

**Public Service Commission
Reclamation Division**

Memorandum

To: Commissioners Kalk, Christmann, and Fedorchak
Darrell Nitschke, Executive Secretary
Illona Jeffcoat-Sacco and Ryan Norrell

From: Jim Deutsch, Dean Moos, and Bill Gunnerson *BG*

Date: September 4, 2013

Subject: Final Order for Case No. RC-13-334, NOV-1301 issued to BNI Coal, Ltd.

Notice of Violation (NOV) 1301 was issued to BNI Coal, Ltd. (BNI) on June 14, 2013 for failure to construct and maintain a sump and silt fence used as sediment control measures as necessary to minimize sediment deposition on undisturbed areas as required by NDAC 69-05.2-16-08(1)(d).

BNI submitted a request for an informal conference in this matter on June 24, 2013. This action required the Commission to assess a proposed penalty and schedule an informal conference in the matter. The Commission proposed a civil penalty of \$1,000 (\$0 for history, \$250 for seriousness, \$750 for negligence, and \$0 deduction for good faith) on July 10, 2013 and scheduled an informal conference for August 19, 2013.

BNI paid the proposed penalty of \$1,000 on July 30, 2013 and withdrew its request for the informal conference on August 8, 2013. The NOV was terminated on August 20, 2013 since BNI's has completed the remedial measures specified in NOV-1301 within the prescribed time.

The Reclamation Division recommends the Commission adopt the attached final order that affirms the Notice of Violation and \$1,000 penalty. The order also closes the case and acknowledges that the informal conference scheduled for August 19, 2013 was canceled.

A proposed motion for consideration at the September 11, 2013 Commission meeting is also attached.

Attachments

Minedata/Center/Violations/2013/NOV-1301/NOV-1301_memo_9-4-13