

Justice Department drops criminal charges against Massey for deaths of 29 miners

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The Obama administration's Justice Department announced Tuesday that it would not press any criminal charges against Massey Energy, or its new owner, Alpha Natural Resources, arising from the death of twenty-nine coal miners at the Upper Big Branch mine in April 2010.

In exchange for not pursuing criminal charges against the companies, Alpha Natural Resources has agreed to pay \$209 million in fines, restorations to the families, and safety improvements to its mines over the next two years.

No charges were brought against any individual company official for their role in the disaster, although the Justice Department says that those may still come.

Moreover, no charges were announced against any government official in the Mine Safety and Health Administration, MSHA, who were responsible for ensuring that Massey followed the safety laws.

The \$209 million includes \$46.5 million to be used to pay \$1.5 million to each of the families of the twenty-nine miners killed in the explosion and the two injured miners. \$35 million will be used to pay civil fines outstanding against all Massey mines, including fines leveled as a result of the disaster. The remaining \$128 million will go to making safety improvements to all its mines.

Spread out over the two years that the company is required to make the improvements, the total settlement amounts to seventy-five cents per ton of coal that they produce, or less than three cents per ton for each miner killed.

Family members reacted with outrage to the decision. Gary Quarles, whose son Gary Wayne died in Upper Big Branch, told the Associated Press, "I'll be satisfied when I hear who they're going to indict and what for," he said, adding, "I want to hear names, and I want to

know what they're going to be charged for. Today would have been a fine day for them to have told us."

"It was an act of murder," said Clay Mullins, whose brother Rex was killed in the explosion. "They murdered twenty-nine men, and I'm not satisfied one bit."

The decision by the Obama administration that it would not pursue criminal charges against the companies sent a strong signal to coal operators throughout the country that production and profits would come before the safety of those performing the work.

It is not simply a coincidence that on the day the decision was announced, another miner from Ohio died from injuries he suffered three days earlier. On Wednesday, December 7, a surface miner was killed in Virginia when the highwall collapsed on him, bringing to twenty-three the number of coal miners killed so far this year.

While the media has spilled much ink speculating which Massey officials may face criminal charges, and how high up the corporate ladder the investigation may climb, and there is no shortage of names that should be on such a list, it misses one critical point: the government has given the corporation a clean slate.

The settlement means that company investors and stockholders will be shielded from any responsibility. For Alpha Natural Resources, the settlement is just a small price for doing business. This past June, Alpha bought Massey for \$7.1 billion. The settlement increases that cost to \$7.3 billion, which is still nearly half of what Massey was valued at before the disaster.

The Justice Department announcement was coordinated to take place just hours before the federal Mine Safety and Health Administration (MSHA) held a press conference to present the conclusion of their

eighteen month investigation into the case of the explosion.

The MSHA investigation found that the April 5, 2010 explosion at the Upper Big Branch mine was completely preventable, and that the root cause was Massey's "systematic, intentional and aggressive efforts" to conceal life-threatening problems. Massey officials maintained two sets of books showing regulators fake safety reports. Massey warned underground miners when inspectors arrived at the mine and threatened miners if they spoke to officials about safety problems.

Investigators maintain that sparks from a poorly maintained and malfunctioning mining machine ignited a small pocket of methane, which in turn triggered a massive coal dust explosion that traveled through miles of underground passageways, killing the twenty-nine men.

The MSHA investigation found 369 safety violations at the mine, including twelve which it said directly contributed to the disaster, of which nine were so obvious that company officials had to know they were violating the law. Among those was the fact that untreated coal dust was allowed to accumulate throughout the mine, that ventilation equipment was not functioning properly, and that miners were not trained in safety procedures.

Despite the massive amounts of safety problems at the mine, the report gave no explanation as to why MSHA officials did not take action to protect the miners or close the mine.

Former MSHA official and mine safety advocate Tony Oppenard told National Public Radio after reading the report that the Upper Big Branch mine "sounds like one of the worst mines in the history of mining. You have an enforcement agency that had to know this was an outlaw operation." Yet, he pointed out, they did not take action that could have prevented the disaster.

Both Democratic and Republican politicians praised the report and the Obama administration's settlement. Both of West Virginia's senators, Jay Rockefeller and Joe Manchin, issued statements of support for the settlement, saying that this was the best way for the company and the industry to move on. Manchin, a Democrat, was the governor of West Virginia at the time of the blast.

Twenty months after the UBB disaster, with the Justice Department announcement and MSHA concluding its investigation, it is clear that like the BP oil disaster, Hurricane Katrina and the financial crisis, no one is going to be held accountable.



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