



Public Service Commission

State of North Dakota

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July 30, 2009

Mr. Joe Clarke
Technical Group Manager
Falkirk Mining Company
P.O. Box 1087
Underwood, ND 58576-1087

Dear Mr. Clarke:

The Public Service Commission has proposed a civil penalty of \$350 (\$100 for seriousness and \$250 for negligence) for Notice of Violation (NOV) No. 0903, Case No. RC-09-316, issued to The Falkirk Mining Company (Falkirk). The proposed penalty assessment was made at this time because Falkirk requested a Formal Hearing on this matter. The proposed penalty of \$350 must be paid to the Commission within thirty days of your receipt of this letter. The funds will be held in an escrow account pending final outcome of the Formal Hearing.

Attached to this letter is a copy of the Notice of Formal Hearing scheduling the hearing for September 9, 2009, beginning at 1:30 p.m., CDT, in the Public Service Commission's Hearing Room, 12th Floor, State Capitol, Bismarck, ND.

As required by NDAC 69-05.2-28-12, the Commission considered the following four factors in determining the proposed penalty for NOV-0903.

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-0903, Falkirk has received three NOV's in the past three years. Based on the criteria we have used in the past, Falkirk does not have a history of violations; therefore, a penalty assessment based on history is not warranted.

Recommended penalty assessment for history - \$0

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. Falkirk's violation did not have any adverse impact on the environment; however, it is serious to some degree in that proper procedure as specified by rules was not followed. A penalty for seriousness is warranted.

Recommended penalty assessment for seriousness - \$100

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 the NOV was caused by miscommunication between Falkirk's permitting staff and others in field operations. Therefore, we believe a penalty for negligence is warranted.

Recommended penalty assessment for negligence - \$250

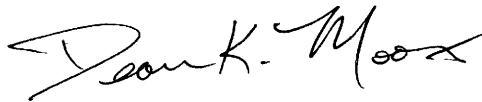
Good Faith: The Commission may deduct up to \$1,000 per day from the total civil penalty when a permittee takes extraordinary measures to abate the violation in the shortest possible time following notification of the violation. No deduction can be made for normal compliance. The compliance in this case was considered normal. No extraordinary measures were either required or taken to abate this violation.

Recommended deduction for good faith - None

In summary, a civil penalty of \$350 is proposed for NOV-0903, which must be paid within thirty days of the receipt of this letter. The proposed penalty can be discussed at the Formal Hearing scheduled for September 9, 2009.

If you have any questions, please contact our office.

Sincerely,



for James R. Deutsch
Director
Reclamation Division

Enclosure

CERTIFIED MAIL

cc: Brian Bjella – Crowley Fleck PLLP
Allen C. Hoberg - OAH

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Falkirk Mining Company
Notice of Violation No. 0903
Violation**

Case No. RC-09-316

NOTICE OF FORMAL HEARING

July 29, 2009

Preliminary Statement

On June 17, 2009, the Reclamation Division of the Public Service Commission issued Notice of Violation No. 0903 to the Falkirk Mining Company. The notice of violation was issued for removing topsoil from a reclaimed area for the construction of a haul road prior to approval of the revision that contained the design plans for the road.

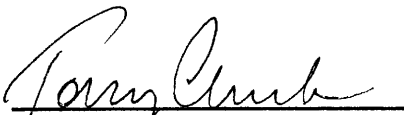
On July 10, 2009, the Commission received a request for a Formal Hearing from the Falkirk Mining Company.

Notice of Formal Hearing

Notice is hereby given that the captioned matter is set for a Formal Hearing, commencing at 1:30 p.m. CDT, on September 9, 2009, in the Public Service Commission's Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.

If you require any auxiliary aids, such as readers, signers, or Braille materials, please notify Darrell Nitschke, Executive Secretary, Public Service Commission, at (701) 328-2400, or Relay North Dakota TTY: 1-800-366-6888 at least 24 hours prior to the hearing.

PUBLIC SERVICE COMMISSION



**Tony Clark
Commissioner**



**Kevin Cramer
President**



**Brian P. Kalk
Commissioner**