

O.M. 10/26/09  
 10-26-9



Section I--Violation Data

1. Date Mo Da Yr 10/21/2009	2. Time (24 Hr. Clock) 0830	3. Citation/ Order Number 8086905
4. Served To Tim Williams (Foreman)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

The Fairchild scoop Serial No. 339-230 being used on the 065-0 MMU, No. 3 Section located in the No. 2 entry in/by the last open break that measured with a standard rule to be an average of 60 inches was not provided with a cab or canopy. The entry that the scoop was located measured with a standard rule 82 inches. This section was moved from a low seam on 10/16/2009 and began production on 10/19/2009.

Management engaged in aggravated conduct constituting more than ordinary negligence, this violation is unwarrantable failure to comply with a mandatory standard.

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 75.1710-1
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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(d)(2)

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 8082692

F. Dated Mo Da Yr 03/17/2009

15. Area or Equipment The Fairchild scoop Serial No. 339-230 located on the 065 MMU.

16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

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) E01

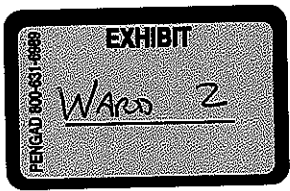
20. Event Number 6288652

21. Primary or Mill

22. Signatu (b) (7)(C)

23. AR Number 24025

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.



O.M. 10/26/09

Mine Citation/Order  
Continuation

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"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 10/21/2009		3. Citation/ Order Number 8086905 - 01	
4. Served To Rick Foster (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

A canopy was provided for the Fairchild scoop Serial No. 339-230.

Section III--Subsequent Action Taken

See Continuation Form

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 6288652		
11. Site (b) (7)(C)	AR Number 24025	12. Date Mo Da Yr 10/21/2009	13. Time (24 Hr. Clock) 1314