



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8431838
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 engaged in a practice of failing to conduct adequate preshift examinations in the north area of the mine where an explosion occurred on April 5, 2010 which resulted in 29 fatalities and serious injuries to two miners. The inadequate examinations occurred from 1.1.2010 up to the date of the explosion.

The practice includes violations of the following subsections of 75.360:

(a) (1) Miner testimony obtained during the accident investigation indicates that miners entered the mine prior to the completion of the preshift examinations.

An agent of the operator, Jeremy Burghduff, failed to conduct a preshift

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 75.360
--------------	--------------------------------------------------------------------------------------------------------------------	----------------------	----------------------------------------------

Section II--Inspector's Evaluation

10. Gravity:					
A. Injury or illness (has) (is):	No Likelihood <input type="checkbox"/>	Unlikely <input type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input checked="" type="checkbox"/>
B. Injury or illness could reasonably be expected to be:	No Lost Workdays <input type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input checked="" type="checkbox"/>	
C. Significant and Substantial:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	D. Number of Persons Affected: 029		
11. Negligence (check one)					
A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input type="checkbox"/>	D. High <input type="checkbox"/>	E. Reckless Disregard <input checked="" type="checkbox"/>	
12. Type of Action 104(d)(2)		13. Type of Issuance (check one)			
		Citation <input type="checkbox"/> Order <input checked="" type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>			
14. Initial Action			E. Citation/ Order Number	F. Dated	Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			8082692		03/17/2009
15. Area or Equipment North area of the mine affected by the explosion on 4/05/2010					
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 Pat Stanfield 23908 Dean Cripps			23. AR Number 23590

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 8431838
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)	

Section II--Justification for Action

Continuation of 8. Condition or Practice

examination prior to two miners on the pumping crew entering the work area for at least 19 shifts from 03.18.2010 through 04.05.2010. Testimony indicates that the two miners traveled with Mr. Burghduff while he conducted the preshift examination. In addition, data downloaded from Burghduff's Solaris multi-gas detector reveals that the detector had not been turned on from 03.18.2010 until after the mine explosion on 04.05.2010. With his detector turned off, Burghduff was unable to test for methane or oxygen deficiency as required.

Another agent of the operator, John Skaggs, performed an inadequate preshift examination of the longwall on 4.4.2010 for the oncoming midnight maintenance shift. According to testimony, the examination consisted of examining the stage loader area. The examiner failed to examine the entire length of the longwall face, where miners were scheduled to and did work during the oncoming shift, and did not include the required air measurements. Testimony indicates that examiners routinely failed to examine the tailgate entry of the longwall section.

(b) Over many shifts, several different examiners failed to adequately examine the areas along the travelways from the North Portal to/and including the three working sections: headgate 22, tailgate 22 and the longwall. The examiners failed to identify very obvious hazardous conditions throughout the examined areas. For example, accumulations of loose coal, coal dust, and float coal dust are present in the entries and crosscuts throughout these areas. Additionally, entry widths exceeded the required widths of the approved roof control plan in 16 locations.

(c) (2) The operator regularly failed to accurately measure the air quantity in the intake entries at the intake end of the longwall immediately outby the face.

(g) Preshift exam records for headgate 22 (03.25.2010), tailgate 22 (03.22.2010) and the longwall (03.10.2010) were not verified by the person conducting the examinations.

The operator recorded hazardous conditions in its internal production and maintenance reports while failing to record the same hazards in its preshift

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
----------------	------------------	------------------------	-------------------------------------	----------------------------------------	--------------------------------------

Section IV--Inspection Data

9. Type of Inspection E06	10. Event Number 4440347		
11. Signature Pat Stanfield 23908 Dean Cripps	AR Number 23590	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 12/06/2011	3. Citation/Order Number 8431838
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)

Section II--Justification for Action

examination records. This practice prevented MSHA, WVMSh&T, miners, and oncoming foremen from knowing of hazardous conditions and taking preventative measures. In the alternative, the operator failed to comply with 30 C.F.R. 75.363(b).

The failure to identify, record and correct hazards in one area of the mine can result in injury or loss of life in another part of the mine, due to the confined nature of the underground mining environment. The operator's practice of failing to conduct adequate preshift examinations, as well as the operator's practice of failing to conduct adequate weekly and on-shift examinations (as cited in 8431855 and 8227550), exposed miners to ongoing hazards. This practice of failing to conduct adequate preshift examinations and to identify and correct obvious hazardous conditions contributed to the explosion on April 5, 2010 and the resulting 29 deaths, disabling injuries to one miner, and serious injuries to another miner.

The operator 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

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
----------------	------------------	------------------------	-------------------------------------	----------------------------------------	--------------------------------------

Section IV--Inspection Data

9. Type of Inspection E06	10. Event Number 4440347		
11. Signature Pat Stanfield 23908 Dean Cripps	AR Number 23590	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800