

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Westmoreland Corporation
Notice of Violation No. 1801
Violation

Case No. RC-18-226

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

September 5, 2018

Preliminary Statement

On July 3, 2018, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 1801 to the Dakota Westmoreland Corporation (DWC) for conducting mining operations within 100 feet of a cemetery.

DWC completed the prescribed remedial measures within the required abatement time. The NOV was terminated on August 22, 2018. 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 1801 states, and the Commission finds, that DWC violated North Dakota Century Code Subsection 38-14.1-07(5) – Surface coal mining operations are prohibited within one hundred feet [30.48 meters] of a cemetery. The violation was observed during a routine inspection of the Beulah Mine on June 27, 2018 and the distance between the topsoil stripping edge and the cemetery fence was measured with a steel tape and Real Time Kinetic Global Positioning System during a follow-up inspection on June 29, 2018.
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. Commission staff terminated NOV 1801 on August 22, 2018.

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 mining operations were conducted in an area prohibited by NDACC 38-14.1-07(5). 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 clearly mark the 100-foot buffer zone around the cemetery. 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 1801.

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 38-14.1-07(5).
3. A civil penalty for NOV 1801 is warranted.

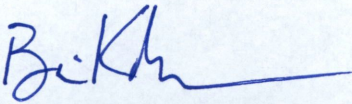
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

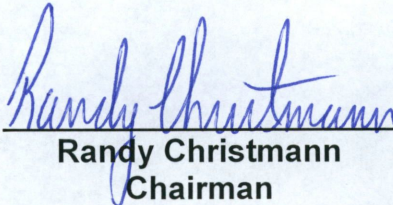
The Commission orders:

1. Notice of Violation No. 1801 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.

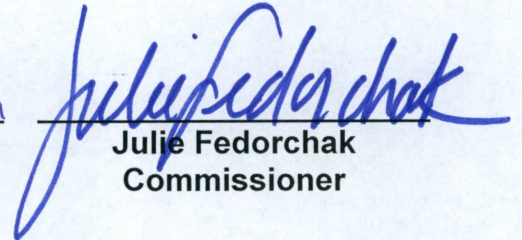
PUBLIC SERVICE COMMISSION



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Commissioner



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Julie Fedorchak
Commissioner