

**WEST VIRGINIA MINE SAFETY AND HEALTH
ADMINISTRATION**

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IN THE MATTER OF:

**THE INVESTIGATION OF THE
APRIL 5, 2010 MINE EXPLOSION
AT UPPER BIG BRANCH MINE.**

The interview of HAROLD K. LILLY, taken upon oral examination, before Jenny Marmol, Court Reporter, and Notary Public in and for the State of West Virginia, Tuesday, June 21st 11th, 2011, at the Mine Academy, 1301 Airport Road, Beaver, West Virginia.

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1 MR. TUCKER: My name is Bill Tucker with
2 Office of Miners' Health, Safety and Training.

3 Today is June 21st, 2011.

4 At this time, I would like the other
5 members of the investigative teams to identify
6 themselves and who they're with.

7 MR. WILSON: I'm Robert Wilson, with the
8 Office of the Solicitor, United States Department
9 of Labor, representing MSHA in this matter.

10 MR. CRIPPS: I am Dean Cripps, with MSHA.

11 MR. CAUDILL: Steve Caudill, with MSHA.

12 MR. STEFFY: I'm David Steffy, with MSHA.

13 MR. TUCKER: We have a court reporter here
14 with Johnny Jackson & Associates. I'll give you
15 one of their cards.

16 They should have your transcript ready in
17 about three business days, but if you want to
18 review it to go over it, you can contact them and
19 you can look it over.

20 If there's any corrections, you can make
21 it on the errata sheet. You can't take it with
22 you, but it gives you an opportunity to look at it
23 and make any corrections.

24 Mr. McCuskey is familiar with that process

1 there, so he can help you with that.

2 Take a break any time you want to take a
3 break, just let us know. It won't be a problem at
4 all.

5 MR. MCCUSKEY: Hopefully it won't be so
6 long we need to take too many breaks.

7 MR. TUCKER: That sounds good.

8 MR. MCCUSKEY: Take a break for dinner.

9 MR. TUCKER: We would ask that you not
10 discuss your testimony with anyone outside the
11 interview, other than your attorney, and this is
12 just to protect the integrity of the
13 investigation.

14 At this time, I'll turn it over to Bob
15 Wilson. He has a statement for you.

16 MR. WILSON: Mr. Lilly, I wanted to give
17 you a letter, which is just requesting your
18 appearance here today, and that's for your records
19 just to show that you were requested to be here.

20 Also, it has our contact information in
21 the letter. If, after the interview today, there's
22 any additional information that you would like to
23 provide to us, you can contact us through your
24 representative.

1 MR. MCCUSKEY: Pretty much the same letter
2 that he got the first interview?

3 MR. WILSON: Yes, correct.

4 MR. MCCUSKEY: Okay.

5 MR. WILSON: Just a couple of things, I
6 just want to remind you, the court reporter will be
7 taking everything down, so please speak up when you
8 answer the questions so that your answers will show
9 up on the transcript.

10 Also, there's some maps in front of you
11 that we may refer to, and, you know, if you just
12 point, well, we were over here, that's not going to
13 show up in the transcript. So as best you can, try
14 and explain where you're pointing to and where
15 referring, if we refer to any of the maps.

16 As Mr. Tucker stated, we request that you
17 not discuss your testimony with anyone else,
18 because we will be interviewing additional
19 witnesses.

20 On behalf of MSHA, I do want to thank you
21 for coming in here again today and providing
22 information as we seek to determine the cause of
23 the accident in the hope of preventing similar
24 occurrences in the future.

1 Like last time, when we finished asking
2 questions, we will provide you an opportunity, if
3 there's anything else that you would like to
4 provide for the record.

5 MR. TUCKER: Would you swear in the
6 witness, please.

7 HAROLD K. LILLY, DEPONENT, SWORN

8 MR. TUCKER: Could you state your full
9 name and spell your last name, please.

10 THE WITNESS: Harold K. Lilly, the second,
11 L-i-l-l-y.

12 MR. TUCKER: And could you state your
13 address and your telephone number?

14 THE WITNESS: [REDACTED]

15 [REDACTED]
16 MR. TUCKER: Okay. Do you have an
17 attorney here with you today?

18 THE WITNESS: Yes.

19 MR. TUCKER: Okay. Could you identify
20 yourself and who you're with?

21 MR. MCCUSKEY: Yes. John McCuskey, law
22 firm of Shuman, McCuskey and Slicer, counsel for
23 Harold Lilly.

24 MR. TUCKER: Okay.

1 Harold, on April the 5th, 2010, what was
2 your job title at UBB?

3 THE WITNESS: Longwall foreman.

4 MR. TUCKER: Okay. We have another
5 attorney with us also. If you would, I would like
6 for you to identify yourself and who you represent.

7 MR. SILKWOOD: Eric Silkwood, I'm here on
8 behalf of Performance Coal Company. I work for
9 Allen, Guthrie & Thomas.

10 MR. TUCKER: We have a subpoena, and,
11 Mr. McCuskey, do you recognize that and the
12 acceptance of service?

13 MR. MCCUSKEY: I do and I did.

14 MR. TUCKER: If we could, we could enter
15 these as Exhibits 1 and 2 or A and B, however.

16 MR. MCCUSKEY: With Mr. Lilly's
17 permission.

18 THE WITNESS: That's fine.

19 MR. WILSON: Why don't we use letters
20 since this is the second callback interview so not
21 to confuse exhibits.

22 MR. TUCKER: That's a good idea.

23 (Exhibit Letters A and B marked
24 for identification.)

1 MR. TUCKER: One thing I just like to
2 mention, Harold, on investigations like this,
3 people anticipate miners are protected from
4 discrimination for appearing here.

5 And I have some information for you, and
6 you probably already received a copy of this at
7 your first interview, but I'll give you another
8 copy.

9 It's just a -- under West Virginia Code
10 22-A-122 you're protected against being
11 discriminated against.

12 If that were to occur, here is some for
13 with the Board of Appeals who you would contact,
14 and you have 30 days from the time of the
15 occurrence to file your complaint with them.

16 And also, I'll give you one of my cards
17 with my phone number on it. If you have any issues
18 or need to contact me, you can use that card.

19 All right. If we could, we'll start with
20 this map right here, Harold.

21 And before we start, I would like to thank
22 you for being here today.
23
24

EXAMINATION

1
2 BY MR. TUCKER:

3 Q. I appreciate your coming and I'm going to
4 try to pick your brain a little bit, and, to the
5 best of your memory, talk about some of these
6 ventilation controls and what you remember about
7 them.

8 Okay. On the 21 headgate at Break 27,
9 between Number 3 and Number 4 entry, one, two,
10 three, four, right here, this set of doors right
11 here, can you tell me what you recall about these
12 doors, if they were in place on April the 5th of
13 2010?

14 A. No, they were not in place, the best I can
15 remember. This miner section, when they started it
16 up, was coming over on the longwall in Number 3
17 entry and getting their supplies. They had
18 supplies stored in Number 3 entry, so they would
19 come through these doors and get their supplies.

20 Q. Okay. We can mark the doors here with
21 pink that we're talking about at 27 Break, just
22 circle them.

23 A. These doors here, they were out and a
24 stopping was there.

1 Q. Okay. Do you have first-hand knowledge of
2 that --

3 A. Yes, I do.

4 Q. -- stopping being --

5 A. Yes, I do.

6 Q. Did you direct that work --

7 A. Yes.

8 Q. -- or assist in that?

9 A. Yes.

10 Q. Do you know why they replaced the doors
11 with the stopping?

12 A. When I got some dust over in this area one
13 day, one of the foremen, Delbert Bailey, come and
14 told me he was seeing some dust in this area, and I
15 went and checked it and one of these doors was
16 checked, you know, wasn't all the way shut.

17 So I called -- I can't remember exactly.

18 It was either Everett Hager or Wayne Pursinger

19 -- and asked them if I could build a
20 stopping for these doors.

21 So what I done, and I asked them if they
22 will reuse the doors, and they said yes. So I
23 built a stopping in front of him.

24 Q. Could you draw a -- just take this ink pen

1 and draw about where you built the stopping.

2 A. Right in this area here. Right here.

3 And I took this door down, had them take
4 this door down and move it here.

5 Q. If you don't mind, the door that you took
6 down, just put an X in the center of it, and where
7 you placed it at, put an X.

8 A. Really just, it's hard to, I mean, right
9 where it was at. Because I figured they would
10 reuse these doors so they would come and get them.
11 They would come down this entry, I guess, and come
12 and get these doors to, you know, reuse for supply
13 doors or whatever.

14 Q. Okay. And the second door, was it still
15 standing, or did you take it off the hinges?

16 A. I'm pretty sure I left it standing,
17 because I didn't -- you know, I was kind of in a
18 hurry to get this stopping built so I wasn't really
19 concerned about this door.

20 I mean, what I'm saying is, after I built
21 the stopping, then took this door down, the crews
22 can could come and get this door.

23 This miner section crew, if they needed
24 this door to put somewhere else, they could come

1 and get it.

2 But from what I can remember, I don't
3 think we took -- I'm almost positive we didn't take
4 this door down.

5 Q. Okay. Now you mentioned that, when this
6 tailgate section first started, that they were
7 traveling through these doors to the longwall
8 section to get supplies?

9 A. Right.

10 Q. Do you know, time-wise, prior to you
11 taking the doors out, how long it had been since
12 they had been traveling that way?

13 A. I would say probably a week or two, just
14 guessing.

15 Q. What did they usually use to get those
16 supplies with?

17 A. Scoop.

18 Q. Okay. Is that the only thing that you
19 know of that you would have brought through
20 there --

21 A. Yeah.

22 Q. -- to get supplies?

23 A. To my knowledge, when I had anything, it
24 was just a scoop come down and get bolt supplies or

1 whatever they needed.

2 Q. Okay. There's another set of doors here.

3 MR. CRIPPS: Bill, do you mind if I ask a
4 quick question before you get away from them doors?

5 MR. TUCKER: No. Go ahead. That would be
6 fine, Dean.

7 MR. CRIPPS: Harold, you was pointing
8 here, and you said you seen dust in this area?

9 THE WITNESS: Right here at the doors.

10 MR. CRIPPS: Was Delbert seen --

11 THE WITNESS: Delbert and Timmy Davis.

12 MR. CRIPPS: Could you explain, rather
13 than point, kind of explain where the dust was that
14 they saw?

15 THE WITNESS: The dust, they had saw the
16 dust coming towards the face of the longwall.

17 And they come to me, and I was down in the
18 other entries, like, one, two or three, me and a
19 crew doing some -- I think we was taking some track
20 out. I know we was moving that track switch is
21 what we was doing, from what I can remember.

22 And they come and said something to me,
23 and soon as they said that, just like a light would
24 come in your head, I said, I know exactly where

1 it's coming from I bet. I went straight up to
2 these doors, and they was cracked and there was
3 dust coming out of them.

4 MR. CRIPPS: Where do you think the dust
5 was coming from?

6 THE WITNESS: I guess the return. See,
7 I'm not -- I guess it was returning down this
8 entry. There was a regulator here at one time, and
9 I guess it could be seeping down through here
10 somewhere.

11 MR. CRIPPS: So those doors separated the
12 return from the Tailgate 22 unit, actually from
13 the --

14 THE WITNESS: Right.

15 MR. CRIPPS: -- intake for the longwall.

16 THE WITNESS: Uh-huh.

17 MR. CRIPPS: And so if that dust was
18 coming from the return through those doors, it
19 would, in fact, been going on the longwall face?

20 THE WITNESS: Yeah, go to the longwall.

21 MR. MCCUSKEY: Did you ask him when he did
22 that, when the door was replaced?

23 BY MR. TUCKER:

24 Q. Do you recall when you --

1 A. I'm not positive on the time, like a week
2 or -- it wasn't much more than a week, because they
3 had quit -- Ralph had started putting a track over
4 here, so they started putting their supplies over
5 here instead of coming over here and getting them.

6 Q. When you say "over here," what do you
7 mean?

8 A. The tracks in Number 2 entry.

9 Q. They call this area through here --

10 A. I'm not sure.

11 Q. -- a crossover?

12 A. Just a crossover, I guess.

13 Q. When you say about a week, probably a week
14 before April the 5th, sometime during the week
15 before?

16 A. I really don't know. I can't say that,
17 timewise.

18 Q. Okay.

19 A. I think it was, like I say, this April 5th
20 sometimes was I ...

21 Q. I understand.

22 A. But I can't think of it being close to
23 April 5th.

24 Q. Now, that was at 27 Break. So moving on

1 up to 28 Break, there's another -- this map shows,
2 and this may or may not be where these doors were
3 at, but just based on your knowledge and your
4 memory, as far as these doors here, do you recall
5 if that's an accurate location?

6 A. I'm pretty sure it was in this track entry
7 here.

8 Q. Right here?

9 A. But I can't -- just, you know, trying to
10 think in my mind, it seemed like the track was over
11 there.

12 Q. Okay. The whole track entry coming
13 through the crossover?

14 A. Right.

15 Q. Which would be Number 3 entry?

16 A. Well, it would be left, right 2. Going
17 that way you're on the opposite end.

18 Q. Let me turn around, yeah.

19 A. Way I'm looking at it, left to right is
20 Number 2.

21 Q. Okay. And there's actually, on this map
22 that's an exhibit, it actually shows symbols of the
23 track in that --

24 A. Right.

1 Q. -- entry. Okay.

2 And do you recall how many doors were hung
3 there?

4 A. No, I don't. I can't -- I can just
5 remember a door, seeing a door because --

6 Q. As far as actual location, you're not
7 sure?

8 A. No, not a hundred percent.

9 Q. Do you happen to recall which way the
10 doors swung?

11 A. Let me think. No, not for sure. In my
12 mind it seemed like it swung towards the longwall,
13 but I'm not sure about that. I can't -- I can't
14 remember.

15 Q. Okay. And it shows two more, I mean, you
16 got two symbols of doors here close together at 28
17 Break, and then you have two other doors spread out
18 here on the track. I mean, that would indicate
19 four doors there. Do you recall if --

20 A. No. No, I sure don't.

21 Q. -- there were two or four or how many?

22 A. I wasn't over in here hardly any at all.

23 Q. Okay.

24 A. Yeah, I can't remember.

1 Q. Okay. What about up here at the mouth of
2 22 headgate? Were you up in this area any at all?

3 A. No.

4 Q. So you wouldn't have any knowledge as far
5 as these door locations?

6 A. The only time I was in this area was after
7 the explosion.

8 Q. Okay.

9 A. They let me get up there one time. That's
10 the only time I've ever been up there.

11 Q. So you didn't work up there any at all.
12 So any questions here as far as doors or stoppings
13 or regulators, you wouldn't have any --

14 A. No.

15 Q. -- knowledge?

16 A. I have no idea.

17 Q. Okay. Well, there's no need of me going
18 on if you've not been up there and don't recall?

19 MR. WILSON: You want to mark that as
20 Lilly Exhibit C.

21 (Exhibit No. C marked for
22 identification.)

23 MR. MCCUSKEY: May I ask that we identify
24 what it is we're marking? Like, I don't -- it says

1 Headgate 22. Is that what you want to call it?
2 Map of Headgate 22 area?

3 MR. WILSON: Just for the record, the
4 middle of the map it says, Sheet 4-A.

5 MR. MCCUSKEY: Okay. I don't see any date
6 on it. Do you all have any idea what this is
7 supposed to represent?

8 MR. TUCKER: The intent of this map is
9 just to trying to identify these doors. It doesn't
10 have a date on it. It's just we cropped it off.

11 MR. MCCUSKEY: I was just wondering what
12 the date of the map was that you cropped it off.
13 Do you have any idea?

14 MR. TUCKER: I don't. Do we need to
15 initial this or anything, or are we good?

16 MR. WILSON: No. Just have it marked as
17 an exhibit.

18 BY MR. TUCKER:

19 Q. Here's another similar map. Now we're
20 down on the tailgate area.

21 Do you recall crossing, you know, the last
22 time -- or were you down in this area of the
23 tailgate where the cut-through is at anytime
24 recently prior to the explosion, the tail entry of

1 the longwall?

2 A. Not -- I mean, I was in this area on
3 Tuesday before the explosion. I think it was
4 Tuesday. It's in my book before the explosion.

5 Q. Okay.

6 A. I checked these entries right here and
7 made sure the air is going towards the fan.

8 Q. When you say "these entries right here" --

9 A. One through seven. One, two, three, four,
10 five, six, seven.

11 Q. Where would you typically check those, as
12 far as in relationship to the face of the longwall?

13 A. I would go two or three breaks outby the
14 longwall face, starting at Number 7 entry and
15 working my way across to one.

16 Q. Okay. And that was a weekly check that
17 you did?

18 A. Right. Weekly check.

19 Q. Down here at the mouth of the tailgate
20 here between 5 and 6, we've got a couple doors
21 here. We show a regulator here.

22 Do you recall, I mean, is this the place
23 you took air readings, or do you recall this
24 regulator being there?

1 A. I remember these doors because I had come
2 through them one time, but it seemed like the
3 regulator I remember was over here.

4 Q. Okay. And that would be in Number 5
5 entry?

6 A. 3 entry. I'm sorry. Number 5 entry.

7 Q. Okay. And do you recall that regulator
8 being there by that --

9 A. Yes.

10 Q. -- overcast?

11 A. Uh-huh.

12 Q. Do you recall what type of regulator it
13 was?

14 A. Just a stopping with a blocks out of it.

15 Q. Okay. Do you recall how big the opening
16 was approximately?

17 A. No. To start with it was when -- it was a
18 pretty big regulator at one time, and then it had
19 been narrowed down. Let's say, four by eight, four
20 by six, something like that.

21 Q. Okay. If I can get you to mark that with
22 maybe a blue highlighter, the regulator that you
23 are talking about?

24 A. Number 5 entry, regulator here, and I'm

1 just guessing about four by eight, because it's a
2 pretty good -- you could walk --

3 Q. Use a pen and just write that area down of
4 the regulator as best you guessed it.

5 A. It was kind of high there, so I'm thinking
6 about four by eight, because you could walk through
7 it real good.

8 MR. WILSON: Just for the record, you're
9 saying the opening was four feet by eight inches --
10 or, I mean, four feet by eight feet?

11 THE WITNESS: Right. From what I can
12 remember, it was real high in this regulator, and
13 like you say, you could walk through it pretty
14 good.

15 Q. So four foot high by eight foot wide?

16 A. No. Probably eight foot high and four
17 foot wide.

18 Q. Oh, eight foot high?

19 MR. MCCUSKEY: Like a door.

20 THE WITNESS: Right. Four wide, eight
21 high.

22 Q. Okay. Thank you.

23 Do you recall if those was built by solid
24 or hollow block?

1 A. I'm pretty sure solid.

2 Q. Okay. Looking at the map here at Number
3 40 break and 45 Break, it shows a regulator?

4 A. They were there.

5 Q. They were there? Do you recall how big
6 the openings were?

7 A. Small, like, maybe two six by six cinder
8 blocks out. They wasn't real big regulators.

9 Q. About the size of two blocks?

10 A. Right.

11 Q. Okay. On the track entry here, it shows a
12 set of doors here at this overcast at the mouth of
13 the tailgate entry, the Number 4 entry, what's your
14 recollection of -- were these doors -- was this air
15 still accessible? Could you still go through here
16 up the tail entry on the track?

17 A. I don't remember if they had the track
18 pulled out below that or not. I was very seldom in
19 this area.

20 Q. Okay.

21 A. But I can't -- I just can't remember going
22 through doors in that area.

23 Q. So you're not sure if there was doors
24 there or a stopping, you just don't recall?

1 A. I can't remember going through any doors.

2 Q. Okay. Go ahead.

3 A. Now, let me correct myself maybe. Let me
4 see where I'm at here.

5 Q. The longwall face is inby over here.

6 A. Yeah. The only doors I can remember going
7 through was there at 78 break, you know, where you
8 make around the turn and go to the right, there was
9 doors up that track.

10 Well, that's what this is. I don't know
11 if that's the location.

12 Q. 78 is back there. These doors we're
13 talking about --

14 A. No, I can't remember, but there's doors
15 right in here somewhere at 78.

16 MR. CRIPPS: It looks like a 10 break.

17 THE WITNESS: Yeah, 10. Yeah, I think so.

18 Q. These are on up around the --

19 MR. CRIPPS: Around 32 break.

20 THE WITNESS: I just can't remember these
21 doors, no.

22 Q. Yeah, it helps to look at the big map
23 sometimes to get your bearings for sure.

24 All right. I got one more question.

1 Right here at spad 2408 it shows a regulator. Do
2 you have any knowledge if this regulator was there?

3 A. No, not to say that I can say exactly
4 there was a regulator there.

5 MR. TUCKER: Dean, have you got anything
6 on this before we put it up?

7 MR. CRIPPS: No. I've got a question on
8 your other one, but I'll get to it.

9 MR. TUCKER: That's all I have for now. I
10 appreciate it.

11 MR. WILSON: We'll have this second map
12 marked as Lilly Exhibit D, and this is the one
13 where he circled the regulator in blue.

14 (Exhibit Letter D marked for
15 identification.)

16 EXAMINATION

17 BY MR. CRIPPS:

18 Q. Harold, in your first interview, you said
19 you started UBB mine in 1996?

20 A. Yes.

21 Q. Can you give me a brief history of your
22 mining experience prior to that?

23 A. Well, before I came to UBB, I worked at
24 Bethlehem Steel in Van, spent eight years on the

1 longwall.

2 COURT REPORTER: What was that last thing
3 you said? Bethlehem Steel in what.

4 MR. CRIPPS: In Van.

5 A. In Van, West Virginia.

6 Then I worked before that for Peabody,
7 several of their mines longwalling. I guess I
8 started on the longwall about 1980, something like
9 that, '81. And Harris, too.

10 And that's -- I guess I done a little bit
11 of everything on the longwall.

12 Q. How many total years of longwall
13 experience would you say you had?

14 A. Over 25.

15 Q. What all jobs have you done on the
16 longwall?

17 A. Run the shear, set jacks, stage loader.

18 At Bethlehem, I took care of all the power
19 moves, kept fiber cribs caught up in the tail
20 entry, put ten and twelve-inch ny-pac in for water
21 line. Generally everything on the longwall really,
22 I guess.

23 MR. MCCUSKEY: What kind of pac did you
24 say? I don't think the court reporter --

1 THE WITNESS: Ny-pac

2 MR. MCCUSKEY: N-i-g-h?

3 THE WITNESS: N-y-p-a-c, Ny dash P-a-c.

4 It's a --

5 MR. MCCUSKEY: She doesn't need to know
6 what it is, she just wants to know how to spell
7 it.

8 Q. I want to know. What is that?

9 A. It's a big watering line. You know, like
10 the -- at the side of the track you see at UBB the
11 big black water line?

12 Q. Yes.

13 A. The reason we use that, they usually use
14 it on strip jobs because it's so tough, you know,
15 you can run over the scoop, if you need to. At
16 Bethlehem, that's what we had in all tail entries.

17 Q. You've been a boss on the longwall?

18 A. Yes.

19 Q. How long did you boss, face boss?

20 A. Probably -- it's hard to say. I started
21 face bossing at Wharton 4, that was another eastern
22 mines, probably in '84, '85, '86, some of those
23 years.

24 They would need a boss, where a boss is on

1 vacation, and they come and ask me if I would like
2 to be on the longwall. And I said yes. So that's
3 how I started being on the longwall.

4 Q. Tell you what, I'm going to go back to
5 this map that Bill had out earlier. This is the
6 map that's showing the --

7 A. First map?

8 Q. The first map, yeah. And you can see here
9 is the longwall face here. Here is your headgate
10 entries, here is the crossover.

11 Do you recall when these crossover entries
12 were mined?

13 A. No, I don't.

14 Q. Do you remember them being mined in
15 general at all?

16 A. No, because we were probably at -- what's
17 the mines below us?

18 MR. TUCKER: Logan's Fork.

19 A. We was probably at Logan's Fork.

20 Q. So you was at Logan's Fork when this was
21 developed?

22 A. Yes.

23 Q. Do you recall a belt line that run through
24 this crossover entry ever dumping on to the

1 longwall belt?

2 A. Yes.

3 Q. Okay.

4 A. Now, I don't recall if it was -- yeah,
5 maybe it was this section. They did dump coal on
6 the longwall belt.

7 Q. And so that was a belt that was going
8 through the crossover, I'll refer to it as the
9 Crossover 22.

10 A. I guess so, yes, I do remember that.

11 Q. Do you recall was there any track that
12 extended through these crossover entries?

13 A. I just can't picture any track in my
14 head. The reason I know the belt was there is when
15 we -- I was on the third shift, we would run the
16 monorail down, and I would have to shut the belt
17 off and they'd start screaming for the belt, the
18 miner section would. That's how I remember there
19 was a belt on the longwall belt.

20 But I can't remember -- I can't recall any
21 -- yes, I do. Yes, I do. I take -- I do recall a
22 track. Because when we would come up sometimes,
23 we would have to switch out with the coal crews
24 going into this crossover.

1 Q. Okay. Was the track in the -- beside the
2 belt, same entry with the belt?

3 A. It wasn't in the same entry.

4 Q. Okay.

5 A. You had the belt, and then to the right of
6 the belt going into the section, the track was on
7 the right, the belt on the left.

8 Q. Okay. Currently the -- I say "currently,"
9 on April the 5th, and we can tell from being
10 underground and seeing the location of the belt
11 now, it's in what I call the Number 2 entry?

12 A. Right.

13 Q. It's the next to the last entry in by, I
14 guess. Is that the entry you recall the belt being
15 in, this same entry here?

16 A. I think so, yes.

17 Q. Okay. That's I wanted for that.

18 Okay. Harold, this map in front of you,
19 it shows the location of the longwall face as of
20 April the 5th.

21 In your first interview, you talked a
22 little bit about the stoppings and when the
23 stoppings get knocked down here in the tailgate
24 entry?

1 A. Right.

2 Q. I would like to talk a little bit more
3 about that. Explain to me just when and why you
4 actually knocked the stoppings between Number 6 and
5 Number 7 entries in the tailgate.

6 A. In Number 7 entry, when the longwall would
7 come to an intersection, you would knock this
8 stopping so your air would come off the face and
9 also down through the entries at Number 6, probably
10 6 and 7, go behind the longwall.

11 Q. Okay. As the longwall face, then,
12 advanced past that intersection, what would you do
13 then?

14 A. When it passed this intersection, you'd go
15 down and knock this stopping. Hold this stopping.

16 Q. Was there a certain distance or a certain
17 amount of time you waited before you knocked the
18 next outby stopping, or was it just as soon as the
19 face got past the --

20 A. Usually, the section boss, I didn't have a
21 lot to do with this. I mean, if I went to the tail
22 and seen -- usually you would mine almost up to the
23 break because that would give you better air across
24 the face.

1 Q. Okay. Explain that to me, what you mean
2 by that.

3 A. Like instead of the air coming across the
4 longwall face and down one break and going across,
5 it would come to the closest place. So you would
6 mine up to this, you know, where it would be a
7 straight shot to the return.

8 Q. So by down, you mean going outby?

9 A. It might go towards the fan, yeah, inby
10 towards the fan.

11 Q. So what you're saying, it's easier for the
12 air to go off the tail and go inby --

13 A. Right.

14 Q. -- than it is for it to try and go outby?

15 A. Right.

16 Q. So when you had your falls there on the
17 tailgate, would that have a tendency to restrict
18 your air going across the longwall face?

19 A. Not too bad. Because your fall would stay
20 in Number 7 entry. Now if your falls had been in,
21 like, 5, 6 and 7, it would have to restrict the air
22 from going up through here, because, like, you
23 know, your air is going the easiest way it can get
24 out of there.

1 Q. Let me -- I may ask this a different way.
2 Say the longwall face is in the middle of a block.

3 A. Right.

4 Q. And you have not opened up this stopping,
5 the next outby stopping between 6 and 7?

6 A. Right.

7 Q. And then if you had a fall tight behind
8 you, between the longwall face and the next inby
9 crosscut, would that restrict your air on your
10 face?

11 A. Yes, it would have to.

12 Q. Have you ever seen that, or have you ever
13 had that happen?

14 A. No. No, we always had real good air back
15 in this area. From, say, jack 160 to the tail,
16 we've always had pretty good air there.

17 Q. Would the air be going inby, like you a
18 explained earlier?

19 A. Yes.

20 Q. Okay. So like I said before, this was the
21 location of the face on the 5th --

22 A. Right.

23 Q. -- and part of this next outby stopping is
24 out?

1 A. Right.

2 Q. Do you know, was that out prior to the
3 explosion?

4 A. I don't know, because it would have been,
5 like, maybe Friday evening or Saturday, or they
6 could have knocked it Monday morning.

7 See, I wasn't there. I wasn't at the mine
8 Saturday, Sunday, Monday.

9 Q. Right.

10 A. So, I mean, if you're running real good
11 coal, you'd knock those daily. It's just according
12 to how you was running.

13 Q. Well, looking at the location of the face
14 in relation to this coal block and this crosscut,
15 would it be unusual to have went ahead and knocked
16 that stopping out, that next stopping outby?

17 A. This stopping?

18 Q. Yes.

19 A. No. This stopping you wouldn't knock.

20 Q. The one you're pointing at now is -- well,
21 there's two crosscuts outby the face?

22 A. One crosscut is all you're allowed to
23 knock the stopping.

24 Q. So the stopping in the first crosscut

1 outby the face, which we'll say that's 48
2 crosscut --

3 A. Should have been knocked.

4 Q. It should have been knocked?

5 A. Right.

6 Q. And that would have been normal practice
7 for you?

8 A. 48 should have been knocked.

9 Q. Okay. So had the longwall kept mining,
10 when normally would you have knocked the stopping
11 in 47 break?

12 A. It's according to your top -- your top
13 always gets worse, as you know, in your
14 intersections. So you really had to, you know,
15 watch.

16 If you waited until you got directly up on
17 it, you had to really watch your top. So
18 sometimes, you know, you would go over there and
19 knock it a little bit before you got there because
20 you didn't want to be out in that intersection.

21 Q. So you would knock the stopping in 47
22 actually before you got past --

23 A. Sometimes.

24 Q. -- 48?

1 A. Right. Sometimes they would go right up
2 to the edge of the block, the edge of the inby
3 block towards the fan, and then they would come
4 over here -- we always kept a sledge hammer right
5 there at that stopping where they could come down
6 and knock that stopping out. And then your air
7 would come down one break and go towards the fan.

8 Q. Okay. Do you think -- did they ever --
9 did the face ever get by this crosscut, we'll say
10 by 48 crosscut, before they went and knocked 47?

11 A. That's a possibility. I mean, like I say,
12 the section foreman usually knocked that, so that
13 would be up to him.

14 Q. Okay. I'm going to move on to something
15 else here. I'm going to jump around a little bit,
16 so if I confuse you, just say so and we'll try to
17 slow down and get you caught up.

18 I've got a calibration record here for
19 your Solaris spotters that we obtained from the
20 Ellis Portal shortly after the accident.

21 If you don't mind, look at this, and your
22 name is on this sheet twice. Do you see it there?

23 A. Yes. Well, I see this one here.

24 Q. Okay.

1 A. This is a calibration record.

2 Q. That's what I said. Do you recognize this
3 sheet?

4 A. Yes.

5 Q. Can you explain to me what it is?

6 A. It's where you calibrate your monitor.

7 Q. By "monitor," do you mean your --

8 A. Solaris.

9 Q. -- your Solaris multi-gas detector?

10 A. Right.

11 Q. And so when you calibrate it, do you
12 actually write down to make a record of that
13 calibration?

14 A. Right. And ...

15 Q. Is that what this is?

16 A. Yes.

17 Q. I'm going to point here to two different
18 entries on this sheet. Do you recognize are those
19 your signatures?

20 A. Yes, they are.

21 Q. So does that indicate to you that you
22 calibrated those two detectors on those days?

23 A. Yes.

24 Q. I say "those two detectors," and I'm

1 determining that by the column here that says
2 serial number?

3 A. Right.

4 Q. By your two entries, there are two
5 different serial numbers?

6 A. Right.

7 Q. Are you familiar with those two
8 detectors? By familiar with, were those both
9 assigned to you?

10 A. I really don't understand your question.

11 Q. Okay.

12 A. All of our Solarises --

13 Q. Okay. You calibrated both of those
14 Solarises on those days; is that correct?

15 A. Yes.

16 Q. Okay. Were -- let me ask this. Did you
17 have a Solaris assigned to you?

18 A. Yes.

19 Q. Okay. And was it the same one that you
20 carried every day?

21 A. No.

22 Q. Okay. How do you get a Solaris assigned
23 to you, or what did you carry underground with you
24 every day?

1 MR. MCCUSKEY: If you'd be careful, you're
2 asking multiple questions, and he's having a little
3 trouble concentrating on it. So just do one at a
4 time, if you don't mind.

5 May I interject to ask -- I had asked for
6 a copy of the documents you were going to have him
7 review. And you gave me a number of documents,
8 which we reviewed before the interview, and I don't
9 think this is one.

10 MR. CRIPPS: John, I'll give it to you.

11 MR. MCCUSKEY: I don't think so, but I
12 wanted you to confirm that it isn't one we seen
13 before.

14 Did you see that one before?

15 THE WITNESS: Did I?

16 MR. CRIPPS: Okay. Then I may not have.
17 The stack here, I may not have.

18 Do you need to take some time to look at
19 it a little closer?

20 MR. MCCUSKEY: Yeah. Is that the only one
21 you got of that kind of record?

22 MR. CRIPPS: Yes.

23 MR. MCCUSKEY: If you don't mind, let us
24 take a minute and look at it since that isn't one

1 we got to look at before.

2 MR. CRIPPS: Let's go off the record.

3 (Whereupon an off the record
4 discussion was held.)

5 MR. WILSON: Okay. Just for the record,
6 we've marked this calibration record as Lilly
7 Exhibit E.

8 (Exhibit Letter E marked for
9 identification.)

10 BY MR. CRIPPS:

11 Q. All right. I'll try and do a little bit
12 better job, Harold.

13 Let me ask you this. When you went
14 underground every day, did you carry a multi-gas
15 detector with you?

16 A. Yes, I did.

17 Q. What type did you carry?

18 A. Solaris.

19 Q. Where did you obtain the Solaris to take
20 underground with you?

21 A. We had chargers up on the wall and in the
22 cabinet to get your detector.

23 Q. That was at the Ellis Portal?

24 A. Right, Ellis Portal.

1 Q. And so you would just pick one up off the
2 charger to take underground with you?

3 A. Yes.

4 Q. And so you would take -- you would not use
5 the same one every day?

6 A. No.

7 Q. Okay. How would you know that the one you
8 was carrying that day was properly calibrated?

9 A. You would have to -- when you bump test
10 it, if it fails, you have to re-calibrate it.

11 Q. Okay. So by bump test, that was on the
12 Galaxy tester?

13 A. I don't know the brand name. I just
14 know ...

15 Q. A bump test is what you did to it every
16 day before you went underground?

17 A. Right.

18 Q. Okay. Did you ever have problems having a
19 spotter to take with you?

20 A. No. You would have to, you know, look
21 them over and make sure they was charged.

22 Q. Do you know of anybody ever needing one
23 and not having one?

24 A. They've never said anything to me about

1 it, no, not to my knowledge.

2 Q. Okay. But again, when you went
3 underground every day, you did have a detector with
4 you?

5 A. Yes.

6 Q. Okay. You did not charge a detector at
7 home?

8 A. At one time I did, but the oxygen sensors
9 go bad on these, so when it went bad I turned it
10 in, and then I just used what we had.

11 Q. I seen in the calibration log that you had
12 calibrated the same two detectors several months in
13 a row. Do you recall that?

14 A. No.

15 Q. Okay.

16 A. Now, are you talking about before or
17 after?

18 Q. Before the explosion. I'm sorry.

19 A. No, no.

20 Q. Okay. Was there any detectors there with
21 your name on it?

22 A. Not to my knowledge. You know, the one I
23 turned in could have had my name on it, but I don't
24 think so.

1 Q. Do you recall how long prior to the
2 explosion it was you turned it in?

3 A. No, I have no idea.

4 Q. Tell me about -- did you take air readings
5 up on the longwall when you were there?

6 A. Yes.

7 Q. Did you take them on the headgate side?

8 A. Yes.

9 Q. Did you take them in the belt entry?

10 A. Yes.

11 Q. Do you recall the last time you did an air
12 reading in the belt entry?

13 A. No, I don't.

14 Q. Do you recall how much air you had in the
15 belt entry?

16 A. At one time, I had 40,000 CFM.

17 Q. Which direction was that air going?

18 A. Going towards the face.

19 Q. Into the face?

20 A. Right.

21 Q. Do you recall the date of the explosion or
22 the last time you was there prior to the explosion
23 which way the belt air was traveling?

24 A. Down the belt.

1 Q. By "down the belt," what do you mean?

2 A. Outby.

3 Q. Belt air was going outby?

4 A. Right.

5 Q. And do you know how much air was going
6 outby?

7 A. No, I don't.

8 Q. Do you know when it got switched from
9 going to the face to going outby?

10 A. I don't have any dates or anything like
11 that, but when -- I think it was in December,
12 Federal told us we couldn't use belt air anymore.

13 I'm just saying what I was told, so I
14 built stoppings on the belt line, box checks, to
15 force the air outby.

16 Q. Okay. Explain what a box check is on the
17 belt?

18 A. It's a stopping, a solid stopping, built
19 and plastered and blocks underneath and overtop, a
20 platform put across, a metal platform, like a belt
21 rail, put on top to stack your blocks on, and then
22 you put -- then you nailed belt overtop of the belt
23 so air couldn't come up.

24 Q. So it's like a stopping with a hole in the

1 center that the belt goes through?

2 A. Right. You try to block all the center
3 off as much as possible.

4 Q. That's what you hang the belt down?

5 A. Right.

6 Q. The belting?

7 A. Right.

8 Q. How many of them did you build?

9 A. I'm pretty sure three.

10 Q. Do you recall what locations they were in?

11 A. No. No, I don't. No, I can't remember
12 for sure.

13 Q. Do you recall when you built them?

14 A. No.

15 Q. Was it shortly after December when you was
16 told you couldn't --

17 A. Yes, because my boss showed me where he
18 wanted them built.

19 Q. Your boss was who?

20 A. Jack Roles.

21 Q. Okay. Did he show you on a map, or did he
22 physically take you underground and showed you?

23 A. I think he physically showed me where he
24 wanted them. Him and Wayne Pursinger showed me

1 where they wanted stoppings, because they was
2 trying to stop the air from coming up the belt.

3 Q. From coming towards the face?

4 A. Right, towards the longwall face.

5 Q. Okay. Do you know if any of those box
6 checks were still in place on April the 5th?

7 A. They should have been. I mean, like I
8 say, I was there Friday. Saturday or Sunday or
9 Monday, I couldn't say.

10 Q. Did you walk the belt on Friday?

11 A. I don't think so. I can't remember if I
12 did or not.

13 Q. Okay. Do you remember the last time that
14 you did walk the belt?

15 A. No.

16 Q. Okay. You said Jack Roles was your
17 supervisor. After the explosion, did Jack tell you
18 anything about what was going on on the longwall
19 face the day of the explosion?

20 A. No.

21 Q. Did you talk to Jack at all about what was
22 going on up there?

23 A. I tried to talk to Jack, but he won't talk
24 to me as far as mining. I guess, you know, for

1 legal purposes, I guess. I don't know.

2 Q. Okay.

3 A. After the 5th, you say?

4 Q. Yes.

5 A. Yes, he don't talk about it.

6 Q. Okay. Do you know if Jack was on the face
7 the day of the explosion?

8 A. No, I don't know. I wasn't there.

9 Q. But he hasn't told you that he was on the
10 face?

11 A. No.

12 Q. Who is in charge of ventilation at the
13 mine?

14 A. Really, I don't a hundred percent -- I
15 mean, there's several people. Like Eric Lilly, was
16 the engineer. Wayne Pursinger, that's who I dealt
17 with mostly. Jack Roles, he would tell me, you
18 know, we need to do this.

19 As far as if you would ask me who the one
20 person was, I couldn't say who -- this guy is over
21 all ventilation.

22 Q. In your experience, all your experience of
23 mines, is that common not to have one person that's
24 in charge of ventilation at the mines, or what's

1 **been your experience in that regard?**

2 **A. Usually all the mines I've ever worked at,**
3 **the superintendent was over everything.**

4 **Q. Including ventilation?**

5 **A. And I'll have to redo this. Bill Ross was**
6 **over all ventilation.**

7 **Q. Okay. Did he work at the mine every day?**

8 **A. No.**

9 **Q. Okay. What did Bill Ross do?**

10 **A. He just made the ventilation -- this is --**
11 **as far as I know, he did the ventilation plans, and**
12 **he retired from MSHA and Massey hired him for**
13 **ventilation expert, I guess.**

14 **Q. Okay. So he worked for, I guess, Massey**
15 **corporate?**

16 **A. Right.**

17 **Q. So he wasn't involved in the day-to-day --**

18 **A. No.**

19 **Q. -- goings on at this mine?**

20 **A. Not to my knowledge.**

21 **Q. Okay. When there was ventilation changes**
22 **that were made at the mine, were you informed of**
23 **what those changes were?**

24 **A. No, not unless it was a big ventilation**

1 change.

2 Q. Okay. Do you recall on March the 9th of
3 2010, that was the day that an MSHA inspector went
4 into the tailgate entries of the longwall, found
5 the air reversed and issued an order. Do you
6 recall that?

7 A. Yes.

8 Q. I understand from your interview that you
9 traveled with the inspector that day?

10 A. Yes.

11 Q. Okay. When he found the air reversed, do
12 you recall what you found that day that was causing
13 it to reverse?

14 A. Yes.

15 Q. What was that?

16 A. This regulator.

17 MR. MCCUSKEY: Why don't you identify the
18 area you're pointing to, Harold.

19 A. At 34 break, and I think there was a
20 regulator in Number 5 entry outby the longwall and
21 then blocks put back in and re-plastered.

22 Q. So it had been completely closed off?

23 A. Right. And also there was 12 to 15, at
24 least, stoppings knocked out.

1 Q. Those stoppings you mean are between
2 Number 6 and Number 7 entries?

3 A. Yes.

4 Q. Okay. Do you know when that change took
5 place?

6 A. No.

7 Q. Do you know who instructed that change be
8 made?

9 A. No, I don't.

10 Q. Was that change in compliance with your
11 ventilation plan?

12 A. No -- well, I say no. The air was going
13 the wrong way, so ...

14 Q. Okay. Well, that could mean the air was
15 traveling off the longwall and going outby?

16 A. Outby.

17 Q. And your ventilation plan, in fact, shows
18 that air should go inby?

19 A. Right.

20 Q. Okay. Do you do the weekly exams in that
21 tailgate entry?

22 A. Yes.

23 Q. The week prior -- let me -- I'll scratch
24 that. I'll get back to it. I'm probably asking

1 you to remember too many things.

2 Were you familiar, on April 5th, were you
3 familiar with the requirements of your roof control
4 plan when it came time to supporting this Number 7
5 entry on the longwall tailgate?

6 A. Are you referring to timbers or cribs
7 or --

8 Q. Yes. What was required by your plan?

9 A. Well, it was according to what cover you
10 had overtop of you. If you had under -- now this
11 is hard for me to remember because this has been
12 over a year ago.

13 We put our cribs on ten foot centers, I
14 think, two rows, if it was under 1,000 foot. If it
15 was under 1,000 foot, we put them on five foot
16 centers.

17 Q. Okay. Do you recall the last time that
18 you did your exam in this Number 7 entry, what type
19 of roof support did you have up there?

20 A. Timbers. I'm pretty sure it was timbers.

21 Q. Do you know what kind and how many rows?

22 A. They was six by eight and single row, I'm
23 pretty sure.

24 Q. Okay. Do you know why there was just a

1 single row of props in that tailgate entry?

2 A. No. No, I don't.

3 Q. To your knowledge, was a single row of
4 props in compliance with your roof control plan?

5 A. I think so for this first panel. Now,
6 like I say, I'd have to look at it and read it
7 again. I can't remember all this stuff.

8 Q. Okay. I understand.

9 Do you know who made the decision just to
10 put the one row of timbers in the tailgate entry?

11 A. No.

12 Q. Did you ever question just the one row of
13 timbers as far as if that was adequate or if that
14 was in compliance with your plan?

15 A. No, not at this time.

16 Q. Okay.

17 MR. MCCUSKEY: You mean not at that time?
18 You said "not at this time."

19 A. I questioned it when I first started at
20 Performance.

21 MR. CAUDILL: Who did you mention it to?

22 THE WITNESS: Pete Hendrix. This was when
23 I first come to this mine, it was a new longwall.

24 When I've been on longwalls before, I didn't think

1 that was enough.

2 Q. That was in 1996?

3 A. Right.

4 Q. Do you think the one row of props was
5 enough on this face?

6 A. Well, it would be strictly my opinion. I
7 don't know how to answer that.

8 Q. Okay. And if you want to give it, that's
9 fine. If you don't, you're not required to.

10 A. Probably best if I keep, you know, my
11 opinions to myself.

12 Is it all right if I step out and grab a
13 drink?

14 MR. CRIPPS: Sure. Let's go off the
15 record.

16 (Break.)

17 BY MR. CRIPPS:

18 Q. You mentioned earlier that you talked to
19 Pete Hendrix about the roof control in the tailgate
20 entry. What did Pete think about your thoughts?

21 A. You don't know Pete Hendrix.

22 Do you know him?

23 MR. TUCKER: Yes.

24 A. I'd rather not say what he said.

1 Q. Was he receptive to your comments?

2 A. No.

3 Q. Was you working on the longwall at UBB in
4 1997?

5 A. Yes.

6 Q. Do you recall the explosion that occurred
7 on the longwall face then?

8 A. I wasn't there, but I can't recall too
9 much about it. I just knew Jack Roles was in it.
10 I can't recall too much about it.

11 Q. Okay. Do you know -- what job was you
12 doing at that time?

13 A. Third shift. Move the power on the third
14 shift, take out belt structure, move monorail down,
15 just, you know, whatever.

16 And I don't know if I was there that day
17 because our schedule, it could have been me or Ben
18 Dolan.

19 Q. Okay. But either way, you wasn't at the
20 mine when it occurred?

21 A. No.

22 Q. You wasn't on the longwall face?

23 A. No.

24 Q. Okay.

1 MR. WILSON: You said you know Jack Roles
2 was in it? Is that what you said?

3 THE WITNESS: I think that's the one he
4 was in. I'm pretty sure that's the one he was in.
5 If that was the one around the tailgate or
6 something.

7 MR. WILSON: What do you recall about that
8 incident in 1997.

9 THE WITNESS: Not much. There was just a
10 pop off or something. He was down there, because
11 he'd tell you how lucky he thought he was. I can't
12 recall anything in particular, just talking to him.

13 BY MR. CRIPPS:

14 Q. I was asking you about the belt air on the
15 longwall a few minutes ago.

16 A. Yes.

17 Q. You mentioned that you had been told that
18 MSHA required -- or told you, you could no longer
19 use belt air at the face?

20 A. Right.

21 Q. Was you aware that when the mine tried to
22 reverse the air, they was, in fact, unsuccessful in
23 doing that?

24 A. Yes.

1 Q. Was you aware that MSHA did, in fact, did
2 allow them to continue to use belt air on the face?

3 A. No, maybe a short period there maybe, but
4 I was told that we couldn't use it at all, and
5 that's why we was building those stoppings.

6 Q. That was in December when you was told
7 that?

8 A. I can't -- the reason I'm saying December
9 is I remember a newspaper article saying that MSHA
10 was going to stop belt air because of the other
11 explosion that happened, or whatever, there at the
12 coal mine, that they was going to start letting
13 mines -- quit letting them use belt air to
14 ventilate the faces.

15 Q. Right.

16 A. December just came to my mind.

17 Q. Okay. I'm going to talk to you a little
18 bit about some of the examinations that you
19 performed.

20 I've got here -- this is the copy of some
21 of your records of examinations that you performed,
22 and this is the record that you looked at a little
23 bit earlier.

24 I'm going to turn back here to a sheet

1 here, and the top corner, right-hand corner, it
2 says, The week ending April the 3rd, and then
3 there's several entries on this page.

4 Do you recognize any entries in there that
5 you, yourself, made?

6 A. Yes. That was on Tuesday? The 3rd?

7 Q. They're dated on March the 3rd?

8 A. Oh, I'm sorry.

9 Q. And I believe that would have been on --

10 A. Tuesday.

11 Q. -- Tuesday, the week prior to the
12 explosion.

13 A. Uh-huh.

14 Q. Did you, in fact, make those examinations
15 that you have documented here?

16 A. Yes.

17 Q. Okay. I want to start, and you have some
18 entries listed here -- let's see, you've got a
19 Number 4, a Number 5, a Number 6 and a Number 7 in
20 the left column of this sheet. Can you explain to
21 me what that signifies or what that stands for?

22 A. Should be these entries here in the
23 tailgate 4, 5, 6 and 7.

24 Q. If I may, in the actual second column

1 that's labeled "EP" on this sheet --

2 A. Yes.

3 Q. -- you actually have LW-2?

4 A. Longwall 2.

5 Q. Okay. So is that evaluation point,
6 Longwall 2?

7 A. Yes.

8 Q. Okay. Let's look at this map that's in
9 front of you and see if that helps your memory a
10 little bit. You can see here that there's a dot,
11 and it signifies evaluation point Longwall 2?

12 A. Right.

13 Q. Does that look familiar to you?

14 A. Yes.

15 Q. Okay. And so when you did these checks
16 that's listed here, once again, you did them in
17 entries 4 through 7?

18 A. Yes.

19 Q. How far outby the face did you generally
20 do these readings?

21 A. Usually three breaks, something like that.

22 Q. Is that your understanding of where the
23 evaluation point was?

24 A. Yeah.

1 Q. So was the evaluation point staying the
2 same place, or did it move as the longwall face
3 moved?

4 A. It moved down. It moved outby.

5 Q. Okay.

6 A. Because some of these evaluation point --
7 if you didn't, you couldn't get to these.

8 Q. As the longwall face mined out, the
9 evaluation point kept moving?

10 A. Right.

11 Q. Is that correct? Okay.

12 Your list in air readings and gas readings
13 in entries 4, 5, 6 and 7. Did you ever do any
14 readings in entry Number 3?

15 A. I don't think so. I had an EP map in my
16 -- I kept an EP map with me, and it showed where
17 the EPs was at, what I've got in the book, but,
18 yeah, EPs.

19 Let's see, that's the EPs -- no. And I
20 don't know if somebody else -- is this where --
21 okay. This is where the longwall is at now.

22 No, I've not done anything in Number 3.

23 Q. Do you recall, was entry 3 actually part
24 of the evaluation point?

1 A. I can't recall. I don't think it was or,
2 I mean, I'd have done it. I wouldn't have missed
3 it.

4 Q. Okay. But looking at these entries that's
5 on this sheet here, and then looking at the map, do
6 you feel that it is correct, you actually did do
7 the readings in entries 4 through 7?

8 A. Yes.

9 Q. Okay. On the days that you did these
10 readings, what route of travel did you take to get
11 over there to do those readings?

12 A. I just come across the face, longwall
13 face.

14 Q. Okay. And you would go off the tailgate
15 of the face --

16 A. Uh-huh.

17 Q. -- out into those entries? Okay.

18 MR. MCCUSKEY: I'm not sure she would have
19 known what your answer was there. I think it was a
20 yes, but you ...

21 A. Yes, I -- well ...

22 MR. MCCUSKEY: I just want to make sure
23 the record is clear.

24 A. You asked me what my travel was?

1 Q. Yes.

2 A. Yes, I went across the longwall face.

3 Q. Okay. Did you actually travel the
4 tailgate entries in their entirety each week?

5 A. No.

6 Q. Okay. Do you know who did that?

7 A. Jack Roles.

8 Q. Did Jack make a record of it?

9 A. I have no idea.

10 Q. Okay. Do you know exactly what Jack
11 traveled each week, which entries?

12 A. No.

13 Q. Okay. So to your knowledge -- let me
14 rephrase that. You, yourself, did not travel
15 Number 7 entry from the longwall face to the mouth
16 of the longwall?

17 A. No, not that I can remember.

18 Q. Okay. And you did not travel entries 3
19 through 6 from the longwall face to the mouth of
20 the longwall?

21 A. No.

22 Q. Okay. I've got another record here, and
23 here again this is a list of the airways that you
24 traveled. Do you recognize this sheet?

1 A. Yes.

2 Q. Is this a record that you made?

3 A. Yes.

4 Q. Okay. Let me -- there's a couple lines
5 here of interest that I want to point out to you
6 and ask you about.

7 There's a line here, and it's dated 3/16
8 of 2010. It says, Traveled the primary escapeway
9 from LOB, which, to me, means last opening break to
10 Number 10 break longwall. And then it looks like
11 there's some initials out beside that. Are those
12 your initials?

13 A. Yes.

14 Q. Okay. So did you actually travel that
15 entry?

16 A. Yes.

17 Q. Okay. And is that a -- did you travel
18 that every week?

19 A. Yeah. Well, yes, a lot of times just ...

20 Q. Okay. And I'll tell you this. I've went
21 through the record book, and I've seen your entries
22 in there almost every week.

23 A. Yeah, I traveled it a lot.

24 Q. And in fact, that's the intake for the

1 longwall?

2 A. Right.

3 Q. And do you understand that to be required
4 seven-day examination?

5 A. Yes.

6 Q. Okay. Let me point at another entry
7 underneath of that line, there's another one dated
8 3/16/10, and it says, Traveled longwall tail entry
9 from face to mouth of longwall?

10 A. Right.

11 Q. And then there's some initials in
12 parentheses. Are those also your initials?

13 A. Yes.

14 Q. Okay. Do you have any understanding or
15 know what that entry refers to?

16 A. I don't -- if I put it on here, I traveled
17 it.

18 Q. Okay.

19 A. But I can't remember, you know, what I
20 did.

21 Q. Okay. So you don't recall exactly which
22 entry you traveled that day, this particular day?

23 A. I couldn't tell you a hundred percent, but
24 I came down this tail entry, come over here through

1 these doors and across.

2 Because I can't -- see, what I can't
3 remember if I traveled it from the longwall side or
4 the tailgate side. That's where I'm mixed up.

5 Q. Okay.

6 A. But just nine times out of ten, because
7 I've checked the face of it, probably I come across
8 the face, come down and went across.

9 Q. Okay.

10 MR. WILSON: Just for the record, when you
11 said you came down this entry --

12 THE WITNESS: Number 7.

13 MR. WILSON: Number 7 on the tailgate
14 side?

15 THE WITNESS: Right.

16 Q. And when you came across, you're referring
17 to you come across the -- I call it the crossover
18 unit at the mouth of the longwall?

19 A. Yes.

20 Q. And so you come across it actually over to
21 the headgate side of the longwall?

22 A. Yes. I can't -- I'm just trying to

23 remember how I done it sometimes. I come, you
24 know, walk the intake down and then come across and

1 go up and go across the face, or maybe it was just
2 according to what time it was of the day and stuff
3 like that.

4 Q. Okay. Now, once again, I'll point out
5 this entry where you went in the tailgate entries.

6 And looking at the records, that's the
7 only entry that I can find that you had actually
8 made as far as traveling those tailgate entries?

9 A. Yeah, that day.

10 Q. Yeah. But for the seven-day checks, it's
11 your understanding that Jack Roles traveled those
12 entries?

13 A. I don't know how many entries, but I know
14 he walked the tail entry. That's my understanding.

15 Q. Okay. So that's actually Number 7 entry?

16 A. I don't know what he traveled.

17 Q. Okay.

18 A. I don't know.

19 Q. Okay. The changes that were made after
20 March the 9th, when the inspectors found the air
21 reversed at the tail, do you recall after the
22 changes which direction the air was going?

23 A. It was going towards the fan.

24 Q. So the air in all the entries was going

1 inby?

2 A. Yes.

3 Q. I'm going to kind of flip around here,
4 because we're talking about the tailgate entries,
5 so I want to try to ask all the questions I can
6 about the tailgate while we're there.

7 I've got another page here, and here again
8 this is another page that's in the top right
9 corner, it says that it's the week ending -- it
10 says 3/6, which would be March the 6th of 2010?

11 MR. WILSON: And it says, Weekly
12 examinations.

13 MR. CRIPPS: Weekly examinations, correct.

14 Q. Once again, I see some examinations here
15 that appear was done by yourself on March the 3rd.
16 Does that look correct?

17 A. Yes.

18 Q. Okay. On March the 3rd, once again, you
19 have entries listed for EP-2, and I'm assuming
20 that's the same EP that's in the tailgate side of
21 the longwall?

22 A. Right.

23 Q. Once again, you're showing entries or
24 documentation for entries four, five, six and

1 seven?

2 A. Right.

3 Q. Okay. Over here in about the one, two,
4 three, four, five, six, seventh column, it says,
5 Direction of air. And you've listed to fan?

6 A. Right.

7 Q. What does that mean exactly?

8 A. Air is going toward the fan.

9 Q. So when you did your check, the air was
10 going inby toward Bandytown fan?

11 A. Uh-huh.

12 Q. Okay.

13 MR. MCCUSKEY: How about not doing uh-huh.

14 A. Oh, okay. I'm sorry. Yes.

15 Q. And this was performed on March the 3rd;
16 correct?

17 A. Yes, if it's...

18 Q. That's the date on the sheet.

19 A. Right, if that's the date on the sheet.

20 Q. Now when you traveled with the inspector
21 on March the 9th, which would be six days later --

22 A. Right.

23 Q. -- was the air at EP-2, when the inspector
24 arrived, was it going to the fan or was it going

1 outby?

2 A. I'm not sure, but I think it was going to
3 the fan. The biggest problem we had was in Number
4 7 entry.

5 Q. Okay. Number 7 entry, the air was going
6 which direction when the inspector showed up?

7 A. Outby.

8 Q. It was going outby?

9 A. Right.

10 Q. Okay. On March the 3rd, during your
11 examination, you've got listed that the air was
12 going to the fan?

13 A. Right.

14 Q. Which would be inby?

15 A. Right.

16 Q. Okay. So is it fair to say that the air
17 was reversed sometime between March the 3rd and
18 March the 9th?

19 A. Absolutely.

20 Q. Okay. Do you have any knowledge of in
21 that time period when that change was made?

22 A. No. I know people was changing the air,
23 but I don't know who or if, you know, I wasn't
24 right there with you, I can't say you was doing

1 this or you was doing that.

2 Q. Okay. Have you, through conversations or
3 talking to people, have you heard who may have been
4 changing the air?

5 A. I really don't know how to answer that. I
6 mean, I'm not here to get other people in trouble.
7 I don't know how to answer that. I mean, hearsay,
8 I don't want to get somebody in trouble by hearsay.

9 Q. I understand.

10 A. What I'm saying is, I wasn't with whoever
11 was doing things. I didn't do it and I can't say
12 that they did it.

13 I mean, I feel very uncomfortable about
14 saying this guy did this and this when I wasn't
15 there and couldn't see it.

16 Q. Okay. That's fair enough.

17 I'm going to flip back to the next week,
18 and once again, this is another list of the weekly
19 exams for the week ending March the 13th.

20 And again, you have some entries in here
21 for the same EP-2. And once again, it shows that
22 the air direction is going to the fan?

23 A. Yes.

24 Q. Is that correct?

1 A. Yes.

2 Q. And so this would have been actually the
3 day after the inspector wrote the order and found
4 the air going outby Number 7 entry?

5 A. Yes.

6 Q. So when you listed that it's going to the
7 fan here, beside Number 7 entry, had it been
8 corrected then?

9 A. Yes.

10 Q. Okay. How long had you been doing the
11 exams down here at EP-2? Had it been for the
12 entire panel?

13 A. Probably so.

14 Q. Okay. Who explained the requirements of
15 the vent plan as far as what was required and where
16 you was required to take your measurements?

17 A. I don't know for sure, but probably Jack
18 Roles because he give me an EP map.

19 Q. So Jack actually gave you the map that you
20 carried in your pocket with the EPs?

21 A. I'm not a hundred percent positive. It
22 was either him or Wayne Pursinger. That's who --
23 nine times out of ten it was Jack.

24 Q. Okay. Had you carried that same EP map

1 for the life of this panel?

2 A. I can't say for sure. I might still have
3 it. I don't know, but I'm not sure.

4 Q. The reason I ask is, if you notice in the
5 tailgate entries the farther inby you go, there's
6 fewer entries up that way?

7 A. Right.

8 Q. So if there's fewer entries, would that
9 require fewer air readings and fewer checks?

10 A. I really don't know. I mean, you would
11 think it would be the same entries, you know, it
12 would be 1, 2, 3, 4 and 5 instead of 7.

13 You know, it would be, like, 5, 4, 3, 2 or
14 something like that. I can't remember this up in
15 here what ...

16 Q. Okay.

17 A. I just do know we had a lot of air.

18 Q. Inby?

19 A. Yeah.

20 Q. In the tailgate entries you're referring
21 to?

22 A. Yes.

23 Q. When you was doing those, your weeklies,
24 did you actually go over into Number 1 and Number 2

1 entries?

2 A. No.

3 Q. Okay. Let me a make sure that you
4 understood my question. Of the seven entries in
5 the tailgate, did you go over into Number 1 and 2
6 entries?

7 A. No.

8 Q. As I understand, Number 1 and 2 entries
9 are actually return entries for the Headgate 22 and
10 Tailgate 22 miner units. Were you aware of that?

11 A. I'm aware they made some changes, but it
12 seemed to me like they had fire bosses that -- in
13 other words, these were my responsibilities and
14 this was somebody else's.

15 Q. Okay.

16 A. To my understanding.

17 Q. Okay. Do you know who traveled the
18 returns over there?

19 A. I think Charley Semenske.

20 Q. Do you know Jeremy Burgdoff?

21 A. Yes.

22 Q. Do you know what exams Jeremy did?

23 A. All I know is Jeremy was responsible for
24 up in the top end of the longwall, and he did the

1 water pumping and -- no, I don't know a hundred
2 percent of his responsibilities.

3 Q. Okay. Do you know if he did any exams at
4 the back end of the longwall?

5 A. He should have. I mean, you know, I don't
6 know who said, Jeremy, this is your responsibility
7 because he didn't work for me directly. I don't
8 know if somebody else had him. I don't know what
9 exams he took, in other words, you know, specific.

10 Q. Okay.

11 A. I do know he did exams, but I don't know,
12 you know, what exams he did.

13 Q. I'm going to refer back to, once again,
14 some of the records that you kept. And I'm going
15 back, I'm looking at the sheet here that says the
16 weekly examinations for the week ending of April
17 the 3rd.

18 I want to look at some of the other
19 entries that you made. You've got an entry here
20 dated March the 30th that's listed as MP-36. Can
21 you tell me or show me on this map where MP-36
22 actually is?

23 A. Well, it -- we had -- Wayne told me we
24 could change these. Do I got 36 or 38? 36. I

1 mean, what do you need to know.

2 MR. MCCUSKEY: He just asked you if you
3 knew where it was.

4 A. Yeah.

5 Q. Did you actually do this reading here on
6 that day?

7 A. Yes.

8 Q. Okay. Did that reading -- you've got one
9 air reading listed there for MP-36. So did you
10 just do one reading and one entry?

11 A. Well, I've got -- for some reason I've got
12 -- oh, that's EP.

13 Q. Yeah, you've also got an EP-39 listed
14 there, and that's going to be my next question,
15 where and what it is?

16 MR. MCCUSKEY: You're asking about EP-36
17 -- or MP-36.

18 MR. CRIPPS: MP-36 and also EP-39.

19 MR. MCCUSKEY: How about we just take it
20 one at a time?

21 MR. CRIPPS: Sure.

22 A. I can't remember if I took them in both
23 entries and combined them. It just seemed like one
24 of these entries had 50,000 coming out, from, you

1 know, what I can remember.

2 Q. Okay. Let me -- maybe it will help you
3 refresh your memory just a little bit. Let me go
4 back to the week prior. Now I'm looking at the
5 sheet that says the week ending -- actually just
6 says 27, 2010.

7 Here in one of your entries dated March
8 the 23rd, you have Longwall 1 listed. And does
9 that mean evaluation point, LW-1?

10 A. I guess. I know one of these areas I was
11 thinking, my recollection that we changed -- we
12 moved it down because I told Wayne I couldn't get
13 to it because of water.

14 I've got it in one of these books in my
15 notes. I'm not sure on this. Longwall 1.

16 Q. Now I want to refresh your memory a little
17 bit. In your previous interview, you did say that
18 on Tuesday, prior to the explosion, that you made
19 it to 38 crosscut. Do you recall that in your
20 first interview?

21 A. Yeah, something. I remember we was
22 talking about it, because they asked me why I
23 didn't -- that's as far as I could get.

24 Q. You said you made it to 38 crosscut and

1 the water was pretty deep there?

2 A. Right.

3 Q. So do you recall actually doing that air
4 reading there?

5 A. Where --

6 MR. MCCUSKEY: Which air reading are we
7 talking about?

8 Q. The air reading on MP 36 --

9 MR. MCCUSKEY: Make sure you look at the
10 one he's showing you.

11 Q. -- that you've got listed here on March
12 the 30th, that shows 50,197 CFM?

13 A. See, I can't remember where I got the
14 water -- there was a point right here I couldn't
15 get to, and I can't remember exactly what break it
16 was, but I told him I couldn't get in by that -- I
17 was thinking it was 39 I couldn't.

18 But a lot of water accumulated there, but
19 I can't remember which -- on this date I just
20 can't.

21 But I do remember getting an air reading
22 of 50,000, because somebody else asked me about
23 this air reading right after, if I'm not mistaken.
24 I can't remember who it was. Pete Hendrix

1 probably. I don't know. I can't remember.

2 But somebody had asked me about that and
3 50,000 come right to my mind, and then we looked at
4 this and it was 50,000.

5 Q. So when you went up there and you got into
6 deep water, the water was not roofed out?

7 A. No.

8 Q. You still had 50,000 going up through?

9 A. Before I got to the water.

10 Q. Before you got --

11 A. In other words, I took my air reading inby
12 the water, because I could wade with chest waders,
13 but I can't remember what break I took my air
14 reading on.

15 COURT REPORTER: I'm sorry. What did you
16 say?

17 THE WITNESS: I can't remember what break
18 it was on. I had chest waders on.

19 COURT REPORTER: Chest waders?

20 THE WITNESS: Yes.

21 Q. So you would wade through the water hole
22 and come out on dry land on the other side?

23 A. Yes.

24 Q. Okay. I'm going to refer back here to

1 March the 23rd again. And in the entry beside EP
2 LW-1, you got, Could not get to EP water?

3 A. Right.

4 Q. Could you explain to me exactly what you
5 mean there?

6 A. The water had got deeper and it was over
7 my chest waders, and I went and told Wayne and Jack
8 that I could not get to that EP, and he said we
9 could move the EP outby to where I could get to
10 it. In other words, I could not get to that.

11 Q. Okay. So exactly where was that EP? What
12 crosscut was it at that you was getting to or
13 trying to get to?

14 A. I think 39.

15 Q. 39 crosscut on the headgate?

16 A. I think so.

17 Q. On the headgate side?

18 A. I think 39. I really can't remember.
19 It's been so long. 39 or 36 is as far as I could
20 get. That's as far as I could get up that entry.

21 Q. So I'm going to flip back here one more
22 page, and this is the previous week. Again, this
23 sheet is listed as week ending 3-20 of 2010.

24 On March the 16th, you also had an entry

1 for EP Longwall 1, Could not get to EP due to the
2 water?

3 A. Right.

4 Q. Is that the same --

5 A. Same general area.

6 Q. Same general area?

7 A. Right.

8 Q. And so it looks like for two weeks in a
9 row you could not get to this EP?

10 A. Right.

11 Q. On March the 16th and on March the 23rd.

12 And on March the 30th, instead of showing
13 the EP Longwall 1, you're showing EP-39. And you
14 are showing an air reading before that.

15 A. We had good air up through there. No
16 problem with air whatsoever.

17 Q. But do you think this air reading was
18 taken outby where you had been taking it
19 previously, or do you know?

20 A. I couldn't say. I couldn't say positive.

21 Q. Do you know if any water was pumped down
22 in that two-week period when you couldn't get to
23 that evaluation point?

24 A. No.

1 Q. Okay. Let me rephrase that. Was water
2 pumped down in that period of time?

3 A. No.

4 Q. Okay. So who told you that you could move
5 the evaluation point outby?

6 A. Wayne Pursinger.

7 Q. Okay. So to your knowledge, did you, in
8 fact, start doing your checks at the evaluation
9 point outby the water?

10 A. Yes.

11 Q. Now --

12 A. Now at one time we had a pump in here, I
13 think at 38 break. But after we come so far, for
14 some reason I don't know why it was taken out. I
15 don't know.

16 Q. Okay. But by these two listings here that
17 I showed you where you could not get to the
18 evaluation point, you actually did not do the exams
19 for those two weeks then, due to not being able to
20 get there because of water?

21 A. Well, I probably misstated it here.
22 Because I took air readings, and I had to be able
23 to get air, but I don't know if I done this wrong,
24 you know, when I talked to Wayne about it. But I

1 told him, I said, Wayne, I've got real good air up
2 there, but I can't get to this point, you know,
3 where I need to put it in the book. I mean, I had
4 good air here in this area.

5 Q. The area you're pointing to is?

6 A. 36, 38 in that area. I know I had good
7 air, but I couldn't get, you know, up in this area.

8 Q. By you say you had good air, you mean you
9 had good air on the outby side of the water?

10 A. Yeah.

11 Q. But you could not get inby --

12 A. No.

13 Q. -- the water to the normal measuring
14 point?

15 A. No.

16 MR. TUCKER: Can I ask one question real
17 quick?

18 MR. CRIPPS: Yeah, jump right in there,
19 Bill.

20 MR. TUCKER: You mentioned the pump at 38
21 break, Harold?

22 THE WITNESS: Yes.

23 MR. TUCKER: Do you happen to remember any
24 time frame of when you recall that pump actually in

1 service?

2 THE WITNESS: No.

3 MR. TUCKER: But there in March, as far as
4 you know, the pump was not pumping during that
5 time?

6 THE WITNESS: I don't know. I can't
7 remember.

8 MR. TUCKER: Okay. Thank you.

9 MR. WILSON: Just for the record, I'm
10 marking, as Exhibit Lilly F, the weekly examination
11 reports that we've been referring to, six pages of
12 the reports. The top sheet is for the week ending
13 2/27/2010, and then Page 6 would be for the week
14 ending 4/3/2010.

15 (Exhibit Letter F marked for
16 identification.)

17 BY MR. CRIPPS:

18 Q. Okay. There's another evaluation point
19 listed here. It's evaluation point 65. Are you
20 familiar with that?

21 A. No, I think that's a regulator off of the
22 miner section.

23 Q. Okay. Did you ever do any air measurement
24 at that evaluation point?

1 A. If I did, I can't remember it.

2 Q. Okay. Do you know if anyone did?

3 A. I have no idea.

4 Q. Okay. When you do your air readings, you
5 say that you had done air readings up here in this
6 area. Explain the process to me that you go
7 through to do your air readings.

8 A. Well, first thing I do is take my lineal
9 feet reading, then I'd measure my square feet.

10 Q. Do you do your reading with an anemometer?

11 A. Yes.

12 Q. Do you just hold it in the center of the
13 entry?

14 A. No. I go figure eight, from rib to rib.

15 Q. When you're doing it in the same place
16 week after week, do you measure your area every
17 week, or do you use a standard area?

18 A. Standard area usually. I write it on the
19 rib or on a timber or something.

20 Q. And then do you try to repeat your air
21 readings in the same location every time?

22 A. Yes.

23 Q. I'm going to go back once again to the
24 record of your air readings. And I'm looking at

1 the week of April the 3rd. It's the last readings
2 you did. And I'm back to looking at MP-36 and
3 EP-36.

4 We've got, well, for MP-36 we've got
5 50,190 CFM. For evaluation point 39, we've got
6 50,200 CFM. See, that's a difference of, what, ten
7 CFMs?

8 A. Ten CFMs, yes.

9 Q. Was that actually two different air
10 readings that you took, or do you recall?

11 A. Probably two different air readings. I
12 can't recall.

13 Q. But you don't know if those were readings
14 taken in two entries and added, or if they were
15 just taken in one entry?

16 A. I can't remember. I think one entry.

17 Q. Do you know if it would have been in the
18 center entry or Number 3 entry?

19 A. I think, just guessing, the center entry.
20 I mean, this is a long time trying to remember
21 back, but I think the center entry.

22 Q. Okay. I understand. We're showing on the
23 map an EP Longwall 1. And it appears that it's
24 about three-and-a-half crosscuts inby the longwall

1 face.

2 Did you ever do an air reading at Longwall
3 1, or did you always go inby farther to do those
4 air readings?

5 A. I can't -- I know I went inby these
6 curtains when I took the reading. I don't know how
7 exactly far.

8 I was trying to think if my map had this
9 -- because I got a -- it's just not familiar with
10 me.

11 Q. So the map that you carried possibly may
12 not even showed EP Longwall 1 on it?

13 A. That's just not familiar. I don't know.
14 That's why I was looking on here. It's not
15 familiar.

16 MR. SILKWOOD: Didn't you just show him a
17 record that had Longwall 1?

18 A. I don't know. I'm just not familiar
19 with ...

20 Q. There is a record listed for a Longwall 1.

21 A. I was trying to think there was -- I'm
22 just not familiar. I don't know why I've got this
23 on here, because I'm not familiar with that, why I
24 couldn't get there.

1 Q. What kind of -- we can't find, or I can't
2 find, where EP-39 is shown on any of the maps or in
3 your ventilation plan. And it really -- it showed
4 up, I think, right here the last day that you
5 actually did the exam.

6 Let's look back through here for a few
7 weeks. See, we're showing Longwall 1 evaluation
8 point, evaluation point Longwall 1, and once again,
9 measuring point 36.

10 We're on March -- the week of March the
11 6th. We've got EP Longwall 1, and the last sheet
12 that I have here, where you actually did the test
13 on February the 24th there's EP Longwall 1. So I
14 guess what kind of confused me is what --

15 A. I just keep -- you've got me confused.

16 Q. -- what EP-39 actually is.

17 A. I'm like you, I'm confused. I don't know
18 why I would put that on there. I mean, is this the
19 EP?

20 Q. Well, it's on here, but there's no lines
21 showing the location of it, so ...

22 A. Right. Okay. This is probably after
23 somebody has made this.

24 Q. I think so, yes.

1 A. All I can do is look at a map and see if I
2 can find a map. I'm not sure either.

3 Q. Okay.

4 MR. TUCKER: You indicated that you might
5 have a map, Harold, showing those EPs?

6 THE WITNESS: Could have. I mean, it
7 might still be in my shirt pocket.

8 MR. TUCKER: If it's possible, if you did
9 find that, if you would give us a call we would
10 like to get a copy of it.

11 THE WITNESS: Okay.

12 BY MR. CRIPPS:

13 Q. Do you recall who you told, when you
14 couldn't get to the -- when you couldn't get back
15 here due to the water, do you recall if you told
16 anyone about that?

17 A. Yes, I did.

18 Q. Who did you tell?

19 A. I went through channels, like I'm supposed
20 to. I started with Jack, Wayne Pursinger, and the
21 superintendent, trying to think of his name. We
22 call him Dick. That's his nickname.

23 MR. TUCKER: Everett.

24 A. Everett Hager.

EXAMINATION

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BY MR. CAUDILL:

Q. Earlier in the interview you stated that you knew people were making ventilation changes?

A. Right.

Q. And you said that you didn't want to get anybody in trouble, and you didn't actually see the people do the changes?

A. Right.

Q. Who would have that knowledge? Who would have the direct knowledge of who was making ventilation changes?

A. I guess the engineer, the ventilation engineer.

Q. And who is that?

A. Eric Lilly.

Q. Now, these ventilation changes that you heard about, can you elaborate on what they were, what people were doing?

MR. MCCUSKEY: Can I ask you to maybe specify a time frame? I mean, five years --

Q. During the time that the inspector came to the mine and found your air reversal?

A. I'm still a little bit lost.

1 Q. Around the March 9th period you traveled
2 with the -- I think that's the correct date, isn't
3 it?

4 A. I'm still --

5 MR. SILKWOOD: I think he's looking for
6 what you may know about any changes from March 3rd
7 to March 9th.

8 A. Like the stoppings being knocked in the
9 tail entry?

10 Q. Right.

11 A. I know they were knocked. I don't know by
12 who, and I really don't know when. I mean, it had
13 to be knocked -- the stoppings wouldn't have
14 mattered all that much, really, just the regulator
15 is what the inspector told me. It's the regulator
16 he told me was the big deal.

17 MR. CAUDILL: That's all I've got.

18 EXAMINATION

19 BY MR. STEFFY:

20 Q. When you said the regulator, they closed
21 the regulator off. Did I understand you
22 correctly?

23 A. Yes.

24 Q. This is just my thought. Any idea why

1 they did that?

2 A. I have no idea.

3 EXAMINATION

4 BY MR. CRIPPS:

5 Q. Okay. Harold, I got just a couple quick
6 things here. I want to clarify, once again,
7 looking back at the record of the weekly exams that
8 you performed. In the entries where you listed
9 could not get to the EP LW-1 due to water, when you
10 entered that, it's your understanding that EP-1 was
11 back in the area of 39 crosscut?

12 A. From what I can remember of this episode,
13 I told Wayne -- I didn't know what to do. You
14 know, I don't know what I needed to do. I said --

15 MR. MCCUSKEY: Listen carefully to his
16 question. I mean, say whatever you want. I'm not
17 trying to control what you say.

18 But your question was --

19 A. I might be losing myself again.

20 Q. No, you're doing fine.

21 A. What exactly are you wanting to know?

22 Q. The -- see if I can be a little clearer.

23 The map that's in front of you shows EP
24 Longwall 1, has a line directed at approximately

1 crosscut 26, 27, 28, 29 -- it's showing between
2 crosscuts 29 and 30.

3 Is it your understanding that by looking
4 at this record that you could not get to crosscut
5 29 and 30 due to high water?

6 A. No. I just can't remember water being in
7 this area this close to us.

8 Q. Okay. Where was the water actually
9 located?

10 A. Probably 38 break, in that 36 or 38 break
11 in that area.

12 Q. Okay. And normally when you was doing
13 your weeklies, was you doing them inby 38 break?

14 A. Yes.

15 Q. And I say normally, prior to the episode
16 that you have listed where you couldn't get there
17 because of water?

18 A. Yes.

19 Q. Okay. Have you been in the mine since the
20 explosion?

21 A. Yes.

22 Q. Okay. Have you actually been up into the
23 area that was affected by the explosion?

24 A. Uh-huh.

1 Q. Do you have any thoughts about what may
2 have happened?

3 A. I think the guys on the longwall knew
4 something was happening, and you just, you know, I
5 wasn't up there long. I saw the crack on the tail
6 and that's what I think happened, no doubt in my
7 mind.

8 Q. Okay. You say you think that's where it
9 happened. What do you think happened?

10 A. I think this crack where this bottom is
11 hooved has just come up out of the bottom.

12 Methane, where your monitors are on the
13 face, not in the tail entry, it wouldn't have
14 picked it up. Right?

15 Our monitors wouldn't have picked that up
16 because it's pushing it past the longwall up the
17 tail entry. I just think where they're cutting
18 sandstone, they hit a spark or something and seen
19 it. Because I don't know why they would have the
20 disconnects pulled.

21 My first thought was the cable, because we
22 get rock in those cables. That was my first
23 thought was the cable, but the inspectors I talked
24 to said there wasn't any rock in the break either.

1 Q. You probably know we've checked the cable,
2 and it was not damaged at all.

3 A. Right.

4 Q. In your experience on the longwall, why do
5 they open that disconnect?

6 A. Like I was stating, if we have cable
7 trouble, or say they're biting a shear or going in
8 the panel of a shear or, you know, just a lot of
9 reasons.

10 But first thing that come to my mind --
11 well, the very first thing that come to my mind was
12 the ranging arm pin. I wondered if they was
13 cutting a well, nobody said they wasn't.

14 And the second come to my mind is the rock
15 got in and ripped a piece of that cable.

16 MR. CRIPPS: Okay. That's all I've got.

17 MR. MCCUSKEY: I wanted to clarify one
18 thing when you're done, if I may.

19 MR. CRIPPS: Sure.

20 EXAMINATION

21 BY MR. MCCUSKEY:

22 Q. Harold, if we could, the exhibits that
23 Dean has been asking you about today, specifically
24 it's marked as Lilly F, and it's one, two, three,

1 four, five, six pages of weekly examinations.

2 And he's asked you questions about most of
3 them. Maybe not every one, but most of them;
4 right?

5 A. Right.

6 Q. At one point you said something about you
7 may have misstated something. Now, I don't know
8 what you meant, but let me ask you.

9 Does every reading that bears your name or
10 initials on here a reading that you actually took?

11 A. Yes.

12 Q. You didn't make any of them up?

13 A. No, would not do that.

14 Q. As far as the place where you took them,
15 whether you can find it on the map or not, is that
16 something you contemporaneously made when you took
17 the reading, you actually put a location down as to
18 where you took the reading?

19 A. Yes. I mean, that's ...

20 Q. Is that correct?

21 A. If I didn't do these, it wouldn't be on
22 there with my name.

23 Q. Okay. And doing them and also where you
24 did them, the EP, if you marked an EP, like EP

1 LW-1, and you said you weren't sure where that was
2 on the map, at the time you took the reading, did
3 you know where EP LW-1 was or did you just make it
4 up?

5 A. No, I didn't make anything up.

6 Q. Okay. That's what I'm asking.

7 A. No, I wouldn't make nothing up.

8 Q. So you might not find it today on the map,
9 but at that time you took it you knew where it was?

10 MR. CAUDILL: You were provided with a map
11 that had EPs on it, is what you told us earlier.

12 THE WITNESS: Yes, sir.

13 MR. CAUDILL: Who provided you with the
14 maps?

15 MR. MCCUSKEY: I think he answered that.
16 Go ahead and answer again.

17 THE WITNESS: I think I said Jack Roles.
18 Either Jack Roles --

19 MR. MCCUSKEY: Yeah, he said or.

20 THE WITNESS: -- or Wayne Pursinger.

21 BY MR. MCCUSKEY:

22 Q. And the other thing I wanted to ask you,
23 you indicated there were areas you, and you put it
24 on these weekly exam readings, where you couldn't

1 get to the area to make a measurement; right?

2 A. Right.

3 Q. And each time that occurred, you put that
4 -- you noted that and it reads that way on Lilly
5 Exhibit F; right?

6 A. Yes.

7 Q. Was there any time when the water was so
8 high that the air wasn't still coming through it?

9 A. No.

10 Q. So the air was still coming through, but
11 you couldn't get through it?

12 A. No, I couldn't get to it.

13 MR. MCCUSKEY: That's all I got.

14 MR. CAUDILL: How high is the entry in
15 that area where the water is?

16 THE WITNESS: Seven, eight foot. Just
17 different.

18 MR. CAUDILL: How tall are you?

19 THE WITNESS: About 5'10".

20 MR. CAUDILL: I believe you said it come
21 up to your chest?

22 THE WITNESS: In some spots, I mean.

23 MR. CAUDILL: I mean, the water come up to
24 your chest, but it about three foot overtop of you?

1 THE WITNESS: You know different heights.

2 MR. CAUDILL: Would you consider that a
3 restriction?

4 THE WITNESS: Yes. Yeah, that would be a
5 restriction.

6 MR. CAUDILL: Ventilation problem?

7 THE WITNESS: To me, no, because I knew
8 there was good air going up there.

9 Now, well, there had to be air going
10 behind it because I don't know how that -- if this
11 was blocked, you wouldn't get no air here. I'm
12 very confident this wasn't blocked.

13 MR. CRIPPS: By "this," you mean Headgate
14 21 entries?

15 THE WITNESS: Headgate side, yes.

16 MR. CRIPPS: And you indicated with your
17 finger there that if it was blocked inby where
18 you'd have been taking your readings, you wouldn't
19 have gotten air?

20 THE WITNESS: Right.

21 MR. CAUDILL: Could it have bled across
22 the gob and not made it through the entries?

23 THE WITNESS: Yeah, some could. I mean,
24 it will pull through the gob.

1 MR. CAUDILL: Yeah, it should pull through
2 the gob. That's all I've got.

3 MR. MCCUSKEY: I don't have anything else.

4 MR. TUCKER: Do you have any statement,
5 Harold, you'd like -- we've asked a lot of
6 questions. Is there anything you can think of or
7 any statement you'd like to make before we go off
8 the record?

9 MR. MCCUSKEY: Other than what he made
10 last time.

11 MR. TUCKER: Just another opportunity.

12 THE WITNESS: I'm fine, I guess.

13 MR. WILSON: I just want to, on behalf of
14 MSHA, thank you for coming in. And if you do think
15 of anything else, contact us through your
16 attorney.

17 And then, also, just a reminder, you were
18 going to check to see if you had your personal map,
19 and if so, please provide that to us.

20 MR. MCCUSKEY: And I'll get that to you.

21 (Interview concluded.)

22

23

24

1 STATE OF WEST VIRGINIA, To-wit:

2 I, Jenny Taylor, a Notary Public and Court
3 Reporter within and for the State aforesaid, duly
4 commissioned and do hereby certify that the
5 interview of HAROLD K. LILLY was duly taken by me
6 and before me at the time and place specified in
7 the caption hereof.

8 I do further certify that said proceedings
9 were correctly taken by me in stenotype notes, that
10 the same were accurately transcribed out in full
11 and true record of the testimony given by said
12 witness.

13 I further certify that I am neither attorney
14 or counsel for, nor related to or employed by, any
15 of the parties to the action in which these
16 proceedings were had, and further I am not a
17 relative or employee of any attorney or counsel
18 employed by the parties hereto or financially
19 interested in the action.

20 My commission expires the 6th day of March
21 2019.

22 Given under my hand and seal this 24th day of
23 June 2011.

24

Jenny Taylor
Notary Public

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June 23, 2011

Norman Page
Chief Accident Investigator
Mine Safety & Health Administration
1301 Airport Road
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Beaver, West Virginia 25813-9426

Re: Errors in the August 23, 2010 Interview of Harold Lilly

Dear Mr. Page:

I have enclosed the deposition Errata Sheet reflecting those corrections and clarifications that resulted from Harold Lilly's review of the transcript of his UBB interview transcript of August 23, 2010. I ask that you append the Errata Sheet to the original transcript and please notify me to confirm that the Errata Sheet and this letter are so appended. I also ask that you provide the Errata Sheet to each person who has been provided a copy of the transcript prior to your receipt of the Errata Sheet. Confirmation of the recipients of the Errata Sheet would also be appreciated.

Sincerely,



John F. McCuskey

JFM/mam
Enclosure

cc: Harold Lilly
Matthew N. Babington
Robert Wilson
Barry Koerber, Esquire

ERRATA SHEET

I, the undersigned, HAROLD LILLY, do hereby certify that I have read the foregoing sworn statement taken on August 23, 2010 at the West Virginia Mine Academy, and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below):

PAGE/LINE

CORRECTION AND REASON FOR CORRECTION

34/15

correction: "one percent" should be ".5 percent"

43/15³⁻

clarification: "dust" referred to "dust from
rock cutting, not coal"

Lined area for document content.

Harold Lilly
HAROLD LILLY

Subscribed and sworn to before me this 21st day of June, 2011.

Melody A. McCormick
Notary Public

