

2/019



Mine Activity Data

1. Action: a. New Entry b. Update 2. Activity Code: E02 3. Event Number: 4119934

4. Date Event Started: 2/5/2009 5. Date Event Finished: 2/5/2009 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 1 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) 040

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

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

15. Prime Independent Contractor Codes (Major Construction)

	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			3					
(2) Terminations/Vacations			1/0					
(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. _____

17. Remarks:
B1232, B1242, B1240

19. Key Entered By _____ Date _____

2/1/09

Activity Calendar

Event Number: 4119934

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 2/1/2009	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>																		

2/6/09 

Section I--Violation Data

1. Date Mo Da Yr 02/05/2009	2. Time (24 Hr. Clock) 1035	3. Citation/ Order Number 8074748
4. Served To Mineforeman	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 comply with the section specific page of the methane/dust control plan for the 040 MMU. There was only 4560 CFM of air behind the line curtain where the continuous miner was loading in the #5 entry. The plan call for 5400 CFM to be available with the scrubber off.

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 75.370(a)(1)
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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: 003		
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 02/05/2009	B. Time (24 Hr. Clock) 1045
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Section III--Termination Action

17. Action to Terminate There is now 7360 CFM of air present behind the line curtain.

18. Terminated	A. Date Mo Da Yr 02/05/2009	B. Time (24 Hr. Clock) 1042
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Section IV--Automated System Data

19. Type of Inspection (activity code) E02	20. Event Number 4119934	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.

2/10/09 

Section I--Violation Data

1. Date Mo Da Yr 02/05/2009	2. Time (24 Hr. Clock) 1027	3. Citation/ Order Number 8074749
4. Served To Mincforeman	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 properly guard the high voltage in places where miners must work or travel under it on the #2 section. At the section pressure pump, high line sled and KVA box the high voltage cable is not guarded. The cable is from 4.5' to 5' above ground level for a length of 30'.

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 75.807
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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 02/06/2009	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 4119934	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

2/12/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/05/2009	3. Citation/ Order Number 8074749 - 01
4. Served To [Redacted] Mineforeman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

The high voltage cable has been guarded.

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 [Redacted]	AR Number [Redacted]	12. Date Mo Da Yr 02/10/2009	13. Time (24 Hr. Clock) 1115



Section I--Violation Data

1. Date Mo Da Yr 02/05/2009	2. Time (24 Hr. Clock) 1115	3. Citation/ Order Number 8074750
4. Served To Mineforeman	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 not maintaining the life line in the #2 section secondary escapeway in a condition for miners to use to effectively escape. The following conditions were found from the Ellis track switch to the section:

- 1) The life line was not equipped with reflective material every 25' in numerous locations.
- 2) The life line is hung too high to reach in numerous locations.
- 3) The life line runs over multiple cables, phone lines, waterlines and flyboards in multiple locations.
- 4) The life line is hung together with the phone line and other cables along the belt in numerous locations.

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)
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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: 008

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 02/05/2009	B. Time (24 Hr. Clock) 1400
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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) E02	20. Event Number 4119934	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

2/12/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/05/2009	3. Citation/ Order Number 8074750 - 01
4. Served To [Redacted] Mineforeman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	

Section II--Justification for Action

Work has been performed on the life line, but additional corrections are still needed.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To A. Date Mo Da Yr 02/12/2009	B. Time (24 Hr. Clock) 0800	<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 E01	10. Event Number 4119932		
11. Signatu [Redacted]	AR Number [Redacted]	12. Date Mo Da Yr 02/10/2009	13. Time (24 Hr. Clock) 1200

Mine Citation/Order
Continuation

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

2/20/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/05/2009	3. Citation/ Order Number 8074750 - 02
4. Served To [Redacted] Mineforeman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

This citation is extended due to the mine fan being down.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 02/19/2009	B. Time (24 Hr. Clock) 0800	<input type="checkbox"/> C. Vacated	<input type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

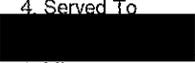
9. Type of Inspection E01	10. Event Number 4119932		
11. Signature [Redacted]	AR Number [Redacted]	12. Date Mo Da Yr 02/17/2009	13. Time (24 Hr. Clock) 2338

Mine Citation/Order
Continuation

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

2/20/09 


Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/05/2009	3. Citation/ Order Number 8074750 - 03
4. Served To  Mineforeman	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	

Section II--Justification for Action

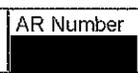
The lifeline has been correctly installed.

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. Signatu 	AR Number 	12. Date Mo Da Yr 02/19/2009	13. Time (24 Hr. Clock) 1800

Mine Citation/Order
Continuation

previously issued

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



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 01/15/2009	3. Citation/ Order Number 8071998 - 03
4. Served To Homer Wallace, supt.	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

A map has been submitted and waiting approval.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 02/10/2009	B. Time (24 Hr. Clock) 0800	<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 E02	10. Event Number 4119934		
11. Signatu	AR Number	12. Date Mo Da Yr 02/05/2009	13. Time (24 Hr. Clock) 1638

Mine Citation/Order Continuation

previously issued

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

2/6/9 


Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/02/2009	3. Citation/Order Number 8074733 - 01
4. Served To Homer Wallace, supt.	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

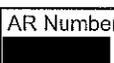
The dayshift has conducted and recorded a smoke search on #3 section.

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 E02	10. Event Number 4119934		
11. Signatu 	AR Number 	12. Date Mo Da Yr 02/05/2009	13. Time (24 Hr. Clock) 0715

Mine Citation/Order
Continuation

Previously issued

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

2/5/9 [Redacted] 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/02/2009	3. Citation/ Order Number 8074737 - 01
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4. Served To [Redacted] Chief electrician	5. Operator PERFORMANCE COAL COMPANY (Contractor)
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6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436
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Section II--Justification for Action

The CO monitor is now functional.

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 E02	10. Event Number 4119934		
11. Signature [Redacted]	AR Number [Redacted]	12. Date Mo Da Yr 02/05/2009	13. Time (24 Hr. Clock) 0720

Mine Citation/Order
Continuation

previously issued

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

2/6/09 

Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 02/02/2009	3. Citation/ Order Number 8074737 - 02
4. Served To [redacted] Chief electrician	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

Modify subsequent action 8074737-01 to read" The methane monitors have been calibrated and the results recorded."

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 checked="" type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E02	10. Event Number 4119934		
11. Signature [redacted]	AR Number [redacted]	12. Date Mo Da Yr 02/05/2009	13. Time (24 Hr. Clock) 1726

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

2/12/9 [REDACTED]

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

Mine ID: 4608436
Inspector: [REDACTED]

Date(s) Collected: 02/05/2009
Office: 401

BOTTLE NUMBER	LOCATION IN MINE	CARBON DIOXIDE	OXYGEN	METHANE	ETHANE	CUBIC FEET AIR PER MINUTE	CUBIC FEET METHANE IN 24 HOURS
B1232	#5 ENTRY - #2 SECTION	0.060	20.88	0.180	0.000	0	0
B1240	#2 SECTION - L.O.B.	0.060	20.88	0.120	0.000	0	0
B1242	#2 SECTION - IMMEDIATE RETURN	0.060	20.52	0.150	0.000	0	0

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: 4/8/09

MESSAGE FOR: FIELD OFFICE SECRETARY -

FROM: _____

PAGES (INCLUDING COVER): 1

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>
<u>8074723</u>	<u>1/20/09</u>	<u>8074732</u>	<u>1/22/09</u>
<u>8074724</u>	<u>"</u>	<u>8074748</u>	<u>2/5/09</u> ✓
<u>8074726</u>	<u>1/21/09</u>	<u>8074750</u>	<u>"</u> ✓
<u>8074727</u>	<u>"</u>	<u>8074752</u>	<u>2/10/09</u>
<u>8074731</u>	<u>1/22/09</u>	<u>8074753</u>	<u>2/11/09</u>

4119934

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

