



### Prosecutions

#### **\$10.8 Million Fine for Mining Company**

*[International]*

Operators of Upper Big Branch Mine whom valued profits above safety and could have 'entirely' prevented 29 deaths in a West Virginia mine explosion last year, said federal officials who announced a \$209.5 million settlement agreement recently in addition to a \$10.8 million fine.

The settlement includes \$46.5 million that will be paid to the families of the victims of the explosion that occurred 5 April 2010.

The fine is the largest ever imposed by the Mine Safety and Health Administration.

"I feel uncomfortable talking about money in front of the families because money doesn't bring anybody back ... but it's part of the system," Kevin Stricklin, the agency's administrator of coal, said at a news conference in Beaver, W.Va. "It's part of the system, but looking into the faces [of the miners' relatives], it isn't enough for what's occurred."

The fines are the maximum allowable under agency guidelines and five times more than the largest previous fine imposed by MSHA.

The agency found 369 violations of law, including 12 that were found to have contributed to the explosion. However, the settlement prevents federal prosecutors from filing criminal charges against Massey Energy, which operated the mine, or Alpha Natural Resources, which acquired it in June. The settlement does not preclude charges against individual employees such as former CEO Don Blankenship and others who cited their constitutional protection against self-incrimination as reason to refuse to speak with agency investigators.

The Mine Safety and Health Administration does not recommend criminal charges but is expected to turn over its findings to prosecutors.

"The commitment of health and safety must extend to all mine officials and company officials. Those that instill and condone a dangerous culture must be held accountable for their actions or inactions," Mr. Stricklin told reporters.

United Mine Workers of America International agreed, saying the report reinforces the need for company managers to be held accountable for the "exceedingly dangerous conditions" that they knew about but did nothing to improve.

"Until someone goes to jail for what happened at this mine, justice will not have been done," union president Cecil E. Roberts said. Mr. Blankenship's attorney, William W. Taylor, declined to comment.

A federal jury in West Virginia did convict one Upper Big Branch employee, Hughie Stover, in October of making a false statement and obstructing justice. Mr. Stover, who was security chief at the mine, is seeking a new trial. A second employee, mine foreman Thomas Harrah, pleaded guilty in October to making false statements and was sentenced to 10 months in prison.

Officials from Alpha did not respond to a request for comment. A statement posted on the company website said the agreement "represents the best path forward for everyone." It also said that the company's sympathies are with the miners' families, that executives are pleased a substantial portion of the settlement will be used to make mines safer and that Alpha is working with consultants to improve the culture and empower employees to improve workplace safety.



## HEALTH & SAFETY NEWS

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In their report, federal investigators revealed a companywide culture of deception and intimidation that allowed health and safety problems to fester. They found the company failed to fix known problems, allowed coal dust to build up for months, failed to properly ventilate mines, hid problems from federal inspectors, aggressively challenged citations and kept two sets of books: one with accurate records of hazardous conditions and another to show to inspectors.

Massey employees testified that the company had used intimidation to keep them from reporting problems and retaliated against those who did by assigning them to overnight shifts or threatening to fire them.

Investigators found that in the weeks leading up to the April 2010 disaster, Massey conducted no required methane testing in an area of the mine where a longwall mining machine sparked and ignited coal dust, which triggered the violent explosion.

Ultimately 29 died in five separate areas of the mine and two others were seriously injured. Two crews -- 13 men -- were ending their shifts and about to exit the mine on mantrips. Some victims had to be carried 1.5 miles out of the mine.

In compiling the report, which includes a detailed narrative of the rescue effort, the agency interviewed 269 people, reviewed 88,000 pages of documents and tested thousands of pieces of physical evidence. Several witnesses refused to testify, citing Fifth Amendment rights.

Meanwhile, the restitution portion of the settlement -- \$1.5 million per family -- brought little comfort to relatives of the miners.

Mr. Peters blames Massey for his son-in-law's death, but he holds federal mine officials more culpable. They're the ones, he said, who let Massey keep operating despite inspectors' findings of dangerous violations.

Mine industry experts say they hope the report sends a message to other mine operators who make production a top priority at the expense of safety.

"My hope is that the industry will take heed," said J. Davitt McAteer, who headed up an investigation of the mine disaster commission by then W.Va. Gov. Joe Manchin.

Mr. McAteer said the amount of the fine and the fact the settlement does not preclude federal prosecutors from bringing criminal charges against former Massey officials "suggests that this is a serious settlement that in fact gets the attention of the coal industry."

In addition to making payments to the families, Alpha agreed to invest in safety improvements at all of its mines and to fund academic and non-profit research into mine safety. The safety measures include requirements to install digital monitoring services, properly staff mines, purchase rock dusting equipment and add a training program.

"Collectively, these requirements will set a new standard for what can and should be done to protect miners," U.S. Attorney R. Booth Goodwin II of West Virginia said Tuesday. "For too long we've accepted the idea that catastrophic accidents are an inherent risk of being a coal miner. It's long past time we put that myth to rest. We believe this agreement does that."

Bruce Stanley, the Pittsburgh attorney who represented the families of two miners killed in a 2006 fire at Massey's Aracoma mine in West Virginia, said Tuesday's settlement addresses shortcomings in the Aracoma disaster settlement.

"We certainly hope that the lesson of making deals with the devil has been learned, that the criminal investigation makes its way into the boardroom as well as the guard shack, and that Alpha chooses a different path than its predecessor," Mr. Stanley said.

"I'm really pleased there's no get out of jail free card," he said.

### Shisha Cafe Owner told to Pay Fine

**A shisha cafe owner has been ordered to pay more than £2,000 after people were discovered smoking in an enclosed area at his premises.**

Ryiaz Patel (33), who co-owns Vanilla Pod, in Uppingham Road, Leicester, was convicted by city magistrates for breaking anti-smoking laws.

Under regulations smoking is only permitted at premises in open air sections.

Caroline Gutteridge, prosecuting for Leicester City Council, said the authority had been tipped off by a member of the public that shisha was being smoked in an upstairs room.

Three plain-clothed city wardens then visited the business on 11 March around 11pm and asked if they could smoke.

She said: "They were told to wait about 30 minutes and were then shown to an upstairs room where they ordered shisha, food and drink."

Two council health and safety officers waiting outside entered the cafe, identified themselves and were taken upstairs by Patel's Leeds-based partner. Mrs Gutteridge said: "They found 20 people smoking shisha pipes in two areas."

Patel, of Kitchener Road, North Evington, who was not in court, gave no explanation although his fellow-proprietor claimed the people involved were friends or family.

**He was convicted of being a person controlling or managing smoke-free premises and failing to cause a person from smoking there** on March 11 this year.

He was fined £1,000, ordered to pay £1,000 costs and a £15 victims of crime surcharge.

Patel's business partner Mohammed Hafejee was dealt with in a separate hearing. He admitted the same charge and received the same penalty.

### Council Fined £20k following CO<sub>2</sub> Leak

Newcastle-under-Lyme Borough Council has been fined for endangering people's health after carbon monoxide leaked from a gas boiler at a community centre.

The Health and Safety Executive (HSE) prosecuted the local authority after members of a bridge club using the Westlands Community Centre in Whitfield Avenue called the fire service to deal with a suspected gas leak.

Fenton Magistrates' Court heard fire fighters found extremely high levels of carbon monoxide escaping from the flue in the loft and evacuated the building.

Sections of the flue had come apart and the potentially lethal gas had built up and started to flow through an open trapdoor into a storeroom off the main hall.

HSE's investigation into the incident revealed that the contract for maintenance and annual safety checks of all gas appliances in the 38 properties owned by the council, including nine households, had lapsed 12 months previously.

The court also heard that the 30-year-old boiler at Westlands Community Centre had not been checked for nearly two years before the incident on 30 March 2009.

Newcastle Borough Council, of Civic Centre, Merrial Street, Newcastle-under-Lyme, pleaded guilty today to breaching Section 3(1) of the Health and Safety at Work etc Act 1974 and Regulation 5 of the Management of Health and Safety at Work Regulations 1999. It was fined £20,000 and ordered to pay £25,550 costs.

Speaking after the hearing, HSE inspector Lynne Boulton said:

"Every year, about 20 people die from carbon monoxide poisoning, invariably due to gas appliances not being properly serviced and checked for safety. Many more become ill with long-term health problems.

"This incident could have had much more serious consequences, particularly as elderly people and children, who are more vulnerable to the effects of this dangerous gas, use the centre regularly.

"All property owners must make sure their gas appliances are checked each year by a Gas Safe registered engineer.

"Organisations such as local authorities, which own a large number of properties, must have robust management systems in place to monitor safety critical contracts.

"It is unacceptable that members of the public were put at risk by Newcastle-under-Lyme Borough Council's failure to take proper measures to protect them."

### **Plumber Given Community Service for Putting People's Lives at Risk**

An Ipswich plumber who put lives at risk by illegally working on gas appliances has been awarded 100 hours of community service. Andrew Davies, 44, of Tower Mill Road, Ipswich, admitted breaching safety regulations when he appeared at Ipswich Magistrates' Court recently.

A joint investigation by environmental health officers from Ipswich Borough Council and Gas Safe found Mr Davies carried out work on gas fittings and appliances at the Kwan Thai restaurant in Saint Nicholas Street, Ipswich in July 2010 without being registered to do so, a legal requirement for carrying out such work. **Mr Davies falsely issued the restaurant owners with a safety record bearing an invalid registration number.**

The piece of work carried out by Mr Davies at the restaurant was judged by a qualified engineer to be so dangerous it represented "an immediate danger to life or property." The Health and Safety Executive (HSE) served a Prohibition Notice on Mr Davies on 9 March 2011 which stopped him from carrying out any further gas work until such time as he obtained registration from GasSafe.

Mr Davies pleaded guilty to breaching Section 3 (2) of the Health and Safety at Work etc Act 1974 and Regulation 3 (3) of the Gas Safety (Installation & Use) Regulations 1998. Along with 100 hours of community service, he was ordered to pay £3,527.50 costs.

HSE Inspector Ivan Brooke said, "It is against the law for anyone who is not registered with Gas Safe to carry out work on a gas appliance. When unqualified workers try to bypass the law in this way they are not only putting themselves at risk of prosecution, and potentially a large fine or a spell in prison - they are also putting their customers' lives at risk.

"Working with gas appliances is difficult, specialised and potentially very dangerous. Only engineers who are qualified and registered should attempt it. "HSE will not hesitate to prosecute those who break the law in this way." Paul Johnston, Chief Executive of Gas Safe Register added, "If you're employing an engineer to fit, fix or service gas appliances, you should always make sure that person is Gas Safe registered. If they say they are, don't just take their word for it. Check they are on the Gas Safe Register and check their ID card when they arrive at your door.

"You shouldn't take any risks, badly fitted and poorly serviced gas appliances can cause fires, explosions, gas leaks and carbon monoxide poisoning."

### News

#### Enforcement of H&S Standards

Companies should be better equipped at enforcing health and safety standards such as warning signs, a specialist has insisted.

The Lofstedt Review has highlighted that it is not health and safety law that has led to needless restrictions, rather it is people's inability to implement the measures in a proportionate, risk-assessed manner.

Roger Bibbings, occupational safety advisor at RoSPA, said: "Basically, we have goal-setting health and safety law in the UK, which requires people to think, rather than just obey blanket rules. Lofstedt should help promote a culture change."

Mr Bibbings added that the review underlined the costs of work related health damage, which are still soaring up to £20 billion in the UK each year.

This news comes after the independent secure shredding firm Russell Richardson gained the SAFEcontractor accreditation, expressing its excellent health and safety practices.

#### Unite Welcomes Northern Ireland's Asbestos Decision

The union Unite has called for an end to the situation of English and Welsh citizens being denied the right to claim compensation for an asbestos related condition, when the citizens of Northern Ireland and Scotland can.

Unite has welcomed the Northern Ireland Executive's announcement (made on 6 December) that people suffering from the asbestos-related lung condition pleural plaques will be able to seek compensation from 14 December 2011.

The right to sue for compensation for pleural plaques – a scarring of the lining of the lungs caused by asbestos – was ended on 17 October 2007 when the House of Lords ruled in favour of insurers in a test case. But the ruling has been overturned in Scotland and now Northern Ireland by their devolved governments.

Similar legislation in Scotland was the subject of a long-running challenge initiated by insurers, which went before the UK Supreme Court. On 12 October this year, the Supreme Court rejected the insurers' claims that the legislation infringed their human rights and was outside the competence of the Scottish Parliament.

Unite's director of legal services Howard Beckett said: "It is great news that our members in Scotland and now Northern Ireland can be compensated for developing the asbestos related condition, pleural plaques.

"However, workers in England and Wales are left in the cold and have no rights to claim compensation for being exposed to asbestos due to the negligence of their employers. This segregation must end.

"It is time the Government woke up to the fact that exposure to asbestos is a serious health and safety issue, and only by the fear of litigation can the excesses of irresponsible employers be prevented."

The decision by the House of Lords in 2007 meant the end to an established right to compensation, which existed for 20 years, for pleural plaques, which are in almost every case caused by workers being exposed to asbestos due to negligence of their employers.

Pleural plaques seldom causes immediate symptoms but are associated with an increased risk of developing fatal conditions like mesothelioma or asbestosis. In the past claimants could receive compensation worth up to £15,000.

### Flexible Working on the Rise

Seven in ten UK managers think that the old idea of '9 to 5' working is dying out in favour of more flexible working arrangements, according to a new survey commissioned by Vodafone.

Among these, nine out of ten say they now allow their staff to work flexibly to some extent, rather than expecting them to stick rigidly to traditional working hours.

Bosses revealed themselves to be relatively open-minded about when and how work is done. Six out of ten managers (63%) said that they did not mind staff doing personal things like calling family members or checking their social networking accounts, as long as they get their work done. However, respondents drew the line at staff doing their weekly shop online from work, which around two-thirds (64%) took exception to.

The research found that things work both ways and two-thirds of managers (65%) ask their employees to work outside of traditional office hours, at least occasionally and more so in the private sector.

Peter Kelly, enterprise director at Vodafone UK, said: "What this research shows is that a cultural shift has started. For many people in the UK, the way we work is changing. Britain's bosses are realising that successful businesses must focus on generating results, not on monitoring what employees do at their desks.

He added: "A new generation of workers is coming through the ranks. They prefer fitting work around their lives rather than the other way around. People don't mind doing some work in the evening or at the weekend, but in return, they expect bosses to cut them some slack so they can see to personal chores."

### Cold Weather Preparations

Transport Secretary Justine Greening has announced a £16m investment in third rail heating as part of a £38m programme to make sure the rail network is better prepared for severe bad weather this winter.

One of the lessons learnt after three successive severe winters was the need to increase the resilience of the railway to heavy snow, particularly on routes relying on the third rail.

The Government is funding an extensive rolling programme to install third rail heating being carried out by Network Rail across London and the South East.

The programme, part of the infrastructure improvements plan announced in the Chancellor's Autumn Statement, will cover 116,000m of track and cover 421 sites where trains require most traction across the Kent, Sussex and Wessex routes.

To ensure that we go into this winter better prepared, equipment has already been installed at about 85% of the locations and is due to be in place at the remaining sites by January 2012.

The Transport Secretary also published today a cross-Government research study examining options for strengthening winter resilience against a backdrop of recent winter travel disruption that has cost businesses and individuals around £280m a day. The review, which involved Chief Economists and Chief Scientists at DfT, DECC and DEFRA, examined the case for greater investment in a variety of different measures to enhance future winter resilience.

The report shows that we have got the balance of investment in winter preparedness broadly correct.

But it found scope to do more in a number of areas, including boosting rail network resilience and showing there was a good case to introduce third rail heating south of London, where weather disruption was greatest last year due to dependence on third rail train power.

Justine Greening also announced that she had asked the UK Roads Board to explore further measures to make better use of salt, equipment and infrastructure to keep local highways open and safe during severe winter weather. She will also look at the case for increased investment in the Met Office's super-computing capacity that could ultimately provide improved information on the likelihood and impact of severe weather and support better long-term planning.

Justine Greening visited a rail depot in Tonbridge today to see some of the winter preparations that the rail industry is putting in place and met managers from Southeastern and Network Rail. Apart from the third rail improvements, Network Rail is expanding its fleet of snow clearance and ice treatment trains to a total of 20 and the rail sector is improving its communications with passengers.

Justine Greening said:

"Severe cold weather will always cause some disruption but the Government has worked with our industry partners to minimise the impact on passengers and businesses in future. Both airports and the railway are much better prepared than in the past and our current salt stock in Britain is over 2.7m tonnes. Today I am announcing £16m of investment in our rail infrastructure to help keep trains moving in snow and ice.

"But I'm also asking the industry to raise its game and communicate better with passengers in severe weather. However much resilience train operators have built in, when problems do occur it's a lack of information that makes delays so frustrating and makes it more difficult for passengers to plan their journeys."

The Secretary of State has in recent weeks seen for herself some of the improvements to winter resilience this year, at Heathrow Airport and Felixstowe Port, for example. Yesterday the Regional Cabinet in Ipswich also discussed plans for winter preparedness this year.

## Guidance

### **Assessing and managing flood risk in development. Code of practice (BS 8533:2011)**

BS 8533 gives recommendations and guidance on the appropriate assessment and management of flood risk where development is proposed in the UK.

It is intended to provide developers, and decision makers (local authorities and regulators), with practical assistance for dealing with flood risk in and around their development.

BS 8533 has been created to help the user to analyse flood risk and to guide the selection of appropriate risk management solutions. The stage at which this guide is intended for use is after initial planning considerations pertaining to the development of the site have been applied, including the Sequential Test within England and the Justification Test within Wales, and after the need to carry out a flood risk assessment (referred to as a flood consequence assessment within Wales) has been established.

BS 8533 has been developed to bring together flood risk management guidance issued by the government and devolved administrations within the UK and to provide the user with recommendations that can help them to amass information for a planning application. Where applicable, this standard makes reference to the appropriate planning policies and guidance as correct at the time of publication.

This standard is intended to complement the following national planning policies and guidance for development and flood risk management in the UK:

- Planning Policy Statement (PPS) 25 – Development and flood risk (England) supported by the PPS 25 Development and flood risk practice guide
- Planning Policy Statement (PPS) 15 – Planning and flood risk (Northern Ireland)
- Scottish Planning Policy (SPP) (Scotland)
- Technical Advice Note (TAN) 15: Development and flood risk (Wales).

Contents for BS 8533 includes:

- assessing the risk of flooding
- managing the risk of flooding.

## Reports

### Occupational Safety and Health Culture Assessment

Occupational safety and health culture ('OSH culture') can be seen as a concept for exploring how informal organisational aspects influence OSH in a positive or negative way. The aim is to convey up-to-date information on this complex topic in a straightforward, condensed way, trying to build a bridge between research and practice. The main approaches and methods that exist to assess the safety culture in an organisation are presented and discussed. This review, published by the European Agency (EU-OSHA), gives an overview and selection of useful tools and techniques from the EU domain and abroad.

The first section outlines the concept of OSH culture. As the EU-OSHA aims to address work-related safety and health issues as one joint matter, the term of 'OSH culture' is used in this report. However, research has for the most part focused on cultural aspects linked to process and occupational safety (safety culture and safety climate). Conversely, the topic of organisational health culture has received less attention from research. Different research traditions recognise the mutual interaction between organisational culture and health.

The main approaches and methods that exist to assess the safety culture in an organisation are also presented and discussed.

Generally, three assessment approaches can be distinguished in this regard: the academic, analytical and pragmatic approach. These distinct strategies provide a different way of looking at and assessing an organisation's safety culture and each comprise specific methods and instruments. The most appropriate approach(es) that can be used in a particular organisation or situation are discussed, as is how the assessment outcomes can be used. Not one single approach or technique is suitable for understanding and exploring safety culture. Rather, a holistic and multi-method approach should be taken towards measuring safety culture. The three approaches should thus be regarded as complementary. A safety climate questionnaire survey can, for instance, result in some (quantitative) outcomes, which should then be further checked and explored by means of interviews with managers and workers.

There exist many tools for exploring and assessing an organisation's safety culture. It is therefore useful to know what they can be used for, their potentials and limitations, and their pros and cons. This review gives an overview and selection of useful tools and techniques from the EU domain and abroad. Many of the available safety culture assessment tools are 'commercial' products, provided by OSH institutions and consultants.

The conclusions section summarises the main findings and most important messages with regard to the assessment of the occupational safety (and health) culture in organisations. It addresses how a cultural diagnosis should be practically approached.

It is noted that addressing and diagnosing an organisation's safety culture implies a tailored approach, taking into account the local context. It is recommended to combine several methods and tools during the assessment process. Taking a tailored triangulation approach towards safety culture provides the best chance of success.

The diagnosis of an organisation's safety culture requires a close collaboration between the organisation's internal resources and outside expertise. So one important consideration is to determine which actions can be covered internally, and to what extent external consultancy and support is needed.

The conclusions section also discusses briefly whether occupational safety and occupational health could be jointly approached from a cultural perspective. Another issue that is addressed is whether the use of safety culture assessment tools is really relevant for many SMEs - particularly for the smaller and micro enterprises outside the high-risk industries. Finally, the feasibility of developing a standard European tool for OSH culture assessment is discussed.

### School Trips - Government Response

The Science and Technology Select Committee published a report of its inquiry into practical experiments in school science lessons and science field trips on 14 September 2011. The report focused on what schools need to do, with encouragement from Government, to overcome the perceived and real barriers to providing high quality practicals, fieldwork and fieldtrips as part of the science education they deliver.

This document sets out the Government's response to the eighteen conclusions and recommendations made in the Committee's report.

Amongst its conclusions, the Select Committee found no convincing evidence that health and safety legislation itself prevents science practicals or field trips.

The Government welcomes this finding and also acknowledges the Report's conclusion that health and safety concerns and the amount of paperwork can influence the level of practical work and the number of field trips. The Government has taken steps to address these issues.

It is stressed that teachers should be confident that they know best how to look after pupils and keep them safe.

Department for Education advice on health and safety law as it affects schools summarises the existing health and safety law relevant to schools and explains how it affects local authorities, governing bodies, head teachers and other school staff. It covers activities that take place on or off school premises, including school trips. Furthermore, the Department for Education is also working with the Department for Work and Pensions on its review of health and safety legislation.

In view of the recommendation that 'the Government work to establish a central repository or facility (or network of such facilities with a common interface) which will contain details and guidance on standard experiments. This facility should provide access, for member schools, to any CLEAPSS provided health and safety guidance for those experiments', the Government believes that teachers should be free to decide which standard experiments they use in the classroom, including the resources they draw upon to help them do so. Support is available from a number of authoritative organisations. The network of science learning centres, which the Government is funding, provides courses on practical experiments such as the CLEAPSS Practical skills and Techniques in Chemistry course for technicians and teachers. Organisations such as the Institute of Physics, the Royal Society of Chemistry, the Society of Biology, SCORE and the National STEM Centre provide details and guidance on practical experiments, including health and safety guidance that can be used in the classroom and school science laboratories.

### **Hazards Arising from the Conveyance and Use of Gas from Non-Conventional Sources**

All gas transported and used has to comply with the Gas Safety (Management) Regulations [GS(M)R] and this raises questions with regard to the suitability of the non-conventional source (NCS) gas within the network and the possible additional hazards that may result over and above those associated with natural gas.

The HSE commissioned a study to review the available data on NCS gas composition to support assessment of hazards and risks associated with the introduction of NCS gas into pipeline networks.

The report covers the following aspects:

- collation of data on composition for a range of NCS gas types and sources, including both bulk gas components and contaminants
- summary of NCS gas clean-up processes and their performance with regard to removal of contaminants
- impact of NCS gas composition on network materials, combustion/utilisation equipment and emissions.

It is noted that the majority of compounds found in NCS gas are similar to those found in natural gas and thus pose no greater risk to the integrity of the pipeline and downstream equipment, however, siloxanes, high levels of oxygen and highly odiferous compounds need further study.