

6/27/06

Section I--Violation Data

1. Date Mo Da Yr 04/25/2006	2. Time (24 Hr. Clock) 0930	3. Citation/ Order Number 7236951
4. Served To GEORGE LEVO,ENGINEER	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

THE MINE OPERATOR FAILED TO SUBMIT 3 COPIES OF A CERTIFIED, ACCURATE, AND UP-TO-DATE MAP OF THE MINE, DRAWN TO SCALE OF NOT LESS THAN 100 NOR MORE THAN 500 FEET TO THE INCH TO THE DISTRICT MANAGER AT AN INTERVAL NOT EXCEEDING 12 MONTHS. THE ANNUAL VENTILATION MAP WAS DUE ON APRIL 14,2006.

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 75.372(a)(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: 001

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

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

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

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 05/01/2006	B. Time (24 Hr. Clock) 0800
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Section III--Termination Action

17. Action to Terminate

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

19. Type of Inspection (activity code)	T02	20. Event Number 9832268	21. Primary or Mill
22. Signature			23. AR Number 23925

MSHA Form 7000 of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National 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.

6/16/06

RR  
5.9-06

Section I--Violation Data

1. Date Mo Da Yr 05/09/2006	2. Time (24 Hr. Clock) 0900	3. Citation/ Order Number 7243937
4. Served To Wendel Wills, 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"/>

Two of the 11 rock dust samples collected on 03-08-2006 as part of a rock dust survey were below the required 65 and 80 per centum of incombustible content as determined by analysis in the Mt. Hope laboratory.

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 75.403
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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: 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"/>
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 05/16/2006	B. Time (24 Hr. Clock) 0800
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Section III--Termination Action

17. Action to Terminate

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

19. Type of Inspection (activity code) T02	20. Event Number 9832268	21. Primary or Mill
22. Signature		23. AR Number 23591

MSHA Form 7000-3, March 2003 (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.

RR  
5-23-06

Mine Citation/Order  
Continuation

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



Section I--Subsequent Action/Continuation Data

1. Subsequent Action <input checked="" type="checkbox"/> 1a. Continuation <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 05/09/2006	3. Citation/ Order Number 7243937 - 01
4. Served To Wendel Wills, 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

Both areas have had additional rock dust applied.

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 checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection E01	10. Event Number 4111118		
11. Signature [Redacted]	AR Number 23591	12. Date Mo Da Yr 05/23/2006	13. Time (24 Hr. Clock) 1100

Mine Citation/Order  
Continuation

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

RR  
5-9-06



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2006	3. Citation/ Order Number 7236951 - 01
4. Served To GEORGE LEVO, ENGINEER	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

THE ANNUAL VENTILATION MINE MAP WAS RECEIVED BY MSHA ON THE 05/01/2006.  
MORE TIME IS GRANTED FOR REVIEW OF MINE MAP BY MSHA.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 05/08/2006	B. Time (24 Hr. Clock) 0800	<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 T02	10. Event Number 9832268		
11. Signature 	AR Number 23925	12. Date Mo Da Yr 05/08/2006	13. Time (24 Hr. Clock) 0657

Mine Citation/Order  
Continuation

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

100  
5-9-06  


Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2006	3. Citation/ Order Number 7236951 - 02
4. Served To GEORGE LEVO,ENGINEER	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
9. C. Part/Section <b>Reason</b>	75.372(a)(1)	
12. Type of Action1 <b>Reason</b>	104(a)	

TO CHANGE SECTION NO. 3 ITEM NO.8-A FROM 05/08/2006 TO 05/19/2006.

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 checked="" type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection T02	10. Event Number 9832268		
11. Signat	AR Number 23925	12. Date Mo Da Yr 05/09/2006	13. Time (24 Hr. Clock) 1100

MSHA Form

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5-24-06

Mine Citation/Order  
Continuation

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



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2006	3. Citation/ Order Number 7236951 - 03
4. Served To GEORGE LEVO,ENGINEER	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

THE ANNUAL VENTILATION MAP WAS RECEIVED BY MSHA ON THE 05/19/2006.MSHA REVIEWED AND DENIED THE MAP ON THE 05/24/2006.A DENIAL LETTER AND EXTENTION OF CITATION NO.7236951 TO ALLOW THE OPERATOR MORE TIME TO RECEIVE AND MAKE CORRECTIONS ON THE MAP WAS SEND BY CERTIFIED MAIL.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 06/09/2006	B. Time (24 Hr. Clock) 0800	<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 T02	10. Event Number 9832268		
11. Signat	AR Number 23925	12. Date Mo Da Yr 05/24/2006	13. Time (24 Hr. Clock) 0816

MSHA Form

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6-13-06

Mine Citation/Order  
Continuation

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



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2006	3. Citation/ Order Number 7236951 - 03
4. Extended To GEORGE LEVO, ENGINEER	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	

Section II--Justification for Action

THE ANNUAL VENTILATION MAP WAS RECEIVED BY MSHA ON THE 05/19/2006. MSHA REVIEWED AND DENIED THE MAP ON THE 05/24/2006. A DENIAL LETTER AND EXTENTION OF CITATION NO. 7236951 TO ALLOW THE OPERATOR MORE TIME TO RECEIVE AND MAKE CORRECTIONS ON THE MAP WAS SEND BY CERTIFIED MAIL.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 06/09/2006	B. Time (24 Hr. Clock) 0800	<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 T02	10. Event Number 9832268	
11. AR Number 23925	12. Date Mo Da Yr 05/24/2006	13. Time (24 Hr. Clock) 0816

MSHA Form

Mine Citation/Order  
Continuation

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

RR  
6-15-06  


Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 04/25/2006	3. Citation/ Order Number 7236951 - 04
4. Served To GEORGE LEVO, ENGINEER	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

A CERTIFIED, ACCURATE, UP-TO-DATE ANNUAL VENTILATION MAP HAS BEEN RECEIVED, REVIEWED, AND APPROVED ON THE 06/14/2006.

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 checked="" type="checkbox"/> D. Terminated	<input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection T02	10. Event Number 9832268		
11. Signa 	AR Number 23925	12. Date Mo Da Yr 06/15/2006	13. Time (24 Hr. Clock) 0623

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: 46-08436  
Mr. Craig Boggs, Pres.  
Performance Coal Co., Inc.  
POB 69  
Naama, WV 25140  
(Incl. Tax) PAB

2. Article Number  
 (Transfer from service label)

7002 3150 0005 2902 7573

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 x C. Hull  Agent  
 Addressee

B. Received by (Printed Name) C. Hull C. Date of Delivery 5-10

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7002 3150 0005 2902 7573

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	<u>incl. &amp;</u>
Return Receipt Fee (Endorsement Required)	<u>sub. act.</u>
Restricted Delivery Fee (Endorsement Required)	<u>8436</u>
Total Postage & Fees	\$

Postmark  
Here

5/9/06

Sent To Craig Boggs, Pres. Performance  
 Street, Apt. No., or PO Box No. POB 69  
 City, State, ZIP+4 Naama, WV 25140

PS Form 3800, June 2002

See Reverse for Instructions

*mt hope 02/27/08*

*PR 12-17-07*  
*TE* 

Section I--Violation Data

1. Date Mo Da Yr 12/03/2007	2. Time (24 Hr. Clock) 0840	3. Citation/ Order Number 7240641
4. Served To via certified mail	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436 (Contractor)	
8. Condition or Practice		8a. Written Notice (103g) <input type="checkbox"/>

The mine operator has failed to submit an alternative protocol plan for ingassing seals to the District Manager. The alternative protocol must address a means to effectively evaluate the atmosphere of sealed area(s). A certified letter requesting the plan was received by the mine operator on November 7, 2007 and the plan was due November 14, 2007. Despite the notification, a plan was not submitted. An alternative protocol plan, which effectively evaluates the sealed area(s), must be submitted to the Mount Hope District Office to abate this condition.

See Continuation Form (MSHA Form 7000-3a)

9. Violation	A. Health <input type="checkbox"/> Safety <input checked="" type="checkbox"/> Other <input type="checkbox"/>	B. Section of Act	C. Part/Section of Title 30 CFR 75.335(b)(1)
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Section II--Inspector's Evaluation

10. Gravity:

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

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

C. Significant and Substantial: Yes  No  D. Number of Persons Affected: 020

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

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

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

15. Area or Equipment

16. Termination Due	A. Date Mo Da Yr 12/12/2007	B. Time (24 Hr. Clock) 0800
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Section III--Termination Action

17. Action to Terminate

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

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

MSHA Form 7000-3, March 2007. Pursuant to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established a National Small Business 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 checked="" type="checkbox"/> <input type="checkbox"/>		2. Dated (Original Issue) Mo Da Yr 12/03/2007		3. Citation/ Order Number 7240641 - 01	
4. Served To via certified mail			5. Operator PERFORMANCE COAL COMPANY		
6. Mine UPPER BIG BRANCH MINE-SOUTH			7. Mine ID 46-08436		(Contractor)

Section II--Justification for Action

Due to a meeting which was held prior to the establishment of the Emergency Temporary Standard, the mine operator erroneously believed that when a set of seals is ingassing, and another set of seals is outgassing, then the sealed area is considered to be outgassing. A telephone conference was held on December 12, 2007 in which the requirements of the Emergency Temporary Standard were explained to the mine operator. In addition, the mine operator was previously placed on notice via certified letter on November 7, 2007, that an alternative plan to effectively evaluate the ingassing sealed area (a) was necessary.

As a result of the telephone call which occurred on December 12, 2007, in which the ETS requirements were explained, the mine operator was again placed on notice, verbally, that an alternative plan is required when seals are ingassing. The citation is hereby extended to allow the mine operator the time to develop and submit an alternative plan, and the citation is now due on December 19, 2007 at 8 a.m.

See Continuation Form

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 12/19/2007	B. Time (24 Hr. Clock) 0800	<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 T02		10. Event Number 9832268			
11. Signat		AR Number 23973	12. Date Mo Da Yr 12/12/2007	13. Time (24 Hr. Clock) 1600	

Mine Citation/Order  
Continuation

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

KK  
1-2-08  


Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) Mo Da Yr 12/03/2007	3. Citation/ Order Number 7240641 - 02
4. Served To via certified mail	5. Operator PERFORMANCE COAL COMPANY	
6. Mine UPPER BIG BRANCH MINE-SOUTH	7. Mine ID 46-08436	(Contractor)

Section II--Justification for Action

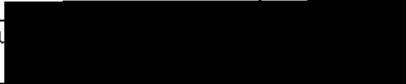
The mine operator submitted an alternative plan for ingassing seals for review.

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 checked="" type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified
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Section IV--Inspection Data

9. Type of Inspection T02	10. Event Number 9832268		
11. Signatu 	AR Number 23973	12. Date Mo Da Yr 12/19/2007	13. Time (24 Hr. Clock) 0745