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West Virginia Office of Miners' Health, Safety and Training

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July 28, 2009

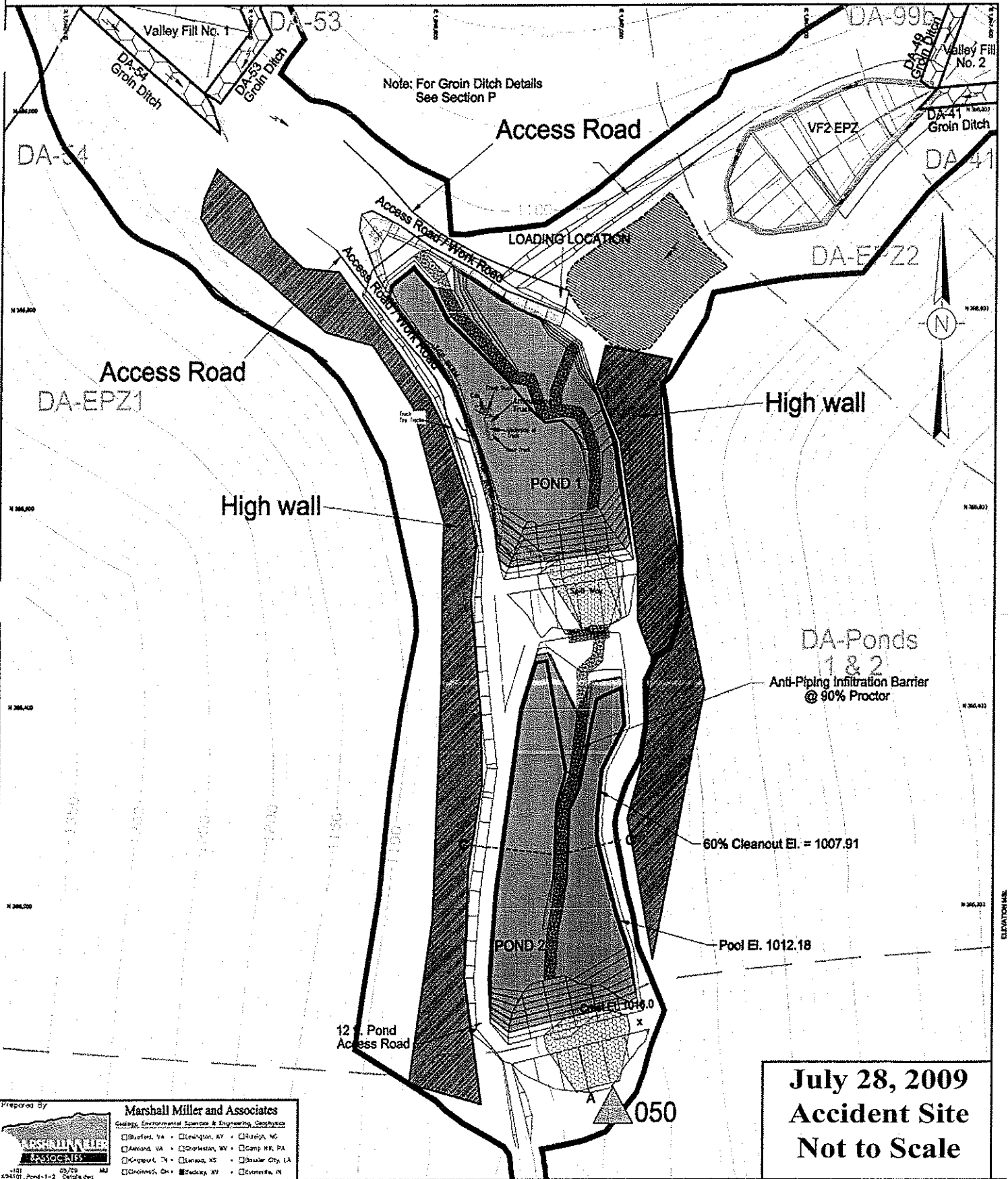
Report of Investigation  
Surface Coal Mine Fatality  
(Haulage Accident)

Hawkeye Contracting Company, LLC, Permit Number C-5343  
Contractor for  
Catenary Coal Company  
Samples Mine, Permit Number S00302390

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


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**July 28, 2009  
Accident Site  
Not to Scale**

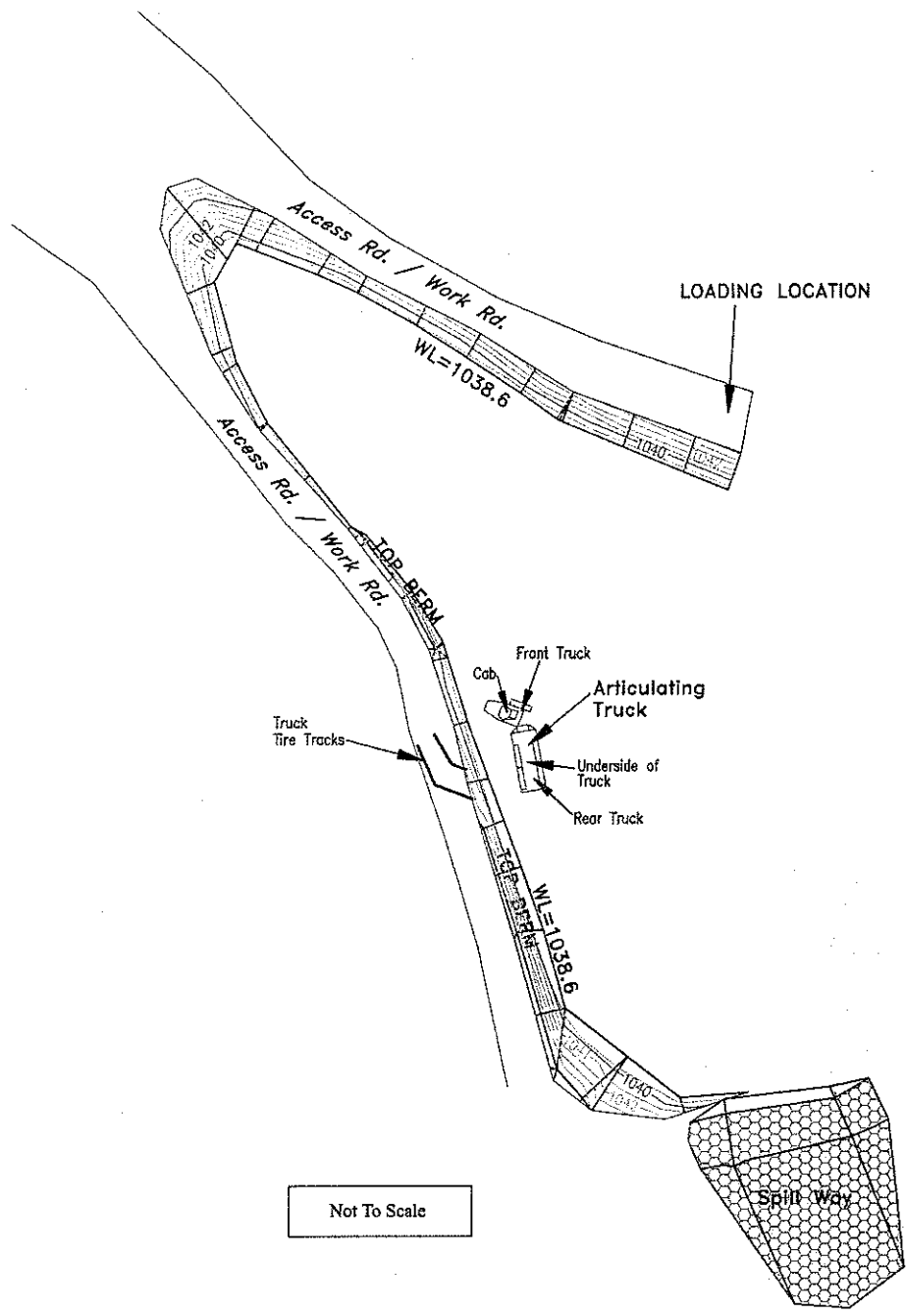
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**Report of Investigation  
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Hawkeye Contracting Company, LLC, Permit Number C-5343  
Contractor for  
Catenary Coal Company  
Samples Mine, Permit Number S00302390**

**GENERAL INFORMATION**

This report is based on an investigation conducted in accordance with Chapter 22A, Article 1, Section 14 of the mining laws of the State of West Virginia.

Mark Allen Gray, an employee of Hawkeye Contracting Company, LLC, was fatally injured in an accident at approximately 9:45 a.m. on July 28, 2009. Mr. Gray was operating an articulating rock truck on a haul road to a designated dumping point, when the rock truck overturned into a containment pond that paralleled the haul road. Mr. Gray died on July 28, 2009, from the injuries sustained during the accident.

The Mine and Industrial Accident Emergency Operations Center was notified of the accident at 10:05 a.m. on July 28, 2009. The West Virginia Office of Miners' Health, Safety and Training was notified of the accident by the Mine and Industrial Accident Emergency Operations Center at 10:18 a.m. A joint investigation with the Mine Safety and Health Administration was started immediately.

**DESCRIPTION**

The Catenary Coal Company, Samples Mine, is located near Eskdale, West Virginia. The surface mine normally operates seven (7) days a week with a day and evening shift and has 255 employees. In addition, several independent contractors are used to perform various duties such as maintenance and reclamation at the mine. Hawkeye Contracting Company, LLC is one of the independent contractors assigned to perform drainage and reclamation projects at the mine.

On July 28, 2009, six (6) employees of Hawkeye Contracting Company, LLC started work at Three Mile Hollow area of the mine site at approximately 6:00 a.m. One of these employees, Mark A. Gray, started his normal duties as a truck driver around this time. Mr. Gray had been working at this work site for approximately three (3) months. The project consisted of building two (2) ponds and establishing drainage to comply with environmental regulations. Mr. Gray was assigned to haul shot rock from an excavator to a designated dumping point at the number two (2) pond. Mr. Gray was operating the rock truck in reverse while on the haul road that paralleled the number one (1) pond.

Work proceeded normally until around 9:45 a.m. when the Foreman, Phillip Rife, observed Mr. Gray operating the haul truck in reverse at a high rate of speed on the haul road that paralleled the number one (1) pond. At this time Mr. Rife stated that he started running to the haul truck and screaming, "Stop, stop, stop." Mr. Rife stated that he watched Mr. Gray run through and/or over the berm, and the truck overturned into the

pond. The haul truck came to rest on its top submerged under the water. Mr. Rife along with another employee (Shawn B. Legg) ran to the accident and Mr. Legg jumped into the water and swam to the overturned truck. Mr. Legg stated that he could not open the operator's cab door on the haul truck while it was submerged. At that time, Gordon Hanson, a truck driver for Hawkeye Contracting Company, LLC arrived on the scene and threw a rock to Mr. Legg to assist in breaking the window in the submerged truck. Mr. Rife had notified Kermal D. Sanders, an excavator operator that was working nearby, to tram the excavator to the accident site. The excavator was used to raise the cab partially out of the water. Mr. Legg broke the right cab window with a rock and pulled Mr. Gray from the cab of the truck. Mr. Gray was put into the bucket of the excavator, which then placed him on the ground of the haul road where they started first aid. Aly Hill, another employee of Hawkeye Contracting Company, LLC, arrived at the scene and helped Mr. Legg administer first aid. Boone County, West Virginia E-911 was notified at 10:05 a.m. on July 28, 2009, and was on scene at 10:29 a.m. At this time, emergency medical service personnel relieved mine personnel from performing CPR. Mark A. Gray was pronounced dead by the Charleston Area Medical Center Med Base on-call physician at 11:05 a.m.

#### FINDINGS OF FACTS

1. Mark Allen Gray was operating a Volvo A-30-D off road haul truck commonly referred to as a "lizard truck" at the time of this accident. The truck's payload capacity was 28 tons. There was no evidence to suggest that the truck was overloaded at the time of the accident. The truck was traveling in reverse at a high rate of speed at the time of the accident.
2. There were no hazards noted in the preshift/on shift examination book for the Hawkeye Contracting work site completed by the Surface Mine Foreman during the week of July 23, 2009 through July 28, 2009.
3. The available daily equipment safety checklists completed by Mark Allen Gray on the Volvo A-30-D haul truck showed no defects noted on the equipment. The onboard computer (ECM) on the truck was damaged due to the accident and no information could be downloaded.
4. The haul road at the Three Mile Hollow area was approximately 320 feet in length, and the berm was consistent with the equipment being used. The road was constructed of shot rock and dirt with a varying width of 15 to 20 feet. Photographs taken by Hawkeye Construction Company, LLC Foreman, Phillip Rife, during the rescue and recovery operation were used to determine the condition of the road at the time of the accident.
5. Inspection of the No. 4053 A-30-D Volvo truck by the OMHST, MSHA Technical Support Group, and a manufacturer's representative from Rudd Equipment showed no defects affecting safety. The 4053 haul truck showed that it had 8,053 operating hours on the hour meter.

6. The West Virginia Medical Examiner found that Mr. Gray died as a result of drowning due to entrapment in a submerged vehicle.
7. A toxicology report from the Office of the West Virginia Chief Medical Examiner revealed that Mark Allen Gray had "alcohol present in the blood at a concentration of 0.08%. An inactive metabolite formed from the consumption of marijuana was also found in the blood. Analysis of trace evidence showed the presence of marijuana plant matter, including the primary psychoactive component, delta-9-terahydrocannabinol."
8. One opened, empty, 12-ounce beer can was found inside the Volvo A-30-D truck operator's cab by OMHST and MSHA inspectors after the haul truck was retrieved from the pond. Foreman, Phillip Rife, stated that on two previous workdays he had detected what he believed to be the odor of alcohol on Mark Allen Gray's breath. Security guard, Joetta Bowling, who was employed by Appalachian Security, stated that she witnessed Mark Allen Gray placing unopened cans of beer in his lunch box at the start of a recent workday. She did not relay this information to any Hawkeye Construction Company, LLC management person.

### CONCLUSION

The A-30-D Volvo truck operated by Mark Allen Gray was being trammed in reverse at a high rate of speed along a haul road that paralleled a containment pond. Mr. Gray failed to negotiate a curve and ran through and/or over the outer berm of the haul road. The truck overturned and submerged in the pond. The haul road was constructed of shot rock and dirt with the berm being consistent with the equipment used. The A-30-D truck was found to be in safe operating condition. The West Virginia State Medical Examiner's report stated in part, "Mark A. Gray died as a result of a witnessed drowning in a pond during work related activity .... Alcohol intoxication is a contributory factor."

### 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 four notices of violation during this investigation. The following three notices of violations were issued to Hawkeye Contracting Company, LLC:

Notice of Violation; Title 36, Series 22, Section 4.3

No person shall at any time carry into any mine or work area of any mine any intoxicant or enter any mine or work area of any mine while under the influence of intoxicants. It was found during a fatal accident investigation that occurred at the Hawkeye Contracting Company, LLC work site that an employee, Mr. Mark Allen Gray, had carried on his person an alcoholic beverage in the form of beer and an intoxicant identified as

marijuana. A toxicology report released by the Office of the West Virginia Chief Medical Examiner stated that "alcohol intoxication is a contributory factor." The toxicology report also revealed that "alcohol was present in the blood at a concentration of 0.08%." This constitutes an imminent danger as described in 56-3-13.1 (a) of the West Virginia Surface Laws, Rules and Regulations. This is a violation of a health and safety rule, is of a serious nature, and involved a fatality.

Notice of Violation; WV Code § 22A-1-36(b)

West Virginia Code § 22A-1-36(b) states that each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program. The operator, Hawkeye Contracting Company, LLC, has failed to follow the safe work practices as described in their Comprehensive Mine Safety Program in that the Foreman, Phillip Rife, stated that on two occasions he allowed an employee, Mark Allen Gray, to perform work as a truck driver after detecting the odor of alcohol on Mr. Gray's person. This is a violation of a provision of this chapter and involved a fatality.

Notice of Violation; Title 36, Series 22, Section 4.4

The operator, Hawkeye Contracting Company, LLC, failed to remove an employee, Mark Allen Gray, from the mine site after having reasonable cause to believe that he could be under the influence of alcohol as evidenced by the odor of alcohol on his person detected on two separate occasions by Foreman, Phillip Rife.

The following Individual Proposed Assessment (IPA) was issued to Phillip Rife:

IPA; Title 36, Series 22, Section 4.4

By your own admission during a sworn statement, you failed to remove an employee, Mark Allen Gray, from the mine site after having reasonable cause to believe he could be under the influence of alcohol as evidenced by the odor of alcohol on his person on two separate occasions. Section 36-22-4.4 requires persons to be removed from the mine site when an odor of alcohol is detected.

The following notice of violation was issued to Appalachian Security, Inc.:

Notice of Violation; Title 36, Series 22, Section 4.3

No person shall at any time carry into any mine or work area of any mine any intoxicant or enter any mine or work area of any mine while under the influence of intoxicants. During a fatal investigation that occurred on July 28, 2009, at the Hawkeye Contracting worksite, the security guard employed by Appalachian Security, Inc. observed an employee carrying, in his personal belongings, alcoholic beverages onto the mine site. Testimony revealed that the security guard witnessed Mark A. Gray place unopened cans of beer into his lunchbox at the beginning of a recent working shift (before July 28<sup>th</sup>) and did not notify company officials. This is a violation of a health and safety rule, is of a serious nature, and involved a fatality.



## RECOMMENDATIONS

In accordance with Title 56, Series 8, Section 9.4 of the WV Mining Laws, the comprehensive mine safety program for Hawkeye Contracting Company, LLC shall be modified to include the following:

1. The foreman shall have personal contact with each employee prior to the beginning of each working shift.
2. The operator shall at frequent (weekly) intervals, search or caused to be searched, any person, including his clothing and material belongings, entering or about to enter the mine, to prevent such person from taking or carrying therein any intoxicants. Results of these searches will be recorded in a book that will be kept on-site and available for inspection by representatives of MSHA and the WV Office of Miners' Health, Safety and Training.

If during these searches any illegal drugs, drug paraphernalia or alcohol is found, the material will be immediately removed from the mine site and the employee(s) involved will be immediately removed from mine property.

3. Pre-employment drug testing will be conducted of all employees of Hawkeye Contracting Company, LLC. Unannounced drug testing without management's knowledge will be conducted on a frequent basis. Such drug test shall be administered in a manner that will ensure that the specimen tested is the individual's. If anyone fails the drug/alcohol test, he or she will be immediately removed from mine property.

## ACKNOWLEDGMENT

The West Virginia Office of Miners' Health, Safety and Training gratefully acknowledges the cooperation of the employees and management of Hawkeye Contracting Company, LLC, Catenary Coal Company and the Mine Safety and Health Administration during this investigation.

## APPENDIX

- Mine Information Sheet
- Contractor Information Sheet
- Victim Information Sheet

## MINE INFORMATION

COMPANY Catenary Coal Company

MINE NAME Samples Mine

WV PERMIT S-3023-90

ADDRESS 100 Tom's Fork Road, Eskdale, West Virginia 25075

COUNTY Kanawha, Boone and Raleigh

DATE PERMIT ISSUED July 15, 1991 WORKING STATUS Active

LOCATION Near Eskdale, WV

UNION \_\_\_\_\_ NON-UNION Yes

DAILY PRODUCTION 7,000 tons (approximately)

ANNUAL PRODUCTION TO DATE 1,265,000 tons

TOTAL EMPLOYEES 255 NUMBER OF SHIFTS 2

NAME OF COAL BED Stockton, Coalburg, and Five Block

SEAM THICKNESS 36" - 48"

ACCIDENT INCIDENT RATE 0 LOST TIME ACCIDENTS 0

TYPE OF HAULAGE Truck, Belt, and Rail

WV OMHST INSPECTOR Garry Wolfe

DATE OF LAST INSPECTION June 23, 2009

NOTIFIED BY Mine and Industrial Accident Emergency Operations Center

TIME OF NOTIFICATION 10:05 a.m.

CMSP - ANNIVERSARY DATE October 15, 2009

CMSP - CONTACT PERSON Terry Tolley

## CONTRACTOR INFORMATION

CONTRACTOR Hawkeye Contracting Company, LLC

WV PERMIT C-5343 MSHA PERMIT NO. F843

MAILING ADDRESS P. O. Box 1200, Robinson Creek, Kentucky 41557

COUNTY Pike PHONE NUMBER (606) 639-9675

TYPE OF WORK PERFORMED Mine Development

WORKING STATUS Active

LOCATION Samples Mine Ponds 1 and 2

UNION \_\_\_\_\_ NON-UNION Yes

TOTAL EMPLOYEES 48

NUMBER OF SHIFTS 1

ACCIDENT FREQUENCY RATE 0 LOST TIME ACCIDENTS 1

WVOMHST INSPECTOR Garry Wolfe

DATE OF LAST INSPECTION N/A

CMSP – ANNIVERSARY DATE June 17, 2010

CMSP – CONTACT PERSON Jeff Sands

VICTIM INFORMATION

NAME: Mark Allen Gray

AGE: 28 yrs.

TOTAL MINING EXPERIENCE: 6 yrs

AVERAGE NUMBER OF DAYS WORKED PER WEEK: 5

AVERAGE NUMBER OF HOURS WORKED PER WEEK: 56hr. PER DAY: 11hrs.

LENGTH OF SHIFTS AT MINE: 12 hrs. TRAVEL TIME TO/FROM WORK: 45 min.

OCCUPATION AT TIME OF ACCIDENT: Truck Driver

REGULAR OCCUPATION: Truck Driver

WEST VIRGINIA CERTIFICATIONS HELD: 4-15652 (surface apprentice card)

EMPLOYMENT HISTORY: Hawkeye Contracting, LLC – 11/12/2008 to 7/28/2009,

Breath Better Carpet & Duct Cleaning – 2002 to 11/12/2008, Mineral Labs, Inc. - 1996 to

2002.

TIME OF ACCIDENT: 9:45 a.m.

DATE OF ACCIDENT: July 28, 2009

CAUSE OF ACCIDENT: While operating haul truck, the victim overturned into a

containment pond.

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DATE OF DEATH: July 28, 2009