



Section I--Violation Data

1. Date Mo Da Yr 04/10/2009	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 9968623
4. Served To CHRIS BLANCHARD		5. Operator PERFORMANCE COAL COMPANY
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 mine operator did not submit the required respirable dust sample/samples during the February/March 2009 bimonthly sampling cycle on 850-0 for the Designated Area as shown in the attached Advisory No. 0197 dated April 7, 2009.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input checked="" type="checkbox"/> Safety <input type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 90.208(a)
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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: 001

11. Negligence (check one) A. None  B. Low  C. Moderate  D. High  E. Reckless Disregard

12. Type of Action 104(a) 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 F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 04/13/2009	B. Time (24 Hr. Clock) 0800
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Section III--Termination Action

17. Action to Terminate The February/March 2009 bimonthly sampling period has expired. The operator shall submit a valid sample for the April/May 2009 bimonthly period.

18. Terminated	A. Date Mo Da Yr 04/10/2009	B. Time (24 Hr. Clock) 0800
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Section IV--Automated System Data

19. Type of Inspection (activity code) T02	20. Event Number 9832268	21. Primary or Mill
22. Signatu		23. AR Number 24024

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.

\*\*0401-005

---ADVISORY OF NONCOMPLIANCE, FAILURE TO SUBMIT---  
(PART 90 MINER)  
ADVISORY NO 0197

9968623  
70.208a

APR 07, 2009

PERFORMANCE COAL COMPANY  
UPPER BIG BRANCH MINE-SOUTH

MINE I.D.46-08436  
DESIGNATED AREA SAMPLING POINT I.D. 8500

Mine: AA  
MMU: Avail.

CURRENT BIMONTHLY SAMPLING CYCLE APR-MAY 2009

PART 90 MINER HALSTEAD, SCOTT D. ,M59319064, OCCUPATION 462 FIRE BOSS PRE-SHIFT EXAMINER

ACCORDING TO MSHA RECORDS A RESPIRABLE DUST SAMPLE, RELATIVE TO THE  
PART 90 MINER IDENTIFIED ABOVE, WAS NOT RECEIVED AS REQUIRED BY 30 CFR 90 FOR THE  
BIMONTHLY SAMPLING CYCLE OF FEB-MAR 2009.

CASSETTE NO.	DATE	SAMPLING START TIME (24-HR CLOCK)	MRE EQUIV CONCENTRATION
51004870	03-24-2009	06	MINER NOT ACTIVE WITH Q&C

---0401---081---46-08436---B ---A  
PERFORMANCE COAL COMPANY  
UPPER BIG BRANCH MINE-SOUTH  
ATTN:CHRIS BLANCHARD  
POB 69  
NAOMA WV 25140

9832268