



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

N.O.V. Number
 0902

Permit Number
 KRSB-8603

Name of Permittee
 Dakota Westmoreland Corporation

Address
 PO Box 39

City
 Beulah

State
 ND

Zip Code
 58523-0039

Telephone Number
 701-873-4333

Mine
 Beulah Mine

County
 Mercer

Name of Operator (if other than permittee)

Address

City

State

Zip Code

Date of Inspection
 April 14, 2009

Time of Inspection
 From: 10:20

a.m.
 p.m.

To: 01:30

a.m.
 p.m.

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.

You must abate this violation within the designated abatement time.

The undersigned authorized representative finds that cessation of surface mining activities is is not expressly or implicitly required by this Notice of Violation.

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.

Print Name of Person Served
 Jesse Noel

Print Title of Person Served
 Manager - Engineering & Environmental

Method of Service
 Personal Certified Mail

Date of Service
 April 27, 2009

Signature of Person Served

Signature of Authorized Representative

Nature of Violation

The permittee failed to install appropriate measures to prevent and control water erosion in a portion of the reclaimed drainageway located in the N½ of the SE¼ of Section 16, T143N, R88W in Permit KRSB-8603; and, appropriate sediment control measures were not installed along a fill section of the primary haulroad that passes over West Brush Creek.

(if applicable, include the extent to which the violation cannot be corrected)

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

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

NDCC 38-14.1-24(4) requires the mine operator to stabilize and protect surface areas to control erosion and attendant water pollution; NDAC 69-05.2-16-04(5) requires appropriate measures to be taken to protect areas from water erosion; and, NDAC 69-05.2-24-01 (2) requires the control or prevention of erosion along haulroads using current and prudent engineering practices. NDAC 69-05.2-22-05 also requires that mulching or other stabilizing practices be used on all regraded and topsoiled areas to control erosion.

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

The reclaimed drainageway located in the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 16, T143N, R88W, and the south side of the primary haulroad is located in the NW $\frac{1}{4}$ of Section 14, T143N, R88W, within Permit KRSB-8603.

Remedial Action Required (including interim steps, if any)

The permittee must submit a plan for repairing and stabilizing the gullies in the reclaimed drainageway in the N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 16, and must provide more details on the specific best management practices (BMP's) that will be installed to stabilize the drainageway. The plan must include details for repairing or reconstructing the rock check dams (that were constructed with large rocks) that will allow them to function as intended.

The permittee must install the appropriate combination of best management practices to prevent erosion along the haulroad in the NW $\frac{1}{4}$ of Section 14.

Time for Abatement (including interim steps, if any)

The remedial plans must be submitted within 15 days of receipt of this NOV. The repair work and installation of additional BMP's must be completed within 30 days of receipt of this NOV.

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.