

Mine Activity Data

1/10/09

1. Action: a. New Entry b. Update 2. Activity Code: E02 3. Event Number: 4119933

4. Date Event Started: 1/14/2009 5. Date Event Finished: 1/14/2009 6. Mine ID: 46-08436

7a. Organization Code (Mine Assignment) 20401 b. Work Group Identifier 01 9. Company Name PERFORMANCE COAL COMPANY

8a. Organization Code (AR Assignment) 20401 b. Work Group 01 10. Mine Name UPPER BIG BRANCH MINE-SOUTH

11. Report Type (check) a. First b. Interim c. Last d. Not Applicable 12. Area of Inspections a. Active Sections 3 b. Idle Sections

c. Outby Areas d. Shafts/Slopes e. Surface Areas (UG) f. Surface Workings g. Company Records h. ATF i. Impoundments j. Refuse Piles

k. Major Construction (1) Shaft/Slope Sinking (2) Impoundment Construction (3) Buildings (4) Dragline/Shovel (5) Other l. Miscellaneous

m. MMU/Pit Number (1) 029

13. Number of Samples Collected a. Air Samples 3 b. Rock Dust Spot 0 c. Rock Dust Survey 0 d. Respirable Dust 0 e. Noise 0 f. Other 0

14. Impoundments/Refuse Piles:
 a. Number b. FHC c. Configuration

15. Prime Independent Contractor Codes (Major Construction)

16. Inspection Results

	Citations		Orders		Safeguards		Other	
	Coal Opr	Ind Con	Coal Opr	Ind Con	Coal Opr	Ind Con	Coal Opr	Ind Con
a. This Inspection								
(1) New Issuances			2					
(2) Terminations/Vacations								
(3) Modifications/Extensions								
(4) Left Pending			2					
b. Previously Issued								
(1) Modifications/Extensions								
(2) Terminations/Vacations								

18. Signature and Card Number of Authorized Representative/
 Right of Entry Person(s) Responsible for Activity

Card Number

a. 

b. _____

c. _____

d. _____

19. Key Entered By _____ Date _____

17. Remarks:
 B1220,B1231,A7428

Activity Calendar

Event Number: 4119933

Mine ID: 4608436

Shift	Sun			Mon			Tue			Wed			Thur			Fri			Sat		
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
Week 1 1/11/2009	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>																		

1/10/09 


Section I--Violation Data

1. Date Mo Da Yr 01/14/2009	2. Time (24 Hr. Clock) 0955	3. Citation/ Order Number 8074721
4. Served To  Mine foreman	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 return stoppings on the #1 section are not being maintained to serve the purpose for which they were built. The return stoppings at #43 and 45 break each have holes approximately 2 foot by 3 foot in them.

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 75.333(h)
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Section II--Inspector's Evaluation

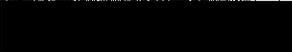
10. Gravity:					
A. Injury or Illness (has) (is):	No Likelihood <input type="checkbox"/>	Unlikely <input checked="" type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input type="checkbox"/>
B. Injury or illness could reasonably be expected 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: 001		
11. Negligence (check one)					
A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input checked="" 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 01/18/2009	B. Time (24 Hr. Clock) 0800
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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) E02	20. Event Number 4119933	21. Primary or Mill
22. Signature 		23. AR Number 

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.

Mine Citation/Order
Continuation

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

1/27/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action <input checked="" type="checkbox"/> 1a. Continuation <input type="checkbox"/>	2. Dated (Original Issue) 01/14/2009 Mo Da Yr	3. Citation/ Order Number 8074721 - 01
4. Served To  Mine foreman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

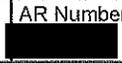
The stoppings have been repaired.

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 checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E01	10. Event Number 4119932		
11. Signature 	AR Number 	12. Date Mo Da Yr 01/21/2009	13. Time (24 Hr. Clock) 1150

1/16/09 

Section I--Violation Data

1. Date Mo Da Yr 01/14/2009	2. Time (24 Hr. Clock) 1105	3. Citation/ Order Number 8074722
4. Served To [Redacted] Mine foreman		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 operator is failing to ensure that life lines on the #1 section are located in a manner for miners to use effectively to escape. From #8 break to #12 break and from 47 break to 49 break along the secondary escapeway, the life line passes between roof props and the belt structure. Clearance between the roof props and the structure ranges from 0 inches to 1 foot.

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 75.380(d)(7)(iv)
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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 checked="" 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 type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input checked="" type="checkbox"/>	Fatal <input type="checkbox"/>	
C. Significant and Substantial:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	D. Number of Persons Affected: 010		
11. Negligence (check one)					
A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input checked="" 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 01/14/2009	B. Time (24 Hr. Clock) 1230
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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) E02	20. Event Number 4119933	21. Primary or Mill
22. Signature [Redacted]		23. AR Number [Redacted]

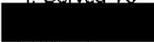
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments 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.

Mine Citation/Order
Continuation

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

1/22/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action <input checked="" type="checkbox"/> 1a. Continuation <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 01/14/2009	3. Citation/ Order Number 8074722 - 01
4. Served To  Mine foreman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

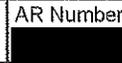
The life line is now installed properly .

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 checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E01	10. Event Number 4119932		
11. Signature 	AR Number 	12. Date Mo Da Yr 01/21/2009	13. Time (24 Hr. Clock) 1210

1/22/09

UNITED STATES DEPARTMENT OF LABOR
MSHA LABORATORIES - MOUNT HOPE, WEST VIRGINIA
ANALYSIS OF AIR SAMPLES

Mine: UPPER BIG BRANCH MINE SOUTH
Company: PERFORMANCE COAL COMPANY

Mine ID: 4608436
Inspector: [REDACTED]

Date(s) Collected: 01/14/2009
Office: 401

BOTTLE NUMBER	LOCATION IN MINE	CARBON DIOXIDE	OXYGEN	METHANE	ETHANE	CUBIC FEET AIR PER MINUTE	CUBIC FEET METHANE IN 24 HOURS
A7428	AIR READING AT MINER IN #3 ENTRY	0.050	20.90	0.090	0.000	9376	12151
B1220	IMMEDIATE RETURN OFF #1 SECTION	0.060	20.89	0.120	0.000	23400	40435
B1231	L.O.B. - #1 SECTION	0.060	20.90	0.100	0.000	9120	13133

THE PERCENTAGE OF NITROGEN CAN BE DETERMINED BY SUBTRACTING THE SUM OF THE REPORTED VALUES FROM 100.00

U. S. Department of Labor

Mine Safety and Health Administration
100 Bluestone Road
Mount Hope, WV 25880-1000



DATE: 3/17/09 [Redacted]
MESSAGE FOR: FIELD OFFICE SECRETARY - [Redacted]
FROM: [Redacted]
PAGES (INCLUDING COVER): 17
SUBJECT: CONTESTED VIOLATION DATA AT ID NO. 8436

The violations shown below have been contested by the mine operator:

<u>VIOL #</u>	<u>ISSUED</u>	<u>VIOL#</u>	<u>ISSUED</u>
	<i>See attached</i>		

These documents go before lawyers and judges. It is important that all copies be clean and clearly legible.

Please provide a copy of each violation and all subsequent actions for that violation.

I also need a copy of the inspector's notes (including the Daily Cover Sheet) for each violation, as well as any special assessment forms and a copy of appropriate plans related to those violations.

If there are any related violations, such as 107(a) Orders, I need a copy of them too.

Please fax your response back to me today or tomorrow - I have a very short turn-around time to get this material in to the Solicitor's Office in Arlington.

If you have any questions, call me on extension 148. Thank you for your help.



4/21/09 [Redacted]

Citations

Selection Criteria:

4608436

807472*

MineID	Type	Mine Off.	WG	Mg Off.	WG	AR #	Cont ID	C/O #	Issue Date	Issuance	SS	Type Action	30 CFR Std	Activity Code	Event Number
4608436	U	0401	01	0401	01			8074720	1/13/2009	C	Y	104-A	75.400	E01	4119932
4608436	U	0401	01	0401	01			8074722	1/14/2009	C	Y	104-A	75.380D7IV	E02	4119933
4608436	U	0401	01	0401	01			8074721	1/14/2009	C	N	104-A	75.333H	E02	4119933
4608436	U	0401	01	0401	01			8074725	1/20/2009	C	N	104-A	75.360E	E01	4119932
4608436	U	0401	01	0401	01			8074724	1/20/2009	C	Y	104-A	75.1100-3	E01	4119932
4608436	U	0401	01	0401	01			8074723	1/20/2009	C	Y	104-A	75.1100-2E	E01	4119932
4608436	U	0401	01	0401	01			8074729	1/21/2009	C	N	104-A	75.503	E01	4119932
4608436	U	0401	01	0401	01			8074728	1/21/2009	C	N	104-A	75.360E	E01	4119932
4608436	U	0401	01	0401	01			8074727	1/21/2009	C	Y	104-A		E01	4119932
4608436	U	0401	01	0401	01			8074726	1/21/2009	C	Y	104-A	75.1103-4A1	E01	4119932