

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, LLC
Notice of Violation No. 1601
Violation

Case No. RC-16-547

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

December 14, 2017

Preliminary Statement

On July 21, 2016, the Public Service Commission's (Commission) Reclamation Division issued Notice of Violation No. 1601 (NOV 1601) to Coyote Creek Mining Company, L.L.C. (CCMC). The Notice of Violation was issued for sediment deposition on undisturbed lands within and adjacent to Surface Coal Mining Permit NACC-1302. The NOV specifically applied to the coal mine haul road and adjacent areas north of Mercer County Road 12 in Sections 8, 9 and 18, T143N, R88W at the Coyote Creek Mine. The required remedial actions included stabilizing the area by mulching of the roadside slopes and other measures as necessary to provide long-term slope stabilization of all haul road cut and fill slopes and improved water management structures/systems for all haul road discharge points. The remedial action plan also required CCMC evaluate the off-permit areas of sediment deposition on undisturbed areas in coordination with the property owners and develop a mitigation plan for dealing with areas of sediment deposition.

On August 22, 2016, CCMC filed a request to vacate NOV 1601 along with a request for an informal conference under NDCC 38-14.1-19.

On September 7, 2016, the Commission assessed a proposed civil penalty of \$2500 for NOV 1601 and scheduled an informal conference for November 3, 2016.

On October 7, 2016, CCMC paid the proposed penalty of \$2500 and on October 13, 2016, the request for an informal conference on NOV 1601 was withdrawn by CCMC.

CMCC completed the prescribed remedial measures in the NOV within the required abatement time and the NOV was terminated on November 30, 2016.

Findings of Fact

1. CCMC is engaged in surface coal mining operations at the Coyote Creek Mine under permits issued by the Commission.
2. NOV-1601 states, and the Commission finds, that CCMC violated NDCC 38-14.1-24(8)(b), NDCC 38-14.1-24(15), NDAC 69-05.2-16-08(1)(a) and (d) and NDAC 69-05.2-24-01(2)(c) as

well as plans in Section 3.2.1 of Permit NACC-1302 resulting in sediment deposition on undisturbed off-permit lands. The violation was observed during routine mine inspections on July 12 and 18, 2016.

3. On August 22, 2016, CCMC requested that NOV-1601 be vacated and that an informal conference be held on the NOV.
4. CCMC completed the remedial actions specified in the notice of violation within the prescribed time.
5. CCMC'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 CCMC's Coyote Creek is not warranted. This is the third NOV that CCMC has received. 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 did cause environmental damage, primarily the sediment deposition on adjacent undisturbed off-permit areas below the haul road storm water discharge points. Sediment deposition ranged from a thin veneer to more than a foot. A penalty based on seriousness is warranted.
9. The Commission finds that CCMC's violation was not due to reckless or willful conduct. CCMC had implemented erosion and sediment control plans for this area, but they were ineffective for the intense, short duration rainfall events that occurred in July. Although the erosion and sediment control measures failed, CCMC was diligent in the installation and maintenance of erosion and sediment control prior to the rainfall events. A penalty based on negligence is not warranted.
10. The Commission finds that CCMC promptly began repair of impacted best management practices, even prior to the issuance of the NOV. Therefore, a deduction for good faith is warranted.
11. Based on these facts, the Commission assessed a penalty of \$0 for history, \$3000 for seriousness, \$0 for negligence and \$500 deducted for good faith, with the net amount totaling \$2500 for NOV 1601.
12. CMCC paid the proposed penalty of \$2500 on October 7, 2016.
13. CCMC withdrew its request for an informal conference on October 13, 2016 and the informal conference scheduled for November 3, 2016 was cancelled.
14. The Commission terminated NOV-1601 on November 30, 2016.

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 CCMC.
2. CCMC violated the provisions of NDCC 38-14.1-24(8)(b), NDCC 38-14.1-24(15), NDAC 69-05.2-16-08(1)(a) and (d) and NDAC 69-05.2-24-01(2)(c) as well as plans in Section 3.2.1 of Permit NACC-1302.
3. A civil penalty for NOV 1601 was warranted.

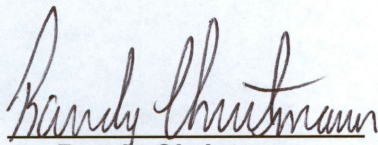
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

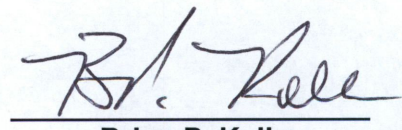
The Commission orders:

1. Notice of Violation No. 1601 is affirmed.
2. Coyote Creek Mining Company, L.L.C. is assessed a total civil penalty of \$2500 (\$0 for history, \$3000 for seriousness, \$0 for negligence, and \$500 deduction for good faith) for the violation
3. The proceeding is closed.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chairman


Brian P. Kalk
Commissioner