



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

Name of Permittee Dakota Westmoreland Corporation		N.O.V. Number 1002	
Address P.O. Box 39		City Beulah	Permit Number KRSB-8603
Telephone Number 701-873-4333	Mine Beulah	State ND	Zip Code 58523-0039
Name of Operator (if other than permittee)			
Address		City	State Zip Code
Date of Inspection May 27, 2010	Time of Inspection From: 10:00		To: 01:30
<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> a.m. <input type="checkbox"/> p.m. <input checked="" type="checkbox"/> p.m.			
<p>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.</p> <p>You must abate this violation within the designated abatement time.</p> <p>The undersigned authorized representative finds that cessation of surface mining activities <input type="checkbox"/> is <input checked="" type="checkbox"/> is not expressly or implicitly required by this Notice of Violation.</p> <p>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.</p>			
Print Name of Person Served Jeff Frohlich		Print Title of Person Served Manager - Engineering & Environmental	
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail		Date of Service June 15, 2010	
Signature of Person Served		Signature of Authorized Representative <i>Bruce Beechie</i>	

Nature of Violation
<p>Dakota Westmoreland failed to protect undisturbed areas adjacent to the main haul road from deposition of sediment and contamination by water transported sediment. A berm constructed of road gravel and scoria along the haul road was improperly maintained, and as a result a precipitation event on the night of May 25, 2010, led to erosion on a constructed ramp along the embankment of the haul road, and deposition of road gravel and scoria onto undisturbed areas adjacent to Brush Creek.</p> <p style="text-align: center;">(if applicable, include the extent to which the violation cannot be corrected)</p>

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

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

NDAC 69-05.2-16-08(1)(a)(d): Appropriate sediment control measures must be designed, constructed, and maintained to prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area; and minimize the deposition of sediment on undisturbed areas.

NDAC 69-05.2-24-01(2)(a)(c): Each road must be constructed and maintained to control or prevent erosion or siltation and maintained to control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area.

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

Haul road berm above Brush Creek in the SW¼NW¼ of Section 14, T143N, R88W, Mercer County.

Remedial Action Required (including interim steps, if any)

Remove sediment from undisturbed areas adjacent to the north sump, culvert, and Brush Creek while minimizing disturbance to underlying topsoil. Reseed disturbed portions of the area and repair the silt fence surrounding the sump. Place additional silt fence or other BMP's on the down-gradient side of the access ramp. Institute a company plan for berm maintenance that incorporates a system of checks or controls to ensure the berm is maintained, controlled or replaced during and after access to the ramp.

Time for Abatement (including interim steps, if any)

Repair of the affected areas and a berm maintenance/control plan is required to be completed by July 1, 2010.

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.