

June 7, 2010

The Honorable Steven L. Beshear  
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The Honorable Joseph Manchin, III  
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The Honorable Robert F. McDonnell  
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Office of the Governor  
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Dear Governors,

On April 5, 2010 the explosion inside the Upper Big Branch Mine (UBB) in Montcoal, West Virginia killed 29 miners and changed our lives forever. These brave men were our colleagues, our neighbors, and our friends. We deeply mourn their loss and we will never forget this tragedy. I am sending this letter to you today to apprise you of grave concerns I have for the future of mining in your states.

Our investigation into the UBB accident is continuing. While we do not yet know the cause of the explosion, we have developed grave and serious concerns about the MSHA imposed ventilation system employed at UBB. Importantly, we have recently learned that MSHA had been warned about the safety of this ventilation system in Illinois before imposing it upon us.

### ***Background***

By way of background, many of the MSHA officials put in place over the last year are experienced in the ventilation practices used in longwall mines in the Pittsburgh seam,

located in Pennsylvania and Northern West Virginia. This coal seam is rich in methane. Ventilation systems there are designed to encapsulate the methane behind longwalls. By drilling recovery holes over the gob (recently mined out areas), the pipeline-quality methane can be commercially removed and sold.

In 2009, MSHA officials familiar with the Pittsburgh-seam model began imposing it upon mining companies in other areas. The problem is that where the seam and gob are not rich in methane, it is not desirable to install such a system for capturing, removing, and selling the methane. The difference is that, in high methane seams, encapsulation keeps the methane above the 15% upper explosibility limit, while in a low methane seam, encapsulation may allow methane to linger in the 5% to 15% explosibility range. At these mines, the clear objective must be to get the methane out of the mine as quickly as possible. Specifically, this MSHA system had the following impacts at UBB:

- Less airflow was available to the working face of the longwall, where the actual mining was occurring.
- Airflow was reduced through the gob area (recently mined-out areas) behind the longwall, thus reducing the flushing of methane out of the area directly behind where the men were working.
- Dirty air from the continuous miner sections, which contains dust and methane was forced to take a circuitous exhaust route rather than being allowed to be dumped into the “bleeder” (a mined-out airway) and exhausted from the mine more quickly.

This MSHA imposed ventilation system was first implemented in Illinois. One operation there had such grave concerns about this system, that it filed a court challenge to stop MSHA. The Administrative Law Judge deferred to MSHA’s judgment. That case is currently on appeal.

The changes then came to UBB. In 2009, MSHA personnel in West Virginia pointed to their success in Illinois and informed us that UBB would be required to implement the Pittsburgh seam ventilation model. UBB was the first operation in MSHA’s District 4 required to use such a plan.

Engineers at UBB resisted the changes. The UBB mine had operated for 14 years under a successful Massey ventilation plan. Indeed, problems associated with the MSHA ventilation system caused many violations and resulted in the mine shutting down several times. However, MSHA continued to pressure UBB to adopt a plan increasingly similar to the one forced on the Illinois mine. The last change to the UBB plan was implemented on March 9, 2010.

The explosion occurred just 26 days later.

### ***MSHA’s role in the ventilation plan process***

Since the UBB tragedy, MSHA has said that it does not do ventilation plans and that it did not do the plan at UBB. Joe Main, MSHA's chief, repeated this in his Senate testimony. This is disingenuous.

Currently, an operator cannot mine coal unless MSHA accepts the ventilation plan. MSHA will not accept a ventilation plan unless an operator includes the elements MSHA commands. It is true that MSHA doesn't prepare the paperwork, but MSHA effectively dictates what plan is submitted and approved.

The current administration at MSHA wishes to dictate the ventilation plan but have no responsibility for it. In the Illinois case, the operator made this point very clear. The operator pleaded for the ability to implement its own plan, noting that:

“[I]f something goes wrong as a result of a mine plan design flaw, it is the operator who must answer to the miners and to the miners' families, and it is the operator who faces potential liability. MSHA knows this, and never misses an opportunity to remind operators that a plan belongs to the operator, not to MSHA.”

This statement was made in the Illinois case, but now seems like a prediction of what would happen at UBB and perhaps your states in the months to come. MSHA dictated the plan, but has now disavowed its role and rejected all calls for an independent examination of its role.

### ***Scrubbers***

If there is any question whether MSHA or mine operators control mine ventilation plans, one need look no further than MSHA's stance with respect to scrubbers.

Scrubbers (dust collectors) are devices used on machinery underground that help remove up to 98% of the harmful coal dust from the air as miners work. A recent report by the government's National Institute of Occupational Health and Safety (NIOSH) has shown that scrubbers are important because, without scrubbers, the level of dust left in the mine's air can be up to 12 times as high. The build-up of dust is doubly dangerous; it isn't good to breathe, and it can help create the conditions for an explosion.

NIOSH's expert study, referenced above, clearly favors the use of scrubbers. More recently, an initial report by MSHA itself about the UBB explosion (called a “fatalgram”) specifically recommended the use of scrubbers as a practice to prevent explosions. In fact, scrubbers have been used since the 1980s and, prior to last year, a closure D-order would have been written if any scrubber were not running.

Inexplicably, however, MSHA has denied the use of scrubbers in many of our mines. MSHA has refused to provide any explanation for this denial — a denial that stands in direct opposition to MSHA's recommendation of scrubbers in its own UBB fatalgram issued just last week.

Certainly, if we were in control of our mine plans as MSHA claims, our scrubbers would be turned on and our miners would receive the benefits. This is but one example of MSHA controlling ventilation plans. Another ventilation issue that creates unsafe and less healthy mining is MSHA's refusal to allow extended cuts on blowing ventilation. Simply put, the ventilation plans are MSHA ventilation plans and they are wrong.

### ***The State's role***

We are asking the affected states to take a closer look at these issues and understand the ongoing, serious risks at mines in your states resulting from MSHA's flawed plans and requirements. The preferred longwall ventilation plan for the Pittsburgh seam is not appropriate in Massey mines or many other mines. We believe experts in the state agencies better understand this and the unique mining conditions present in your states.

We fully support budgetary measures that will allow the states to keep or attract the kinds of experts necessary to closely scrutinize mining plans with mine-specific issues in mind. As you are aware, mine ventilation is not a one-size-fits-all issue.

With regard to scrubbers specifically, we respectfully ask that the state agencies immediately work with their federal partners to turn these important devices back on. Scrubbers work. The science and technology hasn't changed, only the administration at MSHA has. To this end, we have repeatedly asked MSHA Assistant Secretary Joe Main for action on scrubbers and have received no response.

### ***Conclusion***

I can assure you that I never again want to sit across from a wife, mother, or child of a miner who has lost his life in a Massey mine. Those conversations were the hardest I have ever had or ever will have. It was a painful, humbling experience that reinforced my sense of responsibility to the miners that work for Massey. Despite being criticized in the past for doing so, it is my obligation to bring the presence of the ongoing safety concerns described above to your attention and to make you are aware that coal miners in your states are less safe because of MSHA-mandated ventilation plans that are currently in place in your states today.

While we can never erase the pain felt by the families who lost loved ones at UBB, Massey has offered our unconditional financial, health, and academic support to the families who lost loved ones, going well beyond what the law requires. We did this to honor the memory of those who were lost and because it was the right thing to do. But the single best way Massey can honor those lost is to do everything possible to prevent a similar tragedy in the future. It is with this in mind that I write to you to highlight my concern about ongoing MSHA issues known to be present in mines operating today. I will continue to work hard to improve safety at Massey and all other mines, and I know that you share this goal. Ironically, perhaps the single biggest challenge to achieving safe mining is the current behavior of MSHA.

I hope to work in a constructive manner with your state regulators to improve mine safety now and in the future. Thank you for your attention.

Sincerely,

Don L. Blankenship  
Chairman and CEO  
Massey Energy

cc:

Joe Angleton, Director, IL Department of Natural Resources, Office of Mines & Minerals  
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