



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8431855
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 engaged in a practice of failing to conduct adequate weekly examinations in the north area of the mine where an explosion occurred on April 5, 2010 which resulted in 29 fatalities. The inadequate weekly examinations occurred from January 1, 2010 up to the date of the explosion. Weekly examinations of this area conducted during this period failed to identify and correct obvious hazardous conditions, including accumulations of combustible materials, and failed to effectively evaluate the performance of the mine's ventilation system.

The practice includes violations of the following subsections of 75.364 that occurred between 01.01.2010 and 04.05.2010:

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 75.364
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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"/>				
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 A. Citation <input type="checkbox"/> B. Order <input checked="" type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number 8082692		F. Dated Mo Da Yr 03/17/2009
15. Area or Equipment North area of the mine affected by the explosion on 4/05/2010				

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)

Section IV--Automated System Data

19. Type of Inspection (activity code) E06	20. Event Number 4440347	21. Primary or Mill
22. Signature Pat Stanfield 23908 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 8431855	
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

Subsection 75.364(a) has been violated as follows:

- Between 01.01.2010 through 04.05.2010, records show that the required weekly examinations of worked-out locations exceeded the required 7 days;
- Evaluation Point (EP)-LW 1 (air entering Headgate 1 North to assure the headgate of the Longwall is ventilated) was last examined on 03.10.2010. An entry in the record for 03.16.2010 reflects that this EP is blocked with water and records do not indicate it was examined/or could be examined since that date;
- Data downloaded from one examiner's multi-gas detector indicates that the detector had not been turned on since 03.18.2010. Records indicate this examiner conducted numerous examinations at Bandytown fan, EP-LW 3 (where air exits Headgate 1 North), and EP-TG 1 (where air exits Tailgate 1 North) with his detector turned off;
- There is no record of EP 65 (return of TG 22 entering Headgate 1 North) ever having been examined;
- One of the five required air readings (#3 entry) for the EP-LW 2 (Tailgate 1 North) was never taken;
- No air quality measurements were taken at MP A (intake side of Longwall at Headgate 1 North) and MP B (Longwall tail side of Tailgate 1 North);
- Air Quantity measurements were not taken at Monitoring Point (MP) B since 03.20.2010.

Subsection 75.364(b) has been violated as follows:

- The intake split from the West Jarrells Mains to the return off HG 22, and the intake split traveling through old #2 section and crossover, located outby the Longwall, was not traveled;
- The return split in the crossover between HG 22 and TG 22 was not traveled since 03.13.2010;
- The intake split, #7 entry of Tailgate 1 North was not traveled since its plan approval on 03.11.2010.

Subsection 75.364(c) has been violated as follows:

- Air quantity measurements were not taken for 13 intake air splits;
- Air quality and quantity measurements were not taken for 5 return air splits.

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 Pat Stanfield 23908 Dean Cripps		AR Number 23590	12. Date Mo Da Yr 12/06/2011		13. Time (24 Hr. Clock) 0800

Mine Citation/Order
Continuation

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



Section I--Subsequent Action/Continuation Data

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Section II--Justification for Action

Subsection 75.364(d) has been violated as follows:

1. The Operator has failed to immediately correct very obvious hazardous conditions that are present throughout ten air courses and two bleeders in the North area of the mine that existed prior to the mine explosion on 04.05.2010. Very obvious hazards of loose coal, coal dust, and float coal dust are present in numerous locations throughout the entries and crosscuts of the air courses that are required to be examined weekly. The explosion which occurred on 04.05.2010 propagated throughout these ten air courses and two bleeders. These areas that the explosion propagated through include intake and return air courses required to be traveled by the weekly examiner. This fire and explosion hazard was obvious to the most casual observer.
2. The Operator has failed to immediately correct areas where entry widths exceeded 21 feet for a distance of more than 5 feet, in 17 locations throughout various areas traveled by the weekly examiner.
3. Since 01.01.2010, hazardous conditions were listed in the weekly examination reports with no corrective action listed. Some of these same hazards were recorded for several consecutive weeks with no corrective action shown. For example, water accumulations in the longwall bleeders were recorded for 8 consecutive weeks with no correction action noted.

Subsection 75.364(f) has been violated as follows:

The entry in the weekly examination record book on 03.16.2010 reflects that EP-LW1 was blocked by water and could not be examined. Although the entire mine could not be examined, persons continued to enter the mine and produce coal until the explosion on 04.05.2010.

Subsection 75.364(h) has been violated as follows:

The Operator failed to record hazardous conditions, their locations, corrective action taken, results and locations of air quality and quantity measurements at various times and various locations.

The failure to identify and correct hazards in one area of the mine can result in injury or loss of life in another part of the mine, due to the confined nature of the underground mining environment. The operator's

See Continuation Form

Section III--Subsequent Action Taken

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Mine Citation/Order
Continuation

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Section II--Justification for Action

practice of failing to conduct adequate weekly examinations, as well as the operator's practice of failing to conduct adequate preshift and on-shift examinations (as cited in 8431838 and 8227550), exposed miners to ongoing hazards. This practice of failing to conduct adequate weekly examinations and to identify and correct obvious hazardous conditions contributed to the explosion on April 5, 2010 and the resulting 29 deaths, disabling injuries to one miner, and serious injuries to another miner.

The operator has engaged in aggravated conduct, constituting more than ordinary negligence. This is an unwarrantable failure to comply with a mandatory standard.

This violation is issued as a flagrant violation.

This order 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

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