The pre-shift examination conducted on the No. 2 section (MMU 040, 041) for the day shift was not adequate. Hazardous conditions in the No. 2 entry were not dangered off or recorded in the pre-shift examination book. There were two bolts that had been damaged by equipment. One was pulled away from the mine roof so that the roof plate was not firm against the top. The other bolt had been sheared off flush with the mine roof. Also, there was a surface crack in the mine roof extending the entire width of the entry with no supplemental support. These conditions were obvious to the most casual observer and expose miners to hazards related to falls of the mine roof.

See Continuation Form (MSHA Form 7000-3a)

The section was examined by a certified foreman. Also, the No. 2 entry was re-bolted and supplemental support was installed.
The operator was not following the approved ventilation plan on the #2 section (MMU 040-0) to control methane and respirable dust. The continuous mining machine was mining from #2 entry to #3 entry. The dust was visible from 2 breaks outby the end of the shuttle car. The air reading at the miner was 4,095 CFM, the ventilation plan minimum of air is 5,400 CFM without the scrubber system.
**Mine Citation/Order Continuation**

1. Subsequent Action Ta. Continuation: [X]
2. Dated (Original Issue): 04/22/2008
3. Citation/Order Number: 7278782 - 01

4. Served To: Gary May, 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**

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason</td>
<td>To read (MMU 041-0)</td>
<td></td>
</tr>
</tbody>
</table>

**Section III--Subsequent Action Taken**

<table>
<thead>
<tr>
<th>Extented To</th>
<th>A. Date</th>
<th>Mo</th>
<th>Da</th>
<th>Yr</th>
<th>B. Time (24 Hr. Clock)</th>
<th>C. Vacated</th>
<th>D. Terminated</th>
<th>E. Modified</th>
</tr>
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<tbody>
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</tr>
</tbody>
</table>

**Section IV--Inspection Data**

9. Type of Inspection: E01
10. Event Number: 4120376

11. Signature: [Redacted]
12. Date: 04/23/2008
13. Time (24 Hr. Clock): 0639

MSHA Form 7000-3a, Mar 85 (revised)
The Approved Supplement, Dated 07-14-2008, to the Approved Roof Control Plan, Permit No.4-RC-11-94-12307-11, was not being Complied with in the Construction Area Outby the No.1 Section. 50 Ton Heintzmann Jack or Equivalent had not been Installed Across the Crosscut in the Track Entry Left of Survey Station No.19879 and the Block Outby for the Entire Length of the Block Prior to or after the Block had been Split. The Split through the Block at Survey Station No.19879 had been Driven 19 to 20 Feet in Width beginning at Survey Station No.19879 and Extended Inby for 150 Feet. The Approved Supplement Requires that 50 Ton Jacks or Equivalent be Install Across the Crosscuts and the Pillar Blocks Inby and Outby for the Entire Length of the Blocks and the Width through the Pillar Splits will not Exceed 16 Feet. All the Crews and the Foremen have been Instructed in the

Section II—Inspector’s Evaluation

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: 002

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 ☐

14. Initial Action A. Citation ☐ B. Order ☑ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number 7279743
F. Dated Mo Da Yr 03/07/2008

15. Area or Equipment Construct work in Outby area off of No.1 Section

Section III—Termination Action

Additional Supports, Jacks, Cribs and Timbers have been installed in the affected area.

Section IV—Automated System Data

19. Type of Inspection (activity code) E01
20. Event Number 4118287
21. Primary or Mill

22. Signature
Requirements of the Roof Control Plan. This area has been mined for several shifts and is located 250 feet outby the active section. The area had been examined but the conditions cited had not been reported for correction.
The Primary Escapeway, Main Intake, from No.1 Section was not separated with Permanent Type Stopplings from the Belt Conveyor Entry at Four (4) Locations. The Stopplings had been Removed and Brattice Cloth had been installed as a Separation. The area had been Examined and the Conditions had not been Reported for Correction.

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

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

14. Initial Action
   - A. Citation
   - B. Order
   - C. Safeguard
   - D. Written Notice

15. Area or Equipment
   - No.1 Section

Section III—Termination Action

17. Action to Terminate
   - Permanent type stopplings have been installed in the affected areas separating the primary escapeway from the belt conveyor entry.

18. Terminated
   - A. Date
   - 07/25/2008
   - B. Time (24 Hr. Clock)
   - 2115

Section IV—Automated System Data

19. Type of Inspection
   - (activity code)
   - E01
20. Event Number
   - 4118287
21. Primary or Mill
22. Signature
The operator failed to make an adequate preshift examination of the #3 section on 3/16/2009 for the oncoming 3rd shift. The examination conducted by evening shift section foreman, Russell Gunoe, on 3/16/09 from 22:30 to 23:00 hours, was inadequate in that the following hazardous conditions were not reported:

1) The left roof bolter was operating in the 2L crosscut without any ventilation curtain. 2) The #2 face was approximately 50' deep without any ventilation curtain. 3) The #3 face was approximately 60' deep without any ventilation curtain. 4) The #6 face was approximately 40' deep without any ventilation curtain and the energized right roof bolter was parked in the face. 5) The energized right continuous miner was sitting in the #5 face.

9. Violation

<table>
<thead>
<tr>
<th>A. Health Safety</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td></td>
<td>75.360(a)(1)</td>
</tr>
</tbody>
</table>

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(d)(1)

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 8074834

F. Dated Mo Da Yr 03/17/2009

15. Area or Equipment The entire #3 working section.

16. Termination Due

A. Date Mo Da Yr 03/17/2009
B. Time (24 Hr. Clock) 0500

17. Action to Terminate An adequate examination of the section has been conducted of the section and the results recorded in the preshift book.
Continuation of 8. Condition or Practice

with the ventilation curtain 20' back from the face. 6) The check curtain to be used as a stopping between the #6 and 7 entry was missing. 7) The back up check curtains were missing in the #3,4 and 5 entries. 8) The check curtain between the #4 and 5 entry was missing.
The operator is failing to comply with pages 16 items #2 and #5, and page 17 of the approved roof control plan on the #3 pillar section. The operator started pillaring before connecting two entries into the mains to establish a bleeder. Only one entry was connected to the old mains. Also, the operator failed to leave 1/2 of a block on the outside entries of this initial pillar panel.

11. Negligence (check one)  A. None  B. Low  C. Moderate  D. High  E. Reckless Disregard

12. Type of Action 104(d)(1)

13. Type of Issuance (check one)  Citation  Order  Safeguard  Written Notice

14. Initial Action  A. Citation  B. Order  C. Safeguard  D. Written Notice

15. Area or Equipment The operator is prohibited from conducting further pillaring operation until all miners on the #3 section are retrained in the parts of the mine ventilation plan concerning pillaring.

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

17. Action to Terminate

18. Terminated  A. Date  Mo Da Yr  B. Time (24 Hr. Clock)

19. Type of Inspection (activity code)  E01

20. Event Number  4119936

21. Primary or Mill

22. Signature

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.
<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
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</thead>
<tbody>
<tr>
<td>Reason</td>
<td>Change from the &quot;approved roof control plan&quot; to the &quot;approved ventilation plan&quot;</td>
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<tr>
<td>12. Type of Action</td>
<td>104(d)(1)</td>
<td>104(d)(2)</td>
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<td>Reason</td>
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<td></td>
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<tr>
<td>14. Initial Action</td>
<td>Citation</td>
<td>Order</td>
</tr>
<tr>
<td>Reason</td>
<td>incorrectly marked order</td>
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<tr>
<td>14. E. Citation/Order Number</td>
<td>8074834</td>
<td>8082692</td>
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<tr>
<td>Reason</td>
<td>inadvertently entered d-1 citation number instead of initial d-1 order number</td>
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**Section III--Subsequent Action Taken**

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<th>A. Date</th>
<th>B. Time (24 Hr. Clock)</th>
<th>C. Vacated</th>
<th>D. Terminated</th>
<th>E. Modified</th>
</tr>
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<tbody>
<tr>
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</table>

**Section IV--Inspection Data**

<table>
<thead>
<tr>
<th>E01</th>
<th>4119936</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Signature</td>
<td>AR Number</td>
</tr>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

MSHA Form 7000-3a, Mar 95 (revised)
All the miners on the #3 section have been retrained on the mine ventilation plan concerning pillars. MSHA has reviewed the mine ventilation plan with management. The Bleeder punch-out has been supported with a triple row of jacks, through the length of the punch through.
The operator is failing to provide a secondary means of communication on the #3 section. When tested the intake phone failed to function.
The operator has made an incomplete or inadequate effort to fix the secondary communication system on the #3 section.
The intake phone now functions correctly.
THE OPERATOR HAS SUBMITTED AN INACCURATE AND MISREPRESENTING MAP TO THE DISTRICT MANAGER FOR APPROVAL ON 3/13/2009. THE MAP HAS INACCURATE INFORMATION FOR THE ELLIS PUNCH OUT.

<table>
<thead>
<tr>
<th>Violation</th>
<th>A. Health Safety</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>[ ]</td>
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<td>75.372(a)(1)</td>
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<table>
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<tr>
<th>Gravity:</th>
<th>A. Injury or Illness (has is):</th>
<th>No Likelihood [ ]</th>
<th>Unlikely [ ]</th>
<th>Reasonably Likely [ ]</th>
<th>Highly Likely [ ]</th>
<th>Occurred [ ]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B. Injury or illness could reasonably be expected to be:</td>
<td>No Lost Workdays</td>
<td>Lost Workdays Or Restricted Duty [ ]</td>
<td>Permanently Disabling [ ]</td>
<td>Fatal [ ]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C. Significant and Substantial:</td>
<td>Yes [ ]</td>
<td>No [ ]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>D. Number of Persons Affected:</td>
<td>016</td>
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<tr>
<th>Initial Action</th>
<th>A. Citation [ ]</th>
<th>B. Order [ ]</th>
<th>C. Safeguard [ ]</th>
<th>D. Written Notice [ ]</th>
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<th>E. Citation/Order Number</th>
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<th>F. Dated</th>
<th>Mo Da Yr</th>
<th>03/17/2009</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Area or Equipment</th>
<th>THE #2, #3, AND #4 ENTRIES FOR THE ELLIS PUNCH OUT FOR A DISTANCE OF 300 FT. UNDERGROUND FROM THE HIGHWALL</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Termination Due</th>
<th>A. Date</th>
<th>Mo Da Yr</th>
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<thead>
<tr>
<th>Terminated</th>
<th>A. Date</th>
<th>Mo Da Yr</th>
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<table>
<thead>
<tr>
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</thead>
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<table>
<thead>
<tr>
<th>Event Number</th>
<th>4119936</th>
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<tr>
<th>Primary or Mill</th>
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</thead>
</table>

<table>
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<tr>
<th>AR Number</th>
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</thead>
</table>
The operator has submitted a correct 75.372 map to MSHA.
THE 75.1200 MAP LOCATED AT THE MINE OFFICE FOR THE ELLIS PUNCH WAS NOT UP-TO-DATE AND ACCURATE. THE MAP SHOWS TWO NATURAL AIR ENTRIES AS BEING PUNCHED OUT TO THE SURFACE TO, WHEN IN FACT THE ENTRIES ARE NOT. ALSO THE MAP SHOW A REGULATOR AND AIR LOCK DOORS INSTALLED WHERE THE ENTRIES ARE SHOWN TO PUNCH OUT. THE MAP DID NOT SHOW LINE BRATTICES (CURTAIN) IN THE 2 ENTRIES THAT WAS DROVE IN APPROXIMATELY 150 FT. WITHOUT BEING CONNECTED.
**Mine Citation/Order**

**U.S. Department of Labor**

**Mine Safety and Health Administration**

**Section I—Subsequent Action/Continuation Data**

1. **Subsequent Action/Continuation**
   - Ta.
     - Continuation

2. **Date**
   - Mo 04
   - Da 09
   - Yr 2009

3. **Citation Order Number**
   - 6612411 - 01

4. **Served To**
   - ANDY COALSON (MINE FOREMAN)

5. **Operator**
   - PERFORMANCE COAL COMPANY

6. **Mine**
   - UPPER BIG BRANCH MINE-SOUTH

**Section II—Justification for Action**

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
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</thead>
<tbody>
<tr>
<td>8. Condition Or Practice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reason</td>
<td>THIS CITATION SHOULD HAVE READ: THE 75.1200 MAP LOCATED AT THE MINE OFFICE FOR THE ELLIS PUNCH OUT WAS NOT UP-TO-DATE AND ACCURATE. THE MAP SHOWS TWO NEUTRAL AIR ENTRIES (#2 AND #3) AS BEING PUNCHED OUT TO THE SURFACE AND THEY'RE NOT. ALSO THE MAP SHOWS VENTILATION CONTROLS THAT ARE NOT PRESENT IN THE #2 ENTRY (REGULATOR) AND A SET OF AIR LOCK DOORS IN THE #3 ENTRY. THE MAP DID SHOW LINE BRATTICE (CURTAIN) IN THE 2 ENTRIES (#2 AND #3) WHERE THE CURTAIN WAS EXTENDED IN THE MINED ENTRANCE FOR APPROXIMATELY 150 FT. WITHOUT BEING CONNECT.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>9. A. Violation Type</th>
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<td><strong>Reason</strong></td>
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<tr>
<td>10. A. Injury or Illness</td>
<td>Unlikely</td>
<td>No Likelihood</td>
</tr>
<tr>
<td><strong>Reason</strong></td>
<td></td>
<td></td>
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<tr>
<td>10. B. Injury Expected</td>
<td>Lost Workdays</td>
<td>No Lost Workdays</td>
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<tr>
<td><strong>Reason</strong></td>
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**Section III—Subsequent Action Taken**

<table>
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<th>8. Extended To</th>
<th>A. Date</th>
<th>Mo</th>
<th>Da</th>
<th>Yr</th>
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<tbody>
<tr>
<td>B. Time (24 Hr. Clock)</td>
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</tbody>
</table>

| C. Vacated | | |
| D. Terminated | | |
| E. Modified | | |

**Section IV—Inspection Data**

<table>
<thead>
<tr>
<th>9. Type of Inspection</th>
<th>E01</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Event Number</td>
<td>4119936</td>
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<table>
<thead>
<tr>
<th>11. Date</th>
<th>Mo</th>
<th>Da</th>
<th>Yr</th>
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<tbody>
<tr>
<td>12. Time (24 Hr. Clock)</td>
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<td>0829</td>
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</tbody>
</table>

MSHA Form 7000-3a, Mar 95 (revised)
The 75.1200 map now shows the entries correctly.
THE OPERATOR HAS FAILED TO CONDUCT WEEKLY EXAMINATIONS #2 AND #3 ENTRIES THAT ARE NOT CONNECTED AT THE ELLIS PUNCH OUT. THESE ENTRIES ARE DRIVE IN APPROXIMATELY 150 FT. WITH LINE BRATCICE (CURTAIN) INSTALLED.
The cited entries have been examined and the results recorded in the weekly exam book.
The operator is failing to conduct a preshift exam of the unconnected room driven 25' deep off the #4 section intake at spad 5738. The room is ventilated with line curtain.
The operator is failing to certify weekly examinations by leaving Dates, Times and Initials in the examined area. There are not any up to date, Dates, Times and Initials present in the neutral entries going towards DPP # 1 to prove that a weekly examination has been conducted of the area.

The area has been examined and DTT's are now present.
### Section I—Subsequent Action/Continuation Data

1. **Subsequent Action 1a. Continuation**
   - ✔
   - □

2. **Dated (Original Issue)**: 05/11/2009

3. **Citation/Order Number**: 8082762 - 01

4. **Served To**
   - Charley Semenske, Weekly Examiner

5. **Operator**
   - PERFORMANCE COAL COMPANY
   - (Contractor)

6. **Mine**
   - UPPER BIG BRANCH MINE-SOUTH

7. **Mine ID**: 46-08436

### Section II—Justification for Action

**Change**

**From**

**To**

**Reason**

- Change the word "Natural" to read "neutral"

### Section III—Subsequent Action Taken

8. **Extended To**
   - A. Date
   - Mo
   - Da
   - Yr
   - B. Time (24 Hr. Clock)
   - □
   - C. Vacated
   - □
   - D. Terminated
   - ✔
   - E. Modified

### Section IV—Inspection Data

9. **Type of Inspection**: E01

10. **Event Number**: 4119936

11. **Signature**: [Redacted]

12. **Date**: 05/12/2009

13. **Time (24 Hr. Clock)**: 11:53
The operator is failing to examine at least one entry of each intake air course, in its entirety, so the entire air course is traveled. The LBB intake split going towards the Ellis punch-out is not being examined in its entirety. The intake is blocked by two roof falls, two breaks out-by spad 21054 and the intake has been dangered off due to bad top and bad ribs from spad 21054 to spad 21539. This conditions were reported on 03/23/09 and the intake was dangered off at this time. The last complete exam of this area was on the week ending 03/21/09.

The LBB intake split going towards the Ellis punch-out.
**Section I—Subsequent Action/Continuation**

1. Subsequent Action 1a. Continuation [✓] [ ]
2. Dated (Original Issue) Mo Da Yr 05/11/2009
3. Citation/Order Number 8082763 - 01

4. Served To
   Homer Wallace, Supt.

5. Operator
   PERFORMANCE COAL COMPANY

6. Mine
   UPPER BIG BRANCH MINE-SOUTH

7. Mine ID (Contractor) 46-08436

**Section II—Justification for Action**

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason</td>
<td>Change spad 21054 to spad 21254.</td>
<td></td>
</tr>
</tbody>
</table>

**Section III—Subsequent Action Taken**

8. Extended To
   A. Date Mo Da Yr

9. Type of Inspection E01 AR Number

10. Event Number 4119936

11. Signature [Redacted] Date Mo Da Yr 05/12/2009

12. Time (24 Hr. Clock) 1146
A revision to the vent plan concerning the affected area has been approved and the necessary changes in ventilation have been made to make the LBB entries common air.
Operator: PERFORMANCE COAL COMPANY
Mine: UPPER BIG BRANCH MINE-SOUTH

The operator is failing to leave Dates, Times, and Initials in enough locations to prove that a weekly examination for hazardous conditions has been conducted. There are not any up to date, Dates, Times and Initials present in the right return were it travels around the panel off of LBB #4 head.
The mine operator is failing to comply with the approved mine ventilation plan. The operator is failing to examine EP's 53 and 54 in the location approved in the mine ventilation map.
The weekly examiner have been retrained as to the proper location to check EP 53 and 54.
The operator is failing to maintain the #2 belt on the #1 section. A stand is improperly installed at break 48, causing the stand to twist and the belt to rub the metal across the width of the bottom cross member of the stand. At break 52, the stand is damaged, causing the belt to rub on the frame on the walkway side. At break 87, the stand is improperly installed, causing the stand to twist and the belt to rub the metal across the width of the bottom cross member of the stand.
The operator is failing to add additional roof support where the belt/track entry on the #1 section was mined over 20 wide. The operator cuts this entry 22' wide to allow for the belt and track to be in the same entry. The operator has not added additional support for 450' near the end of the belt.

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: 011

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

15. Area or Equipment The #3 belt on the #1 section is to be removed from service until additional support is added for the necessary distance.

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

17. Action to Terminate The operator has set sand jacks for the length of the affected areas.

18. Terminated A. Date B. Time (24 Hr. Clock)

19. Type of Inspection (activity code) 20. Event Number 4119936 21. Primary or Mill

22. Signature

MSHA Form 7000-3, Apr 09 (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 20415. 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.
The operator has failed to take any action to fix the conditions on the #2 Belt, cited in citation #8082817.

The #2 Belt, on the #1 Section is removed from service until all cited conditions are corrected.

The necessary repairs were made.
The operator is failing to comply with an approved revision to the mine ventilation plan. The longwall set up is not being ventilated in the manner specified by the revision. A permanent ventilation control, required to be in place has been practically removed allowing air to short circuit to the return. A regulator required to be in place, to allow air to exit the longwall set up, is instead a solid stopping.

The longwall set up area is not to have any work, except that necessary to correct the ventilation performed.

The ventilation is now corrected.
The operator is failing to comply with the safety precaution page, item 4 and the section specific page of the approved methane/dust control plan on the 064 MMU. Item 4 of the safety precaution page requires curtain to be advanced to within 10' of the face. The #6 face, on the #3 section is 24' deep without any line curtain. The section specific page requires all line curtain to be hung as exhausting. In the #7 entry, the operator has hung a solid check that prevents any air from passing around it and also restricts the LOB velocity to 5700cfm. (separate citation issued.)
The operator is failing to comply with the approved methane/dust control plan, section specific page items 4 and 7. The line curtain in the 4R crosscut is 4 rows of bolts or 15' back from the face. Also the 064 MMU continuous miner is loading in the #3 entry without any line curtain with the miner operator standing in visible dust on the return of the miner. Steve Colo, the section foreman stated to MSHA that he was aware of the conditions. Steve Colo engaged in aggravated conduct by failing to take action on a known hazard. This is unwarrantable failure to comply with a mandatory standard.
The operator is failing to comply with page 5 of the approved ventilation plan and the 064 MMU methane dust control plan, section specific page items 4 and 7. The following conditions were found: 1) There is not a back up check present in the #5 entry. 2) The line curtain in the 4R crosscut is 4 rows of bolts and 15' back from the face. 3) The ventilation current is improperly split and air passing over the left miner is going to the right side of the section. 4) The left side continuous miner is loading in the #3 face without any line curtain and the miner man is standing in the visible dust in the return of the continuous miner. The section foreman stated he was aware of the condition of the face ventilation and failed to take action to correct it. Steve Colo engaged in aggravated conduct by failing to take action on a known hazard. This is unwarrantable failure to comply.

All equipment inby the section power center is to be de-energized and no work other than that necessary to correct the ventilation is to take place.

The section is now correctly ventilated and a safety meeting was held with the crew about ventilation and silicosis.
Mine Citation/Order
Continuation

1. Subsequent Action 1a. Continuation [ ]

2. Dated (Original Issue) Mo Da Yr
   06/17/2009

3. Citation/Order Number 8090855

4. Served To
   Steve Colo, section foreman

5. Operator
   PERFORMANCE COAL COMPANY

6. Mine
   UPPER BIG BRANCH MINE-SOUTH

7. Mine ID 46-08436
   (Contractor)

Section II—Justification for Action

Continuation of 8. Condition or Practice with a mandatory standard.

Section III—Subsequent Action Taken

8. Extended To A. Date Mo Da Yr
   B. Time (24 Hr. Clock)
   C. Vacated D. Terminated E. Modified

Section IV—Inspection Data

9. Type of Inspection E01 10. Event Number 4119936

11. Signer [redacted] AR Number
    12. Date Mo Da Yr 13. Time (24 Hr. Clock)
    06/17/2009 0110

MSHA Form 7000-3a, Mar 85 (revised)
Change the body of citation to read, "The operator is failing to comply with page 5 of the approved ventilation plan. There is not a back up curtain in the #5 entry and the ventilation current is improperly split allowing the air current passing over the 064MMU to go to the right side and the 065MMU. Steve Colo stated to MSHA that he was aware of the condition. He engaged in aggravated conduct by failing to take action on a known hazard. This is unwarrantable failure to comply with a mandatory standard."

Separate plans were cited in one order.
The operator is failing to properly maintain the 029-040 MMU section. Loose coal has been allowed to accumulate in several locations of the section. The no.4 entry has coal measuring 1 inch to 24 inches deep for a distance of 112 feet on both ribs and the roadway. The 3 right cross-cut has coal accumulations measuring 1 inch to 24 inches deep on both ribs and the roadway for a distance of 79 feet in length. The no.3 entry, just outby the last open cross-cut has coal measuring 1 inch to 24 inches deep on both ribs and the roadway. The 2 left cross-cut has coal accumulations measuring 1 inch to 15 inches deep on both ribs and the roadway for a distance of 40 feet.

With the citation issued on 07/08/2009 citing over 2% methane in the same

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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: 010

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 No. 4, 3, 3-Right Cross-cut, and 2-left cross-cut on the MMU-029/040 section.

16. Termination Due
    - A. Date Mo Da Yr 07/09/2009
    - B. Time (24 Hr. Clock) 1315

---

**Section III—Termination Action**

17. Action to Terminate All the affected areas have been cleaned and dusted.

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**Section IV—Automated System Data**

19. Type of Inspection (activity code) E02
   - Event Number 4123477
   - B. Time (24 Hr. Clock) 1315

22. Signature
   - AR Number

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*MSHA Form 7000-3, Apr 09 (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 2150, 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.
location and the problems encountered today with excessive methane, the above conditions create a hazard.

This violation is an unwarrantable failure to comply with a mandatory standard.
THE OPERATOR HAD MADE AN AIR CHANGE ON THE #1 SECTION WITHOUT HAVING AN APPROVED REVISION FROM THE DISTRICT MANAGER. WITH THIS AIR CHANGE MADE THE AIR HAD BEEN REVERSED IN THE #1 ENTRY FROM CROSS CUT #95 TO THE SECTION.
THE OPERATOR FAILED TO FOLLOW THE APPROVED VENTILATION PLAN (METHANE DUST CONTROL) ON THE MMU-040 SECTION. THE CONTINUOUS MINING MACHINE WAS MINING THE 2 LEFT CROSS CUT WITH ONLY 1400 CFM AT THE END OF THE LINE CURTAIN.
THE OPERATOR WAS UNABLE TO GET THE PROPER CFM BEHIND THE LINE CURTAIN IN THE 
#2 LEFT CROSS CUT ON THE MMU-040 SECTION.
THE #2 RIGHT CROSS CUT HAS BEEN CONNECTED AND THE CONTINUOUS MINING MACHINE WAS MINING IN THE #1 FACE WITH THE REQUIRED CFM.
ACCUMULATIONS OF LOOSE COAL WAS PRESENT ALONG THE #3 SECTION FOR #1 SECTION FROM CROSS CUT #128 OUTBY TO THE #3 BELT HEAD. THIS MATERIAL WAS APPROXIMATELY 3 TO 18 INCHES DEEP FROM THE TRACK RAIL TO THE OFFSIDE RIB ON THIS BELT. THE PRE-SHIFT RECORD FOR THIS BELT LIST NEEDS SPOT CLEANED AND DUSTED SINCE 7/11/2009.
The belt has been cleaned.
THE PRE-SHIFT EXAMINATION FOR #3 BELT FOR #1 SECTION DAYSHIFT 7/21/2009 WAS INADEQUATE IN THAT APPROXIMATELY 31 BOTTOM ROLLERS WERE BROKE OFF LYING ON THE MINE FLOOR AND THE OTHER END WAS HANGING ON THE BELT RAIL.

9. Violation
   A. Health [ ]
   B. Safety ✔
   C. Other [ ]

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 [ ]

11. Negligence and Substantial:
    A. Yes ✔
    B. No [ ]

12. Type of Action 104(d)(2)
    A. Citation [ ]
    B. Order ✔
    C. Safeguard [ ]
    D. Written Notice [ ]

13. Type of Issuance (check one)
    A. Citation [ ]
    B. Order ✔
    C. Safeguard [ ]
    D. Written Notice [ ]

14. Initial Action
    A. Citation [ ]
    B. Order ✔
    C. Safeguard [ ]
    D. Written Notice [ ]

15. Area or Equipment THE #3 SECTION BELT FOR #1 SECTION.

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

17. Action to Terminate

18. Terminated
    A. Date Mo Da Yr
    B. Time (24 Hr. Clock)

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, 400 3rd Street, SW MC 2126, 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.
The operator has re-instructed the examiners on proper examinations.
ACCUMULATION OF LOOSE COAL WAS PRESENT AT THE #2 TAILPIECE (2 BELT) FOR #1 SECTION FROM THE BACK OF THE TAILPIECE OUTBY FOR TWO CROSS CUTS. THIS MATERIAL WAS APPROXIMATELY 6 TO 15 INCHES DEEP IN THIS AREA, ALSO FROM CROSS CUT #60 OUTBY TO THE #2 HEAD INCLUDING UNDER THE DRIVE MOTORS LOOSE COAL WAS PRESENT. THIS MATERIAL WAS APPROXIMATELY 2 TO 8 INCHES IN DEPTH ALONG THIS BELT FROM THE TRACK RAIL TO THE OFFSIDE RIB OF THE BELT.
The belt has been cleaned.
THE OPERATOR HAS FAILED TO FOLLOW THE APPROVED ROOF CONTROL PLAN (11/14/2008 5th SUPPLEMENT) FOR THE #3 SECTION THAT'S PILLARING. THIS APPROVED PLAN ITEM #33 STATES THAT FIVE 8FT CABLE BOLTS WILL BE INSTALLED IN THE INTERSECTIONS PRIOR TO SECOND MINING OF THE PILLAR BLOCK BEING MINED. THE SECTION FOREMAN HAS BEEN FOLLOWING THE APPROVED ROOF CONTROL PLAN DATED 7/27/2007.

THE #3 SECTION.

THE OPERATOR HAS INSTALLED THE FIVE 8FT CABLE BOLTS IN THE INTERSECTION WHERE SPAD #23466 (#7 ENTRY) IS LOCATED.
The Approved Supplement to the Roof Control Plan Dated 11/14/2008 was implemented at this mine and miners were not instructed of this revision on the #3 Section that is Pillaring.

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: 009

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 □

15. Area or Equipment: THE #3 SECTION.

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

Section III—Termination Action

17. Action to Terminate: THE REVISION HAS BEEN COVERED WITH THE MINERS ON #3 SECTION.

18. Terminated
   A. Date Mo Da Yr 07/27/2009
   B. Time (24 Hr. Clock) 1200

Section IV—Automated System Data

19. Type of Inspection (activity code) E01

20. Event Number 4119293

21. Primary or Mill

22. Signature

23. AR Number

MSHA Form 7000-3, Apr 08 (rev.4) The Agency's mission is to promote the safety and health of workers by setting and enforcing standards, providing training, outreach, and consultation. Citations are issued to operators to correct violations of applicable standards and to ensure compliance with the Mine Safety and Health Act of 1977. If you are cited, you may have the right to contest the citation and proposed penalty before an administrative law judge. If you choose not to contest, you must pay the penalty within 15 days. If you seek a hearing, you must file your written request for hearing with the Office of Administrative Law Judges within 30 days after the date of the citation.
The operator had 4 open cross cuts on the return side in the number 1 section. Two of these stopping's were taken out to grade bottom in the right return for water drainage.
The operator did not have the required 13,500 CFM in the LOB in the number 1 section. When checked there was only 10,080 CFM.

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: 003

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) 
   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 Number 1 section.

Section III—Termination Action

17. Action to Terminate Two stoppers were built in the right return and the 10,080 CFM in the LOB satisfied the approved ventilation plan requirement of 9,000 CFM.

18. Terminated A. Date 07/29/2009 
   B. Time (24 Hr. Clock) 1500

Section IV—Automated System Data

19. Type of Inspection (activity code) E02
   20. Event Number 6284319
   21. Primary or Mill

22. Signature

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1995, 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, 406 3rd Street, SW MC 2129, Washington, DC 20418. 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.
The operator is using belt air to ventilate the number 1 section.
THE BEARING PLATES ON APPROXIMATELY 35 ROOF BOLTS WERE NOT FIRMLY AGAINST THE MINE ROOF 20 FT. INBY THE FAN IN THE #5 SOUTH PORTAL. WITH THESE BOLTS HANGING DOWN THIS WAS CREATING UNSUPPORTED ROOF IN THE PRIMARY ESCAPEWAY FOR APPROXIMATE DISTANCE OF 48 FT.

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: 018

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 ☑

15. Area or Equipment TWENTY FEET INBY THE #5 SOUTH PORTAL TO THE FIRST CONNECTING CROSS CUTOFF.

Section III—Termination Action

17. Action to Terminate

Section IV—Automated System Data

19. Type of Inspection (activity code) E01

20. Event Number 4119293

21. Primary or Mill

22. Signature

23. AR Number
THE AFFECTED AREA HAS NOW BEEN SUPPORTED.
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<thead>
<tr>
<th>Section I--Subsequent Action/Continuation Data</th>
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<tbody>
<tr>
<td>1. Subsequent Action 1a. Continuation</td>
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<tr>
<td>2. Dated (Original Issue)</td>
<td>Mo Da Yr</td>
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<td>3. Citation/Order Number</td>
<td>8094552 - 02</td>
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<tr>
<td>4. Served To</td>
<td>RICK FOSTER (MINE FOREMAN)</td>
</tr>
<tr>
<td>5. Operator</td>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>6. Mine</td>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
</tr>
<tr>
<td>7. Mine ID</td>
<td>46-08436</td>
</tr>
<tr>
<td>(Contractor)</td>
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<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
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<tbody>
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<td>10. D. Persons Affected</td>
<td>18</td>
<td>1</td>
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Reason: CHANGE TO 1 PERSON AFFECTED.

---

Section III--Subsequent Action Taken

8. Extended To | A. Date | Mo Da Yr | B. Time (24 Hr. Clock) |
|---------------|---------|---------|------------------------|

<table>
<thead>
<tr>
<th>C. Vacated</th>
<th>D. Terminated</th>
<th>E. Modified</th>
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Section IV--Inspection Data

9. Type of Inspection | E01 |
<table>
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<tr>
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<table>
<thead>
<tr>
<th>AR Number</th>
<th>12. Date</th>
<th>Mo Da Yr</th>
<th>13. Time (24 Hr. Clock)</th>
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<tbody>
<tr>
<td>08/05/2009</td>
<td>0533</td>
<td></td>
<td></td>
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</tbody>
</table>

MSHA Form 7000-3a, Mar 85 (revised)
THE OPERATOR FAILED TO MAINTAINED THE PRIMARY ESCAPEWAY FOR THE #3 AND #4 SECTIONS, IN A SAFE CONDITION TO ALWAYS ASSURE PASSAGE OF ANYONE INCLUDING DISABLED PERSONS. APPROXIMATELY 6 TO 18 INCHES OF WATER WAS PRESENT FOR A DISTANCE OF 70 FEET, CINDER BLOCKS, METAL BEAMS, 6 BY 6 TIMBERS, AND MUD WAS PRESENT 20 FT. INBAY THE FAN, CREATING SLIP, AND TRIP HAZARDS. ALSO APPROXIMATELY TWELVE ROWS OF ROOF SUPPORT WERE DAMAGED TO WHERE THE PLATES WERE NOT FIRMLY AGAINST THE TOP, NO LIFELINE HAD BEEN INSTALLED FROM THE MAN DOORS OF THE FAN FOR APPROXIMATELY 135 FT. UNDERGROUND. CITATIONS WILL BE ISSUED FOR THESE CONDITIONS.

See Continuation Form (MSHA Form 7000-3a)
THE OPERATOR IS NOW PROVIDING A CLEAR AND SAFE TRAVELWAY.
THE ESCAPEWAY MAP WHERE MINERS CONGREGATE IN THE BATH HOUSE IS NOT CURRENT AND UP TO DATE. THIS MAP SHOWS THE PRIMARY ESCAPEWAY COMING OUT THE OLD FAN ENTRY (#4), BUT THE ACTUAL ESCAPEWAY COMES OUT THE #5 PORTAL.
THE ESCAPEWAY MAP LOCATED IN THE BATH HOUSE IS NOW UP TO DATE.
THE 1200 MAP FOR THIS MINE WAS INACCURATE IN THAT THE OPERATOR WAS SHOWING THE FAN FOR THE SOUTH PORTALS IN THE #4 ENTRY AND THE FAN IS LOCATED IN THE #5 ENTRY. ALSO THE #4 ENTRY HAS A STOPPING INSTALLED ACROSS THE MINE OPENING. THE PRIMARY ESCAPEWAY IS SHOWN COMING OUT THE #4 PORTAL WHEN IT SHOULD BE COMING OUT THE #5 PORTAL.
THE 1200 MAP IS NOW UP TO DATE IN THE AFFECTED AREA.
THE OPERATOR HAS FAILED TO CONDUCT A PRE-SHIFT EXAMINATION ON THE ROOM THAT WAS DRIVEN APPROXIMATELY 23 FT. OFF THE INTAKE AIR COURSE AT SPAD #26 SOUTH PORTAL.

**Section I - Violation Data**

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<thead>
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<tr>
<td>2. Time</td>
<td>1400</td>
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<tr>
<td>3. Citation Order Number</td>
<td>8094551</td>
</tr>
<tr>
<td>4. Served To</td>
<td>RICK FOSTER (MINE FOREMAN)</td>
</tr>
<tr>
<td>5. Operator</td>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>6. Mine</td>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
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<td>7. Mine ID</td>
<td>46-08436</td>
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**Section II - Inspector's Evaluation**

<table>
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<tr>
<th>9. Violation</th>
<th>A. Health Safety</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
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<tbody>
<tr>
<td></td>
<td>A. Health Safety</td>
<td></td>
<td>75.360(b)(6)(ii)</td>
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</tbody>
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**Section III - Termination Action**

<table>
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<tr>
<th>16. Termination Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Date</td>
</tr>
<tr>
<td>B. Time</td>
</tr>
</tbody>
</table>

**Section IV - Automated System Data**

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<tr>
<th>19. Type of Inspection (activity code)</th>
<th>20. Event Number</th>
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</thead>
<tbody>
<tr>
<td>B01</td>
<td>4119293</td>
</tr>
</tbody>
</table>

**MSHA Form 7000-3a (Type 9111) (Rev 11/25/92) According to 26 U.S.C. 3013, the Office of Ombudsman is an independent agency established under the Small Business Regulatory Enforcement Fairness Act of 1996, which is required to receive complaints from small businesses about federal agency enforcement actions. The Office of 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 contact Mr. Michael A. Elkins, Ombudsman, Small Business Regulatory Enforcement Fairness Act of 1996, Room 1013, 20th Street and Constitution Avenue, NW, Washington, DC 20418. Please note, however, that your right to file a complaint with the Office of 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 Office of Administrative Law Judges.**
THE OPERATOR IS NOW CONDUCTING A PRE SHIFT EXAM OF THE ROOM.
**Mine Citation/Order**

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

**Section I—Violation Data**

<table>
<thead>
<tr>
<th>1. Date</th>
<th>Mo Da Yr</th>
<th>2. Time (24 Hr. Clock)</th>
<th>3. Citation/Order Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>08/03/2009</td>
<td>1335</td>
<td>8094548</td>
<td></td>
</tr>
</tbody>
</table>

**4. Served To**

RICK FOSTER (MINE FOREMAN)

**5. Operator**

PERFORMANCE COAL COMPANY

**6. Mine**

UPPER BIG BRANCH MINE-SOUTH

**7. Mine ID**

46-08436

**8. Condition or Practice**

(Carrier)

**9. Written Notice (103g)**

THE OPERATOR FAILED TO INSTALL A CONTINUOUS AND DURABLE LIFELINE FOR APPROXIMATELY 135 FT. FROM THE AIRLOCK DOORS OF THE FAN TO THE FIRST RIGHT HANDED CROSS CUT UNDERGROUND. THIS IS THE PRIMARY ESCAPEWAY FOR THE #3 AND #4 SECTIONS.

**Section II—Inspector's Evaluation**

<table>
<thead>
<tr>
<th>9. Violation</th>
<th>A. Health</th>
<th>Safety</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>75.380(d)(7)(i)</td>
</tr>
</tbody>
</table>

**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: 018

**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 |

**15. Area or Equipment:**

THE #3 AND #4 SECTIONS PRIMARY ESCAPEWAY FROM THE FAN TO THE FIRST CONNECTING CROSS CUT UNDERGROUND.

**Section III—Termination Action**

**16. Termination Due**

<table>
<thead>
<tr>
<th>A. Date</th>
<th>Mo Da Yr</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Time (24 Hr. Clock)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Section IV—Automated System Data**

**19. Type of Inspection (activity code):**

E01

**20. Event Number:**

4119293

**21. Primary or Mill**

**22. Signature**

[Redacted]

**23. AR Number**

[Redacted]

---

**Disclaimer:**

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 2125, Washington, DC 20418. 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.
1. Subsequent Action 1a. Continuation [✓] [ ]
2. Dated (Original Issue) Mo Da Yr 08/03/2009
3. Citation/Order Number 8094548 - 01

4. Served To
   RICK FOSTER  (MINE FOREMAN)
   PERFORMANCE COAL COMPANY
   UPPER BIG BRANCH MINE-SOUTH
   7. Mine ID 46-08436
   (Contractor)

Section II - Justification for Action

THE LIFELINE IS NOW INSTALLED IN THE AFFECTED AREA.
An intentional change in the ventilation system was in the process of being implemented and unnecessary persons were working in the mine. The operator was in the process of implementing a ventilation change approved by the District Manager on August 6, 2009. Several required ventilation controls were not yet installed, and several ventilation controls were installed but were not approved in the ventilation plan (see citation 6612934).

Airflow had reversed in the longwall set-up entries (see citation 6612934), and airflow was reversed in neutral aircourses (see citations 8094582, and 6612934).

Two coal producing sections, the number 3 section and the number 4 section, (Continuation Form (MSHA Form 7000-3a) [Select one])

- **9. Violation**: A. Health [ ] Safety [☑] Other [ ]
- **B. Section of Act**: 75.324(b)(2)
- **C. Part/Section**: Part 30 CFR

- **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(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 [ ]
- **15. Area or Equipment**: Entire mine except certified persons conducting examinations and persons necessary to insure proper ventilation.

- **16. Termination Due**
  - A. Date: Mo Da Yr: [ ]
  - B. Time (24 Hr. Clock): [ ]

- **17. Action to Terminate**

- **18. Terminated**
  - A. Date: Mo Da Yr: [ ]
  - B. Time (24 Hr. Clock): [ ]

- **19. Type of Inspection (activity code)**: E01
- **20. Event Number**: 4119293
- **21. Primary or Mill**: [ ]
- **22. Signature**: [ ]

*MSHA Form 7000-3a* (Read Before Issued) 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, MO 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.
reverted to production approximately 7 a.m. on September 1, 2009 prior to the completion of the ventilation change. Additionally, three track/motor crew persons were working in the headgate entries inby the longwall recovering high voltage line, an electrician was working along the longwall face, and several Joy Manufacturing service representatives were on the longwall section. Additionally, the number 2 section was mining coal and the number 1 section had persons working in preparation to run coal.

The condition cited was mine wide and the existence of the underlying ventilation conditions (citations 8094581 and 6612934) were both extensive and obvious. Foreman traveled and worked in the areas which were not properly ventilated.
THE VENTILATION CHANGE WAS MADE IN ACCORDANCE WITH VENTILATION REVISIONS APPROVED ON 08/06/09 AND 09/04/09 PER 75.324(B)(1).
The operator failed to follow an approved ventilation revision, approved August 06, 2009, in that (1) a stopping was constructed across the No. 2 neutral entry adjacent from the No. 4 Seal in Seal Set 13; (2) a regulator was constructed near EP-TG 1 on the angled connector opposite Regulator 1 and 2; and (3) two regulators were installed inby and outby the longwall tailgate conveyor drive.

The following controls were not installed as approved: (1) the first regulator in EP-TG 1, the two regulators which comprise EP-LW 3.

The cited conditions collectively contributed to an air reversal in the longwall setup entries where men were working on longwall setup. A

Section II—Inspector's Evaluation

10. Gravity:
   A. Injury or Illness (has) (as): No Likelihood [ ] Unlikely [x] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
   B. Injury or Illness could reasonably be expected to be: No Lost Workdays [x] Lost Workdays Or Restricted Duty [ ] Permanently Disabling [ ] Fatally [ ]


13. Type of Issuance (check one): Citation [ ] Order [x] Safeguard [ ] Written Notice [ ]

14. Initial Action:
   A. Citation [ ] B. Order [x] C. Safeguard [ ] D. Written Notice [ ]

15. Area or Equipment: Entire mine except persons necessary to insure proper ventilation.

16. Termination Due:
   A. Date [ ] B. Time (24 Hr. Clock) [ ]

17. Action to Terminate

18. Terminated:
   A. Date [ ] B. Time (24 Hr. Clock) [ ]

Section IV—Automated System Data

19. Type of Inspection (activity code)
   20. Event Number: 4119293

21. Primary or Mill

23. AR Number [ ]
ventilation change was made which was not in accordance with 30 CFR 75.324 (see accompanying citation). A certified foreman who was directing the work force was present at the longwall setup where the air reversal was both obvious and extensive. The air reversal existed since yesterday (bleeder fan brought on line).
THE OPERATOR SUBMITTED A REVISION ON 09/03/09 AND IT HAS BEEN APPROVED. IN ADDITION, THE MISSING VENTILATION CONTROLS WERE INSTALLED ACCORDING TO THE REVISION DATED 8/6/09. THE LONGWALL FACE IS VENTILATED ACCORDING TO THE REVISION DATED 8/6/09.
THE OPERATOR FAILED TO HAVE TWO DISTINCT ESCAPEWAYS FOR THE LONGWALL SECTION AT CROSS CUT #30 WHERE THE NEW #1 SECTION IS SETTING UP. A STOPPING HAD NOT BEEN INSTALLED AT THIS LOCATION.

<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>2. Time</td>
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</tr>
<tr>
<td>3. Citation/Order Number</td>
<td>8094596</td>
</tr>
<tr>
<td>5. Operator</td>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>6. Mine</td>
<td>UPPER BIG BRANCH MINING-SOUTH</td>
</tr>
<tr>
<td>7. Mine ID</td>
<td>46-08436</td>
</tr>
<tr>
<td>8. Condition or Practice</td>
<td>8a. Written Notice (103g)</td>
</tr>
<tr>
<td>9. Violation</td>
<td>A. Health Safety</td>
</tr>
<tr>
<td>10. Gravity</td>
<td>A. Injury or Illness (has) (is): Unlikely</td>
</tr>
<tr>
<td>11. Negligence</td>
<td>C. Significant and Substantial: No</td>
</tr>
<tr>
<td>12. Type of Action</td>
<td>104(a)</td>
</tr>
<tr>
<td>13. Type of Issuance</td>
<td>Citation</td>
</tr>
<tr>
<td>14. Initial Action</td>
<td>A. Citation</td>
</tr>
<tr>
<td>15. Area of Equipment</td>
<td></td>
</tr>
<tr>
<td>16. Termination Due</td>
<td>A. Date</td>
</tr>
<tr>
<td>17. Action to Terminate</td>
<td></td>
</tr>
<tr>
<td>18. Terminated</td>
<td>A. Date</td>
</tr>
<tr>
<td>19. Type of Inspection</td>
<td>E01</td>
</tr>
<tr>
<td>20. Event Number</td>
<td>4119293</td>
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<tr>
<td>21. Primary or Mill</td>
<td></td>
</tr>
<tr>
<td>22. Signature</td>
<td></td>
</tr>
<tr>
<td>23. AR Number</td>
<td></td>
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</tbody>
</table>

MSHA Form 8091  SUP-1 (rev 8-80)  To comply 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-HAIR (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.
THE WATER IS NOW BELOW THE RAILS.
Section I–Subsequent Action/Continuation Data

<table>
<thead>
<tr>
<th>1. Subsequent Action 1a. Continuation</th>
<th>2. Dated (Original Issue)</th>
<th>3. Citation/Order Number</th>
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<tbody>
<tr>
<td>☑</td>
<td>09/15/2009</td>
<td>8094596 - 02</td>
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</tbody>
</table>

4. Served To
EVERETT HAGER (SUPER)

5. Operator
PERFORMANCE COAL COMPANY

6. Mine
UPPER BIG BRANCH MINE-SOUTH

7. Mine ID
46-08436 (Contractor)

Section II–Justification for Action

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason</td>
<td>THE WRONG CITATION NUMBER WAS TERMINATED IN ERROR.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>THE OPERATOR HAS INSTALLED A STOPPING.</td>
<td></td>
</tr>
</tbody>
</table>

See Continuation Form

Section III–Subsequent Action Taken

<table>
<thead>
<tr>
<th>8. Extended To</th>
<th>A. Date</th>
<th>B. Time (24 Hr. Clock)</th>
<th>☐ C. Vacated</th>
<th>☑ D. Terminated</th>
<th>☑ E. Modified</th>
</tr>
</thead>
</table>

Section IV–Inspection Data

<table>
<thead>
<tr>
<th>9. Type of Inspection</th>
<th>10. Event Number</th>
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</thead>
<tbody>
<tr>
<td>E01</td>
<td>4119293</td>
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<table>
<thead>
<tr>
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<th>12. Date</th>
<th>13. Time (24 Hr. Clock)</th>
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<td></td>
<td>09/16/2009</td>
<td>1000</td>
</tr>
</tbody>
</table>

MSHA Form 7000-3a, Mar 85 (revised)
Section I—Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation [✓] [☐]

2. Dated (Original Issue) Mo Da Yr 09/15/2009

3. Citation/Order Number 8094596 - 03

4. Served To

EVERETT HAGER (SUPER)

5. Operator

PERFORMANCE COAL COMPANY

6. Mine

UPPER BIG BRANCH MINE-SOUTH

7. Mine ID 46-08436 (Contractor)

Section II—Justification for Action

Change

From

To

11. Negligence

Moderate

High

Reason

12. Type of Action

104(a)

104(d)(2)

Reason

13. Type of Issuance

Citation

Order

Reason

14. Initial Action

Order

Reason

14. E. Citation/Order Number

8082692

Reason

14. F. Initial Action Dated

03/17/2009

Reason

15. Area or Equipment

THE #1 SECTION AND THE LONGWALL SECTION.

AFTER REVIEWING THE VENTILATION VIOLATIONS AT THIS MINE THE OPERATOR HAS SHOWN A HIGH DEGREE OF NEGLIGENCE WITH THIS CONDITION PRESENT.

Section III—Subsequent Action Taken

8. Extended To A. Date Mo Da Yr

[☐] C. Vacated [☐] D. Terminated [✓] E. Modified

B. Time (24 Hr. Clock)

Section IV—Inspection Data

9. Type of Inspection E01

10. Event Number 4119293

AR Number

12. Date Mo Da Yr 09/17/2009

13. Time (24 Hr. Clock) 0805

MSHA Form 7090-3a, Mar 85 (revised)
Section I--Subsequent Action/Continuation Data

1. Subsequent Action Ta. Continuation  ☑  
2. Dated (Original Issue)  Mo  Da  Yr  
   09/15/2009  
3. Citation/Order Number 8094596 - 04  

4. Served To  
   EVERETT HAGER (SUPER)  
5. Operator  PERFORMANCE COAL COMPANY  
6. Mine  
   UPPER BIG BRANCH MINE-SOUTH  
7. Mine ID  46-08436  (Contractor)  

Section II--Justification for Action

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. A. Termination Due Date</td>
<td>09/15/2009</td>
<td></td>
</tr>
<tr>
<td>Reason</td>
<td>MODIFIED TO ORDER NO DUE TIME OR DATE REQUIRED.</td>
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</tr>
<tr>
<td>16. B. Termination Due Time</td>
<td>12:30</td>
<td></td>
</tr>
<tr>
<td>Reason</td>
<td>MODIFIED TO ORDER NO DUE TIME OR DATE REQUIRED.</td>
<td></td>
</tr>
</tbody>
</table>

Section III--Subsequent Action Taken

8. Extended To  
   A. Date  Mo  Da  Yr  
   B. Time (24 Hr. Clock)  
   ☐ C. Vacated  ☐ D. Terminated  ☑ E. Modified  

Section IV--Inspection Data

9. Type of Inspection  E01  
10. Event Number  4119293  

AR Number  
12. Date  Mo  Da  Yr  
   09/22/2009  
13. Time (24 Hr. Clock)  0621  

MSHA Form 7000-3a, Mar 85 (revised)
There is an alarm for the Bandy Town fan that is not operational due to a telephone outage and the fan is not being monitored to notify the mine if an fan stoppage occurs. The phone lines have not been in operation since 2:00 am this date according to midnight management.
Mine Citation/Order

Change

From

To

Reason: The first word of the first sentence in this citation should be "The".

Wrong word entered.
### Change

**Change**

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate</td>
<td>High</td>
</tr>
</tbody>
</table>

**Reason**
The operator waited for at least six hours to post an individual at the fan.

**Reason**
After further review of the situation and a discussion with my supervisor, I feel the modification is justified.

---

**Section II - Justification for Action**

**Change**

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate</td>
<td>High</td>
</tr>
</tbody>
</table>

**Reason**
The operator waited for at least six hours to post an individual at the fan.

**Reason**
After further review of the situation and a discussion with my supervisor, I feel the modification is justified.

---

**Section III - Subsequent Action Taken**

<table>
<thead>
<tr>
<th>Extended To</th>
<th>A. Date</th>
<th>B. Time (24 Hr. Clock)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Check:** E. Modified

---

**Section IV - Inspection Data**

<table>
<thead>
<tr>
<th>Type of Inspection</th>
<th>AR Number</th>
<th>Date</th>
<th>Time (24 Hr. Clock)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EO 1</td>
<td>4119283</td>
<td>09/17/2009</td>
<td>0650</td>
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</table>

**Event Number:** 4119283
<table>
<thead>
<tr>
<th>Section I - Subsequent Action/Continuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subsequent Action Ta. Continuation</td>
</tr>
<tr>
<td>2. Dated (Original Issue)</td>
</tr>
<tr>
<td>3. Citation/Order Number</td>
</tr>
<tr>
<td>4. Served To</td>
</tr>
<tr>
<td>5. Operator</td>
</tr>
<tr>
<td>6. Mine</td>
</tr>
<tr>
<td>7. Mine ID</td>
</tr>
<tr>
<td>8086180 - 03</td>
</tr>
<tr>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
</tr>
<tr>
<td>46-08436</td>
</tr>
</tbody>
</table>

| Section II - Justification for Action     |
| Change                                    |
| From                                      |
| To                                        |
| Reason                                    |
| Citation changed to an order              |
| 14. Initial Action                        |
| Reason                                    |
| 14. E. Citation/Order Number              |
| 8074834                                   |
| Reason                                    |
| Additional information is needed for this order |
| 14. F. Initial Action Dated               |
| 03/17/2009                                |
| Reason                                    |
| Additional information needed             |
| 15. Area or Equipment                     |
| Reason                                    |
| The No.1, No.2, and Longwall sections, as well as all belts and outby areas ventilated by the Bandy Town fan are affected. |
| 16. A. Termination Due Date               |
| 09/15/2009                                |
| Reason                                    |
| 18. B. Termination Due Time               |
| 09:00                                     |

| Section III - Subsequent Action Taken     |
| 8. Extended To                            |
| A. Date                                   |
| B. Time (24 Hr. Clock)                    |
| C. Vacated                               |
| D. Terminated                             |
| E. Modified                               |

| Section IV - Inspection Data              |
| 9. Type of Inspection                     |
| E02                                       |
| 10. Event Number                         |
| 4123487 - 4119293                        |
| 11. Site                                  |
| 12. Date                                 |
| 13. Time (24 Hr. Clock)                  |
| MSHA Form 7000-03, Mar 05 (Rev 05)       |
| 09/23/2009                                |
| 1340                                     |
### Section I--Subsequent Action/Continuation Data

<table>
<thead>
<tr>
<th>1. Subsequent Action 1a. Continuation</th>
<th>2. Dated (Original Issue)</th>
<th>3. Citation/Order Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓</td>
<td>09/15/2009</td>
<td>8086180 - 04</td>
</tr>
</tbody>
</table>

4. Served To

Everette Hagar, Mine Supt.

6. Mine

**UPPER BIG BRANCH MINE-SOUTH**

7. Operator

**PERFORMANCE COAL COMPANY** (Contractor)

7. Mine ID

46-08436

### Section II--Justification for Action

**Change**

From

**Reason**

Corrected information needed

**14. E. Citation/Order Number**

8082692

**Reason**

### Section III--Subsequent Action Taken

<table>
<thead>
<tr>
<th>8. Extended To</th>
<th>A. Date</th>
<th>Mo</th>
<th>Da</th>
<th>Yr</th>
<th>B. Time (24 Hr. Clock)</th>
<th>C. Vacated</th>
<th>D. Terminated</th>
<th>E. Modified</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section IV--Inspection Data

9. **Type of Inspection**

TO2

10. **Event Number**

9832268

11. **AR Number**

12. **Date**

10/01/2009

13. **Time (24 Hr. Clock)**

1230

See Continuation Form
THE OPERATOR HAS FAILED TO CONDUCT PRE-SHIFT EXAMINATIONS FOR THE ROOM LOCATED ON THE ELLIS INTAKE SPLIT. THIS ROOM IS DROVE APPROXIMATELY 21 FT. INBY THE CORNER OF THE SOLID RIB LOCATED ONE CROSS CUT INBY SPAD #21272 AND ONE BREAK TO THE RIGHT.
UPPER BIG BRANCH MINE-SOUTH

AFTER REVIEWING THE VENTILATION VIOLATIONS AT THIS MINE THE OPERATOR HAS SHOWN A DEGREE OF NEGLIGENCE WITH THIS CONDITION PRESENT.
<table>
<thead>
<tr>
<th>Section I–Subsequent Action/Continuation Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subsequent Action 1a. Continuation</td>
</tr>
<tr>
<td>✓</td>
</tr>
<tr>
<td>2. Dated (Original issue)</td>
</tr>
<tr>
<td>Mo  Da  Yr</td>
</tr>
<tr>
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<td>4. Served To</td>
</tr>
<tr>
<td>EVERETT HAGER (SUPER)</td>
</tr>
<tr>
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</tr>
<tr>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>6. Mine</td>
</tr>
<tr>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
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<tr>
<td>7. Mine ID</td>
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<tr>
<td>46-08436 (Contractor)</td>
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<tr>
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</tr>
<tr>
<td>To</td>
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<tr>
<td>Reason</td>
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</tr>
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<td>Reason</td>
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<tr>
<td>B. Time (24 Hr. Clock)</td>
</tr>
<tr>
<td>C. Vacated</td>
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<tr>
<td>D. Terminated</td>
</tr>
<tr>
<td>E. Modified</td>
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<tr>
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<td>---------------------------------------------</td>
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MSHA Form 7003-3a, Mar '95 (revised)
THE OPERATOR FAILED TO CONDUCT A COMPLETE EXAMINATION TO ASSURE COMPLIANCE WITH THE RESPIRABLE DUST CONTROL PARAMETERS SPECIFIED IN THE METHANE DUST CONTROL PLAN FOR THE MMU-064 SECTION.
**Change**

**From**

**To**

**Reason**

THE OPERATOR FAILED TO CONDUCT A COMPLETE EXAMINATION TO ASSURE COMPLIANCE WITH THE RESPIRABLE DUST CONTROL PARAMETERS SPECIFIED IN THE METHANE DUST CONTROL PLAN FOR THE MMU-064 SECTION. MANAGEMENT ENGAGED IN AGGRAVATED CONDUCT CONSTITUTING MORE THAN ORDINARY NEGLIGENCE IN THAT PRODUCTION WAS DEEMED MORE IMPORTANT THAN CONDUCTING PARAMETER CHECKS ON THE CONTINUOUS MINING MACHINE. THIS VIOLATION IS AN UNWARRANTABLE FAILURE TO COMPLY WITH A MANDATORY STANDARD.
THE OPERATOR FAILED TO CONDUCT A COMPLETE EXAMINATION TO ASSURE COMPLIANCE WITH THE RESPIRABLE DUST CONTROL PARAMETERS SPECIFIED IN THE METHANE DUST CONTROL PLAN FOR THE MMU-065 SECTION.
THE OPERATOR FAILED TO CONDUCT A COMPLETE EXAMINATION TO ASSURE COMPLIANCE WITH THE RESPIRABLE DUST CONTROL PARAMETERS SPECIFIED IN THE METHANE DUST CONTROL PLAN FOR THE MMU-065 SECTION. MANAGEMENT ENGAGED IN AGGRAVATED CONDUCT CONSTITUTING MORE THAN ORDINARY NEGLIGENCE IN THAT PRODUCTION WAS DEEMED MORE IMPORTANT THAN CONDUCTING PARAMETER CHECKS ON THE CONTINUOUS MINING MACHINE. THIS VIOLATION IS AN UNWARRANTABLE FAILURE TO COMPLY WITH A MANDATORY STANDARD.
**Mine Citation/Order**

1. **Date**: 09/23/2009
2. **Time (24 Hr. Clock)**: 1855
3. **Citation/Order Number**: 8094607

4. **Served To**: STEVE COLO (FOREMAN)
5. **Operator**: PERFORMANCE COAL COMPANY

6. **Mine**: UPPER BIG BRANCH MINE-SOUTH
7. **Mine ID**: 46-08436 (Contractor)

8. **Condition or Practice**: Written Notice (103g)

---

**THE OPERATOR HAS FAILED TO CERTIFY BY DATE, TIME, AND INITIALS THAT THE EXAMINATION (DUST PARAMETERS) FOR 9/23/09 EVENING SHIFT WAS MADE.**

---

**Section II—Inspector's Evaluation**

9. **Violation**: A. Health [✓] Safety [✓] Other [ ]
10. **Section of Act**: B. Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
11. **Title 30 CFR**: C. Part/Section of Act: 75.362(g)(2)
12. **Number of Persons Affected**: D. Number of Persons Affected: 000

---

13. **Type of Issuance (check one)**: A. None [ ] B. Low [ ] C. Moderate [ ] D. High [✓] E. Reckless Disregard [ ]

14. **Initial Action**: A. Citation [ ] B. Order [✓] C. Safeguard [ ] D. Written Notice [ ]

15. **Area or Equipment**: E. Citation/Order Number: 8082692 Mo Da Yr: 03/17/2009

---


---

**Section III—Termination Action**

17. **Action to Terminate**: THE OPERATOR IS NOW CERTIFYING THE EXAMS.

---

**Section IV—Automated System Data**


19. **Type of Inspection**: (activity code) E01

---

20. **Event Number**: 4119293
21. **Primary or Mill**: 22. **Signature**: 23. **AR Number**: [blurred]
THE OPERATOR HAS FAILED TO CERTIFY BY DATE, TIME, AND INITIALS THAT THE EXAMINATION (DUST PARAMETERS) FOR 9/23/09 EVENING SHIFT WAS MADE. THE OPERATOR ENGAGED IN AGGRAVATED CONDUCT CONSTITUTING MORE THAN ORDINARY NEGLIGENCE BY NOT CERTIFYING THAT HE HAD CONDUCTED THE PARAMETER CHECKS. THIS VIOLATION IS AN UNWARRANTABLE FAILURE TO COMPLY WITH A MANDATORY STANDARD.
The operator is failing to adequately protect miners from falls of the roof and rib in the area of the #37 seal. The mine roof has fallen out from between the majority of the roof bolts for a break each inby and outby the seal. The mine roof has also fallen completely away from at least 8 roof bolts, leaving them hanging 2' from the mine roof.

This condition has been reported in the weekly exam for hazardous conditions for the weeks of 8/27/09, 9/2/09, 9/12/09 and 9/19/09. These reports had all been countersigned by the mine foreman. The operator engaged in aggravated conduct by knowing about these conditions and failing to take action on a known hazard. This violation is unwarrantable failure to comply with a mandatory standard.

The entry for 1 break on each side of the #37 seal.
The area, inby and outby, seal 37 has been timbered.
The operator is failing to maintain an approved plan of training for the current mining practices. The operator has started a longwall section that uses belt air in the face and uses an AMS system to monitor the atmospheric conditions in and around the longwall. The current approved training plan does not address the AMS system training in any way.

The longwall inby the belt tailpiece.
A training plan concerning the AMS system has been approved by MSHA.
Reason: Add "The lack of AMS training greatly increases the hazard of exposure to fire and/or smoke. The operator has engaged in aggravated conduct by installing the AMS system without providing training. This violation is unwarrantable failure to comply with a mandatory standard."
The primary escapeway for the Longwall Section MMU 050 is not being maintained 6 feet wide. A rib roll of 8.5 feet long x 3.5 feet height x 3 feet thick fell between the rib and thestage loader, causing the escapeway to be less than 6 feet wide.

9. Violation
   A. Health [x] Safety [ ] Other [ ]
   B. Section of Act
   C. Part/Section of Title 30 CFR

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: 004

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)
   A. Citation [ ]
   B. Order [✓]
   C. Safeguard [ ]
   D. Written Notice [ ]
   E. Citation/Order Number 8082692
   F. Dated Mo Da Yr 03/17/2009

14. Initial Action
   A. Citation [ ]
   B. Order [✓]
   C. Safeguard [ ]
   D. Written Notice [ ]

15. Area or Equipment The Longwall

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

17. Action to Terminate
   The rib roll was cleaned up.

18. Terminated
   A. Date Mo Da Yr 10/19/2009
   B. Time (24 Hr. Clock) 1125

19. Type of Inspection (activity code)
   E02

20. Event Number
   6288656

21. Primary or Mill

22. Signature

23. AR Number [ ]

MSHA Form 7000-3; Apr 09 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1995, 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.
Need to add a sentence after the last sentence in the body of the citation.
The operator is failing to follow the approved ventilation plan. On Section #2, MMU 040, in #4 entry the right side roof bolter was bolting the roof with 2200 CFM of air behind the line curtain. Dust was visible around the roof bolter operators and roof bolter from a distance of at least 50 feet. The operator has engaged in aggravated conduct constituting more than ordinary negligence. This violation is an unwarrantable failure to follow a mandatory standard.

The right side roof bolter in the #4 entry.

The line curtain and box check was tightened to get 5,100 CFM of air behind the line curtain.
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.

The Fairchild scoop Serial No. 339-230 located on the 065 MMU.

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 1-800-REG-FAIR (1-800-738-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 100 3rd Street, SW, MC 2120, Washington, DC 20410. 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.
A canopy was provided for the Fairchild scoop Serial No. 339-230.
The Joy shuttle car, Serial No. PM 0163 being used on the 065-0 MMU, No. 3 Section located in the No. 3 to 2 cross-cut in 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 shuttle car was located measured with a standard rule to be 77 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.
A canopy was provided for the Joy shuttle car Serial No. PM 0163.
The Joy shuttle car Serial No. PM 0158 being used on the 065-0 MMU, No. 3 Section located at the section dumping point in the last open break that measured with a standard rule to be an average of 52 inches was not provided with a cab or canopy. The entry that the shuttle car was located measured with a standard rule to be 46 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)
A canopy was provided for the Joy shuttle car Serial No. PM 0158.
The Fairchild scoop Serial No. 337-196 being used on the 064-0 MMU, No. 3 Section located in the last open break 6 to 7 that measured with a standard rule to be an average of 66 inches was not provided with a cab or canopy. The entries located to the working faces on the 064 MMU average measured with a standard rule to be 51 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.
A canopy was provided for the Fairchild scoop serial No. 337-196.
The Joy shuttle car Serial No. 16851A being used on the 064-0 MMU, No. 3 Section located at the section dumping point that measured with a standard rule to be an average of 60 inches was not provided with a cab or canopy. The entries located to the working faces on the 064 MMU average measured with a standard rule to be 51 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.
A canopy was provided for the Joy shuttle car Serial NO. 16851A.
Based on the results of five valid respirable dust samples collected by the operator, the average concentration of respirable dust in the working environment of the designated occupation in the 064-0 mechanized mining unit was 3.733 mg/m³, which exceeded the applicable limit of 2.0 mg/m³. Management shall take corrective actions to lower the respirable dust concentration and submit these changes in writing to the District Manager in the form of an updated Methane and Dust Control plan. After the plan is approved by the District Manager, abatement sampling may begin.

<table>
<thead>
<tr>
<th>9. Violation</th>
<th>A. Health ✓ Safety</th>
<th>B. Section of Act</th>
<th>C. Part/Section of Title 30 CFR</th>
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<th>10. Gravity:</th>
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<td>A. Injury or Illness (has) (is): No Likelihood □ Unlikely □ Reasonably Likely ✓ Highly Likely □ Occurred □</td>
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<tr>
<th>11. Negligence (check one)</th>
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<tbody>
<tr>
<td>A. None □ B. Low □ C. Moderate ✓ D. High □ E. Reckless Disregard □</td>
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<th>22. Signature [Redacted]</th>
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</table>

MSHA Form T000-3, April 06 (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 1-800-REG-FAIR (1-800-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 400 3rd Street, SW MC 2120, Washington, DC 20418. 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.
The required plan for 064-0 MMU has been received; therefore, time is granted for the approval process.
The revision plan for the 064-0 has been received by the District Manager; Additional time will be granted to allow the approval process.
Additional time will be granted for the approval process for the mechanized mining unit 064-0 (MMU) methane and dust control plan.
Additional time will be granted for the approval process on the 064-0 mechanized mining unit (MMU).
Additional time granted for the approval process to the revision to the mechanized mining unit 064-0 MMU. Additional information requested from the operator was received today 10/15/2009.
The Operator has submitted a revision to the current approved plan for the Mechanized Mining Unit (MMU) 064-0 to the District Manager and has been approved. Additional time is granted to collect compliance samples.
The operator submitted a revision of the current approved plan to the District Manager and was approved on 10/27/2009. The operator again failed to come into compliance on samples taken and submitted on 10/27/2009 thru 10/31/2009. Based on the results of three valid respirable dust samples collected by the operator, the average concentration, when divided by five, of the respirable dust in the working environment of the designated occupation on the Mechanized Mining Unit (MMU) 064-0 was 0.726 mg/m³, which exceeded the applicable limit of 0.7 mg/m³ standard. Due to the hazards of respirable silica dust and coal dust additional time will not be granted under the current dust control parameters.

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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 [ ]

11. Negligence (check one)
- A. None [ ] B. Low [ ] C. Moderate [ ] D. High [ ] E. Reckless Disregard [ ]

12. Type of Action 104(b)

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 9968698

15. Area or Equipment

**Stops production on the Mechanized Mining Unit (MMU) 064-0, Joy 14-10-AA continuous miner Serial Number JM 5519.**

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

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. 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 businesses. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-739-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 400 3rd Street, SW, MC 2120, Washington, DC 20410. 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.
The 14-10-AA Joy continuous miner serial # JM5519A has been taken out of service and brought to the surface.
Miners have been required to work and travel in dark-mucky water from levels measuring 12 inches up to 48 inches. The mine floor under the water contains slipping and tripping hazards that cannot be seen due unlevelled bottom from heaving of the mine floor in the area, extraneous materials and slick rocks. This condition poses hazards related to tripping and falling in water up to 48 inches that could result in drowning. Citation No. 8085240 is being issued in conjunction with this order.
The operator submitted a revision to the District Manager, which was approved. The 107(a) order No. 8085239 is now terminated.
An examination by a certified person has not been conducted for the third panel (non pillar panel) off of the right return for the No. 3 section. Also, an examination at evaluation points 60 and 61, as designated on the ventilation map, have not been conducted. The last dates found were 4/15/2009 and these areas have not been recorded in the designated weekly examination book for the last six months.

<table>
<thead>
<tr>
<th>Violation</th>
<th>A. Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety ✔</td>
<td>Other</td>
</tr>
</tbody>
</table>

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(d)(2)

13. Type of Issuance (check one)
   A. Citation ☐ B. Order ✔ C. Safeguard ☐
   D. Written Notice ☐

14. Initial Action
   A. Citation ☐ B. Order ✔ C. Safeguard ☐ D. Written Notice ☐

15. Area or Equipment The right return off of the No. 3 section.

16. Termination Due
   A. Date Mo Da Yr 12/17/2009
   B. Time (24 Hr. Clock) 1300

17. Action to Terminate An examination has been conducted by a certified person.

18. Terminated
   A. Date Mo Da Yr 12/17/2009
   B. Time (24 Hr. Clock) 1300

19. Type of Inspection (activity code) E91

20. Event Number 6288652

21. Primary or Mill

22. Signature

23. AR Number
The operator is not following the Ventilation Plan as approved by the District Manager on the No.1 section (MMU 029-0), air flow is not in the direction as shown on the approved map. The intake air split for the No.1 section which is used as the primary escapeway, with the lifeline miners are to use to escape in fresh air in emergency situations, the air flow has reversed with air flow going outby. In case of an emergency the men on this section would not have fresh air in the primary escapeway. Terry Moore, mine foreman, stated he was aware of this condition and that it has existed for approximately 3 weeks. Mr. Moore engaged in aggravated conduct constituting more than ordinary negligence in that he was aware of the condition. This violation is an unwarrantable failure to comply with a mandatory standard.

The No.1 section and outby areas using this primary escapeway.

The operator opened regulators to put air flow as shown on the approved map.
<table>
<thead>
<tr>
<th>Section I—Subsequent Action/Continuation Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subsequent Action 1a. Continuation ✔</td>
</tr>
<tr>
<td>2. Dated (Original Issue) Mo Da Yr</td>
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<td>01/07/2010</td>
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<tr>
<td>3. Citation/Order Number 8087709 - 01</td>
</tr>
<tr>
<td>4. Served To</td>
</tr>
<tr>
<td>Terry Moore, Mine Foreman</td>
</tr>
<tr>
<td>5. Mine</td>
</tr>
<tr>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>6. Mine</td>
</tr>
<tr>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
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<td>8. Operator</td>
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<tr>
<td>(Contractor)</td>
</tr>
<tr>
<td>9. Operator</td>
</tr>
<tr>
<td>PERFORMANCE COAL COMPANY</td>
</tr>
<tr>
<td>10. Mine</td>
</tr>
<tr>
<td>UPPER BIG BRANCH MINE-SOUTH</td>
</tr>
<tr>
<td>11. Signature</td>
</tr>
<tr>
<td>[Redacted]</td>
</tr>
<tr>
<td>12. Date Mo Da Yr</td>
</tr>
<tr>
<td>01/11/2010</td>
</tr>
<tr>
<td>13. Time (24 Hr. Clock)</td>
</tr>
<tr>
<td>0733</td>
</tr>
</tbody>
</table>

Section II—Justification for Action

<table>
<thead>
<tr>
<th>Change</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. D. Persons Affected</td>
<td>15</td>
<td>10</td>
</tr>
</tbody>
</table>

Reason Only 10 people on section.
The operator is not following the Ventilation Plan as approved by the District Manager. The return air course from the No.1 section at the overcast on the longwall belt, located 1 1/2 breaks outby survey spad No.22626 at break 11 was entering the secondary escapeway used by the men on the longwall section. This air is used to ventilate the face of the active longwall section (MMU 050-0). When checked with a Solaris gas detector, the detector showed 0.10% methane and 20.8% oxygen in the air going to the longwall face.
One bottom roller was running in accumulation of combustible materials, cross over bar was rubbing top of the bottom belt, and a 2nd bottom roller was stuck and the belt had rubbed a flat groove, one quarter inch deep into the roller, located on the #1 South belt, thirty feet out by break #5 and extended for a distance of thirty feet. (Fire Boss) said that (Fire Boss) had found this problem on Saturday January 09, 2010 and that the section crew had been working on it. At the time of this inspection no one was working on this section of belt. The operator engage in aggravated conduct by his failure to correct the known hazard before running the belt. This violation is an unwarrantable failure to comply with a mandatory standard.
The operator is not following the Roof Control Plan as approved by the District Manager. Located at the rehabilitation area for the new Barrier section, entries and crosscuts are from 20 1/2 feet to 24 feet in width. Survey spads could not be found in the area but according to the location of the North Mains track it would be 60, 61, and 62 break. Three entries are being rehabbed in this area. Crosscut No.1 to No.2 is 20 1/2 feet to 23 1/2 feet wide for a distance of 82 feet. Crosscut No.2 to No.3 is 20 1/2 feet to 23 1/2 feet wide for a distance of 75 feet. The No.2 entry is 21 feet to 24 feet wide for a distance of 72 feet.
Berman Cornett, Safety  
PERFORMANCE COAL COMPANY  
UPPER BIG BRANCH MINE-SOUTH  
46-08436  

To add: Page 12, Drawing 2 shows a maximum of 20 feet in width in crosscuts and entries.
Timbers have been set in the locations indicated by the citation and according to the approved Roof Control Plan on page 12, drawing 2.
The operator is not following the Ventilation Plan as approved by the District Manager on the No.1 section (MMU 029-0) under the Methane Dust Control, in that, the minimum amount of air in the last open crosscut is not maintained at 15,000 CFM. When checked with an anemometer only 7,448 CFM was found in the last open crosscut, 2 to 3 entry.
Ventilation controls were checked and replaced. An air reading of 20,613 CFM was obtained in the last open crosscut.
The approved mine ventilation plan, approved 8/09/09 and re-approved 1/22/10 was not being followed in the tailgate entries of the longwall panel. The air was going outby in the No. 5-7 entries from the longwall face (return air) to the mouth of the section instead of intake air going inby from the mouth of the section to the longwall tail. The regulator at survey station 22412 was not present and instead was a permanent stopping blocking intake air from ventilating the tailgate entries.
The air flow is going in the direction as shown on the revision that was approved on 03/11/2010. The 104(d)(2) order No. 8103337 is now terminated.
At the drive unit of the long wall belt line located behind the drive is an accumulation of mud and slop that is up to 10 inches deep and extends from rib-to-rib and is 30 feet long. The slop is runny and has spread to the belt starter box and track where it has covered the electrical mats at the starter. Accumulations of coal and coal dust shall not be permitted to accumulate in active workings.
No apparent effort was made by the operator to remove accumulations located at the Longwall Mother Drive Belt.
The 104(b) Order, No. 8087763 is now terminated.