
WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

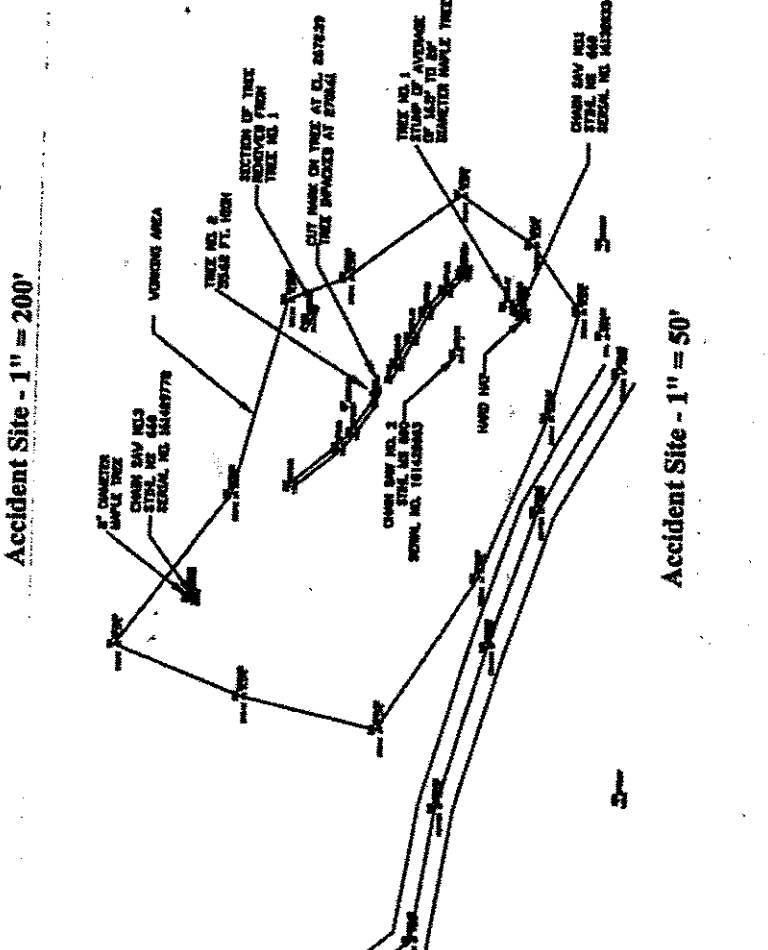
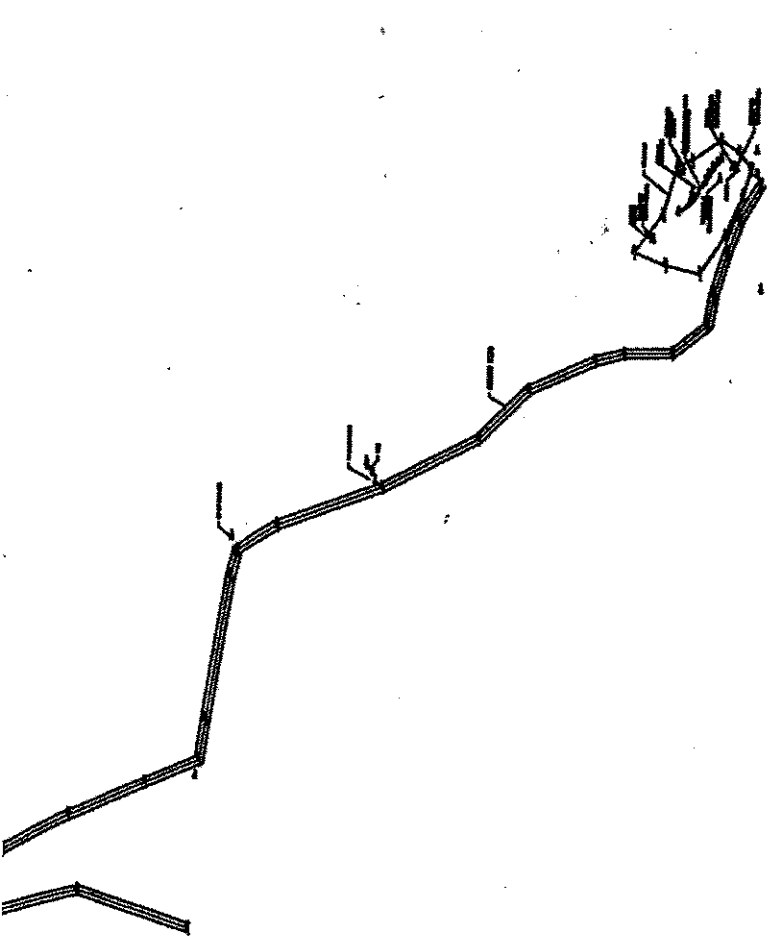
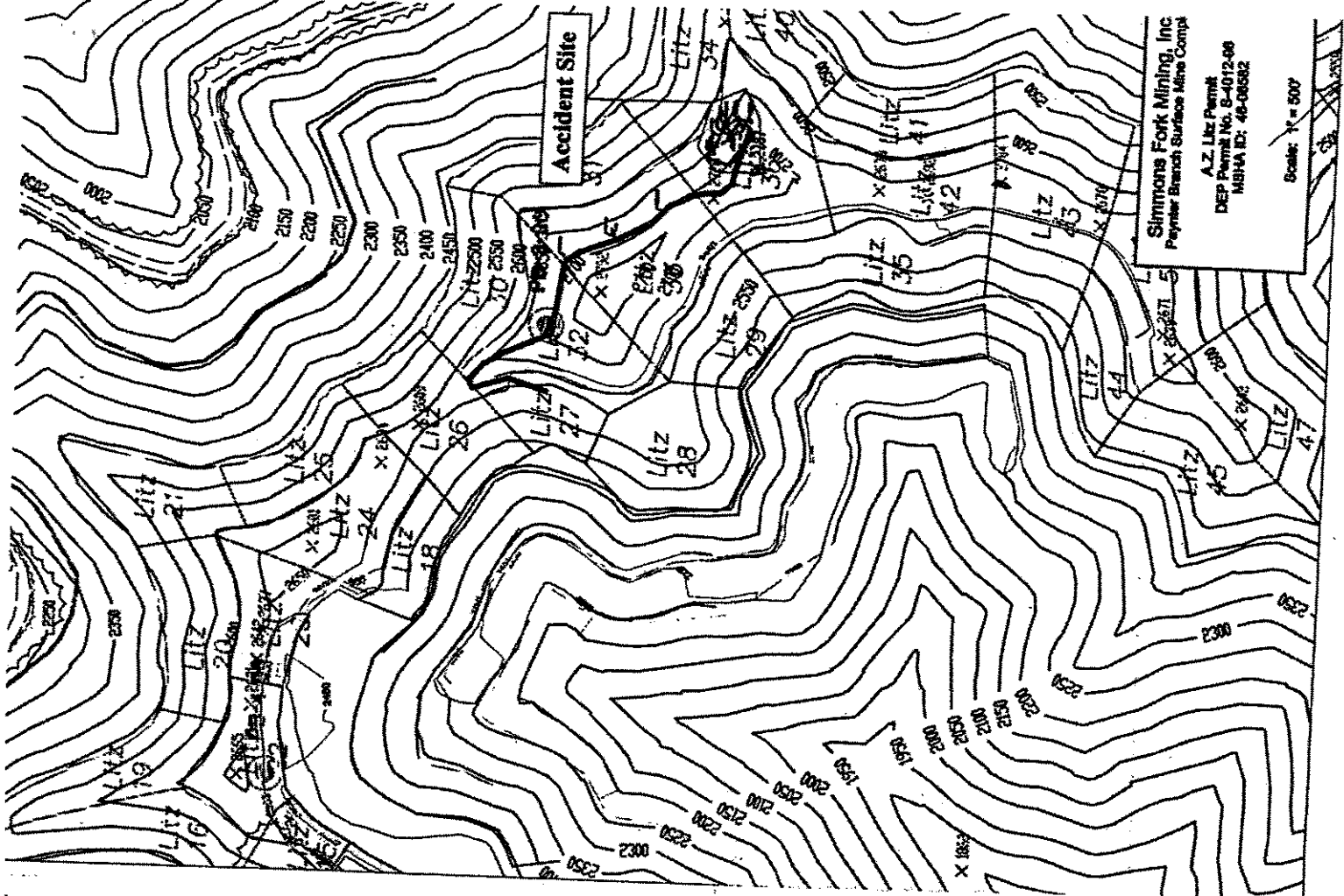
March 12, 2004

Fatal Timbering Accident Investigation Report
Simmons Fork Mining, Inc.
Paynter Branch Surface Mine
Permit No. S-4012-98

Region Two - Welch Office
891 Stewart Street
Welch, WV 24801
Fred B. Stinson, Inspector-at-Large

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**FATAL TIMBERING ACCIDENT INVESTIGATION REPORT
SIMMONS FORK MINING, INC.
PAYNTER BRANCH SURFACE MINE
PERMIT NO. S-4012-98**

GENERAL INFORMATION

A fatal accident involving an employee of an independent contractor engaged in clear-cutting operations, approximately 1,300 feet from the active workings of the surface mine, occurred on March 12, 2004. The accident occurred at approximately 12:45 p.m. Lawrence Payne, Jr., age 33, of Chapmanville, West Virginia, was fatally injured when struck by a falling tree. Mr. Payne was an employee of Mountain Top Clearing, LLC. The accident occurred in the wooded area adjacent to the Simmons Fork Mining, Inc., Paynter Branch Surface Mine. According to information provided by his employer, Mr. Payne had approximately five years experience in this type of work and had worked at this mine sight for three days.

The Office of Miners' Health, Safety and Training received notification of the accident from Jeremy Hill of Simmons Fork Mining, Inc. at approximately 1:19 p.m. on March 12, 2004. A joint investigation with the Mine Safety and Health Administration (MSHA) was started immediately. Trooper Thompson and Sergeant Berkle of the West Virginia State Police, Jesse Detachment, also responded during the initial phase of the investigation.

The Simmons Fork Mining, Inc., Paynter Branch Surface Mine, entrance road is located off Route 10, approximately three miles north of Oceana in Wyoming County. The mine began production in July 1999 and currently employs 41 people on two shifts. This accident occurred near an area of the mine known as the A. Z. Litz Permit. The permit number is S-4012-98.

Mountain Top Clearing, LLC had been sub-contracted solely to perform clear-cutting at this site by M.G.C., Inc. Richard Breton of M.G. C., Inc. is also the supervisor of the Mountain Top Clearing, LLC employees. Removal of the trees and vegetation is done solely by M.G.C., Inc. upon completion of clear-cutting operations.

DESCRIPTION

Three employees of Mountain Top Clearing, LLC entered the wooded area adjacent to the A. Z. Litz Permit area at their routine 7:30 a.m. starting time on Friday, March 12, 2004. The individuals were Lawrence Payne, Jr., Steven Workman, and crew leader Benny May. The three men began clear-cutting and continued until approximately noon. May had suggested they eat lunch at that point, since the wind velocity was picking up. May stated that he had suggested they cease work for the day during their lunchtime conversation due to the increased wind velocity. May stated that Mr. Payne wished to continue, and they chose to resume clear-cutting after lunch sometime shortly after 12:30 p.m.

The accident site location was estimated at approximately 1,300 feet from the A. Z. Litz Permit area. A logging path was used to gain access to the area. According to statements made by Workman and May, they routinely managed to cut one acre per person during a shift. Shifts were limited to six hours due to the work's strenuous nature.

May and Workman stated that Mr. Payne, himself, cut the tree that ultimately fell on him. May stated that Mr. Payne cut the tree from three sides but did not cut it all the way through. May stated that the tree set back in the uphill direction did not fall after Mr. Payne made the cut. According to May, Mr. Payne then decided to move downhill and to the left to cut another tree because the tree he had just cut might ultimately fall in that direction and hang up in the tree a short distance downhill. This would have rendered the tree at the lower level difficult or impossible to cut.

May stated that he then moved a short distance uphill with the intention of sharpening his saw as Mr. Payne moved downhill in the opposite direction intending to cut the tree. May stated that within a minute or two he heard a tree falling and looked around to see the tree Mr. Payne had cut earlier falling downhill to the left at approximately a 45-degree angle. May stated that he yelled as loud as he could in hopes of warning Mr. Payne who was wearing earmuffs and facing downhill in the opposite direction. Workman was located approximately 71 feet to the left of the tree Mr. Payne was preparing to cut when the accident occurred. Workman's description of how the tree fell striking Mr. Payne was the same as May's.

Both Workman and May ran immediately to Mr. Payne after the tree had fallen on him. May grabbed Payne's chainsaw and cut out a section of the fallen tree to free Payne from underneath. May and Workman started giving first aid to the victim. May sent Workman to get help while he continued giving first aid and CPR. The section of the tree that was cut to free the victim measured approximately seven feet in length.

FINDINGS OF FACT

- Wind velocity began to increase around noon according to May and Workman. May, Workman and their Supervisor, Richard Breton, stated that increased wind velocity made the work inherently more hazardous. According to Workman and Payne, the wind was blowing from the top of the ridge behind and above them in a downhill direction.
- The tree that fell striking Mr. Payne was approximately 80 feet in length. Payne was located at a point 41 feet from the stump of the tree that struck him. The tree fell at approximately a 45 degree angle from its stump that was approximately 17 feet uphill at a higher elevation.
- According to May and Workman, Mr. Payne was starting to cut another tree when he was struck from behind by the falling tree. Mr. Payne was wearing earmuffs and was facing the opposite direction when the tree fell.

- May stated that he was uphill from the tree that fell when the accident occurred. May stated that he was preparing to sharpen his saw at the time. May's saw was found lying on the ground approximately three feet from the fallen tree's stump.
- May and Workman stated that they saw Mr. Payne cut the tree himself that ultimately fell on him. They stated that Mr. Payne cut the tree from three sides but did not cut it all the way through. May stated that the tree set back in the uphill direction after Payne made his cut. According to May, Mr. Payne then moved downhill and to the left to cut another tree.
- The fallen tree's stump was cut smoothly all the way through and showed no evidence that it had broken as it fell.
- Stihl MS-660 chainsaws, equipped with 20-inch length cutting bars were used by the Mountain Top Clearing, LLC employees at this job site.

CONCLUSION

Lawrence Payne, Jr., victim, was struck by a fallen tree that he had previously cut while beginning to cut on another tree. The previous cut tree fell striking and pinning Mr. Payne underneath.

ENFORCEMENT ACTIONS

The following violation was a direct contributing factor.

Title 56, Series 8, Section 2

Component number 4, II, 2(b) outlined on page 3 of the approved Comprehensive Mine Safety Program submitted by Mountain Top Clearing LLC was violated in that a fatal accident victim was positioned in a dangerous position while cutting. Lawrence Payne, Jr. was positioned within 41 feet of a tree that had already been cut and had not fallen. The tree measured approximately 80 feet in length and fell striking Mr. Payne as he was attempting to cut another tree.

RECOMMENDATIONS

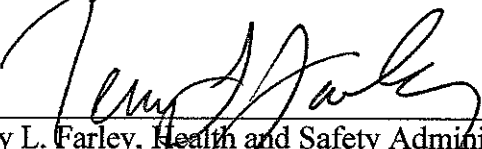
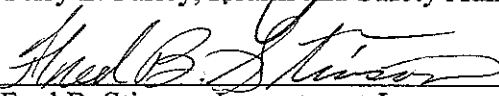

1. The approved Comprehensive Mine Safety Program for this contractor shall be modified to include the following safety precautions:
 - a. Environmental Conditions: All work shall be terminated and each employee shall be moved to a place of safety when environmental conditions; such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mud slides and darkness, creating a hazard for the employees in the performance of the job.

- b. Employees shall be spaced safe distances apart and the duties of each employee shall be organized so the actions of one employee will not create a hazard for any other employee.
 - c. Work areas shall be assigned so that trees cannot fall into an adjacent work area. The distance between adjacent occupied work areas shall be at least two tree lengths of the trees being felled. The distance between adjacent occupied work areas shall reflect the degree of slope, the density of growth, the height of the trees, the soil structure and other hazards reasonably anticipated at that work site. A greater distance than two trees shall be maintained between adjacent occupied work areas on any slope where rolling or sliding of trees is reasonably foreseeable.
 - d. Each employee shall work in a position or location that is within visual or audible contact with another employee.
 - e. Employees shall use hand signals or audible contact; such as but not limited to whistles, horns or radios which shall be utilized whenever noise, distance, restricted visibility or other factors prevent clear understanding of normal voice communications between employees.
2. All employees shall be instructed as to the entire new components of the Comprehensive Mine Safety Program.

ACKNOWLEDGMENT

The West Virginia Office of Miners' Health, Safety and Training acknowledges the cooperation of Simmons Fork Mining, Inc. and the Mine Safety and Health Administration during this investigation.

Respectfully submitted:

	<i>5-3-04</i>
Terry L. Farley, Health and Safety Administrator	Date
	<i>4-30-04</i>
Fred B. Stinson, Inspector-at-Large	Date
<i>Eddie Miller</i>	<i>4-28-04</i>
Eddie Miller, Surface Inspector 110	Date
	<i>4-28-04</i>
Gilbert Witt, District Mine Inspector 22	Date

APPENDIX

- Mine Data Sheet
- Victim Data Sheet
- List of Persons Providing Information/or Present During the Investigation

CONTRACTOR INFORMATION

CONTRACTOR Mountain Top Clearing, LLC

MINE NAME Simmons Fork Mining, Inc., Paynter Branch Surface Mine

WV PERMIT C-6105 MSHA PERMIT NO. C-858

MAILING ADDRESS P.O. Box 75, Fairdale, WV 25839

COUNTY Wyoming PHONE NUMBER 304-934-7448

TYPE OF WORK PERFORMED Tree Cutting

WORKING STATUS Active

LOCATION Three miles north of Oceana, Wyoming County, on Route 10

UNION N/A

TOTAL EMPLOYEES 10 (varies)

NUMBER OF SHIFTS One

ACCIDENT FREQUENCY RATE 0 LOST TIME ACCIDENTS 0

TYPE OF HAULAGE N/A

WVOMHST INSPECTOR Eddie Miller 110 and Gilbert Witt 22

DATE OF LAST INSPECTION REGULAR N/A CHECK N/A

NOTIFIED BY Jeremy Hill, Simmons Fork Mining, Inc.

TIME OF NOTIFICATION 1:19 a.m. 03-12-2004

CMSP - ANNIVERSARY DATE 10-15-2004

CMSP - CONTACT PERSON Jimmy Prince

MINE INFORMATION

COMPANY NAME Simmons Fork Mining, Inc.

MINE NAME Paynter Branch Surface Mine

WV PERMIT S-4012-98 MSHA PERMIT NO. 46-08582

ADDRESS 1520 Kanawha Blvd., East Charleston, WV 25311

COUNTY Wyoming PHONE NUMBER 304-583-2025

DATE PERMIT ISSUED 06-24-2002

WORKING STATUS Active

LOCATION Top of Huff Mountain Near Oceana, WV

UNION _____ NON-UNION X

DAILY PRODUCTION 2,312

ANNUAL PRODUCTION TO DATE 128,748

TOTAL EMPLOYEES 41

NUMBER OF SHIFTS 2

NAME OF COAL BED Winifrede

SEAM THICKNESS 7 Feet

ACCIDENT INCIDENT RATE 0 LOST TIME ACCIDENTS 0

TYPE OF HAULAGE Truck

WVOMHST INSPECTOR Eddie Miller 110

DATE OF LAST INSPECTION 02-23-2004

NOTIFIED BY Jeremy Hill

TIME OF NOTIFICATION 1:19 a.m. 03-12-2004

CMSP – ANNIVERSARY DATE 04-01-2004

CMSP – CONTACT PERSON Burge Speilman

VICTIM INFORMATION

NAME OF VICTIM Lawrence Payne, Jr.

ADDRESS [REDACTED] Chapmanville, WV 25508

AGE 33 SOCIAL SECURITY NUMBER [REDACTED]

TOTAL MINING EXPERIENCE 5 Years

EXPERIENCE AT THIS MINE 3 Days

OCCUPATION AT TIME OF ACCIDENT Tree Cutter

REGULAR OCCUPATION Tree Cutter

COAL MINER'S CERTIFICATION NUMBER [REDACTED] 11-18-1998

OTHER CERTIFICATIONS N/A

SPOUSE'S NAME [REDACTED]

DEPENDENTS One Daughter

DATE OF ACCIDENT 12th DAY OF March, 2004.

AT 12:45 O'CLOCK p.m.

CAUSE OF ACCIDENT Lawrence Payne, Jr. victim, was struck by a fallen tree that he had previously cut while beginning to cut on another tree. The previous cut tree fell striking and pinning Mr. Payne underneath.

DATE OF DEATH: 12th DAY OF March, 2004.

INVESTIGATION

The following persons were present during the on-site investigation conducted on March 12, 2004:

SIMMONS FORK MINING, INC.

Rick Wrinston	Acting Superintendent
William E. Legg	Heavy Equipment Operator
Danford Bragg	Equipment Operator
Randy Browning	Coal Loader
Greg Brunty	Equipment Operator

RIVERTON COAL COMPANY

Randy Hansford	President
John D. Mollohan	Dayshift Foreman

MOUNTAIN TOP CLEARING, INC.

Jimmy Prince	Partner
Gilles Caron	Partner
Bruno Caron	Partner
Richard Breton	Supervisor
Steven M. Workman	Timber Cutter
Benny May	Clear Cutting Crew Leader

TMR LOADING AND PROCESSING

Terry Ratliff	President
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MINE SAFTY AND HEALTH ADMINISTRATION

Sherman Slaughter	Surface Specialist
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WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

C. A. Phillips	Deputy Director
Terry L. Farley	Health and Safety Administrator
Mike Rutledge	Safety Instructor
Eddie Miller	Surface Inspector 110
Gilbert R. Witt	District Mine Inspector 22

INVESTIGATION

The following persons were present during the on-site investigation conducted on March 13, 2004:

SIMMONS FORK MINING, INC.

Rick Wrinston
William E. Legg

Acting Superintendent
Heavy Equipment Operator

RIVERTON COAL COMPANY

Randy Hansford
Randy McMillion

President
Safety Director

PIONEER FUEL, INC.

Mark Weaver

President

MINE SAFTY AND HEALTH ADMINISTRATION

Sherman Slaughter

Surface Specialist

WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Eddie Miller

Surface Inspector 110

INVESTIGATION

The following persons were present on March 15, 2004, during investigation interviews conducted at the MSHA District (Sub-District) office, Pineville, WV:

SIMMONS FORK MINING, INC.

William E. Legg	Heavy Equipment Operator
Danford Bragg	Equipment Operator
Randy Browning	Coal Loader
Julia Shreve	Attorney - Jackson & Kelly

PIONEER FUEL, INC.

Mark Weaver	President
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RIVERTON COAL COMPANY

Randy Hansford	President
Randy McMillion	Safety Director
John D. Mollohan	Dayshift Foreman

MOUNTAIN TOP CLEARING, INC.

Richard Breton	Supervisor
Steven M. Workman	Timber Cutter
Benny May	Clear Cutting Crew Leader
Mark Heath	Attorney

MINE SAFTY AND HEALTH ADMINISTRATION

Sherman Slaughter	Surface Specialist
Preston White	Education Training
Mike Woodrome	Education Training

WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Terry L. Farley	Health and Safety Administrator
Eddie Miller	Surface Inspector 110
Gilbert R. Witt	District Mine Inspector 22

RECOMMENDATIONS

1. The approved Comprehensive Mine Safety Program for this contractor shall be modified to include the following safety precautions:
 - a. Environmental Conditions. All work shall be terminated and each employee shall be moved to a place of safety when environmental conditions; such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mud slides and darkness, creating a hazard for the employees in the performance of the job.
 - b. Employees shall be spaced safe distances apart and the duties of each employee shall be organized so the actions of one employee will not create a hazard for any other employee.
 - c. Work areas shall be assigned so that trees cannot fall into an adjacent work area. The distance between adjacent occupied work areas shall be at least two tree lengths of the trees being felled. The distance between adjacent occupied work areas shall reflect the degree of slope, the density of growth, the height of the trees, the soil structure another hazards reasonably anticipated at that work site. A greater distance than two trees shall be maintained between adjacent occupied work areas on any slope where rolling or sliding of trees is reasonably foreseeable.
 - d. Each employee shall work in a position or location that is within visual or audible contact with another employee.
 - e. Employees shall use hand signals or audible contact; such as but not limited to whistles, horns or radios which shall be utilized whenever noise, distance, restricted visibility or other factors prevent clear understanding of normal voice communications between employees.
2. All employees shall be instructed as to the entire new components of the Comprehensive Mine Safety Program.

IF-018
Revised 11-02

STATE OF WEST VIRGINIA

White- Company
Blue -Inspector
Green -Charleston
Canary -Regional Office
Pink- Post
Goldenrod -Rep of Mines

Region 2 - Welch
Case No. 022-1853-2004
Violation No. 1

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING
1615 Washington Street East
Charleston, West Virginia 25311-2126

NOTICE OF VIOLATION

Company / Operator Mountain Top Clearing, LLC Contractor: Yes No
Permit Number C-6105 Mine Name Simmons Fork Mining, Inc. S-4012-98
Date of Issue 4-22, 2004 Time 6:50 A.M. P.M.

Notice is hereby given that the undersigned authorized representative of the Director of the Office of Miners' Health, Safety and Training, upon making an inspection of this mine finds that the violation referred to in West Virginia Code, Chapter _____, Article _____, Section _____ and/or West Virginia Administrative Regulation: Title 56, Series 8, Section 2 exists as follows: Components Number 4, II,

2B outlined on page 3 of the approved Comprehensive Mine Safety Program submitted by Mountain Top Clearing, LLC was violated, in that a fatal accident occurred on March 12, 2004. The victim was placed in a dangerous position while cutting. Lawrence Payne, Jr. was positioned within 41 feet of a tree that had already been cut and had not fallen. The tree measured approximately 80 feet in length and fell striking and pinning Mr. Payne as he was attempting to cut another tree. The approved Comprehensive Safety Program shall be modified to include all safety precautions that are recommendations of this report on the accident to Mr. Payne on March 12, 2004. All work will cease with this company until all recommendations have been added to the Comprehensive Mine Safety Program and all employees trained under the new components of this approved program with records provided of this training.

Type of Issuance: N.O.V. Order
Area or equipment (if order is issued): _____

The foregoing violation shall be totally abated by _____ a.m. _____ p.m. on _____ 20____
The foregoing violation was totally abated by _____ a.m. _____ p.m. on _____ 20____
Action taken to abate the violation: _____

Company / Operator Agent Served: Jimmy Prince
Authorized Representative: Richard R. Wild Inspector No. 22

VIEW: In accordance with Section 22A-1-17 of the Code, an operator or any representative of the miners may apply to the Director of the Office of Miners' Health, Safety and Training for review of this notice of violation within thirty (30) days from the issued date.

VIOLATION ASSESSMENT EVALUATION

Recommend Special Assessment:
Likelihood of Occurrence: Unlikely: *(0) _____ Reasonably likely (10) _____ Occurred (20) _____
Severity of Injury Expected: None: *(0) _____ No lost work days *(6) _____ Lost or restricted days (11) _____
Permanently disabling (15) _____ Fatal (20) _____
No. of Persons Potentially Affected: 0 (0) _____ 1 (1) _____ 2 (2) _____ 3 (4) _____ 4-5 (6) _____ 6-9 (8) _____ 9+ (10) _____
Negligence: None (0) _____ Low (10) _____ Moderate (15) _____ High (20) _____
Following Violation: No _____ Yes _____ Repeat _____
Good Faith in Abatement: Lack of good faith (+15%) _____
Non-compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____