



Section I--Violation Data

1. Date Mo Da Yr 12/10/2009	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 9968801
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 a valid respirable dust sample during the October/November 2009 bimonthly sampling cycle on the Designated Area 940-0, as shown in the attached Advisory No. 0211 dated December 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 70.208(a)
--------------	--	----------------------	---

Section II--Inspector's Evaluation

10. Gravity:						
A. Injury or illness (has) (is):		No Likelihood <input type="checkbox"/>	Unlikely <input checked="" type="checkbox"/>	Reasonably Likely <input 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 checked="" type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input type="checkbox"/>	
C. Significant and Substantial:		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	D. Number of Persons Affected: 002		
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input checked="" type="checkbox"/> C. Moderate <input type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>						
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"/>				
14. Initial Action				E. Citation/ Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/>		B. Order <input type="checkbox"/>		C. Safeguard <input type="checkbox"/>		D. Written Notice <input type="checkbox"/>

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 12/31/2009	B. Time (24 Hr. Clock) 0800
---------------------	-----------------------------------	--------------------------------

Section III--Termination Action

17. Action to Terminate The October/November 2009 bimonthly sampling period has expired. The operator shall submit a valid sample for the December 2009/January 2010 bimonthly period.

18. Terminated	A. Date Mo Da Yr 12/10/2009	B. Time (24 Hr. Clock) 0800
----------------	-----------------------------------	--------------------------------

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.

996880/
70.208a

**0401-010

---ADVISORY OF NONCOMPLIANCE, FAILURE TO SUBMIT---
(DESIGNATED AREA SAMPLING POINT)
ADVISORY NO 0211

DEC 07, 2009

PERFORMANCE COAL COMPANY
UPPER BIG BRANCH MINE-SOUTH

MINE I.D.46-08436
DESIGNATED AREA SAMPLING POINT I.D. 9400
ROOF BOLTER OPERATOR ON MMU 040-0

Mine: AA
DA: Prod (8/13/09)

CURRENT BIMONTHLY SAMPLING CYCLE DEC-JAN 2010

ACCORDING TO MSHA RECORDS A VALID RESPIRABLE DUST SAMPLE, RELATIVE TO THE DESIGNATED AREA SAMPLING POINT IDENTIFIED ABOVE, WAS NOT RECEIVED AS REQUIRED BY 30 CFR 70 FOR THE BIMONTHLY SAMPLING CYCLE OF OCT-NOV 2009.

CASSETTE NO.	DATE	SAMPLING START TIME (24-HR CLOCK)	MRE EQUIV CONCENTRATION
51039574	11-06-2009	99	INVALID OR MISSING TIME

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

9832268