The West Virginia mine tragedy

Miners doomed by collusion between regulators and coal companies

Barry Grey
10 April 2010

In the wake of Monday's explosion at the Upper Big Branch mine in southern West Virginia, a mass of evidence has emerged of wanton and pervasive safety violations by coal giant Massey Energy, the owner of the mine.

The facts show as well that federal regulators, well aware of the deadly conditions in the mine, did nothing to force the company to comply with safety laws and protect the miners from the inevitable consequences of the company's willful disregard for elementary safety standards.

Twenty-nine miners died in the massive explosion that ripped through the mine Monday afternoon. The disaster at the Montcoal, West Virginia mine is the deadliest US mine accident in four decades.

Massey Energy Company, the biggest coal producer in central Appalachia, has long been notorious for its ruthless pursuit of profit at all costs. Its CEO, Don Blankenship, a right-wing Republican multi-millionaire, made his name in the coal industry by heading up the union-busting operation against miners who struck what was then called AT Massey in 1984-85.

Blankenship employed an army of paramilitary mercenaries, helicopters and armored personnel carriers against the miners, who were left to face on their own the company's terror campaign, court injunctions against mass picketing, and police escorts for strike-breakers, due to the treachery of the United Mine Workers of America (UMWA) leadership, which refused to spread the strike.

The defeat of the AT Massey strike was a milestone in the collapse of the UMWA and the destruction of the gains won by miners over previous generations of bitter struggle.

Blankenship openly campaigns against mine regulations and defies them with impunity, along with the rest of the coal industry. The government agencies that nominally oversee the coal operators and enforce safety laws in actual practice run interference for the companies.

The entire edifice of coal industry regulation is a cynical exercise in which regulators go through the motions—citing violations and handing down fines—knowing in advance that the fines will go mostly unpaid and no serious steps will be taken to address safety hazards. The common aim of both employers and regulators is to subordinate the safety, health and the very lives of miners to the maximization of corporate profit.

To cite some facts:

The Upper Big Branch mine was cited for more than 600 safety violations in the past 18 months, including 124 so far this year. Many of the citations were for inadequate ventilation of explosive methane gas and illegal concentrations of coal dust—the two chief causes of mine explosions. (Federal records show that as much as 2 million cubic feet of methane gas enter the Upper Big Branch mine every 24 hours.)

In a test in March, the ventilation system was shown to be circulating less than half the volume of air needed to keep levels of combustible coal dust and methane within a safe range.

As Pat McGinley, a West Virginia University law professor and coal industry expert, said, "When a mine's ventilation system isn't working properly or there is an unacceptable accumulation of coal dust even for an hour, miners' lives are put at risk."

It is almost certain that the April 5 blast at the Upper Big Branch mine—which some rescuers have called the biggest explosion they've ever seen—was the result of a massive buildup of methane gas, compounded by high levels of coal dust.

There was no lack of warning signs that such a disaster was looming. Federal regulators from the Mine Safety and Health Administration (MSHA) ordered the mine or parts of the mine to temporarily cease operations more than 60 times in the last 16 months.

In 2008, the mine was cited for 458 violations, 50 of which were listed as "unwarrantable failures to comply"—a designation of willful or gross negligence.

According to information posted by MSHA Thursday on its web site, the agency last December cited the mine operator for forcing miners "to work and travel in dark-murky water" measuring as high as four feet. MSHA said the condition "poses hazards related to tripping and falling in water… that could result in drowning."

The following month, MSHA charged the mine with "aggravated conduct" for failing to correct a "known hazard" in the form of "combustible materials" that had accumulated beneath the bottom roller of a conveyor belt located in the mine.

In March, MSHA cited the operator for allowing "mud and slop" as deep as 10 inches to accumulate in the mine. The agency reported that the operator made "no apparent effort" to remove the accumulations when the agency carried out another inspection nine days later.

On Thursday, an MSHA official said that the Upper Big Branch mine had more than 11 times the national rate for the most serious type of safety violation. Yet, despite all this, MSHA has refused to cite the mine for a "pattern of violations," a designation which, under the Miners Act of 2006, would allow federal regulators to impose a harsher enforcement regime, including potentially closing the mine.

In a letter to the mine operator in December of 2007, MSHA said the mine had been issued serious violations at a rate nearly twice the national average over the previous two years. The letter warned that the mine might be cited for a pattern of violations.

But, according to a report in the *New York Times*, "six months later, the safety agency announced that the Upper Big Branch mine, and 19 others that were warned that December, had all instituted plans to fix their problems, and had received fewer violations. They all escaped the added oversight… After the violations went down, they more than doubled the following year."

In a March 25, 2008 letter informing the Upper Big Branch mine that the agency had found no pattern of violations, MSHA wrote, "congratulations on your achievements."

MSHA again reviewed the mine for a potential pattern of violations six months ago, but concluded the company showed no such pattern.

MSHA officials say the agency has, in fact, never used its legal authority to seek federal court orders or injunctions against mines showing a pattern of violation and posing a hazard to the safety of miners.

In any event, the enforcement powers of MSHA under federal mine safety laws are toothless. Mine companies that knowingly violate safety standards—such as dust limits or roof stability rules—can be charged only with misdemeanors.

Moreover, as *USA Today* reported Friday, coal mine operators routinely evade paying even the relatively minor fines imposed by MSHA for major violations. The newspaper reported, on the basis of its own analysis of federal records, that coal companies have paid just 7 percent of the fines they have received over the past three years.

Massey and the other major companies simply appeal major fines and contest violation citations, creating a massive backlog and effectively escaping sanction. The Upper Big Branch mine, for example, has paid only one major fine, costing $10,750, since 2007. It has appealed or is delinquent on 21 major fines totaling $505,000.

Overall, US coal companies have paid only $8 million of $113 million in major fines since April 2007, when fines were increased under the 2006 Miners Act.

By such means, the federal government, under Democratic no less than Republican administrations, has enabled Massey and the other coal giants to massively increase production and profits by intensifying their exploitation of a shrinking pool of miners. Injuries, fatal ailments such as black lung, and violent deaths in mine explosions are deemed part of the production process.

Since 1978, coal production has nearly doubled while the number of miners has fallen by half, from 220,000 to 110,000. In underground mines, production has increased 56 percent while the number of workers has fallen 60 percent.

Massey Energy made a profit of $104 million in 2009, twice its profit for the previous year, despite a decline in the demand for coal. This was accomplished on the basis of a cost-cutting drive, including 700 layoffs, wage and benefit reductions, speedup, forced overtime and savings from the evasion of health and safety laws. Blankenship himself made nearly $24 million in 2007 and an estimated $28 million in 2008.

Speaking from the White House Rose Garden on Friday, President Obama addressed the West Virginia mine tragedy. While making a show of sympathy for the bereaved families and the mining community, he pointedly avoided any criticism of Massey Energy. On the contrary, he attributed to the company a concern for the welfare of the miners that is entirely unwarranted, saying, "But their government and their employers know that they owe it to these families to do everything possible to ensure their safety when they go to work each day."

Obama then quoted from a letter written by one of the miners killed in the explosion to his girlfriend and daughter before he left for the mine Monday morning. "If anything happens to me," the 25-year-old miner wrote, "I'll be looking down from heaven at you all."

The president was silent on what such a letter reveals about the conditions under which the miners are forced to work, and how obvious it was to the mine owners and regulators, as well as the workers, that the mine was a powder keg.