

# Superintendent charged in Upper Big Branch mine disaster

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On February 26 federal attorneys filed conspiracy charges against a mine superintendent for the Upper Big Branch mine explosion of April 5, 2010, which killed 29 West Virginia coal miners.

The case brought to US District Court, Southern District of West Virginia in Beckley by Assistant US Attorney Steven R. Ruby states: “Mine safety and health laws were routinely violated, in part because of a belief that following those laws would decrease coal production.” Phrased more directly, safety was disregarded in order to maximize corporate profit.

Gary May, a senior mine superintendent at the time of the explosion, is only the third Massey Energy employee to be charged for the disaster, joining a mine security manager and a foreman.

Though a superintendent, May was an insignificant figure in the multi-billion dollar Massey corporation, which has since been bought out by rival Alpha Natural Resources. He had been promoted from foreman just two years’ prior to the disaster.

Former Massey CEO Don L. Blankenship, a ruthless cost-cutter who state regulators determined enforced a culture of disregard for safety at the Upper Big Branch and other mines, remains free and uncharged, although there has been speculation that May could be making a plea deal that might include providing evidence against Blankenship.

Clay Mullins, a miner at the Upper Big Branch who lost his brother Rex in the disaster, said that he hoped Blankenship would face prosecution.

“I want to see some other names,” he told the media. “There were a lot of people involved in this, and I just want to see them be punished for the crimes.”

Among other charges, May stands accused of conspiracy for obstructing federal regulators. If found guilty, and if he does not accept a plea deal, this crime

carries a prison sentence of up to five years. The prosecutors’ document also refers to other “unknown” conspirators, which suggests that further charges are possible.

Prosecutors say that May directed an elaborate cover-up scheme for mine safety deficiencies that included doctoring mine records and using secret code phrases to alert employees to the presence of Mine Safety and Health Administration (MSHA) investigators. These secret phrases allowed mine foremen to paper over safety violations, including a malfunctioning ventilation system, prior to inspectors’ visits.

In another instance, a safety monitor used for measuring the level of methane in the mine broke in February 2010. Prosecutors allege that rather than replacing it, May had the unit rewired to circumvent it from activating a safety shut-off mechanism to an attached continuous mining-machine.

The federal charges coincided with the release by the West Virginia Office of Miners’ Health, Safety and Training of a report citing 253 separate violations associated with the Upper Big Branch disaster. Among the violations the West Virginia investigators found were 147 related to electricity, 15 violations of ventilation standards, 11 equipment violations, and two coal dust and rock dust violations.

West Virginia caps fines for violations at \$250 per citation. Additionally, no one higher up the chain of command than a foreman may be cited, according to state law.

The report, which largely echoes three earlier investigations into the disaster, found that water mains designed to extinguish fires did not function, and further that so much coal dust had been allowed to build up in the mine that even a small methane explosion would have resulted in a large-scale

explosion. This build-up was caused by inadequate ventilation.

These conditions were made possible by years of neglect by mine owner Massey Energy—and regulatory indifference from the MSHA.

Though the MSHA routinely issued citations to Massey for its dangerous operations at the Upper Big Branch, it allowed Blankenship and Massey management to continue with impunity, safe in the knowledge that federal regulators and the courts would do nothing to stop them.

In this sense the disaster was a bi-product of the deregulation of American industry that has been underway since the 1970s, pushed by both Republicans and Democrats. From the Wall Street collapse of 2008, to the recent spate of mass food poisonings, to the BP Gulf oil blowout, to the Upper Big Branch Mine, deregulation has resulted in disaster after disaster.



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