



# Public Service Commission

## State of North Dakota

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July 10, 2009

Mr. Joe Clarke  
Environmental Manager  
Falkirk Mining Company  
PO Box 1087  
Underwood, ND 58576-1087

Dear Mr. Clarke:

We have reviewed your response addressing the remedial actions required by Notice of Violation (NOV) No. 0903 that was issued June 17<sup>th</sup> for re-disturbing a reclaimed area before the approval of a revision that proposed to relocate a haul road in this area. Based on additional information that was provided in this response and review of other information in our files regarding the small reclaimed area that was re-affected by topsoil removal, we are modifying the NOV to delete the phrase "that had received partial bond release" in the Nature of Violation. Enclosed is the Modification of Notice of Violation with this change.

With regard to the required remedial actions under the NOV, we are requesting some additional clarification of the circumstances that led to the issuance of the NOV and steps to be taken to prevent a similar occurrence in the future. It is not clear why two scrapers were sent to this area the morning of May 29<sup>th</sup> when we had communications (telephone and e-mail) with Falkirk staff the day before in which several concerns were raised on Falkirk's request to place SPGM and overburden stockpiles on the nearby reclaimed area that had received partial bond release many years ago. As part of those communications, we granted approval to combine Topsoil Stockpile No. 3 with Stockpile No. 19 that was part of the same request. However, these stockpiles are more than 1500 feet southwest of the small reclaimed area where topsoil was removed. Was there some misunderstanding in what had been approved in these communications?

To prevent a similar occurrence in the future, you state that "maps depicting all Reclamation Division related field approvals have been placed in the Reclamation Supervisors' offices by the Reclamation Planner, who solely will be responsible for maintaining the maps and ensuring they are up to date." However, the issuance of NOV-

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0903 was not related to any Reclamation Division field approval. It was issued for topsoil removal on a reclaimed area prior to the approval of the permit revision application that proposed the re-disturbance of reclaimed areas for the construction of a new haul road. The remedial action plan needs to address the steps that will be taken to ensure that work proposed by a pending revision application is not initiated until that revision has been approved as required by subsection 3 of NDAC 69-05.2-11-02.

If you have any questions, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch", written in a cursive style.

James R. Deutsch  
Director  
Reclamation Division

Enclosure

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