

U. S. Department of Labor

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



DEC 04 2007

Mr. Michael Vaught
Safety Director
Performance Coal Company
P.O. Box 69
Naoma, WV 25140

Dear Mr. Vaught:

Subject: Construction of Seals, 30CFR Section 75.335(b)(1), Upper Big Branch Mine-South, I.D. No. 46-08436, Performance Coal Company, Raleigh, West Virginia

Under 30CFR Part 75, Section 75.335(b)(1) of the Final Rule for Sealing of Abandoned Areas, May 22, 2007, requires an alternative protocol plan for seals which are ingassing. A certified letter was received in your office on November 7, 2007, requesting an alternative plan for ingassing seals to be submitted to the District Manager within seven working days. To date, we have not received an alternative plan from the mine for review as part of your mine's ventilation plan. Subsequently, appropriate enforcement action has been taken, and the mine has been issued a 104(a) citation for failure to submit an alternative protocol plan. The citation is attached to this letter as well as a copy of the pertinent portions of 30 CFR Part 75, Sealing of Abandoned Areas; Final Rule, to aid you in the creation, and submission of the required plan.

Should you have any questions concerning this matter, please contact Joseph C. Mackowiak of this office at (304) 877-3900/Ext.115.

Sincerely,

A handwritten signature in cursive script that reads "Robert G. Hardman".

Robert G. Hardman
District Manager
Coal Mine Safety and Health, District 4

cc: Mt Hope Field Office
Inspector
Field Office Supervisor
Files/dac



Section I--Violation Data

1. Date Mo Da Yr 12/03/2007	2. Time (24 Hr. Clock) 0840	3. Citation/ Order Number 7240641
4. Served To via certified mail		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 has failed to submit an alternative protocol plan for ingassing seals to the District Manager. The alternative protocol must address a means to effectively evaluate the atmosphere of sealed area(s). A certified letter requesting the plan was received by the mine operator on November 7, 2007 and the plan was due November 14, 2007. Despite the notification, a plan was not submitted. An alternative protocol plan, which effectively evaluates the sealed area(s), must be submitted to the Mount Hope District Office to abate this condition.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.335(b)(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: 020

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

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 12/12/2007	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)
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Section IV--Automated System Data

19. Type of Inspection (activity code) T02	20. Event Number 9832268	21. Primary or Mill
22. Signature	23. AR Number 23973	

MSHA Form 7000-3 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.



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