



Section I--Violation Data

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| 1. Date Mo Da Yr 12/06/2011 | 2. Time (24 Hr. Clock) 1015 | 3. Citation/ Order Number 8405576 |
| 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 has failed to ensure that all miners be properly trained and participate in the quarterly mine emergency evacuation training and drills as per the approved plan. After a review of the past 5 quarter records of the drills conducted (1st quarter of 2009 thru 1st quarter of 2010), the records indicate that the requirements as set forth in the 30 CFR and the operator's approved plans (Mine Emergency and Fire Fighting Plans Dated 7/15/2008 and 1/25/2010) have not been met. During drills, miners were not always instructed on the use and locations of the life lines and tethers, escapeway maps, fire fighting procedures and the approved plans, hands-on training of SCSR's donning and transfer, and etc. as required by the 30 CFR and the approved plan. The operator failed to ensure drills were not conducted with all miners. The certified records

See Continuation Form (MSHA Form 7000-3a)

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| 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 75.1504 |
|--------------|--|----------------------|---|

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 type="checkbox"/> | Permanently Disabling <input type="checkbox"/> | Fatal <input checked="" type="checkbox"/> | |
| C. Significant and Substantial: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | D. Number of Persons Affected: 030 | | |
| 11. Negligence (check one) | | | | | |
| A. None <input type="checkbox"/> | B. Low <input type="checkbox"/> | C. Moderate <input type="checkbox"/> | D. High <input type="checkbox"/> | E. Reckless Disregard <input checked="" 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 | | | E. Citation/ Order Number | F. Dated | Mo Da Yr |
| A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/> | | | 8082692 | | 03/17/2009 |
| 15. Area or Equipment The entire mine crews. | | | | | |

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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

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| 19. Type of Inspection (activity code) E16 | 20. Event Number 4440348 | 21. Primary or Mill |
| 22. Signature Randall Lewis | | 23. AR Number 24262 |

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

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|---|--|---|--|-------------------------------------|--|
| 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 8405576 | |
| 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

did not identify the miners by name to ensure all underground miners were trained. The review of records indicates not all miners were listed in records and if crews participation in drill or drills even being conducted with crews. There are no records of all the scenarios being conducted with all miners. There are no records of the explosion scenario being conducted with any miners in the past 5 quarters. This mine exploded on 4/5/2010, killing 29 miners.

The requirement for quarterly training of miners on the use of Safe Havens and Rescue Chamber deployment are only listed in a few of the drill records for the 1st quarter of 2009.

It is evident, the need of the operator to properly train miners in all of the scenarios and provide training in all of the requirement as set forth in the operators approved Mine Emergency Evacuation and Fire Fighting Program. The mine has a history of explosive gas inundation, CO gas, water inundations, fires and explosions. The history indicates the importance's of each of the drills scenarios being conducted with all components of the plan be conducted with all miners.

This is unwarrantable failure to comply with a mandatory standard and of the approved operator's plan.

Order 8405577 is issued in conjunction with this order.

This violation is a flagrant violation.

This citation is being issued to the following entities as a unitary operator: Performance Coal Company, Massey Coal Services, A.T. Massey Coal Company, Inc., and Massey Energy Company.

See Continuation Form

Section III--Subsequent Action Taken

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| 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

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|--------------------------------|--|-----------------------------|------------------------------------|---------------------------------|--|
| 9. Type of Inspection E16 | | 10. Event Number 4440348 | | | |
| 11. Signature Randall Lewis | | AR Number 24262 | 12. Date Mo Da Yr 12/06/2011 | 13. Time (24 Hr. Clock) 1015 | |