

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

The Falkirk Mining Company
Notice of Violation No. 0803
Violation

Case No. RC-08-846

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

December 31, 2008

Preliminary Statement

On October 29, 2008, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 0803 to The Falkirk Mining Company (Falkirk) 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 pipe of Pond P-E24-01.

Falkirk completed the prescribed remedial measures within the abatement time as specified in the NOV. The NOV was terminated on December 24, 2008. Falkirk did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. Falkirk is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-0803 stated, and the Commission finds, that Falkirk violated North Dakota Administrative Code 69.05.2-16-10 for failure to use energy dissipaters, riprap channels, surge ponds, or other devices to reduce erosion, prevent deepening or enlargement of stream channels and minimize disturbance to the hydrologic balance.
3. Falkirk completed the remedial actions specified in the notice of violation within the prescribed time.
4. Falkirk did not contest the notice of violation by requesting an informal conference or formal hearing.
5. The Commission terminated NOV-0803 on December 24, 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 Falkirk Mine is not warranted. Previously, Falkirk has not received a NOV since 2003.
8. The Commission finds that Falkirk's present violation did cause erosion of undisturbed areas at the discharge outlet. This erosion resulted in some loss and degradation of topsoil. A penalty based on seriousness is warranted.
9. The Commission finds that Falkirk's violation was not due to reckless or willful conduct. Nonetheless, Falkirk failed to install and maintain an energy dissipater at the discharge outlet of Pond P-E24-01. 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 Falkirk'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 \$500 for seriousness, and \$1,000 for negligence, totaling \$1,500, for NOV-0803.

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 Falkirk.
2. Falkirk violated the provisions of N.D. Administrative Code Section 69-05.2-16-10.
3. The Commission should assess a civil penalty for NOV 0803.

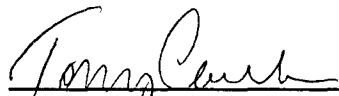
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

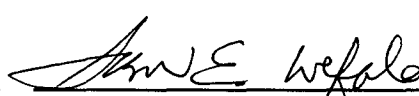
The Commission orders:

1. Notice of Violation No. 0803 is affirmed.
2. The Falkirk Mining Company is assessed a total civil penalty of \$1,500 (\$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