



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8256708
4. Served To Berman Cornett - Safety Director	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g)

The mine operator failed to establish a safe practice of supplying a sufficient supply of multi-gas detectors so miners could safely perform their duties. Miners had to work alone without multi-gas detectors due to an inadequate supply being provided by the operator. Miners that were assigned multi-gas detectors normally had to take them home to be charged in order to ensure that they would have one their next working shift. There was an insufficient amount of spare detectors made available to employees at the mine and three mine employees commented that if detectors were left at the mine site to be charged they would get taken. During witness testimony, eleven miners indicated that employees had to work alone without a multi-gas detector. Seven miners indicated during testimony that there was not a sufficient supply of detectors at the mine. The operator's

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1714-7
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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 Entire Mine.

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 Charles J. Maggard		23. AR Number 24038

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"/> Original Issue <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 12/06/2011	3. Citation/ Order Number 8256708
4. Served To Berman Cornett - Safety Director	5. Operator PERFORMANCE COAL COMPANY	
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Section II--Justification for Action

Continuation of 8. Condition or Practice

practice promoted miners to turn their detectors on and off during the shift to save battery power. A belt examiner commented that he had to turn his detector off to save battery power due to working long shifts. A preshift examiner performing his duties during the evening shift before April 5th only turned his detector on for fifteen minutes.

There was only one multi-gas detector (A586233) found on the longwall face during the investigation into the cause of the April 5, 2010 mine explosion that killed 29 miners at this mine. This detector was turned off for approximately 2 hours and 19 minutes during the dayshift on April 5th. This detector was also needed to perform twenty minute gas checks while the shearing machine was cutting on the longwall face. Six twenty minute gas checks were missed while the shearing machine cut coal in the tailgate area and back to the headgate. Also detector A578751 was being worn underground on 4/5/2010 but was not turned on where 4 employees were working outby the longwall face.

A mine examiner that preshifted and performed weekly examinations along the inby longwall bleeder entries was allowing employees to work alone without a multi-gas detector. The examiner also did not energize this detector from March 18, 2010 until the evening hours of April 5, 2010. When the detector was energized, the unit indicated a low battery alarm.

The mine operator also had a practice of not ensuring that all detectors were being calibrated and worn on a regular basis. Multi-gas detectors being used at the mine prior and during the April 5, 2010 accident were not being calibrated every 31 days. Fourteen multi-gas Solaris detectors (A590572, A588019, A552426, A582650, A5104690, A582586, A511805, A5108060, A586203, A595694, A108889, A5104679, A431130, and A558751) were found to have not been calibrated as required according to the detector downloads. Six of these detectors were used underground on April 5, 2010. The calibration log records the operator had prior to the accident were not adequate. There was forty-four Solaris detectors observed that did not have up-to-date calibrations recorded in the record book. There were also seven CSE 102 methane spotters that were being used underground on April 5th. Only two of these spotters had

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 Charles J. Maggard	AR Number 24038	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800



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Section II--Justification for Action

been shown to be calibrated in the calibration logs. These two detectors were last calibrated on 11/18/2009 and 12/7/2009, according to the records. Mine management was also not regularly calibrating the detectors that they normally used.

Evidence indicates that there was only one employee (section foreman) carrying a multi-gas detector on the longwall face before the mine explosion, and the operator did not provide any written record that anyone else working on the longwall face had a multi-gas detector. The shearer operators were also not qualified persons to perform methane and oxygen deficiency tests. The longwall face is over 1000 feet long and employees had to work alone in the area without a multi-gas detector. Records and testimony indicate that the section foreman was required to preshift and perform four onshift exams for the longwall face and areas outby, which included the power center, track entry, all travelways, and the barricade station. According to the operator's records the preshift examination normally took from 50 minutes to 1 hour and 12 minutes. Once this examination is completed the section foreman is required to contact the oncoming shift with the results of the examination. During April 5, 2010 this examination had began at 1:20 p.m. The results of that examination were communicated to the next oncoming shift at 2:40 p.m. approximately 1150 feet or more from the longwall tailgate. During this time period the longwall shearing machine was cutting coal toward the tailgate side of the longwall where a methane ignition occurred.

Multi-gas detectors can identify dangerous trends or changes in the mine atmosphere where employees work. Mine management failed to provide employees with enough multi-gas detectors in a mine with a history of floor gas feeder hazards and a previous explosion. The Upper Big Branch mine is extensive and has four producing sections and various construction areas that are several miles apart. On April 3, 2010 there were approximately 63 employees underground with 23 of those employees required to perform examinations with only 12 multi-gas detectors found to be used. On April 5, 2010, approximately 124 people worked underground with only 28 multi-gas detectors found to be used. This mine had 23 mine examiners working on April 5th that are required to have multi-gas detectors.

See Continuation Form

Section III--Subsequent Action Taken

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Mine Citation/Order  
Continuation

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



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Section II--Justification for Action

The operator is aware that this mine has a history of methane liberation (103i). The operator was previously cited and verbally instructed that there were not enough multi-gas detectors in the mine prior to April 5, 2010. The operator continued this practice and has engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure to comply with a mandatory standard.

This violation is issued as 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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Charles J. Maggard	24038	12/06/2011		0800