

U. S. Department of Labor

Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880-1000

Denial



APR 10 2009

Mr. Chris Blanchard  
President  
Performance Coal Company  
P. O. Box 69  
Naoma, WV 25140

Dear Mr. Blanchard:

Subject: Mine Ventilation Plan, Section 75.370, 30 CFR 75, Upper  
Big Branch Mine - South, I.D. No. 46-08436, Performance  
Coal Company, Montcoal, Raleigh County, West Virginia

This will acknowledge receipt of the annual ventilation map, dated February 28, 2009, and received by MSHA on March 13, 2009, for the subject mine. The certified map submitted for approval does not meet the requirements of 30CFR, Section 75.372 and is hereby denied. Specifically, the map does not depict an accurate representation of the surface openings at the 'Ellis Punch-out'. The certified map provides air quantities, and shows existing ventilation controls in-place, for the #2 and #3 portals which are mapped as openings to the surface. MSHA has determined that these entries are not opened to the surface; therefore the certified map is inaccurate and misrepresents the depiction of these portal entries.

An accurate and acceptable ventilation map must be resubmitted to this office as soon as possible in order to address enforcement action issued at the mine site on April 9, 2009, by an Authorized Representative.

Should you have any questions concerning this matter, please contact the Ventilation Department at (304) 877-3900/Ext. 142.

Sincerely,

/s/ Richard J. Kline

Robert G. Hardman  
District Manager  
Coal Mine Safety and Health, District 4

Cc: Mt. Hope Field Office (3incl.)  
Files/nlc

SUPERVISORY ACKNOWLEDGEMENT

RG DSM 4-10-09  
Initials Date  
RG 4/10/09

**U. S. Department of Labor**

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100 Bluestone Road  
Mount Hope, WV 25880-1000



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Mr. Chris Blanchard  
President  
Performance Coal Company  
P. O. Box 69  
Naoma, WV 25140

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Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Hardman". The signature is stylized and cursive.

Robert G. Hardman  
District Manager  
Coal Mine Safety and Health, District 4



Section I--Violation Data

1. Date Mo Da Yr 04/09/2009	2. Time (24 Hr. Clock) 1320	3. Citation/ Order Number 6612410
4. Served To ANDY COALSON (MINE FOREMAN)		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 OPERATOR HAS SUBMITTED AN INACCURATE AND MISREPRESENTING MAP TO THE DISTRICT MANAGER FOR APPROVAL ON 3/13/2009. THE MAP HAS INACCURATE INFORMATION FOR THE ELLIS PUNCH OUT.

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 75.372(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: 016

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 THE #2, #3, AND #4 ENTRIES FOR THE ELLIS PUNCH OUT FOR A DISTANCE OF 300 FT. UNDERGROUND FROM THE HIGHWALL.

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) E01 20. Event Number 4119936 21. Primary or Mill

22. Signature [Redacted] 23. AR Number 24172

MSHA Form 7000-3a 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.



# Performance Coal Company

P.O. Box 69

Naoma, WV

25140

March 12, 2009

Mr. Robert G. Hardman  
Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880

Re: Performance Coal Company  
Upper Big Branch Mine  
MSHA ID : 46-08436  
State ID: U-3042-92  
Annual Ventilation Map

Dear Sir:

Please find enclosed, three (3) copies of the Annual Ventilation Map for our Upper Big Branch Mine for your review and approval. Overlays are included as an attachment.

This mine currently has no miner's representative. If you have any questions or comments, feel free to contact me at (304) 854-3516.

Respectfully Submitted,  
Performance Coal Company, Inc.

Eric Lilly  
Mine Engineer

MSHA  
MOUNT HOPE, WV

MAR 13 2009

RECEIVED  
VENTILATION