

Dakota Westmoreland Corporation

Beulah Mine – P.O. Box 39, Beulah, North Dakota 58523-0039
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PUBLIC SERVICE COMMISSION

January 13, 2009

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

Mr. James R. Deutsch
Director, Reclamation Division
Public Service Commission
600 E Boulevard Ave., Dept 408
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

RE: Notice of Violation 0804
Permit KRSB-8603

To fulfill the requirements set forth in your January 7 correspondence, DWC will be installing a second siren. Also, blast warnings are now broadcast over channel 6 which overrides all other channels.

We look forward to discussing this notice of violation at length at the informal conference.

Should you need additional information, please contact me at extension 208.

Sincerely,



Jesse Noel
Manager,
Engineering and Environmental

plg

C: DeLane Bauer
Jeff Frohlich
Larry Schnaidt
Gerry Schatz
Bill Weaver





Public Service Commission State of North Dakota

COMMISSIONERS

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Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

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January 7, 2009

Mr. Jesse Noel, P.E.
Manager, Engineering & Environment
Dakota Westmoreland Corporation
Beulah Mine
P.O. Box 39
Beulah, ND 58523-0039

Dear Mr. Noel:

The Reclamation Division has reviewed your letter, dated December 31, 2008, regarding the remedial action associated with NOV-0804 and the request for an informal conference. With regard to the remedial action, you indicate that DWC does not plan to make any changes to blast warning system currently in use. We feel that is unacceptable as that would indicate that no corrective actions needed to be taken.

As noted in the NOV, the pre-blast and all clear warnings were not heard at the time of the inspection even though the inspector was well within the ½ mile limit. We believe that some sort of modification or change needs to be implemented and suggest the following items be further investigated and implemented if necessary. It appears that a one-directional siren is being used by DWC. This would certainly affect the range of effectiveness of the siren. At a minimum, we recommend the use of a bi-directional siren be used to ensure a wider range of coverage of the siren. Also, the location of the siren should be investigated. If the siren is located in the pit or ramp at the time of the blast, its effectiveness will also be limited. In summary, changes to the current blast warning system are needed to address the required remedial action in the NOV.

With regard to the request for an informal conference, the informal conference will be scheduled at the next Commission meeting. However, we plan to hold the informal conference at 2:30 p.m. (CSD) on February 10th in the Commission Hearing Room.

If you have any questions, please contact this office.


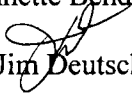
Sincerely,

James R. Deutsch
Director
Reclamation Division

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Cramer, Clark, and Kalk
Darrell Nitschke, Executive Secretary
Illona Jeffcoat-Sacco and Annette Bendish

FROM: Mike Berg,  Dean Moos and  Jim Deutsch

DATE: January 8, 2009

SUBJECT: Proposed Penalty and Informal Conference for NOV 0804 issued to
Dakota Westmoreland Corp., Case No. RC-08-927

SUMMARY - Notice of Violation (NOV) 0804 was issued to Dakota Westmoreland Corporation (DWC) on December 16, 2008 for failure to utilize a pre-blast warning and all-clear signal that can be heard within a range of one-half mile from the blast site when conducting blasting operations. Since DWC has requested an informal conference, the Commission is required to propose a civil penalty and schedule an informal conference on NOV-0804. The Reclamation Division recommends that the Commission propose a civil penalty of \$1,500 for NOV-0804 and schedule an informal conference in this matter.

DISCUSSION: During a routine inspection of the Beulah Mine on December 10, 2009, a coal blast was detonated in the West Silver Pit located in the S½ of Section 17, Permit KRSB-8603. A Reclamation Division inspector was located approximately 300 yards northeast of the blast site at the time of the blast detonation. Although the inspector was located relatively close to the blast site, the required pre-blast warning was not heard prior to the blast nor was an all-clear signal heard after the blast. NDAC 69-05.2-17-05(3) requires that "Warning and all-clear signals of different character that are audible within the range of one-half mile (0.85 kilometers) from the point of the blast must be given."

On December 31st, the Reclamation Division received a letter from DWC regarding the status of the required remedial actions. DWC's proposed remedial actions were considered inadequate and additional information has been requested.

In the December 31st letter, DWC also requested an informal conference on NOV-0804. Therefore, the Reclamation Division recommends that an informal conference on NOV-0804 be scheduled pursuant to NDCC 38-14.1-19. Under the provisions of the coal regulatory program, the Commission is required to propose a civil penalty whenever there is a request for an informal conference or a formal hearing on a Notice of Violation.

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 the recommended civil penalty under each with respect to NOV-0804 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. With NOV-0804, DWC has received five NOV's in the past three years. Based on the criteria we have used in the past, DWC has a history of violations and that requires a penalty to be assessed.

Proposed penalty assessment for history - \$500

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. DWC's violation did not impact the environment; however, the required warning signals are a safety issue. DWC's failure to use a warning that was audible up to one-half mile is serious in that DWC employees or the public could be impacted by the blast. A penalty for 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 \$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, we believe that DWC had not taken the necessary precautions to ensure that the warning siren was audible up to one-half mile from the blast site. Therefore, negligence is a factor in this violation.

Proposed penalty assessment for negligence - \$500


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 \$1,500 (\$500 for history, \$500 for seriousness, and \$500 for negligence) as the result of NOV-0804. A Proposed Motion to assess the proposed penalty and to schedule an informal conference for 2:30 p.m. CST, February 10, 2009, in the Commission Hearing Room, is attached for your consideration. Alan Hoberg from the office of Administrative Hearings will preside over the informal conference.

Attachment

Caselib\08927\memo penalty assessment

APPROVED
DATE: 1-14-09


MOTION

January 14, 2009

**Dakota Westmoreland Corporation
Notice of Violation No. 0804
Violation**

Case No. RC-08-927

I move the Commission assess a proposed penalty for Notice of Violation No. 0804 issued to the Dakota Westmoreland Corporation at the Beulah Mine and schedule an informal conference in the matter.

MDB & JRD

Reccdata/dkm/Beulah/NOV 0804 Motion