



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
P.O. Box 46667
Denver, Colorado 80201-6667

MAR 04 2004

March 2, 2004

NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT (NOPA)

Mr. William D. Bishop – Trustee
Lodestar Energy, Inc.
2525 Harrodsburg Road, Suite 235
Lexington, KY 40504

RE: Imminent Harm Cessation Order C04-140-116-001, “White Oak Mine 1 & 2”, Utah
Permit C007/001

Dear Sir or Madam:

Under the authority of THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, 30 U.S.C. 1201 *et seq.*, on February 13, 2004, you were issued; **Imminent Harm Cessation Order C04-140-116-001**, via certified mail.

Office of Surface Mining regulations at 30 CFR PART 845 establishes a point system to evaluate each violation cited in a Notice of Violation or Cessation Order. In deciding whether to propose a penalty for a violation cited in a Notice of Violation, the permittee's history of previous violations, the seriousness of the violation, and the degree of negligence involved in the violation are considered. If the permittee has abated the violation by the time the proposed assessment is prepared, good faith in complying may also be considered. Under the point system, a penalty is not required when a violation is assigned a total of 30 points or less.

However, in accordance with the regulations under 30 CFR 845.12(c) this office will exercise its discretion to assess a penalty for violations assigned 30 points or less, when points assigned under 30 CFR 845.13 to a particular violation reach a certain threshold limit, in any one of the following categories: “History” 12 or more points, “Seriousness” 21 or more points, “Obstruction” 12 or more points, and “Negligence” 15 or more points.

Therefore, in accordance with 30 CFR Part 845, you are hereby issued a proposed civil penalty assessment for this violation, in the amount of **\$6,160.00**.

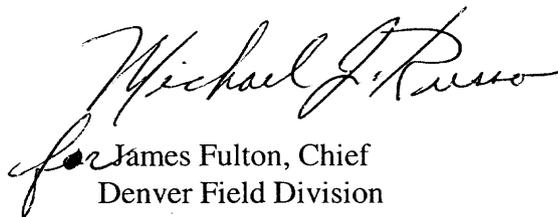
Carefully read this letter and the enclosed information concerning the requirements for payment of civil penalty assessments. Information regarding the requirements for obtaining informal and

formal administrative review of the proposed penalty is also enclosed.

If the enclosed Assessment Worksheet shows that good faith in achieving compliance was not considered in making the assessment, you may request a modified assessment based on consideration of good faith. To request consideration of good faith, you must show that extraordinary measures were taken to abate the violation(s) in the shortest possible time and that abatement was achieved before the time set for abatement. Your request should be made in writing, after the violation(s) have been abated, and should be addressed to the Program Support Division, at the address above.

If you have any questions, you may call Carl R. Johnston, Northwest Branch, at (303) 844-1400, extension 1500.

Sincerely,


for James Fulton, Chief
Denver Field Division

Enclosures

cc: OSM - Denver Field Division
Bureau of Land Management - State Office
Bureau of Land Management - Price Field Office
U.S. Forest Service - Manti-La Sal National Forest
Utah Division of Oil, Gas, & Mining - Coal Regulatory Program

ASSESSOR #: 61

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ASSESSMENT WORKSHEET

PERMIT: C007/001

NOV: C04-140-116-001

Company Name / Permittee: Lodestar Energy, Inc.

VIOLATION 1 of 2

POINTS

1. History of Previous Violations: 0

2. Seriousness (Part A (Event) or Part B (Obstruction))

A. Event violations

(1) Probability of Occurrence: 14

(2) Extent of Actual or Potential Damage: 14

TOTAL Event Seriousness: 28

B. Obstruction to Enforcement: N/A

3. Negligence: 20

4. Good Faith: 0

TOTAL POINTS: 48

ASSESSMENT: \$3,080.00

VIOLATION 2 of 2

POINTS

1. History of Previous Violations: 0

2. Seriousness (Part A (Event) or Part B (Obstruction))

A. Event violations

(1) Probability of Occurrence: 14

(2) Extent of Actual or Potential Damage: 14

TOTAL Event Seriousness: 28

B. Obstruction to Enforcement: N/A

3. Negligence: 20

4. Good Faith: N/A

TOTAL POINTS: 48

ASSESSMENT: \$3,080.00

ASSESSMENT EXPLANATIONCO # C04-140-116-001Company Name / Permittee: Loadstar Energy, Inc.Violation # 1 of 2**Nature of Violation:** Failure to eliminate all highwalls.**Provision Violated:** 30 CFR 816/817.102(a)(2)Points**History of Previous Violations:**0

None

Seriousness: (Part A or B)**A. Event the standard was designed to prevent:**

Endangerment to the Public's Health and Safety, Delay or Failure of the Post mining Land use.

(1) Probability of Occurrence:14

Endangerment to the public's health and safety is likely to occur as a result of the permittee's failure to eliminate all highwalls. Highwall remnants approximately 500 feet long and ranging in height from 40 to 50 feet and 400 to 500 feet long 40 to 60 feet in height remain on the permit area. Of the 151 acre permit area, approximately 102 acres have remained reclaimed for some time. Reclamation activities at the site have only been carried out for only approximately 4 of the 9 months preceding the issuance of the violation. Therefore, some delay in the post mining land use has occurred. Consequently, the upper end of the point scale for "Likely to Occur" (10-14 pts) is warranted and 14 points are assigned.

(2) Extent of Actual or Potential Damage:14

Potential endangerment to the public's health and safety would include death or severe injury given the proximity of the highwall remnants to a U.S. Forest Service recreational jeep trail that runs through the permit area and within 200 feet of the highwalls. Any injury to the public would be considered to have extended beyond the permit area. The Inspector notes in his report that there is a functional sediment control pond on the permit area, however, the Whiskey Creek stream diversion is in need of maintenance and repair. Therefore, snow melt runoff and sediments have the potential to leave the permit area. Consequently, the point scale for "Extending off the Permit Area" (8-15 pts) is warranted and 14 points are assigned.

ASSESSMENT EXPLANATIONCO # C04-140-116-001Company Name / Permittee: Loadstar Energy, Inc.Violation # 1 of 2TOTAL Seriousness: 28**B. Obstruction to Enforcement:** N/A**Negligence:** 20

Greater Degree of Fault than Negligence. The permittee should have been aware that they are ultimately responsible for the full and complete reclamation of all disturbed areas as described in their approved Permit Application Package (PAP) and that they must comply with the terms and conditions of the approved permit. The degree of negligence is increased, however, from "negligence" to "Knowing and Willful / Intentional Conduct", since the Inspector indicated that he had previously documented the existence of highwalls on the unreclaimed disturbed area in a June 2003 inspection report. In addition, the permittee had been cited for the same violation by the Utah Division of Oil, Gas, & Mining - Coal Regulatory Program at that time. Therefore, the permittee was well aware of the need for elimination of the highwalls and full reclamation of all disturbed areas. Consequently, the upper range of the point scale for "Greater Degree of Fault than Negligence" (13-25) is warranted and 20 points are assigned.

Good Faith: 0

The violation remained unabated at the time the assessment was made. Consequently, good faith points were not considered.

ASSESSMENT EXPLANATIONCO # N03-020-179-001Company Name / Permittee: Lodestar Energy, Inc.Violation # 2 of 2**Nature of Violation:** Failure to complete the demolition of coal loadout facilities and reclaim disturbed areas.**Provision Violated:** 30 CFR 773.17(c)Points**History of Previous Violations:**0

None

Seriousness: (Part A or B)**A. Event the standard was designed to prevent:**

Endangerment to the Public's Health and Safety, Delay or Failure of the Post mining Land use.

(1) Probability of Occurrence:14

Endangerment to the public's health and safety is likely to occur as a result of the permittee's failure to fully demolish and reclaim all buildings and structures. Photographs submitted as a part of the Inspector's report depict an open portal to the underground mine secured only by 6 foot chain link panels, several small concrete buildings, a partially demolished grizzly / coal truck dump, a concrete coal stacker tube, an underground coal feed conveyor, and a coal train loadout building complete with stairways and catwalks. Reclamation activities at the site have only been carried out for only approximately 4 of the 9 months preceding the issuance of the violation. Therefore, some delay in the post mining land use has occurred. Consequently, the upper end of the point scale for "Likely to Occur" (10-14 pts) is warranted and 14 points are assigned.

(2) Extent of Actual or Potential Damage:14

Potential endangerment to the public's health and safety would include death or severe injury given the proximity of the remaining buildings and structures to the Alpine School District youth camp. This year round youth camp is located approximately 200 yards from the buildings and structures and is clearly visible in the photographs provided. Any injury to the public would be considered to have extended beyond the permit area. Easy access to the site is provided by the grizzly / coal dump located immediately off of State

ASSESSMENT EXPLANATION

Company Name / Permittee: Lodestar Energy, Inc.

Violation # 2 of 2

(2) Extent of Actual or Potential Damage: (continued)

Road 96 and directly across from the youth camp. Consequently, the point scale for "Extending off the Permit Area" (8-15 pts) is warranted and 14 points are assigned.

TOTAL Seriousness: 28

B. Obstruction to Enforcement: N/A

Negligence: 20

Greater Degree of Fault than Negligence. The permittee should have been aware that they are ultimately responsible for the full and complete reclamation of all disturbed areas as described in their approved Permit Application Package (PAP) and that they must comply with the terms and conditions of the approved permit. The degree of negligence is increased, however, from "negligence" to "Knowing and Willful / Intentional Conduct", since the Inspector indicated that he had previously documented the existence of partially demolished buildings and structures on the unreclaimed disturbed area in a June 2003 inspection report. In addition, the permittee had been cited for the same violation by the Utah Division of Oil, Gas, & Mining - Coal Regulatory Program at that time. Therefore, the permittee was well aware of the need for the complete removal of all buildings and structures and the full reclamation of all disturbed areas. Consequently, the upper range of the point scale for "Greater Degree of Fault than Negligence" (13-25) is warranted and 20 points are assigned.

Good Faith: 0

The violation remained unabated at the time the assessment was made. Consequently, good faith points were not considered.

PAYMENT AND APPEAL INFORMATION

I. PAYMENT PROCEDURES

Unless you request an informal assessment conference or formal administrative review of the penalty in accordance with the instructions set forth below, the proposed civil penalty assessed in the accompanying NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT (NOPA) will be re-issued as a FINAL ORDER thirty (30) days after receipt of this letter. If there is a pending appeal for review of the citation under 30 CFR 843.16, the FINAL ORDER will be issued after conclusion of the appeal. Payment must be received by the Office of Surface Mining (OSM), Collections Team, within 30 days after the issuance of the FINAL ORDER or the debt will be considered delinquent and the following sequence of charges will be applied to your account: (1) Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due. (2) Administrative costs will be incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company. (3) If any portion of the civil penalty remains unpaid ninety (90) days after the assessment is first due, you will be subject to a 1 percent penalty per year upon the balance due calculated from the first day of delinquency. This penalty will accrue at the rate of one-half of one percent for each month or portion thereof that the balance remains unpaid.

Payment should be made by check or money order, payable to the "Office of Surface Mining" and mailed to:

U. S. Department of Interior
Office of Surface Mining
P. O. Box 360292 M
Pittsburgh, PA 15251

To assure proper credit for your payment, please note on your check or money order the citation number for which payment is being made. If payment of the civil penalty in a lump sum will result in severe financial hardship please contact a collection specialist immediately at (202) 208-4031 to discuss installment terms.

Please note that, even though payment is not delinquent until 30 days after the assessment becomes a Final Order, a record of this civil penalty will be placed on the Applicant Violator System (AVS) at the time a Final Order is issued. Placement on AVS may block the issuance of any pending permit.

Federal law also authorizes the collection of the debt (created by issuance of a Final Order) by administrative offset against any payments or refunds due you from the Federal Government. You would have opportunity to inspect and copy OSM records pertaining to this debt, and/or enter into a written agreement with OSM to repay this debt, before such offset occurs.

II. TO REQUEST AN INFORMAL ASSESSMENT CONFERENCE

If you wish an informal assessment conference with a representative of OSM to review the amount of this proposed assessment, you must submit a written request within thirty (30) days after you receive this letter as provided at 30 CFR 845.18(a) [30 CFR 725.18(a) for interim program operations]. You may use the enclosed form to request an informal assessment conference by sending your request to:

Carl R. Johnston, Northwest Branch
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

or by telecopying to the number on the form.

III. TO REQUEST A FORMAL HEARING

If you wish a formal hearing before an Administrative Law Judge under Section 518 of SMCRA [30 U.S.C. 1268] (30 CFR 845.19) to contest either the proposed penalty assessment or the fact of the violation, or both, you must file a Petition for Review together with payment for the full amount of the civil penalty assessed. Your payment will be deposited in an escrow account until there is a final decision on the amount, if any, that is due. The fact of the violation may not be contested if it has been previously decided in a formal administrative review pursuant to 30 CFR 843.16. The dates for filing the Petition for Review are: (1) If you are not requesting an informal assessment conference, you have 30 days from receipt of this letter to file the Petition for Review with escrow payment; and (2) If an informal assessment conference has been held, you have 30 days from receipt of the conclusion of the conference to file the Petition for Review with the escrow payment.

Your escrow payment must be made by check or money order payable to the "Office of Surface Mining" **In order to assure proper credit for your payment, please write the number of the NOV or CO and the pertinent violation(s) on the front of the check or draft.** Attach the draft or check to the petition and send to:

U. S. Department of the Interior
Office of Hearings and Appeals
801 N. Quincy Street
Arlington, Virginia 22203

The requirements for the contents of the Petition for Review are set forth at 43 CFR 4.1152.

If you wish a hearing to contest some, but not all, of the assessed penalties under Section 518, you must indicate the specific violation(s) for which you want a hearing. You must pay into escrow the proposed penalty for those violations. However, with respect to the uncontested

III. TO REQUEST A FORMAL HEARING

penalties, you must pay them within 30 days after the assessment becoming a Final Order to avoid the additional charges described in Section I.

If it is determined through administrative review of the proposed penalty that no violation occurred, or that the amount of the penalty should be reduced, OSM will refund the amount with appropriate interest. However, all refunds are subject to administrative offset for any other outstanding civil penalty debts and/or delinquent reclamation fees you may owe. You would have opportunity to inspect and copy OSM records pertaining to such other debt, and/or enter into a written agreement with OSM to repay such other debt, before such offset would occur.

Please be advised that failure to forward the amount of the proposed assessment along with the Petition for Review under Section 518 of SMCRA will result in a dismissal of your Petition.

Since you are requesting a formal hearing, you may want to have an attorney assist you in the presentation of your case. However, you are entitled to represent yourself.

Locations for hearings are selected by the Administrative Law Judge with due regard for the convenience of the parties and witnesses.

CONFERENCE REQUEST FORM

U.S. Department of the Interior
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

ATTENTION: Carl R. Johnston, Northwest Branch
Program Support Division

OR FAX to: 303-844-1538, followed by a signed original request.

Pursuant to 30 CFR 845.18, I request a conference to review the proposed assessment for violations of Cessation Order # C04-140-116-001.

My telephone number is () _____.

(Signature) (Date)

(Please Print Name and Title)

(Name of Permittee or Operator)

(Street Address or PO Box)

(City, State, Zip Code)

Provided your request is **received** within 30 days as provided in 30 CFR 845.18, you will be contacted by a conference officer in order to arrange the time and place of the conference.

Pursuant to 30 CFR 845.18(b)(2), at least 5 days prior to the conference, OSM will post notice of the time and place of the conference at the OSM field office that has jurisdiction over the mine. Any person has the right to participate in the conference.

Please keep a copy of the completed form for your files.