



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8250014
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 failed to comply with the approved roof control plan in the 1 North Panel tailgate entry. Page 19 of the plan stipulates that in longwall development entries of initial longwall panels, "the tailgate entry will have supplemental support in the form of two rows of 8' (foot) cable bolts or posts installed between primary support. This supplemental support shall be maintained 1000 feet outby the longwall face at all times." The operator failed to install the required supplemental supports in the tailgate entry adjacent to the 1 North longwall panel. The operator failed to install cable bolts and only installed one row of posts in the tailgate entry.

Required tailgate support is significant because observations indicate

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 75.220(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: 029

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 Longwall tailgate entry and 1000 feet outby.

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

17. Action to Terminate

18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)
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Section IV--Automated System Data

19. Type of Inspection (activity code) E06	20. Event Number 4440347	21. Primary or Mill
22. Signature Norman G. Page 23304 John F. Godsey		23. AR Number 23127

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 8250014
4. Served To Berman Cornett, Safety Director	5. Operator PERFORMANCE COAL COMPANY, et al	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID (Contractor) 46-08436	

Section II--Justification for Action

Continuation of 8. Condition or Practice

that crosscut 49, (the first crosscut inby the face) had already caved prior to the face reaching crosscut 48, (the crosscut outby the face) as evidenced by observations of soot, coal dust and debris on the fall rubble. Roof failure in crosscut 49 restricted airflow from traveling inby from the face. The failure to maintain the required tailgate support contributed to the inability to properly ventilate the explosive mixture of gas accumulation in the tailgate and contributed to the explosion that occurred on 4-5-2010 that resulted in the deaths of 29 miners.

The failure to maintain the required supports in the tailgate entry also prevented safe access for mine examiners from conducting required examinations in those entries.

The installation of one row of posts rather than the required two rows would have been very evident to weekly examiners, Longwall preshift and on-shift examiners and the Longwall Coordinator. Testimony revealed that examiners were instructed that one row of supports was sufficient in the tailgate entry.

The operator has engaged in aggravated conduct constituting more 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
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Section IV--Inspection Data

9. Type of Inspection E06	10. Event Number 4440347	11. Signature Norman G. Page 23304 John F. Godsey	AR Number 23127	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800
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