



Public Service Commission

State of North Dakota

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August 25, 2010

Mr. Joe D. Friedlander
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523-9475

Dear Mr. Friedlander:

The Public Service Commission has proposed a civil penalty of \$1,000 (\$250 for seriousness and \$750 for negligence) for Notice of Violation (NOV) No. 1003, Case No. RC-10-418, issued to The Coteau Properties Company (Coteau). The proposed penalty assessment was made at this time because Coteau requested an Informal Conference on this matter. The proposed penalty of \$1,000 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 Informal Conference.

Attached to this letter is a copy of the Notice of Informal Conference scheduling the conference for September 30, 2010, 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-1003.

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. This is the first NOV that Coteau has received since 1999. Based on the criteria we have used in the past, Coteau does not have a history of violations; therefore, a penalty assessment based on history is not warranted.

Proposed 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. Although the extent of the erosion was minimal at the time it was discovered, it is an off-site impact directly attributable to Coteau's activities and there was the potential for more

serious erosion had the discharge continued for a longer period of time. A penalty for seriousness is warranted.

Proposed penalty assessment for seriousness - \$250

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, the primary reason for the NOV was for failure to install an energy dissipater on the discharge outlet. Inspectors had previously noted discharge outlets without energy dissipaters located both inside and outside of the permit area at the Freedom Mine and Coteau personnel were previously cautioned of the risks of not using an energy dissipater on discharge outlets, especially those located outside of the permit area. The failure to use an appropriate energy dissipater was due to lack of diligence and ordinary negligence. Therefore, a penalty for negligence is warranted.

Proposed penalty assessment for negligence - \$750

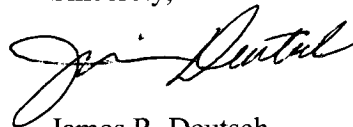
Good Faith: The Commission may deduct up to \$1,000 per day from the total civil penalty when a permittee takes extraordinary measures to abate the violation in the shortest possible time following notification of the violation. No deduction can be made for normal compliance. Even though Coteau immediately discontinued the pond discharge upon discovering the erosion and repaired the small erosion feature in a very timely manner, the compliance in this case is considered normal. No extraordinary measures were required to abate this violation.

Proposed deduction for good faith - None

In summary, a civil penalty of \$1,000 is proposed for NOV-1003, which must be paid within thirty days of the receipt of this letter. The proposed penalty can be discussed at the Informal Conference scheduled for September 30, 2010.

If you have any questions, please contact our office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

Enclosure

Certified Mail