

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dakota Westmoreland Corporation
Notice of Violation No. 1901
Violation

Case No. RC-19-282

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

January 8, 2020

Preliminary Statement

On July 18, 2019, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 1901 to the Dakota Westmoreland Corporation (DWC) for uncontrolled discharge that exceeded the maximum total suspended solids (TSS) allowed and for failure to construct and maintain appropriate sediment control measures.

DWC installed the prescribed remedial measures within the required abatement time but further modifications were needed that required additional time. The NOV was terminated on November 20, 2019. 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 1901 states, and the Commission finds, that DWC violated North Dakota Century Code (NDCC) Subsection 38-14.1-24(8)(b) for failure to prevent excessive suspended solids from streamflow, North Dakota Administrative Code (NDAC) 69-05.2-16-02 for failure to meet water quality requirements of the North Dakota Department of Health (now known as the Department of Environmental Quality), NDAC 69-05.2-16-04 for failure to implement water management measures to meet effluent limits, NDAC 69-05.2-16-08 for failure to construct and maintain appropriate sediment control measures, and NDAC 69-05.2-16-09 for failure to provide adequate storage for sediment and surface water inflows. The violation was observed during a routine inspection of the Beulah Mine on July 9, 2019. The uncontrolled discharge had total suspended solids (TSS) level of 225 mg/L and the maximum TSS allowed by the North Dakota Pollutant Discharge Elimination System Permit is 70 mg/L.

3. DWC completed the remedial actions specified in the notice of violation within the prescribed time but further modifications were needed that required additional time.
4. DWC did not contest the notice of violation by requesting an informal conference or formal hearing.
5. Commission staff terminated NOV 1901 on November 20, 2019.
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 two other violations within the past three years. A penalty for history is usually not assessed unless more than three violations are issued within three years.
8. The Commission finds that this violation was serious in that appropriate surface water management was not in place as required by NDAC 69.05.2-16 and that some environmental damage did occur. Sediment-laden water in excess of the effluent standard was being discharged. 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 an upstream sump to control surface water runoff. This sump was part of the approved water management plan. The failure was due to lack of diligence and ordinary negligence. A penalty for 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 1901.

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(8)(b) and North Dakota Administrative Code 69-05.2-16-02, 69-05.2-16-04, 69-05.2-2-08, and 69-05.2-16-09..
3. A civil penalty for NOV 1901 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. 1901 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



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner