



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 1200	3. Citation/ Order Number 8226115
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) <input type="checkbox"/>

Loose coal, coal dust and float coal dust, was allowed to accumulate in active workings and on rock dusted surfaces. These accumulations of combustible materials existed throughout the following active workings inby survey spad station 19430: Old North Mains, Tailgate 1 North, Headgate 1 North, North Glory Mains, the Long Wall Face, Tail Gate 22 development section, Head Gate 22 development section, Jarrells Mains and the areas known as the Longwall cross over's.

Accumulations ranged from a thin observable layer of float coal dust on belt structures, cribs and various other types of stationary equipment to as much as four feet deep in travelways. The accumulations extended up to the entire entry width and extended as much as 120 feet in length. Many of

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.400
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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: 029

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 All areas inby survey spad station 19430

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

Section III--Termination Action

17. Action to Terminate

18. Terminated A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section IV--Automated System Data

19. Type of Inspection (activity code) E06 20. Event Number 4440347 21. Primary or Mill

22. Signature Randell Lewis 24262 Steaven D. Caudill 23. AR Number 24499

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 8226115
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

these accumulations were created during the initial development stages of the mining process. Observations of the cited accumulations are consistent with belt examination records and testimony provided by several miners.

A mine explosion occurred on April 5, 2010 originating on the tailgate of the Longwall and propagating through these areas of the mine inby survey spad 19430. These accumulations of combustible material contributed to the deaths of 29 miners and the disabling injuries of one miner and the serious injuries to another.

The cited accumulations were obvious, extensive and existed for an extended period of time. The conditions were evident to mine management due to the hundreds of weekly, preshift and onshift examinations that had been conducted by examiners and countersigned by upper management during the time the area was developed from March of 2005 to April 5, 2010. These conditions would be obvious to the most casual observer and would have been recorded by any prudent and diligent examiner.

Based on the history of 75.400 violations and this mine being previously placed on a potential pattern of violations, the operator had been placed on notice that greater attention to compliance with 75.400 was needed. The lack of appropriate action to address this ongoing problem establishes that the operator has engaged in a practice of violating 75.400. This is an unwarrantable failure to comply with a mandatory standard.

This violation is being issued as a flagrant violation.

This Order 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

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 E06	10. Event Number 4440347		
11. Signature Randell Lewis 24262 Steaven D. Caudill	AR Number 24499	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 1200