



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 8227558
4. Served To Berman Cornett, Safety Director	5. Operator PERFORMANCE COAL COMPANY, et al	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

The mine operator failed to follow the approved ventilation plan in effect at the mine on April 5, 2010.

The operator failed to comply with the methane and dust control plan portion of the approved ventilation plan approved on June 15, 2009 for the 050-0 MMU. The approved methane and dust control portion of the ventilation plan requires that the JOY 7LS Longwall shearer be equipped with 109 water sprays, with 43 water sprays on each drum. The plan further specified that these sprays operate at a minimum of 90 psi at each spray block.

Evidence obtained during the investigation of an explosion accident

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.370(a)(1)
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Section II--Inspector's Evaluation

10. Gravity:					
A. Injury or Illness (has) (is):	No Likelihood <input type="checkbox"/>	Unlikely <input type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input checked="" type="checkbox"/>
B. Injury or illness could reasonably be expected to be:	No Lost Workdays <input type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input checked="" type="checkbox"/>	
C. Significant and Substantial:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	D. Number of Persons Affected: 029		
11. Negligence (check one)					
A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input type="checkbox"/>	D. High <input type="checkbox"/>	E. Reckless Disregard <input checked="" type="checkbox"/>	
12. Type of Action	104(d)(2)	13. Type of Issuance (check one)			
		Citation <input type="checkbox"/>	Order <input checked="" type="checkbox"/>	Safeguard <input type="checkbox"/>	Written Notice <input type="checkbox"/>
14. Initial Action		E. Citation/ Order Number		F. Dated	
A. Citation <input type="checkbox"/>	B. Order <input checked="" type="checkbox"/>	C. Safeguard <input type="checkbox"/>	D. Written Notice <input type="checkbox"/>	8082692	Mo Da Yr 03/17/2009
15. Area or Equipment North area of the mine affected by the explosion on 4/5/2010.					

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

17. Action to Terminate

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

19. Type of Inspection (activity code)	E06	20. Event Number	4440347	21. Primary or Mill
22. Signature				23. AR Number
James McElroy 24153 David A Steffey				24209

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.



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input type="checkbox"/> <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 12/06/2011	3. Citation/ Order Number 8227558
4. Served To Berman Cornett, Safety Director	5. Operator PERFORMANCE COAL COMPANY, et al	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	

Section II--Justification for Action

Continuation of 8. Condition or Practice

revealed that the shearer was being operated with missing and clogged water sprays. Seven sprays on the tailgate drum were missing. As a result of the missing sprays, the pressure at the remaining sprays was significantly reduced below the 90 psi requirement. One function of the water sprays is to prevent a potential ignition source from frictional heat generated by the shearer bits striking rock. Such frictional heat from bits striking rock is the most likely source of the ignition for the April 5, 2010 explosion. The failure to comply with this plan requirement contributed to the deaths of 29 miners.

Operating the shearer with the missing sprays would have been obvious to casual observation. Testimony and company records indicate that operating the shearer with missing sprays was a practice at the mine. The operator has engaged in aggravated conduct constituting more than ordinary negligence. This is an unwarrantable failure to comply with a mandatory standard.

Standard 75.370(a) (1) was cited 33 times in two years at mine 4608436 (33 to the operator, 0 to a contractor).

This violation is issued as a flagrant violation.

This citation is being issued to the following entities as a unitary operator: Performance Coal Company, Massey Coal Services, Inc., A.T. Massey Coal Company, Inc., and Massey Energy Company.

See Continuation Form

Section III--Subsequent Action Taken

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

9. Type of Inspection E06	10. Event Number 4440347		
11. Signature James McElroy 24153 David A Steffey	AR Number 24209	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800