

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Westmoreland Corporation
Notice of Violation No. 1201
Violation

Case No. RC-12-786

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

December 21, 2012

Preliminary Statement

On October 30, 2012, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1201 to Dakota Westmoreland Corporation (DWC) for failure to construct two sedimentation ponds before removing topsoil from an area to be mined in a portion of the watershed that drains to the ponds.

DWC completed the prescribed remedial measures within the required abatement time. The NOV was terminated on December 17, 2012. DWC did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. DWC is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-1201 states, and the Commission finds, that DWC violated NDAC Section 69-05.2-16-04(1)(e) for failure to construct sedimentation ponds according to plans in the approved permit before beginning surface mining activities in a drainage area to be affected.
3. DWC completed the remedial actions specified in the notice of violation within the prescribed time.
4. DWC did not contest the notice of violation by requesting an informal conference or formal hearing in the matter.
5. The Commission terminated NOV-1201 on December 17, 2012.

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 DWC's Beulah Mine is not warranted. DWC has received one other violation within the past three years. A penalty for history is usually not assessed unless three or more violations are issued within the preceding three-year time period.
8. The Commission finds that this violation did not cause any environmental damage; however, the potential for sediment being deposited on downstream areas was high had a precipitation event occurred that resulted in runoff from the areas where topsoil had been removed. The violation was serious in that there was the potential for environmental damage due to DWC's failure to construct the required sedimentation ponds before removing topsoil from nearly twenty-five acres in the contributing watershed. A penalty based on seriousness is warranted.
9. The Commission finds that DWC's violation was not due to reckless or willful conduct. Nonetheless, DWC failed to construct the required sedimentation ponds before removing topsoil from areas to be mined. The failure was due to lack of diligence and ordinary negligence. A penalty based on negligence is warranted.
10. The Commission finds that DWC's abatement of the NOV was normal. A deduction from the penalty may be made when extraordinary measures are taken to abate a violation in the shortest possible time following notification of the violation. A deduction for good faith is not warranted for NOV-1201.
11. Based on these facts, the Commission should assess a penalty of \$500 for seriousness and \$1,500 for negligence, totaling \$2,000, for NOV-1201.

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 DWC.
2. DWC violated the provisions of NDAC Section 69-05.2-16-04(1)(e).
3. The Commission should assess a civil penalty for NOV-1201.

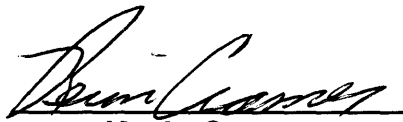
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

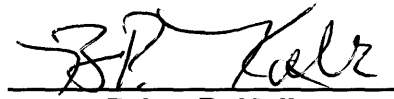
The Commission orders:

1. Notice of Violation No. 1201 is affirmed.
2. Dakota Westmoreland Corporation is assessed a total civil penalty of \$2,000 (\$500 for seriousness and \$1,500 for negligence) for the violation.
3. The proceeding is closed upon payment of the penalty by DWC within thirty days.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Brian P. Kalk
Chairman



Bonny M. Fetch
Commissioner