

Death at Massey Energy Company

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It happened around 3:00 PM on Monday, April 5, in the Upper Big Branch coal mine at Montcoal, West Virginia, one of several mines owned by the Massey Energy Company. The morning shift of miners was still in the process of changing places with the afternoon shift. Members of each group were being shuttled in and out of the entrance in transport vehicles called "mantrips." Nine of the morning shift miners had just come out of one of the mantrips, and were walking out of the mine when they suddenly felt a blast of air blow past them, so strong it almost pushed them over. They all knew what it meant. Turning around, several hurried back into the mine, and shortly came upon seven of their fellow miners dead, next to the mantrip that had just brought them up from below. Two others were alive but injured. A deadly explosion had ripped through the underground coal mine, killing or trapping an unknown number of the miners inside. At the time of the explosion, a total of 61 miners were working underground.¹ Stanley Stewart, one of the miners, later described what it had been like:

On April 5th, I was sitting on a mantrip at about 3 PM with several other miners approximately 300 feet underground. We were getting ready to head to the section when I felt a breeze coming from inside the mine. The intensity picked up quickly and I realized that something bad was happening so I left the mantrip and started making my way toward the outside. Before I could get out the air velocity increased to what I felt was "hurricane strength" and I felt my feet wanting to leave the ground. The air was full of dust debris and I couldn't see. Although I didn't have far to go I panicked, afraid that I might not make it out to safety.²

Fortunately, Stewart made it out safely. Other miners who tried to go down into the cavern to help, were stopped by the smoke and toxic fumes billowing through the mine. Many of the miners who had been underground somehow found their way up to the surface. Although smoky air limited visibility to about two feet, around 6:00 PM the first rescue team entered the mine, each rescuer equipped with an oxygen tank and mask. Because the supply of air in the tanks was limited, each team could search only a small part of the massive labyrinth of passageways before being forced to come out and be relieved by another team. Their progress was slow since the overwhelming force of the blast had littered the floor of the mine with tangled debris.

The blast had twisted rail lines "like pretzels" and it had exploded machinery and hurled their parts over the floor of the mine. Huge boulders and rocks had been thrown everywhere. The first team found a dead miner, and the teams that followed them throughout the evening continued to find more bodies.

By 2:00 AM, the bodies found by the rescue teams brought the death toll to 25. Although four miners were still unaccounted for, the rescue effort was forced to stop at 2:30 AM. The levels of methane, an explosive gas, and carbon monoxide, a toxic gas, were increasing inside the mine, making it too dangerous for the rescuers to continue. Workers would have to drill holes to ventilate the mine and rid it of the dangerous gases before rescuers could enter again. The drilling got underway around 4:00 PM on Tuesday afternoon. Families of the missing miners hoped that the miners had managed to make their way into one of the mine's "refuge chambers," small emergency rooms equipped with food, water, and enough oxygen to last about 90 hours. There were two refuge chambers in the area of the explosion.³

By Wednesday morning, the drillers had broken through into the mine and started pumping out the methane, but it was not until the next day, Thursday morning, that rescue teams were allowed to enter the mine again. They were forced to stop four hours later because air samples showed the mine was still saturated with methane. Another team tried to enter the mine on Friday morning, but was again forced to come out when rising smoke levels indicated fires were still burning somewhere inside the mine. Nevertheless, the second team had reached one of the refuge chambers. It was empty. Meanwhile, workers had been pumping nitrogen into the mine through the drill holes hoping to neutralize the explosive gas and dust. That afternoon, when rescuers were once again cleared to enter the mine they headed for the second refuge chamber. No one was in the chamber; instead, the rescuers found the lifeless bodies of the four missing men lying in the tunnels. Altogether, 29 miners were killed in the worst mining disaster in forty years. The question on everybody's mind was what had caused the deadly explosion inside the Upper Big Branch Mine.

From the first day after the explosion, newspapers had been reporting that Massey Energy mines in general, and the Upper Big Branch Mine in particular, had been cited thousands of times for safety violations by the U.S. Mine Safety and Health Administration (MSHA), an agency of the federal government charged with overseeing employee safety in the mining industry. In fact, the Upper Big Branch

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Mine had been cited more than 50 times for safety violations during the previous month alone, and many of Massey Energy's other coal mines had equally poor safety records.⁴

Massey Energy Company was founded in 1920 in Richmond, Virginia as a coal brokering business. The company acquired its first coal mine in 1945. In 1981, the company was acquired by Fluor Corporation, and with its backing, the mining business rapidly grew. In 1992, Don Blankenship, who had joined the company in 1982, was appointed Chairman and CEO of Massey. In 2000, he oversaw Massey's transformation into an independent company when it split off from Fluor Corporation's non coal-related businesses. Over the next several years, the company continued to grow and by 2010, it was annually producing about 40 million tons of low-sulfur bituminous coal in 42 underground mines and 14 surface mines scattered throughout West Virginia, Kentucky, and Virginia. Massey processed and distributed the coal through 22 processing and shipping centers. The company had 5,851 employees, and in 2009 it had net profits of \$104 million on total revenues of \$2.7 billion.⁵

Under the leadership of CEO Don Blankenship, the company's operations had aroused considerable controversy, much of it related to their impact on the environment. In 1984, when Blankenship was president of Rawl, a subsidiary of Massey Energy Company, he was faced with the problem of disposing of the millions of gallons of coal slurry the mines were producing. Coal slurry is a watery mud that runs off as coal is washed to remove its impurities. The slurry carries with it several toxic substances commonly found in coal, such as arsenic, lead, and cadmium. Blankenship came up with the idea of disposing of the slurry by piping it deep into abandoned coal mines. But there were cracks running through the walls and floors of the mines, and apparently the toxics in the slurry leaked through the cracks and ended up contaminating the underground aquifer that fed the wells from which the surrounding communities drew their drinking water. The company was forced to pay \$3.5 million in fines for the environmental disaster it had created. Then, in 2000 the dam of a small lake filled with coal slurry collapsed, sending 250 million gallons of toxic slurry flooding through Kentucky's rivers, leaving behind over 100 miles of contaminated waterways and destroying the drinking water sources of surrounding towns. That same year, two of its other coal mines had to pay fines for contaminating West Virginia's waterways. In 2006, the company paid additional fines of \$1.4 million to settle five environmental lawsuits and 14 environmental enforcement actions. In 2008, the company paid another \$20 million to settle a government lawsuit charging the company with 4,000 violations of the Clean Water Act.⁶

But in 2010, most of the criticisms leveled against Massey Energy Company focused on the company's lack of attention to employee safety. In the days following the

Upper Big Branch Mine explosion, in fact, Massey was repeatedly accused of having the worst safety record in the industry. The average number of worker injuries in U.S. mines is 4.03 injuries per 200,000 miners. Yet, ten of Massey Energy's underground coal mines, including the Upper Big Branch coal mine, had accident injury rates ranging between 4.49 and 9.78 injuries per 200,000 workers. Not only did these mines have more injuries than the national average, but at least four had more than twice the national average.⁷ Rick Melberth, director of OMB Watch, a regulatory watchdog group, pointed out that Massey and its Upper Big Branch mine were unusually lax in the area of worker safety. "There are huge mines out there that produce a lot more coal, have a lot more hours worked and can operate without violations," he said.⁸

This was not the first time that Massey Energy's safety problems were accused of having led to the loss of lives. In January 2006, a fire had erupted in a Massey coal mine in Logan County, West Virginia and two miners were killed. A state investigation concluded that the deadly fire was due to several safety violations that the company had failed to correct. One was a failure to fix a conveyor belt that caught fire, another was allowing the accumulation of combustible materials that had fed the fire, another was the absence of carbon monoxide monitors that could have alerted the miners to the fire, another was the absence of required fire extinguishers, and another was improper ventilation controls. A few months before the 2006 fire, CEO Blankenship had written a memo suggesting managers should concentrate on producing coal and not waste time responding to requests to fix things: "If any of you have been asked by your group presidents, your supervisors, engineers, or anyone else to do anything other than run coal... you need to ignore them and run coal. This memo is necessary only because we seem not to understand that the coal pays the bills." In 2009, the company paid \$4.2 million in criminal and civil penalties to settle federal charges that the company had willfully violated federal safety standards and that those violations were responsible for the two miners' deaths.⁹

Safety violations had plagued the Upper Big Branch Mine for some time. A year before the 2010 explosion, the mine had been cited eight times for "substantial" violations related to its methane monitors. Regulations required that the mine have methane monitors to warn of any dangerous buildup of methane gas. Methane gas is an odorless gas that gathers in the seams of coal deposits, and it is common for the gas to leak out and accumulate in coal mines, creating a deadly risk since methane is highly flammable and explosive. The mine's operator was supposed to calibrate the methane monitors in the tunnels at least once a month to ensure they were in working order and capable of accurately sensing when the gas had reached dangerous levels. But twice, federal inspectors had found that Massey

was calibrating its methane monitors only once every three months creating a risk that the monitors might not be able to properly detect dangerous levels of methane. Federal regulators also found that the company was not ventilating the mine properly. Ventilation prevents accumulations of methane gas, as well as of coal dust which, like methane, is combustible and can add to an explosion. The inspectors had forced the company to temporarily stop work in some sections of the mine until the ventilation problems had been corrected. While it was not clear exactly what had ignited the explosion of April 5, it was almost certain that it was caused by accumulations of methane and coal dust.

Those were not the only safety issues at the mine. The month before the explosion, the U.S. Mine Safety and Health Administration (MSHA) had cited the Upper Big Branch mine for a total of 50 safety violations, 12 of which were related to problems with ventilation of the mine that should have prevented the accumulation of methane gas and coal dust.¹⁰ Since the start of the year inspectors had issued 68 citations for violations they termed "high negligence" and three of "reckless" disregard. In addition to poor ventilation of coal dust and methane gas, the mine had also been cited for failure to maintain proper escape ways, failure to control dust, inadequate protection from roof falls, and for allowing combustible materials to accumulate in the mine. Since 2005, MSHA had cited the mine for a total of 1,342 safety violations, and levied \$7.6 million in proposed fines against Massey Energy. The company, however, had contested 422 of those violations.¹¹ Challenging MSHA citations allowed the company to delay paying the fines for years. Of the more than \$7.6 million in fines that had been pending since 2005 against Massey Energy, the company had only paid \$2.3 million by 2010.

At the center of the storm of criticism that engulfed the company after the mine explosion was CEO Blankenship who had been paid \$11.8 million in salary, bonuses, and other benefits in 2008. The families of several miners accused him of putting profits ahead of safety. Born in 1950, Blankenship grew up in Stopover, Kentucky, a poor village made up mostly of shacks and trailer homes. His mother divorced his father shortly after he was born, and Blankenship ended up being raised by his mother. A childhood friend of his said "He was a very competitive kid—he didn't like to fail... He was always trying to figure out what he could get away with." In high school, Blankenship played baseball and was elected president of his class. When he graduated, he enrolled in Marshall University in Huntington, where he majored in accounting and managed to graduate within three years. Afterwards, he worked as an accountant for the Keebler Company, married and had two children. Then, in 1982, the Massey Energy Company contacted Blankenship and offered him a job in one of its subsidiaries, named Rawl. He accepted the offer and two years later, he was named president of Rawl. Blankenship

continued his rise up the company's ranks until, in 1992, he was named CEO and chair of the entire company.

Families of the dead miners accused Blankenship of "always cutting corners on safety, pushing for more coal."¹² Blankenship vehemently denied this:

From the day I became a member of Massey's leadership team 20 years ago, I have made safety my number one priority... The result has been a 90 percent reduction in our lost time accident rate, which has been better—often dramatically better—than the industry average for 17 of the last 19 years. So let me state for the record—Massey does not place profits over safety. We never have, and we never will.¹³

While Blankenship acknowledged that Massey had received a large number of safety citations, this was not unusual, he said, for a coal company:

Violations are unfortunately a normal part of the mining process... There are violations at every coal mine in America, and Upper Big Branch was a mine that had violations... I think the fact that MSHA, the state, and our fire bosses and the best engineers that you can find were all in and around this mine, and all believed it to be safe in the circumstances it was in, speaks for itself as far as any suspicion that the mine was improperly operated.¹⁴

And, in a startling move, Blankenship also suggested that MSHA itself might have been responsible for the deaths of the 29 miners:

Against the advice of our own experts, MSHA required several changes since September 2009 that made the ventilation plan significantly more complex. This change in ventilation significantly reduced the volume of fresh air to the face of the longwall mining operation during this period... We opposed the changes because our own engineers believed they made the mine less safe, not because they were more costly or because they interfered with production.¹⁵

During congressional hearings, however, survivors of the explosion and relatives of those who had died testified that conditions in the mine were not always up to standards, and that the miners felt too threatened to raise objections. One survivor, Stanley Stewart, testified:

My name is Stanley Stewart. Most people know me as "Goose." I have worked in coal mines for

34 years and at the Upper Big Branch mine for 15 of those years. I worked at the Upper Big Branch mine until the day of the accident and was 300 feet underground the day the explosion occurred.... The area of the mine we were working was liberating [releasing] a lot of methane. Mine management never fully addressed the air problem when it would be shut down by inspectors. They would fix it just good enough to get us to load coal again, but then it would be back to business as usual.... My experience in the mines showed me that the ventilation system they had didn't work. And with so much methane being liberated, and no air moving it gave me the feeling that area was a ticking time bomb. I was told prior to the April 5th explosion, that they had experienced at least 2 fireballs [small flare-ups of methane] on the drum of the shearer. This leads me to believe the methane was indeed building in that area, showing lack of air and ventilation problems.... No one felt they could go to management and express their fears or the lack of air on our sections. We knew that we'd be marked men and the management would look for ways to fire us. Maybe not that day, or that week, but somewhere down the line, we'd disappear. We'd seen it happen and I told my wife, I felt like I was working for the Gestapo at times.¹⁶

A relative of one of the dead miners said:

My name is Alice Peters and I am the mother-in-law of Edward Dean Jones. Dean was killed in the explosion on April 5th at the Upper Big Branch mine. Dean was married to my daughter, Gina, and they have one son, Kyle. Kyle suffers from cystic fibrosis and has medical problems that require constant medical care.... Dean told me many times that he had concerns about the ventilation at the Upper Big Branch mine. He often told me and his wife that he was afraid to go to work because the conditions at the mine were so bad. He also told me that, at least 7 times, he was told by Massey supervisors that, if he shut down production because of the ventilation problems (bad air), he would lose his job. They knew about his son and that Dean needed to keep his job to make sure his son could get the medical care he needed.¹⁷

The relative of another of the miners who had been killed testified:

My name is Leo Long. I had a grandson that was killed in the Upper Big Branch mine at Massey. You know, he stayed with me for years and years.

I put him through school, he graduated, went to work. I seen him every day, every night. After he got married, he moved right beside of me and I'd see him when he'd come in of an evening from work from the mines.... And he told me something [about]... the methane. He said that the company had a way to bridge [the wiring of the methane monitors on] the continuous miner [a machine that continuously digs for coal] to keep it working [even] if the methane got so [high], when the methane gets so high, it [the monitor] is supposed to shut everything down. But Massey had a way to keep the continuous miner working, bringing coal out. Money come before the men did. You was only a number.¹⁸

But while many people blamed the company for the deaths of the miners, some critics also faulted MSHA, the federal agency that was supposed to protect miners. For one thing, the agency was understaffed and its inspectors were overworked. In addition, a government audit of the agency released the week before the mine explosion said that more than half of the agency's inspectors failed to attend required training courses and the agency neither kept track of their attendance nor did it sanction them.

Critics also pointed out that regulations passed in 2007 hampered MSHA's ability to sanction mining companies. Mining companies, Massey Energy in particular, regularly challenged the citations of MSHA inspectors, a process that required MSHA to submit the challenge to a panel of judges called the Federal Mine Safety and Health Review Commission (MSHRC). But because MSHRC did not have enough judges to review the challenges in a timely fashion, years often passed before companies were forced to address the citations.¹⁹

Although MSHA had the authority to close down a mine if the mine had a substantial number of citations, it had not been able to close the Upper Big Branch mine.²⁰ On December 6, 2007, MSHA had sent a letter to Rick Hodge, superintendent of the Upper Big Branch mine, stating that the mine had accumulated so many violations that it would be closed down if it received any more "Significant and Substantial" violations. The letter read:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 and 30CFR Part 104, the Mine Safety and Health Administration has conducted a pattern of violation (POV) screening of compliance records for the Upper Big Branch Mine... for the 24 months ending September 30, 2007. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent

violations designated as Significant and Substantial be issued as closure orders with all persons withdrawn from the affected area, except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no Significant and Substantial violations. This letter is your notification that a potential pattern of violation exists at the Upper Big Branch Mine.²¹

After receiving the letter, however, officials of Massey Energy challenged several of the citations on which it was based, and corrected enough of the significant and substantial violations it had received during the previous 24 months, to allow its total violations to fall below the level needed to force its closure. Consequently, although MSHA had frequently closed down sections of the mine when it demanded the company remedy a particular ventilation problem, it never forced the entire mine to shut down in order to force it to make significant changes.

In October 2009, MSHA had again reviewed the citations the Upper Big Branch mine had received. But, regulators later discovered, the computer program that processed the review had an error within it. According to Secretary of Labor Hilda L. Solis, "Had the error in the computer program been corrected, the mine could have been placed into potential pattern of violation status in October of 2009." But the error was not corrected until after the 29 miners were killed in the explosion.²²

Cecil Roberts, President of the United Mine Workers of America (UMWA), the largest miners' union in the United States, focused the union's criticisms on Massey and connected its lack of union representation with its poor record of mine safety. A union, he felt, would have fought for better enforcement of safety regulations to protect the miners. But CEO Blankenship was aggressively anti-union. In 1996, he had convinced the company to leave the collective bargaining agreements with the UMWA that all the other major coal companies had accepted. That same year Blankenship had to testify in a federal lawsuit during which he said that "No [coal] operator in their right mind would go union."²³ At his urging, the company gradually phased out and closed down any mines that had earlier been unionized. By 2009, only 76 out of the company's 5,851 workers were still unionized. The company had fought particularly hard to make sure that the Upper Big Branch mine was not unionized. When the UMWA mounted a drive to unionize the workers at the mine, the company threatened to close the mine if its workers unionized, and in 1997 they narrowly voted down the union. During the congressional hearings on the

mine disaster, several miners testified on the difference a union might have made:

My name is Gary Quarles. I am the father of Gary Wayne Quarles who was killed as a result of the explosion at the Upper Big Branch mine on April 5, 2010. Gary Wayne was my only son and my best friend. . . . I also am a coal miner. . . . I worked in union mines for 23 years and have worked in non-union mines the rest of the time. . . . Safety inspections were much different in the union mines I've worked at versus the non-union Massey mines. When an MSHA inspector comes onto a Massey mine property, the code words go out "we've got a man on the property." Those words are radioed from the guard gates and relayed to all working operations in the mine. . . . When the word goes out, all effort is made to correct any deficiencies or direct the inspector's attention away from any deficiencies. . . . When I worked at union mines, workers at the mine would accompany the MSHA inspectors during their inspections. . . . When the MSHA inspector comes to a Massey mine, the only people accompanying him are Massey company people. No coal miner at the mine can point out areas of concern to the MSHA inspector. . . . The Upper Big Branch mine was clearly not safe and as a result 29 miners died, including my son. Someone needs to be held responsible for these deaths.²⁴

Other miners pointed out that in unionized mines, miners do not have to enter areas that are unsafe:

My name is Eddie Cook. I'm Adam Morgan's uncle. Adam was 21 [when] the explosion took him away from us. I worked at Cleveland Cliffs Pinnacle mine [which is] union. . . . As a union person, we have the right to refuse to do work we think is unsafe. Non-union mines, you don't have that. You don't have the right to refuse. If you refuse, they tell you to "get your bucket and go home," you know. "If you don't want to work here, we've got people out on the street wanting your jobs. And if you don't like the way we run it, you can go home."²⁵

Stanley Stewart made a similar point:

I worked close to 20 years in the union and 15 years non-union so I've been on both sides of the fence long enough to know the difference in how miners feel in both types of working

environments. In the union if you had safety concerns you had the right to refuse to work in unsafe conditions without fear of your job. You felt at ease and comforted by your rights. Working at a non-union mine you do not feel that comfort. You know you have to operate with a lack of air or in unsafe conditions.²⁶

On June 15, 2010, investigative teams exploring the mine discovered a large crack in the floor of the mine. Speaking for his company, Blankenship said that the crack may have allowed methane to leak into the tunnel before the explosion on April 5, which would then have been an unforeseeable and unpreventable event. Blankenship also released a letter that MSHA had written to the company on July 15, 2004, in which MSHA noted that the mine had been subject to several methane "outbursts." He claimed that the memo showed that the mine should have had a ventilation system that provided more air than normal to compensate for the periodic increases of methane, yet, he also claimed, MSHA had mandated a ventilation system that provided less air than normal.²⁷ On July 22, 2010, investigators announced that an examination of data from the mine's primary ventilation exhaust fan had found that on the day of the accident a sudden and large surge of methane gas had occurred within the mine. The mysterious release of gas was so large, experts said, that it could have rapidly filled a large part of the mine's interior.²⁸ Investigators also found near the bodies of some of the miners who had been killed, a portable handheld methane monitor that showed methane levels in the area had gone from zero to 5 percent in 3 minutes. Methane gas is not explosive until it reaches concentrations of 5 percent to 15 percent.²⁹ It was unclear whether there was any connection between the crack in the mine's floor and the surge of methane gas, and between either of these and the explosion on April 5.

On Friday, December 3, 2010, Massey Energy Company announced that at the end of the year, Blankenship would step down from his position as CEO and Chair of the company. It was not clear whether the company's board of directors had asked him to resign or he had decided to do so on his own. In a statement Blankenship said only, "After almost three decades at Massey, it's time for me to move on."

Questions

1. In your judgment, and given only the facts described in the case above, should the management of Massey Energy Company be held morally responsible for the deaths of the 29 miners? Explain your answer.
2. Suppose nothing more is learned about the explosion other than what is described in the case above. Do you

think Don Blankenship should be held morally responsible for the deaths of the 29 miners?

3. Given only the facts described in the case above, should the MSHA be held morally responsible (at least in part) for the deaths of the 29 miners?
4. The miners seem to have had some idea of the risks of working in the Upper Big Branch Mine. Should they be held at least partially responsible for their own deaths?
5. In light of the differences between mines without unions like the Massey mines, and other mines that had unions, do you think all mines should be forced to have a union?
6. Miners in the Upper Big Branch mine were paid about \$60,000 a year (in some cases less, and in other cases more, depending on seniority and several other factors) for work that required no more than a high school education. The average salary for all jobs in the United States is about \$43,000. In light of the chapter's discussion of job risks, would you say that the company was handling job risk in an ethically appropriate manner?
7. List all the ethical obligations that you believe the management of Massey Energy Company did NOT fulfill. Explain the ethical basis of each of the obligations on your list.

Notes

1. Michael A. Fuoco, "A Timeline of Events at the Upper Big Branch Mine," *Pittsburgh Post-Gazette*, April 7, 2010.
2. *The Upper Big Branch Mine Tragedy*, Field Hearing Before the Committee on Education and Labor, U.S. House Of Representatives, One Hundred Eleventh Congress, Second Session; Hearing Held In Beckley, WV, May 24, 2010, Serial No. 111-65, (Washington, DC: U.S. Government Printing Office, 2010), p. 34.
3. Michelle James, "A Timeline Look at the Upper Big Branch Mine Disaster," *The Register Herald*, April 11, 2010.
4. Phil Mattera, "Massey Energy," *Crocodyl, Collaborative Research on Corporations*, April 12, 2010, accessed January 17, 2011 at http://www.crocodyl.org/wiki/massey_energy.
5. Phil Mattera, "Massey Energy," April 12, 2010.
6. Ibid.
7. *National Public Radio* (NPR), April 12, 2010, "Massey Energy's Other High-Injury Mines," accessed at <http://www.npr.org/templates/story/story.php?storyId=125864564>.
8. Peter Overby, "Documents Reveal Extensive Violations at Mine," *National Public Radio*, April 9, 2010, accessed January 20, 2011 at <http://www.npr.org/templates/story/story.php?storyId=125788709&ps=rs>.
9. Christopher Maag, "Unacceptable Risk: The Real Price of Coal Mining," *Popular Mechanics*, August 23, 2010.
10. Steven Mufson, Jerry Markon, and Ed O'Keefe, "West Virginia Mine Has Been Cited for Myriad Safety Violations," *The Washington Post* April 7, 2010.