

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Coteau Properties Company**  
**Notice of Violation No. 1003**  
**Violation**

**Case No. RC-10-418**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**September 22, 2010**

**Preliminary Statement**

On July 8, 2010, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1003 to The Coteau Properties Company (Coteau) following an inspection of the Freedom Mine on June 30, 2010. The violation was issued for failure to have an energy dissipater on the discharge outlet of Pond P-N33-01 and for disturbing a small area outside of the permit boundary.

On July 13, 2010, the Commission received a letter from Coteau that addressed the status of the required remedial action items. Coteau completed the prescribed remedial measures in the NOV within the abatement time as specified and staff terminated the NOV on July 22, 2010.

On July 30, 2010, the Commission received a letter from Coteau requesting an informal conference on NOV-1003. On August 24, 2010, the Commission assessed a proposed civil penalty of \$1,000 and scheduled an informal conference for September 30, 2010. On September 2, 2010, the Commission received a \$1,000 check for the proposed penalty and a letter withdrawing the request for the informal conference.

**Findings of Fact**

1. Coteau is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-1003 stated, and the Commission finds, that Coteau violated NDAC Section 69-05.2-16-10 for failure to have an energy dissipater on the discharge outlet of Pond P-N33-01 and disturbing a small area outside of the permit boundary as prohibited by NDCC 38-14.1-25(2).
3. Coteau requested an informal conference on NOV-1003 on July 29, 2010.

4. Coteau completed all of the remedial actions specified in the notice of violation within the prescribed time and staff terminated NOV-1003 on July 22, 2010.
5. Coteau's request for an informal conference required the Commission to assess a proposed penalty.
6. NDAC Section 69-05.2-28-12 requires the Commission to consider four factors in determining the amount of civil penalty. These factors are: 1) history of previous violations; 2) seriousness of the violation; 3) negligence; and, 4) good faith in attempting to achieve rapid compliance.
7. The Commission finds that assessment of a civil penalty based on the history of previous violations at Coteau's Freedom Mine is not warranted. This is the first violation that Coteau has received since 1999 and does not constitute a history of violations.
8. The Commission finds that Coteau's present violation was serious in that some environmental damage occurred. 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 based on seriousness is warranted.
9. The Commission finds that Coteau's violation was not due to reckless or willful conduct. However, in this case, the primary reason for the NOV was for the failure to install an energy dissipater on the discharge outlet. The failure to use an appropriate energy dissipater was due to lack of diligence and ordinary negligence. A penalty based on negligence due to lack of diligence and reasonable care is warranted.
10. The Commission finds that 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. A deduction for good faith is not warranted.
11. Based on these facts, the Commission proposed a penalty of \$0 for history, \$250 for seriousness, and \$750 for negligence, and no deduction for good faith, totaling \$1,000, for NOV-1003.
12. The proposed penalty of \$1,000 was paid by Coteau.
13. Coteau withdrew its request for an informal conference on September 2, 2010, and the conference scheduled for September 30, 2010 should be canceled.

From the foregoing findings of fact, the Commission now makes its:

### Conclusions of Law

1. The Commission has jurisdiction over surface coal mining and reclamation operations conducted in North Dakota by Coteau.
2. Coteau violated the provisions of NDCC 38-14.1-25(2) and NDAC Section 69-05.2-16-10.
3. The Commission should assess a civil penalty for NOV-1003.

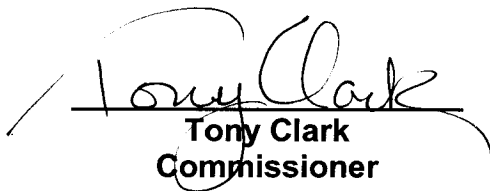
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

### Order

The Commission orders:

1. Notice of Violation No. 1003 is affirmed.
2. The Coteau Properties Company is assessed a total civil penalty of \$1,000 (\$0 for history, \$250 for seriousness, and \$750 for negligence, and no deduction for good faith) for the violation.
3. The informal conference scheduled for September 30, 2010 is canceled.
4. The proceeding is closed.

### PUBLIC SERVICE COMMISSION

  
Tony Clark  
Commissioner

  
Kevin Cramer  
Chairman

  
Brian P. Kalk  
Commissioner