

March 12, 2004

CERTIFIED MAIL  
7099 3400 0016 8895 5774

William Bishop, Trustee  
Lodestar Energy Inc.  
2525 Harrodsburg Road, Suite 235  
Lexington, Kentucky 40504

Re: Proposed Assessment for State Violation No. N04-39-2-1, Lodestar Energy Inc., White Oak/Whisky Creek 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 violation. The violation was issued by Division Inspector, Steven Demczak, on February 11, 2004. 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 Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

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

1. If you wish to informally appeal the fact of this violation, 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.

**If a timely request for review is not made, the fact of violation 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,

Daron R. Haddock  
Assessment Officer

Enclosure

cc: OSM Compliance Report  
Vickie Southwick, DOGM  
Price Field Office

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

COMPANY / MINE Lodestar Energy, Inc. (Bill Bishop, Trustee) PERMIT # C/007/001  
 NOV / CO # N04-39-2-1 VIOLATION 1 of 1

ASSESSMENT DATE March 10, 2004

ASSESSMENT OFFICER Daron R. Haddock

**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>C03-51-1-1</u>	<u>03/12/2003</u>	<u>5</u>
<u>C03-39-1-1</u>	<u>03/11/2003</u>	<u>5</u>
<u>N03-50-1-1</u>	<u>03/11/2003</u>	<u>1</u>
<u>C03-50-2-1</u>	<u>05/15/2003</u>	<u>5</u>
<u>C03-42-1-1</u>	<u>06/20/2003</u>	<u>5</u>
<u>C03-42-2-1</u>	<u>07/16/2003</u>	<u>5</u>
<u>C03-42-1-2</u>	<u>06/20/2003</u>	<u>5</u>
<u>C03-42-2-2</u>	<u>07/22/2003</u>	<u>5</u>
<u>C03-42-1-3</u>	<u>06/20/2003</u>	<u>5</u>
<u>C03-42-2-3</u>	<u>07/16/2003</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 46**

**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?
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
Insignificant	1-4
Unlikely	5-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 18**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*Environmental harm could occur, by allowing water from an undisturbed area to pass through the disturbed area without proper treatment. The sediment pond is not designed to treat this additional water. The Inspector indicated that the event occurred because the undisturbed bypass culvert has been covered with spoil material. Further statements indicate that damage has not occurred yet, but that there is potential for damage to occur. While environmental harm may not have occurred, there is a very high likelihood that it will, given the covered condition of the bypass culvert and the imminent spring runoff.***

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 12**

**PROVIDE AN EXPLANATION OF POINTS:**

***\*\*\*The Inspector indicates that there has been no damage at this time, but there is a high likelihood that damage will occur in the spring with snowmelt. Water would be degraded and damage could occur off the permit area. Since no damage has occurred but the potential for damage is very high, points are assigned in the upper part of the lower half of the range.***

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 ) 30

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 \_\_\_\_\_

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

***\*\*\*A prudent permittee would ensure that drainages are maintained and culverts are open. In this case the contractor had attempted to locate the buried culvert, but was unsuccessful. The Contractor left the site without having established adequate drainage even though they had been warned by the Division to do so. This demonstrates a greater degree of fault.***

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 or 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:**

**\*\*\*The Permittee has failed to complete the abatement.**

V. **ASSESSMENT SUMMARY**

NOTICE OF VIOLATION # <b><u>N04-39-2-1</u></b>	
I.	TOTAL HISTORY POINTS <u>46</u>
II.	TOTAL SERIOUSNESS POINTS <u>30</u>
III.	TOTAL NEGLIGENCE POINTS <u>20</u>
IV.	TOTAL GOOD FAITH POINTS <u>0</u>
	TOTAL ASSESSED POINTS <u>96</u>
	<b>TOTAL ASSESSED FINE <u>\$6,160.00</u></b>

cc: Price Field Office  
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