

APPROVED

DATE: 12-31-08



## MOTION

December 31, 2008

**Falkirk Mining Company  
Notice of Violation No. 0803  
Violation**

**Case No. RC-08-846**

I move the Commission adopt a final order in Case No. RC-08-846, Notice of Violation No. 0803 issued to The Falkirk Mining Company at the Falkirk Mine, to affirm the violation and assess a civil penalty.

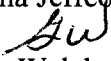
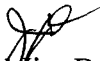

GAW, DKM & JRD

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**PUBLIC SERVICE COMMISSION**  
Reclamation Division  
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Memorandum

TO: Commissioners Wefald, Cramer and Clark  
Darrell Nitschke, Executive Director  
Illona Jeffcoat-Sacco

FROM:  Guy Welch,  Dean Moos and  Jim Deutsch

DATE: December 29, 2008

SUBJECT: Final Order for Case No. RC-08-846, NOV-0803 issued to The Falkirk Mining Company

**Summary:** Notice of Violation (NOV) 0803 was issued to The Falkirk Mining Company (Falkirk) on October 29, 2008, following an inspection of the Falkirk Mine on October 17, 2008. The violation was issued for erosion at a discharge outlet and failure to have an energy dissipater on the discharge outlet of Pond P-E24-01. Falkirk did not request an informal conference or formal hearing in the matter; therefore, we have prepared an order to affirm the violation and assess a \$1,500 penalty in the matter.

**Discussion:** During a routine inspection of the Falkirk Mine on October 17<sup>th</sup>, Guy Welch checked the discharge outlet of Pond P-E24-01. The discharge point is located in the basin of Coal Lake below the high water mark; however, the discharge point is now exposed because of the low water level of Coal Lake. A depression (erosion feature) 3-4 feet deep and about 15-20 feet in diameter existed at the discharge point. There was no evidence that this discharge point has been used recently and it was noted there was no energy dissipater on the pit water discharge pipe. The discharge monitoring reports for this pond were reviewed in the Commission offices following the inspection. A large amount of water had been discharged from this pond in 2007.

NOV-0803 was issued to Falkirk for failure to utilize energy dissipaters on the discharge outlet of Pond P-E24-01 as required by NDAC 69.05.2-16-10 and for the erosion at the discharge outlet. In addition, Section 3.6.24 of Permit NAFK-8405 states that an energy dissipation structure would be placed on the outlet of the discharge line for Pond P-E24-01.

After the NOV was issued, Falkirk abated the violation within the specified time, but did not request an informal conference or a formal hearing. The NOV was terminated on December 24, 2008, following completion of the required remedial work.

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 0803 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. Previously, Falkirk has not received an NOV since 2003, therefore, a penalty assessment for history of violations is not warranted.

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. This violation caused erosion of the shoreline area of Coal Lake. The violation was serious in that some environmental damage occurred. The erosion resulted in some loss and degradation of wetland topsoil. A penalty based on seriousness is warranted.

Proposed penalty assessment for seriousness - \$500

**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 \$3,000 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, Falkirk had an approved plan to use an energy dissipater structure on the discharge outlet of Pond P-E24-01. However, this structure was not in place. The failure to do so was due to lack of diligence and ordinary negligence. Therefore, negligence was a significant factor in this violation. A penalty based on negligence due to lack of diligence and reasonable care is warranted.

Proposed penalty assessment for negligence - \$1,000

**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 that the Commission adopt the attached final order that affirms the NOV and assesses a \$1,500 penalty (\$500 for seriousness and \$1,000 for negligence) as the result of NOV-0803. The order also closes the case upon payment of the penalty. A proposed motion is attached for your consideration at the December 31, 2008 Commission meeting.