



March 12, 2009

Mr. Gary Varney  
Mine Manager  
Broad Run Mine  
Big River Mining Company  
1714 Graham Station Road  
New Haven, WV 25265

Dear Mr. Varney:

In accordance with Section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and 30 CFR Part 104, the Mine Safety and Health Administration (MSHA) has conducted a pattern of violation (POV) screening of compliance records for the Broad Run Mine, MSHA ID No. 46-09136 for the 24-months ending December 31, 2008. A POV screening is used to determine if Section 104(e) is applicable to a particular mine. If implemented, Section 104(e) requires all subsequent violations designated as Significant and Substantial (S&S) be issued as closure orders with all persons withdrawn from the affected area except those necessary to correct the violation. An operator can be removed from Section 104(e) sanctions only after an inspection of the entire operation results in no significant and substantial violations.

This letter is your notification that a potential pattern of violations exists at the Broad Run Mine. This notification is based upon the initial screening and pattern criteria review, which were conducted in accordance with 30 CFR Parts 104.2 and 104.3 respectively. A Pattern of Violation Review report is enclosed as Attachment A. This report details the methodology utilized for the initial screening and pattern criteria review and summarizes your mine's performance relative to the criteria.

Prior to MSHA implementing Section 104(e) sanctions at the Broad Run Mine, you are provided the opportunity, not to exceed 20 days from the date of this notification, to take any or all of the following steps:

Review all documents upon which the pattern of violations evaluation is based and provide additional mitigating information.

Submit a written request for a conference with me (I shall hold any conference within 10 days of a request).

Provide a written plan to me indicating that you will institute a corrective action program to avoid repeated significant and substantial violations at the operation.

Please note that current regulation 30 C.F.R. Part 104.4(d) requires that you post a copy of this letter on the mine bulletin board until you are notified of MSHA's final determination with respect to your status pursuant to Section 104(e) of the Mine Act.

If you implement a corrective action program, MSHA will conduct a complete inspection of the Broad Run Mine. This inspection may start as soon as April 1, 2009. I will analyze the results of this complete inspection and other on-site enforcement activities conducted during the corrective action period to evaluate whether the Broad Run Mine has effectively reduced the occurrence of S&S violations during the review period. Therefore, I encourage you to implement a corrective action program as soon as practicable. If, during the review period, the Broad Run Mine achieves a reduction in the S&S violation frequency rate to 6.9 S&S violations per 100 inspection hours, [this number will be the higher of the two possible goals – 30% reduction or reduction to the national rate] the Broad Run Mine will not be issued a pattern of violations notice during this POV review cycle.<sup>1</sup>

If you implement a corrective action program which does not reduce the rate of S&S violations to the levels set forth in the paragraph above, pursuant to 30 C.F.R. Section 104.5(b), I will submit an evaluation report to the Administrator for Coal Mine Safety and Health within 120 days from the date of this notification. If you choose not to implement a program to reduce S&S violations, I will submit the report of the evaluation to the Administrator within 60 days from the date of this notification.

In both cases, a copy of the report of evaluation will be provided to you 10 days before the report is sent to the Administrator. You will have 10 days from the receipt of the report to submit written comments to the Administrator.

Within 30 days of receipt of my report to the Administrator, the Administrator will issue a decision as to whether the Broad Run Mine is to be issued a Notice of a Pattern of Violations. A copy of the decision will be provided to you. If the Administrator decides to issue a Notice of Pattern of Violations, I will issue the Notice of Pattern of Violations to you.

---

<sup>1</sup> However, mines which have implemented a successful corrective action plan during the 90 day evaluation period will be considered along with all other mines for potential pattern of violation notices during the next and subsequent review cycles. In the case of the Broad Run Mine, it was issued 9.8 S&S violations per 100 inspection hours during the 24-month review period, in this review cycle –146% of the national average of 6.9 S&S violation per 100 inspection hours for {mine type and classification} mines. To ensure the Broad Run Mine is not exhibiting a potential Pattern of Violations when the next evaluation is conducted, the Broad Run Mine should have an S&S violation rate at or near the national rate. MSHA is required to conduct evaluations at least annually but can conduct the evaluations more frequently.

Following issuance of a Notice of Pattern of Violations, I will initiate appropriate inspection activities to ensure that the Broad Run is inspected in its entirety during the following 90-day time frame and each succeeding inspection cycle until the Pattern of Violation order is terminated.

If upon any inspection after the issuance of the Pattern of Violations Notice an authorized representative finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to the cause and effect of a safety or health hazard, the inspector shall issue an order requiring the withdrawal of all persons in the area affected by the violation except those persons listed in 104(c) of the Mine Act. All persons except as listed in 104(c) of the Mine Act shall also be prohibited from entering that area until the inspector determines that such violation has been abated.

Termination of a Pattern of Violations notice shall occur when an inspection of the entire operation results in no significant and substantial violations or no withdrawal order is issued by MSHA in accordance with section 104(e)(1) of the Act within 90 days of the issuance of the pattern letter.

You may request an inspection of the entire operation or portions of the operation at any time. No advance notice of the inspection shall be provided and MSHA will determine the scope of each inspection. Partial inspections covering the entire operation within the 90-day period will constitute an inspection of the entire operation for the purposes of termination of a Pattern of Violations Notice.

Please contact me at (204) 225-6800 if you have any questions regarding this matter. Additional mitigating information, requests for a conference and/or a written plan to institute a corrective action program should be sent to me at:

MSHA  
604 Cheat Road  
Morgantown, WV 26508

Sincerely,



Bob E. Cornett  
District Manager

Enclosures

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4609136  
 Mine Name: Broad Run Mine  
 Mine Type: Underground

	Numbers for Broad Run Mine Operation
At least ten S&S Citations/Orders, at mines classified as Surface and Facility, issued during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, issued during the 24 month review period.	20
At least two "elevated enforcement" actions, [i.e. type action is 104 (b), 104 (d) or 107(a)], issued during the 24 month review period.	49
The ratio of S&S Citation/Orders issued in the most recent 12 months of the review period to the number of S&S Citations/Orders issued during the previous 12 months of the review is 70% or greater.	151%
The mines' rate of S&S Citations/Orders issued per 100 inspection hours during the 24 month review period is equal to or greater than 125% of the National rate of S&S Citations/Orders issued per 100 inspection hours for that mine type and classification.	145%
The number of S&S Citation/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 6.7 This Mine: 5.7
Or	
The number of elevated enforcement Citations/Orders issued per 100 inspection hours during the last two quarters is greater than the Industry Average for this mine type and classification.	Industry: 0.4 This Mine: 1.3
A minimum of two "elevated enforcement" final orders of the Commission, [i.e. type action is 104 (b), 104 (d) or 107(a)] during the 24 month review period.	17
At least one S&S 104 (d) issuance that became a final order of the Commission during the 24 month review period.	13
At least ten S&S Citations/Orders, at mines classified as Surface or Facility, that are final orders of the Commission during the 24 month review period.	N/A
At least twenty S&S Citations/Orders, at mines classified as Underground, that are final orders of the Commission during the 24 month review period.	166

## ***Pattern of Violations Screening Criteria and Scoring Model***

Mine ID: 4609136  
Mine Name: Broad Run Mine  
Mine Type: Underground

Numbers for Broad  
Run Mine Operation

### ***Scores***

a. The number of S&S citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period plus	5.36
b. the number of 104(b) (failure to abate) orders issued per 100 Inspection Hrs. for failure to abate an S&S issuance that that became final during the 24 month review period and multiplying by a factor of 5; plus	0
c. the number of 104(d) (unwarrantable failure) citations and orders issued per 100 Inspection Hrs. that became final during the 24 month review period and multiplying by a factor of 5; plus	2.58
d. the number of 107(a) (imminent danger) orders issued per 100 Inspection Hrs. during the 24 month review period and multiplying by a factor of 5.	0.16

Subtotal: 8.1

### ***Increases to the Subtotal***

e. 5%-20% for operations with injury rates above the national average for the same mine type and industry grouping as follows:	0.41
f. 5%-20% for operations with injury severity rates (number of days lost X 200,000 divided by the total work hours reported) above the national average for the same mine type and industry grouping as follows:	0.02
g. 5%-20% for operations with final S&S citations and orders per 100 inspection hours (VPIH) above the 24-month national average for the same mine type and industry grouping as follows:	0.41

The final weighted score must be greater than or equal to the average weighted score for all active mines of the same mine type and industry classification.

Industry: 4.2

This Mine: 8.9

### ***30 CFR §104.3***

At least five S&S citations of the same standard that became final orders of the Commission during the most recent 12 months.

75.1725(a) Cited 13  
Times

\*Mine ID: 4609136

Mine Name: Broad Run Mine

District: DISTRICT 03  
Field Office: Bridgeport WV Field Office

Operator Name: Big River Mining LLC

County, State: Mason, WV

Current Opr. Begin Date: 12/06/05

Mine Type: Underground

Controller Name: Richard (Barry) Hale

Mine Status: Active

Mine Status Date: 01/01/07

Primary SIC Desc: Coal (Bituminous)

Secondary SIC Desc: -

Type of Company Desc: Other

### Mine Violation History

Cal Yr	Total Opr C/O/S	Total CTR C/O/S	Total Opr & Ctr C/O/S	Total Opr. C/O	Tot Safe	104a S&S	Opr 104a Non S&S	Opr 104b	Opr 104g	Opr 104d Cit	Opr 104d1 Ord	Opr 104d2 ord	Opr 107a	Opr 103k	Opr S&S	Opr Non S&S	Broad Run Mine S&S %	Nat'l S&S %
2000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	42.22%
2001	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	40.59%
2002	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	38.63%
2003	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	39.30%
2004	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	41.56%
2005	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0.00%	39.26%
2006	24	6	30	24	-	11	13	-	-	-	-	-	-	-	11	13	45.83%	39.53%
2007	304	7	311	294	10	122	152	1	-	1	8	10	-	-	139	154	47.44%	36.55%
2008	447	19	466	443	4	145	268	1	-	-	-	27	1	1	165	275	37.50%	35.24%
2009	253	-	253	251	2	64	176	-	-	-	-	10	-	1	70	180	28.00%	33.99%

Cal Yr	Total Opr C/O/S	Total CTR C/O/S	Total Opr & Ctr C/O/S	Total Opr. C/O	Tot Safe	104a S&S	Opr 104a Non S&S	Opr 104b	Opr 104g	Opr 104d Cit	Opr 104d1 Ord	Opr 104d2 ord	Opr 107a	Opr 103k	Opr S&S	Opr Non S&S	Broad Run Mine S&S %	Nat'l S&S %
				1,012											385			