

September 10, 2003

CERTIFIED MAIL
7099 3400 0016 8895 5965

Bill Bishop, Lodestar Trustee
2525 Harrodsburg Road, Suite 235
Lexington, Kentucky 40504

Re: Proposed Assessments for State Cessation Order #'s C03-42-1-1, C03-42-1-2, & C03-42-1-3, Lodestar Energy, Inc., White Oak Mine, C/007/0001, Outgoing File

Dear Mr. Bishop:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation orders were issued by Division Inspector, Wayne H. Western, on June 20, 2003. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the cessation order and the amount of this penalty.

Under R645-401-700, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of any of these Cessation Orders, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the assessment conference will be scheduled immediately following that review.

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C/007/0001
C03-42-1-1, C03-42-1-2, & C03-42-1-3
September 10, 2003

Lodestar Energy, Inc., has been assessed \$750 per day for 30 days (maximum), which is \$22,500 for each Failure to Abate Cessation Order: C03-50-2-1, C03-42-1-1, C03-42-1-2, and C03-42-1-3, pursuant to R645-401-420 and 430.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,

Pamela Grubaugh-Littig
Assessment Officer

Enclosure
cc: OSM Compliance Report
Vickie Southwick, DOGM
Price Field Office
O:\007001.WO\COMPLIANCE\2003\C03-42-1-1,2,3LTR.DOC

**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY/MINE Lodestar Energy, Inc./White Oak/Whiskey Creek PERMIT C/007/001
CO # C03-42-1-1 VIOLATION 1 of 1

ASSESSMENT DATE 09/02/2003

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY (Max. 25 pts.)

A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N03-46-1-1</u>	<u>01/09/2003</u>	<u>1</u>
<u>N03-50-1-1</u>	<u>03/11/2003</u>	<u>1</u>
<u>C03-39-1-1</u>	<u>03/11/2003</u>	<u>5</u>
<u>C03-51-1-1</u>	<u>03/12/2003</u>	<u>5</u>
<u>FTAC03-50-2-1</u>	<u>05/15/2003</u>	<u>5</u>

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) year
No pending notices shall be counted

TOTAL HISTORY POINTS 17

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Event

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

*****Injury to the public (public safety). Damage to property.**

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*****The Permittee was aware of the need to keep all underground openings sealed. In verbal communications with Division personnel, the Permittee stated that the seals failed due to surface mining activities such as blasting. The blocks were hollow and stacked without any mortar. After the seals failed, the Permittee took no action to correct the problem even though the situation was clearly a hazard to public health and safety.**

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*****The Permittee failed to construct adequate seals for the 14, 15, and 16 portals. The hollow block seals failed and the backfilling was inadequate to seal the portals. After the seals failed, the permittee took no action to seal the entries. The failed seals are a threat to public health and safety.**

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 40

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Negligence

ASSIGN NEGLIGENCE POINTS 30

PROVIDE AN EXPLANATION OF POINTS:

******The Permittee was aware of the need to keep all underground openings sealed. In verbal communications with Division personnel, the Permittee stated that the seals failed due to surface mining activities such as blasting. The blocks were hollow and stacked without any mortar. After the seals failed, the Permittee took no action to correct the problem, even though the situation was a hazard to public health and safety.***

The Permittee had equipment and a work force on site that could have placed backfill in the portals and constructed adequate seals. At a minimum, the Permittee could have constructed fences and placed warning signs to protect the public.

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of

approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

****This imminent harm cessation order was converted to a failure to abate cessation order effective July 16, 2003. The underground openings have not been sealed to date.*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION <u>C03-42-1-1</u>	
I. TOTAL HISTORY POINTS	<u>17</u>
II. TOTAL SERIOUSNESS POINTS	<u>40</u>
III. TOTAL NEGLIGENCE POINTS	<u>30</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>87</u>
TOTAL ASSESSED FINE	<u>\$3560.00</u>

**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY/MINE Lodestar Energy, Inc./White Oak/Whiskey Creek PERMIT C/007/001
CO # C03-42-1-2 VIOLATION 1 of 1

ASSESSMENT DATE 09/02/2003

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY (Max. 25 pts.)

A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N03-46-1-1</u>	<u>01/09/2003</u>	<u>1</u>
<u>N03-50-1-1</u>	<u>03/11/2003</u>	<u>1</u>
<u>C03-39-1-1</u>	<u>03/11/2003</u>	<u>5</u>
<u>C03-51-1-1</u>	<u>03/12/2003</u>	<u>5</u>
<u>FTAC03-50-2-1</u>	<u>05/15/2003</u>	<u>5</u>

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) year
No pending notices shall be counted

TOTAL HISTORY POINTS 17

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Event

A. EVENT VIOLATION (Max 45 pts.)

2. What is the event which the violated standard was designed to prevent?

*****Injury to the public (public safety). Damage to property.**

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

******The Permittee failed to follow proper mining procedures by not backfilling the highwalls exposed by surface mining.***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

******The creation of highwalls during surface mining is a standard procedure. Backfilling of the highwalls is also part of the standard mining procedure. Failure to follow the approved backfilling plan resulted in highwalls being left in place longer than the approved time and potentially could fail and pose a hazard to public health and safety.***

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 35

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 30

PROVIDE AN EXPLANATION OF POINTS:

******Permittee, Lodestar Energy, Inc., was fully aware of the permit requirement to backfill. The Permittee had equipment and a work force on site that could have placed backfill against the highwalls.***

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does

the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

******The Permittee had equipment and a work force on site that could have placed backfill against the highwalls. This imminent harm cessation order converted to a failure to abate cessation order, effective July 22, 2003. The highwalls have not been backfilled to date.***

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION <u>C03-42-1-2</u>	
I. TOTAL HISTORY POINTS	<u>17</u>
II. TOTAL SERIOUSNESS POINTS	<u>35</u>
III. TOTAL NEGLIGENCE POINTS	<u>30</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>82</u>
TOTAL ASSESSED FINE	<u>\$3160.00</u>

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING

COMPANY/MINE Lodestar Energy, Inc./White Oak/Whiskey Creek PERMIT C/007/001
CO # C03-42-1-3 VIOLATION 1 of 1

ASSESSMENT DATE 09/02/2003

ASSESSMENT OFFICER Pamela Grubaugh-Littig

I. HISTORY (Max. 25 pts.)

A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>N03-46-1-1</u>	<u>01/09/2003</u>	<u>1</u>
<u>N03-50-1-1</u>	<u>03/11/2003</u>	<u>1</u>
<u>C03-39-1-1</u>	<u>03/11/2003</u>	<u>5</u>
<u>C03-51-1-1</u>	<u>03/12/2003</u>	<u>5</u>
<u>FTAC03-50-2-1</u>	<u>05/15/2003</u>	<u>5</u>

1 point for each past violation, up to one (1) year
5 points for each past violation in a CO, up to one (1) year
No pending notices shall be counted

TOTAL HISTORY POINTS 17

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Event

A. EVENT VIOLATION (Max 45 pts.)

3. What is the event which the violated standard was designed to prevent?

***Injury to public health and safety.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

***The Permittee failed to reclaim the Val Cam Loadout. The abandoned buildings and facilities are a hazard to the public health and safety.

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 25

PROVIDE AN EXPLANATION OF POINTS:

***The abandoned facilities are across the highway from two youth camps. Children from the camps have gone onto the site as evidenced by toys on the rail during an inspection on June 12, 2003.

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 45

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 30

PROVIDE AN EXPLANATION OF POINTS:

****The Permittee, Lodestar Energy, Inc., had equipment and a work force on site that could have dismantled the buildings and facilities.*

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

****This imminent harm cessation order was converted to a failure to abate cessation order on July 16, 2003. No reclamation to date.*

VI. ASSESSMENT SUMMARY

NOTICE OF VIOLATION <u>C03-42-1-3</u>	
I.	TOTAL HISTORY POINTS <u>17</u>
II.	TOTAL SERIOUSNESS POINTS <u>45</u>
III.	TOTAL NEGLIGENCE POINTS <u>30</u>
IV.	TOTAL GOOD FAITH POINTS <u>0</u>
	TOTAL ASSESSED POINTS <u>92</u>
	TOTAL ASSESSED FINE <u>\$3560.00</u>