Mine Operator Escaped Extra Oversight After Warning

By MICHAEL COOPER and IAN URBINA
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The operator of the West Virginia mine that exploded on Monday, killing at least 25 people, was warned by federal officials just over two years ago that it could be cited for having a “pattern of violations,” which would have allowed far stricter federal oversight of the mine. But the mine escaped the stepped-up enforcement even though it continued to amass violations, federal records show.

The mine, known as the Upper Big Branch and operated by the Massey Energy Company, was warned that it had a “potential pattern of violations” in a Dec. 6, 2007, letter from the Mine Safety and Health Administration. The letter noted that the mine had received 204 violations that were deemed serious and significant over the previous two years, well above average.

But six months later, the safety agency announced that the Upper Big Branch mine, and 19 others that were warned that December, had all instituted plans to fix their problems, and had received fewer violations. They all escaped the added oversight, which would have allowed the federal government to close down the mines every time they found a significant violation.

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After the violations went down, they more than doubled the following year. Newly released federal inspection records show that the mine had recently been given warnings for accumulation of flammable coal dust and ventilation problems.

Since the start of 2009, the records show, the mine had at least 50 notices of problems that Massey knew existed but failed to correct. At least four of those concerned violations of a rule that requires the mine operator to follow an approved ventilation plan. Massey officials declined comment on the records.

Some mine experts said that the failure to declare a pattern of violations was a missed opportunity. Tony Oppegard, a former mine agency official who is now a lawyer and mine safety advocate in Kentucky, said that he believed the warning letters helped the coal
industry avoid oversight.

Officials of the mine safety agency said that they were bound by the current regulations, which require them to issue warning letters, and that if companies successfully reduce their rate of violations by 30 percent, they are not to be found to have a pattern of violations. The officials added that before this week’s explosion they were considering tightening the regulations.

Companies can escape the added oversight even if they continue to be worse than the national average. The warning letter to the Upper Big Branch mine, for instance, said that the mine had been issued serious violations at a rate nearly twice the national average over the previous two years. Three months later the mine cut the rate to just above the national average, enough of a reduction to avoid being labeled a pattern of violations.

In a March 25, 2008, letter that found that a pattern of violations did not exist at the mine, the agency wrote "congratulations on your achievements."

Even without establishing a pattern, though, the officials could still pull workers and machinery out of the mine if they found problems. The government issued 63 such “withdrawal” orders in 2009 and 2010, according to the safety agency.

In Washington, the White House said that President Obama would meet next week with Labor Department officials to discuss the cause of Monday’s explosion and efforts by the federal government to beef up mine safety enforcement.

Emergency crews continued Thursday drilling holes more than 1,000 feet deep through rock and dirt to ventilate the mine. Four teams of eight rescuers made it within 500 feet of an airtight shelter where state officials hoped some of the miners were, but they were pulled back after roughly five hours when monitors indicated dangerous levels of methane and carbon dioxide.

As some families held out hope that their loved ones were still alive, others have moved fully into the grieving process. The funerals for at least five miners are scheduled for either Friday or Saturday. According to obituaries in The Beckley Register-Herald those miners are: Carl Calvin Acord, Robert Clark, Steve Harrah, Deward Scott and Benny R. Willingham. Massey officials said they would pay for those funerals, and for the services of the other miners who died in the explosion.

Michael Cooper reported from New York, and Ian Urbina from Montcoal, W.Va. Bernie Becker contributed reporting from Montcoal.
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