

NON-PROSECUTION AGREEMENT

1. This Non-Prosecution Agreement (the “Agreement”), dated December 6, 2011, is entered into by the United States Attorney’s Office for the Southern District of West Virginia (the “Office”), the United States Department of Justice (“DOJ”), Alpha Natural Resources, Inc. (“Alpha”), and Alpha Appalachia Holdings, Inc., formerly known as Massey Energy Company (hereinafter “Massey”). This Agreement arises from the ongoing criminal investigation conducted by the Office of the explosion at Performance Coal Company’s Upper Big Branch Mine (“UBB”) on April 5, 2010, and the conduct of employees of Performance Coal Company and its parent, Massey, and its affiliates regarding violations of the Mine Act, misleading statements regarding health and safety issues, conduct that impeded the work of the United States Department of Labor (“DOL”), including the Mine Safety and Health Administration (“MSHA”), and related issues.

2. This Agreement is binding on Alpha and Massey, and is binding on the Office, DOJ, and the United States Attorney’s Offices for each of the other ninety-three judicial districts (collectively, the “Government”). This Agreement does not provide any protection against criminal prosecution of or the initiation of civil proceedings against any individuals, including any individual that was, prior to June 1, 2011, an officer, employee, director, shareholder, agent or consultant of Massey or its affiliates.

3. The Government enters into this Agreement based, in part, on the following factors: (a) Alpha’s acquisition of Massey on June 1, 2011, over one year after the explosion at UBB; (b) Alpha’s investigation and extensive cooperation with the Government since June 1, 2011, including – but not limited to – Alpha’s voluntary and timely reporting of relevant information; (c) Alpha’s extensive remedial efforts as detailed below; (d) Alpha’s agreement to make a substantial financial investment in additional remedial measures; (e) Alpha’s agreement to pay funds into a trust that will be established to fund projects designed to improve mine health and safety in order to redress the harm that is a subject of the Government’s investigation as described herein; (f) Alpha’s resolution of the MSHA civil proceedings described in paragraph 7 of this Agreement and in Appendix A and Appendix B; and (g) Alpha’s agreement to provide restitution to each of the families of the fallen miners and two individuals affected by the UBB explosion.

4. Since acquiring Massey on June 1, 2011, Alpha has made extensive remedial efforts to improve health and safety at legacy Massey operations. Those efforts include:

- a) Alpha has implemented its behavior-based safety culture and accompanying training program known as “Running Right” at all legacy Massey operations. Alpha has conducted 239 Running Right training sessions for 7,434 legacy Massey employees, constituting 63,189 training man hours, since June 1, 2011. The principles of Running Right also include ethical and compliance features that are incorporated in leadership training. Alpha has conducted 25 leadership training sessions for 450 supervisors, constituting 3,825 training man hours, since June 1, 2011.

- b) Alpha has conducted safety skills training for its certified examiners, including supervisors of legacy Massey operations. Since June 1, 2011, over 1,000 certified examiners have been trained.
- c) Alpha has conducted compliance training, including, but not limited to, training concerning respirable dust standards, 30 C.F.R. Part 50 accident reporting, hazard reporting, and rock dust surveying and accumulated coal dust reporting and cleanup. Since June 1, 2011, over 1,000 certified examiners, including supervisors at legacy Massey operations, have been trained.
- d) Alpha has begun conducting emergency response training, including command center training for mine foremen, superintendents, safety staff, and management at all of its business units.
- e) Alpha has reviewed the mine plans for all legacy Massey operations. Alpha's technical services support team has modeled and surveyed key legacy Massey mines to improve safety and operational design on an as-needed basis.
- f) Alpha has conducted ventilation surveying and modeling at fourteen legacy Massey mines that have been identified as priority sites.
- g) Alpha has purchased thirteen coal dust explosibility meters to conduct real-time rock dust testing at each of its business units with underground mines.
- h) Alpha has participated in the development of next-generation foam-based rock dusting equipment, including extensive testing, at its mine sites.
- i) Alpha has substantially integrated Massey's Mine Emergency Plan ("MEP") into Alpha's MEP.

5. Alpha will, for not less than two years following the date of the execution of this Agreement, implement a number of remedial safety measures, as set forth below, with respect to any entities and operations, including legacy Massey operations, that it continues, directly or indirectly, to own and control. Alpha will invest at least \$80,000,000 in safety remedial measures, including the measures set forth below, during the two years following the date of the execution of this Agreement.

- a) Alpha will install sensors to monitor airflow quantity, airflow direction, and methane levels in the intake and return air courses for every working section in its underground mines.
- b) Alpha will implement a plan within 90 days from the execution of this Agreement to ensure that each of its underground mines has the personnel and resources necessary to meet all legal requirements relating to incombustible material and to prevent accumulations of coal dust and loose coal. Alpha will conduct mine site training for coal dust accumulation, cleanup, and reporting requirements for all underground workers in an annual safety training session dedicated to those topics.

- c) Alpha will construct and launch a new state-of-the-art safety training facility in the Julian, West Virginia area. This facility will include a mine lab of approximately 96,000 square feet in which simulated mine situations and conditions will be presented to certified supervisors and examiners to solve and correct; simulators for training on underground and surface equipment; facilities and equipment for electrical and maintenance skills training; and facilities and equipment for supervisory leadership skills training. Alpha will employ a full-time staff sufficient to operate the training facility and will develop curricula in at least the following areas: technical skills, operator skills, supervisory skills, various certifications, safety compliance, and professional skills. Once constructed, the facility will be used by Alpha, and will be available to other mining firms interested in improving safety at their own operations. The training facility will be operational no later than the second quarter of 2013.
- d) Alpha will purchase an additional twenty coal dust explosibility meters to conduct real-time sampling at multiple locations at each underground mine. Alpha will conduct sampling using the meters at least quarterly at each of its underground operations. Prior to the adoption of the meters, Alpha will conduct rock dust band sampling at least quarterly at each of its underground operations.
- e) Alpha will continue to participate in the research and development of next-generation foam-based rock dusting equipment. Upon MSHA's approval of use of the equipment, Alpha will implement the use of the equipment at all of the underground mines where use of that equipment is feasible.
- f) Alpha will purchase, install, and test thirty advanced oxygen cascading systems for mine escape to supplement the Self-Contained Self-Rescuers that are the current industry standard. Alpha will conduct testing of these systems at three test sites. Following this testing, Alpha will prioritize installation of oxygen cascading systems at Alpha's high-seam mines.
- g) Alpha will conduct safety compliance visits at each of its underground mines at least once every six months. During each visit, a safety compliance team will inspect, at minimum, the condition of each working section, the level of incombustible material in selected intake and return entries, compliance with mine plans, and the accuracy of examination books. After each safety compliance visit, the head of the safety compliance team will prepare and certify a report of all violations and hazardous conditions identified during the visit. The report will be provided to the mine's superintendent (or acting superintendent) within one week after the visit. Within one week after receiving the report, the mine's superintendent (or acting superintendent) will prepare and certify a report of actions taken to correct the violations and hazardous conditions identified during the visit. If the correction cannot be completed within the week, a plan with timeline for correction will be included. The reports of the safety compliance team and the mine superintendent (or acting superintendent) will be included in the periodic reports provided to the Office.

- h) Alpha's technical services support team will continue modeling and surveying legacy Massey mines to improve safety and operational design on an as-needed basis. Alpha will revise and resubmit any mine plans that it determines are inadequate to ensure health and safety.
- i) Alpha will provide regular Running Right training for supervisors; regular Running Right training for all other mine site employees; at least 8 hours of annual safety skills training for its certified examiners; at least 8 hours of annual skilled observations training for mine site personnel; at least 6 hours of annual compliance training, including, but not limited to, training concerning respirable dust standards, 30 C.F.R. Part 50 accident reporting, and hazard reporting for its certified examiners; and will conduct emergency response training, including command center training and Mock Emergency Response Drills ("MERDs") at its business units, with all underground business units receiving at least one command center training exercise in the two-year period and at least one MERD conducted in each region during the two-year period.
- j) Alpha will provide certain engineering and safety staff with annual technical services training on mine plan development and updates.
- k) Alpha will provide managers with training on countersigning examination books and the prohibition on advance notice of mine inspections.
- l) Alpha will continue to integrate Massey's MEP into Alpha's MEP. Alpha will also expand its catastrophic risk analysis and mitigation planning at former Massey operations.
- m) Alpha will continue to implement a series of ethics and compliance enhancements across the company.
- n) If any of the remedial measures described in subparagraphs (a) to (m) above become infeasible or impractical, Alpha will propose alternative measures of comparable value and/or efficacy to the Office for approval, which will not be unreasonably withheld.

6. Alpha agrees to establish a trust within 120 days from the date of the execution of this Agreement to fund projects designed to improve mine health and safety. During the two-year period commencing on the date of this Agreement, Alpha will pay a total of \$48,000,000 into the trust, and those monies will be used solely to fund research and development projects by qualified academic institutions, not-for-profit entities, or individuals associated with either of those types of entities designed to improve mine health and safety, in order to redress the harm that is a subject of the Government's investigation as described herein. The trust will be administered by three highly qualified individuals with academic and/or professional backgrounds in mine health and safety. Alpha will submit the names of potential trust administrators to the Office for approval.

7. Alpha agrees to resolve certain MSHA proceedings and investigations as set forth in the agreement between MSHA and Alpha attached as Appendix A as follows:

- a) Alpha agrees to withdraw, or cause its affiliates to withdraw, its contest of (i) the citations and/or orders in the civil proceedings, and (ii) the proposed assessments in the civil proceedings, all as described in Appendix B. Upon approval of the withdrawal of each such contest by the applicable Administrative Law Judge, Alpha will agree to pay for each citation, order, and proposed assessment as described in Appendix B, a total of up to \$20,230,000.
- b) Alpha agrees that it will not contest any citation or order issued to legacy Massey companies, as specified in footnote 2 of Appendix A, as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011, that has not been assessed as of December 6, 2011. Alpha will agree to pay for each citation or order that has been issued to such legacy Massey companies, as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011, but not yet assessed as of December 6, 2011, a total of \$1,250,000, within 30 days of the execution of this Agreement.
- c) Alpha agrees that it will not contest, or will cause its affiliates not to contest, any citation or order issued by MSHA on December 6, 2011, in connection with the investigation of the UBB explosion, and which are not referenced in Appendix B, and will pay in full proposed penalties of \$10,828,191 for all such citations within 30 days of the execution of this Agreement.
- d) Alpha will agree to pay up to a total of \$2,500,000 to resolve all MSHA citations and orders that have become final orders of the Federal Mine Safety and Health Review Commission, that have been issued to legacy Massey companies, as specified in footnote 2 of Appendix A, as a result of conditions which existed or conduct which occurred prior to or on June 1, 2011, within 30 days of the execution of this Agreement.

8. As restitution for the victims injured in the UBB explosion, Alpha agrees to pay, or to cause Massey or its affiliates to pay, at least \$1,500,000 to each of the families of the fallen miners and to two individuals affected by the UBB explosion. The total restitution payment shall be \$46,500,000, of which (a) \$16,500,000 was previously or anticipated to be paid as part of settlements with the families of eleven of the fallen miners in the actions in Appendix C; and (b) \$30,000,000 will be paid to the families of the fallen miners and two individuals affected by the UBB explosion in the actions in Appendix D who have not resolved their claims, consisting of payment to each of (i) \$500,000 to be paid within 15 days of the execution of this Agreement, and (ii) \$1,000,000 which will be payable at the time of the resolution of pending civil claims through settlement, judgment, or otherwise, and as part of such civil resolution to the extent the civil resolution results in a monetary recovery. Alpha will make the payment described in subparagraph (b) above into a fund established to pay those families of the fallen miners and the individuals.

9. Until the date upon which all investigations and prosecutions conducted by the Government against any individuals that arise out of the conduct described in this Agreement are concluded, Alpha and Massey shall: (a) cooperate fully with the Office, DOJ, the Federal Bureau of Investigation, DOL, including MSHA and the DOL Office of Inspector General, and any other law enforcement agency designated by the Office and DOJ; (b) use their best efforts to promptly secure the attendance and truthful statements or testimony of any officer, agent, or employee of Massey or Alpha at any meeting or interview or before the grand jury or at any judicial proceeding related to the conduct described in this Agreement; (c) bring to the attention of the Office and DOJ all criminal conduct by employees of Massey that is related to the conduct described in this Agreement and comes to the attention of Massey, Alpha, or their senior management; and (d) provide the Government, upon request, all non-privileged information, documents, records, or other tangible evidence about which the Government or any designated law enforcement agency inquires in connection with any investigation or matter related to the conduct described in this Agreement. Nothing in this Agreement shall be construed as a waiver by Alpha or Massey of the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection with respect to documents or records requested by the Government.

10. For a two-year period commencing on the date of the execution of this Agreement, Alpha will report its compliance with this Agreement to the Office at no less than six-month intervals. Each report to the Office will detail Alpha's compliance with this Agreement, will provide a current list of financial expenditures made in connection with this Agreement, and will provide any other non-privileged information requested by the Office. Alpha will certify in its reports that it is in compliance with its 30 C.F.R. Part 48 requirements. Alpha will also provide any other non-privileged information or records with respect to compliance with this Agreement requested by the Office at other times.

11. In consideration for Alpha's and Massey's entering into this Agreement and their commitment to perform the duties and obligations set forth herein, the Government agrees not to criminally prosecute or bring any civil action against Massey, any predecessor or successor of Massey, its current parent, or any of its current or previous direct or indirect affiliates, related to: (a) any conduct attributable to Massey or its affiliates set forth in the Superseding Indictment filed in *United States v. Hughie Elbert Stover*, 5:11 Cr. 00038 (S.D. W. Va.), and in *United States v. Thomas Harrah*, 5:11 Cr. 00082 (S.D. W. Va.); (b) any conduct attributable to Massey or its affiliates that is subject to the settlement of the MSHA civil proceedings described herein and in Appendix A and Appendix B; (c) any conduct undertaken by employees of Massey or its affiliates attributable to Massey or its affiliates on or before the date of the execution of this Agreement to the extent known or disclosed to the Government as of the date of this Agreement, or that was a subject of investigation by the Government that led to this Agreement; and (d) any conduct undertaken by employees of Massey or its affiliates on or before the date of this Agreement that Alpha discovers during its continuing investigation and is promptly disclosed to the Government, provided that such conduct is similar in nature and order of magnitude (as determined by the Government in its reasonable discretion) to the conduct disclosed to the Government as of the date of this Agreement.

12. The parties agree that if, in the two-year period commencing on the date of the execution of this Agreement, the Government determines that Alpha or Massey has: (a) given false or misleading testimony or information in connection with this Agreement, the disclosures that led to this Agreement, or the performance of this Agreement; or (b) otherwise materially violated any provision of this Agreement, Massey shall thereafter be subject to prosecution for any violation of which the Government has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the execution of this Agreement may be commenced against Massey. In addition, Massey agrees to toll, and to exclude from any calculation of time, the running of the statute of limitations for any conduct that is the subject of this Agreement for a two-year period commencing on the date of the execution of this Agreement. By this Agreement, Alpha and Massey expressly intend to and hereby do waive any right to make a claim with respect to any such prosecution premised upon the statute of limitations, as well as any other claim with respect to such prosecution premised on pre-indictment delay.

13. The parties agree that if, in the two-year period commencing on the date of the execution of this Agreement, the Government determines that Alpha or Massey has: (a) given false or misleading testimony or information in connection with this Agreement, the disclosures that led to this Agreement, or the performance of this Agreement; or (b) otherwise violated any provision of this Agreement, the Government shall provide written notice to Alpha of that determination and provide Alpha with a 30-day period following such notice within which Alpha may make a presentation to the Government to demonstrate that no violation occurred, or, to the extent applicable, that any violation should not result in the exercise of certain remedies. Thereafter, the Government shall provide written notice to Alpha of its final determination regarding whether Massey has: (a) given false or misleading testimony or information in connection with this Agreement, the disclosures that led to this Agreement, or the performance of this Agreement; or (b) otherwise violated any provision of this Agreement. The parties agree that the Government's final determination will not be subject to review in any judicial proceeding.

14. The parties agree that if, in the two-year period following the date of the execution of this Agreement, the Government determines that Alpha or Massey has: (a) given false or misleading testimony or information in connection with this Agreement, the disclosures that led to this Agreement, or the performance of this Agreement; or (b) otherwise violated any provision of this Agreement, then: (i) all statements made by Massey to the Government or other designated law enforcement agents and any testimony given by Massey before a grand jury or other tribunal, whether prior or subsequent to the execution of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against Massey; and (ii) Massey and Alpha shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed or otherwise excluded from evidence. By signing this Agreement, Massey and Alpha knowingly and voluntarily waive all rights in the foregoing respects.

15. Nothing in this Agreement and no action taken by Alpha, any of its affiliates, or any individual pursuant to this Agreement will be deemed to constitute any admission by Alpha,

any of its affiliates, or any individual of civil liability under any local, state or federal statute or any principle of common law.

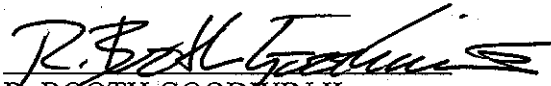
16. The parties agree that exclusive jurisdiction and venue for any dispute arising under this Agreement is in the United States District Court for the Southern District of West Virginia.

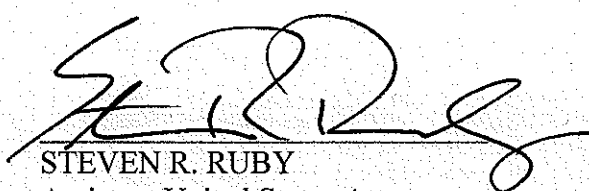
17. The parties agree that this Agreement may be disclosed to the public.

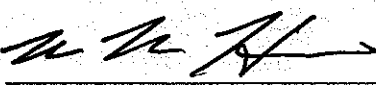
18. From the date of the execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, agreements, promises, and/or conditions between the parties hereto. No additional understandings, agreements, promises, or conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

19. The undersigned representative of Alpha and Alpha Appalachia Holdings, Inc. warrants and represents to the Government that he possesses the authority to enter into this Agreement.

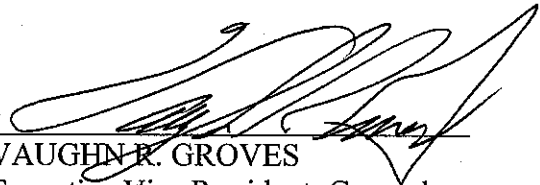
ON BEHALF OF THE GOVERNMENT:

 12/6/11
R. BOOTH GOODWIN II DATE
United States Attorney

 12/6/11
STEVEN R. RUBY DATE
Assistant United States Attorney

 12/6/11
MICHAEL B. HISSAM DATE
Assistant United States Attorney

ON BEHALF OF ALPHA NATURAL RESOURCES, INC.:




VAUGHN R. GROVES
Executive Vice President, General
Counsel and Secretary

12-6-11

DATE

ON BEHALF OF ALPHA APPALACHIA HOLDINGS, INC.,
formerly known as Massey Energy Co.:

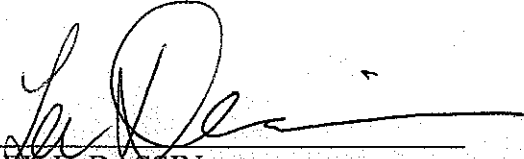


VAUGHN R. GROVES
Executive Vice President, General
Counsel and Secretary

12-6-11

DATE

APPROVED:



LEX L. DASSIN
Cleary Gottlieb Steen & Hamilton LLP
Attorneys for Alpha Natural Resources, Inc.
and Alpha Appalachia Holdings, Inc.

12/6/11

DATE