

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

**Dakota Westmoreland Corporation**  
**Notice of Violation No. 1701**  
**Violation**

**Case No. RC-17-172**

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

**December 20, 2017**

**Preliminary Statement**

On April 3, 2017, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 1701 to the Dakota Westmoreland Corporation (DWC) for failure to maintain a haul road to control or prevent erosion and siltation.

DWC completed the prescribed remedial measures within the required abatement time. The NOV was terminated on December 6, 2017. 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 1701 states, and the Commission finds, that DWC violated North Dakota Century Code Subsection 38-14.1-24(15) and North Dakota Administrative Code Subdivision 69-05.2-24-01(2)(a) for failure to maintain a haul road to control or prevent erosion and siltation, and North Dakota Administrative Code Subsection 69-05.2-24-01(5) for failure to maintain a road to meet the performance standards of Chapter 69-05.2-24. The violation was observed during a routine inspection of the Beulah Mine on March 22, 2017.
3. DWC completed the remedial actions specified in the notice of violation within the prescribed time and extension allowed by North Dakota Administrative Code Section 69-05.2-28-06.
4. DWC did not contest the notice of violation by requesting an informal conference or formal hearing in the matter.

5. Commission staff terminated NOV 1701 on December 6, 2017.
6. As required by North Dakota Administrative Code Section 69-05.2-28-12, the Commission considers the following four factors in determining the amount of any civil penalty: (1) history of previous violations; (2) seriousness; (3) negligence; and (4) good faith in attempting to achieve 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 environmental damage did occur. Failure to maintain the haul road to control or prevent erosion and siltation created an erosional gully in undisturbed land and caused attendant siltation in an intermittent stream. Accumulated sediment altered the streambed and damaged vegetation, and the potential for additional damage did exist. Streambed sediment removal is not practicable until the life of mine haul road that also functions as a pond embankment is reclaimed. A penalty based on seriousness is warranted.
9. The Commission finds that DWC's violation was not due to reckless or willful conduct. Nonetheless, the NOV resulted from DWC's failure to maintain the haul road to control or prevent erosion and siltation. Runoff from the haul road segment crossing the intermittent stream should be controlled by conveying runoff to a sediment pond by way of a drainage grate culvert inlet along the haul road's north berm and through a culvert under the haul road. Haul road runoff bypassed the drainage grate culvert inlet and breached the north haul road berm during a runoff event, or repeated runoff events, creating an erosional gully in undisturbed land and causing attendant siltation in an intermittent stream. 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 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 should assess a penalty of \$500 for seriousness and \$1,000 for negligence totaling \$1,500 for NOV 1701.

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 by DWC in North Dakota.
2. DWC violated the provisions of North Dakota Century Code Subsection 38-14.1-24(15), North Dakota Administrative Code Subdivision 69-05.2-24-01(2)(a), and North Dakota Administrative Code Subsection 69-05.2-24-01(5).
3. A civil penalty for NOV 1701 is warranted.

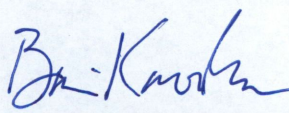
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

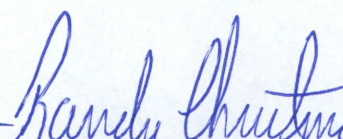
### Order

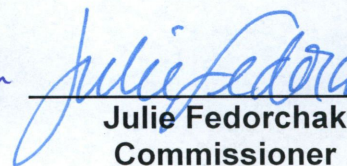
The Commission orders:

1. Notice of Violation No. 1701 is affirmed.
2. Dakota Westmoreland Corporation is assessed a total civil penalty of \$1,500 (\$500 for seriousness and \$1,000 for negligence) for the violation. The penalty must be paid within thirty days of receipt of this Order.
3. The proceeding is closed upon DWC's timely payment of the penalty.

### PUBLIC SERVICE COMMISSION

  
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**Brian Kroshus**  
Commissioner

  
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**Randy Christmann**  
Chairman

  
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**Julie Fedorchak**  
Commissioner