

STATEMENT UNDER OATH  
OF  
JEREMY ROGER TOLER

Taken pursuant to Notice by Miranda  
D. Elkins, a Court Reporter and  
Notary Public in and for the State of  
West Virginia, at the U.S. District  
Court, 500 West Pike, Clarksburg,  
West Virginia, on Friday, February  
24, 2006, at 10:06 a.m.

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## 1 A P P E A R A N C E S

2

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A P P E A R A N C E S (cont.)

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P R O C E E D I N G S

-----

MR. SWENTOSKY:

My name is Dennis Swentosky. I'm an accident investigator with the Mine Safety & Health Administration, an agency with the United States Department of Labor. With me is Tim Williams from our Solicitor's Office, John Collins and Jeff Bennett with the West Virginia Office of Miners' Health, Safety & Training.

I've been assigned to conduct an investigation into the accident that occurred at the Sago Mine on January 2nd, 2006, in which 12 miners died and one was injured.

The investigation is being conducted by MSHA and the West Virginia Office of Miners' Health, Safety &

1 Training to gather information  
2 to determine the cause of the  
3 accident, and these interviews  
4 are an important part of the  
5 investigation.

6 At this time, the  
7 accident investigation team  
8 intends to interview a number  
9 of people to discuss anything  
10 that may be relevant to the  
11 cause of the accident. After  
12 the investigation is  
13 completed, MSHA will issue a  
14 written report detailing the  
15 nature and the causes of the  
16 accident. MSHA accident  
17 reports are made available to  
18 the public in the hope that  
19 greater awareness about the  
20 causes of accidents can reduce  
21 their occurrence in the  
22 future. Information obtained  
23 through witness interviews is  
24 frequently included in those  
25 reports. Your statement may

1           also be used in other  
2           enforcement proceedings.

3                       I would like to thank  
4           you in advance for your  
5           appearance here today. We  
6           appreciate your assistance in  
7           this investigation. The  
8           willingness of miners and mine  
9           operators to work with us is  
10          critical to our goal of making  
11          the nation's mines safer.

12                      We understand the  
13          difficulty for you in  
14          discussing the events that  
15          took place, and we greatly  
16          appreciate your efforts to  
17          help us understand what  
18          happened.

19                      This interview with Mr.  
20          Jeremy Toler is being  
21          conducted under Section 103(a)  
22          of the Federal Mine Health &  
23          Safety Act of 1977, as part of  
24          an investigation by the Mine  
25          Safety & Health Administration

1 and the West Virginia Office  
2 of Miners' Health, Safety &  
3 Training into the conditions,  
4 events and circumstances  
5 surrounding the fatalities  
6 that occurred at the Sago Mine  
7 owned by International Coal  
8 Group in Buckhannon, West  
9 Virginia, on January 2nd,  
10 2006. This interview is being  
11 conducted at the U.S. District  
12 Court in Clarksburg, West  
13 Virginia on February 24th,  
14 2006.

15 Questioning will be  
16 conducted by representatives  
17 of MSHA and the Office of  
18 Miners' Health, Safety &  
19 Training.

20 Mr. Toler, this  
21 interview will begin by me  
22 asking a series of questions.  
23 If you do not understand a  
24 question, please ask me to  
25 rephrase it. Feel free at any

1 time to clarify any statements  
2 that you make in response to  
3 the questions. After we have  
4 finished asking questions, you  
5 will also have an opportunity  
6 to make a statement and  
7 provide us with any  
8 information that you believe  
9 may be important.

10 If at any time after  
11 the interview you recall any  
12 additional information that  
13 you believe may be useful in  
14 the investigation, please  
15 contact Richard Gates at the  
16 phone number and e-mail  
17 address provided to you. And  
18 here's a business card for Mr.  
19 Gates.

20 Your statement is  
21 completely voluntary. You may  
22 refuse to answer any question.  
23 You may terminate this  
24 interview at any time. If you  
25 need a break for any reason,

1 just please let me know.

2 The court reporter will  
3 record your interview and will  
4 later produce a written  
5 transcript. Please try and  
6 respond to all questions  
7 verbally, since the court  
8 reporter cannot record  
9 nonverbal responses. Also,  
10 please try and keep your voice  
11 up. Copies of the written  
12 transcripts will be available  
13 at a later date.

14 If any part of your  
15 statement is based not on your  
16 own first-hand knowledge, but  
17 on information that you  
18 learned from someone else,  
19 please let us know. Please  
20 answer each question as fully  
21 as you can, including any  
22 information that you learned  
23 from someone else.

24 We may not ask the  
25 right questions to learn the

1 information you have, so do  
2 not feel limited in the  
3 precise question that we ask.  
4 If you have information about  
5 the subject area of the  
6 question, please provide it to  
7 us.

8 Mr. Collins, do you  
9 have anything that you would  
10 like to add on behalf of the  
11 Office of Miner's Health,  
12 Safety & Training?

13 MR. COLLINS:

14 Yes. Mr. Toler, the  
15 West Virginia Office of  
16 Miners' Health, Safety &  
17 Training is conducting these  
18 interview sessions jointly  
19 with MSHA and are in agreement  
20 with the procedures outlined  
21 by Mr. Swentosky.

22 But the Director  
23 reserves the right, if  
24 necessary, to call or subpoena  
25 witnesses or require the

1 production of any records,  
2 documents, photographs or  
3 other relevant materials  
4 necessary to conduct this  
5 investigation.

6 MR. SWENTOSKY:

7 Mr. Toler, are you  
8 aware that you may have a  
9 personal representative  
10 present during the taking of  
11 this statement?

12 MR. TOLER:

13 Yes, sir.

14 MR. SWENTOSKY:

15 And do you have a  
16 representative with you here  
17 today?

18 MR. TOLER:

19 Yes, I do.

20 MR. SWENTOSKY:

21 And who might that be?

22 MR. TOLER:

23 Joe Yuhas.

24 MR. SWENTOSKY:

25 Thank you. Has anyone

1 suggested to you that you use  
2 this representative?

3 MR. TOLER:

4 No, sir.

5 MR. SWENTOSKY:

6 Are you aware that your  
7 representative may have a  
8 conflict of interest in  
9 representing you while being  
10 provided by someone else, such  
11 as the company?

12 MR. TOLER:

13 Yes.

14 MR. SWENTOSKY:

15 Have you been pressured  
16 in any way to accept this  
17 person as your representative?

18 MR. TOLER:

19 No.

20 MR. SWENTOSKY:

21 With this  
22 understanding, do you still  
23 choose this person as your  
24 representative?

25 MR. TOLER:

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I do.

MR. SWENTOSKY:

Thank you. Do you have any questions regarding the matter before we get started with the interview?

MR. TOLER:

No, sir.

MR. SWENTOSKY:

Okay. Could you swear in Mr. Toler, please?

-----  
JEREMY ROGER TOLER, HAVING FIRST BEEN  
DULY SWORN, TESTIFIED AS FOLLOWS:

-----  
BY MR. SWENTOSKY:

Q. Could you give us your full name, and just spell your last name for us, please?

A. Jeremy Roger Toler, T-O-L-E-R.

Q. And could you provide us with your address and telephone number, please?

A. P.O. Box 148, Canvas, West Virginia 26662. Telephone number is

1 872-0274.

2 Q. Thank you. And are you  
3 appearing here today voluntarily?

4 A. Yes, sir.

5 Q. And how many years of mining  
6 experience do you have, Mr. Toler?

7 A. Approximately five.

8 Q. And could you just give us a  
9 brief description of your employment  
10 history, please?

11 A. Worked at Brooks Run and  
12 worked for Massey for a little while,  
13 and several contractors.

14 Q. Okay. And how much time have  
15 you spent at the Sago Mine?

16 A. I started there the 1st of  
17 October.

18 Q. October of 2005?

19 A. Yes, sir.

20 Q. And what was your position on  
21 --- what is your present position?

22 A. I'm a roof bolter operator.

23 Q. And that was your position on  
24 the day of the accident?

25 A. Yes, sir.

1 Q. Were you working on the day of  
2 the accident?

3 A. No, sir.

4 Q. And when was the last day that  
5 you worked prior to the accident?

6 A. The Friday before, the day  
7 before New Year's Eve.

8 MR. SWENTOSKY:

9 And for the record,  
10 when I say the accident, I'm  
11 talking about January 2nd,  
12 2006.

13 BY MR. SWENTOSKY:

14 Q. And how long have you worked  
15 as a roof bolter?

16 A. Probably three and a half,  
17 four years.

18 Q. And did you hold any other  
19 positions at the Sago Mine, other  
20 than a roof bolter?

21 A. When I first started I helped  
22 on screening the intake and cable  
23 bolting it, and then helped with the  
24 seals.

25 Q. Okay. And do you have any

1 mining certifications?

2 A. Just my underground card.

3 Q. You don't have the --- what  
4 I'm speaking of, I'm talking about  
5 mine foreman ---

6 A. No, sir.

7 Q. --- examiner's papers. Okay.  
8 Thanks. And who is your immediate  
9 supervisor?

10 A. Right now it's Bob Williams.

11 Q. Okay. On January 2nd, 2006,  
12 who was your supervisor?

13 A. It would have been Bob also.

14 Q. And how long has he been your  
15 supervisor?

16 A. Not too long. Probably only a  
17 month and a half.

18 Q. And who would have been your  
19 supervisor prior to that?

20 A. I guess Jeff Snyder was, on  
21 the seals. And of course, there were  
22 several up there. Jeff's who I  
23 started with. There were several  
24 other supervisors up there. But I  
25 guess I answered to Jeff.

1 Q. And you say you weren't  
2 working on January 2nd, 2006. Did  
3 you go to the mine that day?

4 A. I went to the church that day.

5 Q. So you didn't go down to the  
6 mine at any point?

7 A. No, sir.

8 Q. Are you familiar with the old  
9 Two Left Main seals?

10 A. With the seals, yes.

11 Q. And when I say the old Two  
12 Left Main seals, we're talking about  
13 the ones that were blown out by the  
14 explosion?

15 A. Yes. That's correct.

16 Q. Okay. And you said you worked  
17 on those seals?

18 A. Yes, sir. A few of them.

19 Q. Okay. And do you know which  
20 seals you worked on?

21 A. I helped on seal Number Two,  
22 Four, Five, Six, Seven, Eight and  
23 Nine.

24 Q. Two, Four, Six, --- excuse me,  
25 Five?

1 A. Yeah. Seal Two, Four, Five,  
2 Six, Seven, Eight and Nine.

3 Q. Okay. And you had mentioned  
4 --- who was actually in charge of  
5 building those seals, the  
6 overall ---?

7 A. Well, it kind of switched  
8 hands in the middle of it. Starting  
9 with, Jeff Snyder was.

10 Q. Okay.

11 A. And they moved Jeff Snyder,  
12 and Marty Conrad came up there. Jeff  
13 wasn't there but for just a few of  
14 the seals, but I don't remember which  
15 ones.

16 Q. Okay. And you said after Mr.  
17 Snyder then Marty Conrad?

18 A. Yes, sir.

19 Q. And at that point there he had  
20 over-all charge of this seal  
21 construction underground at that  
22 time?

23 A. Yeah. To my knowledge, yeah.

24 Q. Okay. Who else was up there  
25 helping you building seals?

1 A. There was John Jackson, Harmon  
2 Jordan, Casey Short, George Brooks,  
3 James Scott and Seth Osborne.

4 Q. Okay. And you had mentioned  
5 Jeff Snyder and Marty Conrad ---

6 A. Yes, sir.

7 Q. --- during your period --- was  
8 there any time any other persons up  
9 there who would be directing those  
10 seal constructions?

11 A. No, sir.

12 Q. Okay. I wonder if you could  
13 just start at the beginning of when  
14 you started constructing a seal,  
15 let's say a new seal, and go through  
16 the procedures that you used to  
17 construct those seals. You know,  
18 talk to me about their --- tell me  
19 about the mortar and the way you put  
20 the wedges in and how you secured  
21 into the side, and just the step-by-  
22 step method that you used to  
23 construct those seals and how you  
24 topped it off and so on. Just kind  
25 of a detailed, if you could, on how

1       you did --- built the seal.

2       A.       I don't remember all the  
3       details to it.   What I remember was  
4       we would clean out the area and put  
5       some mud down, some mortar and start  
6       laying our block.   We'd mud the block  
7       horizontal and vertical, joints.   And  
8       once we got a whole row complete,  
9       we'd take buckets of mud and smear it  
10      all over the top of that row.   And  
11      we'd just do the whole seal like  
12      that.   Capping it off, there were  
13      some boards that went in the top and  
14      wedges.   And then that's about it, I  
15      guess.

16     Q.       Okay.   Were all ten of the  
17     seals for the old Two Left Mains,  
18     were they all the same type of seal?

19     A.       They're all Omega seal, yes.

20     Q.       Okay.   And whenever you were  
21     sent to install that seal, what ---  
22     did you receive any training or  
23     anything on how to install those  
24     seals?

25     A.       They went over --- the boss

1       went over the plan with us, and  
2       pretty much gave us a general idea of  
3       what we were doing. And then --- you  
4       know, he was there while we were  
5       building it. But he, you know, gave  
6       us a pretty good idea of how to get  
7       started --- and then you know, he was  
8       there.

9       Q.       Okay. Was that your first day  
10       there, that he gave you your  
11       training?

12       A.       Yes.

13       Q.       And you say the boss, which  
14       boss would that have been?

15       A.       That would have been Jeff  
16       Snyder.

17       Q.       Jeff Snyder. And did he use  
18       any --- I mean, how did he describe  
19       to you how to install?

20       A.       Well, really he read over the  
21       plan with us, and then just went up  
22       there and pretty much just showed us  
23       how to get started.

24       Q.       I have a copy of a plan here,  
25       which consists of five pages. And

1 the first page consists of an  
2 approval letter from Mr. Kevin  
3 Strickland, and it's dated October  
4 24th. There's --- on the first page  
5 there's a small four up in the center  
6 of the top, and then it goes to five,  
7 six, seven and eight.

8 MR. SWENTOSKY:

9 We'll mark that Exhibit  
10 One.

11 (Jeremy Toler Exhibit  
12 One marked for  
13 identification.)

14 BY MR. SWENTOSKY:

15 Q. And do you recognize that at  
16 all?

17 A. Yeah. This is the plan that  
18 the boss had. I'm not sure if he had  
19 these first two pages, but I know  
20 that he had the instruction plan.

21 Q. Okay. And that's the plan  
22 that he had with him whenever he  
23 reviewed --- that he reviewed with  
24 you?

25 A. To my knowledge, yeah. I

1 never actually had the plan in my  
2 hands, but just looking at what he  
3 had, that looks like what he had,  
4 yes.

5 Q. Okay. And he reviewed that  
6 information with you by reading off  
7 of this plan that he had in his  
8 hands?

9 A. Yes, sir.

10 Q. Okay. Did he actually work  
11 with you to show you ---

12 A. Yes, sir.

13 Q. --- how to install that?  
14 Okay. Did you actually have an  
15 opportunity to actually read the plan  
16 yourself at all at any time?

17 A. I never asked to, but I'm sure  
18 that if I would have asked I could  
19 have, yes.

20 Q. Okay. But I mean, you never  
21 did?

22 A. No.

23 Q. You said Mr. Snyder did that?

24 A. Yes, sir.

25 Q. Is this the first time you

1       were ever involved in building the  
2       Omega seals?

3       A.       No, sir.

4       Q.       And where would you have built  
5       those seals before?

6       A.       For Brooks Run.

7       Q.       Brooks Run?

8       A.       Yes, sir.

9       Q.       Okay. And when would that  
10      have been?

11      A.       I don't even --- don't really  
12      have a clue. It was sometime when I  
13      was employed with them.

14      Q.       Okay. And is this the same  
15      procedure that you used at Brooks  
16      Run ---

17      A.       Yes, sir.

18      Q.       --- that I've just shown you?

19      A.       Yes, sir.

20      Q.       Okay. How did you prepare ---  
21      did you measure up the seals, measure  
22      and pick a location for the seals?

23      A.       Jeff did that.

24      Q.       Jeff did that?

25      A.       Yes, sir.

1 Q. And did he measure the  
2 distance for all of the seals?

3 A. Yes, sir.

4 Q. All the seals that you were  
5 involved in?

6 A. Yes, sir.

7 Q. Jeff Snyder or Jeff Toler?

8 A. Jeff Snyder.

9 Q. Jeff Snyder?

10 A. Sorry, yes. Yes, sir.

11 Q. Okay. He measured off every  
12 one, no one else measured off ---?

13 A. No. We held the tape line for  
14 him, but he had it measured back  
15 where he felt we needed to build it,  
16 yes.

17 Q. And he took those measurements  
18 from the corner of the outby side of  
19 the pillar block?

20 A. Yes, sir.

21 Q. To the location where he ---  
22 on both sides did you do that?

23 A. Well, on the very first seal,  
24 we only did one side. And we had  
25 half a seal built, and Jeff Toler

1       came up there --- and one side of  
2       that seal was only a couple feet back  
3       off of there, so we had to tear it  
4       down and move the seal back.

5       Q.       And what number seal was that;  
6       do you recall?

7       A.       I think it was Number Nine.

8       Q.       Number Nine seal, was that the  
9       very first seal that was installed?

10      A.       To my knowledge, yeah. I'm  
11      pretty sure that was the first one we  
12      built, yes.

13      Q.       Okay. And how far up did you  
14      have that seal when Mr. Jeff Toler  
15      made you tear it down?

16      A.       We had a good five or six rows  
17      on it.

18      Q.       Okay. And when you moved it  
19      back, you reused those blocks?

20      A.       No, sir.

21      Q.       What did you do with those  
22      blocks?

23      A.       Well, for the time being we  
24      threw them over to the side, and I  
25      don't know where they went after

1       that.

2       Q.       Okay.  When you started out a  
3       seal, just explain to me what you  
4       did.  What did you do when you  
5       started the seal, how far on each  
6       side of it did you clean the bottom?

7       A.       Well, we took the scoop first  
8       and cleaned the whole area.

9       Q.       Okay.

10      A.       And we got in the general area  
11      of where we had it marked to build  
12      the seal, cleaned the bottom out even  
13      better right there.

14      Q.       And how did you do that?

15      A.       Just with our hammer, and we  
16      had a shovel there also.  It seemed  
17      like the scoop got it pretty well.  
18      And just mix some mud and poured it  
19      down.  We poured a lot of mud at the  
20      bottom.

21      Q.       And to get --- to level up  
22      that bottom, how did you do that?

23      A.       With the mud.

24      Q.       With the mud?

25      A.       Yeah, to level the block up we

1 used the mud.

2 Q. Okay. What do you do, just  
3 take a bag and put it down on the  
4 bottom and level it up, dump the bag  
5 out and level it out?

6 A. We mixed a lot of it. There  
7 were some areas where it was pretty  
8 wet. We would do that, but there was  
9 usually a lot of wet mud involved  
10 with all of them on the bottom. And  
11 leveling them up, we used it dry,  
12 yes.

13 Q. So each seal then, where you  
14 had it uneven, to level that up, you  
15 just dumped the bag out and laid it  
16 on the bottom, and spread it out kind  
17 of like you do rock dust whenever  
18 you're building a stopping, that kind  
19 of thing?

20 A. Yeah. Pretty much, yeah. If  
21 the area --- if the bottom was pretty  
22 damp right there, where that could  
23 absorb the water.

24 Q. Was there puddles of water  
25 laying in that area?

1 A. Well, not huge puddles, but  
2 the bottom was pretty damp, yeah.

3 Q. Muddy soft stuff?

4 A. No, not muddy, it just --- it  
5 had moisture, the ribs and  
6 everything. The mine, it's a wet  
7 mine, but there was no mud that they  
8 would build on, no.

9 Q. Okay. And when you --- okay,  
10 so then you ---.

11 Once you had this dry mortar  
12 laid down, and everything was leveled  
13 up, then explain to me how you laid  
14 the first row of blocks down.

15 A. Well, start on one rib, and  
16 you take a block, lay it down flat  
17 longways, all the way across.

18 Q. Okay.

19 A. Then come behind that block  
20 with the road, laid down flat going  
21 in the other direction, I guess you'd  
22 say.

23 Q. Okay.

24 A. And then you'd butt those  
25 together.

1 Q. Okay.

2 A. As you laid the block, you'd  
3 mud the joints and put them together,  
4 like that. And once you had that row  
5 all the way across, you'd take mud  
6 and dump on top of it, smear it all  
7 out pretty level and lay your next  
8 row over top of it.

9 Q. Okay. To mix that mud, did  
10 you have --- what type of consistency  
11 was that mud as you call it --- what  
12 was the name of that mud, as you've  
13 mentioned?

14 A. That it was B-Bond.

15 Q. B-Bond?

16 A. Yes, sir.

17 Q. BlocBond?

18 A. BlocBond, something, yeah.

19 Q. What color of bag did it come  
20 in?

21 A. I'm not really sure. I know  
22 there's two colors, and I know there  
23 was a specific color, and the only  
24 reason I know that is, the motor crew  
25 had brought in the wrong color, a

1 whole pallet of it one day. And Jeff  
2 Snyder refused to let us use it, and  
3 that's when they found out that there  
4 was a specific B-Bond that we had to  
5 use.

6 Q. I see. And whenever you would  
7 mix that, what did you mix that  
8 material in?

9 A. It was mixed in a wheelbarrow.

10 Q. Okay. How many bags did you  
11 mix at a time?

12 A. I don't even remember. It was  
13 different, just whatever you needed.

14 Q. Could you mix four or five  
15 bags in there at one time, or two  
16 bags?

17 A. Probably on the average, two.

18 Q. And how much water did you put  
19 in there to mix up two bags?

20 A. I don't even remember.

21 Q. Did anybody ever tell you how  
22 much to mix in a bag, water per bag?

23 A. I don't think so, no.

24 Q. Okay. So you just ---  
25 whatever ---?

1 A. Whatever you felt was a good  
2 mixture.

3 Q. Was the mud pretty soupy?

4 A. No, it was good thick mud.

5 Q. Okay. Whenever you laid the  
6 blocks down and the mortar on top of  
7 it, would it have to be pretty soupy  
8 to get down in the joints --- you  
9 know, between the blocks to get it  
10 down in between there? How did you  
11 get that mortar down in between  
12 there?

13 A. Well, we kind of made the mud  
14 for what we needed. If we needed it,  
15 a little bit thin and lay it a little  
16 bit thin so it would get down in  
17 those joints. You know, it would be  
18 a little bit thicker to spread on top  
19 of the blocks and the joints. You'd  
20 make it a little bit thicker for  
21 that.

22 Q. Okay. So on occasion --- was  
23 there like maybe two applications  
24 where you use a little thinner mortar  
25 so it would get down in between the

1 joints and then you had to lay it on  
2 top so it would make it nice and  
3 thick on top, or ---?

4 A. Yeah. But I mean, it wasn't  
5 like water or anything. I mean, it  
6 was still --- it still had a pretty  
7 good texture to it, but --- you know,  
8 it would get down into the cracks  
9 there pretty good.

10 Q. I see. Would you lay the  
11 blocks the whole way across and then  
12 put the mortar on top of the block,  
13 or how did you do that? When I say  
14 the whole way across, you started at  
15 a rib and completed that row to the  
16 next rib, and then put mortar on top?  
17 Is that how you did that, or ---?

18 A. On the top of the blocks?

19 Q. Yes.

20 A. Yes, yes.

21 Q. Okay. So you completed a row.  
22 Okay.

23 MR. SWENTOSKY:

24 I have a drawing here.

25 And we'll mark this Exhibit

1 Two. And what it shows is a  
2 series of blocks, and it's  
3 identified as first course  
4 laid on the floor. And it  
5 shows a series of blocks which  
6 are lettered A through O.

7 And I have also marked  
8 on each block the number on  
9 each side of the block, one to  
10 four, which would indicate the  
11 sides of the block.

12 (Jeremy Toler Exhibit  
13 Number Two marked for  
14 identification.)

15 BY MR. SWENTOSKY:

16 Q. And I'd like to just show you  
17 that for a minute, please. And  
18 starting with the --- as we could  
19 look at this as if the top of the  
20 paper and the bottom of the paper  
21 would be the ribs.

22 A. Uh-huh (yes).

23 Q. And whenever you installed  
24 Block A, could you circle with this  
25 blue pen, the joints to which you may

1       have mortared or didn't mortar  
2       whenever you would lay that  
3       particular block down?

4       Q.       Okay. And you have indicated  
5       with a circle, a blue pen, that you  
6       circled sides one, two, three and  
7       four?

8       A.       Uh-huh (yes).

9       Q.       And on those --- what does  
10      that indicate?

11      A.       All sides.

12      Q.       All sides, meaning?

13      A.       That when we lay a block down  
14      on the sides where it had a mortar  
15      joint on it.

16      Q.       When you say mortar joint, I  
17      just don't understand. Did it have  
18      mortar on the complete side of the  
19      joint, or just a little, or a lot or  
20      what?

21      A.       I had a pretty good amount on  
22      it. I mean, I don't know how thick  
23      it was.

24      Q.       And you've indicated you put  
25      mortar on side number four?

1 A. Yes, sir.

2 Q. As that would be the outside  
3 of either the outby or the inby side  
4 of the block in whatever way. You  
5 also put mortar on that during the  
6 installation instruction --- or the  
7 installation of the block?

8 A. Yes.

9 Q. Okay. And what was that for?

10 A. Both sides, inby and outby,  
11 had to be mudded.

12 Q. Okay. And then whenever you  
13 completed it, did you go over it  
14 again?

15 A. Yes, we did. A lot of it  
16 would fall.

17 Q. And then whenever you would  
18 install Block B, as shown on the  
19 drawing, where would you place mortar  
20 prior to laying that block then?  
21 Just circle those sides which would  
22 be provided with mortar.

23 Q. And you've indicated one, two,  
24 three and four. Okay. And how much  
25 mortar would you place on those

1 vertical joints?

2 A. What do you mean by how much?

3 I mean, ---.

4 Q. Thickness.

5 A. I didn't have a tape measurer  
6 to measure it.

7 Q. Okay. I understand. Sure.

8 A. I don't know how thick it was,  
9 really.

10 Q. How thick were those mortar  
11 joints supposed to be?

12 A. A quarter of an inch, if I'm  
13 not mistaken.

14 Q. Okay. And how did you put  
15 that mortar on the block?

16 A. We was wearing rubber gloves.  
17 You just took it in your hand and  
18 just smeared it on there, yeah.

19 Q. And whenever that --- and that  
20 entire row was or rows of blocks were  
21 laid in that same fashion?

22 A. Uh-huh (yes).

23 Q. Then once a row was completed,  
24 how did you secure it to the rib?

25 A. Just put the block as tight to

1       it as we could. There's usually very  
2       little space in between that we put a  
3       lot of mud down in it. That's about  
4       it, really.

5       Q.       Okay. To get it nice and  
6       tight in there, I know --- like  
7       stoppings or so, you use wedges to  
8       put that in?

9       A.       I don't know if there was ---  
10      if they used them or not. I can't  
11      remember if we used any or not  
12      really.

13     Q.       You say Number Nine was the  
14      first one that you built?

15     A.       Yes, sir.

16     Q.       And who helped on that? Who  
17      built that stopping --- or excuse me,  
18      not a stopping, seal?

19     A.       I don't even remember who all  
20      was up there that day, really.

21     Q.       Did you mix mud for that?

22     A.       For the whole seal?

23     Q.       Yes.

24     A.       No, sir.

25     Q.       Okay.

1 A. I mean, I mixed mud off and  
2 on, but ---.

3 Q. And you were involved in  
4 laying the blocks down, also?

5 A. Yes, sir.

6 Q. And you say you don't recall  
7 who assisted on Number Nine seal?

8 A. No. To my knowledge, no, I  
9 don't.

10 Q. Do you recall whether it was  
11 one of you or two of you up there?  
12 Excuse me --- yeah, two of you?

13 A. Starting out there was very  
14 few of us, yeah. I don't remember  
15 how many was up there, no.

16 Q. Was there three people?

17 A. I don't remember, really.

18 Q. And then when you dumped the  
19 mortar on top of the block, how did  
20 you get it down in between the  
21 joints?

22 A. Usually it would just go down  
23 in the joints.

24 Q. Okay. So it was pretty soupy  
25 then? Soupy enough that it would ---

1 A. That it would go - - - .

2 Q. - - - just drain down?

3 A. Yeah.

4 Q. Did you have to push it down  
5 into a certain spot?

6 A. There were spots, yeah.

7 MR. SWENTOSKY:

8 We'll mark another  
9 drawing, and we'll call this  
10 Exhibit Three. And it's  
11 identified as course at mid-  
12 height. And the drawing is  
13 the same as Exhibit Two, and  
14 it identifies Blocks A through  
15 O. And it also shows the  
16 sides of the block as one  
17 through four sides.

18 (Jeremy Toler Exhibit  
19 Number Three marked for  
20 identification.)

21 BY MR. SWENTOSKY:

22 Q. Would this represent the  
23 blocks on, say, mid-row, I mean,  
24 about halfway up?

25 A. Yeah, similar. Yes.

1 Q. Okay. And as an example,  
2 whenever you would lay --- let's just  
3 say lay Block G, the one that's  
4 marked G, where would you place  
5 mortar, say, during the installation  
6 of that block?

7 A. On all the sides. One, two,  
8 three and four.

9 Q. Okay. Could you mark with a  
10 blue pen, circle those numbers where  
11 you put the ---?

12 Q. Okay. And as an example then,  
13 D, where would you place the mortar?

14 A. The same. Two, three and  
15 four.

16 Q. You can't have my pen.

17 A. Okay.

18 Q. Prior to initial installation  
19 of the block, were there ever any  
20 pipes or cables or anything metallic,  
21 track or anything, running from the  
22 outby side of the seal or the inby  
23 side of the seal?

24 A. There were screen in a few of  
25 the headings.

1 Q. Okay. And what did you do  
2 with the screen?

3 A. We took cutters and cut the  
4 screen out.

5 Q. Okay. And what kind of ---  
6 what type of cutters would you have  
7 used for that?

8 A. Just like bolt cutters.

9 Q. I see. And did you ever have  
10 an occasion where pieces of the  
11 material was actually --- where the  
12 seal was at, maybe it wasn't quite  
13 cut back far enough and it was within  
14 the seal?

15 A. The screen?

16 Q. Yes.

17 A. No, sir.

18 Q. No. Okay. And was there a  
19 water trap, or were you involved in  
20 any of the seals that may have had a  
21 water trap, or ---?

22 A. No, sir.

23 Q. No. How about a pipe that was  
24 put through?

25 A. Yes, sir.

1 Q. Did you ever see any pipe or  
2 anything that was put into those  
3 seals?

4 A. No.

5 Q. And as you were building the  
6 seal, how did you finish that off up  
7 against the rib? How would you  
8 finish that off, each row as you went  
9 up?

10 A. Well, the block was pretty  
11 tight against the rib.

12 Q. Okay. What did you do, cut  
13 the blocks like you do with concrete  
14 block, just tap it with an ax and  
15 move ---

16 A. Yeah.

17 Q. --- to break them into size?

18 A. Yeah.

19 Q. Okay. So they were pretty  
20 tight that way?

21 A. Yeah. There was also mud  
22 there.

23 Q. Okay. You put mud down in  
24 between the rib and the block?

25 A. No, you put it on the side of

1 the block when you put it up, yeah.

2 Q. Okay. And was there any  
3 spaces between ---?

4 A. Fill that with mud.

5 Q. Dry mud?

6 A. No. Wet mud.

7 Q. And I know, like, when you  
8 build stoppings sometimes you fill  
9 holes up with, like, paper, you know,  
10 so it doesn't have to get mud in  
11 there. Did you ever use like paper  
12 or anything to put in there?

13 A. No, sir.

14 Q. Whenever you were measuring  
15 those seals, you said you helped to  
16 hold the tape measurer at times?

17 A. For measuring the location of  
18 it?

19 Q. Yes, sir.

20 A. Yeah.

21 Q. Did you measure width, too?

22 A. Yeah. We measured the width.

23 Q. And how wide were they?

24 A. Most of them was probably 18  
25 or 19-foot wide.

1 Q. Okay. You measured height,  
2 too?

3 A. Yeah.

4 Q. How high was that?

5 A. It just differed with every  
6 seal. I don't remember what height  
7 they were, but they were --- one  
8 place it might be six foot, the next  
9 place it might be seven foot.

10 Q. Okay. Did you ever have to  
11 move a seal because of the height or  
12 anything like that?

13 A. Yeah. I don't remember which  
14 seal it was, but we had to move it  
15 back in the block to build it so it  
16 would be in the requirement of it,  
17 like the height.

18 Q. Was that the one you were  
19 telling me about a minute ---

20 A. No.

21 Q. --- just a little while ago  
22 where you had to move it back?

23 A. No.

24 Q. Is that that occasion?

25 A. No.

1 Q. So you're talking about a  
2 different one?

3 A. Yes.

4 Q. Okay. Was that seal started?

5 A. No. We hadn't started it yet.  
6 We just moved it from where we had  
7 originally planned on building it.  
8 We just moved it on back.

9 Q. And did you --- the seals that  
10 you built and you described earlier,  
11 which ones those were, did you help  
12 in measuring all of those?

13 A. No, not all of them. No.

14 Q. Okay. The ones that you're  
15 involved in measuring, who was  
16 helping you measure those?

17 A. Jeff Snyder.

18 Q. Jeff Snyder. And how many  
19 seals was he involved in while you  
20 were there?

21 A. You'd have to ask him that. I  
22 don't know ---.

23 Q. Oh, you don't know any ---  
24 which seals he was there and which  
25 seals he wasn't there?

1 A. No. I mean, I know he left,  
2 but I don't know which seals he was  
3 there to help us on, no.

4 Q. What seal did Marty Conrad  
5 arrive, what seal did he start  
6 building?

7 A. I don't recall when Marty came  
8 up there, I just know he was up  
9 there.

10 Q. Okay. Did you ever have  
11 occasion to use block for  
12 construction of those seals, maybe  
13 --- you know, how they use them for  
14 stoppings and things like that, bring  
15 them in and re-use them. Did you do  
16 that at all?

17 A. Re-use block?

18 Q. Yes.

19 A. No, sir.

20 Q. Those were all new block?

21 A. Yes, sir.

22 Q. Did you ever have occasion to  
23 use a pier, pour concrete down and  
24 build the seal on top of concrete,  
25 like a floater-type thing?

1 A. No.

2 Q. And how did you --- whenever  
3 you notched rib in, how did you do  
4 that?

5 A. We didn't have to notch the  
6 rib.

7 Q. Didn't have to notch the rib?

8 A. No.

9 Q. All those seals, were they all  
10 the same thickness, or some of them  
11 were a little thinner than others?

12 A. No, they're all the same, I  
13 guess, yeah.

14 Q. You guess. I mean, ---.

15 A. I mean, you lay every seal the  
16 same, so I guess that they would be  
17 the same thickness.

18 Q. Did you ever have an occasion  
19 --- was one of them that had a pier,  
20 or did any of them have a pier ---  
21 excuse me. I'm sorry, I already  
22 asked you that. A pilaster. Do you  
23 know what I mean by pilaster?

24 A. No.

25 Q. Okay. A pilaster in a seal

1 would be as the --- you project away  
2 from the seal.

3 A. That thing that comes out of  
4 the middle of it?

5 Q. Yes.

6 A. Like a block that ---?

7 Q. Yes. That projects out from  
8 the side of it, which makes it a  
9 larger on the inby side and the outby  
10 side?

11 A. On the ones that I helped on,  
12 I don't think we put --- we did not  
13 put a pilaster on any of them.

14 Q. Okay. You had said you don't  
15 think, but ---?

16 A. I know we didn't.

17 Q. You know you didn't?

18 A. Yeah.

19 Q. And what type of mortar was  
20 that you used, again?

21 A. That was BlocBond.

22 Q. BlocBond?

23 A. Yeah.

24 Q. Okay. Not B-Bond?

25 A. We call it B-Bond. BlocBond,



1                   He answered the  
2                   question Denny. You asked him  
3                   the same question six or seven  
4                   times.

5                   MR. SWENTOSKY:

6                   I'm just trying to be  
7                   clear.

8                   ATTORNEY WILLIAMS:

9                   It wasn't six or seven.  
10                  He's trying to get a clear  
11                  answer.

12                  ATTORNEY YUHAS:

13                  He asked him about 15  
14                  minutes ago of the color of  
15                  the bags.

16                  MR. SWENTOSKY:

17                  Yes, I did. Yes, I  
18                  did. I'm just trying to make  
19                  it clear which one he used,  
20                  that's all.

21                  ATTORNEY YUHAS:

22                  I think you're trying  
23                  to put words in his mouth.

24                  ATTORNEY WILLIAMS:

25                  There's really no need

1           to make statements like that.  
2           He's asking a question --- and  
3           he's asking questions as you  
4           and I do every day to try to  
5           maybe get more detail and  
6           provoke his memory, and maybe  
7           get the answer from him. If  
8           he doesn't remember, maybe say  
9           something to help him  
10          remember. If he doesn't  
11          remember, ultimately, that's  
12          fine. We're just trying to  
13          get your memory. That's all.

14          BY MR. SWENTOSKY:

15          Q.           Do you know approximately what  
16          the weight of those bags were?

17          A.           No.

18          Q.           Does any of the mortar ever  
19          come in buckets?

20          A.           No, sir.

21          Q.           Okay. I'm going to show you  
22          another drawing.

23                               MR. SWENTOSKY:

24                               And this drawing's  
25                               called top course at the roof.

1           And it also identified blocks  
2           as A through O. And again,  
3           the sides of the block are  
4           identified as one, two, three  
5           and four. We'll mark that as  
6           Four.

7                           (Jeremy Toler Exhibit  
8                           Number Four marked for  
9                           identification.)

10       BY MR. SWENTOSKY:

11       Q.           And again, --- I'll let you  
12       use my pen.

13       A.           All right.

14       Q.           With a blue pen. As an  
15       example, Block L, and when you were  
16       laying that particular block, which  
17       sides would be mortared?

18       A.           One, two, three and four.

19       Q.           One, two, three and four.  
20       Okay. And you installed that mortar  
21       the same way, with your hands?

22       A.           Yes, sir.

23       Q.           Did you ever have an  
24       opportunity to use a trowel, did  
25       anybody have any trowels up there or

1 anything?

2 A. No, we didn't need them.

3 Q. Didn't need them? Okay. And  
4 as an example, did anyone say block E  
5 --- can you show me which side would  
6 be mortared? One, two, three and  
7 four again.

8 And how close to the roof did  
9 you take the block up?

10 A. I don't know. It was close,  
11 but I don't know.

12 Q. Close. Three or four inches,  
13 or two inches?

14 A. I never measured it.

15 Q. Okay. And how would you top  
16 off the seal?

17 A. There was some boards that we  
18 put in there and wedges.

19 Q. And how thick were those  
20 boards, do you recall?

21 A. No.

22 Q. One-inch?

23 A. Probably about one-inch, yeah.  
24 I never measured them.

25 Q. Okay. And how were those ---

1        what do you call those boards? Was  
2        it fly board? I know there's been  
3        terminology, is that what you called  
4        that, fly board?

5        A.        Yeah. We would call it fly  
6        board, yeah.

7        Q.        For reference?

8        A.        Yeah.

9        Q.        And how many fly boards were  
10       installed on there?

11       A.        Three.

12       Q.        Three. And using the blue pen  
13       again, could you draw me how those  
14       boards were installed or laid on top  
15       of that seal? And let's just ---  
16       I'll mark on this as outby side of  
17       the seal, and I've written that with  
18       a blue pen, and that is the outby  
19       side meaning the active side of the  
20       mine. And inby side of the seal, the  
21       side I've marked, and that would  
22       represent the sealed part of the  
23       mine, the non-ventilated part. And  
24       could you just draw with this pen  
25       with a line, the first board that you

1 installed when you were topping off  
2 the seal?

3 A. I don't know which one is the  
4 first one.

5 Q. Okay.

6 A. You'd have one in the middle,  
7 and one on each side.

8 Q. One on each side?

9 A. Yeah.

10 Q. And you're not sure which one  
11 was installed first, but ---. Okay.  
12 Just indicate by line of where those  
13 boards were installed.

14 A. One in the middle, one inby  
15 side and one outby side.

16 Q. Using this as a reference, the  
17 bottom of the paper and the top of  
18 the paper as the ribs, represent the  
19 ribs. These boards were they  
20 installed just on the center, as  
21 you've indicated from Block B on the  
22 inby side to Block G and on the outby  
23 side marked from K to N?

24 A. I don't know.

25 Q. Did they go clear across, or

1       how was that installed?

2       A.       I don't remember how close the  
3       sides of the board came to the rib.

4       Q.       The end of the boards?

5       A.       Yeah. I mean, I don't know  
6       how far the end of this board was  
7       from this rib and the end of the  
8       other side of the board was to that  
9       rib.

10      Q.       Okay. You're indicating right  
11      and left, and ---?

12      A.       Right. And all I was showing  
13      you on that was where the placement  
14      of the boards were.

15      Q.       Okay. Sure. So the boards  
16      may have not gone the whole way  
17      across from rib to rib?

18      A.       No, they probably didn't. Not  
19      all the way, no.

20      Q.       Okay. Do you have any  
21      recollection of approximately how  
22      short those boards may have been?

23      A.       No.

24      Q.       Did you ever have to cut a  
25      board?

1 A. I never had to, no.

2 Q. No. Did you install any of  
3 those boards up there?

4 A. Very few of them.

5 Q. But you did?

6 A. Yes. I installed a few, yes.

7 Q. A few boards. Okay. And the  
8 boards that you installed, how close  
9 to the rib were you able to get with  
10 them?

11 A. Again, I don't remember how  
12 close they were.

13 Q. Did you ever have to install  
14 two boards?

15 A. Had to install three.

16 Q. Have you ever had an  
17 opportunity where you had to maybe  
18 install one on top of the other?

19 A. No.

20 Q. No. And you say you had to  
21 wedge them?

22 A. Yeah. There were wedges in  
23 the top.

24 Q. Okay. And explain that to me  
25 a little bit, what did you do there?

1 A. I don't know. I know they  
2 just put wedges in there and put them  
3 in all the way across.

4 Q. Okay. When you say they, did  
5 you have an opportunity to put those  
6 wedges in?

7 A. Yeah, I put a few wedges in.  
8 Yeah.

9 Q. Okay. And how did you install  
10 them between the Omega block and the  
11 board, or between the roof and the  
12 board?

13 A. I think it was between the  
14 Omega block and the board.

15 Q. Okay. Did you hammer those in  
16 there to wedge it up tight ---

17 A. Yeah.

18 Q. --- just use a hammer?

19 A. Or an axe.

20 Q. An axe?

21 A. Yeah.

22 Q. Okay. In what direction were  
23 those wedges installed? Were  
24 they ---?

25 A. They were faced ---.

1 Q. Here, just --- I'll tell you  
2 what. Just mark them --- those  
3 wedges, they have a thin end and they  
4 have a thick end; is that correct?

5 A. Right.

6 Q. And let's just use this board  
7 here. We're looking at the --- well,  
8 let's just do it this way. We'll  
9 look at the outby of the seal. And  
10 just show me a direction that you  
11 would, right at this board, and we're  
12 going to look at block L as an  
13 example here, and show me how you put  
14 that wedge in. Just draw a piece of  
15 wedge.

16 A. This being the thin, that  
17 being the thick.

18 Q. Okay. And the thin then is  
19 driven toward the ---

20 A. Center of the seal.

21 Q. --- into the center of the  
22 seal?

23 A. Yes.

24 Q. And how far apart did you put  
25 those wedges as you were going

1 across?

2 A. Just --- I don't remember how  
3 far apart they were.

4 Q. Was there some areas where  
5 there were large distances, three or  
6 four feet, or were some of them a  
7 foot, six inches? Can you kind of  
8 recall that a little bit maybe?

9 A. No. They weren't far apart.

10 Q. And in between the wedges, or  
11 in between the wedges, what did you  
12 do with the cracks that may have been  
13 there between ---?

14 A. Threw mud back in it.

15 Q. Threw mud back in it?

16 A. Yeah.

17 Q. What, did you just take it  
18 like a baseball and throw it back in  
19 the ---?

20 A. Threw it back in there, yeah.

21 Q. And did you ever have an  
22 opportunity to use anything to pack  
23 it back in there or anything, or just  
24 you'd throw it back in there?

25 A. Just threw it back in there.

1 Q. Threw it back in there. And  
2 that was what was done as you went  
3 across to complete the seal?

4 A. Yes, sir.

5 Q. What about the inby --- inby  
6 and outby the seals, wedges on both  
7 of those?

8 A. Yeah, on both sides were done  
9 the same.

10 Q. The same. Okay. And what  
11 about that middle board, what did you  
12 do with that middle board?

13 A. Just threw it back in there.  
14 I mean, there wasn't much you could  
15 do with it.

16 Q. Because it's in the seal  
17 there, the block's in the way a  
18 little bit?

19 A. Right.

20 Q. And what about wedges there?

21 A. I don't remember if there was  
22 any wedges on that or not. I don't  
23 see any way that you could have put  
24 wedges in it.

25 Q. Okay. How was that mortar

1 applied to the vertical joints? I  
2 think you said that, but just for  
3 clarification.

4 A. It was applied with our hands.  
5 We had a glove on our hand.

6 Q. With your hand, okay. And as  
7 you --- I know you mentioned to me  
8 about as like the first row, but as  
9 you kept going up with the  
10 consecutive rows of block, and you  
11 mentioned to me that you cut the  
12 block to fit there with an axe  
13 across, and --- to fill in those  
14 places. Were there occasions  
15 whenever you had to drive wedges down  
16 in to tighten that block up?

17 A. I don't remember if there was.

18 Q. You don't remember. Okay.  
19 And once the seal was completed with  
20 the layers and the boards, then what  
21 did you do with the seal?

22 A. Went back over both sides of  
23 it, inby and outby, and mortared.

24 Q. Okay. Like full face it; is  
25 that what you mean?

1 A. Yes. Yeah.

2 Q. And did you apply extra  
3 mortar, like around the perimeters of  
4 it, roof, bottom?

5 A. Yeah. That had been done when  
6 we did it, yeah.

7 Q. Did that mortar --- did it  
8 harden up pretty hard, or is it, say,  
9 of a soft consistency, do you recall?

10 A. I can't recall, no.

11 Q. And how was that mortar  
12 applied to the full face of that?

13 A. Just applied it with our hand.

14 Q. With your hands again?

15 A. Yeah.

16 Q. Never used a trowel or  
17 anything?

18 A. No, we didn't need one.

19 Q. Was there any trowels up  
20 there?

21 A. Not that I remember, no.

22 Q. Okay. During the  
23 construction, was there any  
24 management people that came up to the  
25 site at all, do you recall, to see

1        what was going on?

2        A.        No.    I already told you that  
3        Jeff Toler was up there.    He's the  
4        mine superintendent.

5        Q.        Okay.

6        A.        And he brought it to our  
7        attention that we built the first  
8        seal wrong.

9        Q.        Okay.    Was that the only time  
10       he was up there?

11       A.        I can't remember how many  
12       times he was --- I don't remember if  
13       he was up there any more or not.

14       Q.        All right.    How about Mr.  
15       Crumrine?

16       A.        I seen Carl up there, yes.

17       Q.        Okay.    And how many times do  
18       you remember seeing him?

19       A.        I don't remember.

20       Q.        Did Mr. Crumrine ever give you  
21       any instruction on how to put it in  
22       or talk to you about the installation  
23       of the seal at all?

24       A.        He came up there with a  
25       federal inspector one day.    I don't

1 remember the inspector's name, and  
2 they looked at how we were building  
3 the seal.

4 Q. Okay.

5 A. That's about it.

6 Q. And Mr. Jeff Toler, did he  
7 ever give you any instructions on how  
8 to put the seal in at all, or did he  
9 instruct anyone on how to put the  
10 seal in at all?

11 A. I mean, he didn't --- our boss  
12 instructed us.

13 Q. Okay.

14 A. I don't know that he  
15 instructed the boss, but the boss had  
16 to get it from somewhere.

17 Q. Okay. And did he ever give  
18 any of the construction workers any  
19 instruction?

20 A. Only when he told us that we  
21 had built that seal wrong.

22 Q. Okay. That's the only time  
23 then?

24 A. That I remember, yeah.

25 Q. Getting back to those roof

1 wedges. Is that how all of the  
2 wedges were installed on those seals,  
3 or were there any different way that  
4 they may have been installed in  
5 another seal or any time that you  
6 recall?

7 A. Could you clarify what you're  
8 asking?

9 Q. Sure. Were the wedges ever  
10 placed along those boards parallel  
11 and then another wedge installed  
12 parallel with that wedge? In other  
13 words, thin end to thin end to try to  
14 wedge it up?

15 A. I didn't see every wedge  
16 installed in those seals.

17 Q. Okay. But the wedges --- but  
18 as you've described, that's the only  
19 way that you installed those wedges?

20 A. That's the only way I put the  
21 wedges in, yes.

22 Q. Okay. During the construction  
23 of a seal, and prior to putting the  
24 mud on the wedges, do you ever ---  
25 and I'm --- so what you're telling me

1       then, you never saw a wedge installed  
2       as I described it?

3       A.       No, sir.

4       Q.       Okay. And all the wedges were  
5       installed, if I'm correct --- and I  
6       just want to clarify. Were all of  
7       the wedges installed there between  
8       the board and the block; right?

9       A.       Well, the ones that I  
10       installed. I don't know about all of  
11       the wedges, but the ones I installed,  
12       yes.

13       Q.       Okay. Was there ever an  
14       occasion whenever you started a seal  
15       and had to discontinue the  
16       installation of it and then come back  
17       at a later time?

18       A.       When I was up there?

19       Q.       Yes, sir.

20       A.       The last seal, yes, that I  
21       helped on, which was seal Number Two.

22       Q.       Two?

23       A.       Yes.

24       Q.       Explain that to me a little  
25       bit, will you please?

1 A. Well, that was --- we ran out  
2 of material, and we also had some  
3 overcasts that we had to construct to  
4 ventilate the seals. So while we  
5 were out of materials on the seals,  
6 we started on the overcasts. And  
7 when we got our seal material in, we  
8 went back to the seals.

9 Q. And what length of time might  
10 that have been?

11 A. It might have been a shift, an  
12 eight-hour shift, maybe two. I can't  
13 really remember.

14 Q. Were those --- were there two  
15 shifts of miners working during the  
16 installation, or were those just the  
17 one shift working doing the  
18 installation of those seals?

19 A. It was only our shift, yeah.

20 Q. Only your shift?

21 A. Yeah.

22 Q. Okay. Were there --- what  
23 about roof support? Was there ever  
24 any roof support installed on either  
25 side of those seals?

1 A. Cribs.

2 Q. Cribs?

3 A. Yeah.

4 Q. Where were they installed?

5 A. There were two cribs behind  
6 each seal and two cribs in front of  
7 each seal.

8 Q. Okay. And approximately how  
9 far away from the seal, do you recall  
10 the way they were?

11 A. I don't remember how far they  
12 were. Marty and Jeff showed us where  
13 to build the cribs.

14 Q. And you mean Jeff Snyder?

15 A. Yes, sir. Sorry.

16 MR. SWENTOSKY:

17 Let's just take a ---  
18 go off the record, we'll take  
19 a break.

20 SHORT BREAK TAKEN

21 BY MR. SWENTOSKY:

22 Q. You started at Sago in  
23 October?

24 A. Yes, sir.

25 Q. On October 1st. Okay. And

1 were you working for ICG at that  
2 point, or were you working for a  
3 contractor at any time?

4 A. I started with Tug Valley, or  
5 no, what was it? GMS.

6 Q. GMS?

7 A. Yeah. I'm not sure what that  
8 stands for, but it was only for a few  
9 weeks.

10 Q. Okay. You just worked for  
11 them?

12 A. Yeah. I just worked for them  
13 while I had my physical and  
14 everything with ICG.

15 Q. Okay. So on October 1st, or  
16 that initial time, it was  
17 approximately three weeks that you  
18 worked actually for GMS?

19 A. Yeah. Yeah, about that. I  
20 drew probably three weeks off them,  
21 yeah.

22 Q. Okay. And then, at that point  
23 then, you were employed by ICG, of  
24 course, until now?

25 A. Yes, sir.

1 Q. Okay. The cribs that were  
2 installed behind the seals, can you  
3 kind of give me an idea of how far  
4 they were installed away from the  
5 seal? In other words, could you walk  
6 between the seal and the cribs?

7 A. Yeah, you could walk in  
8 between them.

9 Q. Without dodging or just  
10 cleanly walk through there?

11 A. Yeah.

12 Q. Okay. And how about between  
13 the rib and the crib, and the crib  
14 and the crib, was there enough  
15 distance you could just walk back and  
16 forth through there?

17 A. Yeah.

18 Q. Could you say whether or not  
19 they were --- were they five feet?  
20 Were they at least five feet from the  
21 seal?

22 A. I don't know how far they was.  
23 I know you could walk in between  
24 them.

25 Q. Okay. About ten feet?

1 A. No, they wasn't that far.

2 Q. Okay. So somewhere between  
3 five and ten feet, closer to five?

4 A. I'd say between probably three  
5 and half to five feet, somewhere  
6 around there.

7 Q. Okay. Were all the seals in a  
8 straight line, meaning the seal was  
9 from --- the seals from Three to  
10 Nine, were they all in a straight  
11 line across? In other words, in the  
12 same location in the block?

13 A. Are you talking distance from  
14 the corner, from the outby corner  
15 back?

16 Q. Yeah. You're right. The  
17 distance from the outby side of the  
18 block to the seal, were those all the  
19 same distance, or ---?

20 A. No, not all of them were.

21 Q. Okay. And do you know why  
22 that was?

23 A. Not on every seal, no. I know  
24 one we had to move it back in the  
25 block to get it in the right height.

1 Q. Okay.

2 A. It was real high at the  
3 beginning of the block, and then the  
4 top dropped down, so we moved it back  
5 to get it underneath that top.

6 Q. Okay. And the area of that  
7 particular seal, the initial area,  
8 did you help measure that at all?  
9 Approximately how high was that, I  
10 guess is what I'm asking, where it  
11 was too high?

12 A. Where it was too high?

13 Q. Yes.

14 A. I don't know. It was too  
15 high, I know that. They said it had  
16 to go on back.

17 Q. Okay. And whenever --- as you  
18 mentioned, whenever you started the  
19 seal and you had to level it up, and  
20 you had to put some dry mortar down,  
21 to kind of make it nice and level,  
22 routinely, how many bags of mortar  
23 would that take to do that?

24 A. Well, I mean I said earlier,  
25 we didn't use dry mortar on every

1 seal.

2 Q. Okay. But typically how many  
3 --- and that's what I'm asking.  
4 Typically, how many bags would it  
5 take to level it up, when you did do  
6 that?

7 A. I have no clue, really.

8 Q. Were there occasions whenever  
9 --- because the roof, ventilations,  
10 low areas and so on, was there ever  
11 occasions when you weren't able to  
12 get a board in on top of the seal?

13 A. I don't know about every seal.

14 Q. That's not what I'm saying  
15 every. Any seal.

16 A. I don't know if there was  
17 three boards on every seal, no, I  
18 can't say that. I can't say there  
19 was, I can't say there weren't.

20 Q. Okay. And whenever you were  
21 topping it off and you were throwing  
22 this mortar back in there, how much  
23 mortar did it take to throw back in  
24 there? I mean, did it usually take  
25 like a full wheelbarrow load, or

1 anything like that, or several bags,  
2 several buckets? I guess, you were  
3 --- what did you use to take the  
4 mortar from the wheelbarrow to  
5 the ---?

6 A. Empty buckets.

7 Q. Empty buckets. Are those  
8 five-gallon buckets?

9 A. Yeah. It was five-gallon  
10 buckets.

11 Q. Okay. And how many of those  
12 buckets would it take to top off a  
13 seal?

14 A. Every seal was different.

15 Q. A little bit different?

16 A. Yeah. I have no idea, really.

17 Q. And you had mentioned earlier  
18 that Mr. Jeff Toler that was up ---  
19 he would stop in and visit at  
20 different times; is that correct,  
21 during the seal construction?

22 A. Yeah. He was up there a few  
23 times, yeah.

24 Q. Was it like every day?

25 A. I don't know how often he was

1 up there. I just know he was up  
2 there.

3 Q. Did he visit every seal?

4 A. You'd have to ask him that.

5 Q. Okay. Whenever Mr. Jeff  
6 Snyder was reviewing the plan with  
7 you --- you had talked about that  
8 earlier --- was he just giving you  
9 that information, or did he give  
10 others that information?

11 A. I know he gave it to me. I  
12 don't know who else was around.

13 Q. So then, he didn't --- or did  
14 he? Were there others with you  
15 actually listening to him at that  
16 time?

17 A. Well, I know Seth Osborne  
18 should have been with us.

19 Q. Should have been, you mean, he  
20 wasn't?

21 A. He was on our crew at that  
22 time.

23 Q. He was on your crew?

24 A. Yeah.

25 Q. And just for clarification,

1       when you said that he should have  
2       been there, do you mean he was there  
3       or he should have been and wasn't; is  
4       what I mean?

5       A.       I don't know. He should have  
6       been there, but I don't know. He may  
7       have been off that day, may have been  
8       sick or came in late or something.

9       Q.       Okay. So you don't know who  
10      was around you at that time?

11     A.       No.

12     Q.       So he may have been giving  
13     that to you by himself?

14     A.       I know he gave it to me.

15     Q.       All right. Was there ever an  
16     occasion whenever you were just  
17     working by yourself, have an occasion  
18     to, I guess, build the seal by  
19     yourself?

20     A.       Just me?

21     Q.       Yes.

22     A.       No.

23     Q.       No. There was always someone  
24     with you. Okay. And the floor, you  
25     had mentioned earlier that it was ---

1 it was damp on some occasions?

2 A. Yeah. The mine's damp, yes.

3 Q. Yeah. But there wasn't any  
4 puddles of water laying around?

5 A. No.

6 MR. SWENTOSKY:

7 Okay. John, do you  
8 have anything?

9 MR. COLLINS:

10 No. Jeremy, we have no  
11 questions concerning the seals  
12 at this time.

13 A. Okay.

14 MR. COLLINS:

15 I assume you're going  
16 to ask him the same as you did  
17 before, about the training or  
18 if he has anything concerning  
19 the explosion.

20 BY MR. SWENTOSKY:

21 Q. Did you ever have an  
22 opportunity to install Omega  
23 stoppings? I'm talking about --- and  
24 I didn't make a mistake there. I'm  
25 talking about stoppings.

1 A. Yeah. I've done Omega  
2 stoppings, yeah.

3 Q. Okay. And tell me a little  
4 bit about how you install those?

5 A. Build it like a regular  
6 stopping.

7 Q. Okay. And let's just pretend  
8 I don't know how you do that.

9 A. All right. Turn the block up,  
10 you know, on it's side. Instead of  
11 laying them down for the seal, you  
12 turn them up on their side for a  
13 stopping, and you dry stack them.  
14 And you wedge them in the top and  
15 then you plaster them.

16 Q. Okay. And do you use a board  
17 on top of those, too?

18 A. No.

19 Q. And how do you wedge those  
20 down on top?

21 A. With a wedge.

22 Q. And how do you --- do you  
23 wedge those into the side, though, to  
24 tighten those up?

25 A. Yeah, you might put a wedge in

1       them, maybe, if you need it.

2       Q.       Okay.  And behind the seals,  
3       on the inby side of the seals, do you  
4       recall, was there a stopping line  
5       behind those seals in the next block  
6       inby?

7       A.       At one time, yeah.

8       Q.       Okay.  During the construction  
9       of those seals, were those stoppings  
10      there?

11      A.       Yeah.

12      Q.       Okay.  Did those stoppings  
13      extend the whole way across?

14      A.       No.  I don't think that they  
15      --- no, they weren't in every entry.

16      Q.       Okay.  Just some entries?

17      A.       Yeah.

18      Q.       And to the best of your  
19      recollection, do you recall which  
20      seal would have had a stopping on the  
21      inby side of it?  Can you give me  
22      some kind of an idea, possibly?

23      A.       I know for sure that One and  
24      Ten did not.

25      Q.       Okay.  And what about, let's

1 says, Three, Four, Five, Six, Seven,  
2 Eight and Nine; do you recall?

3 A. Yeah. I don't know if there  
4 were stoppings behind a lot of those  
5 seals.

6 Q. But you don't know which ones?

7 A. No. I mean, I know that there  
8 was not a stopping behind Number One  
9 seal or Number Ten seal.

10 Q. And that was to allow air to  
11 flow inby?

12 A. Yeah. To blow in and go back  
13 out.

14 Q. Okay. Do you know if those  
15 stoppings were removed after the seal  
16 --- well, after the seals were  
17 installed, but I don't --- I mean, of  
18 course, One and Ten? I mean, nobody  
19 can get back there after it was all  
20 sealed off.

21 A. Right.

22 Q. But at some point, were they  
23 removed? Some of them? All of them?

24 A. All that I know that was done  
25 to them was after the seal was

1 complete, the whole seal was  
2 complete, for us to get out, we would  
3 have to knock a few block out and  
4 crawl out. But I don't know --- you  
5 know, I wasn't there when the One and  
6 Ten seal went up.

7 Q. Yeah. And I understand that.

8 A. So I don't know what they did  
9 as far as, you know, if they took  
10 block out or if the block were there.  
11 I don't know.

12 Q. So the ones that you were on  
13 the inby side, to get out, you would  
14 have to knock a few blocks out of  
15 those stoppings that were on the inby  
16 side?

17 A. Yeah.

18 Q. Okay. But you don't recall  
19 like --- were they completely taken  
20 out at one point, or left there?

21 A. No, I don't remember if they  
22 were or not. I just remember what we  
23 did to them.

24 Q. What you did, okay.

25 MR. SWENTOSKY:

1                   Off the record for just  
2                   a second.

3           OFF RECORD DISCUSSION

4           BY MR. SWENTOSKY:

5           Q.           Do you recall in just your  
6           short amount of there the history of  
7           methane --- did you roof bolt up in  
8           the old Two Left area, the area that  
9           was sealed off?

10          A.           The area that was sealed? No.

11          Q.           No. You were never up there?

12          A.           No.

13          Q.           Okay. Do you recall when your  
14          last annual retraining class that you  
15          participated in?

16          A.           February of 2005.

17          Q.           Okay. And at that point  
18          there, you obviously weren't working  
19          at Sago at that time?

20          A.           Right. I was at Brooks Run.

21          Q.           You were with Brooks Run?

22          A.           Yes, sir.

23          Q.           Okay. And that's the mine  
24          that you worked at prior to Sago?

25          A.           Yes. The company, yes.

1 Q. Okay. Did you work for GMS at  
2 that point?

3 A. At what point?

4 Q. When you took this training,  
5 or when you were at Brooks Run?

6 A. No. I worked for Brooks Run.

7 Q. You worked for Brooks Run. So  
8 then whenever you came to Sago Mine  
9 in October of 2005, that's whenever  
10 you became an employee of GMS?

11 A. GMS. Yes.

12 Q. Okay. And when you started at  
13 Sago Mine, what training did you  
14 receive?

15 A. Just the same as you get  
16 anywhere else. I mean, we went over  
17 the mine map, and showed you the  
18 escapeways.

19 Q. Okay.

20 A. Have a rescuer.

21 Q. Okay.

22 A. I remember everything he went  
23 through.

24 Q. And did that take a couple  
25 hours, a day, or ---?

1 A. No, it took a little while,  
2 yeah.

3 Q. Okay. Did you spend your full  
4 day outside, or did you have an  
5 opportunity to go underground that  
6 particular day?

7 A. I did not go underground that  
8 day, no.

9 Q. Okay. And you mentioned that  
10 you had SCSR training, self-rescuer  
11 training?

12 A. Yeah.

13 Q. And where did you take that  
14 training?

15 A. Al had a training meeting  
16 outside, Al Schoonover.

17 Q. Al Schoonover. And what  
18 position does he have?

19 A. He's the safety director.

20 Q. Okay. Can you explain that a  
21 little bit to me, that particular  
22 training that you had?

23 A. What training, with the SCSR?

24 Q. The SCSR, yes.

25 A. They just told me to go

1 through and show them how I would don  
2 it if I was in an emergency and had  
3 to use it.

4 Q. Okay. And what did you do  
5 whenever you did that?

6 A. Just donned the rescuer, just  
7 like I would have ---.

8 Q. What steps did you use?

9 A. I just on my --- got down on  
10 my knees and turn my bottle cap on,  
11 turn it toward it towards the rescuer  
12 and popped the top on it and put it  
13 clear around my neck, put the  
14 mouthpiece in, activated the bag, put  
15 the nosepiece on, and the goggles;  
16 got up like I'd walk out.

17 Q. Okay. Was that a --- you said  
18 that was a training model that you  
19 were using?

20 A. Yes.

21 Q. Do you feel the training was  
22 adequate?

23 A. Yeah.

24 Q. Was there any other areas of  
25 training that you might --- that you



1 Sago Mine?

2 A. Yes, sir.

3 Q. And how do they do that?

4 A. Just pat you down, take off  
5 your hard hat. That's about it.

6 Q. And who conducts those  
7 searches?

8 A. The boss did mine.

9 Q. Did yours, okay. And how  
10 often does he do that, do you know?

11 A. Usually once a weekend. I  
12 worked the weekend crew. He usually  
13 did it once a weekend.

14 Q. So that would have been every  
15 week?

16 A. Yeah.

17 Q. Have you ever observed anyone  
18 smoking underground?

19 A. At the Sago Mine?

20 Q. Yeah.

21 A. No.

22 Q. Have you ever found any  
23 smoking articles underground?

24 A. At Sago?

25 Q. At Sago Mine.

1 A. No.

2 Q. Has anyone offered you  
3 anything or made any promise to you  
4 in exchange for your appearing here  
5 today?

6 A. No.

7 Q. And do you have anything that  
8 you would like to add before I close?

9 A. No.

10 MR. SWENTOSKY:

11 On behalf of MSHA, I'd  
12 like to thank you for  
13 appearing and answering the  
14 questions today. Your  
15 cooperation is very important  
16 to the investigation as we  
17 work to determine the cause of  
18 the accident.

19 We ask that you not  
20 discuss your testimony with  
21 any person who may have  
22 already been interviewed, or  
23 who may be interviewed in the  
24 future. This will ensure that  
25 we obtain everyone's

1 independent recollection of  
2 the events surrounding the  
3 accident.

4 After questioning other  
5 witnesses, we may call you if  
6 we have any follow-up  
7 questions that we feel that we  
8 need to ask. If at any time  
9 you have additional  
10 information regarding the  
11 accident that you would like  
12 to provide to us, please  
13 contact us at the contact  
14 information that was  
15 previously provided to you,  
16 and that was the business  
17 cards that we provided to you.

18 The Mine Act provides  
19 certain protections to miners  
20 who provide information to  
21 MSHA, and as a result are  
22 treated adversely. If at any  
23 time you believe that you have  
24 been treated unfairly because  
25 of your cooperation in the

1 investigation, you should  
2 immediately notify MSHA.

3 If you wish, you may go  
4 back over any answer you have  
5 given during the interview and  
6 you may also make a statement  
7 if you would like to make it  
8 at this time. Do you have  
9 anything you'd like to add?

10 A. No.

11 MR. SWENTOSKY:

12 Thank you for your help  
13 in this matter.

14

15 \* \* \* \* \*

16 SWORN STATEMENT

17 CONCLUDED AT 11:45 A.M.

18 \* \* \* \* \*

19

20

21

22

23

24

25

4  
Addition of Omega Seal to  
Plan 8' high by 20' wide

OK

Only  
U.S. Department of Labor

Mine Safety and Health Administration  
604 Cheat Road  
Morgantown, West Virginia 26508



OCT 24 2005

Mr. Jeffrey K. Toler  
Superintendent  
Anker WV Mining Company, Inc.  
Route 9, Box 507  
Buckhannon, West Virginia 26201

UNDERGROUND MINE FILE	
APPROVED	10-24-05
INITIALS	alw

SENT TO AND/OR DISCUSSED WITH FIELD OFFICE:

SURNAME	DATE
General/Terry	10/13/2005
REVIEWED BY:	
Parrish	10/19/2005
Brooks for TH	10/20/05
Smith	10-20-05
Mosley	10-20-05

Dear Mr. Toler:

The request filed October 12, 2005, and revision filed October 19, 2005, to add an alternative method of seal construction to the ventilation plan for the Sago Mine, I.D. No. 46-08791, has been reviewed. The alternative method seal made with nonhitched-style Omega blocks is approved and will be included in your currently approved mine ventilation plan.

You are reminded that all changes or revisions to the mine ventilation plan, as specified in 30 CFR 75.370(d), must be submitted to and approved in writing by this office before they are implemented.

If you have any questions, please feel free to contact this office.

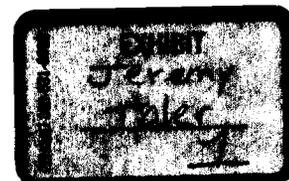
Sincerely,

**Kevin G. Stricklin**

Kevin G. Stricklin  
District Manager

EParrish:aew

bcc:  
Bridgeport F/O (2)  
W. Ponceroff  
E. Parrish  
Health Section  
Map File  
Main File



**Anker West Virginia  
Mining Company**

Rt. 9 Box 507  
Buckkannon, WV 26201

MINISTRY AND  
HEALTH ADMINISTRATION  
MORGANTOWN, WV

*ai*  
*10-13-05*

October 12, 2005

2005 OCT 12 PM 3:18

Kevin Stricklin, District Manager  
Mine Health and Safety Administration  
604 Cheat Road  
Morgantown, WV 26508  
Attn: Tom Hlavsa

RECEIVED  
*cm*

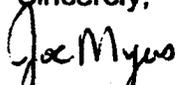
RE: Sago Mine's Ventilation Plan Changes

Mr. Stricklin:

Anker West Virginia Mining Company wishes to add an Omega Concrete Block Seal Method and Plan to our current Ventilation Plan for our Sago Mine, MSHA ID # 46-08791. It should be noted, that at this time, we only wish to add the non-hitched style to our plan. (See attached diagrams).

If you have any questions on this matter, please feel free to contact me at 304-471-3300.

Sincerely,



*For* Joe Schoonover  
Safety Director

## Guidelines for installation of Omega Block Concrete Seals

1. All loose material will be removed from the roof, ribs, and floor to accommodate seal construction and supplemental supports. The seals will be constructed at such a location so that a permanent block seal can be installed in front of the omega seal, if required in the future.
2. The seal will be constructed with Omega blocks using one of the following Methods:
  - A) Total thickness of 40"
  - B) No hitching required.
  - C) Joints must be staggered.
  - D) A bonding agent (Blockbond #122551), will be used to seal between each layer and joining edges of blocks at least ¼" thick and will be applied to the front and back of the seal.
  - E) The Omega blocks will be either be sawed or constructed so as to bring the top blocks to within 2" of the mine roof.
  - F) Three rows of wood planks running the entire length of the seal shall be installed across the top of the seal.
  - G) Wedges will be placed on 1 Foot centers or less, with an approved sealant used to fill the gaps.
  - H) An approved sealant shall be used as full face coating on both sides of the seal.
  - I) Seals shall be installed at least 10 feet from the corner of the pillar.
  - J) Sample pipes shall be installed as per 75.335.
  - K) Water traps will be installed within 12" of the bottom or floor.

RECEIVED

2005 OCT 19 PM 12: 43

A. Alton

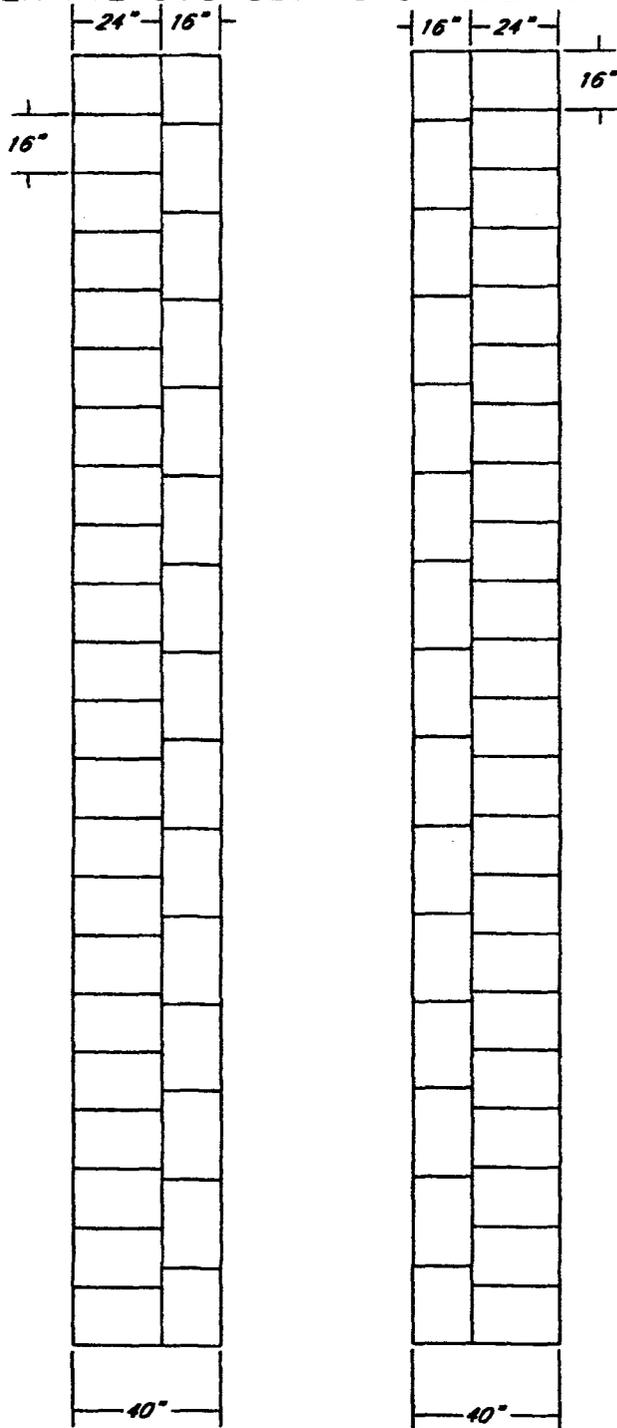
# SAGO MINE

40" THICK OMEGA BLOCK SEAL

CONSTRUCTION PLAN

FOR USE WITH SEALS UP TO 8 FT HIGH BY 20 FT WIDE

## ALTERNATE COURSES TO STAGGER JOINTS

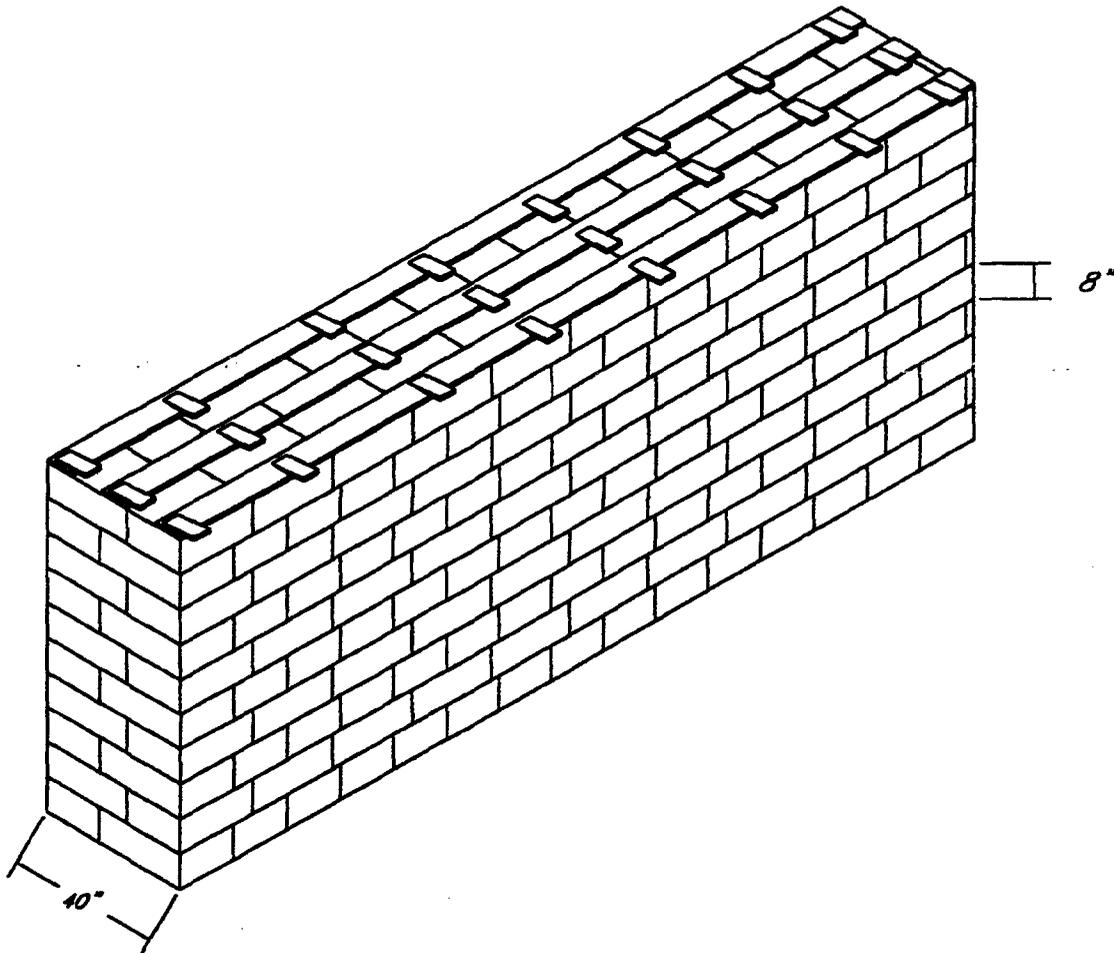


# SAGO MINE

## 40" THICK OMEGA BLOCK SEAL

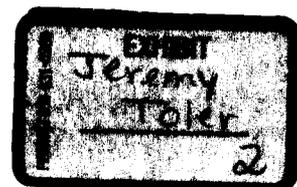
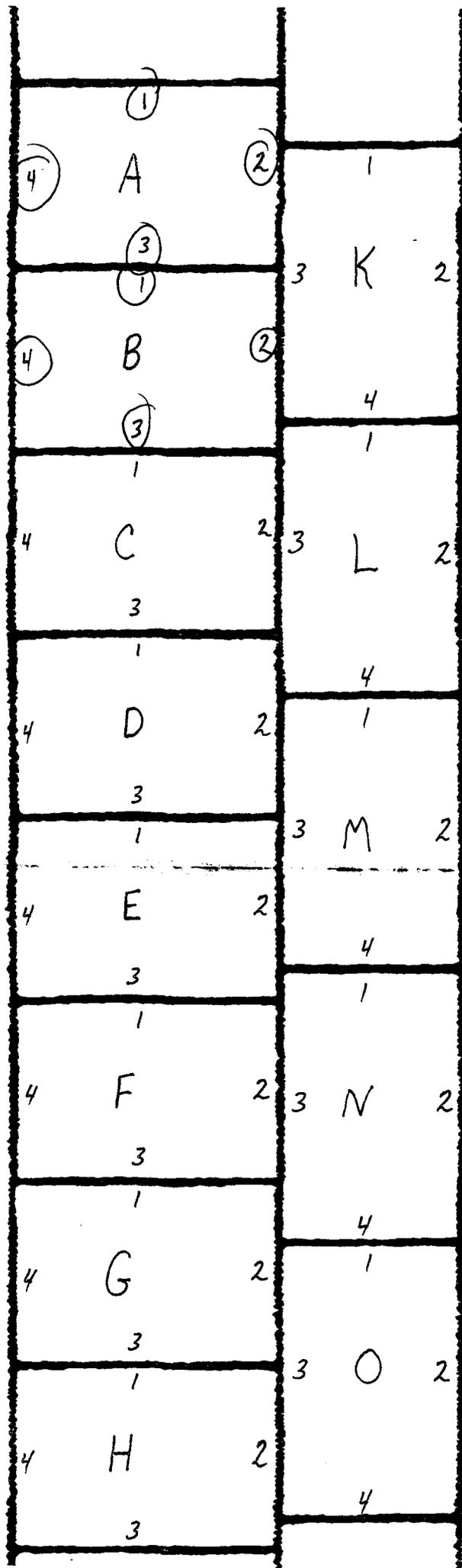
FOR USE WITH SEALS UP TO 8 FT HIGH BY 20 FT WIDE

1. Total thickness 40 inches
2. No hitching required
3. Joints must be staggered
4. All joints shall be a minimum  $\frac{1}{4}$  inch thick and be motared using an approved mortar/sealant
5. Three rows of wood planks running the entire length of the seal shall be installed across the top of the seal
6. Wedges will be placed on 1' centers or less with an approved sealant used to fill the gaps
7. An approved sealant shall be used as full face coating on both sides of the seal.



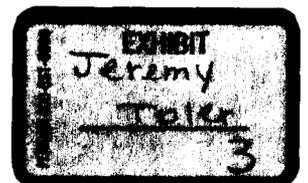
- Seals shall be at least 10 feet from the corner of the pillar
- Sampling pipes shall be installed as per 75.335

1<sup>ST</sup> Course  
Laid ON Floor



Course At  
Mid-Height

	1			
4	A	2	1	
	3		3	K 2
	1			
4	B	2	4	
	3		1	
	1			
4	C	2	3	L 2
	3			
	(1)		4	
(4)	D	(2)	1	
	(3)			
	1		3	M 2
4	E	2		
	3		4	
	1		1	
4	F	2	3	N 2
	3			
	(1)		4	
(4)	G	(2)	1	
	(3)			
	1		3	O 2
4	H	2		
	3		4	



Top Course  
At Roof

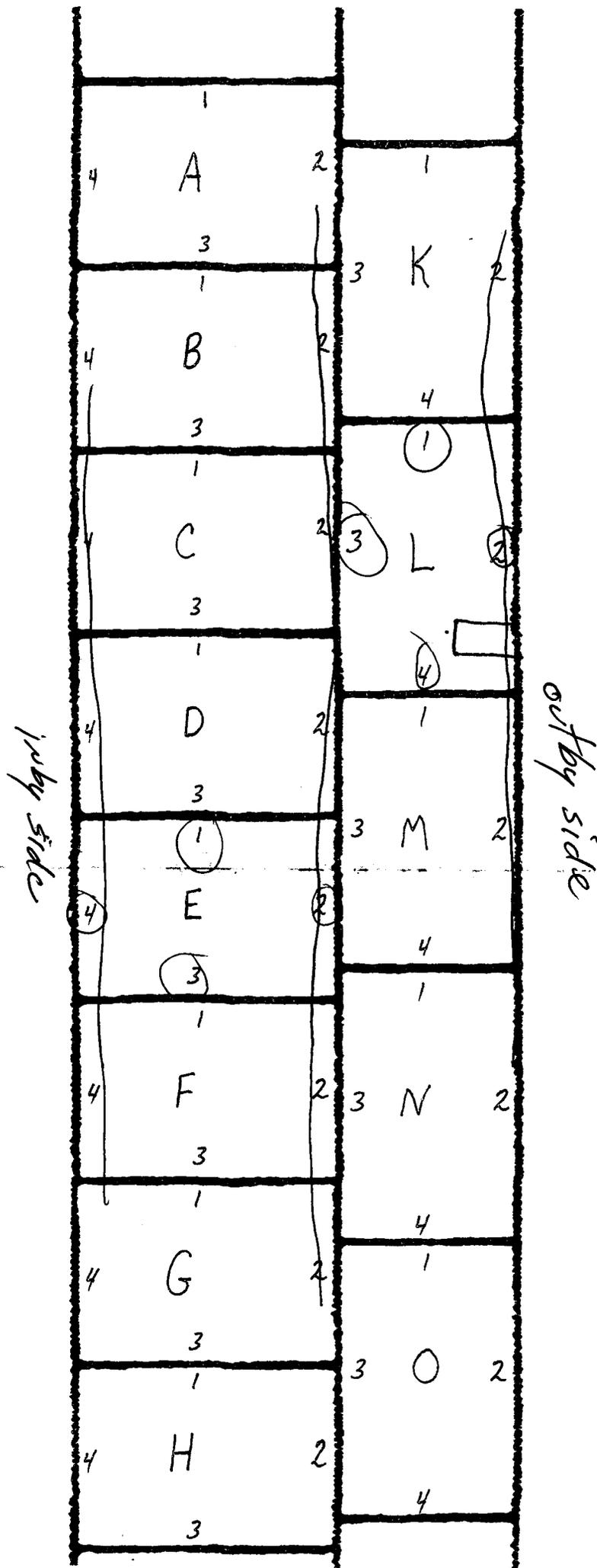


EXHIBIT  
Jeremy  
Tales  
4