
WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY & TRAINING

SEPTEMBER 24, 2004

REPORT OF A FATAL ACCIDENT

**AMERICAN BITUMINOUS POWER PARTNERS, LP
BARRACKVILLE REFUSE PERMIT NO. O-1003-99
WILSON & WILSON, INC. – PRODUCTION CONTRACTOR**

**REGION ONE – FAIRMONT OFFICE
205 MARION SQUARE
FAIRMONT, WV 26554
BRIAN MILLS, INSPECTOR-AT-LARGE**

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General Information

A fatal accident occurred at the American Bituminous Power Partners, LP Surface operation, O-1003-99, located near Barrackville, West Virginia in Marion County. Mr. Harlen R. Ott, age 63, was fatally injured while apparently attempting to dismount a dozer. Mr. Ott had been operating a D-4H Caterpillar dozer in an area where reclamation work was in progress. The dozer was being used to prepare the slope area surrounding the D-2 impoundment pond for re-seeding. Mr. Ott had approximately (30) thirty years experience as a mobile equipment operator, a total of (8) eight years mining experience and had worked at this site for approximately (11) eleven months.

The firm of Wilson & Wilson, Inc. was Mr. Ott's employer. The firm's application to receive a production contractor's permit had not been finalized at the time of the accident. Wilson & Wilson, Inc. was contracted by American Bituminous Power Partners, LP, O-1003-99. Quality Reclamation Services, LLC, O-1003-99-C and Coresco, Inc., O-1003-99-D, production contractors, were also working in the area at the time of the accident.

The accident was reported to the WV Office of Miners' Health, Safety and Training's Region One office at 3:45 p.m. on Friday, September 24, 2004 by Mr. Charles Piovarchy, superintendent of Quality Reclamation Services, LLC. WV Office of Miners' Health, Safety and Training inspectors Mr. Mark Wilfong and Mr. Barry Fletcher arrived at the accident site at approximately 5:15 p.m. The accident had been reported to the Mine Safety and Health Administration at approximately 11:55 a.m. on September 24, 2004.

American Bituminous Power Partners, LP, O-1003-99, was issued a permit on May 21, 2001.

Description

The day shift started at 6:00 a.m. on Friday, September 24, 2004 at the Barrackville Refuse site. Mr. Calvin Wilson, owner of Wilson & Wilson, Inc., Mr. Daniel Marva, dozer operator for Quality Reclamation Services, LLC and Mr. Harlen Ott, dozer operator for Wilson & Wilson, Inc. arrived at the location where the equipment was parked. After equipment pre-operational checks were performed, Mr. Marva went to a separate location where he was assigned to operate the dozer. Mr. Wilson was operating the dragline at the Silt Pond location and Mr. Ott trammed the dozer to the D-2 impoundment to prepare the area surrounding the impoundment for re-seeding. Work proceeded without incident throughout the morning. At approximately 9:00 a.m., Mr. Wilson left the Silt Pond and drove to the D-2 impoundment to check on Mr. Ott. Mr. Wilson stated that he spoke with Mr. Ott and Mr. Ott indicated everything was fine at that time. Mr. Wilson proceeded back to his work location at the Silt Pond.

Mr. Gerald Peacock, superintendent of Coresco, Inc., who was operating the water truck, passed by the D-2 impoundment at approximately 10:30 a.m. and observed Mr. Ott operating the dozer. Mr. Peacock returned to the D-2 impoundment at approximately 10:45 a.m. to refill the water truck. Mr. Peacock stated that he made non-verbal contact with Mr. Ott and Mr. Ott returned the gesture. Mr. Ott was operating the dozer and Mr. Peacock stated he did not observe anything out of the ordinary at that time.

Mr. Peacock drove approximately 100 yards from the location where Mr. Ott was operating the dozer to refill the water truck from the D-2 impoundment. During testimony given by Mr. Peacock, it was stated that it takes approximately 12 minutes to fill the water truck. Mr. Peacock started the pump for the refill process and stated he then observed Mr. Ott operating the dozer at that time. Mr. Peacock stated that when the filling process was approximately half completed, he observed the dozer parked or stopped in the haul road. He could not see if Mr. Ott was in the operator's seat. When the refill process was completed, Mr. Peacock drove immediately to the location where the dozer had stopped. Upon arrival, Mr. Peacock found Mr. Ott lying on his back on the haulroad between the left track and blade with his feet on the dozer's hydraulic jack cylinder. Mr. Peacock immediately got out of the water truck to assist Mr. Ott. Mr. Peacock stated that Mr. Ott had no pulse and had already turned blue. At that time, he called Mr. Marva on the C.B. and told him to contact Mr. Wilson and come to the accident scene immediately.

Mr. Peacock then used his cell phone to call 911 to request that an ambulance be sent to the Barrackville Refuse Site. Mr. Wilson and Mr. Marva arrived very shortly after Mr. Peacock made the 911 call. Mr. Marva and Mr. Wilson attempted to remove Mr. Ott from the area between the blade and the left track of the dozer. Mr. Ott's right rib cage area was caught or touching under a grouser bar of a track pad. Mr. Ott's feet were located on the left hydraulic jack cylinder. In order to remove Mr. Ott as gently as possible, it was decided that Mr. Wilson should back the dozer up a few inches as Mr. Marva pulled Mr. Ott away from the dozer.

Immediately after removing Mr. Ott, the Barrackville EMS arrived and attempted to resuscitate Mr. Ott. Mr. Dennis Wilson, Marion County Medical Examiner, pronounced Mr. Ott dead at 11:55 a.m. Mr. Ott's body was transported to Fairmont General Hospital by the Barrackville EMS.

Findings of Fact

The dozer operated by Mr. Harlen Ott at the time of the accident was a Caterpillar D-4H, Series II, LGP, Serial No.45V52227.

The approximate total weight of the D-4H dozer is 22,600 lbs.

The track pads on the D-4H dozer are 30 inches wide. The grouser bars on the track pads are approximately 1-3/4 inches high and 3/8 inches in width.

Evidence indicates the seat belts in the cab of the D-4H dozer were not being worn on the day of the accident.

Equipment examination forms were completed on 9-7-04, 9-20-04, 9-22-04, 9-23-04, and 9-24-04 with no defects reported. The WV Office of Miners' Health, Safety and Training and the Mine Safety and Health Administration conducted a joint inspection of the dozer on September 27, 2004. The inspection indicated the dozer was functioning as designed.

Testimony indicates the dozer was found stopped or parked on a level, graveled haulroad. The blade was nearly in a fully raised position. The fully raised position is approximately 49 inches from the ground to the bottom of the cutting edges. Testimony indicates the transmission was in neutral and the transmission/parking brake was not set or engaged. The engine was running at more than an idle speed.

The step located on top of the left hydraulic jack cylinder that is used to mount or dismount the track of the dozer, is approximately 24 inches off the ground when the blade is completely lowered.

Mr. Ott was found with his eyeglasses on and in place. Chewing gum was removed from his mouth.

An electrical examination of the area was conducted on September 24, 2004. No stray voltages (AC or DC), on the running machine in reference to earth ground was detected.

Air samples around the dozer, while the engine was operating were taken. All samples were in compliance/no detection.

Conclusion

Evidence indicates that Mr. Halen Ott received fatal injuries while apparently attempting to dismount a Caterpillar D-4 dozer on September 24, 2004.

Recommendations

All mobile equipment operators shall receive enhanced training in the following procedures.

- (a) All equipment, when equipped with a safety bar for automatic transmission, shall be set in the locked position before the operator leaves the cab.
- (b) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground.
- (c) Three points of contact shall be maintained by mobile equipment operators while boarding or unboarding mobile equipment.

Notice of Violations Issued

N.O.V. Title 36, Series 19, Section 7

Type of Issuance: Order issued to American Bituminous Power Partners, LP
Control order to preserve evidence on the access road to the water treatment pond and the surrounding area and the D-4H Caterpillar dozer.

Brian Mills had issued a verbal order on September 24, 2004 at 4:15 p.m.

N.O.V. Chapter 22A, Article 2, Section 63(e)

Type of Issuance: Notice of Violation issued to American Bituminous Power Partners, LP
Violation No.1

The firm of Wilson & Wilson, Inc. has been contracted to perform services on the permitted areas of the permit holder. The firm of Wilson & Wilson, Inc. does not hold a Certificate of Approval at this time. Wilson & Wilson, Inc. will not be allowed to perform any services on permitted areas until obtaining a Certificate of Approval from the West Virginia Office of Miners' Health, Safety and Training.

Note: Wilson & Wilson, Inc. was issued a permit on October 7, 2004.

N.O.V. Title 36, Series 19, Section 4(4.1)

Type of Issuance: Notice of Violation issued to American Bituminous Power Partners, LP
Violation No.2

The operator did not immediately notify the district inspector or Inspector-at-Large of an accident as defined in WV Code 36-19-3(3.2). The accident occurred at approximately 11:00 a.m. on September 24, 2004. The WV Office of Miners' Health, Safety and Training was not notified until approximately 3:45 p.m. on September 24, 2004.

- The following violations may have contributed to the accident.
- The following violations were issued to Wilson & Wilson, Inc. and American Bituminous Power Partners, LP.

N.O.V. Title 56, Series 3, Section 42.2(c)

Mr. Harlen Ott, dozer operator, was fatally injured on September 24, 2004. Testimony from three (3) people indicates the blade of the Caterpillar D-4H dozer that Mr. Ott had been operating was left in a nearly fully raised position. The dozer was found stopped or parked on a level graveled haulroad. Mr. Ott was found lying on his back on the haulroad between the raised blade and the left track of the dozer with his feet on the hydraulic jack cylinder. The fully raised position of the blade is approximately 49 inches from the ground to the bottom of the cutting edges.

N.O.V. Title 56, Series 3, Section 42.7 (c)

Mr. Harlen Ott, dozer operator, was fatally injured on September 24, 2004. Testimony indicates the safety bar for the automatic transmission of the Caterpillar D-4H dozer that Mr. Ott had been operating was not set in the locked position. The dozer was found stopped or parked on a level graveled haulroad. Mr. Ott was found lying on his back on the haulroad between the raised blade and the left track of the dozer with his feet on the hydraulic jack cylinder. Mr. Ott's right rib cage area was under a grouser bar of a track pad.

Acknowledgement


The West Virginia Office of Miners' Health, Safety & Training gratefully acknowledges the cooperation of the employees and management of American Bituminous Power Partners, LP, Coresco, Inc., Quality Reclamation Services, LLC, Wilson & Wilson, Inc. and the Mine Safety and Health Administration.



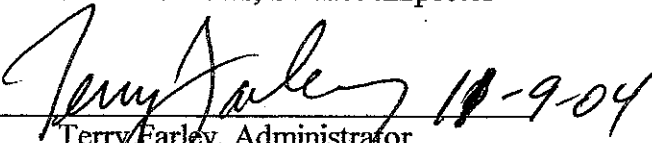
Brian Mills, Inspector-at-Large



Mark Wilfong, Asst. Inspector-at-Large



John Meadows, Surface Inspector



Terry Farley, Administrator

Appendix

- Victim Information
- Mine Information
- List of persons providing information or present during the investigation

VICTIM INFORMATION

NAME OF VICTIM Harlen R. Ott

ADDRESS Mannington, WV 26582

AGE 63 SOCIAL SECURITY NUMBER XXXXXXXXXXXX

TOTAL MINING EXPERIENCE 8 years

EXPERIENCE AT THIS MINE 11 months

OCCUPATION AT TIME OF ACCIDENT Dozer Operator

REGULAR OCCUPATION Dozer Operator

AVERAGE NUMBER OF HOURS WORKED PER WEEK 10 to 40 hours

AVERAGE NUMBER OF HOURS WORKED PER DAY 8 hours

TRAVEL TIME TO AND FROM WORK 30 minutes

AVERAGE NUMBER OF DAYS WORKED PER WEEK 1 to 5 days

NORMAL HRS. WORKED PER SHIFT – 8 HR., 10 HR., ETC. 8 hours

COAL MINER'S CERTIFICATION None

OTHER CERTIFICATIONS None

SPOUSE'S NAME XXXXXX

DEPENDENTS None

DATE OF ACCIDENT 24th DAY OF September, 2004

AT 11:00 O'CLOCK a.m.

MINE INFORMATION

COMPANY: American Bituminous Power Partnerships, LP

MINE: Barrackville Refuse Site

ADDRESS: P.O. Box 159, Grant Town, West Virginia 26574

COUNTY: Marion County

DATE PERMIT ISSUED: May 21, 2001

LOCATION: Barrackville, West Virginia

UNION / NON-UNION: Non-Union Mine

WV OMHS&T INSPECTOR: John G. Lucas No.63

DATE OF LAST INSPECTION: May 25, 2004

NOTIFIED BY: Charles Piovarchy

TIME/DATE OF NOTIFICATION: 3:45 p.m. on September 24, 2004.

Investigation / Interviews

An on-site investigation was conducted on September 24, 2004 at the American Bituminous Power Partners, LP Barrackville Refuse operation.

WV Office of Miners' Health, Safety & Training

Mark Wilfong	Asst. Inspector-at-Large
Barry Fletcher	District Inspector

Quality Reclamation Services, LLC

Charles Piovarchy	Superintendent
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Coresco, Inc.

Gerald Peacock	Consultant
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Wilson & Wilson, Inc.

Esta C. Wilson	Owner
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- The Mine Safety and Health Administration conducted an on-site investigation earlier in the day.

An on-site investigation and interviews were conducted on September 27, 2004 at the American Bituminous Power Partners, LP Barrackville operation.

- Denotes persons also interviewed.

WV Office of Miners' Health, Safety & Training

Terry Farley	Administrator
Brian Mills	Inspector-at-Large
Mark Wilfong	Asst. Inspector-at-Large
John Meadows	Surface Inspector

Mine Safety & Health Administration

Ron Marrara	CMI Surface Inspector
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American Bituminous Power Partners, LP

Brad Christopher	Supervisor
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Investigation / Interviews continued

Coresco, Inc.

* Gerald Peacock Consultant

Quality Reclamation Services, LLC

* Charles Piovarchy Superintendent
* Daniel Marva Dozer Operator

Wilson & Wilson, Inc.

* Esta C. Wilson Owner
Ernest Wilson Secretary/Treasurer

An on-site investigation was conducted on September 29, 2004 at the American Bituminous Power Partners LP Barrackville Refuse operation.

WV Office of Miners' Health, Safety & Training

Brian Mills Inspector-at-Large
Mark Wilfong Asst. Inspector-at-Large
John Meadows Surface Inspector

Mine Safety & Health Administration

Ron Wyatt Supervisor
Ronald Marrara CMI Surface Inspector

American Bituminous Power Partners, LP

Brian Corley Site Coordinator (Edison Mission
Oper & Maint In)
Brad Christopher Supervisor

Wilson & Wilson, Inc.

Esta Calvin Wilson Owner

Investigation / Interviews continued

An on-site investigation was conducted on September 30, 2004 at the American Bituminous Power Partners, LP Barrackville Refuse operation.

WV Office of Miners' Health, Safety & Training

Mark Wilfong	Asst. Inspector-at-Large
John Meadows	Surface Inspector

Mine Safety & Health Administration

Ronald Marrara	CMI Surface Inspector
Michael Shaughnessy	Mechanical Engineer

American Power Partners, LP

Brad Christopher	Supervisor
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Quality Reclamation Services, LLC

Charles Piovarchy	Superintendent
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Wilson & Wilson, Inc.

Esta C. Wilson	Owner
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IF-O18
Revised 11-02

STATE OF WEST VIRGINIA

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

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region ONE
Case No. 150-054
Violation No. 1

NOTICE OF VIOLATION

Company / Operator American Bituminous Power Partners LP Contractor: Yes No
Permit Number 0-1003-99 Mine Name BARRACKVILLE REFUSE SITE
Date of Issue 9-27 2004 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, Chapter 22A, Article 2, Section 63(E) and/or West Virginia Administrative Regulation: Title _____, Series _____, Section _____ exists as follows:

The Firm of Wilson & Wilson Inc. has been contracted to perform services on the permitted areas of the permit holder. The Firm of Wilson & Wilson Inc. does not hold a certificate of approval at this time. Wilson & Wilson Inc. will not be allowed to perform any other services until obtaining a certificate of approval from the 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 9 a.m. p.m. on 10-8 2004
The foregoing violation was totally abated by _____ a.m. p.m. on _____ 20____

Action taken to abate the violation: _____

Company / Operator Agent Served: BRAD CHRISTOPHER

Authorized Representative: Mark Wilford Inspector No. 150

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%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

IF-O18
Revised 11-02

STATE OF WEST VIRGINIA

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

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region ONE
Case No. 150-054
Violation No. 2

NOTICE OF VIOLATION

Company / Operator American Bituminous Power Partners LP Contractor: Yes No X
Permit Number D-1003-99 Mine Name BARRACKVILLE REFUSE SITE
Date of Issue 9-27 2004 Time 4:00 A.M. X 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 4 (4.1) exists as follows:

The operator did not immediately notify the District Inspector or Inspector at Large of an accident as defined in WV Code 36-19-3 (3.2). The accident occurred at approximately 11:00 AM on 9-24-04. The WV Office of Miners Health Safety and Training was not notified until approximately 3:45 PM on 9-24-04.

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

The foregoing violation shall be totally abated by 1100 a.m. p.m. on 10-20 2004
The foregoing violation was totally abated by a.m. p.m. on 20
Action taken to abate the violation:

Company / Operator Agent Served: Brad Christopher

Authorized Representative: Mark Wilfong Inspector No. #150

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

IF - 019
Revised 6/02

State of West Virginia
Office of Miners' Health, Safety and Training
1615 Washington Street, East
Charleston, West Virginia 25311-2126

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

Region ONE
Case No. 150-054

INSPECTION OF VIOLATION

Good faith in abatement: Lack of good faith (+15%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

Violation Number 1 was/is hereby totally abated by 10-7, 20 04
3 a.m. 3 p.m., extended to _____, 20 _____, modified to _____
Order, _____ Withdrawn.

Action taken to abate the violation: The Firm of Wilson & Wilson Inc. has obtained a Certificate of Approval from the Office of Miners Health Safety and Training

Good faith in abatement: Lack of good faith (+15%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

Violation Number 2 was/is hereby totally abated by 10-19, 20 04
_____ a.m. _____ p.m., extended to _____, 20 _____, modified to _____
Order, _____ Withdrawn.

Action taken to abate the violation: 3/6-19 Accident Reporting was explained to operator

Good faith in abatement: Lack of good faith (+15%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

Violation Number _____ was/is hereby _____ totally abated by _____, 20 _____
_____ a.m. _____ p.m., extended to _____, 20 _____, modified to _____
Order, _____ Withdrawn.

Action taken to abate the violation: _____

Good faith in abatement: Lack of good faith (+15%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

Violation Number _____ was/is hereby _____ totally abated by _____, 20 _____
_____ a.m. _____ p.m., extended to _____, 20 _____, modified to _____
Order, _____ Withdrawn.

Action taken to abate the violation: _____

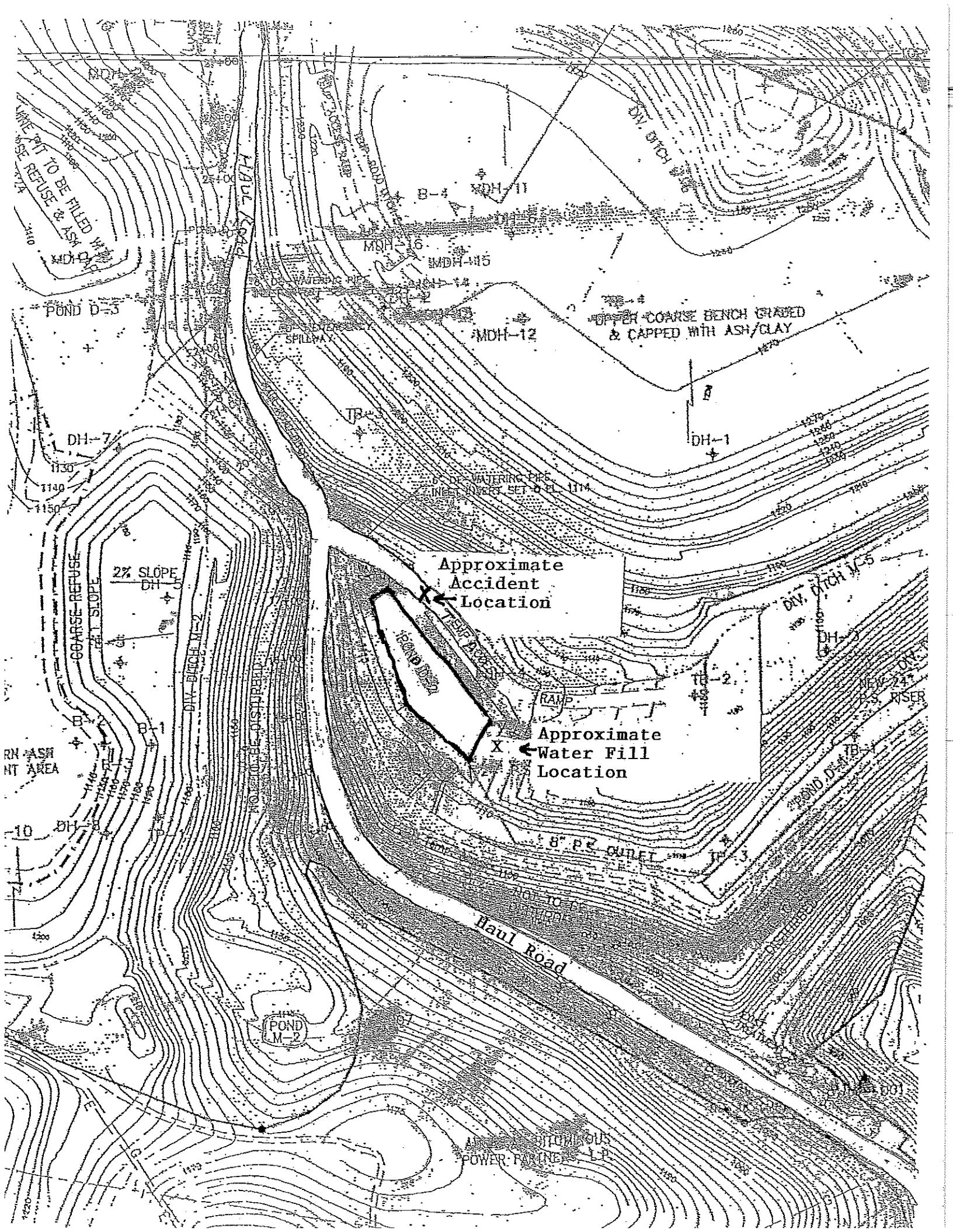
Good faith in abatement: Lack of good faith (+15%) _____

No compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

Violation Number _____ was/is hereby _____ totally abated by _____, 20 _____
_____ a.m. _____ p.m., extended to _____, 20 _____, modified to _____
Order, _____ Withdrawn.

Action taken to abate the violation: _____

Company/Operator Agent served: Basel Christopher Date: 10-19, 20 04
Authorized Representative: Mark Wilfong Inspector Number 150



Approximate Accident Location

Approximate Water Fill Location

Haul Road

ALUMINUM POWER PARTS

WIRE PIT TO BE FILLED WITH COARSE REFUSE & ASH/CLAY

UPPER COARSE BENCH GRADED & CAPPED WITH ASH/CLAY

2% SLOPE

RN ASH MNT AREA

POND M-2

POND D-2

POND D-3

POND D-4

POND D-5

POND D-6

POND D-7

POND D-8

POND D-9

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