



Section I--Violation Data

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|--|--------------------------------|---|
| 1. Date Mo Da Yr 12/06/2011 | 2. Time (24 Hr. Clock) 0800 | 3. Citation/ Order Number 4900509 |
| 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) ☐

The failure to conduct an adequate examination for potentially dangerous conditions and to assure safe operating condition was not being performed on the Fairchild scoop, S/N T339-267, located on the Tailgate 22 section. Several obvious permissibility deficiencies were observed on the scoop that should have been found during the weekly exam. The deficiencies are listed in Order No. 4900494.

The record of the weekly exams on the scoop has "packing gland on order" listed for the exams performed on 3/11/10, 3/05/10, 2/26/10, 2/19/10, 2/12/10, 2/05/10, and 1/29/10. There is no corrective action listed or any indication that the scoop was removed from service.

The operator has engaged in aggravated conduct constituting more than

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 75.512 |
|--------------|--|----------------------|--|

Section II--Inspector's Evaluation

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|---|--|---|--|------------------------------------|
| 10. Gravity: | | | | |
| A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input checked="" type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/> | | | | |
| B. Injury or illness could reasonably be expected to be: No Lost Workdays <input type="checkbox"/> Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/> | | | | |
| C. Significant and Substantial: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | | | | D. Number of Persons Affected: 012 |
| 11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input checked="" type="checkbox"/> E. Reckless Disregard <input 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 A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/> | | E. Citation/ Order Number 8082692 | | F. Dated Mo Da Yr 03/17/2009 |
| 15. Area or Equipment The Fairchild scoop serial #T339-267 on the TG 22 section. | | | | |

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|---------------------|------------------|------------------------|
| 16. Termination Due | A. Date Mo Da Yr | B. Time (24 Hr. Clock) |
|---------------------|------------------|------------------------|

Section III--Termination Action

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| 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) E16 | 20. Event Number 4440348 | 21. Primary or Mill |
| 22. Signature Keith McElroy | | 23. AR Number 24153 |

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 4900509 |
| 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

ordinary negligence. This violation is an unwarrantable failure to comply with a mandatory standard.

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 E16 | 10. Event Number 4440348 | | |
| 11. Signature Keith McElroy | AR Number 24153 | 12. Date Mo Da Yr 12/06/2011 | 13. Time (24 Hr. Clock) 0800 |