

PUBLIC SERVICE COMMISSION

**American Colloid Company
Notice of Violation No. 0801
Violation**

Case No. RC-08-140

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

May 21, 2008

Preliminary Statement

On April 4, 2008, the Reclamation Division of the Public Service Commission issued Notice of Violation (NOV) No. 0801 to the American Colloid Company, following an inspection of the Perkins Mine on March 26, 2008. The violation was issued for failure 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.

Windblown leonardite materials from the open pit were deposited onto undisturbed land located east of the pit. The pit bottom had not been covered with spoil in a timely manner which left the leonardite fines vulnerable for transport by wind. American Colloid failed to implement the preventive procedure in a timely manner as delineated in Permit ACPG-9701.

American Colloid completed the prescribed remedial measures within the abatement time specified in the NOV and therefore, the NOV was terminated on May 7, 2008. American Colloid did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. American Colloid is engaged in surface coal mining operations under a permit issued by the Commission.
2. NOV-0801 stated, and we find, that American Colloid violated N.D. Century Code 38-14.1-24(4) in that it failed to stabilize and protect surface mine areas to control erosion and attendant air pollution.
3. American Colloid completed the necessary remedial measures within the allotted time as specified in NOV-0801.

4. The Commission terminated NOV-0801 on May 7, 2008.
5. For determining the amount of civil penalty for a violation, N.D. Admin. Code Section 69-05.2-28-12 requires the Commission to consider 1) History of previous violations, 2) Seriousness of the violation, 3) Negligence, and 4) Good Faith in attempting to achieve compliance.
6. N.D. Admin. Code Section 69-05.2-28-12(1) establishes the basis for a history of previous violations by the operator or permittee at a particular mine. 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 used for trapping sediment in runoff water. Therefore, a penalty based on history of violations is not warranted.
7. Under N.D. Admin. Code Section 69-05.2-28-12(2), the seriousness of a violation is to be evaluated on the basis of irreparable harm to the environment and any hazard to the public health or safety. 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.
8. Under N.D. Admin. Code Section 69-05.2-28-12(3), negligence is to be evaluated on the basis of the degree of fault of the operator or permittee in causing or failing to correct the violation, condition or practice which led to the notice of violation, either through act or omission. American Colloid was negligent by not properly following the procedures approved in the permit to cover the pit bottom with spoil in a timely manner to lessen the possibility of windblown leonardite fines from leaving the pit area and being deposited on undisturbed land. For this reason a penalty based on negligence is warranted.
9. The good faith standard of N.D. Admin. Code Section 69-05.2-28-12(4) applies only to situations where the operator or permittee used extraordinary measures to abate the violation. American Colloid's compliance following the issuance of NOV-0801 was considered normal and not extraordinary. Therefore, the good faith standard is inapplicable.

From the foregoing findings of fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over surface coal mining and reclamation operations conducted in North Dakota by the American Colloid Company.
2. American Colloid violated the provisions of North Dakota Century Code 38-14.1-24(4).

3. American Colloid does not have a history of recent violations.
4. The violation did not cause any significant damage.
5. American Colloid was negligent by failing to implement timely erosion control measures as outlined in the approved permit.
6. American Colloid abated the violation and completed the remedial actions within the time period required by NOV-0801.
7. American Colloid should be assessed a civil penalty of \$250 for seriousness and \$750 for negligence.


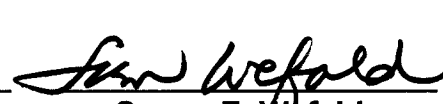
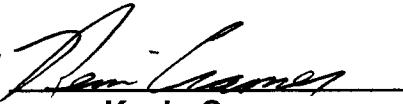
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. Notice of Violation 0801 is affirmed.
2. American Colloid is assessed a civil penalty of \$1,000.
3. The proceeding is closed.

PUBLIC SERVICE COMMISSION

 _____ Tony Clark Commissioner	 _____ Susan E. Wefald President	 _____ Kevin Cramer Commissioner
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