

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Notice of Violation No. 1402
Violation

Case No. RC-14-712

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

November 6, 2014

Preliminary Statement

On September 9, 2014, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1402 to BNI Coal, Ltd. (BNI) for failure to properly mark the permit boundary and for conducting surface mining activities outside of the approved permit boundary at the Center Mine.

BNI completed the prescribed remedial measures within the required abatement time. The NOV was terminated on October 6, 2014. BNI did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. BNI is engaged in surface coal mining operations at the Center Mine under permits issued by the Commission.
2. NOV-1402 states, and the Commission finds, that BNI violated NDCC Section 38-14.1-25(2) that prohibits surface coal mining and reclamation operations from being located outside of an approved permit area and NDAC Section 69-05.2-13-04(4) for failure to properly mark the perimeter of the permit area at the Center Mine. The violation was observed during a routine mine inspection on September 3, 2014.
3. BNI completed the remedial actions specified in the notice of violation within the prescribed time.
4. BNI did not contest the notice of violation by requesting an informal conference or formal hearing in the matter.
5. The Reclamation Division terminated NOV-1402 on October 6, 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 BNI's Center Mine is not warranted. BNI has received one other violation within the past three years. A penalty for history is usually not assessed unless more than three 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. Topsoil had been stockpiled on an area outside of the approved permit boundary and heavy equipment had traversed this area resulting in soil compaction. A penalty based on seriousness is warranted.
9. The Commission finds that BNI's violation was not due to reckless or willful conduct. Nonetheless, BNI failed to properly mark the permit boundary before beginning operations in this area. 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 in this case.
11. Based on these facts, the Commission should assess a penalty of \$500 for seriousness and \$1,500 for negligence, with the total being \$2,000 for NOV-1402.

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 NDCC Section 38-14.1-25(2) and NDAC 69-05.2-13-04(4).
3. A civil penalty for NOV-1402 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. 1402 is affirmed.
2. BNI Coal, Ltd. is assessed a total civil penalty of \$2,000 (\$500 for seriousness and \$1,500 for negligence) 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 BNI within thirty days.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner