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Transcript of the Testimony of **Joseph Mackowiak**

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Case:

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STATEMENT UNDER OATH
OF
JOSEPH MACKOWIAK

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, May 17, 2010, beginning at 1:08 p.m.

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1 A P P E A R A N C E S

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY WILSON:

4 Good afternoon. My name is Bob Wilson.

5 I am with the Office of the Solicitor, United States
6 Department of Labor. We're here with Joe Mackowiak.
7 Today is May 17, 2010. With me is Richard Stoltz, an
8 accident investigator with the Mine Safety and Health
9 Administration. Also present are several persons with
10 the State of West Virginia. I ask that they state
11 their appearance for the record.

12 MR. BECK:

13 I'm Jim Beck. I work for Davitt McAteer
14 on the independent team.

15 MR. FARLEY:

16 Terry Farley, with the West Virginia
17 Office of Miners' Health, Safety and Training.

18 MR. O'BRIEN:

19 John O'Brien, with the Office of Miners'
20 Health, Safety and Training.

21 ATTORNEY WILSON:

22 There are several members of the
23 investigation teams also present in the room today.
24 All members of the Mine Safety and Health
25 Administration Accident Investigation Team and all

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

17 Joe, government investigators and
18 specialists have been assigned to investigate the
19 conditions, events and circumstances surrounding the
20 fatalities that occurred at the Upper Big Branch Mine-
21 South on April 5th, 2010. The investigation is being
22 conducted by MSHA, pursuant to Section 103(a) of the
23 Federal Mine Safety and Health Act and by the West
24 Virginia Office of Miners' Health, Safety and
25 Training. We appreciate your assistance in this

1 investigation.

2 After the investigation is complete, MSHA
3 will issue a public report detailing the nature and
4 causes of the fatalities in the hope that greater
5 awareness about the causes of fatalities can reduce
6 their occurrence in the future. Information obtained
7 through witness interviews is frequently included in
8 these reports. You should know that if you request
9 confidentiality, confidentiality will only be granted
10 on a case-by-case basis. Your statement may also be
11 used in other enforcement proceedings.

12 You may have a personal representative
13 present during the taking of this statement and you
14 may consult with that representative. Do you have a
15 representative with you?

16 MR. MACKOWIAK:

17 No, I do not.

18 ATTORNEY WILSON:

19 You may refuse to answer any question and
20 you may request a break at any time. This is not an
21 adversarial proceeding. Formal Cross Examination will
22 not be permitted, however, clarifying questions will
23 be permitted as appropriate. The court reporter will
24 record your interview. Please speak loudly and
25 clearly. If you do not understand a question, please

1 ask that the question be rephrased. Please answer
2 each question as fully as you can, including any
3 information that you may have learned from someone
4 else.

5 Again, I would like to thank you in
6 advance for appearing here. We appreciate your
7 assistance in this investigation. Your cooperation is
8 critical in making the nation's mines safer. After we
9 have finished asking questions, you will be provided
10 an opportunity to clarify any of your previous answers
11 and to provide any type of a statement if you choose
12 to make one. After the interview, if you recall any
13 additional information that you believe might be
14 useful, please contact Norman Page at the contact
15 information in the letter that I'm providing you now.
16 At this time I'll ask the court reporter to swear you
17 in.

18 -----
19 JOSEPH MACKOWIAK, HAVING FIRST BEEN DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 -----

22 ATTORNEY WILSON:

23 Richard Stoltz will start out with the
24 questioning.

25 EXAMINATION

1 BY MR. STOLTZ:

2 Q. Joe, would you please state your full name and
3 spell your last name, please?

4 A. Joseph Charles Mackowiak, M-A-C-K-O-W-I-A-K.

5 Q. Would you please state your address and telephone
6 number?

7 A. [REDACTED]

8 [REDACTED] And I'm sorry, what was the
9 second part of the question?

10 Q. Telephone number, please?

11 A. [REDACTED]

12 Q. Are you appearing here today voluntarily?

13 A. Yes, I am.

14 Q. How long have you worked for MSHA?

15 A. Nine-and-a-half years.

16 Q. What is your current duty station?

17 A. Mount Hope, West Virginia, District 4.

18 Q. How long have you worked at that location?

19 A. Since 2004.

20 Q. What is your present position?

21 A. Ventilation supervisor, however, my title is
22 supervisory mining engineer.

23 Q. How long have you been in that position?

24 A. Since June of 2008.

25 Q. How many people do you supervise?

1 A. Six plan reviewers and one secretary, seven.

2 Q. Who is your current supervisor?

3 A. Richard Kline.

4 Q. Could you please tell us some of your mining
5 history and experience?

6 A. Sure. I started working for A.T. Massey Coal
7 Company in the summer of my sophomore year of college,
8 and worked for them until --- that began in 1992, and
9 worked for that company through college. Upon
10 completion of college, I worked for them through
11 January 2000, approximately seven years.

12 Q. What did you do while at Massey?

13 A. I did mining engineering, surveying, AutoCAD while
14 in school. Upon graduation, I worked underground at
15 various underground coal mines along the Route 3 area.
16 For a period of time I did various construction
17 projects, and additionally, some mining engineering in
18 the Route 3 area, and then again in the Summersville
19 area.

20 Q. Basically a lot of your experience was engineering
21 experience?

22 A. Well, about two-and-a-half years of underground
23 experience followed by mining engineering.

24 Q. Do you have any specialized training or
25 certificates?

1 A. Yeah. I'm a Certified Impoundment Inspector with
2 the Mine Safety and Health Administration. I'm a
3 certified dust --- certified with dust pumps with the
4 Mine Safety and Health Administration. I am both a
5 surface and underground instructor with the State of
6 West Virginia, as well as with the United States
7 Department of Labor, Mine Safety and Health
8 Administration. I have a Bachelor's of Science degree
9 in Mining Engineering from West Virginia University.
10 I am a Registered Professional Engineer in the State
11 of West Virginia. I am a Certified Underground Mine
12 Foreman --- Assistant Mine Foreman. I'm also a
13 Certified Underground Miner. I have a Master's of
14 Science in Safety from Marshall University. I think
15 that's it.

16 Q. Okay. In your current position, what is your
17 primary areas of responsibilities?

18 A. Primarily to process ventilation plans for
19 District 4 and to supervise plan reviewers in the
20 processing of ventilation plans and to work
21 collaboratively with the district field offices for
22 issues that may be raised during inspections related
23 to ventilation.

24 Q. Is ventilation plans your only area of
25 responsibility?

1 A. Well, we occasionally assist on EO1 regular
2 inspections, quarterly inspections. My guys --- I'll
3 go out occasionally as well. I occasionally help with
4 the editing of fatal accident reports for the
5 district. I've also served on various committees,
6 including SCSR, Bleeder and Gob Committee. And that's
7 essentially it for right now. Now, in the past I've
8 done several other things. I don't know how broad of
9 a question you want answered.

10 Q. That's good. How many active underground coal
11 mines are currently in the district?

12 A. I don't keep a day-to-day count of it. The last I
13 heard from the district manager, Robert Hardman, was
14 245.

15 Q. And you would be responsible for all the vent
16 plans for ---

17 A. Yes, sir.

18 Q. --- all those?

19 A. Yes.

20 Q. Could you go over the standard operating
21 procedures for reviewing a submitted ventilation plan?

22 A. Sure. When a ventilation plan comes into the
23 district, it is date stamped upon receipt to show
24 what --- you know, when it arrived. It goes through
25 clerical person's hands in being input into our MIS,

1 mine tracking. It's a plan tracking software. And
2 then it essentially gets put into a series of bins
3 that are holding bins spread --- based on the type of
4 plan that they are. I will assign that plan to a plan
5 reviewer and they will conduct a review of the plan.
6 Upon their completion, they attach an approval or
7 denial letter to it, and they submit it to me for
8 secondary review. I conduct that review. If ---
9 depending on what --- whether we agree or not depends
10 on whether it goes to Mr. Kline for a third-level
11 review. And if I agree with the conclusions of the
12 plan reviewer, whether it be approved or denied, then
13 I will sign it and pass it on.

14 Now, one of the steps that occurs prior to it
15 coming to me is that plan is reviewed with the field
16 office, preferably the supervisor or the inspector
17 assigned to the mine, to ensure that it's applicable
18 to the mining conditions and that it will function as
19 desired. Frequently we require their input on
20 everything from mining near gas wells to ventilation
21 map revisions, where a mine operator wants to turn an
22 air course, or to plan revisions themselves, like a
23 face sketch wants to be changed or something similar
24 to that. But we always take everything through the
25 field office, either verbally, by explaining item by

1 item what's in the plan, or you know, we like to also
2 send 'em --- scan 'em and send 'em to the field
3 office.

4 Now, once I agree or disagree with their
5 conclusion, it goes to Richard Kline, who does an
6 additional review. He's the Assistant District
7 Manager of Technical Programs. And upon his review,
8 he forwards it to the Assistant District Manager of
9 the Enforcement Division, who actually manages all the
10 field offices for them to review it and either concur
11 or disagree, at which time --- at any time they
12 disagree it comes back to me. And then we'll contact
13 the mine operator and work on whatever plan details
14 are necessary to make that plan acceptable.

15 And then finally, from the Assistant District
16 Manager, Enforcement Programs, it ends up at the
17 District Manager's desk. Now, we are all making
18 recommendations, from my plan reviewer through the
19 Assistant District Manager of Enforcement, making
20 recommendations, but the final determination is made
21 by the District Manager, as to whether to approve or
22 deny a plan.

23 Let me add just one more. The final process is it
24 comes back to the district, to my office, for
25 transmittal to the mine operator and to the field

1 office, and at which time a copy is sent --- two
2 copies are sent to the field office, one for the
3 residing inspector, whoever is there at the time, one
4 for their records in the uniform mine file. The
5 additional copy goes into our records in the
6 Ventilation Department for the purpose of reviews. We
7 re-review all of those upon each annual map to assure
8 that they're still applicable.

9 Q. Who normally submitted plans for the Upper Big
10 Branch Mine?

11 A. Several people submitted plans for the Upper Big
12 Branch Mine. Normally, it would be Eric Lilly, an
13 engineer that worked for Performance or Route 3
14 Engineering. I believe he told me verbally he worked
15 for Route 3 Engineering. However, when he submitted
16 plans, he did it on Performance Coal Company
17 letterhead. And occasionally plans were submitted
18 within six months prior to the accident also by Bill
19 Ross, Chris Adkins and Chris Blanchard.

20 Q. Did you have any meetings with upper mine
21 management personnel concerning submitted or proposed
22 plans? Please give me the name and titles.

23 A. Prior to approval or after approval?

24 Q. Prior or after.

25 A. There were several meetings.

1 Q. And the purpose of the meetings?

2 A. Okay. There were several meetings. It's a broad
3 question, so it's difficult. But let me start --- one
4 that stands out is the mine received approval to
5 reverse belt air on December 18th. After
6 implementation in the days following that, Bill Ross
7 and Chris Adkins, who I believe is vice-president of
8 Massey Energy, came to my office the morning of
9 December 23rd requesting a plan to change the December
10 18th plan due to difficulties encountered during
11 implementing. They hand delivered a plan with them.
12 We looked at it. We being --- and I'm not absolutely
13 sure on the meeting attendees, but I'm sure I had a
14 plan reviewer there, which one I'm not sure of, Rich
15 Kline and possibly Luther Marrs. But I'm not really
16 exactly sure. There's some notes on that.

17 Well, I don't think I took notes that day,
18 actually. But they described that due to the
19 influence of the bleeder fan on those neutral air
20 courses in the Number One entry of the headgate, that
21 they were unable to turn the belt air from
22 approximately the panel two crossover, which is mining
23 from headgate --- the active headgate towards Headgate
24 22, inby to the area here shown December 2009, which
25 is approximately crosscut 49 or 50, in that general

1 area. And subsequently, their plan stated that the
2 neutral air course would split and a portion of it
3 from the crossover, at about crosscut 28 would go inby
4 and 28 would go outby to a regulator located at
5 approximately crosscut 12, in that general area. But
6 the specifics of that plan are on the December 23rd
7 plan. And basically they described the influence of
8 the bleeder fan was too great for them to turn the
9 entire thing.

10 A portion of that plan also described upon their
11 submittal, in their submittal letter, that the ---
12 they would have a long-term plan to change the belt
13 air around. Now, I had several meetings prior to that
14 during previous plan reviews. I don't know the exact
15 dates of 'em, in which we had requested ---.

16 Q. Would it be helpful for that plan to go --- I
17 guess lay out each plan and go over each of the
18 approved plans and then talk about denials? Would
19 that be ---?

20 A. If we can do that in chronological order from
21 all --- that would be very helpful.

22 Q. And it sounds like what you're saying is a lot of
23 your meetings pertained to either approvals or denials
24 of plans ---

25 A. Yes.

1 Q. --- and the various accompanying officials?

2 A. Yes, one of which, which really didn't have to do
3 with approvals and denials, in mid-January Wayne
4 Persinger, I believe, was transferred to the mine and
5 he came to our office without any company engineers
6 and met with Link Selfe, I believe Rich Kline, Jim
7 Humphrey from the district, who was acting as a field
8 office supervisor at the time, and just to basically
9 get to know one another. He described what he was
10 doing at the mine, why he was there, due to compliance
11 challenges. And we basically gave him our current
12 status of the mine with regard to past citations and
13 orders issued. There was also a meeting for that. It
14 really didn't have much to do with plans, per se, but
15 it did have to do with mine conditions.

16 Q. I guess how do you know when a plan has been
17 implemented?

18 A. That's very difficult. The only way to know that
19 a plan has been implemented is to talk to our MSHA
20 employees who have been into the mine. There is no
21 reporting requirements by the operator.

22 Q. Moving on, I was going to talk a little bit about
23 the Belt Air Rule. And the Belt Air Rule was
24 effective on December 31st, 2008. Underground coal
25 mines were required to have a plan to the district by

1 March 1st. Could you please explain or discuss the
2 effect of the regulation on the mines in your
3 district?

4 A. By and large, the mines in my district were not
5 prepared for the Belt Air Rule. They didn't fully
6 understand the requirements of it. Several meetings
7 with some of the mine operators, they were fairly
8 resilient to change. And it took multiple requests on
9 the part of the district to basically get them to turn
10 in their belt air requests, either a justification for
11 the belt air they were currently using or the request
12 to use it or the request to change it. Under 370, the
13 mine ventilation plan has to be developed and
14 submitted by the mine operator. It requires them to
15 have a fundamental understanding. So we gave out
16 copies of the Final Rule and discussed it with them.
17 I kept a notice on the whiteboard in the district
18 within my office so all mine operators could see that
19 there was a requirement. And despite that, we still
20 had to send out multiple letters in order to prompt
21 that. Now, it being a new regulation, we weren't
22 extremely punitive in its application initially. We
23 wanted to more or less educate the mine operators and
24 get that --- get that ball rolling, so to speak.
25 Some mine operators turned right around and gave a

1 justification that was subsequently approved. It
2 generally took several submittals to get an approval
3 because the mine operators weren't familiar with the
4 new regulations, and there wasn't a whole lot of
5 guidance within the regulation itself with regard to
6 like a checklist. There wasn't a checklist in the
7 regulation with regard to what would be necessary for
8 that plan.

9 This mine, in particular, with regard to belt air,
10 was very difficult to deal with in that it took
11 multiple notifications. They had a base plan --- they
12 got approval for use of the longwall, I believe it was
13 August 6th, 2009. On that approval for the longwall
14 contained a face sketch which showed belt air being
15 used. Now, due to the influence of the bleeder fan,
16 that was fairly normal. The bleeder fan would want to
17 pull the neutral air courses that way. At that time,
18 it was requested from them verbally from me that they
19 address the belt air issue. Again, we were fairly
20 lenient with the application of the new regulation
21 because it was new. We asked for it then.

22 We addressed it again approximately November 20th
23 in a plan correspondence for this issue to be
24 addressed, either justification for its use or its
25 elimination, as required by the regulation. We

1 requested again December 3rd, via plan correspondence,
2 December 4th via plan correspondence, I believe again
3 on December due to plan correspondence.

4 I'm trying to hold to those dates. Again, I'm
5 going off memory. But I believe within either the
6 approvals or denials, it was in a plan letter. We did
7 that several times.

8 Just prior to December 9th, the company engineer,
9 Eric Lilly, stated to me that he did not have a copy
10 of the regulations. So you'll see within that letter
11 that requested --- it states in there that a copy of
12 the regulations did accompany that. Now, he picked
13 that up in my office from my secretary and attached it
14 accordingly on that day, on that morning. And that
15 essentially, I guess, got the point across that they
16 either needed a justification or removal pursuant to
17 the regulations. And they submitted and was approved
18 to get off of belt air on December 18th. However,
19 again, as I previously stated, they had difficulty
20 implementing that revision, and they revised that
21 revision on December 23rd. And that was the meeting
22 with Bill Ross and Chris Adkins.

23 Q. I'm now going to, I guess, move on to the ---
24 basically try to walk you through the approved
25 ventilation plans.

1 MR. STOLTZ:

2 But before I do that, Terry or Jim, did

3 you have anything --- follow-up questions, I guess, on

4 what was initially covered?

5 MR. FARLEY:

6 Very quickly.

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Mid-January Wayne Persinger met with Link Selfe,
10 Rich Kline, Jim Humphrey, et cetera. What was
11 Persinger's job? What was his position?

12 A. I don't know his exact title. He was transferred
13 to the mine in order to address their compliance
14 issues. They received numerous orders from the Mine
15 Safety and Health Administration. And in particular,
16 he talked about some things that he had observed and
17 seen with regard to doors or access via scoop down
18 here in the southern part of the mine. It's off the
19 map that's on the table, but it's --- and I don't know
20 the exact area because he briefed us very quickly, but
21 somewhere down there an acting, producing section that
22 was driven off from near the South Portal. He talked
23 about that and just trying --- explained that he was
24 trying to get to know the mine and was walking the
25 areas and traveling with people, trying to get an idea

1 as to, you know, how to help --- how to help the area,
2 how to help the mine.

3 Q. Okay. Earlier on you indicated that UBB plans
4 were normally submitted by Eric Lilly, also Bill Ross,
5 Chris Adkins, and you mentioned Chris Blanchard.

6 A. Yes.

7 Q. Anything in particular that came from him?

8 A. That was not the norm that it was received from
9 Chris Blanchard. However, he did submit one or two.
10 Now, I can't quote to you which ones they are, but
11 they tended to have his signature on their submittal
12 letter.

13 Q. Okay. Was there anything different about his
14 submittals as opposed to others? Was it ---?

15 A. Generally if he submitted a plan, he wanted a
16 quick turnaround as much as possible. And when he
17 turned it in, he wanted to meet with one of my group,
18 either a plan reviewer or myself. And that's
19 frequently done by mine operators throughout the
20 district, that they want you to sit down and look at
21 their plan upon submittals to tell them if there's any
22 issues with it and get a pre-review, so to speak. And
23 the reason being is we're a large district. We have
24 volumes of submittals. And that's one way that the
25 mine operators tend to, it appears to me anyway, try

1 to circumvent the waiting period in order to get a
2 quick response, to kind of compensate for lack of
3 proper planning or an extreme situation that --- like
4 say a section hits rock ---. And it didn't happen in
5 this mine, but I'm going to give you an example, where
6 they hit rock and they have to move and they need a
7 quick turnaround or they're going to suffer a loss in
8 production. That's one way that they try to get their
9 plan above the rest of 'em. You know, currently ---
10 last week I had 136 or 139 outstanding plans. So you
11 can see where that would be advantageous to the
12 operator.

13 Q. Okay. Let's see here. You indicated in 2009,
14 after the Belt Air Rule became effective December 31,
15 2008, that UBB required multiple notifications?

16 A. Yes.

17 Q. Can you quantify multiple?

18 A. November --- August 6th, verbal, November 20th,
19 December 3rd, December 4th, and again on December 9th,
20 that's five notifications with no response.

21 Q. Okay.

22 MR. STOLTZ:

23 Jim?

24 EXAMINATION

25 BY MR. BECK:

1 Q. Mr. Mackowiak, you said there were 245 coal mines
2 in District 4?

3 A. Roughly.

4 Q. Roughly. Is that all underground mines?

5 A. Those are underground coal mines. I think the
6 total number of mines in the district is in excess of
7 400 or hovers around that area.

8 Q. Would District 4 be the largest MSHA district in
9 West Virginia?

10 A. It would certainly be in West Virginia.
11 Geographically, it's --- I don't know if it's any
12 larger. But as far as the volume of mines, yes.

13 Q. You mentioned Bill Ross. Did he formerly work
14 with MSHA?

15 A. He did. He's an MSHA retiree.

16 Q. Where was his duty station when he retired, do you
17 recall?

18 A. He was a ventilation supervisor for District 4.
19 He had my current position prior to me.

20 Q. Do you know his job with Massey right now?

21 A. As I understand it, he works for Massey Coal
22 Services, which is a technical management group. I've
23 never really had it explained to me, but that's
24 essentially what they do.

25 Q. Okay. And when Wayne Persinger came to visit you,

1 did he express any concerns about ventilation? Was
2 that one of his issues?

3 A. Nothing in particular stands out, other than he
4 said he was traveling the mine --- excuse me,
5 traveling the mine in order to gain familiarity.

6 MR. BECK:

7 That's all.

8 RE-EXAMINATION

9 BY MR. STOLTZ:

10 Q. Okay. Joe, I'm going to, as I said, walk you
11 through some of the various plans, starting from the
12 August 6th, 2009 plan. And I guess I'd ask you to
13 just go over and provide us some of the details on
14 each of the plans as we go through 'em. The August
15 6th, 2009 plan was the One North longwall startup plan
16 submitted in July, which it was revised --- I know it
17 says in the approval note three times prior to being
18 approved. Could you just kind of walk us through what
19 basically the plan entailed?

20 A. Yes, I will. The plan is comprised with ---
21 initially on the cover it's initialed by me, J.M.,
22 8/6. That's the date that I saw it from the reviewer.
23 And it's just basically an initial in the lower
24 right-hand corner stating that I was in agreement with
25 the writing of the letter and the wording used within

1 it. The mine operator doesn't receive a copy of that.
2 What he sees is page two in this packet, which doesn't
3 have my initials in the lower right-hand corner. It
4 only has a signature by Robert Hardman. Then there is
5 a cover letter submitted by the company that's
6 required on all plans, dated July 28, 2009. However,
7 those dates are important that the operator puts into
8 it because they don't always correspond with the date
9 on which we received it. This one, in particular, in
10 the lower right-hand corner, was logged in received on
11 August 6th, 2009. So the total lapse time that we
12 would have had, it would be from August 6th to August
13 6th. So you can see that this was a same-day process.
14 The letter initiates --- consists of three phases.

15 Phase one is a ventilation scheme during development
16 of the north district coal reserves ---.

17 COURT REPORTER:

18 Wait a minute.

19 MR. STOLTZ:

20 Yeah, slow down.

21 COURT REPORTER:

22 You need to slow down.

23 A. I'm sorry.

24 COURT REPORTER:

25 Thanks.

1 A. The revision consists of three phases. Phase one
2 is the ventilation scheme during development, prior to
3 the exhausting fan being placed into service. The
4 panel one crossover will be mined under the approved
5 ventilation revision. Once the exhausting fan is
6 placed in service, the vent scheme for mining
7 crossover will reflect what is shown in the attached
8 phase one map.

9 Phase two is a ventilation scheme for further
10 development of the northern district and startup and
11 activation of the longwall panel, establishment of
12 bleeder evaluation checkpoints, the surface EP at the
13 top of the bleeder return shaft, and the necessary
14 ventilation controls being installed, removed. Also
15 shown in phase two, as the sequence of mining panel
16 two and three crossovers as well as sequencing for
17 mining Headgate Two and Three.

18 It goes on for phase three. Shows the ventilation
19 scheme for mining Headgate Two and Headgate Three once
20 the panel two and three crossovers are completed. At
21 this time the panel three crossover will be ventilated
22 by return air in the Number Four entry and neutral in
23 the One, Two and Three entries. The air from all four
24 entries will enter the right return in the section
25 mining Headgate Number Two. A description of the

1 bleeder system, including a line diagram, I had
2 actually requested this to assure that the mine
3 operator understood the requirements of 75.364, where
4 air --- specifically (a)(2)(iii), where air exits the
5 worked-out area and enters the bleeder air course. So
6 that they knew prior --- or during development that
7 they would have to travel the back of these longwall
8 panels, the bleeder system, to the vent shaft,
9 including the outlets from the worked-out area, for
10 the entire ventilating district. And the reason
11 that's of pertinent importance is if you go back to
12 the 2005 face plan for this base plan for this mine,
13 they were not required to travel the bleeder air
14 courses in their entirety. Subsequently, they did not
15 capture quantity, quality and direction for the air
16 that exits the worked-out area. That's why the line
17 diagram is in there, to assure that that portion of
18 the regulations could be followed long term.

19 It includes general safety precautions for water
20 control, roof control, the bleeder system evaluations,
21 dictates what they're to do. And the page numbers
22 aren't marked, but there is a map that is sideways
23 that shows a plan view of the longwall and it includes
24 MPA, MPB, EP Longwall One and EP Longwall Two. And
25 those are the required items for 75.364(a)(2)(i),

1 where air enters the worked-out area.
2 Additionally, it has a bleeder outlet point at the
3 rear of the longwall, two regulators denoted on EP
4 LW3, EP LW1 picked up, set of temporary check curtains
5 in the headgate to direct air across the longwall
6 face, a set of temporary regulators in the Number One
7 and Number Two entries in the back of the longwall
8 connector to assure that air, as they started the
9 longwall, would go across the longwall face, and an
10 additional outlet EP, just called EP TG1, which is
11 everywhere where air exits the worked-out area on the
12 tailgate side. It also shows in the plan view that
13 there is a --- in the Number One entry of the
14 tailgate, a return air course that is isolated from a
15 bleeder system or from the worked-out area, heading
16 back towards the return shaft at Bandy creek --- not
17 Bandy creek but Bandytown. It shows an additional face
18 sketch with a four-entry headgate, and that was for
19 subsequent panels as they were laying out. It didn't
20 apply for the first panel.

21 BY MR. STOLTZ:

22 Q. But that would be for a future panel?

23 A. That's for future panels. As you see on the
24 left-hand side, it shows gob, which would be for the
25 previously-mined longwall panel. It has an additional

1 one for --- this is for the second longwall panel.

2 And again, the page is not marked, but it has Three

3 --- Three entry tailgate, because it was mined on the

4 first panel at Three entry headgate, followed by Four

5 entry headgate. And then as the longwall went to the

6 third panel in the district, it would have a four-

7 panel tailgate with a four-panel headgate. And

8 because --- it was required to be defined on each

9 separate one because all the entry numbers varied from

10 panel to panel. I wanted to make sure that they had

11 addressed that properly.

12 Q. So that would be a typical face sketch for ---?

13 A. For longwall mining?

14 Q. Yes.

15 A. Right.

16 Q. Okay.

17 A. And those would survive in the plan from here on

18 out, unless the operator had requested a change.

19 Q. Several of the face sketches you talked about MPs

20 and EPs. What would be the difference between an EP,

21 or evaluation point, or an MP, measuring point?

22 A. An evaluation point is in lieu of travel. It is

23 quantity, quality and direction. It is a requirement.

24 It's a nomenclature that exists within the district

25 prior to my arrival, but it is essentially the points

1 required by 75.364(a)(2)(i), (ii) and (iii), which
2 would be where air enters a worked-out area and exits
3 a worked-out area and measuring point location
4 sufficient to assure that the bleeder is functioning
5 effectively.

6 An MP is a measuring point. It has a different
7 frequency. It is in addition to travel, not in lieu
8 of travel, and so it would also be quantity, quality
9 and direction. Now, in this particular requirement in
10 this plan, I believe that it requires MPA and MPB to
11 be a daily check, that they would always check air
12 going into the worked-out area. And then the EPs at
13 the active longwall face would check air entering the
14 worked-out area. And then the EPs on the bleeder,
15 where air exits a worked-out area, into the bleeder
16 air courses, is the area where weekly you --- you're
17 required to check where air exits the worked-out area.
18 And then on to the maps ---.

19 Q. I have another quick question.

20 A. Sure.

21 Q. Your MPs on your face sketches, MPBs, you show
22 basically a location, could be three or four entries.
23 Would that requirement then --- that measurement would
24 have to be made in each of those entries?

25 A. I agree, yes. They would need to be.

1 Q. Back to that plan then. Basically that plan
2 provided --- allowed the longwall to go on line and
3 start up, so it did, and the development of the future
4 gate entries, Headgate --- HG 22 or HG 23; is that
5 true?

6 A. Yes. This plan actually requires something in and
7 above the regulation. It's something I had asked for
8 verbally. And at the bottom of the --- I guess it's
9 the page --- at the top it says Northern District
10 Longwall Bleeder System. At the bottom it described
11 MP will also be established along the headgate
12 entries, starting at the setup face and at intervals
13 of approximately 2,000 feet. And what that is, is
14 these MPs were to survive until the second panel had
15 pulled past them. They showed in this plan that they
16 would maintain --- and I turn to the face sketch here
17 --- typical longwall face ventilation. They're
18 showing that they're going to maintain a return
19 stopping line in the Number --- between the Number Two
20 and Number Three entry at the headgate. And what
21 those MPs are for is, they're strategically placed
22 every 2,000 feet. So as they're mining the subsequent
23 panel, they can cross that into the center entry and
24 check that for methane accumulation, to assure that
25 the previously mined-out panel is not having a

1 substantial methane accumulation adjacent to the
2 active longwall. And that's a safety enhancement in
3 and above that that I --- that's required in the
4 regulation. Again, it's described on the page that
5 says Northern District Longwall Bleeder System, at the
6 bottom of the page and the top of the following page.
7 This plan also has several large maps with it.

8 Depicted the crossover mining. Here it's entitled
9 panel two crossover and panel three crossover and also
10 the mining of the Headgate Two North, Headgate Three
11 North, and gives a sequence of mining. The primary
12 and secondary escapeway is marked in green and in
13 yellow. We look at these routinely to assure that
14 they are isolated, that we don't have any potential
15 issues with regard to the escapeway.

16 It looks like a portion of these maps are actually
17 cut off. The title blocks are missing.

18 Q. I apologize if they are.

19 A. It doesn't look like it's going to interfere with
20 what we're doing here today. However, let me ---
21 nope. I stand corrected. I'm sorry. They're
22 actually accurate. The mine operator submitted them
23 this way.

24 And I'm looking at phase two, starting longwall,
25 which shows opposed exhausting fan locations, 300,000

1 cfm. According to the verbiage in the plan, that was
2 to be on line prior to the starting of the longwall.
3 It shows the neutral air courses in the tailgate as
4 well as an isolated return off of the panel one
5 crossover mining. And it is shown with dash
6 projections, which comes down, across the set of
7 overcasts near the longwall stop point, and along the
8 Number One and Number Two entries, up the tailgate,
9 isolated from the tailgate system in its entirety, all
10 the way back to a regulator, which describes 30,000
11 cfm, which would be air coming from the panel to
12 crossover development mining, separate from the
13 longwall mining system, which is something that we had
14 had discussions about with the operator. We did not
15 want to commingle return air from any development
16 section with the tailgate or the headgate air from the
17 longwall due to potential contamination concerns. And
18 this plan shows it as being isolated.

19 And there's an additional map in here that shows
20 the sequence of mining for the longwall, which is
21 hatched in green. It shows the location of MPB, EP
22 LW2 and MPA. A 30,000 cfm regulator from the air
23 coming off of panel one crossover is also shown, still
24 isolated in its entirety from the longwall to assure
25 that contamination does not occur. It also shows, via

1 red numbers one, two, three, two and four on the upper
2 end, the sequence of mining for development of the
3 longwall headgate panels --- or headgate development
4 entries. They were showing a four-entry system at the
5 time, which changed at a later date. It also shows
6 the MP at Crosscut 58 and an MP at Crosscut 36, which
7 are supplemental to the requirements of the
8 regulation, to assure that air is moving in the proper
9 direction; quantity, quality and direction.

10 MR. STOLTZ:

11 Terry, instead of going over every plan,
12 maybe after each plan ---?

13 MR. FARLEY:

14 Okay.

15 RE-EXAMINATION

16 BY MR. FARLEY:

17 Q. The map you just had out here, you showed some of
18 the future longwall gate entry development
19 projections. And you said that initially the
20 projections said three-entry development that was
21 later changed --- initially showed four and was later
22 changed to three.

23 A. Uh-huh (yes).

24 Q. Any particular reason?

25 A. I never received a reason on that. It's certainly

1 the operator's choice as to what he needs to do. I
2 can only guess that is to assure the development would
3 be faster. It's certainly quicker to mine three
4 entries than it is to mine four. But again, I've
5 never been given that from anyone.

6 ATTORNEY WILSON:

7 Jim?

8 RE-EXAMINATION

9 BY MR. BECK:

10 Q. Basically the question I had in mind about what
11 determined or who determined three or four entries,
12 and you answered it. But I guess one question I would
13 have is, which one would provide a more stable
14 ventilation system?

15 A. It really depends on the nature of the coal mine.
16 Certainly more entries are more passageways for air.
17 However, it depends on the characteristics of the mine
18 as to whether or not those entries will be stable and
19 the long-term stability. I would leave that best up
20 to the mine operator because they have more experience
21 in that coal seam than any regulatory agency.

22 Q. Most mine operators probably would lean towards
23 the three entry because it's faster, can develop it
24 faster?

25 A. Officially, less entries sometimes are more stable

1 with regard to large blocks. There's a lower
2 extraction ratio. There could be a lower extraction
3 ratio. But certainly it would take less time to
4 develop.

5 MR. BECK:

6 Okay. That's all.

7 RE-EXAMINATION

8 BY MR. STOLTZ:

9 Q. I guess if I heard you right then, that provided
10 the opportunity for the operator to put the longwall
11 --- start the longwall. Bandytown fan then was
12 started sometime before the longwall was in operation?

13 A. Yes. I visited the mine while the headgate was
14 being developed because they had air issues to
15 resolve, orders issued by the field office. And I
16 traveled the headgate --- intake of the headgate
17 development prior to connection with the Bandytown
18 fan, I don't know, it was sometime prior to August.
19 And I traveled it myself. I took a team of
20 inspectors. As a matter of fact, specialists from
21 within my division. And we --- I had people travel
22 the tailgate, the tailgate connector that's diagonal.
23 It's on the upper left inby the start of the longwall.
24 I also had people on the crossover section, as I
25 recall. And the reason for low air was they had

1 reached essentially the limits of the pushing
2 ventilating fan at North Portal. And any leakage that
3 they had in the air courses going up to the working
4 section was of importance because they were also
5 having --- rumored to have methane issues. And I
6 believe those have been cited by the field office. So
7 I traveled those in its entirety. We issued several
8 violations that day, just maybe one or two. There
9 wasn't a whole lot going on, and I don't recall that
10 the working section actually ran. We did take last
11 open crosscut measurements.

12 I visited this mine additionally September 1st of
13 2009, again, with several of my ventilation ---
14 actually, I believe I had one, Michael Haynes, with
15 me. And the longwall change was supposed to have
16 occurred. That is, the regulators that were to be
17 tailgate EPs for air exiting the worked-out area and
18 the headgate EPs for air exiting the proposed worked-
19 out area. The longwall had not started mining yet.
20 The Bandytown fan was on line.

21 I visited the mine. The regular CMI, or coal mine
22 inspector, was Joey Athey. And the reason I went
23 there was due to ---. He had issued several orders
24 throughout the regular inspection, and we talked on a
25 regular basis, and he would tell me his concerns about

1 the mine. And prior to the startup of the longwall, I
2 wanted to assure that the air was correct. I traveled
3 to approximately Crosscut 80. At that time there was
4 a double door which separated the Number One and
5 Number Two entry or the Number Two and Number Three.
6 I'm uncertain which one. But the track, I believe,
7 came up to the Number Two entry at that time, yes.

8 I traveled through a double door, and soon upon
9 traveling through the double door, the air hit me in
10 the face, where it should have hit me in the back, and
11 the system was reversed. I issued a violation, an
12 actual (d) order, pursuant to 75.324, intentional
13 changes in mine ventilation. The changes, as required
14 by the August 6th plan, had not yet been completed.
15 However, working areas of the mine with reactivated
16 power was in those areas where the mine was operating.
17 There were two Joy miner reps, miner operators,
18 allowed to come underground with me, unbeknownst to me
19 that their air change wasn't completed until I found
20 this condition.

21 Additionally saw an electrician working on a stage
22 loader, with a longwall coordinator, I believe was his
23 title at the time, Jack Roles. I asked Jack what was
24 going on. I asked Jack what was going on. He replied
25 that his air was all messed up.

1 After traveling that area and taking air
2 measurements at the stage loader in the Number One and
3 Number Two shields, I tried to look behind the
4 longwall to examine the evaluation points that would
5 become EP TG1. And the two temporary regulators, all
6 the controls had not been constructed. I came back
7 and I issued a mine-wide Withdrawal Order pursuant to
8 the (d) order written with 75.324 --- written to
9 75.324.

10 Jack Roles called the company president, Chris
11 Blanchard, and I informed him of the mine-wide
12 withdrawal. We came outside and reduced our citations
13 to writing and hung a red tag over the drift mouth.
14 The mine was down four days in order to complete the
15 required air changes and come in compliance with the
16 August 6th revision.

17 Q. I guess Bandytown was on line at that time?

18 A. Bandytown was on line at that time, yes, sir. And
19 it was prior to the longwall startup.

20 Q. It took four days for them to abate that citation?

21 A. Yes, sir.

22 Q. Doesn't that seem kind of lengthy?

23 A. I think it goes to substantiate the --- it goes to
24 substantiate the existence of the citation itself,
25 that there were substantial changes yet to be made.

1 The longwall was not operating at that time, ---

2 Q. Yes. It was in the setup mode.

3 A. --- but there were people up there working and
4 they were not working on ventilation controls. And
5 that's in defiance of that reg, which requires only
6 persons necessary to change the ventilation.

7 MR. FARLEY:

8 Can I interrupt one second? Did you say

9 air was hitting you in your face as opposed to at your
10 back?

11 A. Yes, sir.

12 MR. FARLEY:

13 I'm sorry.

14 A. It was flowing from the longwall tailgate towards
15 the longwall headgate, as opposed to headgate to
16 tailgate.

17 BY MR. STOLTZ:

18 Q. Were they close to being able to fire up the wall
19 at that time?

20 A. It appeared they were. The stage loader was in
21 place. The shields were in place. The pan line was
22 in place. However, power was disconnected and ---
23 exactly how far --- of course, there's a lot of small
24 things on the longwall that need to be in place prior
25 to starting. And not being a longwall electrician, I

1 can't tell you what minor things were there, but I
2 just heard there was an electrician up there working,
3 doing non-ventilation-related work.

4 Q. Do you know when the wall was actually ---
5 longwall was started?

6 A. It was started approximately September 4th,
7 whenever that (d) order was terminated. And there was
8 a subsequent (d) order issued for improper controls by
9 Michael Haynes, and that was also on September 1st.
10 There were two (d) orders issued, one by me and one by
11 my employee.

12 Q. Okay. Well, I'm ready to move on to the September
13 11th plan. I guess if you could just kind of explain
14 the September 11 approval, which was an annual
15 ventilation map which incorporated, I guess, several
16 revisions.

17 MR. BECK:

18 What date is that?

19 MR. STOLTZ:

20 September 11th, 2009. And this is the
21 second submittal of the annual ventilation map.

22 BY MR. STOLTZ:

23 Q. If you read it, it incorporates those.

24 A. I had requested an additional face plan due to
25 numerous revisions which were in existence. Their

1 base plan went back to 2005. It was somewhat dated.
2 The revision of August 6th didn't necessarily agree
3 with their previous base plan in that it required
4 additional safety enhancements, additional evaluation
5 points, measuring point locations. So in order to
6 essentially hit the reset button on the ventilation
7 plan at this mine and get one document that contained
8 it all, I had requested this ventilation plan. It
9 was, again, approved on September 11th, and it was
10 specific to the requirements of 75.370, as well as the
11 requirements of 75.371.

12 And this ---. I don't have a review sheet with
13 this one, interestingly enough, that shows who
14 processed it within the district, but I require if it
15 contains a map, we have a checklist, pursuant to
16 75.372, which is checked off within the district.

17 Q. Back up. There probably was additional maps with
18 it, but I did not copy all the maps. I'm sorry.

19 A. Oh, okay. Yeah, there's no large annual map with
20 them. But we would do a checklist to make sure it
21 complies with all the requirements of 75.372, with
22 relation to boreholes, gas wells, air courses, air
23 readings, et cetera.

24 Additionally, we have a checklist, pursuant to
25 75.371, which is for the plan content, which is

1 typically shown in these eight and a half by 11 sheets
2 of paper that you've given me. This one appears that
3 the plan was worked on by Matt Walker, who is an
4 additional person who worked on the plan to add to
5 that previous statement that I had given. And they
6 also have another engineer called Heath Lilly, who may
7 occasionally work on plans. But they all three work
8 for Route 3 Engineering, as I understand it. The
9 title page for this or submittal page says Eric Lilly,
10 but within the body of the plan it says individual
11 submitting the plan information was Matthew Walker.

12 And it goes through general plan requirements. It
13 has sections of the regulations with regard to the
14 company's submittal, how they'll determine ambient
15 level of carbon monoxide, typical face sketches for
16 development of multiple entry development sections,
17 typical face sketching for pillaring. And of course,
18 this would be in areas that aren't longwall mined.

19 Page five, six --- starting on page seven,
20 extending through --- extending through page 20, is
21 the evaluation of pillared, worked-out areas with
22 regard to remove pillars. Starting on page 21, it's
23 the evaluation and bleeder typicals for non-pillared,
24 worked-out areas. That extends to page 29. And then
25 from page 30 through 36 includes the items specific to

1 the longwall, including page 36 is the line diagram
2 which shows inlet and outlet EPs for each worked-out
3 panel, including the panel which the accident
4 occurred, Number One North, as denoted on page 36,
5 through panel five. And it was my understanding from
6 the mine operator that that is the total amount of
7 panels that would be mined on that district.

8 Q. So it's my understanding then basically it took
9 the August 6th, 2000 mine plan, that revision, and you
10 incorporated it into this plan here?

11 A. Yeah, one single base plan that would replace the
12 previous plan. Now, there is a plan that, prior to
13 this, as a result of a letter that I had written to
14 the mine operator, and that plan is not to be
15 superseded or marked, do not supersede, within our
16 files here in the district with regard to the water in
17 the adjacent sealed area and the barrier necessary to
18 assure that an inundation could not occur. And that's
19 not part of this, but that was still outstanding in
20 their file at that time and would stay that way.

21 MR. STOLTZ:

22 Okay. Terry, questions?

23 RE-EXAMINATION

24 BY MR. FARLEY:

25 Q. Let me go back over this order you wrote on

1 September the 1st, '09.

2 A. Yes, sir.

3 Q. If I understood you correctly, that condition
4 existed because of some controls over on what was to
5 be the tailgate side had not been completed yet?

6 A. Yes.

7 Q. All right. But it did occur --- your order was
8 issued before the longwall actually commenced
9 operation?

10 A. Absolutely. And at that time we issued that
11 violation with a high degree of negligence but a low
12 degree of likelihood because we didn't measure any
13 methane that day.

14 Q. Okay.

15 A. No dangerous amounts, I mean, very minimal. I
16 don't remember the amount, per se, but certainly my
17 notes for September 1st would show that, as well as
18 the notes of Michael Haynes. And that's why we issued
19 it non S&S.

20 Q. Okay.

21 A. And the longwall wasn't operating, so it was
22 giving credit for that.

23 Q. Had not started up yet?

24 A. Sure. It's essentially the same as checking
25 emissions in a car before the car has been started.

1 MR. FARLEY:

2 Okay. Very good. Thank you.

3 MR. STOLTZ:

4 Jim?

5 RE-EXAMINATION

6 BY MR. BECK:

7 Q. Do you know on these two orders if Massey
8 contested 'em and they're tied up in litigation?

9 A. They actually were contested, and I was at one
10 point notified of that from someone at the Solicitor's
11 Department.

12 MR. BECK:

13 Okay. Before we move on, are you okay?

14 Do you want to take a five-minute break or ---?

15 A. Sure.

16 MR. BECK:

17 Okay. Off the record.

18 SHORT BREAK TAKEN

19 ATTORNEY WILSON:

20 Let's go back on the record.

21 RE-EXAMINATION

22 BY MR. STOLTZ:

23 Q. Before we continue, I have three follow-up
24 questions, Joe. Did the company conduct a ventilation
25 simulation prior to the installation of the Bandytown

1 fan?

2 A. I don't know.

3 Q. By that, I don't know, I guess ---?

4 A. I don't know if they did or not, ---

5 Q. Okay.

6 A. --- because they didn't submit anything to me.

7 Q. Okay. Were the other sections allowed to work
8 during the correction of the --- to the ventilation
9 citation?

10 A. No. I ordered a mine-wide withdrawal. The area
11 and equipment affected was the entire mine. And my
12 red tag, as placed at the mine drift mouth, was to
13 prohibit that exact practice.

14 Q. Okay. So they were down for the entire time of
15 the three or four days?

16 A. Yes. What I was seeking was full compliance with
17 75.324, which says that the entire mine will be
18 evacuated and power would not be --- or power would be
19 removed to the affected areas.

20 Q. Could you, I guess, talk a little bit about the
21 --- I guess the water over the --- over mining ---
22 over the mining of the --- in the Powellton seam, I
23 believe?

24 A. I don't have a map, per se, of the water in the
25 Powellton seam. Now, the water adjacent that I

1 mentioned earlier is in the old longwall panel, which
2 according to this map, appears to have been mined
3 March 2000 to November of 2000. And during either
4 talking with the field office inspector assigned to
5 the mine at the time or looking at a map, I can't
6 really be sure, I recognized that they were mining
7 precariously close to a water accumulation in this
8 adjacent sealed area. And I became concerned with it,
9 and I did not want a repeat of the Quecreek accident.

10 So I submitted a letter to the operator,
11 requesting that an immediate revision be conducted,
12 which would limit the mining extraction in the area of
13 this water and provide an engineered barrier to assure
14 that there is no blowout potential due to the static
15 load of the water on the mine barrier between the
16 active and the inactive sealed area and to minimize
17 seepage. And that letter is available in our files in
18 District 4. I don't know if you received a copy, but
19 I believe that it's been scanned for transmittal. And
20 they did a revision pursuant to that. And I believe
21 they also revised their projections, because it
22 appeared that mining would have encroached upon that
23 barrier had I not sent that letter in order to prevent
24 an accident.

25 Q. Okay. I guess in follow-up to what I just

1 previously asked you, how does the district, I guess,
2 handle, in this case where you have a mine that has
3 potentially, what, five other mines above it? I mean,
4 you've got areas that are sealed potentially that
5 could accumulate water. You have active areas above.
6 I mean, I guess ---.

7 A. How we handle it is that during the 75.372 annual
8 ventilation map, as it's submitted, each year we look
9 at the overlying mines to see if there is a problem
10 with them. Some are active. Some are inactive. The
11 inactive mines, you don't know as much about as, say,
12 an active mine because they're also submitting an
13 annual ventilation map. There's some local knowledge,
14 you know, just from working within the district that
15 you gain over time, and I rely upon that of my plan
16 reviewers who have dealt with the mines for a period
17 of time. And you look at that overlay map on an
18 annual basis, but additionally a requirement under
19 75.1716 for mining under bodies of water, it is the
20 mine operator's responsibility to make MSHA aware of
21 such potential and to get a plan approved prior to
22 doing that.

23 Of course, with the intimate knowledge that the
24 mine operator has of the mine, they should always be
25 aware of any potential overlying bodies of water.

1 That's why it's their requirement.

2 Q. I'm ready to start on the next approved plan.

3 This would be the September 18th, 2009 plan. It
4 contains about constructing two regulators between
5 breaks 33 and 34 in the tailgate One North. Would you
6 just briefly go over it?

7 A. Okay. Looking at the plan review transmittal
8 sheet, and it states 9/14. It was actually received
9 on the 14th, reviewed by Specialist Mike Haynes on the
10 14th. He was one of the gentlemen who was with me on
11 September 1st, so he had in-line knowledge.

12 Additionally, he did the specialist supervisor review,
13 which would normally have been done --- he did that
14 for me on the 17th. Evidently I was out of town, and
15 he would be the one that I would normally name acting
16 in my place. So I have not done the review of this
17 initially. Now, I have read it since it was approved.

18 And the operator had submitted to install two
19 regulators between breaks 33 and 34, tailgate One
20 North. Regulators will be installed in entries Four
21 and Five to limit the amount of neutral air going to
22 the longwall tail. At the current time the Upper Big
23 Branch Mine does not have a miner's representative.
24 If you have any questions or concerns, call me, Eric
25 Lilly, who submitted it. And it appears that they're

1 limiting the amount of air going to the longwall tail
2 from the neutrals, which is actually off of an intake
3 split --- or a neutral air course in the Number Three
4 entry to 75,000, feeding these parallel neutrals,
5 which would be near spad 22417. There's five neutral
6 air courses along tailgate One North.

7 Q. And that was done before?

8 A. I think that was done because they were losing too
9 much air in their neutrals or maybe having a
10 possibility of a problem with their ---. One of the
11 times that Mike Haynes and I went to the mine, and I
12 don't know if it was --- I think it was September 1st,
13 we checked the neutral air course at the intersection
14 they call the Ellis Switch, and that's essentially
15 where the North Mains --- the mains that run
16 north/south meet this Number Five North belt. Do we
17 have a larger map? Yeah, right in that general area
18 where your finger is, and it would be where Ellis
19 Mains meet --- it would be where the Ellis Mains meet
20 the Number Four North belt area. There's a junction
21 right there. And in particular, we traveled up by the
22 seals, seat set 9, 10, 11, 12 and --- somewhere in the
23 seal set 13 area we had issued a violation at an
24 overcast. That was just off the intake, and the
25 pressures were reversed here. It wasn't functioning

1 as specified in their approved ventilation plan, so we
2 issued a violation here. It appeared that the neutral
3 air courses weren't flowing properly.

4 And that was the company's fix, was to put
5 controls up here on that plan, at the Tailgate One
6 North. So those controls were in response to that
7 violative condition. And there was a citation issued
8 by, I believe, Mike Haynes on that.

9 ATTORNEY WILSON:

10 Just for the record, you're referring to
11 a map on the wall which is a one inch to 500 foot
12 scale. And the area you're referring to is where the
13 North belt mains intersect the ---.

14 A. It's a set of mains running north/south.

15 ATTORNEY WILSON:

16 It's marked Number Three North belt?

17 A. Yeah, Three and Four North belt intersections.

18 ATTORNEY WILSON:

19 That's near the set 13 seals; is that
20 right?

21 A. Yes. But it wasn't in that return air course. It
22 was actually the neutral air course, which was another
23 stopping line to the east. And there was a violation
24 issued for that, for that area.

25 MR. STOLTZ:

1 Terry, any follow-up?

2 A. I want to point out, too, that this plan actually
3 is just to put those controls in, and it estimates
4 75,000. There is no minimum requirement by the
5 district. There is no actual number required by the
6 district. And this control was not required by the
7 district. It was just a means that the coal company
8 used to abate the citation.

9 EXAMINATION

10 BY ATTORNEY WILSON:

11 Q. Let me just ask a follow-up here. In that plan
12 revision, the regulators that you referred to, are
13 they located on the map that's in front of you here?

14 A. No. They've since been changed. There is ---
15 it's essentially totally different.

16 Q. Okay. Why don't we just --- let's get the green
17 pen there and just in a large circle with the
18 highlighter just circle the general area where those
19 regulators are located, just so that we can compare on
20 this map the plan. Okay. And let's put an arrow and
21 put out here --- what was the date of that, 9/15?

22 A. September 18th, 2009.

23 Q. 9/18. Okay. So just put 9/18 plan.

24 WITNESS COMPLIES

25 (Mackowiak Exhibit One marked for

1 identification.)

2 ATTORNEY WILSON:

3 Okay. And that's on the map that's been

4 marked Exhibit Mackowiak One, just so that we can have

5 a large-scale reference to the plan that you were

6 referring to.

7 MR. STOLTZ:

8 I don't have anything. Terry?

9 MR. FARLEY:

10 No.

11 MR. STOLTZ:

12 Jim?

13 RE-EXAMINATION

14 BY MR. BECK:

15 Q. Just a couple follow-ups. I need to back up a
16 little bit. On your inspections on the longwall face
17 you typically measure air quantities?

18 A. Yes. Typically in the methane dust control plan
19 there's a requirement for the air quantity at the ---
20 near the head. It will give a certain shield number
21 and also at the tail. I never inspected this longwall
22 while in operation, so I can't tell you exactly what
23 their plan requirements are, but they're typically
24 given in velocities in lieu of volumes because it's
25 difficult to get a proper area across the longwall

1 face.

2 Q. Okay. And had you ever noticed any cracks in the
3 roof or floor from undermining or overmining that may
4 indicate or --- allow gas to come through?

5 A. During my travels in this area, I did not observe
6 any of those. Now, again, I wasn't there as the
7 longwall was operating. I did have specialists there
8 after the fact.

9 Q. If I understood you right, you said that an
10 operator had to have a plan if they were mining under
11 a known body of water?

12 A. Yes. 75.1716 is a regulation which requires it.

13 Q. And what about if there wasn't a known body of
14 water, just an abandoned mine or an active mine above
15 it or below it, do they have to have a plan for that?

16 A. If it has a potential to impound water, yes.

17 Q. Only if that potential exists?

18 A. Correct. If it is dry, then the requirement would
19 not be made. Now, when we evaluate the bleeder plan
20 we take into consideration overlying mines as well,
21 looking at that annual 75.372 map in order to
22 determine if we would have active caving from one mine
23 to the other that may impact the ventilation system.

24 In the case of this mine, they had had extensive
25 previous mining prior to me becoming a ventilation

1 supervisor. And one of the guys who was in --- who
2 was a reviewer had knowledge of this area down here,
3 mined prior to November 2000. And that didn't appear
4 to be an issue, so of course it wasn't a concern of
5 mine, ---

6 MR. BECK:

7 Thank you.

8 A. --- due to the history.

9 RE-EXAMINATION

10 BY MR. FARLEY:

11 Q. Joe, the regulator or regulators you just circled
12 in green on the large map, does this large map match
13 the September 18, 2009 ---?

14 A. No, it does not. No, it does not. But also this
15 map has some --- well, it shows a door in that
16 location in lieu of a regulator, which would decrease
17 the volume of air going out to that area. Not a major
18 concern initially to me, unless they were having
19 problems within that air course. Only the mine
20 operator would have this knowledge or someone who had
21 just inspected the area.

22 But there's also another revision that would
23 impact this later on, and it's showing the tailgate
24 stopping line adjacent to the longwall, with respect
25 to that. And I believe that is in response to a

1 violation issued December 1st --- no, back in January.

2 MR. STOLTZ:

3 You have several plans you've gone
4 through.

5 A. Yeah. Yeah. We'll get to that, though. I'm not
6 really sure of the date that this plan that changed
7 these controls came into effect, so there's --- this
8 is the first plan for controls in the tailgate, and
9 there's a subsequent plan at a later date, which I
10 believe you have. We'll get to it.

11 RE-EXAMINATION

12 BY MR. STOLTZ:

13 Q. Joe, if I heard you correctly when you answered
14 Jim's question is that you all require velocities made
15 along the longwall face on the head and tail?

16 A. Yeah, near the head and near the tail. The shield
17 number should be specified in the methane dust control
18 plan.

19 Q. Thank you. And then your intake air quantity, you
20 require an intake air quantity?

21 A. I do require an intake air quantity. It's on
22 theirs as well. The minimum required by 75.325 I
23 believe is 30,000. At this mine I would expect it to
24 be higher.

25 Q. That intake quantity, where would you commonly

1 take it? Where is it made? Is there a difference
2 between when you're using belt air or not using belt
3 air?

4 A. You would have to take that belt air into
5 consideration. However, the belt air regs themselves
6 require that the intake air supplied to the longwall
7 panel will be less --- the air coming to the longwall
8 panel from the belt air course would be less than 50
9 percent of the total, and that would be required. And
10 it really depends on their methane dust control plan,
11 what was specified in that, but you can certainly take
12 it immediately outby the longwall face, in the Number
13 One entry and also in the Number Two entry, where the
14 crosscut --- as it's delivered into there. But it has
15 to be taken outby these check curtains, as shown on
16 this exhibit, Mackowiak One, that are shown in the
17 One, Two and Three entries. They would have to be ---
18 the actual air that enters the longwall face. So in
19 this respect on this one, the crosscut immediately
20 outby as well as this entry coming up the neutral,
21 that has to --- that would encompass the intake air
22 coming to the section.

23 Q. If belt ---?

24 A. If belt air was in use.

25 Q. If belt air was being in use, you'd add it. If

1 belt air is not being in use, you'd subtract from it?

2 A. Absolutely.

3 Q. Okay. I would like to, I guess, go over our plan
4 that was approved then on September 24th, 2009. The
5 plan was, I guess, to drill a 20-inch dewatering
6 borehole, I'm gathering, here at --- this plan,
7 apparently the wall had started sometime after
8 September 1st --- well, you stated September 4th you
9 believe the wall started. Then they must have
10 encountered --- had some water problems and requested
11 a dewatering hole.

12 A. In addition, I appear to have been off this day.
13 It was assigned to Rick Kline for me, assigned by my
14 supervisor. It is a plan --- an eight-inch pilot hole
15 to be drilled initially and reamed out to diameter of
16 20 inches. That has a safety precaution for when the
17 hole reaches within a hundred feet of the mine, a
18 regulator to assure that the air is not interrupted.
19 And it contains a listing of equipment that has
20 automatic fire suppression. In addition with that ---
21 I'm assuming that's because they put their track
22 travelway to the section in their intake, therefore,
23 it would be required to have automatic fire
24 suppression. And it has a map attached to it, which
25 shows the location of the longwall at that time, the

1 last open break or intake air quantity of 68,175 cfm
2 and the location of a single 20-inch borehole at the
3 rear of the panel near the Bandytown shaft.

4 Q. I guess the water problem they were encountering,
5 do you know where it was at that point in time?
6 Because they had to have water since they were putting
7 a dewatering hole in.

8 A. Sure. To my knowledge, just through verbal
9 communications with the inspectors and some of the
10 plan personnel, that they had actually mined a sump
11 back there, and this was to go into that sump and be
12 countersunk into the floor. Now, again, I didn't
13 approve this plan. But having read it here, it does
14 not show any water accumulations anywhere, which would
15 appear to misrepresent what was actually there,
16 because you would certainly put a pump where a pump
17 was needed. And therefore, you'd need water.

18 Q. Okay. That pump would be used, then, to get the
19 water out of the mine, basically, a dewatering hole?

20 A. Correct. And I don't know --- this map also does
21 not contain the elevations which would be pertinent
22 for our use in determining where water accumulations
23 are likely to occur.

24 Q. Okay.

25 MR. STOLTZ:

1 Terry? Jim?

2 MR. BECK:

3 I'll defer until later.

4 MR. STOLTZ:

5 Okay.

6 BY MR. STOLTZ:

7 Q. I guess the next plan would be an October 29th,
8 2009 plan. It's a two-phase plan consisting of the
9 One Right Crossover and installation and removal of
10 some vent controls in the One Right Crossover. Also,
11 I guess a question as we get into it, do you know when
12 Headgate 22 section --- or sometimes it's referred to
13 as MMU 029 or 001 section, when it was started?

14 A. I do not.

15 Q. Okay.

16 A. That's something --- when you do plans, they don't
17 necessarily have a time period in which to be enacted.
18 So I don't know how far in the future the mine
19 operator is proposing these changes. You just look at
20 it for face value, for what you get, and determine
21 whether they materially ventilate or not. This plan
22 was again processed by inspector --- or specialist
23 Mike Haynes. And typically I like to keep the plans
24 with the people who understand the mines. So after
25 his mine visit, I tried to make sure that --- the best

1 reviewers are the people who have actually walked the
2 air courses.

3 This plan revision appears to have been required
4 because they were mining off of the panel one
5 crossover, which is located approximately tailgate
6 entry 31 --- or 30, running north and south. It
7 actually turned and went east into the One Right
8 Crossover. And I had asked at this time why this was
9 necessary, and I believe it was either Matt Walker or
10 Chris Blanchard indicated that they needed it for air.
11 And I said, well, why? Do you need more air? Well,
12 no, but we're going to turn at the intake. So being
13 that we reviewed ventilation plans, additional intake
14 is never a bad thing. So we looked at it, it
15 ventilated, and we processed it and approved it.

16 And the letter from the operator --- this plan
17 also, let me state, had some of the MIS or MSIS system
18 plan detail within it, which actually just shows a
19 legal ID report, and that was something I implemented
20 during the time. You may see this intermittently
21 through some of your plan readings, just to assure
22 that we send the mine's response --- our plan approval
23 or denial to the right location, and that's what
24 that's for. But the mine operator submitted --- phase
25 one shows the ventilation while mining and cutting

1 through. It's cut through, will be isolated and
2 controlled. Regulators will be built on the inby and
3 outby sides of the cut-through. These regulators will
4 remain open to ventilate the area until immediately
5 prior to cut-through. Of course, the concern is
6 they're cutting through into an intake air course, and
7 the contamination needs to be eliminated, and that
8 would be the requirement for that.

9 Phase two shows the installation and removal of
10 controls for One Right Crossover to create additional
11 intake once the cut-through is complete and the
12 section moves. Headgate Three North will be mined
13 under longwall ventilation revision dated August 6th.
14 So this doesn't change the ventilation revision which
15 allowed the implementation of the longwall. It only
16 was to provide additional intake entries.

17 Q. Would that be something that's typical? Do you
18 see that often?

19 A. No, I do not see it often. I actually don't see
20 panel crossover mines often at all. And I have asked,
21 through verbal conversation with Chris Blanchard
22 several times, why these crossovers were necessary to
23 be mined since they weren't recovery entries. Now,
24 typically when you see that, they're recovery entries.
25 The longwall will mine into them, they have heavy roof

1 support, and that's for the recovery of the actual
2 shields and pan line, et cetera. These panel
3 crossovers are not mined for that because the longwall
4 stop points, as shown on all the maps that have been
5 submitted, don't mine into them. So on several
6 occasions I've asked Chris Blanchard what's the
7 purpose of these, and I've yet to receive an answer.
8 I don't know. I can only look at a map, and it
9 ventilates, so therefore I can approve it.

10 Q. Yes.

11 A. And likewise, I believe the One Right Crossover
12 was mined to get the additional coal that would have
13 been left in this wedge between the 6 North belt and
14 the longwall.

15 Q. Well, that's what it appears.

16 A. That's the only logical answer that I can come up
17 with. I've never been told specifically why, other
18 than they said they were converted to additional ---.

19 Q. I guess as long as the vent controls are
20 constructed correctly then, it shouldn't pose a
21 ventilation hazard?

22 A. Correct. This area specifically, if you follow
23 the return air course, it comes out of the One Right
24 Crossover, down the panel one crossover, across two
25 overcasts and across a regulator, into that isolated

1 split, which is within the tailgate Number One and
2 Number Two entries. So therefore, it is isolated from
3 the longwall itself, should have no effect if
4 constructed properly, and therefore is not a
5 contamination issue.

6 Q. Okay.

7 MR. STOLTZ:

8 Terry? Jim?

9 RE-EXAMINATION

10 BY MR. BECK:

11 Q. Joe, can you just touch on --- this is what's
12 called a push/pull system; right?

13 A. It is.

14 Q. I guess because air is being pushed from Ellis
15 Portal ---?

16 A. No, sir. Air is being pushed at the North Portal
17 with a blowing fan, and that ---.

18 Q. Pulled at Bandytown?

19 A. And being pulled at Bandytown. And the Bandytown
20 fan was added to the system that was already in place.
21 And it was used previously in these previous panels
22 that were mined out. I believe they had --- there's a
23 12-foot ventilation shaft shown at the back end of
24 this March 2000 panel.

25 Q. So how do you get that air to go --- how do you

1 control it going across the longwall face with that
2 kind of system?

3 A. At some point you go from a positive pressure to a
4 negative pressure past the zero point. And I'm
5 assuming in this case, without putting a Mag-Gage on
6 the stopping lines or taking a barometric pressure
7 survey, that it occurred outby the longwall.

8 Q. Is this a --- would you consider this kind of a
9 complex, unusual system?

10 A. Yes, it is complex and it is unusual. It has been
11 used before. But certainly when you're doing a
12 push/pull, things get more complex, yes.

13 Q. Do you know why MMU 040-0, why that started?

14 A. I'm sorry. Can you point to MMU 040-0? Oh, do I
15 know why that started out?

16 Q. It just looks kind of odd sitting there.

17 A. It does. And it is odd. And I would like to
18 point out that the projections --- and we'll get to
19 that here in a moment, but the projections actually
20 tie back into the existing longwall at approximately
21 break 90. And I think right around December that will
22 become evident, if you can just give me a little bit
23 to get through that.

24 Q. Okay.

25 A. Because there's revisions involved, and that's

1 kind of an issue ---

2 Q. Okay. I got ahead of myself.

3 A. --- in and of itself. Yeah. Are we okay on One
4 Right Crossover?

5 MR. STOLTZ:

6 I don't have any follow-ups.

7 MR. BECK:

8 I'm fine.

9 MR. STOLTZ:

10 Okay.

11 RE-EXAMINATION

12 BY MR. STOLTZ:

13 Q. Okay. I guess I'd like to go over then the
14 approved November 13th, 2009 plan, which is for a
15 panel two crossover to develop three entries for
16 Headgate Two North.

17 A. Plan contains a portion of the legal ID, which we
18 added to it. The actual submittal by the mine
19 operator begins with the letterhead of Performance
20 Coal Company, dated November 3rd, stamped received
21 November 4th. It is a ventilation revision for the
22 Upper Big Branch Mine for our review and approval.
23 This revision is to show the ventilation scheme on the
24 panel two crossover is completed, and mining begins on
25 Headgate Two North. Now, the August 6th approval

1 actually had a sequence for the mining in the
2 crossovers on the subsequent headgate panels. What
3 this is, is essentially the mine operator changed
4 their mind. They weren't going to follow that August
5 6th. So in lieu of following it, which was already
6 approved and on the books and understood as to
7 function, they're now going to what we consider a
8 site-specific revision. And it isn't a revision to
9 the ventilation plan, per se, but rather to the map,
10 and it's to show the changes on the air course. And
11 it shows the isolated return off the section via
12 overcasts on the large map.

13 The intake is in the Number Two entry, the center
14 entry, the belt, and neutral is in the Number One
15 entry, and the return is in the Number Three entry.
16 And they overcast that return across and down to this
17 isolated --- this map is outdated currently, the
18 Mackowiak One. It's a later map than this. But there
19 was an isolated return entry in the Number Three
20 entry, the headgate at that time, that traveled the
21 length of the longwall all the way back to the bleeder
22 shaft. And this was connecting to that. This return
23 right here, which is the Number One entry in the panel
24 two crossover, was isolated in its entirety, and it
25 does show the neutral airs coursing outby or south on

1 this map, as well as shows the primary intake
2 escapeway in a green arrow. They elected to remove an
3 isolation stopping between the neutral and the intake
4 on the right-hand side of the map, and they were going
5 to compensate with that with double doors, which would
6 be required for traveling from one air course to the
7 other in pairs under 75.333.

8 And essentially that's it. I mean, it was just a
9 change in the way they were going to mine that
10 crossover. It also estimates that the last open break
11 quantity would be 25,000 cfm on MMU 029, which shows a
12 tie from our plans to the methane dust control plans
13 that the inspector on site could make to assure that
14 the two plans coincide with one another. That's what
15 that number is really good for. We always try to get
16 it on there. Additionally, the LOB requirement is
17 25,000. It is in excess of the minimum required by
18 75.325, which is 9,000. So it was approved on
19 November 13.

20 Q. Okay.

21 MR. STOLTZ:

22 Terry? Jim?

23 BY MR. STOLTZ:

24 Q. I guess the next approved plan would be the
25 December 18th, 2009 plan revision, request to route

1 the travelable return air course from the active MMU
2 040 and add a regulator.

3 MR. BECK:

4 What's the date on that?

5 MR. STOLTZ:

6 December 18th.

7 A. Now, between the date of November 13th and
8 December 18th several items occurred at the mine with
9 regard to the in-mine inspections. Specifically I
10 believe the CMI is Kevin Lyall. He traveled this area
11 around break 80 and cited bulging stoppings. And I
12 don't know the exact citation number, but I believe
13 it's somewhere around November 14th. He cited that,
14 required those stoppings to be repaired. Additionally,
15 I sent --- I believe it was Keith Sigmon to the area,
16 who issued an (a) order on water in that area. They
17 were --- the mine was requiring miners to travel
18 chest-high water in order to set pumps and try to work
19 on the condition. The ventilation controls had taken
20 weight and there were some issues related to that.

21 And I believe they issued violations again on
22 December 1st, possibly that (a) order right around
23 there. Somewhere between December 1st and December
24 14th, I believe, is when Keith Sigmon issued that (a)
25 order for the area shown --- and I'm going to say from

1 break 90 to break 70, in that general area, in the
2 Number Three entry of the headgate. This water was
3 impacting the isolated return air course off of MMU
4 029, which is the headgate section. Therefore, this
5 December 18th revision was submitted. Additionally,
6 this December 18th revision, I believe --- let me read
7 it for a second.

8 WITNESS REVIEWS DOCUMENT

9 A. And he also states, the mine had submitted
10 numerous plans prior to December 18th that may be of
11 importance. And I have it here on a sheet of paper
12 provided to me from you, Rich Stoltz. November 20th,
13 December 1st, December 3rd, December 4th, three on
14 December 4th. Again on December 9th and again on
15 December 11th that were all denied. In fact, there
16 were nine plans submitted that were all denied for
17 various items across the entire mine. And the reason
18 for denial of all these plans is listed on the plan
19 itself and mailed back to the mine operator. We
20 retain one for the record, and I believe we
21 transmitted that to you as well. And I think at times
22 those denials are of pertinent importance in that they
23 show that the items that the mine operator would
24 like --- steps that they would like to take that do
25 not necessarily comply with the regulations or do not

1 materially ventilate the mine. And therefore, that is
2 your two reasons to deny it, and we did do that.

3 Back to the December 18th revision.

4 BY MR. STOLTZ:

5 Q. If I heard you right, it was the vent controls
6 that were separating the return air course to the gob
7 was being compromised ---

8 A. Yes.

9 Q. --- and cited?

10 A. Yes.

11 Q. Okay.

12 A. Now, on December 14th, I received a citation from
13 either the field office or my specialist, I'm not
14 sure. And each time that our specialist would come
15 back or I would send someone to a mine, I meet with
16 them as soon as upon returning, sometimes late in the
17 evening, sometimes the very next morning. They're
18 required each time that they go to the mine to put a
19 copy of the citations in my in box. I read them every
20 time they come back to assure that we all understand
21 everything. Because what goes on in a mine, if it
22 needs a plan modification, the only way to get a good
23 plan modification and to get quality within these
24 plans is for me to understand that violated condition.
25 And therefore, having discussions about it just only

1 helps for the abatement.

2 Furthermore, if someone issued a citation pursuant
3 to an in-mine condition and a plan is required to
4 abate it, I want to make sure that that plan, it meets
5 their satisfaction. They saw the issue. They have
6 the most intimate knowledge. So I did that each and
7 every time that I had --- and I wasn't there, each and
8 every time I had a specialist there.

9 On December 14th I received a citation for this
10 area. And Specialist Keith Sigmon told me that, Joe,
11 man, this area looks bad. And I said, how bad? Top,
12 bottom, ribs? He said, yes. I said, will it ---
13 could it satisfy the requirements of 75.384, longwall
14 tailgate travelway, which is a means of emergency
15 egress off the longwall? He said, I don't think so.
16 So I immediately notified Chris Blanchard verbally,
17 via telephone call, as soon as possible, that the
18 conditions within this entry are not conducive to
19 75.384. That was based on the discussions I had with
20 Keith Sigmon. That's the beginning of the
21 introduction of this mining right here, which later
22 becomes the mine operator's response to that. And I
23 believe it's a January 22nd revision that allowed that
24 tailgate entry to --- tailgate mining to commence.
25 Q. You're talking --- when you say right here, you're

1 talking about Tailgate 22?

2 A. Tailgate 22 development, which on this map,
3 Mackowiak One, is denoted MMU 040-0. But that
4 essentially began on December 14th. Now, what I did
5 on December 14th to fully understand, I guess, the
6 breadth of the situation was I took an overburden map
7 of the area to roof control and I asked them politely
8 to run ARMPS for me, which is a stability analysis.
9 When they ran the stability analysis with no
10 overmining, it showed stable. When they ran the
11 stability analysis with overmining, which is the case
12 due to the overlying Castle mines and maybe four or
13 five others, it did not come back with the recommended
14 long-term stability. Therefore, I picked up the phone
15 and called Chris Blanchard to put him on notice.

16 Q. Basically you're saying the pillars were being
17 done ---?

18 A. The pillars were too small, yes, which explains
19 the bulging stoppings, as issued on November 14th by
20 Kevin Lyall, and it explains the conditions issues by
21 Keith Sigmon. Now, it doesn't explain the water.
22 When looking at elevations of the mine map, you can
23 see that there's a depression in the area and that
24 water would be likely to accumulate.

25 Back to December 18th. The mine operator

1 submitted a change to the typical longwall face sketch
2 in which it said stoppings will be removed at least
3 every 600 feet to make entries common. Each stopping
4 will be reconstructed to isolate the tailgate entry
5 prior to mining second longwall panel. And the reason
6 being is I believe that the mine operator no longer
7 wanted to travel that air course in its entirety.

8 That would be the return air course off of Headgate 22
9 down across these overcasts, which is near Tailgate
10 22, and along the Number Three entry of the headgate
11 due to both the water issues and the degrading ground
12 conditions.

13 Q. He wanted to make it common with the longwall top?

14 A. Yes. Now, this ventilation revision requires air
15 to be evaluated where it enters a worked-out area,
16 pursuant to 75.364(a)(2)(i), and where air exits the
17 worked-out area, pursuant to (ii) and (iii). It also
18 had typical face sketch for gate road development for
19 the three-entry system.

20 And we had been asking for at several times ---

21 and this was provided to me I believe from Matt
22 Walker. Let me confirm that. Yes, Matt Walker
23 submitted this plan. And I was asking for actual
24 pressure drops and quantities at multiple locations to
25 assure that this system would function for long term.

1 I did those verbally. And this page, which says Upper
2 Big Branch and has a mine segment and gives distances,
3 entries, areas, resistance, quantities, gains and
4 losses, total head, to assure that we had enough head
5 to functionally ventilate this area. And the operator
6 did submit that and it was approved and included a fan
7 chart, several fan charts, for the existing fan.

8 This was to reroute the continuous miner return.

9 Instead of exclusively along the Number Three entry of
10 the headgate, it would allow a portion of that return
11 to travel isolated along the Number Seven North belt,
12 across the set of overcasts right here (indicating),
13 where they estimate 35,000 cfm in this plan.

14 Q. When you say right here ---?

15 A. Right here would be at the beginning of Headgate
16 One North. There's a regulator located with a green
17 label that says estimating 35,000 cfm, across four
18 overcasts, down along panel one crossover, across two
19 overcasts, and back towards this isolated return
20 split, which was the return for the area denoted on
21 this map, MMU 040, which had 18,621 cfm at the last
22 open crosscut. I think it's called the One Right
23 Crossover mining. It was the one from the previous
24 revision, that area right there at the mouth of the
25 longwall panel, the mining in the wedge, that the

1 return off of this section would joint its section
2 return and be isolated back towards the bleeder fan.
3 But it also allowed a secondary return down the panel
4 two crossover, which was isolated along ---. Let me
5 read it. Just a second.

6 WITNESS REVIEWS DOCUMENT

7 A. Okay. I'm sorry. Let me stand corrected. I was
8 getting ahead of myself. It actually allows an intake
9 air course --- an additional intake air course to the
10 longwall mining section along the Number Three entry
11 to the longwall and to route this MMU 029 return air
12 course down the mains and to join the MMU 040 return
13 and into the Number One and Number Two entries of the
14 return. And it's isolated back to the Bandytown fan.
15 That's what it allowed.

16 BY MR. STOLTZ:

17 Q. The Headgate 22 return to join them?

18 A. Yeah. Headgate 22 return includes a face sketch
19 for three entries.

20 Q. So it did away with the intake --- or the return
21 coming up the Number Three entry ---

22 A. Correct.

23 Q. --- toward the allotted intake and rerouted to the
24 return for that section?

25 A. Correct. Let me also state that it also reversed

1 the longwall belt air, which is of pertinent
2 importance in that it's shown at break 52, coursing
3 outby to a regulator located at Crosscut 11 and into
4 that return as well, which would reverse and do away
5 with the belt air requirement or basically come into
6 compliance with the belt air regs promulgated December
7 31st, 2008.

8 MR. FARLEY:

9 You said the plan reversed the belt air?

10 A. Yes. And the longwall at that time is
11 approximately at break 52.

12 BY MR. STOLTZ:

13 Q. Also of importance with this plan is the last line
14 on the third paragraph for the mine operator, it says,
15 this will also show the dewatering system in
16 place ---.

17 BRIEF INTERRUPTION

18 A. The mine operator's plan on --- the third
19 paragraph, the last sentence, also states, this will
20 also show the dewatering system in place to handle
21 future inflows of water and to keep ventilation
22 uninterrupted. And they show two three-inch air pumps
23 at approximately crosscut 123 in the Number Three
24 entry, two three-inch air pumps at crosscut 100, one
25 three-inch air pump at crosscut 88. Hatch indicates

1 shoreline elevation. No areas are roofed to impede
2 ventilation or travel. And that's in direct response
3 to the violative conditions and specifically the (a)
4 order that had been issued by Inspector Sigmon.

5 We wanted to assure that the air could flow and
6 that there were no changes that could occur as a
7 result of water accumulations. And that appeared to
8 suffice, based on the evaluations.

9 Also shows a single 20-inch diameter borehole with
10 a vertical turbine pump, which is in a previous
11 revision located at break 131. I'd like to also point
12 out it shows the intake to the longwall being 57,951
13 cfm, which is in excess of the minimum 30,000
14 requirement by the regulation.

15 MR. STOLTZ:

16 Terry?

17 MR. FARLEY:

18 No questions.

19 MR. STOLTZ:

20 Jim?

21 MR. BECK:

22 This is not a question for Joe, but we
23 talked about overlays sometime in the past. I think
24 we talked about seams underneath. I'd like to request
25 a copy of any overlays that MSHA or the State --- the

1 independent team, that we can get copies of those
2 maps.

3 MR. STOLTZ:

4 Thank you, Joe.

5 BY MR. STOLTZ:

6 Q. Okay. The next one, Joe, would be the --- I guess
7 it was approved on December 23rd, 2009. It was a plan
8 to implement The December 18th plan for belt air
9 reversal and limit the exposure to miners for belt
10 air.

11 A. I was in the office that day when Bill Ross and
12 Chris Adkins, who I believe is a senior
13 vice-president, and Chris Blanchard, I believe ---
14 well, maybe not. I believe Bill Ross and Chris Adkins
15 for sure. I'm not really sure about Chris Blanchard
16 having brought this in. And as stated on the mine
17 operator's submittal dated the 23rd and stamped
18 received on the 23rd, on December 21st and 22nd this
19 plan was attempted to be implemented. Due to the
20 influence of the longwall bleeder fan, it was not
21 possible to make the approved changes. Please find
22 attached an interim ventilation revision to allow the
23 belt air to course towards the longwall face. Belt
24 air will travel inby from near crosscut 25 on the
25 Number One North headgate. The remainder of the belt

1 air will travel outby through a belt regulator and
2 into the return.

3 The below procedures will be followed during the
4 time while belt air is being utilized in the face at
5 the One North longwall panel. The entire length of the
6 belt conveyor system from the split point inby to the
7 longwall face will be traveled every two hours.

8 Results of this examination will be communicated to
9 the longwall foreman at the end of each inspection. A
10 box check will be installed to the longwall tailpiece
11 and near 029-0 MMU belt drive to limit the quantity of
12 belt air traveling inby. All personnel working on the
13 One North longwall panel will be informed of this
14 ventilation change.

15 In addition, within 30 days of approval, a long-
16 term ventilation plan will be submitted to your
17 office, which will show long-term solutions to allow
18 belt air to travel outby as well as to open intake air
19 courses. The safety precautions will ensure equal or
20 greater protection for members working on the longwall
21 section. This mine currently has no miners' rep.
22 Again, ---.

23 Q. I guess what I just heard, Gerry (sic), is they
24 tried to implement the December 18th plan where --- to
25 have belt air go outby. And they were not --- they

1 could not do that, so they're requesting another plan
2 on December 23rd now, with added safety procedures?

3 A. Correct. And it was hand delivered by Bill Ross,
4 with Massey Coal Services, as well as Chris Adkins,
5 senior vice-president of Massey Energy, which is quite
6 odd to have such high-ranking individuals come in and
7 hand deliver a plan and request an immediate meeting.
8 So certainly that was granted. And we reviewed it on
9 the spot. And I was there and I believe Rich Kline as
10 well, and possibly Luther Marrs --- or Link Selfe.
11 Excuse me, not Luther Marrs.

12 And we reviewed it and --- they had attempted the
13 reversal, and it did not occur, so this was purely
14 their plan. Eric Lilly was in attendance as well, as
15 noted by his change on the map. And my only concern
16 upon reviewing this was that they show compliance with
17 the 50 feet per minute CO monitor rule, because CO
18 monitors are in use in the mine. And any time you get
19 less than 50 feet per minute, you get a reaction time
20 issue to those sensors.

21 He added that, and it was subsequently approved.

22 It was --- and a plan was drafted, developed by the
23 mine operator in response to the difficulties. And
24 considering the fact that they had actually followed
25 75.324, as far as I knew, and implemented it and it

1 didn't function, then I think it was pertinent that we
2 entertain it, you know, for safety of the miners.

3 MR. STOLTZ:

4 Terry? Jim?

5 BY MR. STOLTZ:

6 Q. You need a little break? Joe, you want a little
7 break?

8 A. No, I'm okay. I'd like to also point that I'm not
9 aware --- I was under the impression, of course,
10 within the plan, on this December 23rd plan, that a
11 long-term solution to allow belt air to travel outby
12 as well as to open more intake air courses would be
13 submitted. I don't recall we ever got that long-term
14 solution submitted by the mine operator.

15 Q. Within the 30 days or ---?

16 A. Within or outside the 30 days. Additionally ---
17 as far as their need for additional intake air
18 courses, it wasn't conveyed to me during that meeting
19 that they had any air problems. And the air volumes
20 as shown on this map are nearly double the minimum
21 required by Federal regs.

22 Q. Okay. The next plan would be the approved plan on
23 January 5th, 2010, vent controls being installed and
24 removed for shearing blocks for the new longwall belt
25 to Headgate Two North.

1 A. A fairly small revision and purely shows an area
2 that will be mined near crosscut 135, directly
3 adjacent or to the east of the Number One Headgate 22
4 development section, which contains their belt
5 neutral. And it shows where they're going to mine in
6 order to connect the future longwall belt into the
7 mainline belt, which is contained within Number Seven
8 North belt, near the Glory Hole. And it was to show
9 isolation controls to assure that return air from this
10 mining doesn't course down the neutrals, which were
11 going outby, over non-permissible equipment. And it
12 required the construction of a box check to assure
13 that that didn't occur, because it was mining in a new
14 area and would subsequently require a primary and
15 secondary escapeway, as well as isolation controls, to
16 assure that contamination does not go from the mining
17 area into the belt neutrals. That's the purpose of
18 that plan.

19 And interestingly enough, phone calls with the
20 mine operator, as I recall, they did not want to
21 submit this plan. They indicated that this was
22 construction. However, because mineral and coal would
23 be mined and subsequently methane and coal dust would
24 be generated, we were uncomfortable ourselves without
25 having a revision, so we did a verbal request for

1 this.

2 MR. FARLEY:

3 Seven North or --- what did you say?

4 A. I said Number Seven North belt, which is the
5 annual belt that terminates its angle near the base of
6 Headgate 22.

7 RE-EXAMINATION

8 BY MR. BECK:

9 Q. Joe, back on that December 18th reading again,
10 when Chris Adkins and Bill Ross and I think it was a
11 Lilly that showed up, did you have any idea they were
12 coming or did they just pop in or ---?

13 A. No. They just popped in.

14 Q. Just popped in. When they said that what they
15 attempted to do didn't work and that's why they're
16 coming in with a request for another revision, did
17 that mean that the air still wasn't functioning right
18 at the mine?

19 A. That that neutral --- they indicated that that
20 neutral air course would not reverse.

21 Q. But they kept on mining under those situations?

22 A. No, sir. To my knowledge, they shut down pursuant
23 to 75.324, which would be power off of the affected
24 area and the entire mine evacuated.

25 Q. They weren't mining at all then ---

1 A. Correct.

2 Q. --- in that ---?

3 A. Correct.

4 Q. Just on the longwall or anywhere in the mine?

5 A. I didn't ask that specifically, other than that
6 plan, in and of itself, I believe has a
7 requirement --- and of course, the Federal regulations
8 are always there, but I think it states explicitly
9 that it must be done in accordance with 75.324. Let
10 me find it.

11 MR. STOLTZ:

12 It would be considered a major air
13 change, though, to change direction?

14 A. It is a major air change. 75.324 is required
15 regardless of whether it's stated in here or not. I
16 stand corrected. It is not contained within here, but
17 it is a requirement because of the air change.

18 MR. STOLTZ:

19 Is it a change in direction or greater
20 than 9,000?

21 A. Correct.

22 BY MR. BECK:

23 Q. So to the best of your knowledge, they weren't
24 mining then?

25 A. Correct. Yeah. If I had knowledge that they were

1 mining, the first thing I would have done is to inform
2 them of the requirements of 75.324, which would
3 prohibit that practice.

4 MR. STOLTZ:

5 Anything?

6 MR. BECK:

7 That's all.

8 RE-EXAMINATION

9 BY MR. STOLTZ:

10 Q. I guess the next plan would be the approved plan
11 on January 20th, 2010, reverse intake airflow outby
12 001 section or Headgate 22 section on the Number Two
13 Crossover panel to break 12 on Headgate One.

14 BRIEF INTERRUPTION

15 A. There's two intake splits going to Headgate 22 at
16 this time, one that goes up around this area called
17 Eight North and comes back down and one that's coming
18 up these --- along Number Four and Five entries of
19 Headgate 22, along break 15 through 25. There's
20 actually two intakes. And this plan was to reverse
21 one of those intakes, which would take additional air
22 to the longwall. And I asked exactly why this was
23 needed because it's kind of odd to see an intake split
24 go back towards outby, but however it joined back to
25 the longwall. And that's indicative of that bleeder

1 fan's influence from Bandytown towards Headgate 22.
2 And it appeared to me that that was a push/pull system
3 and them trying to balance their air with regard to
4 that.

5 Now, as far as me looking at it, I just looked at
6 it, and yes, it does materially ventilate it. This
7 area is not mined --- or has not ventilated a working
8 section, and, therefore, it could be classified as
9 intake air. But their intake air was coming here
10 across two regulators, which is in this general area
11 of break 135, just adjacent to the Glory North belt or
12 the Glory Hole at the intersection of the mains and
13 Headgate 22. And they indicated at that time that
14 there was approximately 60,000 cfm at this overcast,
15 near break 135 at the mouth of Headgate 22. And that
16 15,000 would be coursing towards the longwall, which
17 would supplement the longwall air ventilation. An
18 estimated 45,000 was coming to the ventilating section
19 of Headgate 22.

20 And on the section they were showing that they
21 estimated 20,000 to Headgate 22. Of course, all the
22 quantities are much higher than what would be required
23 in the regulations or even in the methane dust control
24 plan. So it functionally ventilated on paper. The
25 exact reason is not specified in the plan submittal.

1 RE-EXAMINATION

2 BY MR. FARLEY:

3 Q. Joe, ---

4 A. Yes, sir.

5 Q. --- help me out here if I'm missing something on
6 Federal law, but any time there would be a ventilation
7 plan change, wouldn't there be a requirement that it
8 be reviewed with the miners or posted on the bulletin
9 board?

10 A. It has to always ---.

11 Q. What would the requirements be?

12 A. It always has to be posted on the mine bulletin
13 board and supplied to the miners' rep. There isn't a
14 miners' rep at this site, as indicated by their
15 letter.

16 Q. Okay.

17 A. But within their letter they state, the change in
18 air direction will be discussed with the persons
19 affected and will be recorded in a pre-shift exam
20 book. Additionally, our ---.

21 Q. I'm sorry. Go ahead.

22 A. Additionally, our ventilation approval stated in
23 bold letters, all ventilation changes will be made in
24 accordance with 30 C.F.R. 75.324. That's fairly
25 common now. During this period of time there have

1 been numerous 75.370(d) violations and 75.324
2 violations that have been issued. Within the back of
3 my mind, September 1st, 2009 still existed, where they
4 had a ventilation change in defiance of that
5 regulation, and it begins to show up in plan
6 correspondence to assure that the mine operator is
7 placed on additional notice to comply with that reg,
8 which would withdraw all persons, eliminate electrical
9 power in the affected area, and the only people
10 underground could be the people necessary to change
11 the ventilation. And that's for protected measures.
12 Additionally, 75.324 has an examination requirement
13 where affected areas have to require --- have an
14 examination to assure that nothing can be wrong or out
15 of place for the safety of miners.

16 RE-EXAMINATION

17 BY MR. BECK:

18 Q. Joe, how did you get that plan? Did somebody
19 bring that one to you also or ---?

20 A. No. We don't log in the method of delivery.
21 This one says mail. But to be honest, we don't keep
22 up with that so much. How we get it is a little less
23 important than what's in it.

24 Q. And back on December 23rd, it was Chris Adkins who
25 was Massey's Chief Operating Officer, and Bill Ross

1 came. Did Elizabeth Chamberlin or anybody higher than
2 Chris Adkins come?

3 A. I don't recall that Elizabeth Chamberlin came for
4 that.

5 Q. I mean, any --- come to talk to you any time about
6 ventilation?

7 A. She comes intermittently for other issues. I know
8 I've spoken to her with regard to other mines. I
9 don't know if any discussions were had with her
10 pursuant to this mine. It's not standing out in my
11 memory.

12 Q. She's Massey's Vice-President of Safety; am I
13 right?

14 A. I absolutely don't know their titles. I do know
15 she's within their Safety Department and she is an
16 attorney, but as far as what her exact title is, I
17 don't keep up with it. Again, let me point out that
18 having 245 coal mines within your district eliminates
19 some of that intimate knowledge ---

20 Q. Oh, absolutely.

21 A. --- because you really are quite busy.

22 RE-EXAMINATION

23 BY MR. STOLTZ:

24 Q. Ready to move on? I'd like you to now go over the
25 plan approved on January 22nd, 2010. That was the

1 plan to change intake air course on the Headgate One
2 North panel to return air, show a ventilation scheme
3 for the Number 22 Tailgate Panel or MMU 040, or
4 sometimes it's even referred to as 02 section, show
5 return air course on the North Glory Mains to intake,
6 and change the intake air course in the Number Three
7 entry on MMU 050, the longwall section.

8 A. It's indicated as received on our plan transmittal
9 sheet on January 11th. It's dated by the mine
10 operator January 8th. That frequently happens.

11 Contains a map --- two maps. Ventilation revision,
12 phase one. Ventilation --- Panel 22 Tailgate, phase
13 two. And it shows the startup of Tailgate 22 mining,
14 as well as the projections that this was anticipated
15 to be developed. This is the plan pursuant to the
16 December 14th ARMPS' analysis, which I conducted or
17 had roof control conduct for me of the area --- of the
18 headgate and tailgate on Headgate One North and
19 Tailgate One North, as well as a result of the
20 degrading conditions which were issued by the
21 inspector in the break 70 to 90 area.

22 Mike Haynes also traveled that area. I believe he
23 saw the degradation. And it shows the three-entry
24 system for Tailgate 22 reconnecting approximately at
25 break 90 into the headgate. I had a concern with the

1 plan, which was addressed by the mine operator, that
2 prior to starting --- it's hand written on this.
3 Prior to starting the second longwall panel, Panel 22,
4 additional safety precautions will be submitted to
5 address mining into entries. And that was to assure
6 that there was a controlled cut-through. But
7 additionally, as the longwall is mining in this panel,
8 it will encounter these entries. And when it
9 encounters those entries, you will be required to
10 remove shields and pan lines, reposition your tail
11 drives, in an effort to shorten your longwall phase,
12 it won't be as wide, and to mine it.

13 I felt like that was a roof control concern of
14 mine at a future time. Any time you mine into
15 entries, you now have a larger span that has to be
16 supported. And I wanted to assure safety at a future
17 date, and I wanted to do that via a site-specific
18 revision, so that it was detailed and engineered. And
19 that was as a safety enhancement. There was at no
20 time described to the mine operator what they would
21 have to submit. That was something we would just
22 basically cross at that future time. The startup ---.
23 Q. I guess a quick question on it then. This was
24 proposed or submitted because of the degradation to
25 the headgate entries. How much was --- how much of

1 that headgate entries was taking weight or hooving or
2 whatever ---?

3 A. The extent of it?

4 Q. Yes.

5 A. That would be --- you would have to look on the
6 previous citations issued. I mean, I believe it was
7 at least ten crosscuts. But it appeared --- and
8 according to Michael Haynes, our discussions with that
9 was that it would continue to grow because all of the
10 pillars were the same size. So if one pillar is too
11 small, then they're essentially all too small, unless
12 you get into a low cover area, at which time ---. I
13 didn't do an overburden analysis. Again, I'm looking
14 at ventilation. But certainly if it's at two
15 crosscuts and inhibits travel, it doesn't maintain
16 compliance with 75.384. Therefore, it can't be a
17 tailgate travelway. So as far as the actual extent,
18 it's kind of immaterial. If you can't travel one
19 point, it's the same as not traveling all of them.

20 The revision is shown at two phases. Phase one
21 shows the current ventilation and the controls being
22 installed and removed to complete the ventilation
23 change. Phase two map shows the ventilation after the
24 changes had been completed.

25 The return off of 001 section, which is MMU 029,

1 will travel down the Number One entry of Panel One
2 Crossover and mix with the return off of 002 section.
3 That would mean immediately at the base of Tailgate
4 22. A portion of the belt air from 001 section, not
5 all the belt air from 002 section, will enter the
6 return. This return will split at Headgate One North.
7 Now, this says a portion of the belt air coming into
8 the return at this location, which is the mine
9 operator's choice on how he's going to handle his belt
10 air with regard to the December 31st, 2008 regulatory
11 change, the Final Rule.

12 This return will split at Headgate One North. The
13 travel return for the sections will flow outby the
14 Panel Two Crossover and across the Panel One Crossover
15 to Tailgate One North. And that's this area
16 (indicating) across the overcast at Crosscut 13 ---
17 12, excuse me, and down along an isolated return, back
18 to the return that was originally approved for the
19 mining within the wedge area. And it's an isolated
20 return.

21 Now, through discussions with virtually every mine
22 operator in the district, when Robert Hardman became
23 District Manager and I became Ventilation Supervisor,
24 pursuant to the regulations it says under 75.364(b),
25 that each return air course will be traveled in its

1 entirety. In the literal interpretation of that, we
2 wanted each return air course traveled in its
3 entirety. The reason for that is to assure that water
4 doesn't complicate the return air courses to these
5 mining sections. The top can't degrade or ribs can't
6 --- or pillars can't degrade to the point that we lose
7 an air course. Because losing the air course, if it
8 happened in sufficient time, you wouldn't realize it
9 until you lost air on the mining section. That could
10 happen while mining was being conducted, and therefore
11 would pose a hazard. That's why there's a necessity
12 for an isolated return air course off of these
13 sections. And we've maintained that requirement for
14 all the district plans that have been approved through
15 me and Bob --- recommended through me and approved by
16 Bob Hardman. And that's their isolated return air
17 course.

18 Now, they were also taking a portion of this
19 return air through a regulator at crosscut 31 and it
20 would remain isolated along the active intake
21 escapeway to the section, and there would be a
22 proposed evaluation point, EP-65, which would be the
23 requirement for the weekly examination where air
24 enters a worked-out area, pursuant to the Federal reg
25 75.364(a)(2)(i). That's where air enters the

1 worked-out area. That was in addition to that
2 required by the longwall face sketch.

3 But that was that isolated --- or it's isolated
4 for the period while it's adjacent to the intake
5 escapeway until it goes into the worked-out area. So
6 the air would actually be evaluated as this additional
7 EP was added, and the EPs that were previously ---
8 originally approved on August 6th remained. It did
9 not drop those EPS. And although they're not labeled
10 on the map, they are not dropped, because we limit the
11 operator's request to exclusively what's in writing.

12 The regulator --- also in the plan, the regulator
13 currently allowing neutral air from the longwall belt
14 to enter the return at 11 Break will be relocated to
15 12 Break. They moved that regulator from --- one
16 crosscut, back into a return. This relocation will
17 allow intake to course over the overcast at 11 Break.
18 The return entries along North Glory Mains will be
19 converted into intake entries, which is this area
20 along this wedge, adjacent to crosscut 115, along with
21 Number Seven North belt, which is additional intake
22 entries were added to supplement the loss of the
23 intake entries along crosscuts 15 through 25 in the
24 headgate. They rerouted their intake.

25 It appeared to satisfy the requirements of 75.380

1 for escapeways. With regard to being the most direct,
2 it's as direct. It is practical, and therefore was
3 approved.

4 Q. How do they normally regulate their sections?

5 A. Within their section typicals, there is a
6 regulator shown on their typical face sketch, which is
7 to be placed outby the section, in its section return.
8 Each section return should be regulated independently
9 from one another. Also, the Headgate 22 section is
10 shown an estimated 20,000 cfm of ventilating air
11 current, which is more than double the requirement.
12 002 showed an estimated 20,000 cfm of intake air,
13 which is, again, more than double the 75.325
14 requirement. And the volume shown on the longwall,
15 the operator is saying they estimate they had 90,000
16 at that time, which is three times the minimum
17 required by Federal regs. So therefore, the
18 ventilating air current is shown properly sufficient
19 to assure ventilation.

20 Q. That split where you had return air either heading
21 toward the --- inby, coming up the headgate
22 return, ---

23 A. Uh-huh (yes).

24 Q. --- or the return that's going to go out around
25 through the crossover, would that be controlled by

1 regulation then?

2 A. Yes, sir. It should be controlled by the
3 regulator. There's actually a regulator here shown on
4 that return at --- the first crosscut in the headgate
5 --- or excuse me, Tailgate 22, there's a regulator
6 shown there.

7 Q. Will that be controlling the section?

8 A. That would control a section return. This return
9 air split, which goes from break 25 along the headgate
10 back towards break 15, across the Panel One Crossover
11 around the bottom end appears to me to be unregulated
12 free split due to its great distance. You know, it
13 travels a lot farther than the rest of them.

14 Additionally, the longwall air is regulated of its
15 own accord by EP Headgate One and EP Tailgate One just
16 here on the outlet of the longwall itself. So each
17 split appears to be regulated except for the
18 unregulated free split, which would be the Number One
19 entry that goes out to the Number Two entry along the
20 Tailgate 22 --- 21, excuse me. On this map it's also
21 shown as Tailgate One North.

22 Q. The addition of those tailgate entries, the new
23 tailgate section, is that typical?

24 A. It is not typical at all.

25 Q. Something very unusual, isn't it?

1 A. Very unusual.

2 Q. Was there some sort of analysis performed? ARMPS
3 helps. I see there's a small barrier between the
4 sections, I mean, to allow so that the --- those new
5 entries would not take the same weight that the
6 headgate entries are seeing now?

7 A. I did not perform that analysis. However, their
8 roof control plan should contain, and I'm sure it does
9 contain, although I don't --- I can't tell you where,
10 a requirement for stability of those entries. I did
11 --- I asked Mr. Eric Lilly if they had done that, and
12 he said yes.

13 RE-EXAMINATION

14 BY MR. BECK:

15 Q. Joe, back on --- I'm just jumping back a little
16 bit. On December 23rd you got a letter from Chris
17 Blanchard stating that within 30 days of approval, the
18 plan back in that time frame --- well, they couldn't
19 comply with the December 18th plan?

20 A. Correct.

21 Q. Within 30 days of approval, did they submit a
22 long-term ventilation plan that would show long-term
23 solutions to allow belt air to travel outby as well as
24 to open more intake air courses?

25 A. Correct.

1 Q. Did they ever submit that plan within 30 days?

2 A. No, sir.

3 Q. Did they ever explain why they didn't?

4 A. No, sir.

5 Q. Okay.

6 A. It appeared to me that subsequent to this January
7 22nd plan, the emphasis at that time was the mining of
8 the tailgate as soon as possible to limit the amount
9 of time that the head --- that the longwall was
10 parked. See, when this longwall finished, it had
11 nowhere to go. Subsequently, there is an LBB Number
12 Five Panel, which is very near the Ellis Portal. It
13 is a panel where essentially the panel width and the
14 panel length are about the same. It's extremely
15 small. That is also very odd. That's the smallest
16 longwall panel I've ever seen. And I believe that
17 that --- those projections in that ventilation
18 revision was submitted purely to prevent this longwall
19 from slipping. And that's directly in relation to the
20 failed headgate pillars and the conditions within the
21 headgate, that they couldn't use the current headgate
22 as the following tailgate.

23 Q. You said that one there would be what, a month's
24 money, at best probably?

25 A. Sir, I don't know if I could answer that. Under

1 ideal conditions, possibly.

2 Q. I mean, just based on ---.

3 A. It really depends on their advancement.

4 Q. Just based on what you see what they did on other
5 longwall panels in the mine.

6 A. Yeah. I mean, the month of October, according to
7 this map, they did fairly well. The month of
8 December, not so well. So it depends on conditions.
9 Could be as few as.

10 MR. STOLTZ:

11 Okay. We'll move on.

12 SHORT BREAK TAKEN

13 ATTORNEY WILSON:

14 Back on the record.

15 RE-EXAMINATION

16 BY MR. STOLTZ:

17 Q. Okay, Joe. I guess I'd like to go over now the
18 approved plan dated February 22nd, 2010. It was
19 approved due to water accumulation. It relocated EP
20 LW3 from break 85 to 90.

21 A. Basically is to relocate EP LW3 from a water hole
22 to the shoreline. I actually got to speak to Eric
23 Lilly about this, and he said literally they just
24 didn't want to stand in the water to take an air
25 reading. The mine map itself shows a water

1 accumulation at break 85, 86, 87, 88 and 89. However,
2 it doesn't appear to be substantial to interrupt
3 ventilation. And the ventilation scheme itself didn't
4 change in that it actually only moved one three
5 crosscuts and two other evaluation points four
6 crosscuts. My primary concern with this was, are they
7 taking air readings at all the entries to assure that
8 they can compensate --- or meet the requirements of
9 75.364 with regard to quantity, quality and direction,
10 therefore, you know, getting all three splits
11 satisfies the quantity requirements. So I didn't have
12 any issue with that, and I approved it.

13 It certainly doesn't state that the water is an
14 issue or that it is impacting ventilation in any
15 degree. And it was actually routed through Thomas
16 Moore, the Field Office Supervisor at the time, and
17 Link Selfe, who is also --- and Rich Kline. I mean,
18 everyone seen all the plans for the mine up to this
19 point, so it didn't seem to be an issue.

20 MR. STOLTZ:

21 Terry? Jim?

22 MR. BECK:

23 No.

24 BY MR. STOLTZ:

25 Q. Moving on, I guess the next plan would be the

1 approved March 11th, 2010 plan. It corrects the
2 violation condition on the longwall tailgate and
3 depicts the new tailgate isolated split.

4 A. This plan is a direct result of in-mine inspection
5 which occurred immediately prior to that and which
6 there was an order issued on the Tailgate one North
7 area. And that order was issued by Keith Sigmon, who
8 has traveled with Tom Moore. Keith Sigmon was in the
9 mine with some additional specialists that work for
10 me, and they went to the sections. And essentially
11 I've been --- I routinely talk, especially about this
12 mine and the vast number of revisions, I routinely had
13 talked to Joey Athey several quarters before, which
14 led to my September 1st visit. I talked to Kevin
15 Lyall, which led to the visit to the headgate entries
16 by Mike Haynes and, I believe, Keith Sigmon. And I
17 was talking to the current inspector, which was Keith
18 Stone. And he felt like he needed to get a feel for
19 all the different areas all at one time. Now, one
20 inspector can't do that, and we call it robbing Peter
21 to pay Paul to see what the volumes are in several
22 areas.

23 So I actually was supposed to go to that mine. I
24 believe they went on either March 8th or 9th. And I
25 was supposed to go there, but due to other issues,

1 like I had to take an online training course. I was
2 going to be at another meeting the following day and I
3 didn't want to be out and allow all these plans to
4 build up. I can't leave the district unattended, so
5 at the last minute I actually pulled out from going to
6 the mine this day, which is not normal for me.

7 But at any rate, Keith Sigmon and Tom Moore
8 crossed the longwall face and went into the Tailgate
9 One North entries, at which time they found that the
10 air has actually reversed and flowing outby or towards
11 the mains instead of towards the bleeder for nearly
12 its entire length, stagnated for a portion, and then
13 turned around and near the Number Three entry was
14 actually going towards the bleeder air course. It
15 essentially had a large swirl.

16 What concerned me, as soon as Keith found it, he
17 called me on the phone from the mine. And my primary
18 concern was that they would pull gob air or air from
19 the worked-out area that was caved behind the longwall
20 panel across the tailgate drives, which would be a
21 potential ignition source. Albeit they're
22 permissible, you certainly don't want to see that risk
23 taken, specifically ventilating that corner of the
24 face when the longwall shearer cut out. Now, that's a
25 significant ignition source. So any time you have

1 longwall air that's not going towards a bleeder and is
2 actually reversed, regardless of the issue, there's a
3 hazard there, and regardless of the methane content of
4 the mine. And you're also concerned always with coal
5 dust.

6 He issued that as an order. And subsequent to
7 that, they had to do something to correct it. And I
8 was told, via telephone call by one of the mine
9 operator's agent, I believe it's the engineer, Matt
10 Walker, who had submitted it --- it was either Matt
11 Walker or Eric Lilly, that they tried to adjust this
12 regulator that's here at crosscut 34 in order to
13 increase the volume of air up this tailgate in order
14 to compensate for that. But they were not successful,
15 so they elected --- and I had asked for this several
16 times previously. I guess I asked them, why don't you
17 have a tailgate stopping line, which is typical. And
18 you'll even see that within the typical bleeder plans
19 and guidelines within the agency, the bag class that
20 they give to ventilation specialists, that that is
21 generally a necessary control. Now, Massey doesn't
22 like to do that because there is some construction
23 requirement with that and labor costs that would be
24 associated with that. But they actually were going
25 to --- submitted this to reconstruct that tailgate

1 stopping line. And they gave actual measurements on
2 the regulators there that indicated they were putting
3 73,386 cfm up their tailgate.

4 Now, because they have five tailgate entries in
5 this area, they're prone to losing the velocity. So
6 you have to put a larger volume up there, which would
7 spread across the larger area, and therefore decrease
8 its velocity, and that would govern it. They actually
9 took actual air readings at the tailgate and entries
10 Three, Four, Five and Six and Seven, right there at
11 the tailgate junction of the longwall face, and
12 they're actually showing that they have 61,000 going
13 across the longwall face, which would be
14 significantly ---. At the outlet of the longwall face
15 they have more than double what's required in the
16 inlet.

17 So this plan doesn't show any intake problems, per
18 se. It actually shows something contrary to that. It
19 shows that even though they're losing air through the
20 gob along the longwall face, near their tail, they
21 still have 61,000. So that's a considerable amount of
22 air. It's actually promising. And this was to abate
23 that violative condition and then subsequently the
24 order associated with it.

25 Q. I guess just a quick question. I guess up until a

1 point, they were able to pull the air back to the
2 Bandytown fan?

3 A. Correct.

4 Q. So in your opinion, what happened to the system to
5 cause the air now to reverse and, you know, then the
6 resubmittal --- or the resubmittal of this plan? I
7 shouldn't say resubmittal, submittal of this plan?

8 A. Submittal of this plan. I think that the small
9 pillars in the tailgate, which were mined at
10 approximately the same center as the headgate and also
11 didn't satisfy the stability minimum recommended by
12 ARMPS could have been a potential factor.

13 Additionally, convergence along the side abutment
14 zone along this panel could also make air difficult.
15 And as they mined this panel out and it's gotten
16 longer, you're looking at more resistance with regard
17 to that return air course from the longwall face back
18 towards the EP, where air exits a worked-out area.

19 And additionally, they may have lost volume here
20 when they put the tailgate section on. And
21 subsequently, the system itself changed. So other
22 changes in the mine could also affect the volume air
23 going up that tailgate.

24 I know at one time Mike Haynes went to the mine
25 and came back. We did a line diagram. Now, this was

1 back approximately December, November, in that area.
2 I actually had specialists there September, November,
3 December, February and March. Five out of seven
4 months I sent ventilation specialists to this mine.
5 And my purpose for that was, I was talking regularly
6 to the inspection personnel and we wanted to keep
7 close tabs on it, particularly because they had a high
8 volume of revisions.

9 So, you know, I didn't go to this exact area. One
10 of my specialists did, as well as a field office
11 supervisor. And I can only surmise that as the air
12 course has increased, that it would be a little more
13 difficult to ventilate. And the tailgate mining may
14 have had an impact on it as well.

15 Q. I guess that's all I'm getting at. Since you're
16 sending so many specialists out and you named them in
17 the various months, that would be abnormal?

18 A. It's very abnormal. In fact, we visited this mine
19 more than any other in the district. And we issued
20 orders here. I issued orders when I visited there.
21 There were --- my guys issued orders on the headgate.
22 My guys issued orders on the tailgate. That's
23 extremely abnormal.

24 Q. I guess my next follow-up question, the order was
25 issued and they submitted a plan. Why do you think it

1 took greater than two days to fix the problem?

2 A. I believe on the 10th --- on the 10th, Keith Stone
3 went to terminate the order. He's the regular CMI for
4 the quarterly inspection. He called me from the mine
5 and stated that they had built new controls, looked
6 like everything was going fine, and the mine operator
7 wanted him to lift the order. And I said, are all the
8 controls installed, and is the air functioning as
9 designed in this plan? His answer to both was no. I
10 told him, therefore, the order still stands, period.
11 According to the Mine Act, it must be totally abated,
12 and that's what we were looking for.

13 They called the afternoon of December 11th --- or
14 excuse me, March 11, requesting --- or stating that
15 the mine was in compliance and requesting the order to
16 be lifted. And that's frequently the case when an
17 order is issued to a mine operator. They want it
18 abated as soon as they've got it corrected. It can be
19 after hours, and they will exert significant pressure
20 to assure that it gets --- they get their abatement.

21 Keith Stone had already worked that day. He
22 really didn't want to go back out. All of my guys
23 were gone already. Keith Stone --- or excuse me,
24 Keith Sigmon wasn't in. Keith Stone went in lieu of
25 Keith Sigmon and essentially I cut a deal with him.

1 And that deal was, if you can go terminate Keith
2 Sigmon's paper, my guys would run dust for you on the
3 working sections, on the headgate and tailgate
4 development sections. That's to tell him, you know,
5 basically you help me, I help you.

6 But what Keith Stone didn't realize at the time,
7 it was kind of a chess move on my part, it was a nice
8 way of getting him to go out after hours for me, of
9 course, but --- or for my guys, but I really hadn't
10 got comfortable with their numerous changes yet. And
11 what I really wanted --- because we'd already done
12 these district-wide mine inspections for months. I
13 wanted my guys on the working section for the entire
14 shift. That's hard to do with a ventilation
15 specialist because you're not a regular CMI. You have
16 other duties.

17 So I was able to do that. And so what you see is
18 Clyde Gray and Benny Clark ran dust, which is
19 extremely out of the ordinary for a ventilation
20 specialist to run dust pumps for an entire shift. And
21 to be honest, they weren't that crazy about it, but it
22 was necessary for me to understand and to have an on-
23 site specialist for the entire shift to assure that
24 the air is functioning properly at the face, where
25 miners are exposed, where the risk for anything is the

1 highest, to assure that it was safe. And that's
2 exactly why I did it. And you'll see that later in
3 the inspection reports, that those ventilation
4 specialists actually did that.

5 MR. STOLTZ:

6 Terry?

7 MR. FARLEY:

8 I don't have any more.

9 MR. STOLTZ:

10 Jim?

11 MR. BECK:

12 I'll wait until after the next one.

13 MR. STOLTZ:

14 Okay.

15 BY MR. STOLTZ:

16 Q. Ready to move on with the last approved plan here.

17 A. And to my knowledge, in a follow-up conversation
18 with Keith Stone, this plan was successful. It abated
19 the violative condition. There was no methane found
20 and the air functioned as designed.

21 Q. I guess the last approved plan would be the March
22 22nd, 2010 plan. It's a revision to replace the
23 typical longwall face sketch depicting ventilation
24 controls along the remainder of the One North
25 headgate.

1 A. Now, I requested this because when they crossed
2 the Panel Two Crossover, I was concerned that this EP
3 that was previously approved that was to be
4 located --- I think the number was 65 in this Number
5 Three air course of the headgate would no longer
6 progress outby, that it would stop with this regulator
7 that's located immediately off of Tailgate 22. And I
8 wanted to assure, in compliance with the regulation
9 75.364(a)(2)(i), that everywhere where air entered the
10 worked-out area, that that was an evaluation point
11 that was approved by the district manager and that
12 that evaluation point could not move. And that was to
13 assure that the plan itself did not become outdated.

14 And again, the reason to get quantity, quality and
15 direction at evaluation points is so that you can
16 understand the system, you can measure the system and
17 you can make those changes as necessary, because the
18 mine operator ---. It's the mine operator's
19 responsibility for pre-shift, on-shift and weekly
20 examinations to assure that they can abate any kind of
21 hazardous conditions.

22 Q. So that would be basically a part of the weekly
23 examination?

24 A. It would be part of the weekly examination, yes,
25 sir. And it includes a submittal letter from the ---

1 Eric Lilly, the mine engineer, dated on the 10th,
2 received on the 10th. And because the mine was
3 progressing, the longwall was progressing outby and
4 they were going to pass this area, I wanted to make
5 sure that we expedited the review of this. Let's not
6 get a plan after it's no longer necessary. Let's get
7 the plans prior to being necessary so that, you know,
8 things function correctly underground. And it shows
9 MPA, MPB, the EPs on the longwall. And it also
10 requires this stopping line will be kept intact to
11 ensure separation of the gob air and the travelable
12 return.

13 And what it was is that's the return air off the
14 section being separate from the intake to the
15 longwall, because there's a potential contamination
16 issue if they lose that stopping line. So during a
17 verbal request, I want to make sure that this stopping
18 line is important. You have to keep it. And so they
19 put that in the plan.

20 Q. So if I understand, that EP would --- was that
21 in --- return air coming into the worked-out area?

22 A. Is return air coming into the worked-out area?

23 Q. It would be splitting? Some would be going
24 inby ---?

25 A. No, sir.

1 Q. Not all traveled inby?

2 A. It split at the same split point as the January
3 22nd revision, which is the Number One entry, which is
4 a return entry on Tailgate 22, immediately adjacent to
5 the regulator, that that return air would go ---
6 travel to the east, along Headgate 25 through 15
7 crosscut numbers. And then EP --- it doesn't have a
8 number on it, but that EP would stay stationary. So
9 that is a portion of the ventilating return air off
10 the section going into the worked-out area, into the
11 headgate. The other isolated return air course that
12 was in the January 22nd revisions remained intact.

13 Q. Okay.

14 A. But the ventilating arrows are shown on the
15 typical longwall face sketch. They call it typical,
16 but it's really no longer typical. It's site-
17 specific. But it would remain in effect until the
18 completion of the longwall, at the longwall stop
19 point, which is shown on this map, on Mackowiak One,
20 as crosscut 14.

21 Q. And that was the only thing that changed --- that
22 was changed on that face? Everything else, all the
23 MPs and EPs stayed the same?

24 A. Yes.

25 MR. STOLTZ:

1 Jim?

2 RE-EXAMINATION

3 BY MR. BECK:

4 Q. Joe, from August 6th, I think it was, to March
5 22nd, I count 14 revisions that were approved. Is
6 that right?

7 A. I never counted them. If you give me a minute, I
8 can.

9 MR. STOLTZ:

10 There's probably even more.

11 ATTORNEY WILSON:

12 Well, Joe, the record will show how many
13 there were.

14 MR. BECK:

15 I counted them.

16 A. Yeah, I can't --- it sounds about right.

17 BY MR. BECK:

18 Q. And you said five out of seven months you had
19 specialists at the mine, and you, yourself, made a
20 couple trips down there. So is it safe to say the red
21 flag's up, we've got some major ventilation issues
22 here at Upper Big Branch?

23 A. We were trying to prevent major ventilation issues
24 due to the lack of trust ---.

25 Q. Well, what I was getting at, I mean, did anybody

1 ever go to Massey and say, look, you know, you're
2 grasping for straws here, I mean, you're throwing all
3 these plans out every couple days and you're even
4 coming back with plans that --- revisions for plans
5 that didn't work that you tried? It just seems like
6 they were grasping for straws.

7 A. There was a lack of proper planning as far as the
8 long-term perspective. Additionally, their engineers,
9 Eric Lilly, Matt Walker and Heath Lilly, are very
10 inexperienced. They're quite aggressive with regard
11 to mining coal, and I think that the combination of
12 those factors led to numerous revisions.

13 Q. Do you know if they ever made an air change
14 without approval or prior to getting approval, major
15 air change?

16 A. I believe they did, but I think you would be well
17 served to pull the 370(d) violations. That would be
18 the section of the regulation that would govern that.
19 I can't give you that answer off the top of my head,
20 but that data is available.

21 Q. Do you know if around 14 --- set 14 seals and 15,
22 if there were ever any air samples taken in those
23 areas?

24 A. I can tell you during each EO1 they should pump
25 samples from within the sealed --- from within the

1 sealed atmosphere.

2 Q. If they did, then that data would be available?

3 A. It would be in the inspection reports, yes, sir.

4 I don't receive inspection reports on a daily basis.

5 Q. All right.

6 A. But they should pull those. The mine operator

7 also, I believe, has data concerning that.

8 Q. Okay.

9 ATTORNEY WILSON:

10 Let's go off the record.

11 OFF RECORD DISCUSSION

12 ATTORNEY WILSON:

13 All right. We had a discussion off the

14 record. What we're going to do is stop Mr.

15 Mackowiak's interview now, and it's 4:10 on Monday

16 afternoon, and we will resume tomorrow afternoon at

17 one o'clock. We're off the record.

18

19 * * * * *

20 STATEMENT UNDER OATH

21 CONTINUED AT 4:10 P.M.

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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