

West Virginia Office of Miners' Health, Safety and Training

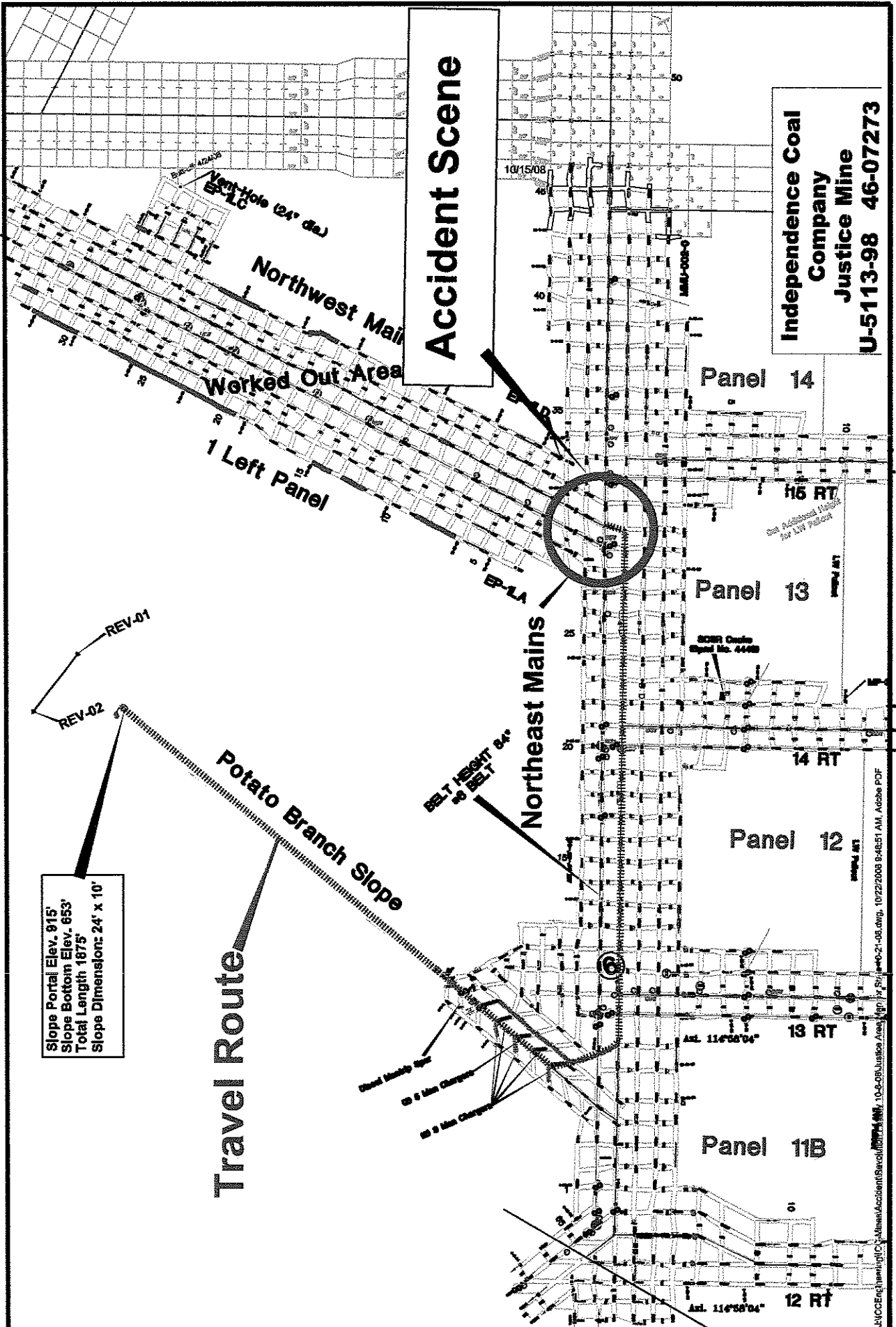
October 8, 2008

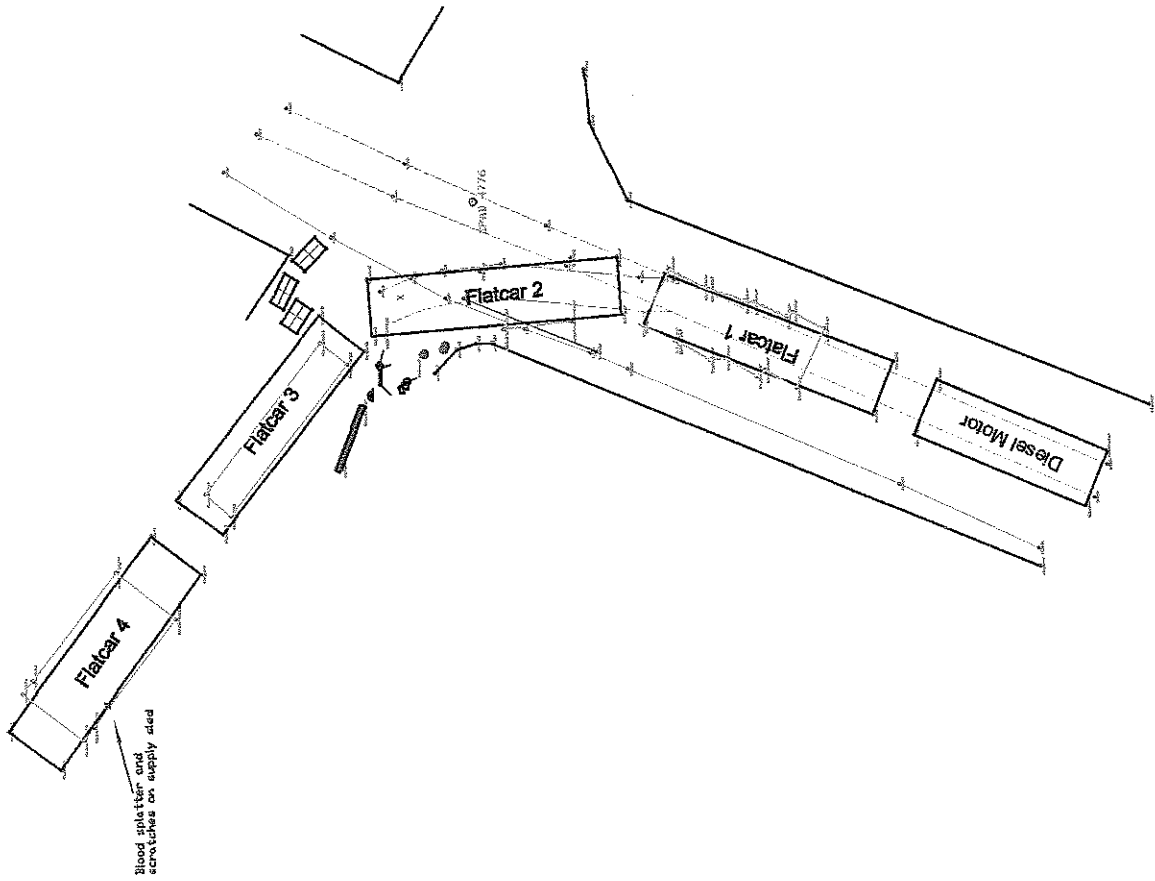
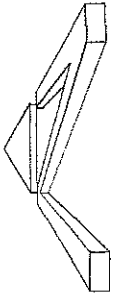
Crushing Fatality Investigation Report
Independence Coal Company, Inc.
Justice #1 Mine
Permit No. U-5013-98

Region Three – Danville Office
137 Peach Court, Suite 2
Danville, WV 25053
Eugene White, Inspector-at-Large

Table of Contents

Sketches.....	3-9
General Information.....	10
Description.....	10, 11
Findings of Fact.....	11, 12, 13
Conclusion.....	13
Enforcement Action.....	13, 14
Recommendations.....	15, 16
Acknowledgement.....	17
Appendix.....	18-21



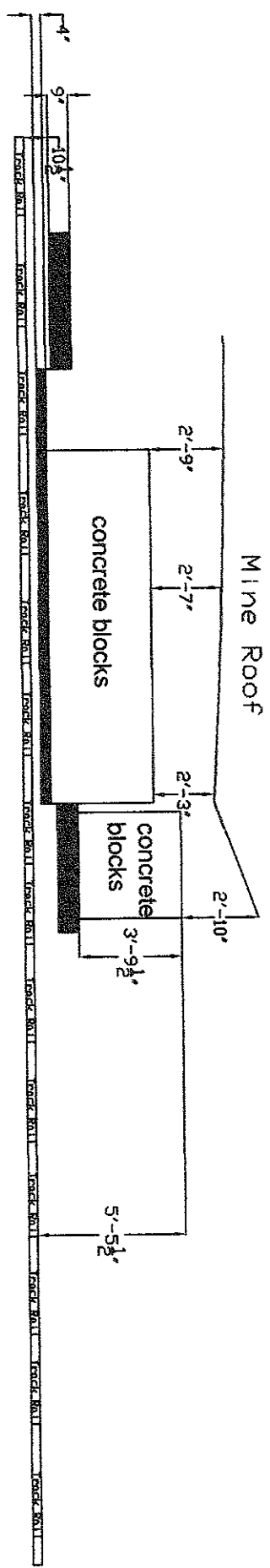


Legend

- X Miner's Belt, cap Light, and SCSR
- Rebreather
- Track
- High-Voltage Cable
- Nipack Line
- ☞ Glove
- ☞ Suspender Strap
- ☞ Electrical Tape
- ☞ Hard Hat
- ☞ First Aid Box
- ☞ Belt Roller
- Blood

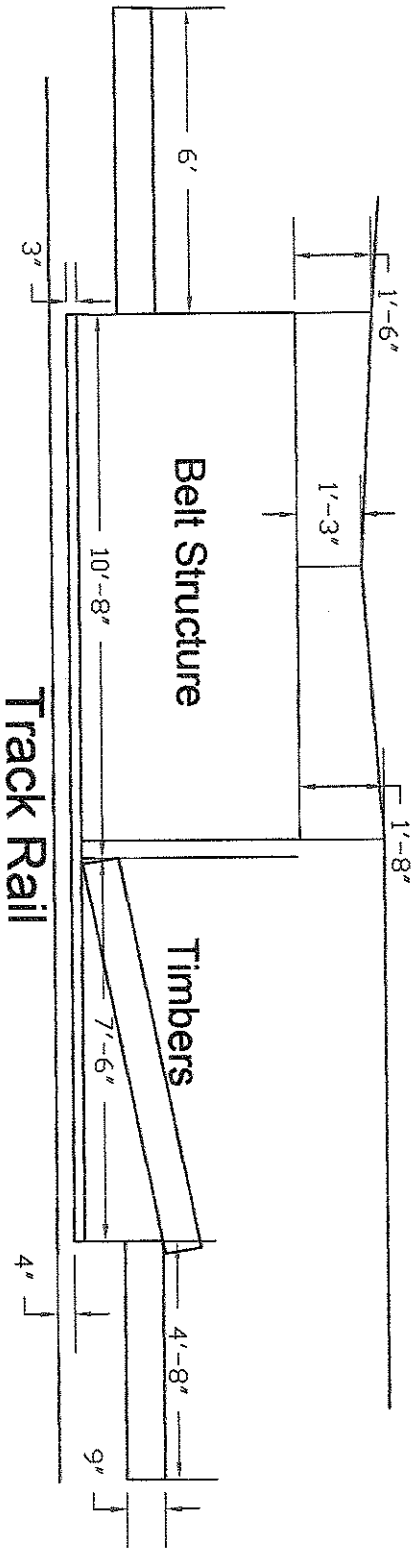
Independence Coal Co.	
DRAWN	DATE
W. K. Miller	10/9/08
APPROVED	DATE
C. Frumpton	10/9/08
SCALE	SHEET
1"=30'	One Left Trunk Switch
PROJECT NO.	STATE ID:
	U-5013-08
JUSTICE No. 1 Mine	MSHA ID:
	46-07273

FLAT CAR 1



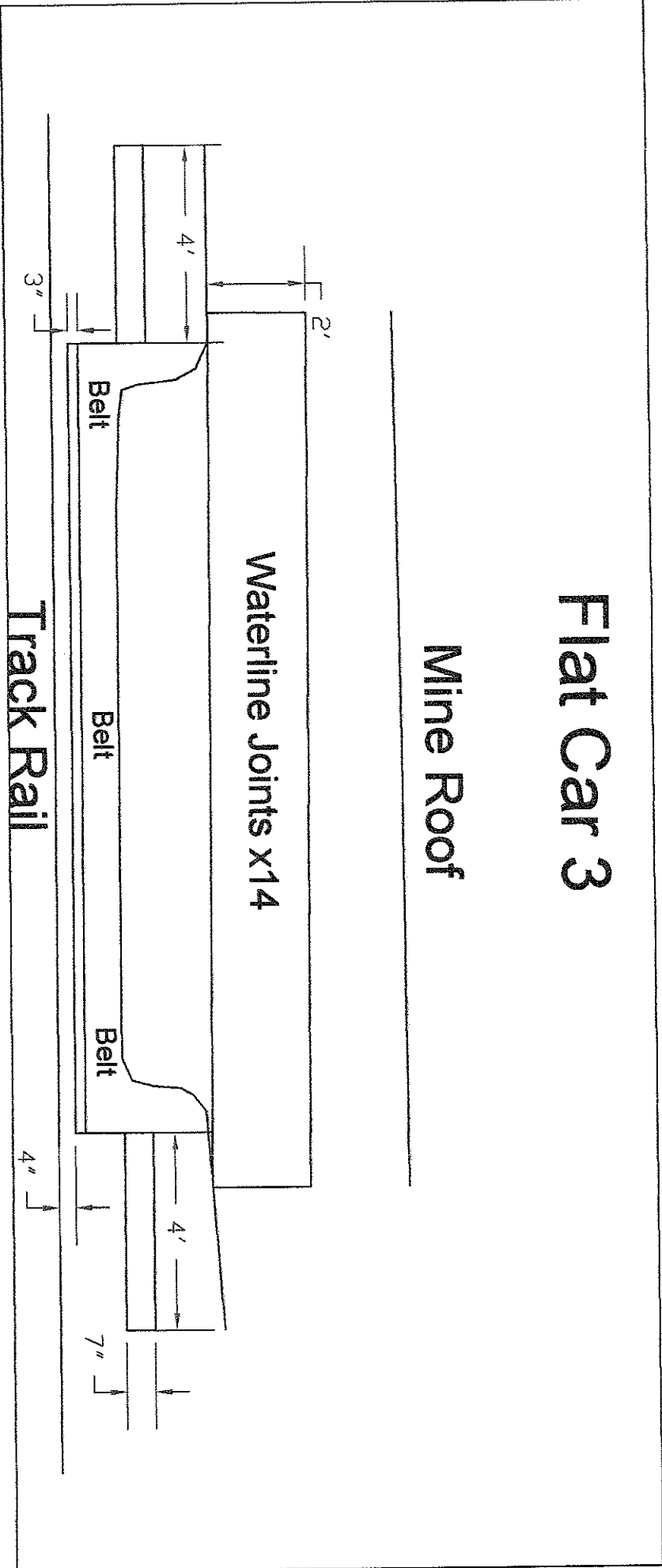
Flat Car 2

Mine Roof

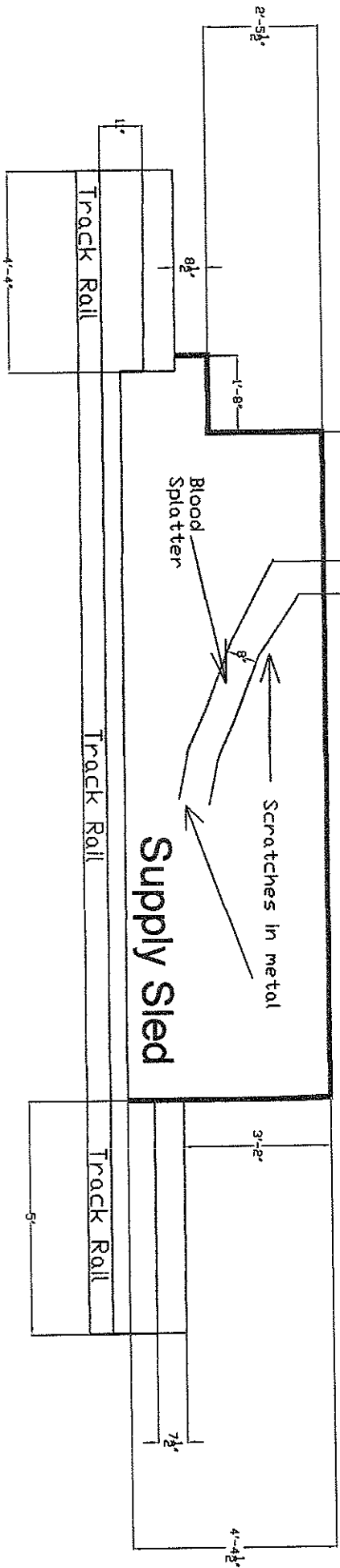


Flat Car 3

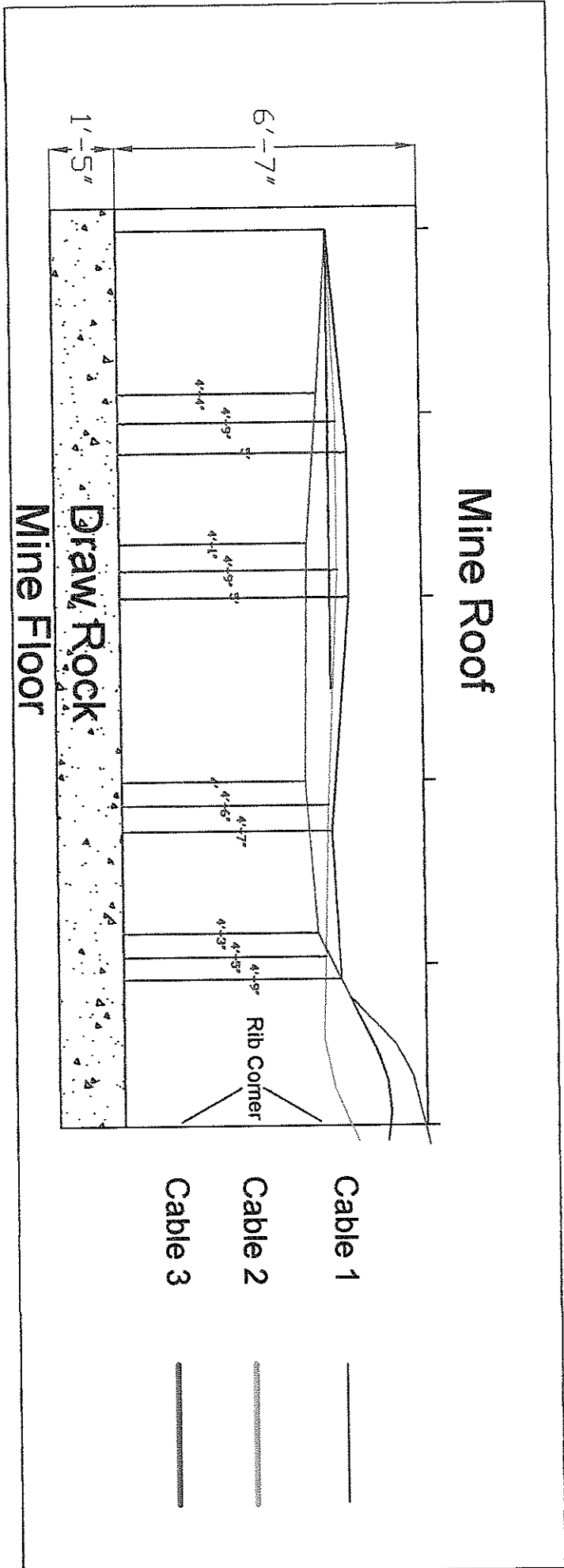
Mine Roof



Flatcar 4



Mine Roof



Cable 1

Cable 2

Cable 3

General Information

Independence Coal Company, Inc. was permitted to operate the Justice #1 Mine on January 10, 1999. The mine employs 145 persons on three shifts, two continuous mining machine units, and one longwall unit currently producing coal from the Powellton Seam along with a longwall construction set up crew. The coal seam varies from 38 to 52 inches high with mining height maintained at approximately 72 inches. Alternating work schedules are utilized. Personnel and supplies are transported by battery and diesel powered track mounted vehicles.

Mountaineer Labor Solutions (contract labor firm) provides employees to assist in manpower needs at the Justice #1 Mine.

Steven R. Cain a 32 year old apprentice (red hat) miner had been working at the Justice #1 Mine for approximately four months. Mr. Cain was employed by Mountaineer Labor Solutions, a contract labor firm currently providing 24 employees including 20 apprentice (red hat) miners at the Justice #1 Mine. Company records indicate that Mr. Cain worked 91 shifts at the Justice #1 Mine.

Mr. Cain was fatally injured on Wednesday, October 8, 2008 at approximately 11:00 pm. Mr. Cain was caught between a track mounted supply car carrying a parts sled and the mine rib as a trip of four supply cars was being pushed into a rail spur. The Boone County 911 Emergency Operations received a telephone call from the Justice #1 Mine at 11:02 pm. The Boone County 911 Operations contacted the West Virginia Emergency Call Center at 11:11 pm.

Description

Mr. Steven Cain, apprentice (red hat) miner began his regularly scheduled shift at the Justice #1 Mine at 3:00 pm on Wednesday, October 8, 2008. Mr. Cain was assigned to assist motor/supply men Curtis Ball and Rocky Osborne. Mr. Cain had routinely been assigned to assist the supply crew over the past 4 weeks, 21 shifts. Cain, Ball and Osborne received their work orders regarding supplies needed from Robert Massey, 2nd shift foreman.

Five supply cars were loaded on the surface at the start of the evening shift. A rubber tired diesel tractor was used to lower the five loaded supply cars to the slope bottom. The slope bottom had to be cleared of mantrips, motors and the placement of trips on charge to clear passage of track. One supply car carrying aluminum air lock doors was separated and left at the slope bottom. Ball, Osborne and Cain then left the slope bottom and proceeded toward the 13 Headgate Section planning to separate and park one supply car at the First Left rail spur along the track haulage travel way. Ball operated the lead battery powered No. 3 motor while Osborne operated the trailing diesel powered No. 10 motor. Cain rode with Osborne in the trailing motor. The lead or inby supply car was carrying a maintenance parts sled. The supply car immediately outby the first supply car was carrying conveyor belt and plastic pipe. The next supply car on the outby side of the second supply car was carrying conveyor belt structure. The last supply car in the trip was loaded with cinder blocks and half headers.

The trip arrived at the First Left rail spur where Ball separated the lead battery powered motor and proceeded to the 13 Headgate Section track switch. Ball's intentions were to return to the First Left spur where they planned to leave one of the four supply cars.

After the lead motor separated and moved away Osborne positioned the trip to push supply cars into the rail spur where the lead supply car was to be separated and parked.

According to Osborne the insulated and guarded high voltage cable hanging parallel to the mainline track and across the First Left rail spur was hanging too low to allow the supply cars to clear and pass under. Osborne stated that Cain was positioned at First Left rail spur switch located on the left side of the trip facing the inby direction where he engaged the switch to enable the supply cars to enter the spur. Osborne stated that he was positioned in the operator's deck of the diesel powered motor located on the outby end of the trip which measured 144 feet in length according to the investigators. Osborne stated that Cain told him that he would hold up the high voltage cable to allow the lead supply car to clear as it passed under. Osborne stated that he moved the trip forward into the spur. Osborne stated that he exited the motor on the right side, clearance side, facing in the inby direction (on the opposite side of Cain's location) to assist Cain in uncoupling the lead supply car which was to be parked in the spur. Osborne stated that he walked to the end of the trip on the right side (clearance side) calling out for Cain along the way. After passing around the farthest inby point of the trip Osborne stated that he still had not located Cain. He then stated that he traveled outby along the clearance side and found Cain lying on the mine floor on the opposite side of the supply cars as he moved in the outby direction. Seeing that Cain was severely injured Osborne ran toward the 13 Headgate Section rail switch to find Curtis Ball. Osborne told Ball that an accident had occurred and asked him to go to Cain while he went to the phone at the First Left rail switch to call for assistance.

Several persons traveled to the accident scene along with first aid equipment to provide assistance to Cain. Mr. Cain was placed on a back board (CPR in progress) and transported to the surface where Cain was pronounced deceased by CAMC Med Base.

Findings of Fact

1. Steven R. Cain, apprentice (red hat) miner and an employee of Mountaineer Labor Solutions, had been working at the Justice #1 Mine since June 5, 2008. He has worked a total of 91 shifts underground. He had no other mining experience.
2. Mountaineer Labor Solutions is a contract labor firm which provides underground workers. The Justice #1 Mine is responsible for any and all supervision of Mountaineer Labor Solutions employees. This arrangement effectively allows the mine operator to evaluate employees before hiring them on a full time basis.
3. Steven R. Cain completed his 80-hour apprentice miner training on May 17, 2008. His training was provided by Coal River Training.

4. Steven R. Cain was caught between the mine rib and the lead car in the trip carrying a maintenance parts sled as it was pushed by the outby corner of the crosscut into the First Left rail spur.
5. Rocky Osborne, supply man/motorman an experienced miner, stated during an interview with OMHS&T and MSHA investigators that Steven R. Cain was positioned at the outby corner of the First Left rail spur to hold up a high voltage cable which was hanging too low for the trip to clear and pass underneath when pushed into the rail spur. The high voltage cable was hung parallel to the main line track.
6. The trip consisted of four supply cars and a diesel powered motor pushing from the outby end. The second supply car immediately outby the lead car was carrying conveyor belt and plastic pipe, the third supply car was carrying conveyor belt structure and the fourth supply car was carrying cinder blocks and half headers.
7. The diesel powered pusher motor on the outby end of the trip was operated by Rocky Osborne, supply man/motorman and an experienced miner. The lead battery powered motor, which was disconnected and moved away before the supply cars were pushed into the First Left rail spur was operated by Curtis Ball, supply man and an experienced miner.
8. OMHS&T and MSHA investigators attempted to reenact and or simulate how the accident occurred on Thursday, October 9, 2008 at the accident site. Upon observing the trip being pushed into the First Left rail spur during the simulation investigators concluded that Steven R. Cain was caught between the lead car carrying the maintenance tool sled and the outby corner of the coal rib.
9. When the diesel powered motor and four supply cars were repositioned on the main line track as they would have been positioned prior to the accident. Investigators positioned themselves in the operator's seat of the diesel powered motor. All stated that they could not see a person standing at the location near the outby corner of the First Left rail spur where Steven R. Cain would have been located just prior to the accident. Their view was totally obstructed by the loaded supply cars immediately inby the diesel powered motor.
10. The No. 6 conveyor belt and the diesel powered motor were both said to have been operating at the time of the accident. Based on the reenactment/simulation conducted by OMHS&T and MSHA investigators, who had the No. 6 conveyor belt and the diesel powered motor energized and operational; the resulting noise level would have made it impossible to have heard anyone call out from the First Left rail spur.
11. The total length of the 4 supply cars and diesel powered motor measured 144 feet.

12. The accident site was illuminated with lights installed from the mine roof along the main track entry up to the First Left spur track.
13. The 20 ton No. 10 Brookville diesel powered motor serial number 9956 was equipped with a functional strobe light located on the inby end of the motor at the time of the accident.
14. The height at the accident site was 71 inches.

Conclusion

The victim an apprentice (red hat) miner, while assisting the supply motor crew to spur up loaded mine supply cars at the First Left rail spur was caught between mining equipment and the coal rib thus resulting in fatal crushing injuries.

Enforcement Actions

The following enforcement actions were taken as a result of the investigation.

A non-assessed control order was issued in accordance with Chapter 22A, Article 2, Section 68 of the West Virginia Code to preserve evidence following the accident.

A total of seven violations were issued during this investigation. Four violations were determined to have contributed to the occurrence of the accident and three violations were non-contributing. Also one individual personal assessment was issued and one withdrawal of certification will be initiated.

The following are the four contributing (special assessed) violations.

W. Va. Code § 22A-2-12 states. "It is the duty of every mine operator who employs apprentices . . . to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices." Following a fatal mine accident investigation it was found that on October 8, 2008 at the 1st left spur apprentice miner Steven Cain was not effectively supervised as he was allowed to work in an unsafe area as four mine cars (supply cars) were pushed into the 1st left spur. Apprentice miner Steven Cain was found around the corner (left rib), out of sight of the #10 diesel motor operator.

36 CSR§ 34-3.2

Following a fatal mine accident investigation, it was found that 36 CSR § 34-3.2 was violated when on October 8, 2008 at the 1st left spur track the #10 diesel motor was not being operated safely in that the motor operator could not see his apprentice miner because the supply cars were loaded to a height that obstructed visibility.

36 § 4 8.2(b)

Following a fatal mine accident investigation it was found that on October 8, 2008 at the 1st left spur track a twelve inch clearance between the supply cars and the guarded high voltage cable was not maintained. The second supply car was carrying belt structure that was touching the guarded high voltage cable. 36 CSR § 4-8.2 (b) requires a 12 inch radius clearance be maintained between the supplies being transported and the high voltage cable. Two of the four supply cars did not have the proper clearance. The tool sled and the structure car were in contact with the high voltage cable.

36 CSR § 33-4.1

Following a fatal mine accident investigation it was found that on October 8, 2008 at the 1st left spur track apprentice miner Steven Cain, while in the vicinity of a switch, did not get into an area of safety (shelter hole or crosscut) when four loaded supply cars were pushed into the 1st left spur track by the #10 diesel track motor.

The following are the three non-contributing violations.

W. Va. Code § 22A-2-37(o)

The no. 3 battery operated and the no. 10 diesel powered locomotives/supply motors are not being properly maintained in that this equipment is not equipped with a suitable lifting jack and handle.

36 CSR § 29-4(4.1)

The no. 3 battery operated locomotive/supply motor is not being properly maintained in that this track haulage equipment which is regularly coupled and uncoupled is not equipped with an automatic coupler or other device approved by the Director which provides an equal or greater level of safety, which couple or uncouple without the necessity of persons going between the ends of such cars.

W. Va. Code § 22A-2-37(a)

The no. 2 and no. 3 track switches located near the bottom of the potato branch slope are not being properly maintained in that the switch throws are broken and not operational. A bar or other means is used to align these switches.

Recommendations

Independence Coal Company, Inc.

HC 73 Box 1800
Madison, WV 25130
Phone: 304-369-7103
Fax: 304-369-7109

November 10, 2008

Mr. Ron Wooten - Director
West Virginia Office of Miners Health, Safety and Training
1615 Washington St. East
Charleston, WV 25311-2126

RE: Independence Coal Company
Justice No. 1 Mine
State ID # U-5013-98
Fatal Haulage Accident

Mr. Wooten:

Independence Coal Company -- Justice #1 Mine would like to propose the following steps to prevent a reoccurrence of the fatal haulage accident that we suffered on October 8, 2008:

1. A minimum clearance of 24 inches measured from the widest point of the load shall be maintained on both sides of section haulage equipment in supply spur entries
2. In all other track entries, no work shall be performed on the tight side of the section haulage equipment while such equipment is in motion.

Thank you in advance for your attention in this matter. Should you have any questions or require additional information please call me at (304) 369-7103.

Sincerely,



Gary Frampton
General Manager

Mountaineer Labor Solutions
Seth, W.V. 25181
(304) 837-3909

The training on close clearance and pinch points will be conducted during Mountaineer Labor Solutions experience miner training.

In addition each apprentice Miner will be given a W.V. Underground Mining Laws, Rules and Regulation Manual.

Each apprentice miner will know for the first 90 days he or she will be within sight and sound of the mine foreman, asst. mine foreman, or An experienced miner. Such location/s shall be on the same side of any belt, conveyor, mining equipment, or track equipment.

Thank you,
Brian Buzzard

Acknowledgement

The Office of Miners' Health, Safety and Training gratefully acknowledges the cooperation of the employees and management of Independence Coal Co., Inc. and the Mine Safety and Health Administration during this investigation.

Appendix

Mine Information

Victim Information

Contractor Information

MINE INFORMATION

COMPANY Independence Coal Co., Inc.

MINE NAME Justice #1 Mine

WV PERMIT U-5013-98 MSHA PERMIT NO. 46-07273

ADDRESS HC 78 Box 1800, Madison, WV 25130

COUNTY Boone PHONE NO. 304-837-7290

DATE PERMIT ISSUED 01/10/99

WORKING STATUS Active

LOCATION Robinson Hollow, Uneeda, WV V

UNION _____ NON-UNION X

DAILY PRODUCTION _____ ANNUAL PRODUCTION TO DATE _____

TOTAL EMPLOYEES 140

NUMBER OF SHIFTS 3

COAL SEAM NAME AND THICKNESS Powellton 42 inches

ACCIDENT INCIDENT RATE 3.6 LOST TIME ACCIDENTS 5

TYPE OF HAULAGE Belt

WVOMHST INSPECTOR Harrison Stollings

DATE OF LAST INSPECTION Current

NOTIFIED BY Kennith Bailey

NOTIFICATION TIME State 11:11 pm MSHA 11:19 pm

CMSP ANNIVERSARY DATE 01/28/2009

CMSP CONTACT PERSON David Brown

VICTIM INFORMATION

NAME OF VICTIM Steven R. Cain

AGE OF VICTIM 32

TOTAL MINING EXPERIENCE 4 months EXPERIENCE AT THIS MINE 4 months

AVERAGE NUMBER OF DAYS WORKED PER WEEK 5

AVERAGE NUMBER OF HOURS WORKED PER WEEK 45

LENGTH OF SHIFTS AT MINE 9 hours TRAVEL TIME TO/FROM WORK 20 minutes

OCCUPATION AT TIME OF ACCIDENT Supply Man

REGULAR OCCUPATION Supply Man

MINERS CERTIFICATION None OTHER CERTIFICATIONS 4-17353 Apprentice Miner

NAME OF SPOUSE Becky SPOUSE'S TELEPHONE NUMBER 304-837-3673

FAMILY CONTACT PERSON Becky Cain

FAMILY CONTACT PHONE NUMBER 304-837-3673

DEPENDENTS two

DATE OF ACCIDENT 8th DAY OF Oct. 2008

AT 11:02 pm O'CLOCK

LOCATION OF ACCIDENT 1st. left track spur

CAUSE OF ACCIDENT Crushed between supply car and coal rib.

DATE OF DEATH 8th DAY OF October 2008

CONTRACTOR INFORMATION

CONTRACTOR Mountaineer Labor Solutions

MINE Independence Coal Co., Inc., Justice #1 Mine

WV PERMIT NUMBER C00007776

MAILING ADDRESS P. O. Box 488, Seth, WV 25181

COUNTY BOONE TELEPHONE NUMBER 304-837-3909

TYPE OF WORK PERFORMED Contract Labor

WORKING STATUS Active

LOCATION Robinson Hollow, Uneeda, WV

UNION _____ NON-UNION YES

TOTAL NUMBER OF EMPLOYEES 45

NUMBER OF SHIFTS 3

ACCIDENT FREQUENCY 1 LOST TIME ACCIDENTS 0

TYPE OF HAULAGE Track

WVOMHST INSPECTOR Harrison Stollings

DATE OF LAST INSPECTION Regular: _____ Check: _____

NOTIFIED BY Kennith Bailey

TIME OF NOTIFICATION 11:02 pm

CMSP ANNIVERSARY DATE 12/10/08

CMSP CONTACT PERSON Brian Buzzard