

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Notice of Violation No. 1301
Violation

Case No. RC-13-334

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

September 11, 2013

Preliminary Statement

On June 14, 2013 the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1301 to BNI Coal, Ltd. (BNI) following an inspection of the Center Mine on May 29, 2013. The violation was issued for failure to properly construct and maintain a sump and silt fence used as sediment control measures to minimize sediment deposition on adjacent undisturbed areas.

On June 24, 2013 the Commission received a letter from BNI requesting an informal conference on NOV-1301. In the same letter BNI also addressed the status of the required remedial action items.

On July 10, 2013 the Commission assessed a proposed civil penalty of \$1,000 and scheduled an informal conference for August 19, 2013. On July 30, 2013 the Commission received a \$1,000 check for the proposed penalty and on August 8, 2013 BNI submitted a letter withdrawing the request for the informal conference.

BNI completed the prescribed remedial measures in the NOV within the required abatement time as specified and the NOV was terminated on August 20, 2013.

Findings of Fact

1. BNI is engaged in surface coal mining operations under permits issued by the Commission.
2. NOV-1301 states, and the Commission finds, that BNI violated NDAC Section 69-05.2-16-08(1)(d) 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.
3. BNI requested an informal conference on NOV-1301 on June 24, 2013.

4. BNI completed the remedial actions specified in the notice of violation within the prescribed time.
5. BNI'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 BNI's Center Mine is not warranted. BNI has received no other violations 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 was serious in that some environmental damage occurred. The overburden-spoil sediment deposition on adjacent undisturbed land caused a certain degree of environmental damage and the potential for additional damage did exist. A penalty based on seriousness is warranted.
9. The Commission finds that BNI's violation was not due to reckless or willful conduct. Nonetheless, the NOV resulted from BNI's failure to take sufficient measures to maintain and strengthen the sump and silt fence that were being used as best management practices. This concern was brought to the attention of BNI staff on several previous inspections and BNI's follow-up actions were limited to installing some straw bales behind the silt fence. The failure was due to lack of diligence and ordinary negligence. A penalty based on negligence is warranted.
10. The Commission finds that BNI'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.
11. Based on these facts, the Commission proposed a penalty of \$0 for history, \$250 for seriousness, \$750 for negligence, and \$0 deduction for good faith, totaling \$1,000 for NOV-1301.
12. BNI paid the proposed penalty of \$1,000 on July 30, 2013.
13. BNI withdrew its request for an informal conference on August 8, 2013 and the informal conference scheduled for August 19, 2013 was canceled.

14. The Commission terminated NOV-1301 on August 20, 2013.

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 BNI.
2. BNI violated the provisions of NDAC Section 69-05.2-16-08(1)(d).
3. The Commission should assess a civil penalty for NOV-1301.

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

Order

The Commission orders:

1. Notice of Violation No. 1301 is affirmed.
2. BNI Coal, Ltd. is assessed a total civil penalty of \$1,000 (\$0 for history, \$250 for seriousness, \$750 for negligence, and \$0 deduction for good faith) for the violation.
3. The proceeding is closed because the request for the informal conference was withdrawn.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner