

APPROVED

DATE: 8-27-08
[Signature]

MOTION

August 27, 2008

**Dakota Westmoreland Corporation
Notice of Violation No. 0802
Violation**

Case No. RC-08-389

I move the Commission adopt the order in Case No. RC-08-389, Notice of Violation No. 0802 issued to Dakota Westmoreland Corporation at the Beulah Mine, to affirm the violation and assess a civil penalty.

MDB, DKM & JRD

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Westmoreland Corporation
Notice of Violation No. 0802
Violation

Case No. RC-08-389

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

August 27, 2008

Preliminary Statement

On June 24, 2008, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 0802 to Dakota Westmoreland Corporation (DWC) following inspections of the Beulah Mine on June 4 and 10, 2008. The violation was issued for failure to protect undisturbed areas adjacent to the main haulroad from deposition of sediment and contamination by water transported sediment. In addition, DWC failed to take the appropriate measures to prevent windblown sediment from a soil removal area from being deposited on undisturbed native grassland topsoil.

DWC completed the prescribed remedial measures within the abatement time as specified in the NOV. The NOV was terminated on July 30, 2008. DWC did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. DWC is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-0802 stated, and the Commission finds, that DWC violated North Dakota Century Code 38-14.1-24(4) for failure to protect all surface areas affected by surface coal mining from erosion and attendant air and water pollution; N.D. Admin. Code Section 69-05.2-16-08(1)(d) for lack of appropriate sediment control measures to minimize the deposition of sediment on undisturbed areas; and, N.D. Admin. Code Section 69-05.2-24-01(2)(a) for lack of measures to control or prevent erosion and sedimentation from haulroads.
3. DWC completed the remedial actions specified in the notice of violation within the prescribed time.

4. DWC did not contest the notice of violation by requesting an informal conference or formal hearing.
5. The Commission terminated NOV-0802 on July 30, 2008.
6. N.D. Admin. Code Section 69-05.2-28-12 requires the Commission to consider four factors in determining the amount of 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.
7. The Commission finds that assessment of a civil penalty based on the history of previous violations at DWC's Beulah Mine is warranted. DWC has received three previous violations within the past two years. Although the previous violations were not all of the same nature as NOV-0802, four violations within two years does constitute a history of violations.
8. The Commission finds that DWC's present violation did cause sedimentation on several undisturbed and previously disturbed areas and windblown sand was deposited on undisturbed topsoil. The violation was serious in that some environmental damage occurred. The sedimentation resulted in some loss and degradation of topsoil. A penalty based on seriousness is warranted.
9. The Commission finds that DWC's violation was not due to reckless or willful conduct. Nonetheless, DWC failed to take appropriate measures to control or prevent water erosion and subsequent deposition of sediment along the haulroad. In addition, DWC failed to take measures to prevent wind erosion from an active mine area. The failure to do so was due to lack of diligence and ordinary negligence. A penalty based on negligence due to lack of diligence and reasonable care is warranted.
10. The Commission finds that DWC's compliance with the specified abatement measures was normal. Therefore, no deduction from the penalty under the good faith criterion is applicable.
11. Based on these facts, the Commission should assess a penalty of \$250 for history, \$500 for seriousness, and \$1,000 for negligence, totaling \$1,750, for NOV-0802.

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 DWC.

2. DWC violated the provisions of N.D. Century Code 38-14.1-24(4) and N.D. Admin. Code Sections 69-05.2-16-08(1)(d) and 69-05.2-24-01(2)(a).
3. The Commission should assess a civil penalty for NOV 0802.

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

Order


The Commission orders:

1. Notice of Violation No. 0802 is affirmed.
2. Dakota Westmoreland Corporation is assessed a total civil penalty of \$1,750 (\$250 for history, \$500 for seriousness, and \$1,000 for negligence) for the violation.
3. The proceeding will be closed upon payment of the penalty.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner