
West Virginia Office of Miners' Health, Safety and Training

February 5, 2004

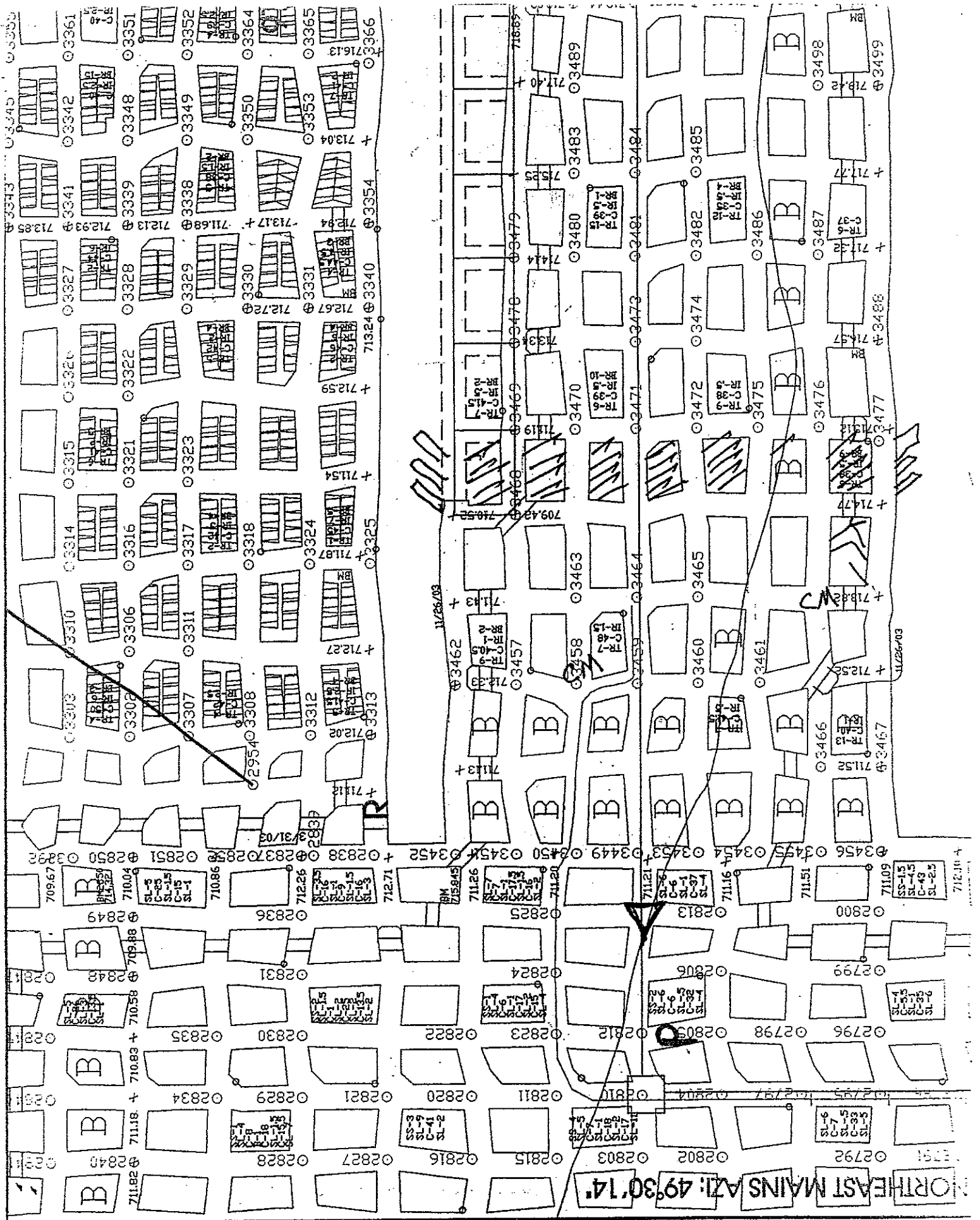
Underground Mine Fatality Investigation Report
Spartan Mining Company
Ruby Energy Mine
Permit No. U-5019-96-A

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

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NORTHEAST MAINS AZI: 49°30'14"



**SPARTAN MINING COMPANY
RUBY ENERGY #2 SECTION**

KENNETH McNEELEY - ELECTRICIAN

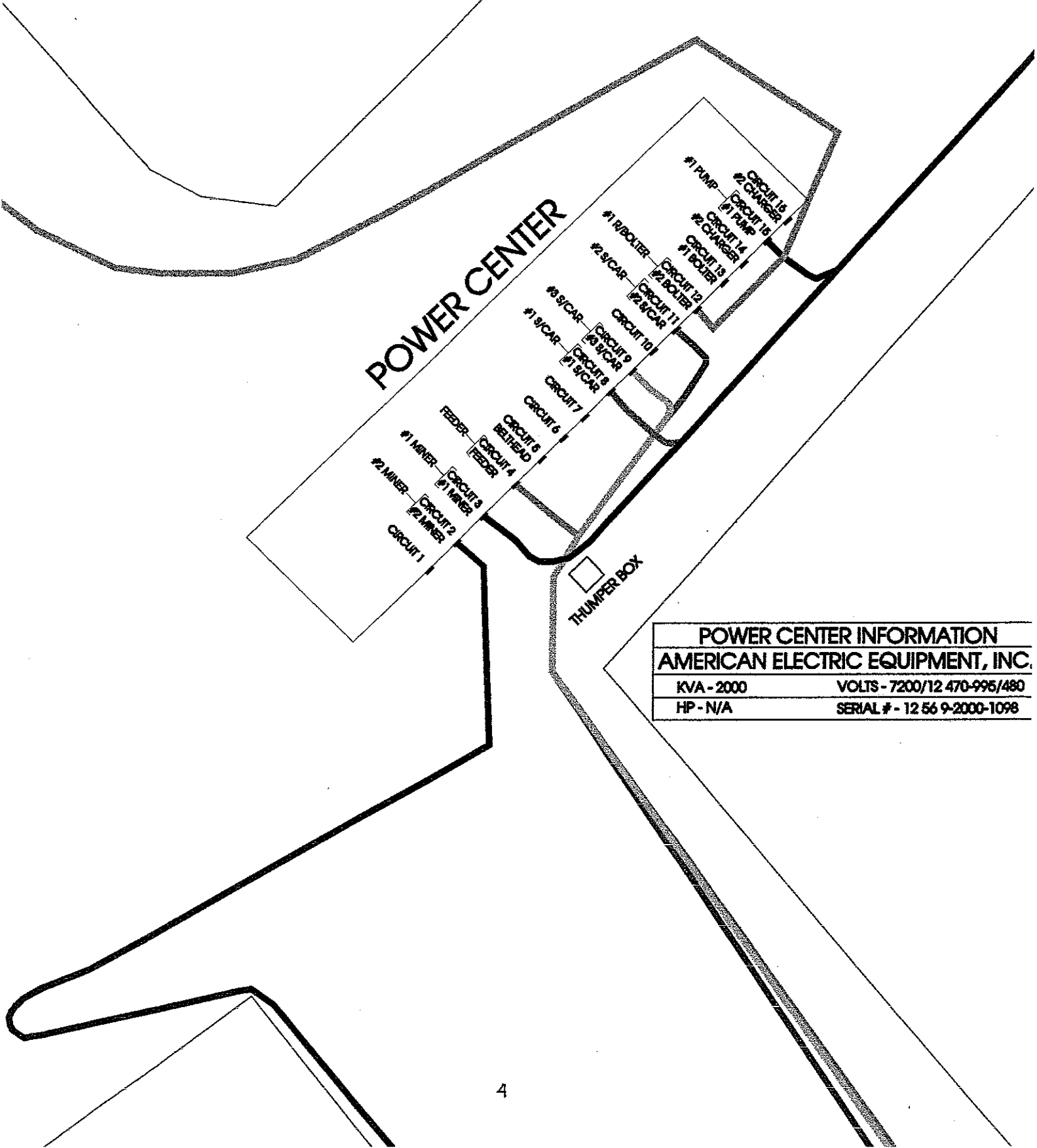
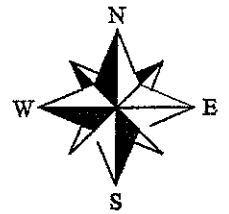
**FATAL INVESTIGATION
DATE: FEB. 5, 2004**

DEPT. MINES NO. - U-5019-96

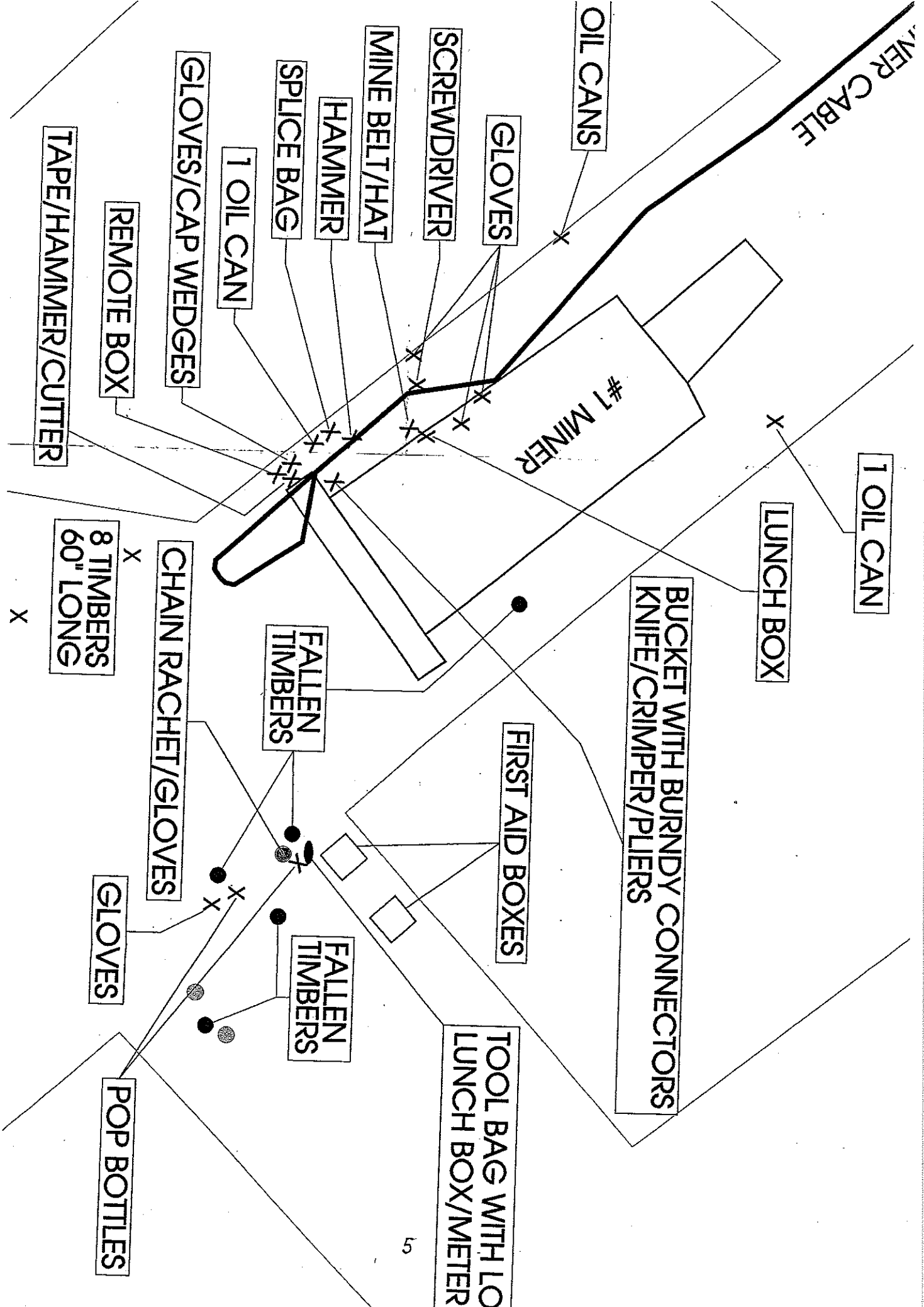
M.S.H.A. NO. - 46-08808

MMU - 001

SCALE: 1"=5'



POWER CENTER INFORMATION	
AMERICAN ELECTRIC EQUIPMENT, INC.	
KVA - 2000	VOLTS - 7200/12 470-995/480
HP - N/A	SERIAL # - 12 56 9-2000-1098



MINNER CABLE

OIL CANS

GLOVES

SCREWDRIVER

MINE BELT/HAT

HAMMER

SPLICE BAG

1 OIL CAN

GLOVES/CAP WEDGES

REMOTE BOX

TAPE/HAMMER/CUTTER

#1 MINNER

1 OIL CAN

LUNCH BOX

BUCKET WITH BURNDY CONNECTORS
KNIFE/CRIMPER/PLIERS

FIRST AID BOXES

TOOL BAG WITH LO LUNCH BOX/METER

FALLEN TIMBERS

FALLEN TIMBERS

CHAIN RACHET/GLOVES

8 TIMBERS
60" LONG

GLOVES

POP BOTTLES

Underground Mine Fatality Investigation Report
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Permit No. U-5019-96-A

GENERAL INFORMATION

A fatal electrical accident occurred at approximately 1:20 p.m. on February 5, 2004 at the Spartan Mining Company, Ruby Energy Mine, located near Delbarton in Mingo County. Mr. Kenneth A. McNeely, age 33, of Delbarton, WV was electrocuted while making repairs to a continuous mining machine trailing cable. The electrical circuit had not been locked out before the trailing cable repair was started. McNeely had approximately six and a half years of mining experience and had been employed at this mine for one year. McNeely was classified as an electrician and had obtained his electrical certification on June 19, 1999.

The Office of Miners' Health, Safety and Training received notification from Massey Coal Services Manager of Safety, Frank Foster, at 2 p.m. on the same day. A joint investigation with the Mine Safety and Health Administration (MSHA) was started immediately.

The Spartan Mining Company, Ruby Energy Mine was issued a permit to commence operations on November 4, 1999. The mine currently employs 43 people on three shifts. Room and pillar methods are used to mine coal from the Lower Cedar Grove seam. One super section is being operated.

DESCRIPTION

The 002 section crew under the direction of section foreman, Gilbert W. Sada entered the mine at their regular starting time of 7 a.m. They arrived on the 002 section at approximately 7:15. The left side continuous mining machine operated by James Hatfield started mining in the no. 4 entry at 7:35 a.m. Mining continued in the no. 3, no. 2, and no. 1 entries as the day progressed. The left side continuous mining machine was then moved back to the no. 3 entry for servicing. (See location on page 3) The men finished servicing the continuous mining machine at approximately 1 p.m. Electrician, Kenneth McNeely, Hatfield, Sada, and shuttle car operator, Kenneth Collins did the servicing. According to Hatfield and Collins, McNeely left the continuous mining machine when the servicing was finished.

Sada then instructed Hatfield to move the continuous mining machine to the no. 4 entry. Hatfield moved the continuous mining machine forward approximately two feet. One of the bit lugs on the continuous mining machine's ripper head struck the machine's trailing cable. This occurred at approximately 1:04-1:05 p.m., and power to the machine was immediately de-energized. It was also apparent that the power to other equipment had been de-energized along with the section power center. Ventilation to the mine was also interrupted at the same time. (See Appendix pages 18-20)

Sada left the continuous mining machine and went to the mine phone located at the section dumping point. Sada called outside to speak with mine superintendent, Steve Neece, who indicated that all underground power and the mine fan were out.

After Sada left the continuous mining machine Hatfield and Collins attempted unsuccessfully to remove the trailing cable from beneath the machine's ripper head. Collins then walked approximately six cross-cuts outby to the section belt head to find the scoop to assist in removing the trailing cable from beneath the machine's ripper head. Collins found scoop operator Charles Smith near the section belt head, and Smith immediately brought the scoop to the continuous mining machine location. The scoop bucket was then used to bump the ripper head dislodging the cable.

When interviewed Sada stated that as he was leaving to go to the section phone at the dumping point, he saw McNeely sitting in the battery powered vehicle he routinely used in the first cross-cut outby the continuous mining machine between no. 2 and no. 3 entries. Collins, who left shortly after Sada, stated that he saw McNeely's vehicle parked between spad numbers 2812 and 2823 in a cross-cut near the section belt head. Chief electrician, Sonny Vance, who was underground with OMHST electrical inspector, Don Crawford, stated that he clearly heard McNeely speaking on the mine phone approximately three minutes after the power outage. Sada also stated that McNeely was in the same cross-cut outby the continuous mining machine when he returned after walking to and from the section phone located at the dumping point.

While standing on the outby side of the continuous mining machine, Sada heard Hatfield say that the trailing cable's outer insulation was not damaged. Sada stated that he had a brief conversation with McNeely before leaving again to travel across the section to the right to inform others that the power and fan were out. Sada stated that during his conversation with McNeely he told him that they had fifteen minutes before they would have to leave the mine. Sada also stated that he did not instruct McNeely to examine the continuous mining machine trailing cable or perform any electrical work. Sada then traveled to the right and across the section returning to the section phone located at the dumping point.

Hatfield, Collins and Smith stated that McNeely came to the continuous mining machine after Sada left for the second time. McNeely took out his knife and began cutting into the trailing cable insulation. Hatfield and Collins stated that they assumed that McNeely had locked out and tagged the trailing cable at the section power center.

While waiting at the section phone at the dumping point Sada felt air movement indicating that the mine fan had been re-started. Within a minute or two Sada heard the section power center also start up again. Sada then went to the power center and began re-energizing (engaging breakers) section equipment. Sada stated that he "set the left side continuous mining machine breaker and it felt like it went in and tripped". Sada did not attempt to reset this breaker. As Sada continued to reset other breakers, Collins arrived and said that McNeely did not want the left side continuous mining machine energized. At about this time Sada and Collins heard people calling for help from the direction of the face area.

Sada, Collins and other members of the crew went immediately to the left side continuous mining machine. Hatfield and EMT Jerry Vance performed CPR. McNeely was then transported on the battery-powered vehicle to the end of the track and from there by track mounted vehicle to the surface. Stat Ambulance Service had arrived at 1:35 p.m. and was waiting when McNeely was brought to the surface. McNeely was transported to Williamson Memorial Hospital where he was pronounced dead on arrival.

FINDINGS OF FACT

1. All underground power including the power to the mine fan de-energized to a re-closure switch located at the preparation plant at or about the same time the left side continuous mining machine trailing cable on the 002 section was damaged.
2. According to the mine carbon monoxide sensor database located in the mine office the power outage occurred at 1:04 p.m.
3. Underground and mine fan power were restored at 1:18 p.m.
4. The victim (Kenneth McNeely) did not lock-out and tag the 995 volt AC continuous mining machine cable before starting cable splice.
5. Section foreman, Gilbert W. Sada, was not aware that electrical work on the continuous mining machine was in progress.
6. Sada reset the power to the section equipment prior to examining the face regions after the fan outage.

CONCLUSION

The victim was performing electrical repairs on a trailing cable, and the power source had not been suitably locked out and tagged. The accident occurred when the circuit was energized by the victim's supervisor who was unaware that electrical work was in progress.

ENFORCEMENT ACTION

The following enforcement action was 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 two (2) notices of violations was issued during this investigation. One (1) was considered to have contributed to the accident and is listed below. Also one (1) Individual Personal Assessment was issued.

Chapter 22A, Article 2, Section 40(19): During a fatal investigation it was revealed that the victim (Kenneth McNeely) while making a cable splice on the 995 volt AC No.1 Joy Continuous miner serial # (JM4902) operating on the left side of the 002 section did not **lock and tag** out the disconnecting device prior to performing work.

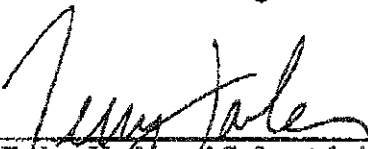
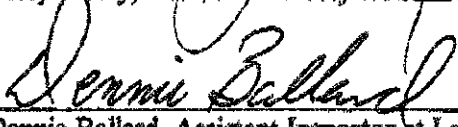

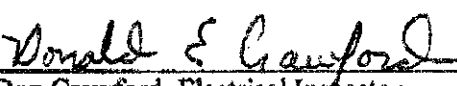
RECOMMENDATIONS

Spartan Mining Company, Ruby Energy mine is committed to the safety of its members. Notwithstanding this commitment to safety, on February 5, 2004, the mine suffered a fatal accident when an electrician was electrocuted during repairs to a miner cable that was not tagged and locked out. To prevent a reoccurrence of this accident, Ruby Energy will undertake the following remedial measures, some of which are beyond State and Federal mine safety requirements:

1. Re-train all employees of the mine on lock and tag out procedures.
2. Reinspect all employees on procedure for fan outage.
3. Instruct all employees that before resetting breakers, communication will be made to ensure that it's safe to do so.

ACKNOWLEDGMENT

The West Virginia Office of Miners' Health, Safety & Training gratefully acknowledges the cooperation of the employees and management of Spartan Mining Co. and the Mine Safety and Health Administration during this investigation.

	3-22-04
Terry Farley, Health and Safety Administrator	Date
	3-29-04
Dennie Ballard, Assistant Inspector at Large	Date
	3/31/04
Eugene White, Accident Investigator	Date
	3-26-04
Don Crawford, Electrical Inspector	Date

APPENDIX

- Mine Information Sheet
- Victim Information Sheet
- Supplemental Information
- Persons Present During Investigation
- Probable Cause: Loss of Power to Mine Fan

MINE INFORMATION

COMPANY Spartan Mining Company

MINE NAME Ruby Energy

WV PERMIT U-5019-96-A

ADDRESS P. O. Box 750 Matewan, WV 25678

COUNTY Mingo

DATE PERMIT ISSUED November 4, 1999

WORKING STATUS Active

LOCATION 2.5 miles north of Delbarton, WV on Rt. 65

UNION _____ NON-UNION X

DAILY PRODUCTION 3,500 raw tons ANNUAL PRODUCTION TO DATE 105,646 tons

TOTAL EMPLOYEES 43

NUMBER OF SHIFTS 2 production, 1 maintenance

COAL SEAM NAME AND THICKNESS Lower Cedar Grove, 48 inches to 72 inches

ACCIDENT INCIDENT RATE 0.00 LOST TIME ACCIDENTS 0

TYPE OF HAULAGE Belt

WVOMHST INSPECTOR Lee Sipple

DATE OF LAST INSPECTION January 27, 2004

NOTIFIED BY Frank Foster

NOTIFICATION February 5, 2004 at 2:00 p.m.

CMSP-ANNIVERSARY DATE December 9, 2004

CMSP-CONTACT PERSON Tim Rutherford

VICTIM INFORMATION

NAME Kenneth A. McNeely

ADDRESS Rt. 1, Box 72 Delbarton, WV 25670

TELEPHONE NO. (304) 475-4373 AGE 33 SOCIAL SECURITY NO. [REDACTED]-2124

TOTAL MINING EXPERIENCE 6.5 yrs. EXPERIENCE AT THIS MINE 1 yr.

AVERAGE NUMBER OF DAYS WORKED PER WEEK 6

AVERAGE NUMBER OF HOURS WORKED PER WEEK 54 PER DAY 9

LENGTH OF SHIFTS AT THIS MINE 9 hrs. TRAVEL TIME TO/FROM WORK 5 min.

OCCUPATION AT TIME OF ACCIDENT Electrician

REGULAR OCCUPATION Electrician

COAL MINER'S CERTIFICATION 3-12823

OTHER CERTIFICATIONS 3-71 (electrical)

SPOUSE'S NAME Natasha

DEPENDENTS 2

DATE OF ACCIDENT 5th DAY OF February 2004

AT 1:20 O'CLOCK p.m.

CAUSE OF ACCIDENT: The victim was performing electrical repairs on a trailing cable, and the power source had not been suitably locked out and tagged. The accident occurred when the circuit was energized by the victim's supervisor who was unaware that electrical work was in progress.

DATE OF DEATH: 5th DAY OF February 2004

SUPPLEMENTAL INFORMATION

Mr. McNeely received annual refresher training on November 1, 2003. Electrical retraining for Mr. McNeely was held June 14, 2003.

INVESTIGATION

The following persons were present during the onsite investigation conducted on February 5, 2004.

SPARTAN MINING COMPANY

Steve Neece	Mine Superintendent
Eugene Vance	Mine Foreman
Sonny Vance	Chief Electrician

DELBARTON MINING COMPANY

Macs Hall	President
Forrest Sammons	Safety Director

MASSEY COAL SERVICES

Drexel Short	President
Frank Foster	Manager of Safety
Keith Hainer	Assistant Maintenance Manager
Shane Harvey	Attorney

SPILLMAN, THOMAS & BATTLE

Mark Heath	Attorney
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MINE SAFETY AND HEALTH ADMINISTRATION

Jim Humphrey	Accident Investigator
Larry Cook	Electrical Inspector
Marcus Smith	Electrical Inspector

OFFICE OF MINERS' HEALTH, SAFETY & TRAINING

Dennie Ballard	Assistant Inspector-at-Large
Eugene White	Accident Investigator
Lee Sipple	District Inspector
Don Crawford	Electrical Inspector

INVESTIGATION

The following persons were present during the onsite investigation conducted on February 6, 2004.

SPARTAN MINING COMPANY

Steve Neece	Mine Superintendent
Sonny Vance	Chief Electrician

DELBARTON MINING COMPANY

Forrest Sammons	Safety Director
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MASSEY COAL SERVICES

Frank Foster	Manager of Safety
Keith Hainer	Assistant Maintenance Manager

MINE SAFETY AND HEALTH ADMINISTRATION

Jim Humphrey	Accident Investigator
Marcus Smith	Electrical Inspector
Wayne Carey	Tech Support

OFFICE OF MINERS' HEALTH, SAFETY & TRAINING

Terry Farley	Health & Safety Administrator
Dennie Ballard	Assistant Inspector-at-Large
Eugene White	Accident Investigator
Dan Crawford	Electrical Inspector

INTERVIEWS

The following persons were present during interviews conducted on February 7, 2004.

SPARTAN MINING COMPANY

Steve Neece *	Mine Superintendent
Gilbert Sada *	Foreman
Keith Sturgill *	Foreman (Evening)
Jamie Hatfield *	Continuous Miner Operator, EMT
Kenneth Collins *	Shuttle Car operator
Jerry Vance *	Supply man, EMT

* Denotes those interviewed

DELBARTON MINING COMPANY

Macs Hall
Forrest Sammons

President
Safety Director

MASSEY COAL SERVICES

Frank Foster
Shane Harvey

Manager of Safety
Attorney

SPILLMAN, THOMAS & BATTLE

Mark Heath

Attorney

MINE SAFETY AND HEALTH ADMINISTRATION

Ray Saunders
Jake Blevins
Jim Humphrey
Wayne Carey
Marcus Smith
Dennis Holbrook

Supervisor
Supervisor
Accident Investigator
Tech Support
Electrical Inspector
Coal Mine Inspector

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Terry Farley
Dennie Ballard
Eugene White
Eon Crawford

Health & Safety Administrator
Assistant Inspector at Large
Accident Investigator
Electrical Inspector

INTERVIEWS

The following persons were present during interviews conducted on February 10, 2004

SPARTAN MINING COMPANY

Steve Neece
Sonny Vance *

Mine Superintendent
Chief Electrician

DELBARTON MINING COMPANY

Daniel Wallace *

Electrician

* Denotes those interviewed

MASSEY COAL SERVICES

Shane Harvey	Attorney
Frank Foster	Manager of Safety
Darvin Spencer	Maintenance Manager
Keith Hainer	Assistant Maintenance Manager

MINE SAFETY AND HEALTH ADMINISTRATION

Jim Humphrey	Accident Investigator
Marcus Smith	Electrical Inspector

OFFICE OF MINERS' HEALTH, SAFETY & TRAINING

Terry Farley	Health and Safety Administrator
Dennie Ballard	Assistant Inspector-at-Large
Don Crawford	Electrical Inspector

INTERVIEWS

The following persons were present during interviews conducted on February 23, 2004.

SPARTAN MINING COMPANY

Sonny Vance *	Chief Electrician
Gilbert Sada *	Foreman
Jamie Hatfield *	Continuous miner operator
Kenneth Collins *	Shuttle Car Operator
Charles Smith *	Supply man

*Denotes those interviewed

DELBARTON MINING COMPANY

Macs Hall	President
Forrest Sammons	Safety Director

MASSEY COAL SERVICES

Frank Foster	Manager of Safety
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SPILLMAN, THOMAS & BATTLE

Mark Heath	Attorney
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MINE SAFETY AND HEALTH ADMINISTRATION

Jim Humphrey
Marcus Smith
Timothy Bowen

Accident Investigator
Electrical Inspector
Coal Mine Inspector

OFFICE OF MINERS' HEALTH, SAFETY & TRAINING

Terry Farley
Dennie Ballard

Health and Safety Administrator
Assistant Inspector at Large

PROBABLE CAUSE: LOSS OF POWER TO MINE FAN

Refer to figure 1:

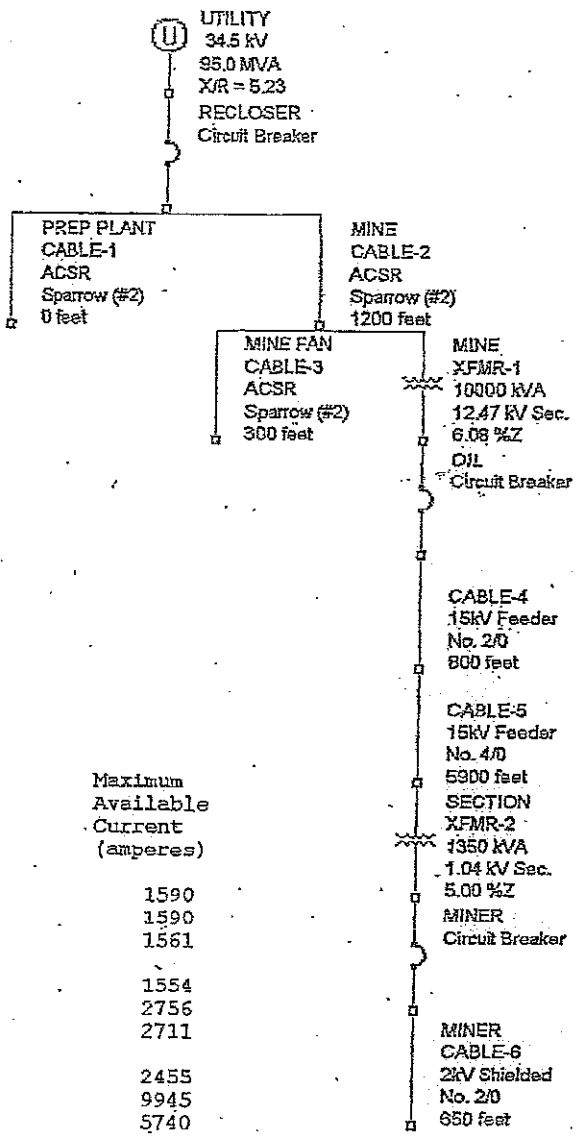
When the line-to-line short circuit occurred on the miner trailing cable, the miner circuit breaker, the oil circuit breaker, and the re-closer opened. The miner circuit breaker is the only one that should have opened.

The "MSHA, short circuit" computer program was used to determine the magnitude of the short circuit current flowing through each circuit breaker when the short circuit occurred. Peak loading data from the utility record and the observed load distributions at the mining complex were used to estimate the load currents flowing through each circuit breaker. These currents were summed to get total current through each circuit breaker at the time of the fault. The total current through each circuit breaker was compared to the trip setting of the circuit breaker to determine trip status. The response time of each circuit breaker was obtained from appropriate technical publications.

The data accumulated is shown in table 1. The data supports these statements:

- (1) The Miner circuit breaker probably tripped because the total current through it (4061 amps) exceeded its trip setting of 1500 amperes.
- (2) The oil circuit breaker did not trip because the total current through it (375 amps) did not exceed its trip setting of 945 amperes. The oil circuit breaker probably tripped from the under-voltage condition created when the re-closer opened.
- (3) The re-closer probably tripped because the total current through it exceeded its trip setting of 140 amperes.
- (4) At the calculated current levels, the re-closer should not have tripped if the miner circuit breaker tripped in 0.02 seconds and the time characteristic of the re-closer control corresponds to published data.

FIGURE 1



Bus ID	Minimum Available Current (amperes)	Maximum Available Current (amperes)
UTILITY	1308	1590
CABLE-1	1308	1590
CABLE-2	1283	1561
CABLE-3	1277	1554
XFMR-1	2266	2756
CABLE-4	2225	2711
CABLE-5	1997	2455
XFMR-2	7750	9945
CABLE-6	4061	5740

BUS KILOVOLT	CIRCUIT BREAKER	FAULT CURRENT AMPERES	LOAD CURRENT AMPERES	TOTAL CURRENT AMPERES	TRIP SETTING AMPERES	RESPONSE TIME SECONDS	TRIP
34.5	RE-CLOSER	122	66*(2)	188*	140	.06	Possible (1)
12.47	OIL	339	36*(2)	375*	945	NO RESPONSE	NO
1.04	MINER	4061	4061	4061	1500	.02	YES

*Estimated value

(1) The time margin between the re-closer and the miner circuit breaker is not sufficient to preclude tripping of the recloser.

(2) Load current distribution based on 79 amperes @ 34.5 KV

NORMAL CIRCUIT

12 Amperes

26 Amperes

41 Amperes

FAN

UNDERGROUND

SURFACE

FAULTED CIRCUIT

12 Amperes

13 Amperes

41 Amperes

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 2
Case No. 014-0570
Violation No. 1

NOTICE OF VIOLATION

Company / Operator Seaton Mining Company Contractor: Yes No
Permit Number 11-5019 96-A Mine Name RUBENSON
Date of Issue 3/01/11 2011 Time 1:15 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 22A, Article 2, Section 3(a) and/or West Virginia Administrative Regulation: Title _____, Series _____, Section _____ exists as follows:

DURING A FATAL INVESTIGATION IT WAS REVEALED THE SECTION FOREMAN DID NOT RE-EVALUATE THE TAIL DRUMS AND OTHER EFFECTS. AFTER A TAN SINGAPORE'S STATE TO EVACUATING THE TAIL EQUIPMENT ON THE ACTUAL END. SIGNED

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 _____ 2011

The foregoing violation was totally abated by 12 a.m. 2:19 p.m. on 20 11

Action taken to abate the violation: Safety meeting held with all employees discussed behavior of machine for safety, additional power outage procedure, and procedures for putting in work.

Company / Operator Agent Served Superv. Vandy

Authorized Representative: Blanche White Inspector No. 179

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%) 0

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

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

Notice of Individual Violation

Case Number 079-0599

Name of person charged Gilbert William Sada Social Security Number [REDACTED]-5324

Address: Rt Box 128, Delbarton, WV 25670

Home phone number: [REDACTED] Certification number: 37296-01

Applicable type of certification: 37296-01

Name of mine operator/company SPARTAN MINING COMPANY Mine: Ruby Energy

Date: 3/1, 2004 Time 4 pm A.M. P.M.

Location of violation: Active # 002 SECTION

Notice is hereby given that you have been found in violation of the following: West Virginia Code,

Chapter 22A, Article 1, Section 21(A-3) and/or Administrative Regulation _____

Title _____, Series _____, Section _____ in that you were: _____

DURING A FATAL INVESTIGATION IT WAS REVEALED YOU DID NOT RE-EXAMINE THE FACE REGIONS AND OTHER EFFECTED AREAS OF THE 002 SECTION AFTER A FAN STOPPAGE, PRIOR TO ENERGIZING THE FACE EQUIPMENT
22A-2-3(a)

Proposed Order of Assessment

Likelihood of occurrence: Unlikely (0) _____ Reasonably likely (10) _____ Occurred (20) X

Severity of injury normally expected: None (0) _____ No lost work days (5) _____

Lost workdays/restricted days (10) _____ Permanently disabled (15) _____ Fatal (20) X

Number of persons potentially affected: 0 (0) _____ 1 (5) X 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: Eugene White #79

Assessment Officer: _____

Assessment Review Officer: _____

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 3
Case No. 074-0547
Violation No. 1

NOTICE OF VIOLATION

Company / Operator Location, Mining Company Contractor: Yes No

Permit Number 11-15019 9/6-A Mine Name Rubid Mountain

Date of Issue 3/01/04, 20 04 Time 1:50 A.M. P.M.

Notice is hereby given that the undersigned authorized representative of the Director of the Office of Miners' Health, Safety and Training, upon making an inspection of this mine finds that the violation referred to in West Virginia Code, Chapter 22A, Article 2, Section 40(19) and/or West Virginia Administrative Regulation: Title , Series , Section exists as follows:

During a fatal investigation it was revealed that the victim Kenneth McNeill while making a cable splice on the 095 Volt AC. No. 1 fan continuous miner (serial # 5A 4902) operating on the left side of the 065 section did not lock and tag out the disconnecting device prior to performing work.

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 12 a.m. p.m. on 2/19 20 04

Action taken to abate the violation: Lockout procedure held with all employees. Discussed lockout procedure. Both parties procedure. Some safety procedure procedure for putting in breaker.

Company / Operator Agent Served: ESU MR. Vance

Authorized Representative: Esmond White Inspector No. #79

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: YES

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%)