September 19, 2008

Report of Investigation
Surface Coal Mine Fatality
(Rollover of a Dozer)

AJM Corporation, Permit Number C-7881
Contractor for
Alex Energy, Inc.
No. 1 Surface Mine, Permit Number S-3013-91A

Region IV Office
142 Industrial Drive
Oak Hill, West Virginia  25901
Gary S. Snyder, Inspector-at-Large
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Accident Scene - Slope Profile
Prepared By
Alex Energy, Inc., Engineering Department

Not To Scale

281' Total Path Traveled

124'

118'

276' Vertical Distance

37' Horizontal Distance

APPROXIMATE PATH OF TRAVEL

FRONT BENCH

END DOZER TRACKS

39'

LARGE ROCK

STEEP SLOPE

EXCAVATOR

DOZER
Report of Investigation  
Surface Coal Mine Fatality  
AJM Corporation, Permit Number C-7881  
Contractor for  
Alex Energy, Inc.  
No. 1 Surface Mine, Permit Number S-3013-91A

GENERAL INFORMATION

This report is based on an investigation conducted in accordance with Chapter 22A, Article 2, Section 66 of the mining laws of the State of West Virginia.

James Otis Woods, an employee of AJM Corporation, was critically injured in an accident at approximately 2:50 p.m. on September 19, 2008. Mr. Woods was attempting to grade a previously reclaimed area of the mine, when the dozer he was operating overturned and rolled four times to the bottom of a steep grade. Mr. Woods died on October 4, 2008 from the injuries he sustained during the accident.

The West Virginia Office of Miners’ Health, Safety and Training, Region IV office, was notified of the accident by the Mine and Industrial Accident Emergency Operations Center at 3:58 p.m. on September 19, 2008. A joint investigation with the Mine Safety and Health Administration was started immediately.

DESCRIPTION

The Alex Energy Inc., No. 1 Surface Mine, permit number S-3013-91A, is located near Drennen in Nicholas County, West Virginia. The surface mine normally operates seven (7) days a week, with staggered shifts and starting times, and has 208 employees. In addition, several independent contractors are used to perform various duties such as maintenance, blasting and reclamation at the mine. AJM Corporation is one of the independent contractors assigned to perform drainage and reclamation projects at the mine.

On September 19, 2008, two (2) employees of AJM Corporation met at the Right Fork reclamation area of the mine at 7:30 a.m. to plan the work to be done that day. The two men, James Otis Woods and Bernard Brown, had been working at this site for approximately one (1) week. The project consisted of grading the outer slope of the area that had been mined and back-filled approximately three (3) years ago. Subsequent settlement of the back-fill material had exposed sections of the reclaimed highwall that needed to be removed or covered to comply with environmental regulations. The exposed highwall lay approximately midway down the back-filled slope. Earlier in the week, Mr. Woods had used a dozer to excavate the back-filled material to create a bench atop the exposed highwall. Mr. Woods then used a small John Henry track drill, owned by the mine operator, to drill holes in the solid rock of the exposed highwall. A blasting crew then used light charges of explosives to crack and break the rock for removal. A plastic slurry line, leading from the preparation plant to a refuse impoundment, was located adjacent to a drainage ditch at the bottom of the reclamation slope. The slurry
line had been damaged by the dozer the day before. After discussion, the men decided to work at the bottom of the slope, repairing and covering the plastic slurry line. They would also place large rocks in front of the line to protect it from damage should a rock roll down the slope from the grading work to be done above. This work continued for approximately three (3) hours. Mr. Woods was, as usual, operating a Caterpillar D6R dozer and Mr. Brown was operating a Caterpillar 325 excavator. Work progressed until approximately 12:00 p.m. when both men stopped for lunch.

After lunch, Mr. Woods began to grade the outer slope of the back-filled material. The outer slope was 276 feet in length and the percentage of grade varied from 59.5% to 70.9%. Mr. Brown was to remain at the bottom of the slope and continue to place large rocks to protect the plastic slurry line. The grading of the material required Mr. Woods to begin at the top of the slope at a temporary road that had been constructed for access to the area. Mr. Woods would lower the dozer’s blade and begin his descent down the slope, from the upper portion, while cutting and gathering as much loose material as he could in front of his blade. This material was to be used in grading the outer slope and also served to act as a “brake” to keep the dozer under control while descending the steep slope. Some of this loose material was used to fill voids and cavities near the site of the previously exposed highwall. The lower section of the outer slope was too steep to allow the dozer to climb back up the hill on the loose material. Upon reaching the bottom of the outer slope, Mr. Woods would have to tram the dozer to an adjacent area that was not quite as steep in order to return to the top of the slope for another downhill grading pass. Mr. Woods and Mr. Brown used C.B. radios to stay in communications with each other during this process. Mr. Brown stated he would watch Mr. Woods as he descended the hill in order to avoid any loose rocks that would happen to be dislodged and roll down the slope.

Work proceeded normally until around 2:50 p.m. when Mr. Woods started, according to Mr. Brown, his eighth pass down the slope. The previous passes down the slope had gotten progressively closer to a section of the exposed highwall that appeared to consist of a more solid rock material. Mr. Brown stated that as he was watching Mr. Woods come to the area of the previously exposed highwall, the dozer blade raised and the dozer abruptly turned to the left. As the dozer turned sideways, it overturned and rolled approximately four (4) times, coming to rest upside down at the bottom of the slope. Mr. Brown immediately ran to the overturned dozer and found Mr. Woods semi-conscious and suspended upside down by the seat belt in the operator’s seat. Mr. Brown lifted the victim enough to unlatch the seat belt and helped Mr. Woods to the ground beside the dozer. Mr. Brown then ran back to the excavator and used the C.B. radio to summon aid from workers at the surface mine. EMT’s from the surface mine rushed to the site to administer aid to the victim. Because of the rough terrain, a four-wheel drive vehicle from Kesslers Cross Lanes Fire Department was used to transport the victim to an area near the Sugar Camp underground mine. The victim was then transferred to a waiting Health Net helicopter that transported him to Charleston Area Medical Center for treatment. James Otis Woods remained a patient in the medical facility until the time of his death at 10:29 p.m. on October 4, 2008.
FINDINGS OF FACTS

1. There were no hazards noted in the preshift/on shift examination book completed by the surface mine foreman during the week of September 15, 2008 through September 19, 2008.

2. The available daily equipment safety checklists completed by James Otis Woods on the Caterpillar D6R dozer showed no defects noted on the equipment. The onboard computer on the dozer (ECM) showed no conclusive evidence of low fluid levels or electrical/mechanical malfunctions on the day of the accident. Statements from the victim, to family members after the accident, indicated there were no operational faults on the dozer on the day of the accident.

3. The outer slope of the Right Fork reclamation project, in the area of the accident, was approximately 276 feet in distance. The top portion of the reclamation projects outer slope (above the previously exposed highwall) had an average grade of 59.5 percent. The lower portion of the reclamation project’s outer slope had an average grade of 70.9 percent. The backfill material consisted of rock and dry dirt. The victim lost control of the Caterpillar D6R dozer near the area of the previously exposed highwall. Although the exposed highwall had been drilled and lightly blasted, the rock material in this area was still tightly wedged in place making traction/control for the dozer difficult.

4. AJM Corporation, the independent contractor assigned to perform reclamation duties at the Right Fork area of the mine, had not properly registered with the West Virginia Office of Miners’ Health, Safety and Training and therefore was not assigned an independent contractor identification number. AJM Corporation did not possess a Certificate of Approval for 2008 or an approved Comprehensive Mine Safety Program, both of which are required to perform work on mine property in West Virginia.

5. The mine operator could not provide accurate information on the independent contractor, AJM Corporation, assigned to perform reclamation/drainage projects at the Alex Energy, Inc., No. 1 Surface Mine. Upon review of the mine operator’s independent contractor register, it was found that the required information for AJM Corporation was incomplete. Omission of the required information allowed the independent contractor to perform work prior to receiving the required permits and plans.

CONCLUSION

The backfilled material at the accident scene was comprised of dry, loose dirt and rocks that were placed in a steep angle of repose. This was also an area, near the previously exposed highwall, that had tightly-wedged large rocks that had to be pryed from the lightly-blasted material to grade the outer slope. These conditions made it difficult to maintain full control of the equipment being used to grade the slope.
James Otis Woods died of injuries received when he lost control of the D6R Caterpillar dozer he was operating and it rolled to the bottom of the steep slope.

ENFORCEMENT ACTION

A non-assessed control order was issued in accordance with Title 36, Series 19, Section 7 of the West Virginia Mining Laws in order to preserve the scene of the accident and to complete an investigation. The WV Office of Miners’ Health, Safety and Training issued five notices of violation during this investigation. Three were issued to AJM Corporation and two were issued to Alex Energy, Inc. The following violation issued to Alex Energy, Inc. is considered to have contributed to the accident:

Notice of Violation (Order); Title 56, Series 3, Section 13.1a:

Investigation of an accident that occurred at the Right Fork reclamation area of the mine revealed the outer slope of the spoil material was too steep (for the type of material) to allow full control of the equipment (unassisted) being used. The spoil material consisted of dry, loose dirt mixed with large rocks which, when placed in a steep angle of repose, made maintaining control of the dozer being used to grade material difficult and hazardous. A D6R Caterpillar dozer was being operated on the slope without winch-cable anchorage (56-3-4.1, 56-2-14.2m) to assist the dozer operator in maintaining full control of the equipment (56-3-42.10a). Instability of the spoil material in the steep slope allowed the dozer to turn sideways, overturn, and roll four (4) times to the bottom of the grade. The dozer operator, James O. Woods, suffered serious injuries when he lost control of the dozer on the steep slope.

The following violation was issued to Alex Energy, Inc. and is not considered to have contributed to the accident:

Notice of Violation; Title 36, Series 20, Section 4.4:

The investigation revealed the mine operator, Alex Energy, Inc., was not maintaining an accurate register for independent contractors performing work at the surface mine. The independent contractor, AJM Corporation, had not properly registered with the WV Office of Miners’ Health, Safety and Training, and had been working at this mine for more than two years.

The following three violations were issued to AJM Corporation and are not considered to have contributed to the accident:

Notice of Violation; Chapter 22A, Article 2, section 63(e):
AJM Corporation had not applied for a certificate of approval from the WV Office of Miners’ Health, Safety and Training prior to performing reclamation work at the Alex Energy, Inc., No. 1 Surface Mine.

Notice of Violation; Title 56, Series 8, Section 5.1: AJM Corporation had not submitted a comprehensive mine safety program for approval prior to performing reclamation work at the Alex Energy, Inc., No. 1 Surface Mine.
Notice of Violation; Title 36, Series 19, Section 4:
AJM Corporation did not submit a mine accident and injury report, as required, to the
WV office of Miners’ Health, Safety and Training, giving full details of the accident that
occurred on September 19, 2008.

RECOMMENDATIONS

In accordance with Title 56, Series 8, Section 9.4 of the WV Mining Laws, the
comprehensive mine safety program for Alex Energy, Inc. shall be modified to include
the following:

STEEP SLOPE OPERATION SAFEGUARDS

The following safeguards shall apply only when work is being done by heavy equipment,
such as dozers and excavators, on steep slopes (exceeding 25°/47°):

1. Only experienced operators who had demonstrated their knowledge and skill on
the equipment to be used shall be allowed to operate the equipment on such
slopes.

2. Radio communications will be provided on all equipment used on such slopes.

3. Work on such slopes shall be performed during daylight hours only.

4. Prior to commencing work on such slopes, a knowledgeable certified foreman
responsible for the work area will meet at the site with the affected equipment
operators to discuss the nature of the project and to identify potential hazards.
Follow-up meetings will be held if warranted by changing conditions such as
slope material or weather. Such discussions shall include at a minimum:

   a. Slope, characteristics and roughness of the material to be graded, and;
   b. Role of excessive loads, potential of track slippage, speed and equipment
      characteristics
   c. Equipment maintenance
   d. Additional safeguards as needed, such as side benches, blasting and
      anchorage

5. A record of the meetings required by paragraph four (4) above shall be recorded
on an MSHA 5000-23 form.

ACKNOWLEDGMENT

The West Virginia Office of Miners’ Health, Safety and Training gratefully
acknowledges the cooperation of the employees and management of Alex Energy, Inc.,
AJM Corporation, and the Mine Safety and Health Administration during this
investigation.
APPENDIX

- Mine Information Sheet (page 9)
- Contractor Information Sheet (page 10)
- Victim Information Sheet (page 11)
- Notices of Violation Issued (page 12-17)
MINE INFORMATION

COMPANY  Alex Energy, Inc.

MINE NAME  No. 1 Surface Mine

WV PERMIT  S-301391A

ADDRESS  P.O. Box 857, Summersville, WV 26651

COUNTY  Nicholas

DATE PERMIT ISSUED  December 21, 1998  WORKING STATUS  Active

LOCATION  Near Drennen, WV

UNION  NON-UNION  Yes

DAILY PRODUCTION  7,500 tons (approximately)

ANNUAL PRODUCTION TO DATE  1,980,477 tons (approximately)

TOTAL EMPLOYEES  208  NUMBER OF SHIFTS  2

NAME OF COAL BED  Clarion, 5-Block, Coalburg, Stockton

SEAM THICKNESS  Varies

ACCIDENT INCIDENT RATE  LOST TIME ACCIDENTS

TYPE OF HAULAGE  Off-Road Truck

WV OMHST INSPECTOR  Henry M. Armentrout

DATE OF LAST INSPECTION  August 4, 2008

NOTIFIED BY  Mine and Industrial Accident Emergency Operations Center

TIME OF NOTIFICATION  3:58 p.m.

CMSP – ANNIVERSARY DATE  February 15, 2009

CMSP – CONTACT PERSON  Jonah Pritt
CONTRACTOR INFORMATION

CONTRACTOR  AJM Corporation

WV PERMIT  C-7881  MSHA PERMIT NO.  D 705

MAILING ADDRESS  91 Ball Park Road, Craigsville, WV  26205

COUNTY  Nicholas  PHONE NUMBER  (304) 619-8513

TYPE OF WORK PERFORMED  Reclamation

WORKING STATUS  Active

LOCATION  Near Drennen, West Virginia

UNION  NON-UNION  Yes

TOTAL EMPLOYEES  3

NUMBER OF SHIFTS  1

ACCIDENT FREQUENCY RATE  0  LOST TIME ACCIDENTS  0

WVOMHST INSPECTOR  Henry M. Armentrout

DATE OF LAST INSPECTION  N/A

CMSP – ANNIVERSARY DATE  October 31, 2009

CMSP – CONTACT PERSON  Jamie Woods
VICTIM INFORMATION

NAME OF VICTIM: James Otis Woods

AGE OF VICTIM: 61 yrs.

TOTAL MINING EXPERIENCE: 42 EXPERIENCE AT THIS MINE: 2yrs

AVERAGE NUMBER OF DAYS WORKED PER WEEK: 5

AVERAGE NUMBER OF HOURS WORKED PER WEEK: 47½

LENGTH OF SHIFTS AT MINE: 9½ TRAVEL TIME TO/FROM WORK: 30 min.

OCCUPATION AT TIME OF ACCIDENT: Foreman/Dozer operator

REGULAR OCCUPATION: Foreman/Dozer operator

COAL MINER'S CERTIFICATION: S-5972

OTHER CERTIFICATIONS: Surface Mine Foreman _SM-1197-79

SPOUSE'S NAME: None FAMILY CONTACT NO: (304) 619-8513

DEPENDENTS: None

DATE OF ACCIDENT: 19th DAY OF September 2008

AT: 3:00 O’CLOCK: p.m.

LOCATION OF ACCIDENT: Right Fork – No. 1 Surface Mine

CAUSE OF ACCIDENT: While working a steep slope, a dozer operator lost control of the machine he was operating. This resulted in the dozer rolling down the slope, overturning approximately 4-5 times. The operator suffered serious injuries that eventually caused his death.

DATE OF DEATH: 4th DAY OF October 2008
NOTICE OF VIOLATION

Company / Operator: Alex Energy, Inc.  
Contractor: Yes  No ✓
Permit Number: 5301391A  Mine Name: No. 1 Surface Mine
Date of Issue: Sept. 19, 2008  Time: 6:00 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 36, Series 19, Section 7.1 exists as follows:

This shall serve as notification to preserve the scene of an accident involving a dozer being operated by James Otis Woods, performing reclamation duties at the "Right Fork" area of the mine. The dozer was owned by, and Mr. Woods was employed by Tri Mountain Corporation (C:7652), an independent contractor hired by the mine operator to perform reclamation duties. The area to be preserved shall include the entire unreclaimed slope sections of the Right Fork area, and the D-6R Cat dozer involved in the accident and the 325 Cat excavator that was working in the area.

Type of Issuance: N.O.V.  
Area or equipment (if order is issued): Right Fork reclamation slope, D-6R Cat dozer, and the 325 Cat excavator

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: Sonah Pitt

Authorized Representative: Mike Armes特朗t  Inspector No. 074

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.

Non-Assessable Control Order

VIOLATION ASSESSMENT EVALUATION:

S and S Violation:  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)

* If these are checked in each category, do not go further unless a knowing violation.

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%)
No compliance (extenuating circumstances) (0%)
NOTICE OF VIOLATION

Company / Operator: Alex Energy, Inc.  Contractor: Yes  No ✓

Permit Number: 5301271A  Mine Name: No. 1 Surface Mine

Date of Issue: Sept 29, 2008  Time: 7:00  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 13.13 exists as follows: Investigation of an accident that occurred at the Right Fork reclaim area of the mine revealed the outer slope of the spoil material was too steep for the type of material to allow full control of the equipment (unassisted) being used. The spoil material consisted of dry, loose dirt mixed with large rocks and wind, when placed at a steep angle of repose, made maintaining control of the dozer being used to grade material difficult and hazardous. A D8 Caterpillar dozer was being operated on the slope without winch-cable anchorage (51:3.41, 54.2.143) to assist the operator in maintaining full control of the equipment (51:3.41, 10a). Instability of the spoil material on the steep slope allowed the dozer to turn sideways, overturn, and roll 4 times to the bottom of the grade. The dozer operator, James O. Woods, suffered serious injuries when he lost control of the dozer on the steep slope.

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: Jonathan Pruitt

Authorized Representative: Mike Armentrout  Inspector No. 074

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

S and S Violation:  

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)_______

* If these are checked in each category, do not go further unless a knowing violation.

No. of Persons Potentially Affected: 0 (0)_______ 1 (1)_______ 2 (2)_______ 3 (4)_______ 4-5 (8)_______ 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: Alex Energy, Inc.  
Contractor: Yes   No ✓
Permit Number: 5301391A  Mine Name: No. 1 Surface Mine
Date of Issue: Sept 29, 2008  Time: 7:00 AM  PM
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 36, Series 20, Section 4.4, exists as follows: The mine operator, Alex Energy, Inc., could not provide accurate information on an independent contractor performing water drainage projects, backfill grading, slope work, and other normal reclamation duties at the surface mine. The independent contractor, listed as "Battle Creek" on the mine operator's register list, had not registered with the Office of Miners' Health, Safety and Training, and therefore had not received a contractor identification number. The contractor identification number, as well as the business address, business telephone, and general description of the work to be performed were not included, as required, on the mine operator's register for independent contractors. The type of issuance: N.O.V. X Order mine operator, by omission of the required information for independent contractors, allowed a contractor improperly work on mine property. 

The foregoing violation shall be totally abated by 8:00 a.m. p.m. on 9:29 2008 

The foregoing violation was totally abated by  a.m. p.m. on 20 

Action taken to abate the violation: 

Company / Operator Agent Served: Sarah Pitt

Authorized Representative: Mike Armentrout  Inspector No. 074

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.

The independent contractor, "Battle Creek" has been working at this mine for more than 2 years.

VIOLATION ASSESSMENT EVALUATION

S and S Violation:    Recommend Special Assessment: X
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)

* If these are checked in each category, do not go further unless a knowing violation.

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
1615 Washington Street East
Charleston, West Virginia 25311-2126

NOTICE OF VIOLATION

Company / Operator: A.J.M. Corporation
Contractor: Yes  √  No

Permit Number: C: 7881
Mine Name: Alex Energy Inc.'s No. 1 Surface Mine

Date of Issue: October 24, 2008
Time: 4:00 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 22A, Article 2, Section 43e and/or West Virginia Administrative Regulation: 74-17-6 exists as follows: The independent contractor did not apply for (obtain) a certificate of approval prior to commencing operations at the mine. According to statements from the mine operator's officials and Jamie Woods, an officer for A.J.M. Corporation, the independent contractor had been employed to perform various reclamation duties at the mine for the past two (2) years. The independent contractor was doing business at the mine under the trade name of A.M.I. Battery Creek. During this time, the independent contractor had not properly registered with the Office of Miners' Health, Safety and Training nor applied for (received) a certificate of approval to perform duties at mines in West Virginia.

Type of Issuance: N.O.V.  √  Order

Area or equipment (if order is issued): A.J.M. Corp. shall not be permitted to perform duties on WV mine property until properly registered and a certificate of approval 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: Jamie Woods

Authorized Representative: Henry M. Armentrout  √  Inspector No. 074

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

S and S Violation:  √  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)______

* If these are checked in each category, do not go further unless a knowing violation.

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 (exculpatory circumstances) (0%) ______ Extra effort (-15%) ______
NOTICE OF VIOLATION

Company / Operator: A.M. Corporation
Contractor: Yes ☑ No

Permit Number: C-2881
Mine Name: Alex Energy Inc.'s No. 1 Surface Mine

Date of Issue: October 24, 2008
Time: 4:00 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, Title 50, Chapter 8, Section 5.1, exists as follows: The independent contractor did not submit a comprehensive mine safety program to the W.V. Office of Miners' Health, Safety and Training for approval prior to commencement of performing reclamation projects at Alex Energy Inc.'s No. 1 Surface Mine. The mine operator's records indicate the independent contractor has been employed to perform various reclamation duties at the surface mine for the past two (2) years. During this time, A.M. Corporation has been doing business under the trade name A.M. Battle Creek. The independent contractor has not possessed an approved comprehensive safety program while performing reclamation at the mine during the past two years.

Type of Issuance: N.O.V. ☑ Order

Area or equipment (if order is issued):

The foregoing violation shall be totally abated by 8:00 a.m. on October 27, 2008.

The foregoing violation was totally abated by a.m. on 

Action taken to abate the violation:

Company / Operator Agent Served: Jamie Woods

Authorized Representative: Henry M. Armentrout
Inspector No. 074

REVIEW: In accordance with Section 22A.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

S and S Violation: ☑
Recommend Special Assessment: ☑

Likelihood of Occurrence: Unlikely: 0 (0) ☑ Reasonably likely (10) ☑ Occurred (20)
Severity of Injury Expected: None: 0 (6) ☑ No lost work days (6) ☑ Lost or restricted days (11)
Permanently disabling (15) ☑ Fatal (20)

* If these are checked in each category, do not go further unless a knowing violation.

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
1615 Washington Street East
Charleston, West Virginia 25311-2126

NOTICE OF VIOLATION

Company / Operator: A.W.M. Corporation
Contractor: Yes ✗ No

Permit Number: C-7881
Mine Name: Alex Energy Inc.’s No. 1 Surface Mine

Date of Issue: October 27, 2008
Time: 12:30 A.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 36, Series 19, Section ___ exists as follows: The independent contractor did not submit a mine accident and injury report on an accident that occurred on 9-19-08 at Alex Energy Inc.’s No. 1 Surface Mine. An official for A.W.M. Corporation, Jamie Woods, stated he had completed the report (and produced a copy from the mine’s record file) but no copy or record of the report could be found as received by the W.V. Office of Miners’ Health, Safety and 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. 1:00 p.m. on 10-27-08

The foregoing violation was totally abated by a.m. 1:00 p.m. on 10-27-08

Action taken to abate the violation: An official of A.W.M. Corporation had a copy of a completed accident report faxed to the Region 4 office.

Company / Operator Agent Served: Jamie Woods

Authorized Representative: Henry M. Pimentel ✗ Inspector No. 074

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

S and S Violation: ☐
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)

* If these are checked in each category, do not go further unless a knowing violation.

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%)