



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 1200	3. Citation/ Order Number 8226116
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"/>

The operator has failed to adequately apply and maintain rock dust in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust are not less than 65 per centum in intake air courses or 80 per centum in return air courses. Following a mine explosion on 04.05.2010 a mine dust survey was conducted by MSHA to determine the incombustible content of the combined coal dust, rock dust, and other dust in the mine. These survey samples provided a depiction of the pre-explosion incombustible content in the affected areas of the mine.

MSHA divided the underground workings into 22 separate sampling areas beginning at survey spad 22382 along the Ellis Track entry and survey spad 7301 along the North Mains and extending inby to the deepest accessible portions of the mine affected by the explosion. Areas 18, 20, 21 and 22

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 75.403
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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.

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration



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 8226116
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Section II--Justification for Action

Continuation of 8. Condition or Practice

inby the Longwall face were not accessible due to adverse roof conditions. Sampling locations were designated on a mine map for each area. Those locations were spaced every 500 feet in areas outby crosscut 67 of Old North Mains and approximately every 100 feet in areas inby crosscut 67. Sampling on 100-foot centers has been shown to offset any dust transport that may have occurred during an explosion. MSHA identified 2,207 locations for band sampling. If an area was too wet or inaccessible due to hazardous conditions, MSHA did not take a sample. Of the 2,207 intended sampling locations, MSHA took samples at 1,803 locations because actual mine conditions dictated that 404 locations were either too wet or otherwise inaccessible for sampling. MSHA sent all 1,803 samples for analysis to determine their incombustible content. Of the 1803 samples collected 1412 of the samples were non-compliant (78.31%). Of the 22 sampling areas designated by MSHA, flame propagated through 12 of these areas (area 5 at crosscut 67 and extending inby, and areas 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19). Flame propagation could not be determined in areas 18, 20, 21 and 22 due to inability to collect samples.

The results of the 1353 mine dust samples collected by MSHA within the area encompassed by flame propagation (determined by the extent of coking found in the dust samples collected) show that the operator failed to adequately apply and maintain rock dust on the top, floor, and ribs of this underground coal mine. Of the 1353 total samples collected from the flame propagation area, 1225 were non-compliant (90.5%). The failure by the operator to adequately rock dust these areas of the mine allowed a coal dust explosion to propagate, resulting in the deaths of 29 miners and injuries to others. The operator has engaged in aggravated conduct and more than ordinary negligence by failing to adequately rock dust and maintain the incombustible content in these areas of the underground coal mine to control dangerously volatile accumulations of combustible material. 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

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

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration



Section I--Subsequent Action/Continuation Data

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Section II--Justification for Action

Company, Inc., and Massey Energy Company.

See Continuation Form

Section III--Subsequent Action Taken

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