

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann and Kalk
Illona Jeffcoat-Sacco - General Counsel
Darrell Nitschke - Executive Secretary

FROM: Jim Deutsch, Dean Moos, Bruce Beechie, Zanna Brinkman

DATE: June 11, 2015

SUBJECT: Order for Case No. RC-15-165, NOV 1501 issued to Coyote Creek Mining Company, LLC

Summary: Notice of Violation (NOV) 1501 was issued to Coyote Creek Mining Company, LLC (CCMC) on April 24, 2015, following an April 16, 2015 inspection of the Coyote Creek Mine. NOV 1501 was issued for placement of a mixture of subsoil and overburden materials on undisturbed in-situ topsoil and up against an adjacent topsoil stockpile at the Coyote Creek Mine. CCMC did not request an informal conference or formal hearing in the matter. Therefore, the Reclamation Division recommends that the Commission adopt the attached order to affirm the violation and assess a \$500 penalty.

Discussion: During an April 16, 2015 inspection of the Coyote Creek Mine, Bruce Beechie and Zanna Brinkman noticed that a mixture of subsoil and overburden materials had been placed on an area of undisturbed in-situ topsoil and up against an adjacent topsoil stockpile. The subsoil and overburden materials were cuttings from large diameter holes drilled for footings for a nearby electrical substation that was being installed to support Coyote Creek's mining activities. In addition, cement washdown residue was noted on the topsoil surface in this same area. The electrical substation is being built by MDU to serve the Coyote Creek Mine and it is considered a mine related activity. A contractor for MDU was constructing the substation. CCMC personnel stated they had previously explained to MDU and their contractor that the subsoil/overburden material would need to be hauled to the shop/office construction site for disposal in a construction pad.

NOV 1501 was issued to CCMC on April 24, 2015 for placement of the subsoil/overburden mixture on undisturbed in-situ topsoil and for placing the subsoil/overburden mixture against a topsoil stockpile. Specifically, the NOV was written for violations of the provisions of NDAC Sections 69-05.2-15-02(1), 69-05.2-15-02(2)(a), 69-05.2-15-02(2)(b)(1), and 69-05.2-15-03(2).

The NOV was terminated on May 22, 2015 after staff determined that all of the required remedial action items were satisfactorily completed. Most of the required remedial action items

were completed within a day of the inspection and prior to the issuance of the NOV. CCMC did not request an informal conference or a formal hearing in this matter.

Since an informal conference or hearing was not requested, the Commission needs to assess a civil penalty and adopt a final order in this matter. The Commission must consider four factors in determining the amount of a 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. These factors and recommended civil penalty with respect to NOV 1501 are discussed below:

History of Violations: The Commission may assess a civil penalty of up to \$3,500 per day on the history of previous violations at the mine where the violation is found. Generally, the history of violations within the preceding three years is considered and a penalty for history has not been recommended in the past if three or fewer violations have occurred in that three-year period. This is the first NOV that the Coyote Creek Mine has received. Based on the criteria we have used in the past, CCMC does not have a history of violations that requires a penalty to be assessed.

Recommended penalty assessment for history - \$0

Seriousness of the Violation: The Commission may assess a civil penalty of up to \$3,500 per day based on the seriousness of the violation. Factors to be considered in seriousness are the extent and the duration of potential or actual damage in terms of impact on the public or the environment. This violation did cause some minor environmental damage, primarily minor loss and degradation of topsoil caused by the placement and subsequent removal of the subsoil/overburden mixture. Also, the area affected was quite small. A penalty based on seriousness is warranted.

Recommended penalty assessment for seriousness - \$250

Negligence: The Commission may assess a civil penalty of up to \$3,000 per day based on the degree of the fault of the permittee. However, a violation caused by negligence, but not through reckless, knowing or willful conduct may be assessed a penalty of up to only \$1,500 per day. A penalty of up to \$3,000 per day may be assessed for a violation which occurs through a greater degree of fault than negligence, or through reckless, knowing or intentional conduct. In this case, MDU's contractor placed the subsoil/overburden materials on in-situ topsoil and against an adjacent topsoil stockpile after having been instructed not to do so by CCMC. Even though the violation was caused by a contractor, CCMC is responsible for ensuring that all mine related activities are in compliance with the applicable laws and regulations. A penalty based on negligence due to lack of diligence and reasonable care is warranted.

Recommended penalty assessment for negligence - \$750

Good Faith: The Commission may deduct up to \$1,000 per day from the total civil penalty when a permittee takes extraordinary measures to abate the violation in the shortest possible time following notification of the violation. No deduction can be made for normal compliance.

CCMC had taken very prompt measures to remove the subsoil/overburden materials from the in-situ topsoil. These measures were implemented even before the NOV was issued. Therefore, a deduction for good faith is warranted.

Recommended deduction for good faith – \$500

In conclusion, the Reclamation Division recommends that the Commission adopt the attached final order that affirms NOV 1501 and assesses a civil penalty in the amount of \$500 (\$250 for seriousness and \$750 for negligence, with \$500 deducted for good faith). The order also closes the case upon payment of the penalty. A proposed motion is also attached for your consideration at the June 17th Commission meeting.

Attachments

Minedata/CoyoteCreek/Violations/2015/NOV-1501_memo_6-11-15