




**PUBLIC SERVICE COMMISSION**  
Reclamation Division  
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Memorandum

TO: Commissioners Wefald, Cramer and Clark  
Illona A. Jeffcoat- Sacco, Executive Director  
Bill Binek

FROM: Dr. Stephan A.  Schroeder, Dean  Moos and Jim  Deutsch

DATE: May 14, 2008

SUBJECT: Final Order for Case No. RC-08-140, NOV-0801 issued to American Colloid Company

**SUMMARY:** Notice of Violation (NOV) 0801 was issued to the American Colloid Company on April 4, 2008, following an inspection of the Perkins Mine on March 26, 2008. The violation was to American Colloid for failing to take the appropriate measures to prevent and control wind-blown leonardite fines from being deposited onto undisturbed areas at the Perkins Mine as stated in Permit ACPG-9701.

**Discussion:** Leonardite (oxidized coal) fines had blown out of the open pit over the past several months and were deposited on adjacent undisturbed area, mainly cropland. The area of deposition was approximately 1.6 acres in size and the depth of deposition ranged from about ½ inch to 5 inches. A silt fence installed next to the open pit was buried in leonardite fines and had not been properly maintained. American Colloid had failed to cover the pit bottom in a timely manner as specified in Permit ACPG-9701. After the NOV was issued, American Colloid Company abated the violation within the specified time, and did not request an informal conference or a formal hearing. The NOV was terminated on May 7, 2008, since the remedial work was completed.

Since no informal conference or hearing was requested, the Commission needs to assess a civil penalty and adopt a final order in the matter. The Commission must consider four factors in determining the amount of a civil penalty. These factors are (1) History of previous violations, (2) Seriousness of the violation, (3) Negligence, and (4) Good Faith in attempting to achieve rapid compliance. These factors and recommended civil penalty with respect to NOV 0801 are discussed below:

**History of Violations:** The Commission may assess a civil penalty of up to \$3,500 per day on the history of previous violations at the mine where the violation is found. Generally, the history of violations within the preceding three years is considered and a penalty for history has not been recommended in the past if three or fewer violations have occurred in that three-year period. American Colloid has received only one NOV in the last three years and that NOV, issued in June of 2005, was for failure to maintain a silt fence. Based on the criteria we have used in the past, American Colloid does not have a history of violations that requires a penalty to be assessed.

Proposed penalty assessment for history - None

**Seriousness of the Violation:** The Commission may assess a civil penalty of up to \$3,500 per day based on the seriousness of the violation. Factors to be considered in seriousness are the extent and the duration of potential or actual damage in terms of impact on the public or the environment. There was no significant harm done to the undisturbed areas on which the leonardite was deposited nor was there any apparent hazard to the public health or safety. However, because harm would have been done to the undisturbed cropland without removal of the materials as required by the abatement measures, a penalty based on seriousness is still warranted.

Proposed penalty assessment for seriousness - \$250

**Negligence:** The Commission may assess a civil penalty of up to \$3,000 per day based on the degree of the fault of the permittee. However, a violation caused by negligence, but not through reckless, knowing or willful conduct may be assessed a penalty of up to only \$1,500 per day. A penalty of up to \$3000 per day may be assessed for a violation which occurs through a greater degree of fault than negligence, or through reckless, knowing or intentional conduct. In this case, American Colloid had an approved plan of operation to cover the pit bottoms with spoil following removal of the leonardite. However, this was not done in a timely manner and thus leonardite fines were available to be blown from Pit B-1 for a considerable amount of time before the pit bottom was covered. Therefore, negligence was a significant factor in this violation.

Proposed penalty assessment for negligence - \$750

**Good Faith:** The Commission may deduct up to \$1,000 per day from the total civil penalty when a permittee takes extraordinary measures to abate the violation in the shortest possible time following notification of the violation. No deduction can be made for normal compliance. The compliance in this case is considered normal. No extraordinary measures were either required or taken to abate this violation.

Proposed deduction for good faith – None

In conclusion, the Reclamation Division recommends a civil penalty of \$1,000 (\$250 for seriousness and \$750 for negligence) as the result of NOV-0801. A proposed motion to assess the proposed penalty is attached for your consideration at the May 21, 2008 Commission meeting.

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