

Upper Big Branch Mine Explosion and the Federal Response

How will federal actions ultimately impact West Virginia's coal mining industry?

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This is a part one in a series discussing the UBB mine explosion, the federal response and potential federal response and the possible impact on the West Virginia coal industry. There has already been a considerable federal response in the short time since the accident but there will likely be much stronger and aggressive action by the federal government. This installment will provide a brief factual background discussing the UBB accident and will summarize the ensuing federal action. [Download the white paper here.](#)

On April 5, 2010, at 3:27 p.m., there was an explosion at Massey Energy's UBB underground mine located in Montcoal, Raleigh County, West Virginia. Twenty-nine miners were killed in the explosion that occurred about 1,000 feet underground. It was the worst mine accident in the U.S. in 40 years.

On April 26, 2010, Massey Energy released a letter to its stakeholders. The letter indicated the UBB mine itself is out of operation and its unclear when it will resume production. Also, the letter mentioned Government and company inspection teams will investigate the scene. There are three teams of investigators working to determine the cause of the accident. These teams represent the U.S. Mine Safety and Health Administration (MSHA), the State of West Virginia, and Massey Energy.

On May 6, 2010, Senator Robert Byrd proposed legislation that would force companies to disclose safety and health information to their shareholders. The legislation requires publicly traded companies operating in high-risk environments — places like coal mines and oil rigs — to submit occupational safety information to the Securities and Exchange Commission (SEC) or face financial penalties. The legislation outlines four categories of safety information the companies would have to disclose:

1. Pending litigation regarding health and safety;
2. Significant health or safety conditions at risky workplaces, which may cause the corporation to incur damages arising from wrongful deaths;
3. Significant health or safety conditions that may impact financial conditions or operating results within the corporation; and
4. Trends in health and safety violations that may affect the relationship between costs and revenues of a corporation.

Also, Senator Jay Rockefeller, is the lead co-sponsor of the Byrd's legislation. On the same day, Senator Rockefeller introduced a separate but similar piece of legislation, which would apply the new safety disclosure rules only to mining companies. Rockefeller's legislation has Byrd as the lead co-sponsor. Both Senators are pushing for greater disclosure of safety issues by publicly traded companies for the purpose of greater transparency.

On May 13, 2010, the U.S. Senate added \$22 million to the supplemental budget bill to clear the backlog of over 16,000 mine safety appeals. Subsequently, the supplemental budget bill passed the Senate

Appropriations Committee. Included in the funding package was \$18.2 million for the solicitor's office at MSHA and \$3.8 million for the review commission. The funds will be used to hire government staff for the purpose of clearing the backlog of appeals.

On May 14, 2010, the U.S. Department of Justice (DOJ) through the U.S. Attorney's Office for the Southern District of West Virginia sent a letter to the U.S. Secretary of Labor. The letter confirms the DOJ is currently conducting a criminal investigation of violations that occurred at UBB. Additionally, the letter requests MSHA petition the designated Administrative Law Judge (ALJ) for a stay of the pending civil administrative actions pertaining to UBB until the criminal matters are resolved.

On May 20, 2010, the Senate Appropriations Subcommittee on Labor, Health, Human Services, Education and Related Agencies held a mine safety hearing on Capitol Hill. The hearing was entitled "Investing in Mine Safety: Preventing Another Disaster". The hearing included appearances by Don Blankenship, Chairman and CEO Massey Energy Company, Cecil Roberts, International President of the United Mine Workers Association (UMWA), and Joseph Main, the Assistant Secretary of Labor For Mine Safety and Health. The witnesses answered questions from the Senators regarding the UBB accident and general mine safety issues. Also on May 20, 2010, the U.S. House of Representatives passed House Resolution 1363. The resolution permits the Committee on Education and Labor to issue subpoenas and take depositions to investigate underground coal mining safety and related matters to the UBB explosion.

On May 24, 2010, the House Committee on Education and Labor held a hearing at the Beckley-Raleigh County Convention Center at 9 a.m. The hearing included testimony from West Virginia Governor Joe Manchin and relatives of four of the twenty-nine men who died as a result of the UBB explosion. The Committee's authority to investigate coal mining issues will expire in January of 2011. Also on May 24, 2010, Senator Rockefeller sent a letter to the President detailing mine safety reform suggestions made by the witnesses at the hearing.

With regard to comprehensive federal legislation, the 2006 Miner Act strengthening federal mine safety laws was a response to the January 2, 2006 Sago mine disaster that killed thirteen miners. Congress is considering actions that will further strengthen federal mine safety laws in response to the UBB accident. Some of the mine safety issues where Congress is considering reform are listed below:

1. Making it easier for regulators to place a mine on a "pattern of violation";
2. Higher penalty assessments;
3. Greater subpoena authority for MSHA;
4. Stronger criminal penalties for violators;
5. Enhanced whistleblower protection;
6. Greater injunctive relief power;
7. Revising definitions for significant & substantial and unwarrantable failure;
8. Stronger Contractor Safety requirements; and
9. Federal licensing to exclude particular mine safety violators from participating in the mining industry.

While some mine safety reforms may pass in a piecemeal fashion this year, the general view is a larger mine legislative package won't be fully considered until the next Congress. Congressional legislation on the agenda this year includes but is not limited to the oil spill in the Gulf of Mexico, financial reform, cap & trade, immigration, and the appointment of a new Supreme Court Justice. Also, because this is an election year many members of Congress will likely focus much of their time and effort on campaign activities rather than official office issues.

Many mine safety experts agree, MSHA presently has broad powers including most of the powers that are being discussed for new legislation. The most prudent course of action is for Congress to await the UBB investigation's findings and move forward with reforms to address the cause of this accident. The federal

government's actions responding to the UBB accident are an uncertain moving target. What is certain, is there will continue to be actions undertaken by Washington in response to the accident. Its too early to know how these federal actions will ultimately impact West Virginia's coal mining industry.

Stay tuned — we will update you periodically to account for new developments.