



Section I--Violation Data

1. Date Mo Da Yr 12/06/2011	2. Time (24 Hr. Clock) 0800	3. Citation/ Order Number 4900622
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 Operator has failed to immediately correct or post with conspicuous "Danger" signs, the Hazardous condition observed during the examinations of the 5 North Belt, prior to a mine explosion on 04.05.2010. The Operator has a habitual practice of failing to correct reported hazards of loose coal, coal dust, and compacted coal and coal dust (lack of rock dusting). Multiple examiners conducted examination of the 5 North Belt on three shifts daily. Witness statements indicate the belts were often black with coal dust and float coal dust was often on the belt structure of the conveyor belt. Thirty-One shifts prior to the explosion on 04.05.2010, the record book reflects that 5 North Belt needed cleaning from crosscut #60 inby to the flow-thru, a distance of approximately 1,600 feet.

Following the explosion the 5 North belt was inspected to determine the

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 75.363(a)
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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 checked="" 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 type="checkbox"/>	Permanently Disabling <input type="checkbox"/>	Fatal <input checked="" type="checkbox"/>	
C. Significant and Substantial:				D. Number of Persons Affected:		030
		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			
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 5 North Belt						

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)

Section IV--Automated System Data

19. Type of Inspection (activity code) E16	20. Event Number 4440348	21. Primary or Mill
22. Signature Patrick Alan Stanfield		23. AR Number 23908

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 4900622
4. Served To Berman Cornett (Safety Director)	5. Operator PERFORMANCE COAL COMPANY, et al	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID (Contractor) 46-08436	

Section II--Justification for Action

Continuation of 8. Condition or Practice

accumulations that existed. Accumulations of loose coal, coal dust, float coal dust, and other combustible materials were not cleaned up. The accumulations were permitted to accumulate below the belt, underneath belt rollers, on belt structure, around the belt, and along portions of the ribs that were not cleaned up during the initial development. The accumulations ranged from 9.5 to 24 inches deep. In at least two locations the conveyor belt had contacted operated in contact with these accumulations. The accumulations are consistent with the belt examination records and various testimonies given by miners.

The examination records are countersigned by a mine official (Terry Moore). The purpose of having the mine foreman countersign the examination records is to detect and correct developing hazards. Countersigning by the Mine foreman assures the necessary notification to a mine official with the knowledge of the day-to-day operation of the mine and having the authority (allocation of manpower and materials) to maintain the mine in a safe operating condition. These records were countersigned day after day by Terry Moore, day after day, repeatedly showing hazardous conditions that were not corrected.

This mine has a history of methane liberation-103(i) spot (10 day), methane explosion in 1997, methane/natural gas outbursts in 2003 and 2004.

The Operator has engaged in conduct constituting more than ordinary negligence. This is an unwarrantable failure to comply with a mandatory standard.

This violation is 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 E16	10. Event Number 4440348		
11. Signature Patrick Alan Stanfield	AR Number 23908	12. Date Mo Da Yr 12/06/2011	13. Time (24 Hr. Clock) 0800