



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 1050	3. Citation/ Order Number 8405589
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"/>

Loose coal, coal dust and float coal dust, was allowed to accumulate in active workings and on rock dusted surfaces. These accumulations were not cleaned up and removed beginning at the 54 crosscut in the Parallel mains extending into the area inby and North Glory Mains.

Accumulations ranged from a observable thin layer of float coal dust on belt structures, cribs and various other types of stationary equipment to as much as four feet deep, seven feet wide extending as much as one hundred feet in length were left behind from initial development stages of the mining process.

These accumulations are consistent with belt examination records and

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.400
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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: 031

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 All areas inby survey spad station 19430.

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 (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

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 8405589
4. Served To Berman Cornett-Safety Director		5. Operator PERFORMANCE COAL COMPANY, et al
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Section II--Justification for Action

Continuation of 8. Condition or Practice

testimony given by miners as well as visual observations, photographs and physical measurements conducted by MSHA investigation teams on 05/24/2011, 05/25/2011 and 06/09/2011. The operator has habitually failed to correct these hazardous conditions.

The conditions were evident to mine management due to the hundreds of weekly, preshift and onshift examinations that had been conducted by examiners and countersigned by upper management during the time the area was developed from December 2004 to June 2005. These conditions would be obvious to the most casual observer and would have been recorded by any prudent and diligent examiner

The operator's clean-up program is ineffective and inadequate to control dangers from loose coal, coal dust and float coal dust along beltways and the areas between the face and loading point. The program fails to address the areas of beltways and areas from forty feet outby the face to the loading point.

Based on the history of 30 CFR 75.400 violations and this mine being previously placed on a potential pattern of violations, the operator had knowledge of the conditions that existed within the mine. The lack of corrective action shows the operator has engaged in aggravated conduct constituting more than ordinary negligence by ignoring, reported hazards and failing to correct obvious hazards that proved to be detrimental to the health and safety of the miners required to work and travel in and through the area of the mine inby survey 19263. Performance Coal Company and Massey Energy's deep-seated focus on production was a significant detriment to the safety and health of UBB miners and contractors. This is an unwarrantable failure to comply with a mandatory standard.

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

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 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) 1050

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	8405589
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

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	E16	10. Event Number	4440348	
11. Signature	AR Number	12. Date	Mo Da Yr	13. Time (24 Hr. Clock)
Randall Lewis	24262		12/06/2011	1050