



NOTICE OF VIOLATION
 NORTH DAKOTA PUBLIC SERVICE COMMISSION
 SFN 18099 (10-91)

		N.O.V. Number 0901	
Name of Permittee The Falkirk Mining Company		Permit Number NAFK-8405	
Address PO Box 1087	City Underwood	State ND	Zip Code 58576-1087
Telephone Number 701-443-5751	Mine Falkirk	County McLean	
Name of Operator (if other than permittee)			
Address		City	State Zip Code
Date of Inspection March 23, 2009		Time of Inspection From: 3:00	To: 4:00
		<input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	<input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
<p>Under the authority of North Dakota Century Code Chapter 38-14.1, the undersigned authorized representative of the Commission has conducted an inspection of the above mine on the above date and has found a violation of the statute, rules, permit condition(s), or section(s) of the approved operations and reclamation plan listed on page 2 of this Notice of Violation.</p> <p>You must abate this violation within the designated abatement time.</p> <p>The undersigned authorized representative finds that cessation of surface mining activities <input type="checkbox"/> is <input checked="" type="checkbox"/> is not expressly or implicitly required by this Notice of Violation.</p> <p>This Notice of Violation shall remain in effect until it expires as provided on the reverse side of this page, or is terminated or vacated by written notice by an authorized representative of the Commission.</p>			
Print Name of Person Served Joe Clarke		Print Title of Person Served Environmental Manager	
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail		Date of Service April 1, 2009	
Signature of Person Served		Signature of Authorized Representative 	

Nature of Violation
<p>Failure of the embankment of sedimentation Pond P-E13-01, located in the SW¼SW¼ of Section 13, T146N, R82W at the Falkirk Mine, caused an uncontrolled discharge and sediment to be deposited in an undisturbed drainage located in Section 24 flowing into Coal Lake. The embankment surrounding the principal drop inlet spillway had been eroded away causing an uncontrolled release of sediment laden water.</p> <p style="text-align: center;">(if applicable, include the extent to which the violation cannot be corrected)</p>

Distribution: Public Service Commission; Permittee/Operator; and, OSM Field Office

Provision(s) of the Statute, Rules, or Permit Violated

NDAC 69-05.2-16-08(1)(a): Failure to prevent, to the extent possible, additional contributions of sediment to the stream flow or to runoff outside the permit area.

NDAC 69-05.2-16-08(1)(d): Failure to minimize the deposition of sediment on undisturbed areas.

NDAC 69-05.2-16-10: Failure to control discharges from a sedimentation pond.

Portion of the Operation to which this Notice Applies (Include legal description)

The sedimentation pond located in the SW¼ of Section 13, T146N, R82W, Mclean County, North Dakota, within Permit NAFK-8405 and downstream undisturbed areas in Section 24, T146N, R82W.

Remedial Action Required (including interim steps, if any)

The embankment and spillway must be reconstructed according to approved design plans. In the interim, water levels must be kept several feet below the eroded area by pumping water from the pond to prevent any future erosion to the embankment and to minimize uncontrolled sediment discharge. Other interim measures such as bale dikes, silt fences, sumps or other best management practices must be installed within disturbed areas in the upstream watershed to help prevent any discharges from the pond and to minimize deposition of sediment downstream of Pond P-E13-01. In addition, Falkirk must thoroughly investigate the cause of the failure and report to the Reclamation Division the results of the investigation and additional measures that need to be taken when constructing sedimentation ponds in the future to prevent a similar failure.

Time for Abatement (including interim steps, if any)

Interim measures need to be addressed within 10 days of receipt of this notice. An approved spillway must be reconstructed and repairs to the embankment made within 45 days of receipt of this Notice of Violation.

The report on the investigation of the embankment failure must be submitted to the Reclamation Division within 20 days.

IMPORTANT - PLEASE READ CAREFULLY

1. **MINESITE HEARING.** A Notice of Violation which requires cessation of surface mining activities, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public minesite hearing has been held at or near the minesite within that time or the hearing has been waived. On the reverse of this page, an authorized representative has made a finding as to whether this Notice requires cessation of surface mining activities. If cessation of mining is required, an informal public minesite hearing will be automatically scheduled by the North Dakota Public Service Commission and will be held within thirty (30) days of the service of this Notice, unless you or your agent waive that hearing in writing.
2. **INFORMAL CONFERENCE.** Notwithstanding the informal minesite hearing provided for in paragraph 1, you must apply for an informal conference with the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice in order to preserve your appeal rights. You may apply for an informal conference by submitting a written request for an informal conference to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. The informal conference will be held in the locality of the mine if requested. A stenographic record will be made of the informal conference unless waived by all parties.
3. **FORMAL PUBLIC HEARING.** If you do not desire an informal conference, you may apply for a formal hearing regarding this Notice by submitting a written request for a hearing to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. If you do not request an informal conference or a formal public hearing within thirty (30) days, your right to appeal will be forfeited. Please note that you will also have the opportunity to request a formal hearing within thirty (30) days of the decision on the informal conference held under paragraph 2.
4. **TEMPORARY RELIEF.** You have the right to request temporary relief from this Notice pending completion of any investigation and hearing procedures being conducted. A request for temporary relief must be in writing as set forth in subsection 4 of North Dakota Century Code Section 38-14.1-30 and filed with the North Dakota Public Service Commission. The request for temporary relief must include a detailed statement giving reasons why such temporary relief should be granted. The request for an informal conference or a formal public hearing will not stay enforcement of this Notice unless temporary relief is requested and granted.