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Investigations Services

Compliance Section

MEMORANDUM

TO:	**John Dhaliwal, Review Officer**
FROM:	**James A. McJannet, Barrister & Solicitor, Investigations Legal Officer**
DATE:	**January 6, 2012**
SUBJECT:	**Request for Review - RFR #R0130850**
	RFS 201100256
	Administrative Penalty IR 2011110870029
	Applicant/Firm: Peter Kiewit Infrastructure Co.
	Firm No.: 76110

With this memorandum, I enclose the response of Officer Barbara Deschenes to the Firm's submission of November 30, 2011, along with a statement of Officer William (Mark) Lunny.

I wish to provide some further brief comments regarding the test for "recklessness", as established in the jurisprudence. Most simply put, "recklessness" has been established where a party has been found to have recognized risk associated with a particular course of conduct and has decided to proceed in the face of that risk; *R. v. Sansregret*, [1985] 1 SCR 570. That test has been applied by the Workers' Compensation Appeal Tribunal in the context of occupational health and safety violations: WCAT decision 082648-A (January 13, 2010), page 22. In this context, the notion of recklessness "...requires some degree of awareness or advertence to the threat of the lives or safety of others or alternatively *a willful blindness to that threat which is culpable in light of the gravity of the risk assumed.*" [*R. v. Tutton*, [1989] 1 SCR 1392, cited with approval in WCAT decision 082648-A (January 13, 2010), page 23 (emphasis added).

Where an employer's conduct is a marked departure from reasonable standards, that employer's knowledge of the risk and its culpability for proceeding in the face of that risk will be presumed absent evidence to the contrary:

> "It can be assumed that a person functioning with normal faculties of awareness and engaging in conduct which represents such a grave departure from the norm is either aware of the risk or is wilfully blind to the risk. Proof of the conduct will, in other words, cast an evidential burden on the accused to explain why the normal

> inference of conscious awareness or wilful blindness should not be drawn." [*Tutton*, supra, per Wilson J. at paragraph 15, cited with approval in WCAT decision 082648-A (January 13, 2010), page 25.]

Officer Deschenes found the Firm was aware of the applicable safety requirements for steep-terrain excavations on worksites of the type in question and that the hazard to down-slope workers and equipment presented by large, loose rock and other unstable material was plainly evident. It was her view a reasonable employer in the Firm's position following the events of February 21, 2009 would have realized the significant probability a similar incident could occur with a substantial risk of harm to its workers. She found the evidence gathered in the investigation demonstrated the Firm's supervisory personnel recognized the hazard created by incomplete scaling and machine activity up-slope of workers. The Site Specific Safety Plan developed for the East Toba/Montrose projects stated: "Scaled slopes must be reviewed and approved by a qualified person before being deemed safe for work on or below" (Disclosure document *026 - PKS - Plutonic Site Specific Plan 45 pg*, page 17). Officer Deschenes found the Firm's failure to mitigate those hazards, in light of the incident which occurred the day before the fatal accident, was a grave departure from the conduct to be expected of such a sophisticated and well-resourced employer.

Firm Name:	**Peter Kiewit Infrastructure Co. (the "Employer")**	Firm Number:	**76110**
RFP #:	**201100256**	Date:	**January 6, 2012**
Request for Review:	**R0130850**		

Officer Barbara Deschenes' Response to Employer's Submission

The Employer argues there were significant differences in the circumstances of the two incidents of February 21 and 22, 2009, such that the second event was not foreseeable. The Firm states the February 21 incident occurred as a result of an excavator casting loose material downhill, whereas on February 22 a rock rolled downhill "on its own accord". On February 21, the excavator was actively removing, or mucking out, quantities of blast product from Bench 4 and casting rocks downhill. On February 22, the excavator had cleared a portion of the brow above Bench 4, pulling out forest debris and loose overburden adjacent to the tree line. At the time of the fatal incident, the excavator was sweeping smaller rocks aside to enable access to the area above Bench 4 for drilling equipment and pickups. Irrespective of differences in what the excavators were doing on the two days, there were common factors in both incidents:

- On both February 21 and 22, the site conditions above work areas were inherently dangerous to workers as there were unstable materials up slope from the assigned work areas.
- On both dates, supervisory personnel planned the work and positioned crews to work below unstable materials which could dislodge and enter their work areas.
- On both dates, rocks rolled downhill into active work areas.

One of the primary tasks at the workplace was to move many tons of material. In this workplace, personnel were well aware of the known hazard potential of large rocks possibly rolling from a long distance, falling into work areas or roadways and potentially hurting or killing people. The hazard was clearly demonstrated to the Employer the day before the fatal accident. Its knowledge is clearly reflected in the work plan and hazard assessment documentation its personnel completed following the event of February 21. Despite that knowledge, the firm made wholly inadequate efforts to clean up the material upslope of workers, particularly from the ground above Bench 4. There was significant recent blasting activity at that location and workers were placed on the Bench 4 area and exposed to the hazard of rock fall, an example of which was realized only the day before the fatal accident.

WorkSafeBC's Incident Investigation Report and the Recommendation for Administrative Penalty do not confuse the two events of February 21 and 22, as suggested by the Employer. I agree I did not determine that an uphill excavator directly contacted the rock which caused the fatal accident on February 22, 2009. However, in each case, the Employer proceeded with the very unsafe practice of having excavators work upslope of other crews. Due to the terrain and the amount and size of the unstable material present which was at high risk of entering a work area, I consider the Employer to have been reckless in the manner in which it conducted its scaling and mobile equipment operations.

I consider the context in which the violations occurred to be critical. The work at the site involved extensive contouring of a steep hill and moving many tons of materials disturbed through drilling, blasting and excavation. The hazards of rockfall were foreseen by the employer and workers. Yet, very ineffective hazard control measures were used and ongoing hazard exposure was tolerated. These circumstances persisted even after a very serious equipment damage incident which clearly demonstrated the significant potential for worker fatality. Accordingly, the Employer was reckless and grossly negligent with respect to obvious hazards. It is clear that simple enforcement of the Regulation and basic supervision would have prevented the fatality which occurred.

Many of pre-incident job site records prepared in the weeks before both incidents clearly showed the Employer was aware of the risks of unstable material moving on the site.

Disclosure document *019 - PKS - Document Binder 2 - 453 pg (redacted)*

Pages 89, 90, 95, 116-121

Given the Employer's prior knowledge of the risks at this job site and other sites with similar hazards, I do consider the hazard was "glaringly", and objectively, obvious. One need only view photographs taken of the debris we found on the uphill slope to recognize the risk it posed to any workers positioned below.

Disclosure documents 033 - Photos - IO Deschenes x 36

035 - Photos - OSO Lunny x 71

036 - Photos - SRO Bertrand x 8

I consider the Employer's conduct to have been reckless in that it knew the area above the crest of the hill still contained unstable material which had not been completely scaled or stabilized and yet it planned the work so that the drilling and blasting crew and hand scalers were positioned downhill from the hazardous area.

It is not entirely certain the rock which rolled on February 21 came from material cast by the excavator or if it dislodged spontaneously from a location either above or below the excavator. The Employer's investigation suggested the rock was dislodged by an uphill excavator.

Several of the Employer's personnel were unsure on this point, however. I have reproduced portions of my interviews with Mr. Rule (Construction Manager), Mr. Karjala (Earthworks Superintendent) and Mr. Ladd (Earthworks Foreman) below:

> Q. Um, now, I need to know a little more from you around what happened on the day before Sam Fitzpatrick was killed. There was another incident where a rock came down and struck the hoe drill. So, we know this happened and we know what occurred, but I also understand that you were ... you went out there after that with a couple supervisors.
>
> A. Yes.
>
> Q. So, can you just give me information about what occurred that day, and how you came to go out there, and so on.
>
> A. Um, well, immediately after the incident occurred, I was notified by the field guys, uh, that this had happened. Um, you know, looked, looked, you know, made sure that, uh, that nobody was hurt, and there was no, no further potential for injury at, at the site. And, uh, we basically went out to the site to see if we could determine exactly what had happened. And, uh, why we had a rock fall on ... into an area where, where people were working.
>
> Q. Um-hmm. And, what were your findings up there?
>
> A. We, we didn't determine exactly where the rock had come from. But, it had come from above. So, we basically had, had a stand down with the crew that afternoon, and decided that, uh, that we would no longer work at that particular area until the work above there was completed.
>
> Q. Okay. And, was Tyson Motz, did he receive the small rock fragment, scratch his hand, or something like that?
>
> A. Uh, not that I was aware of, no.
>
> Q. Okay. I believe he did, because I have been told that by a couple people, but it was an insignificant, uh, injury. But, I wanted to know if you knew that people had been out of their machines at the time that that rock struck the hoe drill.
>
> A. I did know that there were people out, you know, there were people on the bench, absolutely ...
>
> Q. Um-hmm.
>
> A. ... and that they were not in the machine at the time, but I wasn't aware that anybody had been actually struck by a rock.
>
> Q. It was apparently a splinter, you know, from the, from the rock that hit the machine, only a small fragment. It was a minor, minor, minor thing. All right, so, you couldn't really determine where the rock came from, but, uh, was it your, your examination of this that did you find that it originated from the area where a machine had been scaling?
>
> A. Um, we, we couldn't definitively determine that it had come from that area. Interviews with the operator, suggested that it didn't come from his machine.
>
> Q. Perhaps it was a little bit behind him, or ...

A. Yeah, it could've been in that ... It, it could've been from anywhere above where the guys were working (inaudible)

Q. But, the equipment operator didn't report that he saw it coming towards his machine, is that correct? He, he didn't see the thing start in motion?

A. No.

Q. So, it must have come from outside of his range of view.

A. Yes.

Disclosure document *014 - Verified - 09_Jul_8 - T RULE - Construction Mgr (redacted)*

pages 2-4

Q. Okay. We understand there was there was a rock got away the day before

A. That's correct

Q. Okay, um can you can you tell us how that happened or do you know anything about that, were you on site?

A. Yes I was on site yeah

Q. Okay so what what happened on that case

A. Well a rock come from up in this I don't know where, how far up that hill it come down from but it come from up high and that's what you see on this other photo over here the picture, the line that they drawed in there which people thought we thought that's where how it come down (coughing)

Q. So the reference of this uh track dated February 21st photo took was uh it shown on the blue line on photograph 001, is that correct Jerry?

A. Well part of the blue line I don't I don't think there's any way anybody could tell up here where it come down. What it what it come from way up there right here or all we can tell is it it hit the road and tossed over the berm and went down into there

Q. Okay so so you don't know the origin of it. You just know it hit the road [inaudible]...

A. No I surely don't and I don't think well I don't know

Disclosure document *004 - Verified - 09_Feb_25 - J KARJALA - Earthworks Superintendant (redacted)*

Do you did you guys find the spot where you think this rock might have started from?

A. Yeah we well I mean.

Q. Or did Jessie show you anything or?

A. He, there again it was um we don't know if there was a rock that, that um he let go or one that let go or one that bumped one other one or what not…

Disclosure document *009 - Verified - 09_Mar_3 - M LADD - Earthworks Foreman (redacted)*

A report prepared by the project's independent environmental monitor for the period February 21-27, 2009 refers to activities and events which took place during the time when the two rock fall incidents occurred. The writer of the report recorded in the February 21 entry:

Scaled and mucked PI 27 and PI 28, hauled blast rock to stock pile at 1+945.

Production drill and constructed access at bench 4.

Drilled bench 22.

Rock rolled down from PI27 and hit hoe drill at bench 4. The rock broke hoses and caused a hydraulic oil spill. Absorbent pads were placed immediately.

Disclosure document *024 - Misc - Kootenay Enviro Ser Weekly Reports 142 pg*

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Similarly, and contrary to the Employer's characterization in its submission, it was not conclusively determined the rock which killed the worker on February 22 "rolled of its own accord". In my investigation, I could not exclude the possibility that the rock was previously disturbed from blasting in the days prior to the incident or from recent mobile equipment activity. Although there was evidence at the site which showed the area where the rock was first seen rolling had been recently disturbed (we saw fresh tracks from tracked mobile equipment there), the investigation established that the excavator working closest to the crest of the hill did not strike the rock immediately prior to the rock's motion. I obtained this information from my interviews of the equipment operator (Disclosure document *001 - Verified - 09_Feb_25 - J TALYOR - Excavator Operator (redacted)*) and the deceased worker's brother (Disclosure document *011 - Verified - 09_Mar_10 - A FITZPATRICK – Scaler*, page 11 lines 35-42). Please also refer to Disclosure document *031 - PKS Incident Invest Reports 19 pg (redacted)*, the employer incident investigation of the fatality, pages 11 and 13, which refers to individuals who saw the excavator operating near the tree line and mobile equipment tracks in the area near the tree line where the rock was seen to be rolling. Mr. Taylor (the excavator operator) told me he first saw the rock rolling in an area which was "on the verge" of the smooth area he had machine scaled about one month before the incident. He said he saw it in an area that had not yet been scaled (See disclosure document *001 - Verified - 09_Feb_25 - J TALYOR - Excavator Operator (redacted)*, page 8 starting at line 42:

A. We had already cleaned the brow above that bench, you know, if you guys went up there, or whoever went up there, you'll see from the vertical face, that it's clean rock all the way back quite a ways, we've already gone up and we've pulled all the loose material down and we've gone up on top of that, we've pull all the loose material back, so there was nothing above those guys where they were working that came a lot further down from further up the hill where we haven't gone up and cleaned brow yet, and when it came out of the, when it came out of the rough stuff where the dirt was, that when it gone on to the material that we already cleaned off, I knew that that rock wasn't going to stop because there was nothing to slow it down.

Q. Paul Orr - Yeah, so it just skated on the bared rock.

A. Yeah

Q. Jessie, this photograph here, which is our photograph 21…

A. Yeah

Q. and, if you wish you fellows can come over to see what we're looking at here, it will make it easier later. But on this photograph, is that your machine that you were operating the 345…

A. Yes

Q. and it's parked uh, with the cab facing uphill…

A. Yes

Q. did you move it after the incident site to this position?

A. Yeah, I swung it around to look up the hill at Mike. I didn't, I didn't spin my tracks, I was facing, I was working just like it was angled on a 45 towards the bluff there.

Q. Okay, so now on this photo we can see that the timber line is to the left…

A. yeah, it's quite a ways up.

Q. and were you positioned with the cab facing that way…

A. Yeah

Q. when this occurred?

A. I was facing up hill but more on an angle toward the tree line.

Q. Towards the tree line.

A. And that's what, that's why I've seen the boulder leave, like up closer to the tree line I've seen stuff start to move and that's what caught my eye, cause I was turned that way….

See also page 11 line 37 to page 12 line 45:

A. ... there's a spot in there that you'll see where we cleaned ...

Q. Yep.

A. ... from there down ...

Q. Yep.

A. ... and it was just right on the verge of where we stopped cleaning ... — not sealed

Q. Alright.

A. ... the hill.

Q. There was a spot here where it was quite finished.

A. Yeah that's it that's the spot.

Q. Okay.

A. [inaudible]. Yeah.

Q. So ...

A. Yeah.

Q. ... are you just, is this, helpful, can you identify it?

A. Yeah. That's the back of the wall. We've cleaned all this area ...

Q. Um hm.

A. ... and the rock came down I think either from right here or on this top side. But I, I just couldn't see where it came down. But soon I seen it started rolling down the hill it caught my eye.

Q. Mark Lunny - You could see that, there's some tracks there ...

A. Yeah.

Q. Mark Lunny -... and, and when, when would you have been there last.

Q. Okay, we're looking at picture 23 and um you just stated that you believe the rock came from close to the tree line in this general area. You're not certain exactly where it originated from but this is where you noticed it was rolling?

A. Yes.

Q. Alright.

In the preliminary submission provided by the Employer to Review Division, counsel remarks that prior blasting possibly may have affected the rock's stability. From records and interviews, I learned there were blasts performed on or near Bench 4 on February 17 and 18, and during the night shifts on February 19 and 20. While natural environmental factors, such as rain and thawing of frozen ground, may have an influence on the stability of such material, I determined there was no precipitation during the preceding days until the morning of the fatal incident. See Disclosure document *024 - Misc - Kootenay Enviro Ser Weekly Reports 142 pg*, pages 54 and 65.

The critical fact is that the Employer was reckless in failing to ensure the site above Bench 4 was adequately cleared of unstable material before placing many personnel below that area. There were numerous unstable rocks present above the crew members, any of which could have caused severe injury or death. Whatever directly caused the rock to begin rolling down the hill is not relevant to the determination of the Employer's reckless conduct.

The penalty under review was not based on whether or not the excavator set the rock into motion on February 22. Rather, this sanction is based on the fact the Employer knew it had unstable materials present which were capable of inflicting grave harm, knew it had not yet scaled areas that could be hazardous to workers, and did not use safe and compliant practices or deploy adequate resources to control the hazards. The Employer did not have an effective system to thoroughly examine the site for hazards of this nature. Most importantly, it did not address this issue even after management and safety personnel visited the site following the serious incident on February 21.

Photographs taken at the accident site show the obviously hazardous unstable materials present on the uphill slope.

Disclosure document *035 - Photos - OSO Lunny x 71*, photo 23, above, shows the "verge" of the unscaled uphill area and the previously scaled smooth area.

Although the practice in the workplace was to conduct frequent hazard assessments, the Employer did not have an inspection system that personnel followed diligently at such intervals as necessary to identify and control hazards adequately. This deficiency persisted despite very frequent blasting and excavation activities which disturbed materials routinely. When hazards where identified, the Employer selected the least effective methods of hazard control, as evidenced by this passage from my interview of the Project Manager:

> Q: Mmm-hmm. Now, another thing of note that I need to ask you about is, yesterday I was asking if there was any criteria established for people to follow with respect to, what is hazardous material? I mean, yeah, it may sound like a stupid question, but when is it too big, when does it have to be removed, when can it stay, what type of information have you been using on these jobs about that?
>
> A: Well, we rely on the experience of the operators and the superintendents and the foreman at that point. The people who are there. We talk about the risks. If the risks are that loose material will fall on people, what we do to eliminate those risks is get rid of the material.

Q: Mmm-hmm.

A: So, it's a guy in the excavator who's touching the rock that can draw the conclusion as to whether or not that material is going to come loose or not.

Q: Okay.

A: You can also rely on... You know, after the...after the excavator's done, you know, a pass through...a visual pass to make sure that things, you know, look good.

Disclosure document *016 - Verified - 09_Jul_9 - C DANDURAND - Project Mgr (redacted)*

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Even though its personnel knew from the incident of February 21 that uncontrolled movement of large boulders could cause serious harm, the Employer recklessly placed workers into an extremely dangerous situation where boulders could roll toward them and strike them, with little or no forewarning, when they returned to work the next day.

These potentially lethal circumstances were entirely foreseeable, and I consider there to have been an element of risk-taking by the Employer with the planning and conduct of the workplace. The practice of working two headings on the slope simultaneously, with crews above and below each other on ground which contained unstable materials, had been occurring for some time. Contrary to the Employer's inference in its submission that, on February 22, excavator operators unwisely "placed themselves" above the drilling and scaling crew, this work arrangement was planned and continued the same approach which was in place when the February 21 incident occurred. Refer to the statement of the Earthworks Engineer (note underlined content):

Q. Um, all right. Now, can you recall a little bit for me here about the job site, and what happened up there in, in February, on February, I believe, it was the 20th. I may have to check my notes. But, the day before, um, before this fatality, there was an accident and a near miss. Equipment did get damaged. Can you recall anything about that day?

A. Yeah. I can go through my day there. Um, so, I had ... I had been out on site previously that day. And, with my other cohort, his name would be Cody. Um, he's ...

Q. Is that Cody Dart?

A. That's right. Cody Dart. He's the ... my other field engineer, we're paired for turnaround basis.

Q. Um-hmm.

A. Um, and then, uh, we both left site, and we went back to the office and we were working on some work plans. And then, we returned on site to, uh, to the, the near miss that had happened. Um, when I got there, uh, there were ... the accident had already occurred. Um, equipment damage was done. There was, uh ... The drill and shoot crew, the earthworks crew, the maintenance department was there, um, investigating what had happened. Um, at that point, it was ... it was decided to shut ship down, and, uh, that we would all go back to camp, and, and have a meeting to discuss the, the events that, that occurred. And, uh, everybody that was involved from the drill and shoot department, and the earthworks department, and Tim Rule, our construction manager, uh, who is in charge of ... in charge of the construction for the whole ...

Q. Um-hmm.

A. ... project site, uh, he was the one that chaired the meeting. And, uh, so, we all went back and we talked about, uh, the events that occurred. Um, it was, uh ... It was then that, uh, we, we talked about our work plan for that area, on that, that rock face cut. Um, there was two headings. Uh, there was a heading coming from the top, which we call it we refer to it as bench four, and one at the bottom, bench twenty-one. Now, the headings work from the outsides working towards each other. Uh, towards this centre of the penstock line. Uh, and the center ... The penstock line runs on a diagonal from the, from the top down to powerhouse. And, with the topography of the rock, we knew that ... The topography of the rock created a, a natural chute that all the material would fall down from bench four away from bench twenty-one work zone. Um, at some point, they were going to converge and we weren't going to be able to work on top of, of each other there. So, um, we felt we were still ... This, this incident happened at a time that we didn't expect, uh, for, uh, for an incident to occur. Um, we still felt that we had lots of work time, um, based on, based on the topography and the rock, the rock chute. But, it was ... it was in that meeting that, uh, my supervisor, Jerry Karjala, uh, was very adamant and outspoken that, "No, this is ... This is ... It's ... It's too much, it ...". Whatever happened there, nobody really knows where that rock came from, but it was just ... It's just too close, and he was adamant that no ... There was no more working at the two benches. We, we'd come to that point before we expected that we're at that point now, so ... We came, came up with the idea for working past that, was that there was going to be no working bench four, and bench twenty-one simultaneously. Um, and, we actually decided that anything below the access road, so it would be bench, I guess, they started at bench eighteen down, uh, we were going to work it from the top down. So, none of that was going to be touched until we had got bench four down to the access road. Um, during that meeting, uh ... So, we talked about our, our plan for the next day. And, uh, ... And, uh, from developed ... developed a plan with, uh, everybody that was in the room.

Q. Okay. And, what was your recollection of the plan then, if they couldn't work on bench four and bench 21 simultaneously, um, what was the idea on how they would proceed?

A. Uh, for proceeding, what we talked about was there's two rock drills, a Ranger and a hoe drill. Um, they were going to drill bench four. Uh, there was a ... There was a ... what seemed to be a boulder. It was still natural ground, but it looked like a boulder. Um, and that area was going to be hand plugged by Sam and Arlen the two scalers. And, uh, then the excavation crew was going to work on, on, I guess you would call it clearing, grubbing, or, or removing topsoil-type material from, from the bank between working points PI twenty-seven and twenty-eight.

Q. Which is uphill of bench four.

A. Uphill of bench four. Um, but, there was an ... There's an area that had already been completed, uh, which is near the PI twenty-eight section. Um, the area that we were working in was the area closer to PI twenty-seven. (emphasis added)

Disclosure document *012 - Verified - 09_Jul_8 - F SMITH - Engineer-Earthworks (redacted)*

pages 2-4

Following the February 21 incident, the Employer failed to have senior and mid-level management and safety management inspect the site thoroughly for unstable materials to evaluate the condition of the terrain above Bench 4. They did not have additional scaling conducted to clean up the site although it was evident that the amount of scaling done was not keeping up to the quantity of unstable materials present. The site photographs taken by WorkSafeBC, police, coroner, and by the geotechnical engineers from Wiley Norrish clearly show the significant accumulation of the materials. Although these conditions were obvious, and a very serious incident had occurred on February 21 which certainly could have killed people working on Bench 21, the Employer did not curtail activities until their contracted geotechnical engineers could be brought in to evaluate conditions following a major incident. Safety shutdowns and meetings, warnings or personal efforts to watch out for rolling rocks, and revised plans and procedures did not improve or change dangerous site conditions or effectively reduce the significant risk of being assigned to work in a hazardous area downhill from unstable materials.

I disagree with the Employer's argument that site conditions and practices were satisfactory at the time of Officer Lunny's attendance at the site, that orders were not necessary, and that the accident which occurred was therefore not foreseeable. Officer Lunny's observations of the conditions of the slope were limited due to the work being conducted when he attended. He was not able to view the uphill portion of the slope as the access road was closed. Further, the conditions of the site would have changed due to the Employer's day and night blasting and scaling operations at the site. I determined from records I obtained that trim blasts near the top of the cut and adjacent to the tree line were done on February 15. The Bench 4 area was again blasted on the day before the incident.

Disclosure document *019 - PKS - Document Binder 2 - 453 pg (redacted*
Tab 17 Time Sheets page 397- 402

Also of note is that, according to Arlen Fitzpatrick, the hand scaling of the area which was trim-blasted was not completed in its entirety.

> Q. Paul Orr - so now when you fellas started doing your making your benches and stuff, was the scale, was it all scaled off at all above you?
>
> A. No (paper shuffling) they never gave us time to scale and as you can see
>
> Q. Paul Orr - and you and your brother are the only two scalers?
>
> A. Yes
>
> Q. I believe there might be more scalers uh I was told there was maybe a couple more um
>
> A. None of them um we had a couple of guys, we had one guy, Jason Carlson, helping us but that was only for a matter of five days, three days something like that because he doesn't work for drill and shoot. He works for the Transmission Line and they got started up and they wanted him back; so fair is fair; he works for them, there he goes

Q. Paul Orr - so when you are at, when you're on your days off does anybody fill in for you guys?

A. No. That's why we wanted to clean it up before we left

Disclosure document *002 - Verified - 09_Feb_25 - A FITZPATRICK - Scaler (redacted)*
Starting at page 9, line 49

See also disclosure document *011 - Verified - 09_Mar_10 - A FITZPATRICK – Scaler* at page 4 lines 15-19:

Q. Okay, um, now, the face above where the fatality incident happened, had you had the chance to hand scale that?

A. No. I mean, we scaled a little bit, rolled a couple of rocks directly, that were right on the edge of over there, but we didn't do anything above that.

See also disclosure document *005 - Verified - 09_Feb_25 - W EHELER - Blaster (redacted)* at page 8 line 13 to page 9 line 31:

Q. Paul Orr - okay and you said that on the day of the incident you guys did up there you made up a work plan, they did some scaling and then they started work on that rock. Where were they scaling it?

A. So they, um way over there around the corner here by the tree line back up on this bench over here away from everybody we were just cleaning up stuff that's ongoing kind of and then they drilled some holes over there for me to shoot; we were going to shoot them with the production blast. I think they drilled that morning, they might have just scaled...yeah there were a couple of little blocks on the tree line that they wanted to take out.

Q. Then Sam was killed right here and there were some areas that up in here that obviously hadn't been scaled yet. There was lots of loose material there. Would you have any input into getting that scaling done?

A. Um yeah we were we were just doing as we as we I think that was stable up there already and looked at it.

Q. So is it you Warren that is makes is the decision maker to yeah that's got to be hand scaled there.

A. Yeah, we were going to scale that.

Q. And when would you like, why wasn't it scaled yet? That's my question I guess, is why, why wouldn't it be scaled yet? At what point would you...scale that?

A. Yeah, we were going to scale that after cause I don't think that was that close to them. You look it's in the pictures.

Q. I know from perspective of pictures but no it was a question that arose in our mind at the site as it is a relatively straight line to the Tamrock drill downhill. So we're just wondering like what the criteria is to get any hand scaling done? Is it based on, is it your call or who's the person that makes that call?

A. Uh, we just kind of all look at it together and, and decide. Like I don't

Q. Uh, is is Paul the person that, that makes that decision or?

A. Well he kind of comes in and directs us of what were going to do and in what order...kind of thing and we look at it.

Q. Paul Orr - I think Barb what we need Warren is uh and and you know through your experience you know, you do a shot you're not allowed to let any worker close to the face until the slope and face is clear, right, and safe? Right? So there's been shots there and so there's still stuff up on top that hasn't been cleared. Like was that shot by the night crew and they couldn't see it or

A. No that was shot the day before.

Q. Paul Orr -Yeah. And they

A. Well they would, the drill were drilling right over here so I don't think they were right underneath that.

Q. Paul Orr - yeah, but the idea of having a regulation like that, and not to sit here and quote regulations... but the idea of having a regulation like that is that you do, you do your work, you do your shot, you clear it, you make it safe, then you move on to do whatever it is you're going do next, right?

A. Yeah.

Q. Paul Orr -you don't you don't move over then only go back to clear it when somebody is going to go in there

A. Yeah. They wanted them to, they wanted them to drill.

Q. Paul Orr – who wanted them to?

A. Oh, I'm not sure. I guess it was Paul, I guess.

Again, we determined from many sources and from site conditions that the terrain upslope of Bench 4 was incompletely scaled. The excavator operator, Jesse Taylor, stated the rock which killed the scaler came from an area that had not yet been scaled. Arlen Fitzpatrick, scaler, stated that, right after the fatality, Mr. Taylor pointed to the area where the rock had come from. Mr. Fitzpatrick had worked near the area previously and stated that the rock which killed his brother came from the area above Bench 4 where trim blasts were previously done. His evidence in this regard is found in disclosure document *011 - Verified - 09_Mar_10 - A FITZPATRICK – Scaler*, at page 11 line 15 to page 12 line 48:

Brian Fitzpatrick: I wonder if I could ask Arlen something. It might be helpful.

Q. Sure, all right, Brian, I'll allow it.

Q. Brian Fitzpatrick: Arlen, the rock that slid down the hill, that killed Sam, was it pretty obviously in a bad position, that it could be a hazard where it was sitting where it was on the side of the road?

A. No.

Q. Brian Fitzpatrick: It just kind of, it sort of came out of nowhere?

A. Well, I know where it came from. It came from over by our trim blasts.

Q. Really, I don't think, Brian, he could have seen it. He might have sort of seen the general area, but he couldn't have seen where it started from.

A. Well, I know where it started from. I couldn't see where it started from, from where we were. All I could see was a rock wall straight up and sky above us. And then everything below it. You can't see what's going on above you.

Q. Did anyone show you later? I've doubted it, because I know you, you know, were distressed immediately after this and probably left to go to camp. But did anybody show you or tell you where it had come from?

A. Yes, Jesse came running down, and I yelled at him "What did you do to my brother?" And he said, "It wasn't me. I was way over here." He said, "Look, that's where it came from, right there" and he pointed at it and I noticed I could see the path that it took .... He said, "that's where it came from" and I said "okay".

Q. Did the path that you saw come through the rocky dirty area and then into the smooth area, or?

A. Well, I'm not sure what you're talking about.

Q. Well, up there....

A. Like rough and smooth...

Q. Okay, well, all right, well,

A. It's all pretty rough...

Q. No, no, there's actually a really noticeably smooth....

A. Well, I know there's smooth space where we have to walk...yeah...well it came from over here, where we had been trim blasting...there was machine access up there, but just recently, a few days before they'd cleaned it up and moved out of there and they were working in a different area.

Q. Okay, just let me clarify what I mean. You know that area, where you had drilled the day before and, in fact, all your gear was sitting around there, I am calling that the rocky outcropping because it is quite a noticeable rocky outcropping there in that area. And then, you could see where a machine had machine-scaled some, and really smoothed it out.

A. Yeah.

Q. And just above that, there's an area that, a lot of dirt, it hasn't even been stripped off, the overburden hasn't been stripped off. So this path that Jesse pointed out to you where the

rock had come from, did he mean that it came from near the tree-line, through that dirt, and then down into the smooth area? Is that what he sort of showed you, or?

A. Well, I need a picture....

Q Okay, I'll show you one in a minute, but...

A. It came from where we had trim blasted, down, and then changed directions and went down the road, down.

Q. Okay, I think that part is clear to me and I can show you on the pictures in a moment, what other people have shown to me now. And that will be good for you, too, Brian, because the other day we were not sure. The last time we interviewed Arlen, we did not know for certain where did it come from. So, I'll show you what other people have shown me and ask you if that concurs with what they showed you that day. All right, uh, well, and, and when Arlen said, Arlen, you said that Jesse told you that he wasn't near it?

A. Yeah.

Q. When it happened?

A. Brian Fitzpatrick: So, it was just balancing there? Teetering?

Q. Evidently, that is the information we have at this time from Jesse. All right, well, thank you all. I will stop this interview at this time. It is 2:25.

See also disclosure document *001 - Verified - 09_Feb_25 - J TALYOR - Excavator Operator (redacted)* at page 15, line 32 to page 17 line 35. Photograph 27, referred to in the passage, is included below.

Q. Okay, it's Paul Orr. That, that berm that you guys made a few weeks before that?

A. Yeah. That was the left over material that we pulled off that hill. So we just pulled it down and we left it there and we were gonna' truck it out instead of keep throwing everything down the mountain.

Q. So there ...

A. We left it there for a safety precaution. We dragged it down, left it at the bottom of the slope as a catch basin for anything that was gonna' roll down. If there was gonna' be anything ya' know, we went up there and stripped anything that was gonna' come off, but when I go in there any, anything that's gonna' come off or any loose material we take for that reason, so it's, so it's safe.

Q. So it missed that or ...

A. No it didn't come out of that area. That was all cleaned.

Q. Um hm.

A. That rock came out of the rough stuff that we hadn't, we didn't clean. Like we cleaned ...

Q. Over ...

A. ... up to a certain point right. There was no rock like, if you go out and walk that there is no rock bigger than ya' know 6 inches or anything. It's just ah skin of dirt that's left left on the rock right.

Q. Photograph 27 shows this cleaned area that he's referring to. Ah, is that correct ...

A. Yes ...

Q. Jessie?

A. ... yes.

Q. And what you're, if this is the, the chute that you were discussing ...

A. Yes.

Q. ... and the pail is right there. What you just said just now is that the rock didn't come from this previously cleaned area or land down in this area that was deliberately left ....

A. Yeah.

Q. ... but it came down from the, from the other area just up slope from this ...

A. Yes.

Q. ... and went through this trough over by that ...

A. Yes.

Q. ... pail.

A. It came from up here but that looks like the mark right there running across there.

Q. This here?

A. Yeah. That was the trail it took down. Like, I can see it. I showed ah Mike. Like you could see, wh-, where the rock had rolled down the stuff we already cleaned 'cause it, the, you can see our teeth marks and ...

Q. Um hm.

A. ... it's all a uniformed pattern ...

Q. Um hm.

A. ... and you can see where that big rock rolled right across that slope and down that hill.

Q. There's a, it looks to me like a drill rod here that ...

A. [inaudible].

Q. ... is that correct?

A. That's a rock bolt.

Q. Rock bolt okay.

Q. Allan Blair – Barb, for the tape it's Allan. I wonder whether or not um you can just indicate and Jessie you're looking at photograph 27 and ah Barb has just oriented that rock bolt which is lying in the lower third towards the left margin of the photo. Do you agree?

A. Yes.

Q. Allan Blair - And you've indicated just immediately to the right ah again, third from the bottom, you see a series of little markings, striations across the ah teeth marks. The teeth marks are running from left to right and these markings are running sort of in the lower part of the photograph into the mid-part of the photograph and you're saying you believe that to be the evidence of the track of the boulder?

A. Yes.

Q. Allan Blair - And that's in photograph 27?

A. Yes.

Q. Barb - Okay, thanks. Okay. And I think that, that'll help.

There can be no question the hazards posed by the large amounts of loose material on the upslope portion of the site were obvious and the Employer's efforts to address the issue were wholly inadequate, despite the incident only one day before where a boulder rolled downhill to an area populated by a work crew. This was acknowledged to me by the Employer's Project Manager, Chris Dandurand:

> Q. Mmm-hmm. Was there an effort in place in recent weeks prior to this incident to obtain more scaling services?
>
> A: No… I don't know the answer to that question.
>
> Q: Okay. Well, I asked Paul… Jim McBride that, and he indicated that there had been attempts…recent attempts to get more scaling power, and Tim said that they had adequate scaling people there and they weren't seeking more. So, it's just something that's a discrepancy. Just wondered about that. Well, from our observation, we… We're not saying that more hand-scaling needed to be available. It could have been done by machine, it could have been, you know, accomplished by other means. But it is our view that more scaling needed to be done there. Would you share that after seeing the site?
>
> A: Without question.
>
> Q: Yeah.
>
> A: It was…it was not properly scaled.
>
> Disclosure document *016 - Verified - 09_Jul_9 - C DANDURAND - Project Mgr (redacted)*
>
> Page 9, line 7

Barbara Deschenes
Supervisor – Fatal and Serious Injury Investigations
Occupational Safety Officer

Firm Name:	**Peter Kiewit Infrastructure Co. (the "Employer")**	Firm Number:	**76110**
RFP #:	**201100256**	Date:	**January 6, 2012**
Request for Review:	**R0130850**		

Statement of Officer William (Mark) Lunny

I inspected several employers working in the construction project during February 18-20, 2009. As a result, I issued one inspection report to the Employer and a number of other inspection reports to contractors and subcontractors.[1] I departed the Toba Inlet area, by aircraft, after four hours of post-inspection meetings and inspection activity I conducted on February 20 at the Employer's camp. I was not at the Montrose site on February 20 or 21.

During my February 18-20 inspections in the area, I did go to the Montrose site on February 19. I was driven to Montrose by one of the Employer's personnel to observe an excavator casting rocks down the slope following a blast. It was not possible to go up the mountain as the road below the excavator was blocked off to eliminate traffic due to the casting activity. When I was observing the excavator casting material, there were no workers present in the hazard area downhill from the machine. My comments on the inspection report I issued reflect only that which I could observe from the base of the hill, which was limited. From the base of the mountain I could not accurately see and evaluate all site conditions, such as unstable materials above road areas or the loose materials in the area above the crest of the hill. I documented my inspectional activity for the week on inspection report 2009113820043, which does not contain any orders. Due to the inability to travel up the mountainside at Montrose, I brought up the matter of maintaining compliant first aid and the ability to transport injured workers when the conduct of operations blocked the access road, and documented this issue on the inspection report.

On February 24, following my attendance at the Montrose site with Officer Deschenes, I issued inspection report 2009113820051 which contained an order for the violation of permitting workers to be downslope of equipment during machine scaling operations. I issued this immediate compliance order as a result of the highly hazardous work area arrangements that we learned had occurred both on February 21 and on February 22. In addition, another order required the preservation of the incident scene for investigation purposes and required the Employer to submit a compliance plan acceptable to the Board prior to resuming operations at the site.

The site activity remained suspended by my order until March 6. On that date, I received a detailed and acceptable compliance plan from the Employer which addressed safety issues and violations. Senior Regional Officer Bjarne Nielsen, Officer Deschenes and I reviewed the plan and concurred that if it was followed, remediation of the hazardous conditions at the site could safely be done and, subsequently, operations could be resumed.

Daily site activities and variations in work assignments and work area arrangements would have changed the workplace conditions quite significantly from the time I did my limited inspection from the base of the mountainside on February 19 to when the February 21 and 22 incidents occurred.

William (Mark) Lunny
Occupational Safety Officer

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[i] IR 2009113820044, IR2009113820045, IR2009113820046, IR2009113820047, IR2009113820048, IR2009113820049

The scalers began to hand drill the boulder, taking turns doing this very physical and noisy work. Meanwhile, the Excavator Operator continued clearing the rest of Bench 4 until about 09:30–09:45. The Drill and Blast Engineer left the site while the Excavator Operator was still clearing Bench 4. After the Excavator Operator finished clearing Bench 4, the Earthworks Foreman directed the Excavator Operator to take the excavator uphill to work while the Earthworks Foreman bulldozed the road nearby to clear the rocks cast from Bench 4.

A hoe drill hauled to the site during the morning replaced the machine damaged the previous day. After Bench 4 was cleared and the blasting pattern was established, the Hoe Drill Operator positioned the hoe drill on the central area of Bench 4. The Hoe Drill Operator started drilling his portion of the blast pattern on the side of the bench closer to the Ranger Drill Operator's location, while tracking the hoe drill out toward the bench's central area.

The Earthworks Superintendent was on site throughout the shift, but for most of the time, he remained in a vehicle at the base of the hill. He was providing traffic control to keep personnel from entering Bench 21 or the main access road while work was going on uphill. After the Earthworks Foreman finished clearing the road, he went up the slope to operate a second excavator. To access the area he intended to work in, the Earthworks Foreman travelled near the area where the Excavator Operator was working above the crest of the hill. At all times while the Earthworks Foreman was above the crest of the hill, he had an unhindered view of the Excavator Operator working below him.

By the time the road and Bench 4 were cleared, it had started to rain. It rained lightly at first and then increased to a steady, moderate amount of rainfall. The Excavator Operator said that as the amount of precipitation increased, he noticed some wet material slough from the banks as he worked above the crest of the hill. At some point during this activity, the Earthworks Superintendent came up the hill to Bench 4 to bring some empty blasting-powder bags to the Blaster. He then returned to the base of the hill.

The Hoe Drill Operator finished drilling his portion of the blast pattern, and using reverse gear, travelled backward on Bench 4 to park the hoe drill about 10 metres below the boulder where the scalers were working. The Excavator Operator described that he then had the excavator positioned at a 45-degree angle to the tree line and was gathering small rocks near the machine. The excavator was about 50 metres upslope from the crest of the hill and approximately 20 metres from the tree line.

1.5.2 Rock rolls downslope to Bench 4

The Excavator Operator noticed that to the left of his machine and downhill, a 5-foot to 6-foot diameter rock was rolling out from the tree line area. The Excavator Operator described that when he first saw the rolling rock, it was on some rough ground just uphill of and near the verge of smoother ground that had been machine-scaled about a month before (see Figure 7). At times, the motion of the rock slowed on the rough ground, and the Excavator Operator thought that the

rock might stop. At one point during his observation, the Excavator Operator lost sight of the rock as it rolled behind a berm of piled material.

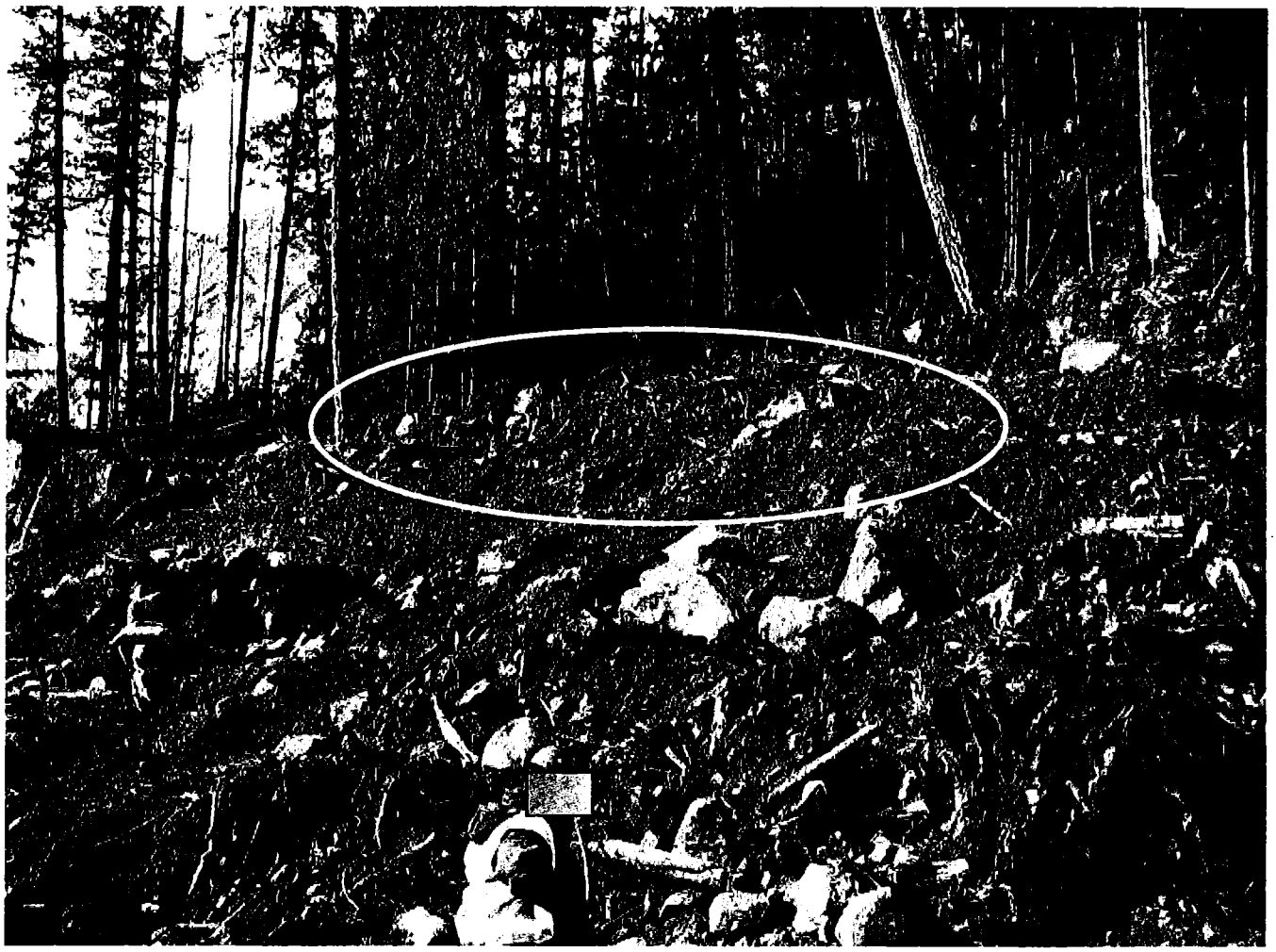

Figure 7. *Rough area adjacent to previously machine-scaled ground.*

Then, the Excavator Operator saw the rock again and realized it was continuing to roll. The Excavator Operator used the radio to warn the drilling crew about the rock coming toward Bench 4. He feared that the rock would enter the trough in the terrain and drop into the drilling area. He saw the rock roll over the berm of material and speed up once it rolled onto the smoother ground (see Figure 8). The rock rolled down the trough-like depression in the terrain toward a black pail sitting near the crest of the hill. The rock then dropped over the crest to Bench 4 (see Figure 9).

Figure 8. *Previously machine-scaled area. The dotted line indicates the rock's path that the Excavator Operator described.*

At this time, the Blaster was doing some paperwork in his pickup near the outer end of Bench 4. The Hoe Drill Operator was standing beside the hoe drill's front left track, conversing with Scaler 2, who was sitting in the cab of the hoe drill. The Ranger Drill Operator was drilling, and Scaler 1 was on the boulder running the hand drill. Everyone at the worksite heard the Excavator Operator's warning except Scaler 1. Scaler 1 was wearing hearing protection because of the hand drill's loud noise and he did not have a radio.

Scaler 2 and the Hoe Drill Operator started yelling at Scaler 1 to warn him. Just as Scaler 1 looked downhill at the Hoe Drill Operator and Scaler 2, the rock rolled over the crest behind Scaler 1, struck him directly, and rolled over him.

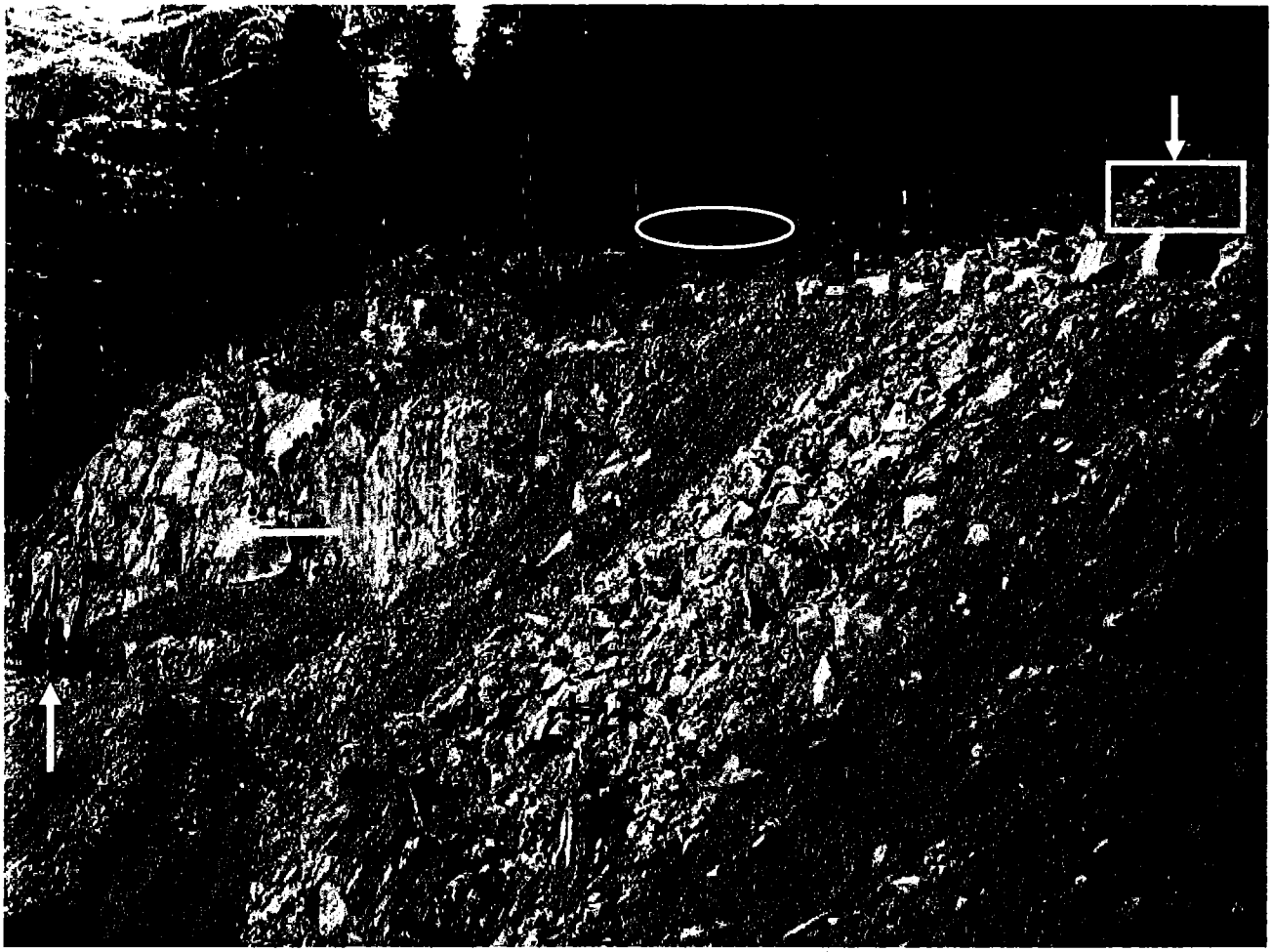

Figure 9. *Overview photograph of fatal incident area. The dotted line indicates the path of the rock that the Excavator Operator and the drilling crew described. The area within the oval at the tree line is where the Excavator Operator first saw the rolling rock. The downward arrow points to the Excavator Operator's machine, which is in the area within the rectangle. The horizontal arrow points to the fatality scene. The upward arrow points to the hoe drill.*

The rock partially fragmented after striking Scaler 1 and the boulder he had been drilling, but a large portion of the rock continued to come directly toward the hoe drill. The Blaster looked toward the area and saw the Hoe Drill Operator rapidly move from near the hoe drill's left track to escape being struck by the rock by taking shelter beside the rock face. Scaler 2 remained in the cab of the hoe drill. The rock struck the track of the hoe drill and split apart into several pieces. Some of the rock's fragments remained beside the hoe drill's left track and the rock face, and a large portion landed behind the rear of the hoe drill (see Figures 10 and 11).

Figure 10. *Fatality scene indicated by the circled area. The rock split apart during the incident. Some of the rock's fragments remained on the boulder. The arrow points to one of the rock's fragments that landed behind the hoe drill.*

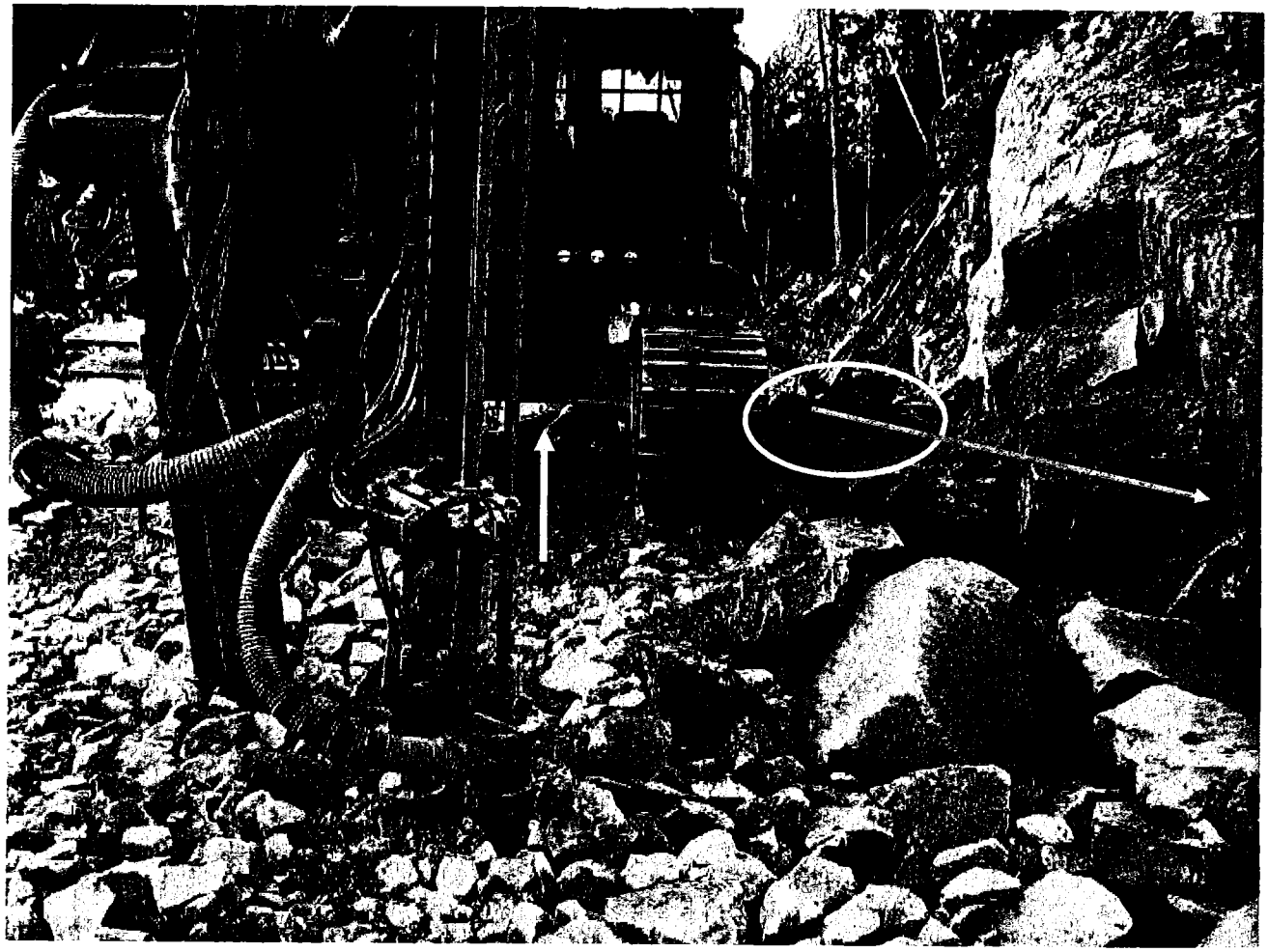

Figure 11. *Rock fragments between the left track of hoe drill and the rock face are circled. The blue arrow points to where the Hoe Drill Operator moved to take shelter from the rolling rock. The yellow upward arrow points to the rock fragment behind the hoe drill.*

Both the Hoe Drill Operator and the Blaster (who had previously had Level 3 first aid certification for more than 10 years) immediately went onto the boulder to assess Scaler 1 for signs of life. Scaler 1 had no vital signs present, and it was evident that he had an extremely severe head injury, as well as other injuries. The Hoe Drill Operator and the Blaster were very certain that Scaler 1 had died.

Scaler 2 had current Level 1 first aid certification. However, due to his distress from directly witnessing the incident, his close personal relationship with Scaler 1, and the Blaster and Hoe Drill Operator's certainty that Scaler 1 was deceased, the Blaster and Hoe Drill Operator would not let Scaler 2 onto the boulder to attempt first aid. The Ranger Drill Operator radioed the camp

to request that a first aid attendant come to the scene. As Scaler 1's airway was not clear, the Blaster moved Scaler 1 slightly in an effort to place him in a three-quarter prone position.

No resuscitation measures were attempted until the Nurse/FAA from the camp arrived at the incident site at 13:30. She assessed Scaler 1 and did not find any vital signs present. Using advanced first aid techniques and equipment, she attempted resuscitation without success. She determined that death had occurred and ceased resuscitation measures at 13:45. She made the decision to transport Scaler 1's body from the worksite to the camp and await the arrival of the Coroner and investigators. In her first aid reports of the incident, the Nurse/FAA documented that "the scene was unsafe for rescuers to remain."

Soon after the incident, Kiewit arranged an air flight to take Scaler 2 home. Although Kiewit had not authorized them to do so, the Blaster, the Hoe Drill Operator, the Ranger Drill Operator, and the Excavator Operator left camp with Scaler 2 on the flight. The Earthworks Superintendent and the Earthworks Foreman remained at the camp.

1.6 Cause of death

The Coroner did not require an autopsy. Severe head injury was the evident cause of death.

1.7 Site factors

1.7.1 Topographical conditions above Bench 4

Above Bench 4, there was a significant trough-like depression in the ground (see Figure 12). Persons interviewed were aware of the presence of this trough and further understood that material that rolled in the area and entered the trough would likely roll farther onto Bench 4. The terrain above the crest of the hill sloped to varying degrees in different locations; Kiewit engineering personnel estimated that the area where the rock was seen rolling had a slope of 30 to 35 percent.

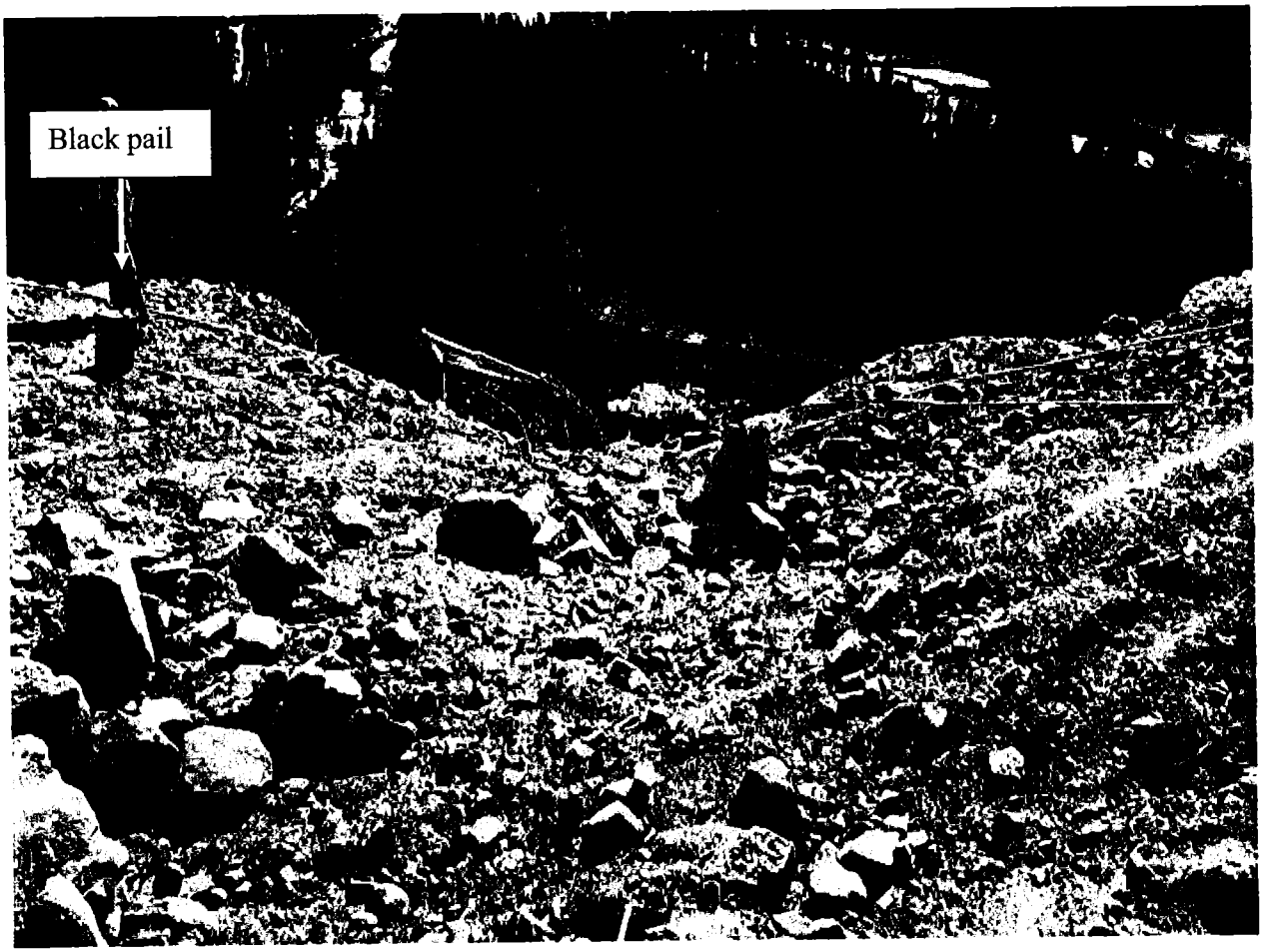

Figure 12. *Trough above Bench 4. The rock rolled down the trough and beside the black pail. The upper components of the hoe drill (still where it was parked when the fatality occurred) are visible near the centre of the photograph.*

1.7.2 Loose material

The Montrose site had many areas where workers and road users were exposed to unstable or loose materials such as rocks, forest debris, damaged or disturbed standing timber, and some unsecure logs. In the area above Bench 4, there were numerous loose rocks of varying sizes evident both on the face of the rock cut, in close range of the crest, and within the 50-metre area uphill from the crest.

Some of the larger rocks near the tree line area were on top of disturbed ground and forest debris that afforded little surface stability (see Figure 13). Equipment track marks and the fresh appearance of disturbed ground indicated that mobile equipment operation had recently disturbed some of the loose materials.

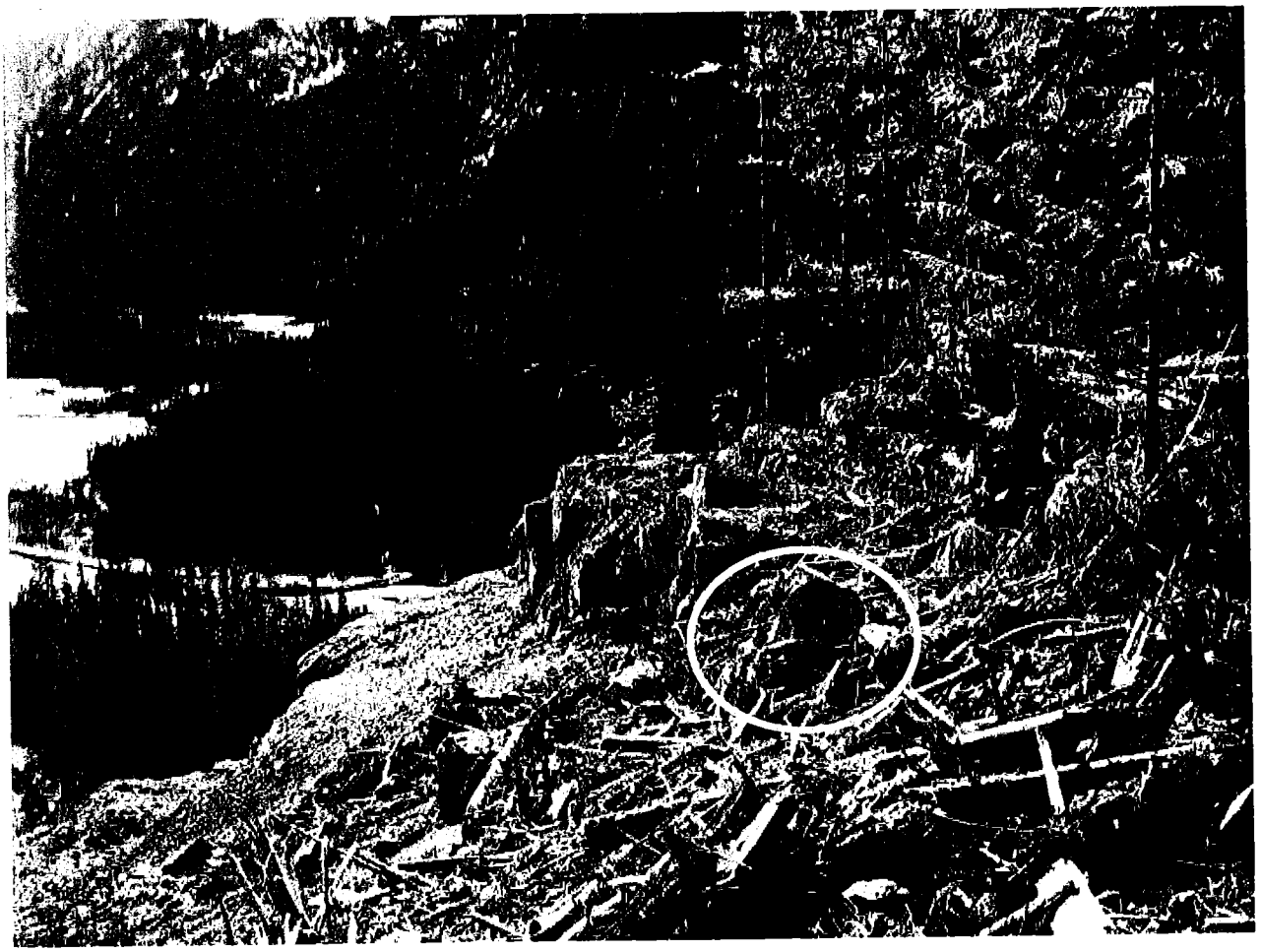

Figure 13. *Unstable materials adjacent to area previously machine-scaled. A rock lying upon loose forest debris is circled.*

Some hand scaling had previously occurred near the crest following some recent blasting in that area. Scaler 2 asserted his belief that the rock that rolled and killed Scaler 1 was loose material from this area that was not removed after the trim blasts the preceding week.

On the rock face above where the drillers and scalers drilled, and above where others, such as the Kiewit engineers, the Blaster, and the survey crew had worked, there were unscaled rocks on the uphill face of the rock cut (see Figure 14). This same loose material was present and shown on the February 18 photograph taken by Geotechnical Engineer 2 (see Figure 3). In his inspection report, the engineer had recommended that the full face be scaled.

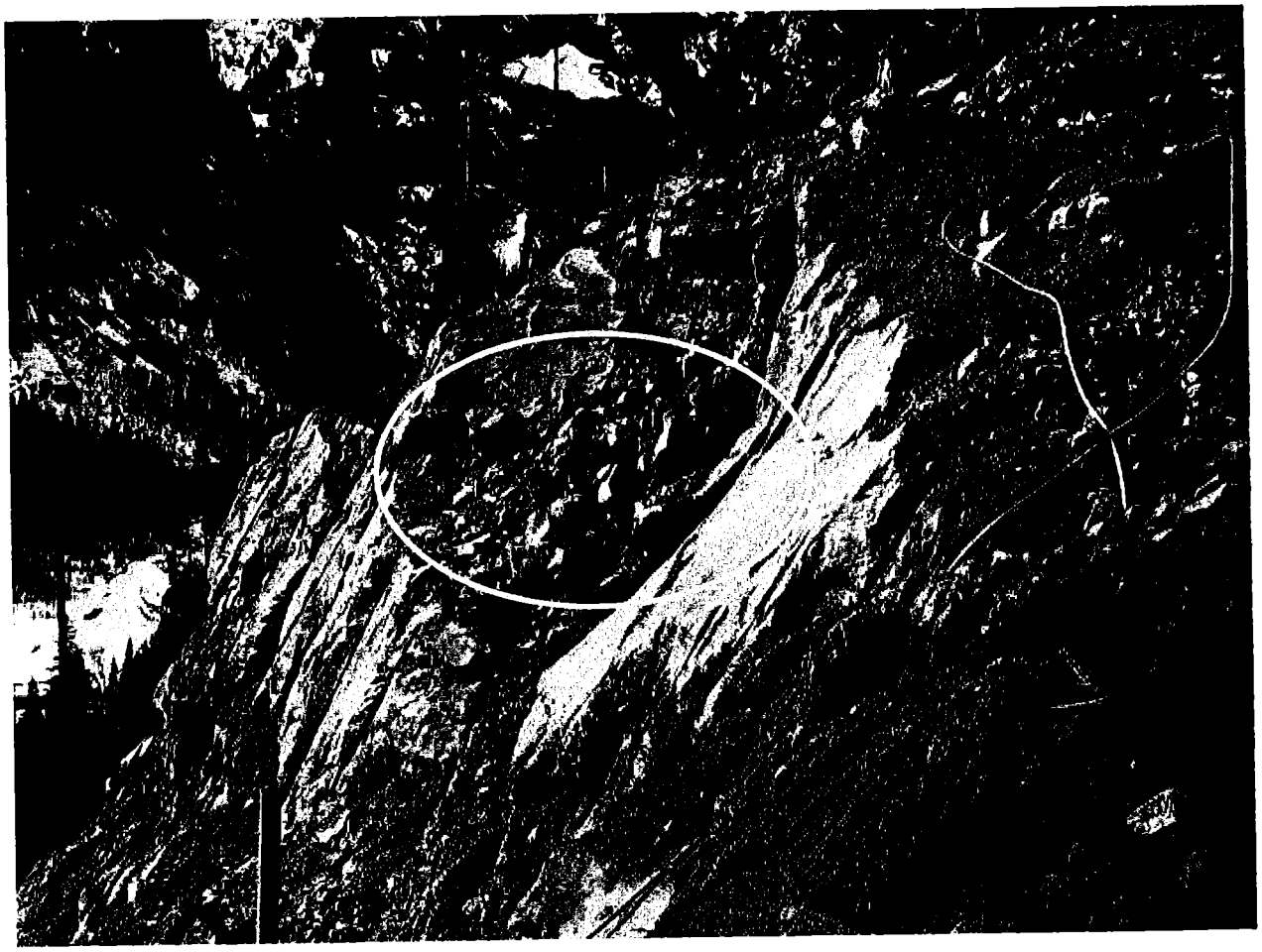

Figure 14. *Loose unscaled rock above the Ranger Drill Operator's location.*

Below the access road to Bench 4, and above the main access road to the site, there were loose rocks, forest debris, and logs (see Figure 15). These materials presented falling material hazards to persons travelling on roads or working below them.

Figure 15. *Unstable rock, forest debris, and logs below the Bench 4 access road and above the main access road.*

1.8 Safety requirements

Employers must plan, construct, use, and maintain workplaces to protect any person working at them from danger. This is stated by the reference to "Safe Workplace" in section 4.1 of the Occupational Health and Safety (OHS) Regulation. Several provisions outlined by the OHS Regulation require employers to protect workers from work areas made hazardous by falling or unsecured materials. There are requirements for employers in construction to make work areas safe from these hazards outlined in section 20.9. There are also parallel requirements specific to drilling in section 21.42(b), excavating in sections 20.80 and 20.92, scaling in section 20.97, and blasting in section 21.76. These requirements vary, but all deal with protecting workers from the hazards of unstable or loose material that may fall and strike them. Other provisions require that roadways are made safe from these hazards.

December 14, 2011

Box 2484
Garibaldi Highlands, B.C.
V0N 1T0

Work Safe BC
Review Committee

To Whom it May Concern:

I am writing in regards to the death of my son Samuel Joseph Fitzpatrick, born September 30, 1984, died in Toba Inlet, February 22, 2009. Sam was killed while working for P.K. Kiewit and Sons, they were constructing a Run of the River power project on the Montrose Creek, leading into the Filer valley, leading into the Toba River.

Sam was working as a rock scaler, with his brother Arlen. Sam was only 24 years old at the time of his death, and his brother Arlen was only 22. Arlen had gone over to the machine to get a drink of water, and he turned to see his brother getting crushed by a huge rock that was falling from above. Apparently, Sam could not hear the warnings that the other workers that were above him were shouting. Arlen's life has been changed immeasurably, from that moment on. Watching his brother's death in such a shocking manner, right in front of his eyes , is something that will continue to affect him deeply for the rest of his life.

Sam was my oldest son. He was very courageous and daring, very kind and funny, he was musical, he was hard worker, he was honest , and was growing into a fine young man. All his life he had been a leader among his friends. In fact he was one of the finest young men I know of, and he was dearly beloved by all his family and friends. His loss has created a huge void in all our lives.

We know that there were machines working above the boys. We know this because the young men that were working with Sam and Arlen came to our house in the days following the accident, and told us this. It seems very unsafe to me to have machines working above the scalers, my sons.

We know that the night before, Arlen had gone to their supervisor, and reported that the work was unsafe, and requested that the work be done by machine, as it was too unsafe to be there. Apparently the manager refused this request, and Sam and Arlen, being young workers and anxious to please, went ahead and complied with the order to work in that particular spot.

I went to the Montrose site to visit the spot where my son was killed and leave some

the following story:

The week before Sam was killed Dave had gone up in his truck, to the Montrose Site, and picked up a loader that had been crushed by a falling rock. A few days later, he had to go back up to the site, and pick up a Rock Drill that had been crushed by a falling rock, and take it out. A few days later, Sunday, in fact, Sam was killed by a falling rock.

Kiewit can whine all they like about Sam's death not being their fault, and that they were not responsible, and that it was WorkSafe BC's fault for allowing work to continue. They can blame the WSBC inspector for allowing them to work, but I do not agree. I think Kiewit, and Chris Dandurand need to take full responsibility for the unsafe work practises that were occurring at the Montrose site. It seems to me that any employer that was concerned about safety would not have allowed two young workers to work in such an unsafe area, especially with machines working above them, especially after one worker had pointed out the danger, and especially after two machines had been crushed at the same site.

This has affected me very deeply. It has affected my job as a high school teacher. I taught Planning 10 for years, and now I find I can no longer teach the course. The reason is that Planning 10 has a very strong WorkSafe BC component. I found I was no longer able to tell these young people that they had the Right to Refuse Unsafe Work. If big companies like Kiewit do not listen to their trained, trusted, responsible, young employees, how can I tell my students to refuse unsafe work? Kiewit has shown that they will not be listened to.

I think Kiewit was grossly negligent . I believe that $250,000. for seven safety violations is not enough. I think WorkSafe BC should fine Kiewitt $250,000. for each safety violation, found in the WSBC report about the accident. Sam's death was a disgraceful violation of Health and Safety Regulations, and although I know that a fine will not bring Sam back, Kiewit needs to learn a lesson, and WSBC needs to show the industry that such gross negligence will not be accepted.

Respectfully submitted;

C. Tamburri

Christine Tamburri, formerly Fitzpatrick

4 Pages

TO: Barbara Deschenes WORK SAFE BC

Occupational Safety Officer
Fatal and Serious Injury Investigations March 26 09

FROM: Brian Fitzpatrick E. Mail: fitz.NV@shaw.ca

Re: Sam Fitzpatrick, fatally injured on Kiewit project Feb 22 09

WCB FILE: 2009113820050

Furthering my point that communication is the most important aspect of work safety; I have included a copy of a letter dated Jan 31 08 between the union for Kiewit Sons: CLAC and Kiewit regarding Kiewit supervisor Jerry Karjala.

This letter underscores my previous letter sent to you re: Rick Berg, Project Manager for Kiewit Seg 1, dated Jan 28 08 contending that employees and foremen of Kiewit Sons working under Mr.Karjala would be significantly intimidated to freely communicate on the work site at Seg 1, thereby compromising safety.

The most common form of communication on a large site is via two way radio, whereby demeaning and demoralizing comments would be heard by one and all. Mr. Karjala is supervisor on the site where Sam was killed.

I believe this may have played a significant role in creating the fatal work site which was fraught with unacceptable hazards as well as the poisoned atmosphere regarding communication.

In closing allow me to remind you that Sam and his brother Arlen did not want to work on that site that day as they felt it was unsafe due to a near miss only the day before due to unstable rock which had not yet been rectified and equipment was once again working above them. They were pressured to work and a few hours later Sam was killed. Luckily there were no other fatalities that day.