

U. S. Department of Labor

SEP 16 2009

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



Mr. Chris Blanchard  
President  
Performance Coal Company  
P. O. Box 69  
Naoma, WV 25140

*Denial*

Dear Mr. Blanchard:

Subject: Mine Ventilation Plan, Section 75.370, 30 CFR, Upper Big Branch Mine-South, I.D. No. 46-08436, Performance Coal Company, Montcoal, Raleigh County, West Virginia

This will acknowledge receipt of a revision to the ventilation map, requesting to drill a dewatering hole into the subject mine, and convert the No. 4 entry of the No. 1 North Headgate to a return aircourse. The revision, dated September 8, 2009, was received by MSHA on September 11, 2009. The submitted map and plan, as submitted, does not provide the required information, pursuant to 30 CFR, Section 75.371 and 75.372, and cannot be approved. Furthermore, the proposed plan does not comply with the base mine ventilation plan approved on August 6, 2009. Please refer to the discrepancies marked on the attached map and plan, which provide the basis for denial of the ventilation map.

Additionally, citations were issued at the mine on September 15, 2009 for missing ventilation controls which compromised the isolation of the primary (intake) escapeway for the longwall mining section. In response to these conditions, pursuant to 30 CFR 75.370, additional provisions are being requested by the District Manager in the form of safety precautions to ensure the primary escapeway is not compromised in the future, and an inventory of equipment that is provided with automatic fire suppression or will be attended in the intake escapeway (to ensure compliance with 30 CFR 75.380(f)(3)).

Should you have any questions concerning this matter, please contact the Ventilation Department at (304) 877-3900/Ext 142.

Sincerely,

/s/ ROBERT G. HARDMAN

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

cc: Mt. Hope Field Office (3 copies  
Files/nlc

SUPERVISORY ACKNOWLEDGEMENT

*RLC 9/16/09*

Initials *Jm* 9/16/09 Date



# Performance Coal Company

P.O. Box 69

Naoma, WV

25140

September 8, 2009

Mr. Robert G. Hardman  
Mine Safety and Health Administration  
100 Bluestone Road  
Mount Hope, WV 25880

Re: Performance Coal Company  
Upper Big Branch Mine  
MSHA ID: 46-08436  
State ID: U-3042-92  
Borehole Plan

Dear Sir,

Performance Coal Company will be drilling a dewatering hole into the Upper Big Branch Mine in the area of the exhausting fan shaft (see location on map). An 8-inch pilot hole will be drilled initially and then reamed out to a diameter of 20 inches. When the hole reaches to within 100ft of the coal seam the area will be dangered off for a radius of 50ft. When the hole reaches to within 25ft of the coal seam no one will be allowed within 200ft of the bottom of the proposed hole location. Methane will be monitored continuously at the top of the hole.

Before the hole intersects the mine workings a regulator will be build inby the hole location to prevent a short circuit of air. This regulator will be removed once the hole is regulated on the surface. Also before hole-through the area at the bottom of the hole will be pre-shift examined.

At the current time the No. 4 entry of the No.1 North Headgate is designated as an intake airway. This entry will be converted to a return air course once the #1 section begins mining the Panel No.2 Crossover per approved ventilation plan dated August 6, 2009. The proposed controls for starting the #1 section are shown on the attached map.

Performance Coal Company Inc. does not have a miner's representative at this time. If you have any questions or concerns feel free to contact me at (304) 854-3508.

Respectfully Submitted  
Performance Coal Company

Eric Lily  
Mine Engineer


MSHA  
MOUNT HOPE, WV

SEP 11 2009

RECEIVED  
VENTILATION

Mine Citation/Order

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

9/16/09 MSH  


Section I--Violation Data

1. Date Mo Da Yr 09/14/2009	2. Time (24 Hr. Clock) 0600	3. Citation/ Order Number 8094594
4. Served To EVERETT HAGER (SUPER)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE CERTIFIED 75.1200 MAP WAS NOT UP-TO-DATE WITH THE CORRECT VENTILATION CONTROLS FOR THE REGULATOR LOCATED ON THE #1 SECTION AND THE DOUBLE SET OF DOORS LOCATED IN THE #4 ENTRY FOR THE LONGWALL.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.1202
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Section II--Inspector's Evaluation

10. Gravity:					
A. Injury or illness (has) (is):	No Likelihood <input checked="" type="checkbox"/>	Unlikely <input type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input type="checkbox"/>
B. Injury or illness could reasonably be expected to be:	No Lost Workdays <input checked="" type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input type="checkbox"/>	
C. Significant and Substantial:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	D. Number of Persons Affected: 011		
11. Negligence (check one)					
A. None <input type="checkbox"/>	B. Low <input type="checkbox"/>	C. Moderate <input checked="" type="checkbox"/>	D. High <input type="checkbox"/>	E. Reckless Disregard <input type="checkbox"/>	
12. Type of Action 104(a)		13. Type of Issuance (check one)			
		Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>			
14. Initial Action			E. Citation/ Order Number		F. Dated Mo Da Yr
A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>					
15. Area or Equipment					

16. Termination Due	A. Date Mo Da Yr 09/14/2009	B. Time (24 Hr. Clock) 0605
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Section III--Termination Action

17. Action to Terminate THE MAP IS NOW CORRECT.

18. Terminated	A. Date Mo Da Yr 09/14/2009	B. Time (24 Hr. Clock) 0605
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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 24172

MSHA Form 7000-3a (Rev. 05-01-09) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

Mine Citation/Order

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

9/16/09

Section I--Violation Data

1. Date Mo Da Yr 09/14/2009	2. Time (24 Hr. Clock) 0300	3. Citation/ Order Number 8094593
4. Served To BILLY GRAHAM (FOREMAN)		5. Operator PERFORMANCE COAL COMPANY
6. Mine UPPER BIG BRANCH MINE-SOUTH		7. Mine ID 46-08436 (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE THIRD SET OF AIRLOCK DOORS INBY CROSS CUT #78 FOR THE LONGWALL AND #1 SECTIONS WERE NOT SHUT TO FORM AN AIRLOCK.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.333(d)(3)
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Section II--Inspector's Evaluation

10. Gravity:			
A. Injury or Illness (has) (is):	No Likelihood <input type="checkbox"/>	Unlikely <input checked="" type="checkbox"/>	Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>
B. Injury or illness could reasonably be expected to be:	No Lost Workdays <input checked="" type="checkbox"/>	Lost Workdays Or Restricted Duty <input type="checkbox"/>	Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>
C. Significant and Substantial:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	D. Number of Persons Affected: 011	
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104(a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>		E. Citation/ Order Number	F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 09/14/2009	B. Time (24 Hr. Clock) 0303
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Section III--Termination Action

17. Action to Terminate THE DOORS WERE SHUT.

18. Terminated	A. Date Mo Da Yr 09/14/2009	B. Time (24 Hr. Clock) 0303
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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 24172

MSHA Form 7000-3, Apr 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

Mine Citation/Order

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

9/16/2009

Section I-Violation Data

1. Date Mo Da Yr 09/15/2009	2. Time (24 Hr. Clock) 0835	3. Citation/ Order Number 8094595
4. Served To EVERETT HAGER (SUPER)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE OPERATOR FAILED TO RECORD THE LAST OPEN BREAK READING FOR THE #1 SECTION PRE-SHIFT EXAMINATIONS BOOKS BEING CONDUCTED THIS SECTION.

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 75.360(f)
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Section II-Inspector's Evaluation

10. Gravity:			
A. Injury or illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>			
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>			
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			D. Number of Persons Affected: 000
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>			
12. Type of Action 104(a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>	
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>			E. Citation/ Order Number
F. Dated Mo Da Yr			
15. Area or Equipment			

16. Termination Due	A. Date Mo Da Yr 09/15/2009	B. Time (24 Hr. Clock) 1600
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Section III-Termination Action

17. Action to Terminate		
18. Terminated	A. Date Mo Da Yr	B. Time (24 Hr. Clock)


Section IV-Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number 4119293	21. Primary or Mill
22. Signature		23. AR Number 24172

MSHA Form 7000-3a  
Under the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.

Mine Citation/Order

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

7/16/9/10/11  


Section I--Violation Data

1. Date Mo Da Yr 09/15/2009	2. Time (24 Hr. Clock) 1230	3. Citation/ Order Number 8094597
4. Served To RICK FOSTER (MINE FOREMAN)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE OPERATOR FAILED TO CERTIFY WITH DATE, TIME, AND INITIALS THAT THE ELECTRIC PUMP LOCATED AT CROSS CUT #71 IN THE #1 SECTION RETURN HAD BEEN PRE-SHIFTED FOR 9/15/2009.

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 75.360(e)
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Section II--Inspector's Evaluation

10. Gravity:				
A. Injury or illness (has) (is): No Likelihood <input checked="" type="checkbox"/> Unlikely <input type="checkbox"/> Reasonably Likely <input type="checkbox"/> Highly Likely <input type="checkbox"/> Occurred <input type="checkbox"/>				
B. Injury or illness could reasonably be expected to be: No Lost Workdays <input checked="" type="checkbox"/> Lost Workdays Or Restricted Duty <input type="checkbox"/> Permanently Disabling <input type="checkbox"/> Fatal <input type="checkbox"/>				
C. Significant and Substantial: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				D. Number of Persons Affected: 001
11. Negligence (check one) A. None <input type="checkbox"/> B. Low <input type="checkbox"/> C. Moderate <input checked="" type="checkbox"/> D. High <input type="checkbox"/> E. Reckless Disregard <input type="checkbox"/>				
12. Type of Action 104(a)		13. Type of Issuance (check one) Citation <input checked="" type="checkbox"/> Order <input type="checkbox"/> Safeguard <input type="checkbox"/> Written Notice <input type="checkbox"/>		
14. Initial Action A. Citation <input type="checkbox"/> B. Order <input type="checkbox"/> C. Safeguard <input type="checkbox"/> D. Written Notice <input type="checkbox"/>				E. Citation/ Order Number
15. Area or Equipment				
16. Termination Due A. Date Mo Da Yr 09/15/2009 B. Time (24 Hr. Clock) 1231				


Section III--Termination Action

17. Action to Terminate THE OPERATOR CONDUCTED AN EXAMINATION AND CITIFIED THIS AREA WITH DATE, TIME, AND INITIALS.	
18. Terminated A. Date Mo Da Yr 09/15/2009	B. Time (24 Hr. Clock) 1232

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 24172

MSHA Form 7000-3a 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.

*[Handwritten signature]*  


Section I--Violation Data

1. Date Mo Da Yr 09/14/2009	2. Time (24 Hr. Clock) 0045	3. Citation/ Order Number 8094590
4. Served To BILLY GRAHAM (FOREMAN)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 <span style="float: right;">(Contractor)</span>	

8. Condition or Practice  
THE OPERATOR FAILED TO APPLY SEALANT TO THE REGULATOR LOCATED ON THE NEW #1 SECTION RETURN.

8a. Written Notice (103g)

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.333(d)(1)
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Section II--Inspector's Evaluation

10. Gravity:

A. Injury or illness (has) (is): No Likelihood  Unlikely  Reasonably Likely  Highly Likely  Occurred

B. Injury or illness could reasonably be expected to be: No Lost Workdays  Lost Workdays Or Restricted Duty  Permanently Disabling  Fatal

C. Significant and Substantial: Yes  No  D. Number of Persons Affected: 003

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

12. Type of Action 104(a) 13. Type of Issuance (check one) Citation  Order  Safeguard  Written Notice

14. Initial Action A. Citation  B. Order  C. Safeguard  D. Written Notice  E. Citation/Order Number F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 09/15/2009	B. Time (24 Hr. Clock) 0600
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Section III--Termination Action

17. Action to Terminate

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

Section IV--Automated System Data

19. Type of Inspection (activity code) E01	20. Event Number 4119293	21. Primary or Mill
22. Signature	23. AR Number 24172	

MSHA Form 7000-3a (Rev. 12-2008) Under the 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.

9/16/09 MSH  
MSHA

Section I--Violation Data

1. Date Mo Da Yr 09/14/2009	2. Time (24 Hr. Clock) 0130	3. Citation/ Order Number 8094591
4. Served To BILLY GRAHAM (FOREMAN)	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE OPERATOR FAILED TO SEPARATE THE PRIMARY ESCAPEWAY FOR THE LONGWALL SECTION AT CROSS CUTS #43 AND #51 FROM POWER BOXES (S.N. 14196-1800-100 AND S.N. 29920-209) LOCATED IN THESE BREAKS.

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 75.380(f)(3)(iii)
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Section II--Inspector's Evaluation

10. Gravity:						
A. Injury or illness (has) (is):		No Likelihood <input type="checkbox"/>	Unlikely <input checked="" type="checkbox"/>	Reasonably Likely <input type="checkbox"/>	Highly Likely <input type="checkbox"/>	Occurred <input type="checkbox"/>
B. Injury or illness could reasonably be expected to be:		No Lost Workdays <input type="checkbox"/>	Lost Workdays Or Restricted Duty <input checked="" type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input type="checkbox"/>	
C. Significant and Substantial:			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	D. Number of Persons Affected: 008	
11. Negligence (check one)						
A. None <input type="checkbox"/>		B. Low <input type="checkbox"/>		C. Moderate <input checked="" type="checkbox"/>		D. High <input type="checkbox"/>
E. Reckless Disregard <input type="checkbox"/>						
12. Type of Action 104(a)			13. Type of Issuance (check one)			
			Citation <input checked="" type="checkbox"/>		Order <input type="checkbox"/>	Safeguard <input type="checkbox"/>
			Written Notice <input type="checkbox"/>			
14. Initial Action						
A. Citation <input type="checkbox"/>		B. Order <input type="checkbox"/>		C. Safeguard <input type="checkbox"/>		D. Written Notice <input type="checkbox"/>
			E. Citation/ Order Number		F. Dated Mo Da Yr	
15. Area or Equipment						

16. Termination Due	A. Date Mo Da Yr 09/15/2009	B. Time (24 Hr. Clock) 0800
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Section III--Termination Action

17. Action to Terminate
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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) E01	20. Event Number 4119293	21. Primary or Mill
22. Signature		23. AR Number 24172

MSHA Form 7000-3, April 08 (revised) In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAIR (1-888-734-3247), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 409 3rd Street, SW MC 2120, Washington, DC 20416. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.



Mine Citation/Order

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

9/16/09 MHA

Section I-Violation Data

1. Date Mo Da Yr 09/15/2009	2. Time (24 Hr. Clock) 1110	3. Citation/ Order Number 8094596
4. Served To EVERETT HAGER (SUPER)		5. Operator PERFORMANCE COAL COMPANY
6. Mine UPPER BIG BRANCH MINE-SOUTH		7. Mine ID 46-08436 (Contractor)
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE OPERATOR 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.

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 75.380(a)
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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: 008

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

12. Type of Action 104(a)

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

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

E. Citation/Order Number

F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due A. Date Mo Da Yr 09/15/2009 B. Time (24 Hr. Clock) 1230

Section III-Termination Action

17. Action to Terminate

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

Section IV-Automated System Data

19. Type of Inspection (activity code) E01

20. Event Number 4119293

21. Primary or Mill

22. Signatu

23. AR Number 24172

MSHA Form 7000-3a (Rev. 11/05) (Required) 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.