had a handle on the ventilation,
2 and I was telling her, I said, I've been around for a
3 long time, and I said I know that the methane
4 detectors on the men, they start at .5. The shearer
5 shuts off at 2. The explosion range is five plus. I
6 know something had to have happened quick because when
7 it happened, the two miner sections was idle. They
8 had done shut down and the wall was running, which
9 they was going through the tailgate, which is the
10 hotter end of it. And for something to happen, it had
11 to have been extraordinary.

12 So to me, I don't know why. I'd like to know.

13 I'm very curious myself of what happened. And like I
14 told her, I said, I hate for any of us to get in this
15 finger pointing, it was your fault or your fault or
16 this one's fault. I think in this situation it's time
17 that we all come together, the company and the State
18 and the Federal, and try to sit down with our heads
19 and go in it and try to figure out if there's some way
20 that we might stop something like this or might be
21 able to foresee something like this in the future
22 rather than trying to put the blame on somebody that
23 --- you know, so I don't know. I'm just --- that's
24 just my opinion. I think it's time we grouped as a
25 --- and try to figure out what happened.

1 MR. PAGE:

2 That's what we want to do, is find out
3 what happened.

4 A. You know, because I can't see --- I can't see
5 anyone. I can't see the Federal --- you're going to
6 have people say that, well, the Federal, it's their
7 plans. They've got to approve them. And the State is
8 there, well, the company is the one that submits them.
9 But I can't see any one --- I mean, we're all in it.
10 And I'm sure they might be --- there's human fault and
11 faculties in --- everybody and everything you do,
12 there's human factors involved, but I think a lot of
13 this human factor, when you get right down to it, you
14 might find is trivial compared to what actually
15 happened. So I thank you people, too, and thank you
16 for your patience and ---.

17 MR. PAGE:

18 I agree with you.

19 ATTORNEY BAXTER:

20 Again, I want to thank you for your
21 cooperation in this matter.

22 A. Okay.

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 2:28 P.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify: That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness; That the proceeding is herein recorded fully and accurately; That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.



Alison Salyards