A federal district judge on Wednesday sentenced Don Blankenship, the former Chief Executive of Massey Energy, to serve one year in federal prison–the maximum term allowed by law–and to personally pay a criminal penalty of $250,000 for Blankenship's acts of omission and commission that led to the notorious 2010 coal mining disaster at Massey's Upper Big Branch Mine in West Virginia. That mine explosion killed 29 Massey-employed miners, and represented the worst American mining disaster in 40 years.

AP File Photo. Massey Energy Co. chief executive Don Blankenship testifies in May 2010 at the U.S. Senate's Health and Human Services subcommittee hearing on mine safety, just a few weeks after 29 miners died at the Massey-operated Upper Big Branch Mine, in Raleigh County.

CEO Blankenship's federal sentencing follows a December 2015 jury verdict that found Blankenship conspired to willfully violate federal mining safety standards. That verdict reportedly represents the first time in U.S. history that a CEO of a major American corporation has been criminally convicted of workplace safety violations. Blankenship similarly has the dubious distinction of being the first corporate leader sentenced to be sentences to a prison term for his crime. That same federal jury, however, acquitted Blankenship of charges that he committed federal securities fraud and made false statements to U.S. mining officials.

The 2010 Upper Big Branch Mine disaster resulted from an underground coal dust explosion that killed 29 of 31 Massey Energy miners working in the mine on April 5, 2010.

Following an extensive investigation, federal regulators with the Mine Safety and Health Administration concluded that the company's flagrant pattern of safety violations contributed to the explosion. The feds therefore issued 369 civil citations and imposed $10.8 million in civil penalties against Massey Energy. An independent investigative team castigated Massey for multiple failures to meet basic mine safety standards required under the Federal Mine Safety and Health Act, enacted by Congress in 1977. It reported, "A company that was a towering presence in the Appalachian coal fields operated its mines in a profoundly reckless manner, and 29 coal miners paid with their lives for the corporate risk taking." Among the specific

deficiencies, charged mine regulators after-the-fact, were inadequate ventilation of the mine (thus allowing explosive methane and other gasses to accumulate) and the company's failure to adequately maintain underground safety chambers that could have sheltered the miners from the explosion that killed them.

Tellingly, the federal investigative report castigated both Massey corporate officers and West Virginia government officials: it charged that Massey used its corporate influence and funding "to attempt to control West Virginia's political system," and that state and local politicians were intimidated by Massey because of its "willing[ness] to spend vast amounts of money to influence [West Virginia] elections.

It turns out that Massey had been cited for a host of prior mine safety violations *before* the 2010 disaster. A year earlier, the company was fined $382,000 for "serious" safety violations, including lacking adequate ventilation systems in its mines. Indeed, the day before the accident, the Upper Big Branch South Mine was hit with two safety citations, and had received a whopping 515 citations for safety violations in the preceding year. Federal investigators noted that a significant fraction of those earlier citations were categorized by mine safety officials as "unwarrantable failure to comply" with established safety standards, indicating willful or gross negligence.

JIM WORKMAN / The State Journal.

Given this pattern of egregious and illegal conduct, I would argue that both the company and CEO Blankenship amply deserved the criminal and civil sanctions imposed upon them. But what larger environmental–and workplace safety–lessons can be learned from this sorry episode and the prosecutorial response?

First, the fact remains that criminal enforcement of environmental and workplace safety laws is tough, for several reasons: first, the prosecutor's burden of proof–"beyond a reasonable doubt," rather than the "preponderance of the evidence" standard applicable in civil enforcement actions–is a formidable one. Even in extreme cases, it's often difficult for prosecutors to secure criminal convictions in environmental and workplace safety cases. (As noted above, Massey CEO Blankenship was acquitted of some of the criminal offenses with which he was charged under federal law.) Second, too many prosecutors, judges and juries still don't see these types of cases as involving "real crime," preferring to focus criminal

prosecutorial energies on more conventional criminal offenses like murder, rape and robbery. Finally, the fact remains that a company can't be incarcerated for its crimes.

Nevertheless, the Blankenship criminal conviction and sentence send an important message. When I supervised environmental enforcement efforts on behalf of the State of California, I believed–and still believe–that criminal laws should be invoked in criminal cases more often than they currently are. To be sure, the pursuit of criminal sanctions should be reserved for the most extreme environmental violations. But in cases like the Upper Big Branch Mine disaster–and the pattern of corporate illegality the tragedy ultimately revealed–the filing of criminal charges was eminently proper. And make no mistake: Blankenship's criminal conviction and imprisonment will send a strong message to corporate boardrooms across the nation, and not just to Big Coal. One of the key objectives of environmental enforcement is the deterrent effect it provides with respect to the regulated community generally. We can only hope that the now-tangible threat of criminal sanctions and imprisonment for corrupt corporate managers will deter future disasters of the type visited upon the doomed coal miners at Massey's Upper Big Branch Mine. (Alas, it's patently apparent that regulators' prior pattern of assessing *civil* citations to Massey and its corporate leaders had no real deterrent effect whatsoever.)

One final note: it's currently fashionable in some political quarters to criticize federal regulators as out-of-touch, inflexible and petulant. But the Massey mine disaster demonstrates why a federal enforcement presence remains necessary. West Virginia state and local officials were apparently too timid, or too pressured politically by Massey, to provide any form of viable enforcement presence that could have prevented the Upper Big Branch Mine tragedy. It's therefore fortunate that federal prosecutors were not intimidated, and were successful in holding both Massey and CEO Blankenship accountable for their misdeeds.