
West Virginia Office of Miners' Health, Safety and Training

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

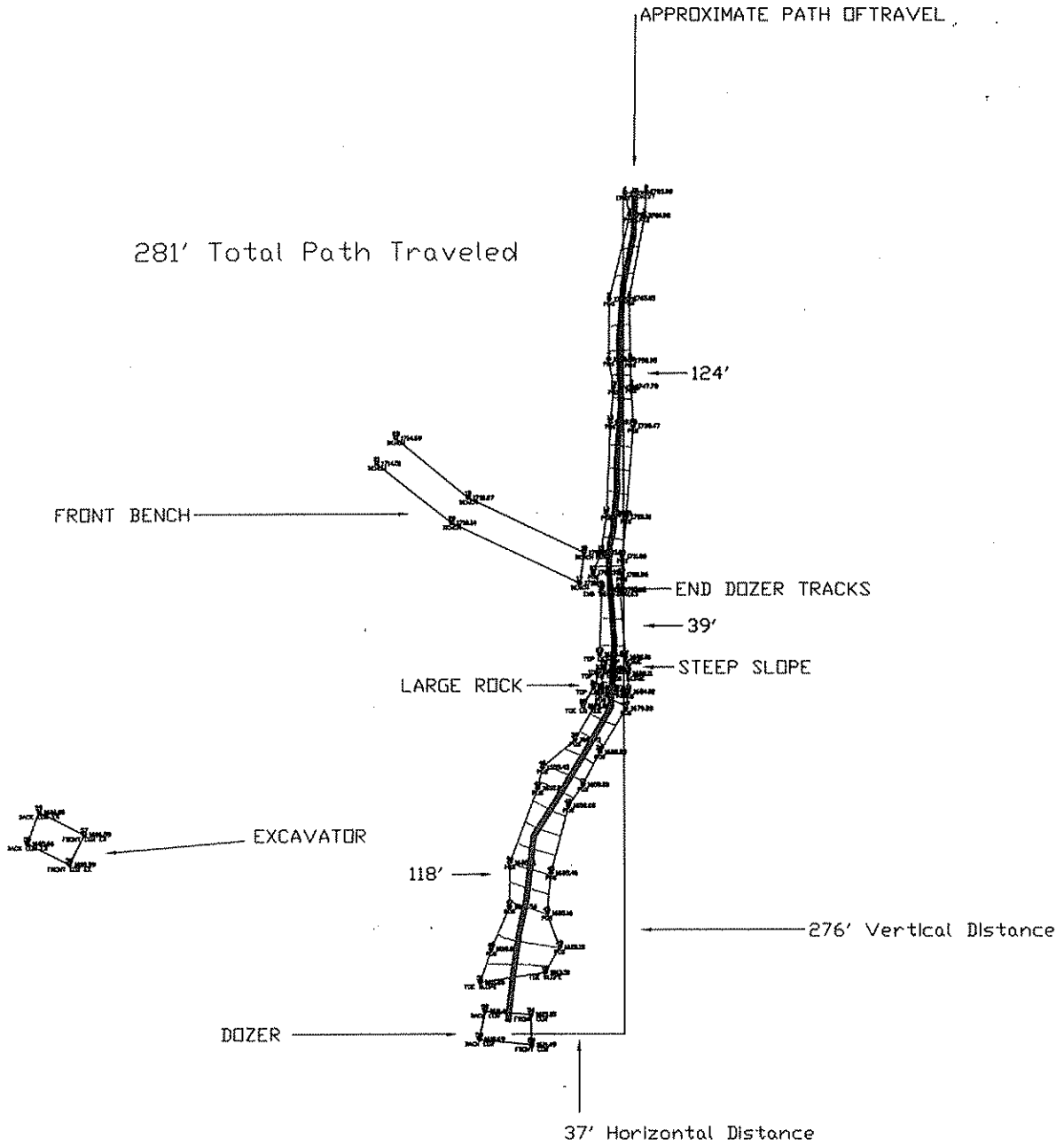
Region IV Office
142 Industrial Drive
Oak Hill, West Virginia 25901
Gary S. Snyder, Inspector-at-Large

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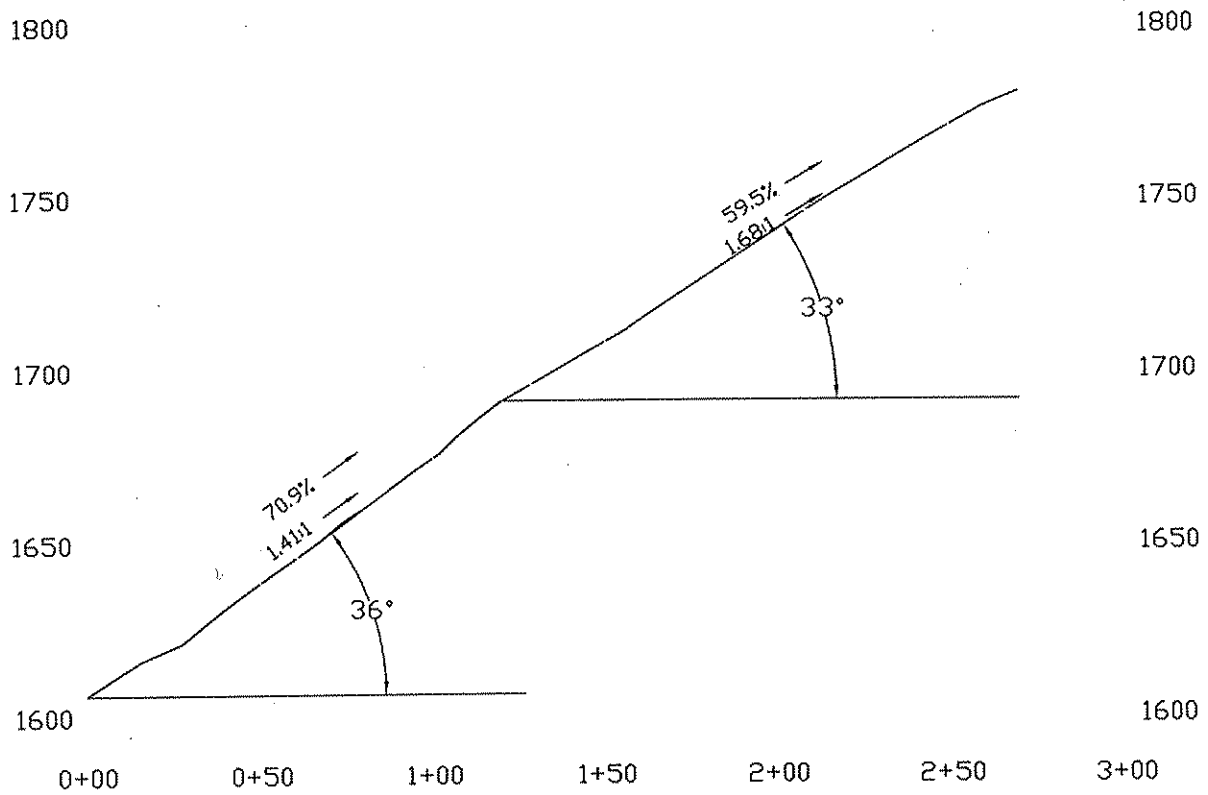
Accident Scene – Slope Profile
Prepared By
Alex Energy, Inc., Engineering Department

Not To Scale



Accident Scene - Slope Profile
Prepared By
Alex Energy, Inc., Engineering Department

Scale 1" = 50'



**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 Kessler's 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 20.08

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 20 08

IF-018
Revised 1-08

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OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 4
No. 074-0648-2008
Violation No. _____

No: **15183**

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, 20 08 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 reclama-
tion duties at the "Right Fork" area of the mine. The dozer was
owned by, and Mr. Woods was employed by, Tri Mountain Corpora-
tion (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

Type of Issuance: N.O.V. _____ Order area.

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 Pritt

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.

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%) _____

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

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OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 4
No. 074-0648-2008
Violation No. _____

No: 15185

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, 20 08 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 13.1a exists as follows: 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 p6R 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 on the steep slope allowed the dozer to turn sideways, overturn, and roll 4 times to the bottom of the grade. The dozer operator,

Type of Issuance: N.O.V. _____ Order James O. Woods, suffered serious
Area or equipment (if order is issued): Right Fork reclaim area. 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: Sonah 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.

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%) _____

IF-O18
Revised 1-08

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

Region 4
No. 074-0650-2008
Violation No. _____

No: 15184

NOTICE OF VIOLATION

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

Permit Number S 301391A 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 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, back-fill 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. Order mine operator, by omission of the required information for independent contractors, allowed a contractor ^{to} improperly work on mine property. (36-20-7)
Area or equipment (if order is issued): _____

The foregoing violation shall be totally abated by _____ 8:00 a.m. _____ p.m. on 9-29 2008 ^{b-2}

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

Action taken to abate the violation: _____

Company / Operator Agent Served: Sarah Pritt

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:
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%) _____

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Region 4
No. 074-0649-2008
Violation No. _____

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

No: 15192

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, 20 08 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 63e and/or West Virginia Administrative Regulation: Title _____, Series _____, Section _____ exists as follows:

The independant 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 ASM Corporation, the independant contractor had been employed to perform various reclamation duties at the mine for the past two (2) years. The independant contractor was doing business at the mine under the trade name of ASM/Battle Creek. During this time, the independant 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 X
Area or equipment (if order is issued): ASM Corp. shall not be permitted to perform duties on W.V. 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 (extenuating circumstances) (0%) _____

Extra effort (-15%) _____

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OFFICE OF
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1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 4
No. 074-0651-2008
Violation No. _____

No: 15194

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, 20 08 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 _____, Article _____, Section _____ and/or West Virginia Administrative Regulation: Title 56, Series 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.J.M. Corporation has been doing business under the trade name A.J.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. _____ p.m. on 10-27 2008

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

§ 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%) _____
Non-compliance (extenuating circumstances) (0%) _____ Extra effort (-15%) _____

IF-O18
Revised 1-08

STATE OF WEST VIRGINIA

Copies - Company
Inspector
Assessment
Regional Office
Post
Rep of Mines

OFFICE OF
MINERS' HEALTH, SAFETY AND TRAINING

1615 Washington Street East
Charleston, West Virginia 25311-2126

Region 4
No. 074-0651-2008
Violation No. _____

No: 15195

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 27, 20 08 Time 12:30 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 4 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.J.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 20 08

The foregoing violation was totally abated by _____ a.m. 1:00 p.m. on 10-27 20 08

Action taken to abate the violation: An official of A.J.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. 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 (extenuating circumstances) (0%) _____ Extra effort (-15%) _____