



Public Service Commission

State of North Dakota

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November 29, 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 \$1,500 (\$250 for seriousness and \$1,250 for negligence) for Notice of Violation (NOV) No. 1004, Case No. RC-10-598, issued to The Coteau Properties Company (Coteau). The proposed penalty assessment was made at this time because Coteau requested a Formal Hearing on this matter. The proposed penalty of \$1,500 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 outcome of the Formal Hearing.

Attached to this letter is a copy of the Notice of Formal Hearing scheduling the conference for December 17, 2010, beginning at 9:00 a.m., CST, 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-1004.

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 second NOV that Coteau has received this year and only the second NOV 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.

Recommended penalty assessment for history - None

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. The erosion caused minor sedimentation on a reclaimed area that is just north of the haulroad. A penalty for seriousness is warranted.

Recommended penalty assessment for seriousness - \$250

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Negligence: The Commission may assess a civil penalty of up to \$3,000 per day based on the degree of 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 \$3,000 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 the necessary erosion and sediment control measures in the north haulroad ditch. Other than seeding, no other erosion and sediment control measures were installed in the north haulroad ditch. Coteau's September 17, 2009, certification of this haulroad following its construction noted that the installation of a silt fence adjacent to culvert installations to control erosion remained to be completed at that time. However, it was apparent on September 30, 2010, that a silt fence was never installed next to the culvert inlet on the north road ditch near the center of Section 18. Sediment deposition in this road ditch was also noted during the September 2, 2010 inspection, but Coteau failed to install any silt fences or sediment control measures in the north ditch after that inspection. The failure to install the erosion and sediment control measures is due to lack of diligence and ordinary negligence. Therefore, a penalty for negligence is warranted.

Recommended penalty assessment for negligence - \$1,250

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. Even though Coteau immediately began repair of the erosion feature and installed erosion control measures, the compliance in this case is considered normal. No extraordinary measures were required to abate this violation.

Recommended deduction for good faith - None

In summary, a civil penalty of \$1,500 is proposed for NOV-1004, 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 December 17, 2010.

If you have any questions, please contact our office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

Enclosure

cc: Brian Bjella, Crowley Fleck

Certified Mail

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Coteau Properties Company
Notice of Violation No. 1004
Violation**

Case No. RC-10-598

NOTICE OF FORMAL HEARING

November 24, 2010

Preliminary Statement

On October 4, 2010, the Public Service Commission's Reclamation Division issued Notice of Violation 1004 to The Coteau Properties Company for failure to install the appropriate measures to control erosion and sedimentation from a section of haulroad at the Freedom Mine.

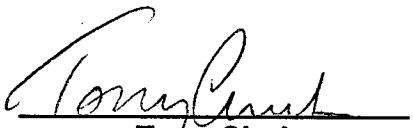
On October 29, 2010, the Commission received a request for a Formal Hearing from The Coteau Properties Company in the matter.

Notice of Informal Conference

Notice is hereby given that the captioned matter is set for Formal Hearing, commencing at 9:00 a.m. CST, on December 17, 2010, 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 the 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
Chairman**



**Brian P. Kalk
Commissioner**