

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Falkirk Mining Company**  
**Notice of Violation No. 0901**  
**Violation**

**Case No. RC-09-143**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**June 24, 2009**

**Preliminary Statement**

On March 31, 2009, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 0901 to The Falkirk Mining Company (Falkirk) following an inspection of the Falkirk Mine on March 23, 2009. The violation was issued for a piping feature that eroded through the embankment of sedimentation Pond P-E13-01 located in the SW¼SW¼ of Section 13, T146N, R82W, in Permit NAFK-8405. The erosion feature was approximately 2.5 feet in diameter and ran the entire length of the barrel discharge pipe which is approximately 110 feet long. The piping hole in the pond embankment caused an uncontrolled discharge of sediment laden water and resulted in the deposition of sediment in the undisturbed drainageway downstream of the pond within the boundaries of Permit NAFK-8405.

Falkirk completed the prescribed remedial measures within the abatement time as specified in the NOV. The NOV was terminated on June 15, 2009. 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-0901 stated, and the Commission finds, that Falkirk violated North Dakota Administrative Code 69.05.2-16-10 for an eroded hole in the embankment of Pond P-E13-01 that caused uncontrolled discharges from the pond and for failure to minimize the deposition of sediment on undisturbed areas as required by North Dakota Administrative Code 69.05.2-16-08(1)(d).
3. Falkirk completed the remedial actions specified in the notice of violation within the prescribed time.

4. Falkirk conducted a required investigation into what may have caused the eroded hole to form in the pond embankment and reported that no manually operated power tampers or plate vibrators were used to compact the embankment material around the discharge pipe as required by approved construction plans in the mining permit and Commission rules.
5. Falkirk did not contest the notice of violation by requesting an informal conference or formal hearing.
6. The Commission terminated NOV-0901 on June 15, 2009.
7. 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.
8. The Commission finds that assessment of a civil penalty based on the history of previous violations at Falkirk Mine is not warranted. With this NOV, Falkirk has received two NOVs within the last three years and this does not constitute a history of violations.
9. The Commission finds that Falkirk's present violation is serious in that the sedimentation pond did not function as designed and uncontrolled discharges from the pond resulted in the deposition of sediment on undisturbed areas. A penalty based on seriousness is warranted.
10. The Commission finds that Falkirk's violation was not due to reckless or willful conduct. However, the pond failure was likely due to lack of diligence and ordinary negligence since material around the discharge pipe had not been properly compacted when the pond was constructed about one and one-half years ago. A penalty based on negligence due to lack of diligence and reasonable care is warranted.
11. 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.
12. Based on these facts, the Commission should assess a penalty of \$1,000 for seriousness and \$1,500 for negligence, totaling \$2,500, for NOV-0901.

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 Sections 69-05.2-16-08(1)(d) and 69-05.2-16-10.
3. The Commission should assess a civil penalty for NOV-0901.

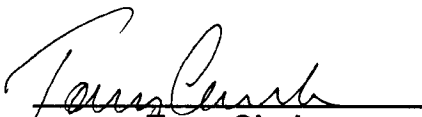
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

**Order**

The Commission orders:

1. Notice of Violation No. 0901 is affirmed.
2. The Falkirk Mining Company is assessed a total civil penalty of \$2,500 (\$1,000 for seriousness, and \$1,500 for negligence) for the violation.
3. The proceeding will be closed upon payment of the penalty.

**PUBLIC SERVICE COMMISSION**

  
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**Tony Clark**  
Commissioner

  
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**Kevin Cramer**  
President

  
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**Brian P. Kalk**  
Commissioner