

**West Virginia Office of Miners' Health, Safety and Training**

**May 16, 2024**

**Report of Fatality  
Mobile Equipment  
Ejected from Excavator**

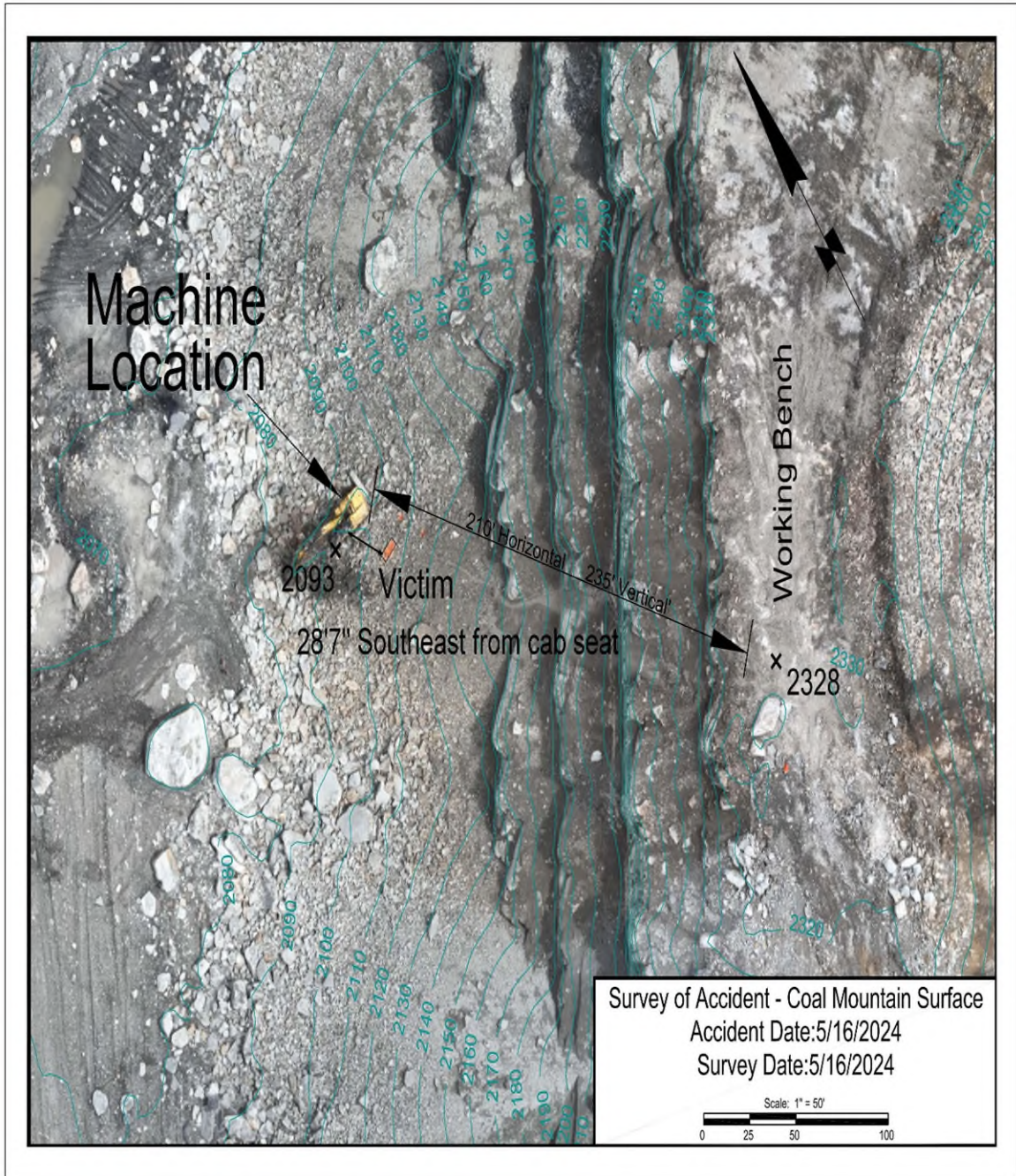
**CM Energy Operations, LP  
Coal Mountain No. 1 Surface Mine  
Permit No. S00402096A  
Cornerstone Labor Services, Inc.  
Permit No. S00402096A-A  
Near Coal Mountain in Wyoming County, WV**

**Region Two  
830 Virginia Ave.  
Welch, WV 24801**

**Michael Pack, Inspector-at-Large**

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## Timeline

-  5:00 p.m. Virgil Paynter (victim) started his shift.
-  6:30 – 7:00 p.m. Mr. Tackett spoke with Mr. Paynter on the DC8A Williamson bench.
-  12:00-12:30 a.m. Mr. Tackett drove below the DC8A Williamson bench.
-  1:45 a.m. Mr. Harris began assisting Mr. Paynter with the rock/boulder.
-  1:55 a.m. Mr. Harris told Mr. Paynter that “I got it from here.”.
-  2:15 a.m. Mr. Harris asked on the c.b. radio “Where is Virgil” and Mr. Tackett heard metal crashing.
-  2:20 a.m. Dave Houck, Maintenance Foreman called 911.
-  2:20 a.m. Mr. Tackett arrived on scene and checked the victim.
-  2:34 a.m. Shane Christian, a paramedic, arrived and checked Mr. Paynter, finding no pulse.
-  2:50 a.m. Lewis White, Safety Manager, called the Mine Incident Hotline.
-  3:13 a.m. Mike Pack, Inspector-at-Large, issued a Non-Assessed Control Order for the mine.
-  4:15 a.m. A joint investigation between WVOMHS&T and MSHA began.
-  7:15 a.m. Control Order modified to build a road to recover Mr. Paynter.
-  8:00 a.m. Mr. Paynter was recovered.

## GENERAL INFORMATION

The Coal Mountain No. 1 Surface Mine, owned by CM Energy Operations, LP, under permit No. S00402096A, is located near Coal Mountain, West Virginia. The mine's production contractor is Cornerstone Labor Services, Inc., under permit No. S402096A-A. The Surface Mine has an annual production to date of 370,499 tons.

This surface mine operates with two (2) shifts, with one-hundred five (105) employees employed by Cornerstone Labor Services, Inc. and fifteen (15) employees employed by CM Energy Operations, LP. On May 16, 2024, at approximately 2:15 a.m., 59-year-old Virgil Paynter, employed by Cornerstone Labor Services, Inc., received fatal injuries while operating a Caterpillar 374F. The excavator he was operating traveled over a highwall and then down a distance of three-hundred and seventeen (317) feet.

On May 16, 2024, at 2:50 a.m., Lewis White, the Safety Manager of CM Energy Operations, LP., notified the Mine Emergency Incident Hotline. Michael Pack, Inspector-at-Large of the West Virginia Office of Miners' Health, Safety and Training, Region 2 Welch Office, contacted Mr. White at 3:11 a.m., in reference to the incident. Mr. Pack issued a Verbal Non-Assessed Control Order on the mine permits at 3:13 a.m. Mr. Pack immediately notified all Region 2 Surface Inspectors to proceed to the mine immediately. A joint investigation with the Mine Safety and Health Administration, CM Energy Operations, LP and Cornerstone Labor Services, Inc. began upon arrival at the mine.

## ACCIDENT DESCRIPTION

On May 15, 2024, at 5:00 p.m., Mr. Paynter started his shift. Mr. Paynter was working on the DC8A Williamson bench area. Between 6:30 p.m. and 7:00 p.m., James Tackett, a foreman, drove to the DC7B Williamson bench area and walked up to the DC8A Williamson bench. Mr. Tackett stated he talked with Mr. Paynter at that time. The DC8A Williamson bench area where Mr. Paynter initially started working was one-hundred sixty-five (165) feet in width. On May 16, 2024, after 12:00 a.m., Mr. Tackett again drove to the area near the DC8A Williamson bench. Mr. Tackett stated that the DC8A Williamson bench was inaccessible at the time of his second On-Shift examination. The second On-Shift recorded at 12:32 a.m., noted the conditions were 64 degrees, with rain and heavy fog. At approximately 1:45 a.m., Mr. Paynter encountered a 17' x 14' x 8' rock, while operating the Caterpillar 374F Unit #7106 Excavator. Mr. Paynter was assisted by James Harris, a D11T Dozer Operator, to move the large rock across the DC8A Williamson bench. At approximately 1:55 a.m., Mr. Harris advised Mr. Paynter that he "could handle it from here." (Meaning that Harris could handle moving the rock and that he could leave Paynter to continue his work.) Mr. Harris stated that he then backed down the roadway, toward the DC7B Williamson breakdown bench, to continue working on the road. At approximately 2:00 a.m., Mr. Tackett stated he drove by underneath the DC8A Williamson bench area. At approximately 2:15 a.m., Mr. Harris advised that he returned to the DC8A Williamson bench (to

move the rock the rest of the way off the bench) and asked on the C.B. radio "Where's Virgil at?". Mr. Tackett stated at 2:15 a.m., he heard metal banging and crashing. Mr. Tackett stated that he immediately got on the CB radio and advised another Foreman to call 911 and asked for EMT's. Dave Houck, a maintenance foreman, called 911 at 2:20 a.m. Mr. Tackett stated once he was on scene at the 328 Alma Pit, he traveled on foot to the machine. He stated he checked the cab and surrounding area for Mr. Paynter. Mr. Tackett stated he found Mr. Paynter on the cab side of the machine, facing the wall, on his left side. Mr. Tackett stated he could not awaken Mr. Paynter. Mr. Tackett stated he checked for and could not obtain a pulse. Shane Christian, a paramedic and coal loader operator, arrived on scene and checked Mr. Paynter, finding no vital signs. Lewis White, Safety Manager, called the Mine Incident Hotline at 2:50 a.m. STAT ambulance driver, Morgan Shepherd, and EMT, Destinee Spry, arrived on scene at 3:03 a.m. Dr. Joshua Enyart, with MEDCOM, gave the DNR Order at 4:21 a.m. Mr. Paynter was recovered at 8:00 a.m. Christina Bryant, a medical examiner, arrived on scene at 9:20 a.m. Mr. Paynter departed the mine site at 10:41 a.m., via STAT Ambulance, and were transported to Stafford Family Funeral Home, located at 143 Clear Fork Road in Lynco, W.Va. and arriving at 11:48 a.m.

### **FINDING OF FACTS**

1. Mr. Paynter was a certified surface apprentice coal miner. His certification was issued May 15, 2014, Certificate No. 3-36069.
2. Documents indicate that Mr. Paynter received Experienced Miner training on March 21, 2024.
3. Mr. Paynter received task training on the Caterpillar 374F Excavator on April 10, 2024.
4. Mr. Paynter was an employee of Cornerstone Labor Services, Inc.
5. Mr. Paynter had eight (8) weeks' experience on this permitted property.
6. The manufacturer date of the Caterpillar 374F is December 16, 2015. It was placed in service on this permitted property April 19, 2018.
7. Mr. Paynter started his shift at 5:00 p.m. on May 15, 2024.
8. Mr. Paynter did not note any issues on his pre-operational examination.
9. Formal interviews revealed that Mr. Paynter had worked on this bench on previous dates.
10. Mr. Paynter moved to the DC8A Williamson Bench at approximately 6:30 p.m.

11. The Pre-Shift On-Shift did not notate any hazardous conditions. Weather conditions were 64 degrees, rain, and heavy fog.
12. The DC8A Williamson bench area where Mr. Paynter initially started working was one-hundred sixty-four (164) feet wide.
13. The DC8A Williamson bench area is fifty-four (54) feet wide at the area of the accident.
14. Formal interviews revealed that Mr. Paynter was working with a large rock/boulder at the time of the accident.
15. The rock/boulder was 17 feet X 14 feet X 8 feet in size.
16. The south side of the rock/boulder was fifteen (15) feet from the edge of the highwall.
17. The track length on the 374F Excavator is nineteen (19) feet, three (3) inches.
18. No coworkers stated that they witnessed the accident.
19. Training requirements were not met on the Comprehensive Mine Safety Program, and the MSHA Ground Control Plan.
20. Mr. Paynter received fatal injuries when the excavator went over the DC8A Williamson Bench Highwall. The excavator traveled 317 feet, before coming to rest in the 328 Alma Pit. Mr. Paynter was located 27 feet, 8 inches away from the cab/seat of the machine.

## **CONCLUSION**

The victim did not receive adequate training on plans, procedures, and precautions at this permitted mine. Mr. Paynter was operating the Caterpillar 374F Excavator Unit #7106 on CM Energy Operations, LP Permit #S00402096A on the DC8A Williamson bench. At approximately 2:15 a.m., on 5/16/2024, the victim went over the highwall and received fatal injuries. The victim was found 27' 8" away from the machine.

### **ENFORCEMENT ACTION**

CM Energy Operations, LP was issued a non-assessed control order. Cornerstone Labor Services, Inc. was issued a non-assessed control order. Both orders were issued in accordance with Chapter 22A, Article 2, Section 68 of the West Virginia Code. There was a total of six (6) violations issued. Three (3) violations issued to CM Energy Operations, LP and three (3) violations issued to Cornerstone Labor Services, Inc.

### **RECOMMENDATIONS**

In accordance with Title 56, Series 8, Section 8.4. of the West Virginia Code CM Energy Operations, LP, and Cornerstone Labor Services, Inc. shall update and make modifications to their Comprehensive Mine Safety Program. CM Energy Operations, LP and Cornerstone Labor Services, Inc. have submitted plans of prevention and reoccurrence, and updated the Comprehensive Mine Safety Programs.

### **ACKNOWLEDGEMENT**

The West Virginia Office of Miners' Health Safety and Training, greatly acknowledges the cooperation of employees, and management of CM Energy Operations, LP and Cornerstone Labor Services, Inc. and the Mine Safety and Health Administration, during this investigation.

**VICTIM INFORMATION**

NAME OF VICTIM: Virgil Paynter

AGE OF VICTIM: 59

TOTAL MINING EXPERIENCE: 10 weeks EXPERIENCE AT THIS MINE: 8 weeks

AVERAGE NUMBER OF DAYS WORKED PER WEEK: 5.5

AVERAGE NUMBER OF HOURS PER WEEK: 54

LENGTH OF SHIFTS AT MINE: 10 TRAVEL TO/FROM WORK: 10 minutes

OCCUPATION AT TIME OF ACCIDENT: Excavator Operator

REGULAR OCCUPATION: Excavator Operator

MINERS CERTIFICATION: 3-36069 WV ELECTRICIAN CERTIFICATION: N/A

SPOUSE'S NAME: Sherri Paynter

DATE OF ACCIDENT: 16 DAY OF May 2024 AT 2:15 am O'CLOCK

LOCATION OF ACCIDENT: DC8A Williamson Bench

CAUSE OF ACCIDENT: Operating the excavator on the edge of the DC8A Williamson bench and traveling over the highwall resulting in fatal injuries to the victim.

DATE OF DEATH: 05/16/2024

DAY OF THE WEEK: Thursday

**MINE INFORMATION**

COMPANY: CM Energy Operations, LP

MINE NAME: Coal Mountain #1 Surface Mine

WV PERMIT # S00402096A      MSHA ID # 4609062

ADDRESS: 200 George Street Suite 4 Beckley, WV 25801

COUNTY: Wyoming    PHONE No.: 681-207-7393    DATE PERMIT ISSUED: 4/25/17

WORKING STATUS: Active    LOCATION: Coal Mountain, WV    UNION \_\_\_\_\_

DAILY PRODUCTION: N/A      ANNUAL PROD. TO DATE: 370,499 tons YTD

TOTAL EMPLOYEES: 15      NUMBER OF PRODUCTION SHIFTS: 2

COAL SEAM NAME & THICKNESS: N/A      LOST TIME ACCIDENTS: 0 YTD

ACCIDENT INCIDENT RATE    0 YTD      TYPE OF HAULAGE: Equipment

WVOMHST INSPECTOR: Ben Hamilton

DATE OF LAST INSPECTION: 02/21/2024

WMOMHST NOTIFIED BY: WVEMD      NOTIFICATION TIME: 2:50 a.m.

CMSP ANNIVERSARY DATE: N/A      CMSP CONTACT PERSON: Lewis White

**CONTRACTOR INFORMATION**

CONTRACTOR NAME: Cornerstone Labor Services, Inc.

STATE PERMIT No. S00402096A-A

MSHA ID # B4839

ADDRESS: PO Box 1675 Ashland, Ky 41528

COUNTY: Pike

PHONE (804) 883-6528

LOCATION: Ashland, Ky

UNION   X  

TYPE OF WORK PERFORMED: Contract Labor

TOTAL EMPLOYEES: 105

No. OF SHIFTS: 2 ACCIDENT FREQUENCY RATE: 0 LTA: 0

WVOMHST INSPECTOR: Ben Hamilton

NOTIFIED BY: Lewis White NOTIFICATION DATE: 05/16/2024 TIME: 2:50 a.m.