September 17, 2003

Fatal Surface Haulage Investigation Report
Independence Coal Company
Twilight MTR
Permit No. S-5023-96

Region Three – Danville Office
137 Peach Court, Suite 2
Danville, West Virginia 25053
Harry Linville, Inspector-at-Large
TABLE OF CONTENTS

- SKETCHES ................................................................. 3 - 5
- GENERAL INFORMATION .................................................. 6
- DESCRIPTION ............................................................... 6, 7
- FINDINGS OF FACT ...................................................... 7, 8
- CONCLUSION ............................................................... 8
- ENFORCEMENT ACTION .................................................. 8, 9
- RECOMMENDATIONS ..................................................... 9
- APPENDIX ................................................................. 10 - 19
NOTE: EQUIPMENT LOCATION AT TIME OF INVESTIGATION.

ACCIDENT LOCATION
2500 HOE PIT
Fatal Surface Haulage Investigation Report
Independence Coal Company
Twilight MTR
Permit No. S-5023-96

GENERAL INFORMATION

A fatal haulage accident occurred at the Independence Coal Company, Twilight MTR surface mine on September 17, 2003. The accident occurred at approximately 6:00 a.m. Rodney W. Sheets, age 47, of Danville, West Virginia, and William P. Birchfield, age 37, of Madison, West Virginia, were fatally injured when the portal vehicle (a Ford E-350 Econoline 12 passenger van) in which they were passengers was struck by a Euclid 190 rock truck driven by Gordon S. Mills. The accident happened at a location known as the “2500 Pit”. Matthew Adkins, age 28, the portal vehicle’s driver, also received injuries requiring hospitalization for two days. The portal vehicle was parked in the forward path of the rock truck for the purpose of delivering supplies to the rock truck driver.

Harry Linville, Inspector-at-Large from the Office of Miners’ Health, Safety and Training’s Danville Office was notified that an accident had occurred by Independence Coal Company manager of safety, H. Tyrone Coleman at approximately 7:30 a.m. on September 17, 2003. A joint investigation with the Mine Safety and Health Administration (MSHA) was started immediately.

DESCRIPTION

The Independence Coal Company, Twilight MTR surface mine is located near Twilight, West Virginia in Boone County. The mine started production in 1997, and currently employs 153 people on two shifts. Production for the current year has exceeded two million tons.

Twilight MTR employees began to assemble at a parking lot and staging area known as the “S-1 Trailer” around 5:30 a.m. on Wednesday, September 17, 2003. Matthew Adkins, who operates a Hitachi 2500 Excavator at a location known as the “2500 Pit” arrived at the staging area around this time. Before getting into the portal van (a Ford E-350 Econoline 12 passenger van), Adkins told foreman, Jack Easter, that he would be stopping by the mine warehouse to pick up supplies on the way to the work-site. Euclid 190 rock truck driver, Gordon S. Mills, heard the conversation and asked Adkins to pick up paper towels and toilet paper for him. Adkins was driving the portal vehicle and left the staging area at approximately 5:45 a.m. Passengers in the van with Adkins included rock truck driver, Lawrence Fox, bulldozer operator, Glen Akers, drill operator, Rodney W. Sheets, and bulldozer operator, William P. Birchfield. Mills made a pre-operational examination of his truck and left the staging area shortly thereafter proceeding to the “2500 Pit”.

The portal vehicle driven by Adkins proceeded to the warehouse facility to pick up the supplies. (See diagram/map on page 3) After collecting the supplies, Adkins and the portal van passengers left the warehouse within a few minutes. While proceeding to the “2500 Pit”, Lawrence Fox was dropped off at a location known as the “930 Parking Lot”. A few minutes later Glen Akers was dropped off along the James Creek Road, a short distance from the Bradley Intersection. The portal vehicle then proceeded along the 3rd. Left Road toward the “2500 Pit” worksite.
Gordon S. Mills had left the staging area in the Euclid 190 rock truck and driven directly to the “2500 Pit” work-site. Mills was the first rock truck driver to arrive at the work-site. Mills stated that he was sitting in his truck with the interior dome light on and the engine idling while facing in the direction opposite the direction being traveled by the portal vehicle. Mills was also facing the Hitachi 2500 Excavator routinely operated by Adkins. According to Mills the interior dome light was on inside the excavator operator’s compartment along with the entrance lights on the rear exterior of the operator’s compartment. Mills stated that he heard Adkins call on the radio. Mills stated that Adkins told him to come and get his toilet paper. Mills stated that he thought Adkins was calling from the excavator and proceeded forward in the Euclid 190 rock truck. Within seconds Mills heard rock truck driver Edmund Dotson calling on the radio for him to stop. Dotson was approximately 200 yards behind Mills’ truck and saw the Euclid 190 rock truck strike the portal vehicle. Mills then stopped immediately and exited the rock truck to discover what had happened.

Adkins stated that he had gotten a confirmation or an “ok” response from Mills as he approached the Euclid rock truck. Adkins confirmed that he approached the rock truck on its “off” side (the side opposite the operator’s seat where visibility is more limited) and stopped the portal vehicle directly in front of the rock truck’s right front wheel. The portal vehicle’s driver side was within arm’s reach of the rock truck’s bumper. Adkins stated that the rock truck struck the portal vehicle in the area of the driver’s side door causing it to flip over onto the passenger side. The rock truck then traveled atop the portal vehicle.

Having witnessed the accident, Edmund Dotson then used his radio to call for assistance before proceeding to the accident site. Dotson found Adkins trapped within the severely mangled portal vehicle and calling out for help. There was no response from Sheets and Birchfield.

Rock truck driver, Steve S Ignon, foreman, Jack Easter and maintenance superintendent, Bill Waters arrived within minutes to assist.

Calls were made for ambulances and fire department personnel at 6:18 a.m. Emergency vehicles and ambulances began arriving at the scene at 6:46 a.m.

The “Jaws of Life” was used by emergency personnel to extricate the victims. Matthew Adkins was transported to CAMC General Division at 7:17 a.m. Truck driver Edmund Dotson became ill during the rescue and recovery process and was transported by ambulance at 7:53 a.m. The bodies of Rodney W. Sheets and William P. Birchfield were transported to Boone Memorial Hospital at 9:31 a.m.

**FINDINGS OF FACT**

1. The accident happened at approximately 6:00 a.m. Although it was still completely dark, the weather was described as clear.

2. The vehicles involved in the accident were a Euclid 190 rock truck (190 ton capacity) and a Ford E-350 Econoline 12 passenger van.

3. The Euclid 190 rock truck driver, Gordon S. Mills did not utilize the front video camera and monitor equipment provided in the truck to verify that his path was unobstructed before proceeding forward. Mills also did not sound the truck’s horn before advancing as required by company safety rules.
4. The Euclid 190 rock truck was equipped with front, rear and off side video cameras and a monitor in the operator’s compartment not required by state or federal rules. The off side camera was not functional when tested following this accident. However, the front camera was operational and would have shown the portal vehicle had it been used prior to this accident.

5. The portal vehicle driver, Matthew Adkins, approached the rock truck from its off side and parked in the path of the rock truck without sufficient radio and visual contact with the rock truck driver to specify the location of the portal vehicle.

6. The portal vehicle was equipped with a yellow/amber colored strobe light on its roof not required by state or federal rules. This light was not working at the time of this accident. However, during a simulation and re-enactment conducted after the accident it was determined that this particular type of strobe light may not have been of sufficient illuminating power to be seen anyway.

7. According to the portal vehicle driver, Matthew Adkins, Rodney W. Sheets was sitting in the front passenger’s seat while William P. Birchfield was sitting in the second passenger seat at the time of this accident.

8. The portal vehicle was struck in the area of the driver’s side door and flipped over onto the passenger’s side when struck by the rock truck. The rock truck then traveled atop the portal vehicle.

CONCLUSION

The Ford E-350 Econoline 12 passenger portal vehicle was struck by the Euclid 190 rock truck after the portal vehicle was parked in the direct forward path of the rock truck without sufficient communication from the portal vehicle driver to the rock truck driver. The rock truck driver also did not verify that the rock truck’s path was unobstructed before proceeding.

ENFORCEMENT ACTION

During this investigation a total of four (4) notices of violation were issued to the mine operator. Two of the violations were determined to have contributed to the occurrence of this accident. Two individual personal assessments that were determined to have contributed to this accident were also issued. The contributing violations are as follows:

Title 56, Series 3, Section 34.4(a): The Euclid R 190 haulage truck operator, Gordon Mills, did not make sure his truck path was unobstructed, especially when starting or moving the truck forward or backward. The portal van had approached the front of the rock truck from the off side to deliver supplies. Mr. Mills heard Matthew Adkins, driver of the portal van, say come and get your supplies; thinking Mr. Adkins was in the Hitachi 2500 excavator he proceeded forward without making a video monitor or visual check of the front of the truck, which resulted in a fatal accident.
Title 56, Series 3, Section 34.4(b): The driver of the portal van, Matthew Adkins, did not make sufficient radio or visual contact with Gordon Mills, an operator of a haulage truck, to insure that it is safe to approach the truck. Mr. Adkins did not warn and make clear to the rock truck driver that he was approaching the off side of the rock truck and proceeding to the front of the truck to deliver supplies, which resulted in a fatal accident.

RECOMMENDATIONS

See 2 page attachment titled “Training Agenda 09-18-03”

ACKNOWLEDGMENT

The West Virginia Office of Miners’ Health, Safety and Training gratefully acknowledges the cooperation of the employees and management of Independence Coal Company and the Mine Safety and Health Administration during this investigation.

Respectfully submitted:

Terry Farley, Health and Safety Administrator 11-12-03

Harry Linville, Inspector-at-Large 11-10-03

Randall Bailey, Surface Inspector 11-12-03
APPENDIX

- Mine Information Sheet
- Victim Information Sheets
- Supplemental Information
- Persons Present During Investigation
MINE INFORMATION

COMPANY Independence Coal Company

MINE NAME Twilight MTR

WV PERMIT S-5023-96

ADDRESS HC 78, Box 1796, Madison, WV 25130

COUNTY Boone

DATE PERMIT ISSUED September 19, 1997

WORKING STATUS Active

LOCATION Near Twilight, West Virginia

UNION NON-UNION X

DAILY PRODUCTION 18,000 tons ANNUAL PRODUCTION TO DATE 2,075,930 tons

TOTAL EMPLOYEES 153

NUMBER OF SHIFTS 2 production

COAL SEAM NAME AND THICKNESS Chilton, Clarion, Coahburg, Winifrede, Stockton, 38 ft.

ACCIDENT INCIDENT RATE 4.92 LOST TIME ACCIDENTS 3

TYPE OF HAULAGE Truck

WVOMHST INSPECTOR Randall Bailey

DATE OF LAST INSPECTION June 3, 2003

NOTIFIED BY H. Tyrone Coleman

NOTIFICATION 7:30 a.m. September 17, 2003

CMSP – ANNIVERSARY DATE October 22, 2003

CMSP – CONTACT PERSON Brian Petrosky
VICTIM INFORMATION

NAME OF VICTIM: William P. Birchfield

ADDRESS: P. O. Box 902 Madison, WV 25130

TELEPHONE NO.: (304)369-4026 AGE: 37 SOCIAL SECURITY NUMBER: [redacted] 6032

TOTAL MINING EXPERIENCE: 10 yrs. EXPERIENCE AT THIS MINE: 5 yrs.

AVERAGE NUMBER OF DAYS WORKED PER WEEK: 6

AVERAGE NUMBER OF HOURS WORKED PER WEEK: 60 PER DAY: 10

LENGTH OFhifts AT THIS MINE: 10 hrs. TRAVEL TIME TO/FROM WORK: 1.5 hrs

OCCUPATION AT TIME OF ACCIDENT: Dozer Operator

REGULAR OCCUPATION: Dozer Operator

COAL MINER'S CERTIFICATION: L-5194

OTHER CERTIFICATIONS: S-3669-03

SPOUSE' NAME: Tammy

DEPENDENTS: 2 children

DATE OF ACCIDENT: 17th DAY OF September, 2003 AT 6:05 O'CLOCK a.m.

CAUSE OF ACCIDENT: The Ford E-350 Econoline passenger portal vehicle was struck by the Euclid 190 rock truck after the portal vehicle parked in the direct forward path of the rock truck.

DATE OF DEATH: 17th DAY OF September, 2003
VICTIM INFORMATION

NAME OF VICTIM _____ Rodney W. Sheets
ADDRESS_ Rt. 1, Box 744 Danville, WV 25053
TELEPHONE NO. (304)369-5026 AGE _47_ SOCIAL SECURITY NUMBER _____ 1934
TOTAL MINING EXPERIENCE_ 7 yrs. EXPERIENCE AT THIS MINE __5.5 yrs.
AVERAGE NUMBER OF DAYS WORKED PER WEEK _______ 6
AVERAGE NUMBER OF HOURS WORKED PER WEEK _60_ PER DAY _10_
LENGTH OF SHIFTS AT THIS MINE_ 10 hrs. TRAVEL TIME TO/FROM WORK_ 1.5 hrs.
OCCUPATION AT TIME OF ACCIDENT ___________ Drill Operator
REGULAR OCCUPATION ________________ Drill Operator
COAL MINER’S CERTIFICATION ___________ L-6735
OTHER CERTIFICATIONS ______ EMT-M, L-66-A, S-3418-00, SC-1009-92
SPOUSE’ NAME _________ Tamara
DEPENDENTS _________ 2 children
DATE OF ACCIDENT_ 17th. DAY OF September, 2003 AT 6:05 O’CLOCK a.m.
CAUSE OF ACCIDENT: The Ford E-350 Econoline passenger portal vehicle was struck by the Euclid 190 rock truck after the portal vehicle parked in the direct forward path of the rock truck.

SUPPLEMENTAL INFORMATION


INVESTIGATION

The following persons were present during the onsite investigation conducted on September 18, 2003.

INDEPENDENCE COAL COMPANY

Mike Snelling
Bill Waters
Frank Foster
H. Tyrone Coleman
Brian Petrosky
Jason McMillion

Mine Manager, Black Castle/Nicholas Co. Coal
Maintenance Superintendent
Safety Coordinator for Massey Services
Manager of Safety
Safety Department
Security

MINE SAFETY AND HEALTH ADMINISTRATION

Don Conrad
Alice Blanton
Don Ellis
Michael M. Zenone
Richard Skrabak
Steve Vamossy
John Fredland
John S. South
John F. Workman
Clyde Gray, Jr.
John M. Pyles
Mike Woodrome

Educational Field Services
Accident Investigator
Supervisor
Specialist
Technical Support – Engineer
Technical Support – Engineer
Technical Support – Engineer
Supervisory Specialist Investigator
Surface Specialist
CMI Underground
Administrator
Tri-state Initiative

WEST VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley
Harry Linville
Randall Bailey

Health and Safety Administrator
Inspector-at-Large
Surface Inspector

INTERVIEWS

The following persons were present during interviews conducted on September 22, 2003.
INDEPENDENCE COAL COMPANY

Mike Snelling
Frank Foster
H. Tyrone Coleman
Brian Petrosky
Jason McMillion
Bill Waters*
Jack Easter*
Matthew Adkins*
Gordon S. Mills II*
Edmund Dotson*

Mine Manager, Black Castle/Nicholas Co. Coal
Safety Coordinator for Massey Services
Manager of Safety
Safety Department
Security
Maintenance Superintendent
Foreman
Van Driver/Excavator Operator
Rock Truck Driver
Rock Truck Driver

*Denotes those interviewed

MINE SAFETY AND HEALTH ADMINISTRATION

Don Conrad
Alice Blanton
Don Ellis
Michael M. Zenone
Richard Skrabak
Steve Vamossy
John Fredland
John S. South
John F. Workman
Clyde Gray, Jr.
John M. Pyles
Mike Woodrome

Educational Field Services
Accident Investigator
Supervisor
Specialist
Technical Support – Engineer
Technical Support – Engineer
Technical Support – Engineer
Supervisory Specialist Investigator
Surface Specialist
CMI Underground
Administrator
Tri-state Initiative

WEST VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley
Harry Linville
Randall Bailey

Health and Safety Administrator
Inspector-at-Large
Surface Inspector

The following persons were present during interviews conducted on September 23, 2003.

INDEPENDENCE COAL COMPANY

Mike Snelling
Bill Waters
Frank Foster
H. Tyrone Coleman*
Brian Petrosky*
Mike R. Engle*

Mine Manager, Black Castle/Nicholas Co. Coal
Maintenance Superintendent
Safety Coordinator for Massey Services
Manager of Safety
Safety Department
Evening Shift Foreman
Rick Hunter*  Foreman
Steve Sigmon* Rock Truck Driver
Larry Peters* Truck Driver
Randy J. Toler* Truck Driver
Jason McMillion Security

* Denotes those interviewed

MINE SAFETY AND HEALTH ADMINISTRATION

Don Conrad  Educational Field Services
Alice Blanton  Accident Investigator
Don Ellis  Supervisor
Michael M. Zenone  Specialist
Richard Skrabak  Technical Support – Engineer
Steve Vamosy  Technical Support – Engineer
John Fredland  Technical Support – Engineer
John S. South  Supervisory Specialist Investigator
John F. Workman  Surface Specialist
Clyde Gray, Jr.  CMI Underground
John M. Pyles  Administrator
Mike Woodrome  Tri-state Initiative

WEST VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley  Health and Safety Administrator
Harry Linville  Inspector-at-Large
Randall Bailey  Surface Inspector

The following persons were present during interviews conducted on September 24, 2003.

INDEPENDENCE COAL COMPANY

Mike Snelling  Mine Manager, Black Castle/Nicholas Co. Coal
Bill Waters  Maintenance Superintendent
Frank Foster  Safety Coordinator for Massey Services
H. Tyrone Coleman  Manager of Safety
Brian Petrosky  Safety Department
Charles Hayward*  Oiler/Greaser
Samuel Tipton II*  Excavator Operator
John Fox*  Drill Operator
Jason McMillion  Security

* Denotes those interviewed
MINE SAFETY AND HEALTH ADMINISTRATION

Don Conrad
Alice Blanton
Don Ellis
Michael M. Zenone
Richard Skrabak
Steve Vamossey
John Fredland
John S. South
John F. Workman
Clyde Gray, Jr.
John M. Pyles
Mike Woodrome

Educational Field Services
Accident Investigator
Supervisor
Specialist
Technical Support – Engineer
Technical Support – Engineer
Technical Support – Engineer
Supervisory Specialist Investigator
Surface Specialist
CMI Underground
Administrator
Tri-state Initiative

WEST VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley
Harry Linville
Randall Bailey

Health and Safety Administrator
Inspector-at-Large
Surface Inspector

The following persons were present during interviews conducted on September 25, 2003.

INDEPENDENCE COAL COMPANY

Mike Snelling
Bill Waters
Frank Foster
Tyrone Coleman
Brian Petrosky
Matthew Adkins*
Glen Akers*
Lawrence Fox*
Jason McMillion

Mine Manager, Black Castle/Nicholas Co. Coal
Maintenance Superintendent
Safety Coordinator for Massey Services
Manager of Safety
Safety Department
Excavator Operator
Dozer Operator
Drill Operator
Security

*Denotes those interviewed

MINE SAFETY AND HEALTH ADMINISTRATION

Don Conrad
Alice Blanton
Don Ellis
Michael M. Zenone
Richard Skrabak

Educational Field Services
Accident Investigator
Supervisor
Specialist
Technical Support – Engineer
Steve Vamossy  
John Fredland  
John S. South  
John F. Workman  
Clyde Gray, Jr.  
John M. Pyles  
Mike Woodrome

Technical Support – Engineer  
Technical Support – Engineer  
Supervisory Specialist Investigator  
Surface Specialist  
CMI Underground  
Administrator  
Tri-state Initiative

WES'T VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley  
Harry Linville  
Randall Bailey

Health and Safety Administrator  
Inspector-at-Large  
Surface Inspector

The following persons were present during interviews conducted on October 10, 2003.

INDEPENDENCE COAL COMPANY

Frank Foster  
H. Tyrone Coleman* (via phone)  
John Fox*  
Bill Waters*  
Glen Akers*  
Edmund Dotson*  
Mark Heath

Safety Coordinator for Massey Services  
Manager of Safety  
Drill Operator  
Maintenance Superintendent  
Dozer Operator  
Rock Truck Driver  
Attorney

*Denotes those interviewed

MINE SAFETY AND HEALTH ADMINISTRATION

John Pyles  

Administrator/Accident Investigator

WEST VIRGINIA OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING

Terry Farley  

Health and Safety Administrator
Training Agenda 09-18-03

Supplies:
1. No supplies [i.e. Paper Towels, Window Cleaner, etc...] should be delivered to equipment during production time.

2. In the event supplies “must” be delivered during production time, they will be dropped off at a designated area and picked up by the “Equipment Operator”.

Note: The drop off point will be determined between the operator and the person delivering the supplies.

Pre-Operational Exams;

1. Pre-op will be picked up from a designated location, and not directly from the equipment operator.

Communications:

1. All radio communications will identify their locations and intentions. The equipment operator will confirm the communications by repeating it back to the originating party.

Note: The Equipment is not to move until the communication confirmation has been met!

2. Review S-1 Guideline concerning radio communications.
3. The Equipment Operator is to verify that “ALL IS CLEAR” by visual examination. GET OUT OF THE EQUIPMENT AND LOOK TO SEE IF THE AREA IS CLEAR!

Note: Radio Channel Review.
1. Progress “Big Radio” / Warehouse / Emergencies
2. Channel – 1 “Shovel Pit.
3. Channel – 2 “3600 “
4. Channel –3 “2500”
5. Channel – 4 “908 G-Spread”
6. Channel – 5 “UBB-Site”
7. Channel – 6 “920 G-Spread”
8. Channel –7 “Coal Haulage “
9. Channel –8 “Drills and Blasting Crew”

Audible Alarm Sequence – Before Moving:

1. The Sequence listed is intended for Haulage Equipment that is taken out of the normal production cycle.

2. The horn will be SOUNDED {3} times and the equipment operator will wait {15} seconds BEFORE THE EQUIPMENT IS MOVED!

3. During this time span the equipment operator will cycle thru the camera screens and look at all views.

4. When in doubt the equipment operator will GET OUT OF THE TRUCK AND VISUALLY VERIFY ALL IS CLEAR!

Cameras:

1. ALL HAULAGE TRUCKS EQUIPPED WITH CAMERAS WILL BE UTILIZED BY THE OPERATORS

Current Policy:

1. Review Current POLICY & NEAR MISSES.
NOTICE OF VIOLATION

Company / Operator ___________________________________________ Contractor: Yes □ No □
Permit Number _______ Mine Name ____________________________
Date of Issue ___________ 2013 Time ______ 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 3, Section 27-6 exists as follows:

The chain of the portal was not held while personnel did not make sufficient effort to visual contact with either worker or operator of a heavy truck. To ensure that it is safe to approach the truck, Mr. Aiken did not lean and move closer to the work truck chain. He was approaching the side of the local truck and providing to the time of the truck to deliver supplies which resulted in a fatal accident.

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: Safety training was conducted to all employees.

Company / Operator Agent Served: __________________________

Authorized Representative: ___________ Inspector No. 2577

REVIEW: 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)________________________

Knowing Violation: No _____ Yes _____ Repeat _____

Good Faith in Abatement: Lack of good faith (+15%) ___________________________ Extra effort (-15%) ___________________________
STATE OF WEST VIRGINIA
OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING
1615 Washington Street East
Charleston, West Virginia 25311-2126

NOTICE OF VIOLATION

Company / Operator: Independence Coal Co. (a) Contractor: Yes No

Permit Number: 5-5023-06 Mine Name: Twilight

Date of issue: Oct 15, 2003 Time: 10:00 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 3 Section 34.4(a) exists as follows:

The East & 191 heavy truck operator order mill did not make sure his hook path was unobstructed, especially when starting or moving the truck forward or backword. The panel men had approached the front of the hook path from the off end to deliver supplies. Mr. Miller had met another series of the panel men on the same route. He proceeded forward without making a video monitor or visual check of the front of the path which resulted in a hook accident.

Type of issuance: N.O.V. □ Order □

Area or equipment (if order is issued):

The foregoing violation shall be totally abated by

The foregoing violation was totally abated by

Action taken to abate the violation:

Company / Operator Agent Served: Ty Colemar

Authorized Representative: L. D. Keyly Inspector No. 321

REVIEW: 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 *(8) _______ 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) □
Knowing Violation: No □ Yes _______ Repeat
Good Faith In Abatement: Lack of good faith (+15%) □
No compliance (extenuating circumstances) (0%) □ Extra effort (-15%)

PAGE 35
NOTICE OF VIOLATION

Company / Operator: Independence Coal Co.  Contractor: Yes, No □

Permit Number: 5-50239. Mine Name: Twilight MTB.

Date of Issue: Oct 15, 2003 Time: 9:00 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 3, Section 42.3(a) exists as follows:

The roof E 250 panel Van 41 112, the safety equipment was not maintained in a safe working condition. The flashing strobe light mounted on the roof of the van was inoperative. The strobe light is used in darkness, fog, dust Ext for better visibility.

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 __________ 2003

The foregoing violation was totally abated by: __________ a.m. __________ p.m. on __________ 2003

Action taken to abate the violation: The operator has chosen to take the panel out of service if the above listed is incorporated.

Company / Operator Agent Served: Ty Coleman

Authorized Representative: W. D. Bailey  Inspector No. 997

REVIEW: 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 *(5)_____ 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 (5) □ 6-9 (8) □ 9+ (10) □

Negligence: None (0) _____ Low (10) □ Moderate (15) _____ High (20) □

Knowing Violation: No □ Yes □ Repeat □

Good Faith in Abatement: Lack of good faith (+15%) □

No compliance (extenuating circumstances) (0%) □ Extra effort (-15%) □
NOTICE OF VIOLATION

Company / Operator: T J Independent Coal Co.  Contractor: Yes  No  
Permit Number: 5-5423 91  Mine Name: Tawhito M. T.  
Date of issue: 07-15-2004  Time: 9:30  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___, Series___, Section___ exists as follows:  

The fuel hose used to link the safety equipment was not maintained in a fit working condition. The high side view camera was inoperative. The side camera is used to view vehicles and other equipment on the off side of the load track.  

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 9-26 2004  
Action taken to abate the violation:  

A new camera exl viewing was installed  

Company / Operator Agent Served:  
Authorized Representative:  A. D. Bailey  Inspector No. 2039  

REVIEW: 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)  Nolost work days (8)  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)  
Knowing Violation: No  Yes  Repeat  
Good Faith in Abatement: Lack of good faith (+15%)  
No compliance (extenuating circumstances) (0)  Extra effort (-15%)  

State of West Virginia
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
1815 Washington Street, East, Charleston, WV 25311-2126

Notice of Individual Violation
Case Number: 075-2750

Name of person charged: Gordon S. Mills
Address: Rt 1 Box 131B Oak Hill, WV 25901
Home phone number: (304) 235-7924 Certification number: 07 T-1193
Applicable type of certification: Surface Longwall
Name of mine operator/company: Independence Coal Co. Mine: Twilight MTR
Date: Oct 15, 2003 Time: 2:00 A.M. 
Location of violation: Hirshi 2500 Pit

Notice is hereby given that you have been found in violation of the following: West Virginia Code,
Chapter, Article, Section and/or Administrative Regulation
Title 56, Series 3, Section 14.41(a) in that you were:
The Euclid R 190 729 haulage truck operator Gordon Mills did not make sure your truck path was unobstructed, especially when starting or moving. The portal van had approached the front of the rock truck from the off side to deliver supplies. You heard Matt Adams, driver of the portal van say come and get your supplies. Thinking Mr. Adams was in the Hirshi 2500 excavator you proceeded forward without making a video monitor or visual check of the front of the truck, which resulted in a fatal accident.

Proposed Order of Assessment

Likelihood of occurrence: Unlikely (0) ______________ Reasonably likely (10) ____________ Occurred (20) ✓
Severity of Injury normally expected: None (0) __________ No lost work days (5) ______________
Lost workdays/restricted days (10) ____________ Permanently disabled (15) ____________ Fatal (20) ✓
Number of persons potentially affected: 0 (0) __________ 1 (5) __________ 2 (10) __________ 3 (15) ✓ 4-5 (20) __________
6-9 (25) _____ more than 9 (30) __________
History of prior violations during past thirty-six (36) months: 0 (0) __________ 1 (15) __________ 2 or more (30) __________
Total Points: _______________________

Authorized representative: R. D. Bailey
Assessment Officer: Harry Speciall
Assessment Review Officer: __________________________
State of West Virginia
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING.
1615 Washington Street, East, Charleston, WV 25311-2128

Notice of Individual Violation
Case Number: 070-0749

Name of person charged: Matthew Adkins
Social Security Number: 8-9454
Address: P.O. Box 52, West Hamlin, WV 25551
Home phone number: 344-2393 Certification number: 07-3-755
Applicable type of certification: Surface Coal miner
Name of mine operator/company: Independence Coal Co. Mine: Twilight 2459
Date: Oct 15 2003 Time: 1:30 A.M. P.M.
Location of violation: Hirachi: 2500 pit

Notice is hereby given that you have been found in violation of the following: West Virginia Code,
Chapter_______ Article_______ Section_________ and/or Administrative Regulation_________
Title 56, Series 3, Section 34.4(a), in that you were:

The driver of the parcel van Matt Adkins did not make sufficient radio or visual contact with Gordon Mills an operator of a haulage truck, to insure that it is safe to approach the truck. Mr. Adkins did not warn and make clear to the truck driver that he was approaching the off side of the truck and proceeding to the front of the truck to deliver supplies which resulted in a fatal accident.

Proposed Order of Assessment

Likelihood of occurrence: Unlikely (0) __________ Reasonably likely (10) __________ Occurred (20) __________
Severity of injury normally expected: None (0) __________ No lost work days (5) __________
Lost workdays/restricted days (10) __________ Permanently disabled (15) __________ Fatal (20) __________
Number of persons potentially affected: 0 (0) __________ 1 (5) __________ 2 (10) __________ 3 (15) __________ 4-5 (20) __________
6-9 (25) __________ more than 9 (30) __________
History of prior violations during past thirty-six (36) months: 0 (0) __________ 1 (15) __________ 2 or more (30) __________

Total Points: __________

Authorized representative: L. D. Bailey
Assessment Officer: ________
Assessment Review Officer: ________