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September 30, 2009

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PUBLIC SERVICE COMMISSION

Mr. Darrell Nitschke
Executive Director
NORTH DAKOTA PUBLIC
SERVICE COMMISSION
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Nitschke:

In re: The Falkirk Mining Company
 PSC Case No. RC-09-316
 Our File No. 32-154-000

Enclosed for filing are the original and seven copies of the proposed Findings of Fact, Conclusions of Law and Order submitted on behalf of The Falkirk Mining Company.

Very truly yours,



BRIAN R. BJELLA

bw
Enc.
cc: Annette Bendish

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Proposed Findings of Fact, Conclusions of Law and Order

Falkirk Mining Co.

Brian Bjella, Crowley Fleck, PLLP

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Falkirk Mining Company
Notice of Violation 0903**

Case No. RC-09-316

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Dated October ____, 2009

Appearances:

Commissioners Kevin Cramer, Tony Clark and Brian P. Kalk.

Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of The Falkirk Mining Company.

Annette Bendish, Legal Counsel, North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission staff.

Allen C. Hoberg, Administrative Law Judge, Office of Administrative Hearings, 1707 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

The Falkirk Mining Company ("Falkirk") is the operator of the Falkirk Mine located near Underwood, North Dakota. Falkirk operates the mine pursuant to various permits issued by the North Dakota Public Service Commission ("Commission").

On the morning of May 29, 2009, equipment operated by Falkirk personnel entered a small reclaimed area located within the SE¼ of Section 5, Township 145 North, Range 82 West, McLean County, North Dakota, covered by Commission Permit NAFK-8705. Falkirk has admitted that it entered the area by mistake, as any work in the area was subject to pending approval by the Commission of Revision No. 32 to Permit NAFK-8705. The revision had yet to be approved by the Commission when the work was commenced on May 29.

Upon discovery of the mistake by Falkirk personnel shortly after the work began, the equipment was ordered to immediately cease operations and leave the area.

Falkirk personnel shortly thereafter voluntarily self reported the matter to the Commission's Reclamation Division staff both by telephone call and by email. Falkirk personnel also informed a Commission inspector who was on the mine site on May 29.

While Falkirk personnel were directed by the Assistant Director of the Reclamation Division of the Commission that Falkirk need not restore the topsoil as it was subject to the pending Revision No. 32, Falkirk management directed its staff to restore the topsoil, which work was subsequently completed.

The inspector who was at the mine on May 29 did issue an Inspection Report. The inspector noted that two scrapers had begun to remove topsoil from the affected area, but these operations were discontinued and the scrapers removed as it was determined that the area was subject to pending Revision No. 32. The inspector noted approximately 10 scraper loads of topsoil had been removed. The inspector did not inspect the affected area.

On June 3, 2009, Commission inspectors inspected the mine, also intending to inspect the affected area. However, through inadvertence, the inspectors viewed other lands. An Inspection Report was issued.

The Reclamation Division issued Notice of Violation No. 0903 dated June 17, 2009. The nature of violation stated that "topsoil was removed from a reclaimed area that had received partial bond release prior to approval of a revision application that contains plans for the re-location of a primary haul road to the area." The area of violation was described as "a small reclaimed area located in the SE¼ of Section 5, T145N, R82W, in Permit NAFK-8705" (hereinafter "NOV 0903").

In NOV 0903 Falkirk was directed to provide a remedial action letter. Falkirk submitted its remedial action letter dated July 2, 2009. In said remedial action letter it was noted that the affected area was not subject to partial bond release as noted in NOV 0903, but was fully bonded.

On June 24, 2009, the Commission approved Revision No. 32 to Permit No. NAFK-8705 by which Falkirk received approval for relocating topsoil within the affected area in order to construct a haul road. Subsequent to the approval of the revision, Falkirk did remove the topsoil within the affected area to construct the haul road.

By Modification of Notice of Violation, dated July 10, 2009, NOV 0903 was modified to state the nature of violation as "topsoil was removed from a previously reclaimed area prior to approval of a revision application that contained plans for the re-location of a primary haul road through the area."

A Termination or Vacation of Notice of Violation dated July 20, 2009, was issued by the Reclamation Division informing Falkirk that NOV 0903 was considered abated upon approval of Revision No. 32 to Permit No. NAFK-8705 on June 24, 2009.

On July 10, 2009, Falkirk filed with the Commission a request for a Formal Hearing.

On July 29, 2009, the Commission issued Notice of Formal Hearing scheduling the matter 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.

The Formal Hearing was held as scheduled at 1:30 p.m. CDT on September 9, 2009, in the Commission's hearing room.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. That on the morning of May 29, 2009, Falkirk equipment mistakenly entered into a small reclaimed area located in the SE¼ of Section 5, Township 145 North, Range 82 West, McLean County, North Dakota. That upon discovery of the mistake, after approximately ten scraper loads had removed topsoil, Falkirk personnel ordered the work to be immediately halted and the equipment removed. Shortly thereafter Falkirk personnel notified the Reclamation Division of the Commission both by telephone call and email.
2. That Falkirk personnel voluntarily self-reported the entry of its equipment into the affected area.
3. That the mistake occurred due to a miscommunication between Falkirk's environmental staff and operations staff.
4. That the affected area is very small, being approximately 55' x 100', comprising approximately .13 acre.
5. That while the Reclamation Division did not order that the topsoil be restored, Falkirk management did order the topsoil be restored which work was subsequently completed.
6. That no harm occurred to the environment of the affected area by virtue of the unauthorized work.
7. That while it was initially believed by the Reclamation Division and Falkirk that the area had been partially bond released, it was subsequently verified by Falkirk and confirmed by the Reclamation Division that the area was fully bonded.
8. That subsequently, after approval of Revision No. 32 to Permit NAFK-8705 on June 24, 2009, the topsoil was removed from the affected area to construct a haul road.
9. That due to inadvertence, the affected area was never inspected by the Reclamation Division either on May 29 or June 3.
10. That as a result, good cause exists to vacate NOV 0903.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. That the Commission has jurisdiction over this proceeding pursuant to North Dakota Century Code Chapter 38-14.1.
2. That North Dakota Administrative Code § 69-05.2-28-05(2) provides that “(t)he Commission or its authorized representative may modify, vacate, or terminate a notice of violation for good cause.”
3. That as no harm occurred to the environment by virtue of disturbance of topsoil on May 29 in the very small affected area comprising only .13 acre; that as Revision No. 32 to Permit NAFK-8705 authorizing this work was issued shortly thereafter on June 24; and as Falkirk personnel voluntarily self reported the matter--that good cause exists to vacate NOV 0903.

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

Order

The Commission orders that NOV 0903 is vacated in all respects.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Kevin Cramer
President

Brian P. Kalk
Commissioner