

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8256726
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 mine operator failed to comply with the approved training plan in effect at the mine prior to April 5, 2010. The approved training plan, dated March 29, 2007, required training to be provided in several training programs, including experienced miner training, task training, and annual refresher training. The operator's failures included:

1). Approximately 112 miners either did not receive experienced miner training or received incomplete experienced miner training.

2). Approximately 42 miners did not receive task training before performing the task as mobile equipment operators or performing other new job tasks.

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 48.3
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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 Entire Mine.

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 Randall Lewis 24262 Charles Maggard		23. AR Number 24038

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
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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 8256726
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

3). Approximately 21 miners did not receive annual refresher training.

4). Approximately 22 miners received experienced miner training from individuals who were not MSHA-approved instructors. Nine different individuals certified these miners' training records despite not being MSHA-approved instructors.

Company audits conducted in September 2009 and October 2009 identified many of these failures, which put the operator on notice of its compliance problems. As of April 5, 2010, the operator had failed to correct or address most of these failures.

Due to the operator's failure to comply with the mine's approved training plan, many miners did not receive training in hazard recognition, prevention of accidents, and the mine's roof control and ventilation plans (including the mine's methane and dust control plan for the longwall water spray system). The operator also failed to provide task training to many of its examiners, its rock dusting crew, and several miners who operated and maintained the longwall shearer. The underground conditions at the mine, including the extensive accumulations of loose coal, coal dust, and float coal dust, the lack of adequate rock dusting, and the poor condition of the longwall shearer, were present in part because of the operator's failure to provide adequate training on identifying and correcting these hazardous conditions. These conditions contributed to the deaths of 29 miners on April 5, 2010.

This violation is issued as a flagrant violation.

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 Randall Lewis 24262 Charles Maggard	AR Number 24038	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800