

2/27/09

Mine Activity Data

1. Action: a. New Entry b. Update 2. Activity Code: E02 3. Event Number: 4119935
 4. Date Event Started: 2/26/2009 5. Date Event Finished: 2/26/2009 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 1. Miscellaneous

m. MMU/Pit Number
 (1) 029

13. Number of Samples Collected a. Air Samples 1 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 | | 5 | | | | | | |
| (2) Terminations/Vacations | | 2/0 | | | | | | |
| (3) Modifications/Extensions | | | | | | | | |
| (4) Left Pending | | 3 | | | | | | |
| b. Previously Issued | | | | | | | | |
| (1) Modifications/Extensions | | 1 | | | | | | |
| (2) Terminations/Vacations | | 2/0 | | | | | | |

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:

B6905

| 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 2/21/2009 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

2/27/09

Section I--Violation Data

| | | |
|---|--------------------------------|--|
| 1. Date Mo Da Yr 02/26/2009 | 2. Time (24 Hr. Clock) 1018 | 3. Citation/ Order Number 8074781 |
| 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 maintain stoppings built to separate intake and belt entries. The intake stopping at break 70 on the #1 section has not been plastered on either side or over the wood used in construction of the stopping.

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(b)(3) |
|--------------|--|----------------------|--|

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: 010

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 02/26/2009 | B. Time (24 Hr. Clock) 1100 |
|---------------------|-----------------------------------|--------------------------------|

Section III--Termination Action

17. Action to Terminate The stopping has been plastered on both sides.

| | | |
|----------------|-----------------------------------|--------------------------------|
| 18. Terminated | A. Date Mo Da Yr 02/26/2009 | B. Time (24 Hr. Clock) 1150 |
|----------------|-----------------------------------|--------------------------------|

Section IV--Automated System Data

| | | |
|--|-----------------------------|--------------------------|
| 19. Type of Inspection (activity code) E02 | 20. Event Number 4119935 | 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.

2/27/9 [Redacted]

Section I--Violation Data

| | | |
|---|---|--|
| 1. Date Mo Da Yr 02/26/2009 | 2. Time (24 Hr. Clock) 1035 | 3. Citation/ Order Number 8074782 |
| 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 comply with the section specific page of the approved methane/dust control plan for the 029MMU on the #1 section. The left continuous miner is loading in the in the #1 entry with only 2700 cfm of air present behind the line curtain. (25 MEAV). The plan calls for 5400 cfm (54 MEAV) of air to be present without the scrubber running.

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) |
|--------------|--|----------------------|--|

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: 002 | | |
| 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 02/26/2009 | B. Time (24 Hr. Clock) 1050 |
|---------------------|--------------------------------|--------------------------------|

Section III--Termination Action

17. Action to Terminate There is now 5880 cfm (56 MEAV) of air present.

| | | |
|----------------|--------------------------------|--------------------------------|
| 18. Terminated | A. Date Mo Da Yr 02/26/2009 | B. Time (24 Hr. Clock) 1040 |
|----------------|--------------------------------|--------------------------------|

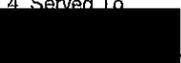
Section IV--Automated System Data

| | | |
|--|-----------------------------|--------------------------|
| 19. Type of Inspection (activity code) E02 | 20. Event Number 4119935 | 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.

2/27/09 

Section I--Violation Data

| | | |
|---|---|--|
| 1. Date Mo Da Yr 02/26/2009 | 2. Time (24 Hr. Clock) 1102 | 3. Citation/ Order Number 8074783 |
| 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 operator is failing to comply with the page 3 of the approved roof control plan (dated 10/25/05) on the #1 section. In the #3 entry in the block outby spad 23112, the width of the entry ranges from 21 to 22 feet wide for a distance of 32'.

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 75.220(a)(1) |
|--------------|--|-------------------|---|

Section II--Inspector's Evaluation

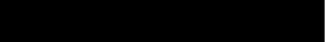
| | | | | | |
|--|---|--|---|--|-----------------------------------|
| 10. Gravity: | | | | | |
| A. Injury or illness (has) (is): | No Likelihood <input type="checkbox"/> | Unlikely <input type="checkbox"/> | Reasonably Likely <input checked="" type="checkbox"/> | Highly Likely <input type="checkbox"/> | 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: 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 02/26/2009 | B. Time (24 Hr. Clock) 1400 |
|---------------------|--------------------------------|--------------------------------|

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 4119935 | 21. Primary or Mill |
| 22. Signatur  | 23. AR Number  | |

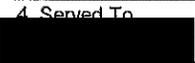
MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments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

3/6/09 

Section I--Subsequent Action/Continuation Data

| | | |
|---|---|--|
| 1. Subsequent Action <input checked="" type="checkbox"/> 1a. Continuation <input type="checkbox"/> | 2. Dated (Original Issue) 02/26/2009 Mo Da Yr | 3. Citation/ Order Number 8074783 - 01 |
| 4. Served To  Mine Foreman | 5. Operator PERFORMANCE COAL COMPANY (Contractor) | |
| 6. Mine UPPER BIG BRANCH MINE-SOUTH | 7. Mine ID 46-08436 | |

Section II--Justification for Action

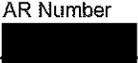
The wide area has been timbered down to less than 20'.

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 |
|----------------|---------------------|------------------------|-------------------------------------|---|--------------------------------------|

Section IV--Inspection Data

| | | | |
|---|--|------------------------------------|---------------------------------|
| 9. Type of Inspection E01 | 10. Event Number 4119932 | | |
| 11. Signature  | AR Number  | 12. Date Mo Da Yr 03/04/2009 | 13. Time (24 Hr. Clock) 1048 |

2/27/09

Section I--Violation Data

| | | |
|---|---|--|
| 1. Date Mo Da Yr 02/26/2009 | 2. Time (24 Hr. Clock) 1107 | 3. Citation/ Order Number 8074784 |
| 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 comply with the page 3 of the approved roof control plan (dated 10/25/05) on the #1 section. In the #3 entry in the block inby spad 23098, the width of the entry ranges from 22 to 23 feet wide for a distance of 32'.

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 75.220(a)(1) |
|--------------|--|----------------------|--|

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: 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 02/26/2009 | B. Time (24 Hr. Clock) 1400 |
|---------------------|-----------------------------------|--------------------------------|

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 4119935 | 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

2/5/9 

Section I--Subsequent Action/Continuation Data

| | | |
|---|---|--|
| 1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> | 2. Dated (Original Issue) Mo Da Yr 02/26/2009 | 3. Citation/ Order Number 8074784 - 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

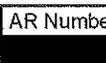
The wide area has been timbered down to less than 20'.

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 |
|----------------|------------------|------------------------|-------------------------------------|---|--------------------------------------|

Section IV--Inspection Data

| | | | |
|--|--|---------------------------------|---------------------------------|
| 9. Type of Inspection E01 | 10. Event Number 4119932 | | |
| 11. Signature  | AR Number  | 12. Date Mo Da Yr 03/04/2009 | 13. Time (24 Hr. Clock) 1048 |

2/27/09 

Section I--Violation Data

| | | |
|---|---|--|
| 1. Date Mo Da Yr 02/26/2009 | 2. Time (24 Hr. Clock) 1145 | 3. Citation/ Order Number 8074785 |
| 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 comply with the approved revision to the mine ventilation plan dated 5/16/2008. This revision allows for the operator to have 3 open crosscuts provided 13,500 cfm of air is passing through the last open break. On the #1 section the operator has 3 open breaks on the return side with only 10,241 cfm of air present.

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) |
|--------------|--|-------------------|---|

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: 010

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 02/26/2009 | B. Time (24 Hr. Clock) 1300 |
|---------------------|-----------------------------------|--------------------------------|

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 4119935 | 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

3/5/09 [Redacted] 

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 02/26/2009 | 3. Citation/ Order Number 8074785 - 01 |
| 4. Served To [Redacted] 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

There are now only 2 open crosscuts on the return of the #1 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 |
|----------------|------------------|------------------------|-------------------------------------|---|--------------------------------------|

Section IV--Inspection Data

| | | | |
|------------------------------|-----------------------------|---------------------------------|---------------------------------|
| 9. Type of Inspection E01 | 10. Event Number 4119932 | | |
| 11. Signature [Redacted] | AR Number [Redacted] | 12. Date Mo Da Yr 03/04/2009 | 13. Time (24 Hr. Clock) 1040 |

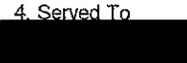
Mine Citation/Order
Continuation

Previously issued

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

2/27/09 

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 02/12/2009 | 3. Citation/ Order Number 8074757 - 01 |
| 4. Served To  Examiner | 5. Operator PERFORMANCE COAL COMPANY | |
| 6. Mine UPPER BIG BRANCH MINE-SOUTH | 7. Mine ID 46-08436 | (Contractor) |

Section II--Justification for Action

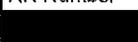
A contract company has been contacted and is making arrangements to build the damaged seal.

See Continuation Form

Section III--Subsequent Action Taken

| | | | | | |
|----------------|-----------------------------------|--------------------------------|-------------------------------------|--|--------------------------------------|
| 8. Extended To | A. Date Mo Da Yr 03/15/2009 | B. Time (24 Hr. Clock) 0800 | <input type="checkbox"/> C. Vacated | <input type="checkbox"/> D. Terminated | <input type="checkbox"/> E. Modified |
|----------------|-----------------------------------|--------------------------------|-------------------------------------|--|--------------------------------------|

Section IV--Inspection Data

| | | | |
|--|--|------------------------------------|---------------------------------|
| 9. Type of Inspection E02 | 10. Event Number 4119935 | | |
| 11. Signatu  | AR Number  | 12. Date Mo Da Yr 02/26/2009 | 13. Time (24 Hr. Clock) 1427 |

Mine Citation/Order
Continuation

previously issued

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

2/19/11 [Redacted]

Section I--Subsequent Action/Continuation Data

| | | |
|--|---|--|
| 1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> | 2. Dated (Original Issue) Mo Da Yr 02/19/2009 | 3. Citation/ Order Number 8074776 - 01 |
| 4. Served To [Redacted] 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 exposed wood has been plastered.

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 |
|----------------|------------------|------------------------|-------------------------------------|---|--------------------------------------|

Section IV--Inspection Data

| | | | |
|------------------------------|-----------------------------|---------------------------------|---------------------------------|
| 9. Type of Inspection E02 | 10. Event Number 4119935 | | |
| 11. Signature [Redacted] | AR Number [Redacted] | 12. Date Mo Da Yr 02/26/2009 | 13. Time (24 Hr. Clock) 1108 |

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

7/9/09 [REDACTED]

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

Mine ID: 4608436
Inspector: [REDACTED]

Date(s) Collected: 02/26/2009
Office: 401

| BOTTLE NUMBER | LOCATION IN MINE | CARBON DIOXIDE | OXYGEN | METHANE | ETHANE | CUBIC FEET | CUBIC FEET |
|------------------|--------------------------|-------------------|--------|---------|--------|-------------------|------------------------|
| | | | | | | AIR PER MINUTE | METHANE IN 24 HOURS |
| B6905 | #1 SECTION - MAIN RETURN | 0.080 | 20.88 | 0.180 | 0.000 | 10920 | 28305 |

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: 5/11/09 [REDACTED]
MESSAGE FOR: FIELD OFFICE SECRETARY - [REDACTED]
FROM: [REDACTED]
PAGES (INCLUDING COVER): 15
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.



✓
5/20/09
[REDACTED]

Citations

Record Count: 1

Selection Criteria:

4608436

7264864

| 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 | | | 7264864 | 3/9/2009 | C | N | 104-A | 72.630B | E01 | 4119932 |

| 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 | | | 8074752 | 2/10/2009 | C | Y | 104-A | 75.380D7VI | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074754 | 2/11/2009 | C | N | 104-A | 75.370A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074755 | 2/11/2009 | C | N | 104-A | 75.333E1II | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074753 | 2/11/2009 | C | Y | 104-A | | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074757 | 2/12/2009 | C | N | 104-A | 75.337A | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074758 | 2/17/2009 | C | Y | 104-A | 77.1605K | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074776 | 2/19/2009 | C | N | 104-A | 75.333E1II | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074777 | 2/19/2009 | C | Y | 104-A | 75.1714-7 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074778 | 2/25/2009 | C | N | 104-A | 75.364A | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074780 | 2/25/2009 | C | N | 104-A | 75.333H | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074781 | 2/26/2009 | C | N | 104-A | 75.333B3 | E02 | 4119935 ✓ |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074782 | 2/26/2009 | C | Y | 104-A | 75.370A1 | E02 | 4119935 ✓ |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074783 | 2/26/2009 | C | Y | 104-A | 75.220A1 | E02 | 4119935 ✓ |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074784 | 2/26/2009 | C | Y | 104-A | 75.220A1 | E02 | 4119935 ✓ |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074785 | 2/26/2009 | C | N | 104-A | 75.370A1 | E02 | 4119935 ✓ |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074799 | 3/3/2009 | C | N | 104-A | 75.516 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074798 | 3/3/2009 | C | N | 104-A | 75.1100-2E | E01 | 4119932 |

Citations

Record Count: 39

Selection Criteria:

4608436

80748*

| 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 | | | 8074800 | 3/3/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074808 | 3/4/2009 | C | Y | 104-A | 75.220A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074809 | 3/4/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074807 | 3/4/2009 | C | Y | 104-A | 75.220A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074806 | 3/4/2009 | C | N | 104-A | 75.333H | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074805 | 3/4/2009 | C | Y | 104-A | 75.370A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074804 | 3/4/2009 | C | N | 104-A | 75.400 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074803 | 3/4/2009 | C | N | 104-A | 75.333B3 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074802 | 3/4/2009 | C | Y | 104-A | 75.380D7I | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074801 | 3/4/2009 | C | Y | 104-A | 75.380D7I | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074810 | 3/4/2009 | C | N | 104-A | 75.360A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074813 | 3/6/2009 | C | N | 104-A | 75.1200 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074814 | 3/6/2009 | C | N | 104-A | 75.372A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074815 | 3/9/2009 | C | Y | 104-A | 77.208D | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074816 | 3/9/2009 | C | N | 104-A | 75.364B1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074817 | 3/10/2009 | C | Y | 104-A | 75.380D7I | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074818 | 3/10/2009 | C | Y | 104-A | 75.1100-2B | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074819 | 3/10/2009 | C | N | 104-A | 75.333H | E01 | 4119932 |

| 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 | | | 8074822 | 3/11/2009 | C | Y | 104-A | 75.1106-3A2 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074820 | 3/11/2009 | C | Y | 104-A | 75.1100-2E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074823 | 3/11/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074824 | 3/11/2009 | C | Y | 104-A | 75.701 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074825 | 3/11/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074826 | 3/11/2009 | C | N | 104-A | 75.1100-3 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074827 | 3/11/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074828 | 3/11/2009 | C | Y | 104-A | 75.701 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074821 | 3/11/2009 | C | N | 104-A | 75.360E | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074830 | 3/16/2009 | C | Y | 104-A | 75.1725A | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074831 | 3/16/2009 | C | Y | 104-A | 75.503 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074829 | 3/16/2009 | C | Y | 104-A | 75.503 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074832 | 3/16/2009 | C | Y | 104-A | | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074833 | 3/17/2009 | C | N | 104-A | 75.503 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074834 | 3/17/2009 | C | Y | 104-D-1 | 75.370A1 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074835 | 3/17/2009 | C | N | 104-A | 75.503 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074836 | 3/17/2009 | C | N | 104-A | 75.342A4 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074837 | 3/17/2009 | C | N | 104-A | 75.503 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074838 | 3/17/2009 | C | N | 104-A | 75.1505A3 | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074839 | 3/17/2009 | C | Y | 104-A | 75.1103-4A | E01 | 4119932 |
| 4608436 | U | 0401 | 01 | 0401 | 01 | | | 8074840 | 3/18/2009 | C | N | 104-A | 75.1715 | E01 | 4119932 |