

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

**Dakota Westmoreland Corporation**  
**Notice of Violation No. 1401**  
**Violation**

**Case No. RC-14-313**

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

**July 30, 2014**

**Preliminary Statement**

On June 5, 2014, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1401 to Dakota Westmoreland Corporation (DWC) for failure to properly implement and maintain water management plans at the Beulah Mine.

DWC completed the prescribed remedial measures within the required abatement time. The NOV was terminated on June 27, 2014. 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 at the Beulah Mine under permits issued by the Commission.
2. NOV-1401 states, and the Commission finds, that DWC violated NDAC Section 69-05.2-16-04(1)(a) and NDAC Section 69-05.2-16-08 for failure to properly implement and maintain water management plans at the Beulah Mine. The violation was observed during a routine mine inspection on May 28, 2014.
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-1401 on June 27, 2014.

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 was serious in that some minor environmental damage did occur. There was sediment deposition on reclaimed and undisturbed lands and the potential for greater environmental damage existed because DWC failed to install and maintain appropriate water management measures. Pumped pit water discharges of water carrying a high sediment load were allowed to pass untreated over reclaimed lands because of a breach in a berm or dike that was designed to route water a different direction. Elsewhere, surface water runoff was not being directed to a sediment pond because DWC had not installed a culvert in a re-constructed county road. 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 install and maintain appropriate water management measures. Pumped pit water discharges were not passed through a sediment sump as designed and runoff from an affected area was not being directed to a sediment pond as required by NDAC 69-05.2-16-04(1)(a). 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 rapid, demonstrating good faith. 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. DWC installed a culvert in the reconstructed county road on May 30, 2014 to direct runoff to a sediment pond and repaired the breach in the berm/dike on June 2, 2014 when conditions allowed. All other remedial action was completed by June 5, 2014. A deduction for good faith is warranted for NOV-1401.
11. Based on these facts, the Commission should assess a penalty of \$500 for seriousness and \$1,250 for negligence, with \$500 deducted for good faith, with the net amount totaling \$1,250 for NOV-1401.

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)(a) and NDAC 69-05.2-16-08.
3. A civil penalty for NOV-1401 is warranted.

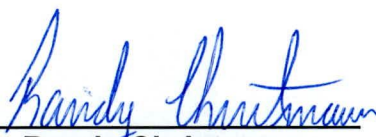
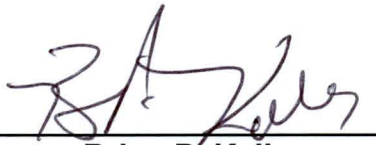

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

### Order

The Commission orders:

1. Notice of Violation No. 1401 is affirmed.
2. Dakota Westmoreland Corporation is assessed a total civil penalty of \$1,250 (\$500 for seriousness and \$1,250 for negligence, with a \$500 deduction for rapid remedial action) for the violation. The penalty must be paid with thirty days of receipt of this Order.
3. The proceeding is closed upon payment of the penalty by DWC within thirty days.

### PUBLIC SERVICE COMMISSION

		
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<b>Randy Christmann</b> Commissioner	<b>Brian P. Kalk</b> Chairman	<b>Julie Fedorchak</b> Commissioner