



NEWS RELEASE
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FEDERAL COURT UPHOLDS THE COMMISSION'S AUTHORITY TO REGULATE SURFACE MINING

U.S. District Judge Daniel Hovland today issued a 22- page decision upholding the authority of the North Dakota Public Service Commission to continue to regulate surface mining in the state. The Commission's authority was challenged in a lawsuit brought by the Dakota Resource Council claiming that the Commission's longstanding practice of providing written guidance to mine operators constituted unlawful amendments to North Dakota's federally-approved surface mining program. The US Secretary of the Interior intervened in this suit in support of the State.

"The Commission is very pleased with the Court's thorough decision," said Commission Chair Brian Kalk. "North Dakota was one of the first states in the country to have its own federally approved mining and reclamation programs and the Commission has effectively maintained that program over the last 30 years. The state is best situated to properly ensure that mining occurs in a responsible way that benefits economic development in the state and is done in a manner that protects the environment and future beneficial use of reclaimed lands."

Judge Hovland noted that the US Office of Surface Mining Reclamation and Enforcement's 2012 annual report found that the Commission "continues to administer an efficient and successful coal regulatory program," and has "no major issues that need corrective action."

"The Court in this decision agreed with all of the Commission's legal positions," Commissioner Julie Fedorchak noted. "It's a strong affirmation of the state's authority to continue managing our top-notch coal reclamation program."

Judge Hovland's opinion confirms the Commission acted within its legal authority and discretion to provide mine operators with written guidance elaborating on the many complex mining and reclamation laws and regulations administered by the Commission.

Recognizing the authority of North Dakota as the exclusive enforcement authority of surface mining laws in the state, Judge Hovland explained in his opinion that, "the PSC's Policy

Memoranda merely expand on aspects of the existing state program that require further clarification, but do not alter the language or overarching principles of the state laws and regulations.” The Court further found that the Dakota Resource Council only asserted “vague, non-specific challenges to the Policy Memoranda,” and never identified any “concrete injury” from the existence or application of any of the Policy Memoranda. Accordingly, the Court assessed the DRC’s claims and found them all to be without merit.

“The Commission takes seriously its role to ensure that surface mining is done responsibly in our state,” Commissioner Randy Christmann said. “We care about our farmlands and know personally how important it is to maintain and protect these lands. And because of that, the Commission works hard to make sure that North Dakota’s strong mining and reclamation laws are enforced.” Commissioner Christmann also thanked Director Deutsch and the Commission staff for their hard work and diligent efforts to serve the public.

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