



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 4900591
4. Served To Berman Cornett (Safety Director)		5. Operator PERFORMANCE COAL COMPANY, et al
6. Mine UPPER BIG BRANCH MINE-SOUTH		7. Mine ID 46-08436 (Contractor)
8. Condition or Practice		

8a. Written Notice (103g)

The Operator has failed to comply with the approved addendum to the Section Specific Methane Dust Control Plan (dated 01.26.2010) for 029/MMU (HG22 or #1 section).

The Addendum requires that 029/MMU be ventilated in the last open break (crosscut) with a minimum of 15,000 CFM. The HG 22 Preshift record reflects that for 47 shifts following the approval of the addendum the section was operated without the required minimum velocity. These dates and shifts are:
 (1) 01.29.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 13,985 CFM,
 (2) 01.30.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 13,948 CFM,

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input checked="" type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.370(a)(1)
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Section II--Inspector's Evaluation

10. Gravity:

A. Injury or Illness (has) (is): No Likelihood Unlikely Reasonably Likely Highly Likely Occurred

B. Injury or illness could reasonably be expected to be: No Lost Workdays Lost Workdays Or Restricted Duty Permanently Disabling Fatal

C. Significant and Substantial: Yes No

D. Number of Persons Affected: 010

11. Negligence (check one) A. None B. Low C. Moderate D. High E. Reckless Disregard

12. Type of Action 104(d)(2)

13. Type of Issuance (check one) Citation Order Safeguard Written Notice

14. Initial Action A. Citation B. Order C. Safeguard D. Written Notice

E. Citation/
Order Number 8082692

F. Dated Mo Da Yr
03/17/2009

15. Area or Equipment HG 22 (029/MMU)

16. Termination Due	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section III--Termination Action

17. Action to Terminate

18. Terminated

A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section IV--Automated System Data

19. Type of Inspection (activity code) E16	20. Event Number 4440348	21. Primary or Mill
22. Signature Patrick Alan Stanfield		23. AR Number 23908

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input type="checkbox"/> <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 12/06/2011	3. Citation/ Order Number 4900591
4. Served To Berman Cornett (Safety Director)	5. Operator PERFORMANCE COAL COMPANY, et al	
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Section II--Justification for Action

Continuation of 8. Condition or Practice

(3) 01.31.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 14,450 CFM,
 (4) 02.01.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 14,060 CFM,
 (5) 02.02.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 14,176 CFM,
 (6) 02.03.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 14,456 CFM,
 (7) 02.07.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 13,165 CFM,
 (8) 02.08.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 14,830 CFM,
 (9) 02.09.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 13,986 CFM,
 (10) 02.10.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 12,172 CFM,
 (11) 02.11.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 12,152 CFM,
 (12) 02.11.2010 Preshift examination done on the evening shift by Rick Hutchens reflects a reading of 14,960 CFM,
 (13) 02.12.2010 Preshift examination done on the owl shift by Kyle Anderson reflects a reading of 14,886 CFM,
 (14) 02.12.2010 Preshift examination done on the day shift by Dean Jones reflects a reading of 12,106 CFM,
 (15) 02.12.2010 Preshift examination done on the evening shift by Rick Hutchens reflects a reading of 14,550 CFM,
 (16) 02.13.2010 Preshift examination done on the owl shift by Kyle Anderson reflects a reading of 14,560 CFM,
 (17) 02.13.2010 Preshift examination done on the evening shift by Rick Hutchens reflects a reading of 14,550 CFM,
 (18) 02.14.2010 Preshift examination done on the owl shift by Kyle Anderson reflects a reading of 14,210 CFM,
 (19) 02.14.2010 Preshift examination done on the day shift by Brandon Bowling reflects a reading of 14,770 CFM,
 (20) 02.14.2010 Preshift examination done on the evening shift by Rick

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr	B. Time (24 Hr. Clock)	<input type="checkbox"/> C. Vacated	<input type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E16	10. Event Number 4440348		
11. Signature Patrick Alan Stanfield	AR Number 23908	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800



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Section II--Justification for Action

Hutchens reflects a reading of 14,160 CFM,
 (21) 02.15.2010 Preshift examination done on the owl shift by Kyle Anderson
 reflects a reading of 14,110 CFM,
 (22) 02.15.2010 Preshift examination done on the day shift by Brandon Bowling
 reflects a reading of 13,365 CFM,
 (23) 02.19.2010 Preshift examination done on the owl shift by Kyle Anderson
 reflects a reading of 12,500 CFM,
 (24) 02.19.2010 Preshift examination done on the day shift by Dean Jones
 reflects a reading of 12,600 CFM,
 (25) 02.19.2010 Preshift examination done on the evening shift by Rick
 Hutchens reflects a reading of 13,600 CFM,
 (26) 02.20.2010 Preshift examination done on the day shift filed by Dean
 Jones reflects a reading of 12,146 CFM,
 (27) 02.20.2010 Preshift examination done on the evening shift by Rick
 Hutchens reflects a reading of 13,000 CFM,
 (28) 02.21.2010 Preshift examination done on the owl shift by William
 Campbell reflects a reading of 12,675 CFM,
 (29) 02.21.2010 Preshift examination done on the day shift by Dean Jones
 reflects a reading of 12,800 CFM,
 (30) 02.21.2010 Preshift examination done on the evening shift by Rick
 Hutchens reflects a reading of 12,800 CFM,
 (31) 02.22.2010 Preshift examination done on the owl shift by Kyle Anderson
 reflects a reading of 12,280 CFM,
 (32) 02.22.2010 Preshift examination done on the day shift by Brandon Bowling
 reflects a reading of 12,148 CFM,
 (33) 02.22.2010 Preshift examination done on the evening shift by Rick
 Hutchens reflects a reading of 12,670 CFM,
 (34) 0223.2010 Preshift examination done on owl shift by Shawn Walker
 reflects a reading of 13,020 CFM,
 (35) 02.23.2010 Preshift examination done on the day shift by Brandon Bowling
 reflects a reading of 13,370 CFM,
 (36) 02.24.2010 Preshift examination done on the evening shift by Rick
 Hutchens reflects a reading of 14,110 CFM,
 (37) 02.25.2010 Preshift examination done on the owl shift by Kyle Anderson
 reflects a reading of 14,288 CFM,
 (38) 02.25.2010 Preshift examination done on the day shift by Brandon Bowling

See Continuation Form

Section III--Subsequent Action Taken

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Section IV--Inspection Data

9. Type of Inspection E16	10. Event Number 4440348		
11. Signature Patrick Alan Stanfield	AR Number 23908	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800



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Section II--Justification for Action

reflects a reading of 13,680 CFM,
(39) 02.26.2010 Preshift examination done on the owl shift by Kyle Anderson
reflects a reading of 14,860 CFM,
(40) 02.26.2010 Preshift examination done on the day shift by Dean Jones
reflects a reading of 14,651 CFM,
(41) 02.26.2010 Preshift examination done on the evening shift by Brandon Bowling
reflects a reading of 14,885 CFM,
(42) 02.27.2010 Preshift examination done on the owl shift by Kyle Anderson
reflects reading of 14,480 CFM,
(43) 02.27.210 Preshift examination done on the day shift filed by Dean Jones
reflects reading of 13,872 CFM,
(44) 02.27.2010 Preshift examination done on the evening shift by Brandon Bowling
reflects a reading of 14,422 CFM,
(45) 02.28.2010 Preshift examination done on the owl shift by Kenny Farmer
reflects a reading of 12,700 CFM,
(46) 03.01.2010 Preshift examination done on the owl shift by Kenny Farmer
reflects a reading of 13,550 CFM,
(47) 03.02.2010 Preshift examination done on the owl shift by Kenny Anderson
reflects a reading of 12,635 CFM.

Mine examiner, Charlie Semenske recorded these readings on HG 22 during the same time period to further reflect the cited condition of failure to maintain the required 15,000 CFM;

- (1) 02.24.2010 a reading of 10,710 CFM,
- (2) 03.04.2010 a reading of 9,470 CFM,
- (3) 03.17.2010 a reading of 11,984 CFM.

The cited condition poses two distinct hazards to the HG22 (029/MMU) miners. These are: (1) the low volume and resulting low velocity is not likely to dilute and render harmless a combustible atmosphere containing explosive gases as this mine is on a 103(i) spot for methane liberation, and (2) the low volume and resulting low velocity may fail to dilute and render harmless dust generated from cutting/loading coal and rock that can result in lung disease. A mine explosion occurred on 04.05.2010 affecting the HG 22 (029/MMU).

The cited condition poses a high degree of risk to the HG 22 (029) miners. The condition extended for a prolonged period of time increasing the operator's negligence-reckless disregard. Mine Foreman-Terry Moore

See Continuation Form

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Section II--Justification for Action

countersigned all the records indicating that Performance Coal Company higher management knew of the condition and allowed the condition to exist.

The Operator has engaged in aggravated conduct constituting more than ordinary negligence. This is an unwarrantable failure to comply with a mandatory standard.

This violation is a flagrant violation.

This citation is being issued to the following entities as a unitary operator: Performance Coal Company, Massey Coal Services, Inc., A.T. Massey Coal Company, Inc., and Massey Energy Company.

See Continuation Form

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