



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8431853
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)

Section 103(a) of the Mine Act states that: "Authorized representatives of the Secretary... shall make frequent inspections and investigations in coal or other mines each year..." and that "In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person...". The mine operator has failed to comply with this section of the Mine Act. Testimony given by both management and hourly employees during the accident investigation indicates that the mine had a regular practice of notifying persons underground that an inspector was present on the surface. Underground employees would regularly cease production to correct hazards prior to the possible arrival of the inspectors. This advance notice prevented MSHA inspectors from observing the actual conditions to which miners were being exposed.

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 103(a)	C. Part/Section of Title 30 CFR
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Section II--Inspector's Evaluation

10. Gravity:					
A. Injury or Illness (has) (is):	No Likelihood <input type="checkbox"/>	Unlikely <input type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input checked="" 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: 029		

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"/>
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12. Type of Action	104(a)	13. Type of Issuance (check one)	Citation <input checked="" type="checkbox"/>	Order <input type="checkbox"/>	Safeguard <input type="checkbox"/>	Written Notice <input type="checkbox"/>
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14. Initial Action	A. Citation <input type="checkbox"/>	B. Order <input type="checkbox"/>	C. Safeguard <input type="checkbox"/>	D. Written Notice <input type="checkbox"/>	E. Citation/ Order Number	F. Dated Mo Da Yr
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15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 01/05/2012	B. Time (24 Hr. Clock) 1600
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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 Terry Jude 24314 Dean Cripps			23. AR Number 23590

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 8431853
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

Unannounced inspections are a key part of MSHA's effort to identify unsafe and unhealthy conditions in mines. By providing advanced notice of inspections, the mine operator has interfered with inspectors in their attempts to inspect the mine and has shown a reckless disregard for the health and safety of their miners.

This violation of the Mine Act contributed to the death of 29 miners in that MSHA was denied the opportunity to develop additional guidelines, discover hazards, and make inspections of the actual conditions at the mine.

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 Terry Jude 24314 Dean Cripps	AR Number 23590	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800