



## Section I--Violation Data

|  |                                |   |
|--|--------------------------------|---|
| 1. Date<br>Mo Da Yr<br>12/06/2011                | 2. Time (24 Hr. Clock)<br>0800 | 3. Citation/<br>Order Number<br>8250009         |
| 4. Served To<br>Berman Cornett (Safety Director) |                                | 5. Operator<br>Performance Coal Company, et al. |
| 6. Mine<br>UPPER BIG BRANCH MINE-SOUTH           |                                | 7. Mine ID<br>46-08436<br>(Contractor)          |
| 8. Condition or Practice                         |                                |   |

8a. Written Notice (103g) ☐

The operator failed to immediately contact MSHA at once without delay and within 15 minutes of an explosion that occurred on 4-5-2010 at the Massey Energy's Upper Big Branch mine. Records indicate from recording devices recovered from the accident scene that at 15:02 an explosion occurred that resulted in the deaths of 29 miners. The MSHA call center received a call from the Marfork training center at 15:30 saying there was an air reversal on the belts with C/O concentrations between 50 and 100 parts per million. When asked by the call center operator if there were any deaths, injuries, fire or anyone trapped as a result of this condition, the answer was no. In a mine emergency that indicates potential catastrophic results, early notification to authorities would assist in the preservation of life and property. The operator has engaged in aggravated conduct constituting more

See Continuation Form (MSHA Form 7000-3a) ☒

|              |  |                      |  |
|--------------|--|----------------------|--|
| 9. Violation | A. Health <input type="checkbox"/><br>Safety <input checked="" type="checkbox"/><br>Other <input type="checkbox"/> | B. Section<br>of Act | C. Part/Section of<br>Title 30 CFR<br>50.10(a) |
|--------------|--|----------------------|--|

## Section II--Inspector's Evaluation

|   |  |   |  |                                    |
|---|--|---|--|------------------------------------|
| 10. Gravity:  |  |   |  |                                    |
| A. Injury or Illness (has) (is): No Likelihood <input type="checkbox"/> Unlikely <input checked="" type="checkbox"/> Reasonably Likely <input 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 type="checkbox"/> No <input checked="" type="checkbox"/>   |  |   |  | D. Number of Persons Affected: 050 |
| 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<br>A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>  |  | E. Citation/<br>Order Number 8082692  |  | F. Dated Mo Da Yr<br>03/17/2009    |
| 15. Area or Equipment Underground area of the mine.   |  |   |  |                                    |
| 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<br>(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<br><input type="checkbox"/> <input checked="" type="checkbox"/> | 2. Dated<br>(Original Issue) Mo Da Yr<br>12/06/2011 | 3. Citation/<br>Order Number 8250009 |
| 4. Served To<br>Berman Cornett (Safety Director)  | 5. Operator<br>Performance Coal Company, et al.     |                                      |
| 6. Mine<br>UPPER BIG BRANCH MINE-SOUTH  | 7. Mine ID<br>46-08436 (Contractor)                 |                                      |

Section II--Justification for Action

Continuation of 8. Condition or Practice

than ordinary negligence. This 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<br>Keith McElroy | AR Number<br>24153       | 12. Date Mo Da Yr<br>12/06/2011 | 13. Time (24 Hr. Clock)<br>0800 |