



JUL 18 2008

MEMORANDUM FOR KEVIN STRICKLIN
Administrator for
Coal Mine Safety and Health

FROM: GEORGE M. FESAK *G.M. Fesak*
Director, Program Evaluation and Information Resources
Chairman, MSHA Fatality Review Committee

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Director for Educational Policy and Development
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for Director of Technical Support
Member, MSHA Fatality Review Committee

SUBJECT: Fatality Review Committee Decision on Chargeability

Deceased: [REDACTED] **Case No.:** C-2007-49

Date of Incident: November 11, 2007 **Date of death:** November 11, 2007

Operator: James River Coal Corporation **Mine:** Bullhorn Mine

Decision: Non-chargeable

In a unanimous decision the Fatality Review Committee has determined that the death of [REDACTED] [REDACTED] should not be charged to the mining industry. The deceased, a 41 year old trespasser, was found dead 800 ft. underground in a mine atmosphere of less than 5% oxygen. It appears that [REDACTED] and his 19 year old son dug a hole through an earth seal at an abandoned and sealed mine for purposes of theft and were overcome by the irrespirable atmosphere. The members of committee felt that this death should not be chargeable since the deceased was a trespasser involved in illegal activity at an abandoned and sealed property at the time of this incident.

cc: Richard E. Stickler
John Pallasch
Robert M. Friend