

April 10, 2003

CERTIFIED MAIL RECEIPT  
7099 34 0016 8895 5392

Mark Wayment  
Lodestar Energy, Inc.  
HC35 Box 370  
Helper, Utah 841526

Re: Interim Findings of Fact, Order and Comments on the Fact of Proposed Assessment for Notice of Violation N 02-46-3-1, White Oak Mine, Lodestar Energy, Inc. C/007/001, Outgoing File

Dear: Mr. Wayment:

Lowell Braxton  
Mark Wayment, General Manager Mountain Operations.

On, March 19, 2003 an Informal Conference was held to review the fact of violation and proposed assessment for state violation N 02-46-3-1, Lodestar Energy, Inc, White Oak Mine. Attending were:

Assessment Conference Officer:

For Loadstar Energy:

For Oil, Gas and Mining's  
Coal Regulatory Program: Pete  
Hess Inspector  
Dana Dean, Hydrologist  
Pamela-Grubaugh Littig, Assessment Officer  
Mary Ann Wright, Associate Director, Mining.

Preliminary discussions determined that the Permittee did not wish to contest the assessment, only the fact of the violation. As a result of a review of all pertinent data and facts, including those presented in the Informal Assessment Conference, the following shall constitute interim findings of fact, conclusions of law on the NOV up to the time of the informal conference, and prior to abatement of the NOV.

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### **Fact of Violation**

Notice of violation NOV 02-46-3-1, (the NOV) was written 12-20-02 for "failure to properly reclaim the subsidence impact known as Surface Impact # 23," and failure to follow the approved reclamation plan for Surface Impact # 23".

#### **Provisions of Act, Regulations, or permit violated:**

1. R 645-301-541-100 (Reclamation of affected areas)
2. R 645-301-560 (Performance Standards)
3. UCA-40-10-18 (3)(a)(iii) (Maintenance of surface use values)

#### **Portion of operation to which notice applies:**

Surface Impact #23 in Boarding House Canyon and access area to the impact.

#### **Remedial action required (including any interim steps):**

1. Apply for and receive all consents necessary from the USFS/ Manti-La Sal National Forest prior to re-entering Boarding House Canyon.
2. Perform additional work necessary to bring the impacted area into compliance in accordance with the approved reclamation plan.

#### **Abatement Time**

Within 90 days of December 20, 2002.

### **The Informal Conference**

Pete Hess presented a chronology of events that began in 1985, with the development of the 3<sup>rd</sup> left off of the 3<sup>rd</sup> West Decline which encountered faulted ground conditions ultimately contributing to a surface subsidence "sinkhole" that was discovered in 1988. The chronology documents differing federal agency positions re the environmental and safety hazards of the sinkhole (which had been fenced by the then permittee, Valley Camp of Utah). The Surface managing agency's (Manti La Sal National Forest) position established the feature as a "significant safety hazard" in need of reclamation, and Lodestar submitted a reclamation plan to the Utah Coal Regulatory Program in accord with that desire. After approval of the plan by the Utah Coal Regulatory program, the permittee initiated reclamation to comply with the reclamation plan, but de-mobilized equipment prior to inspection by an authorized representative of the permittee or the Utah Coal Regulatory Program.. When notified that the work conducted did not meet the requirements of the plan, the permittee verbally committed to rectify the situation in November, 2002 but failed to do so. Based on this failure the Division issued the

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NOV in December, 2002.

Mark Wayment, representing Lodestar Energy, Inc. suggested that issuing an NOV may have been unwarranted given the fact that the White Oak permit did not contain a specific time by which mitigation of subsidence damages was to have been accomplished. He none the less committed to have the work completed when access and regulatory windows would allow this to happen.

In concluding the informal conference, the Conference Office stated that he was reluctant to make a final ruling on the fact of the violation or the final assessment until termination of the NOV had occurred.

### **Findings**

1. The NOV was issued on the basis of an inspection.
2. The request for an informal conference on the fact of the violation was timely.
3. The request for the informal conference was appropriately noticed
4. The NOV had not been abated at the time of the informal conference.
5. Field conditions and spring weather conditions preclude abatement of the NOV in the next 60 days.
6. It is not possible to make a finding on the proposed assessment or to fully evaluate the fact of this type of violation prior to abatement of the NOV.
7. While R 645-401-723 contemplates resolution of the fact and penalty for an NOV within 30days of the informal conference, it is not reasonable to expect this be done when field conditions preclude abatement of the NOV.
8. Circumstances which may qualify a notice of violation abatement period of greater than 90 days are enumerated at R 645-400-327.100 through 500.
9. R-645-400-327.400 contemplates extended abatement beyond 90 days for climatic conditions, or conditions where abatement would cause more environmental harm than they would prevent. This is the situation at the White Oak Surface Impact # 23 site.
10. By letter received March 19<sup>th</sup> 2003 the Permittee requested a 120 day extension in abatement of the NOV.
11. R645-401-800 mandates escrow of penalties when a permittee charged with a violation asks for a formal hearing on the violation before the Board.
12. At this time, the permittee has not asked for a formal hearing on the NOV before the Board.

**Order**

A finding regarding the fact of the NOV and the appropriateness of the proposed penalty will be withheld pending abatement and termination of the NOV.

Unless the Permittee opts to ask for a formal hearing on the NOV prior to termination and abatement, escrow of the penalty is not required.

The Permittee shall monitor field conditions and comply with right of entry requirements so as to conduct subsidence mitigation activities in satisfaction of the NOV at the earliest practical date in 2003 so that these activities can be conducted without causing more environmental harm than the NOV was designed to prevent.

Beginning May 12, 2003, and every 14 days thereafter, the Permittee will report field conditions to the Division inspector with the intent of establishing an appropriate date to begin construction activities that will satisfy the terms of the NOV.

**Remarks** None

**Assessment Conference** The

Permittee waived the assessment conference opportunity

**Findings**

No decision will be made on the proposed penalty until the NOV is terminated.

	<b>Points</b>	<b>Proposed</b>	<b>Proposed Assessment Final</b>
History Points	0	0	
Seriousness			
Damage		5	<b>0</b>
Probability of Occ.		5	
Negligence		10	
Good Faith			

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0 \_\_\_\_\_ 0 The NOV was not abated at the conference

**Total Points \_\_\_\_\_ 10**

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal of this informal Order to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

Sincerely,

Lowell P. Braxton  
Assessment Conference Officer

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vs  
cc: Mary Ann Wright  
Pamela Grubaugh-Littig  
Pete Hess

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