

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann and Kroshus
John Schuh - General Counsel
Steve Kahl - Executive Director
DKM ZAB

FROM: Dean Moos, Zanna Brinkman and Guy Welch

DATE: October 29, 2021

SUBJECT: Order for Case No. RC-21-419, NOV 2101 issued to Westmoreland Beulah Mining LLC

Summary: Notice of Violation (NOV) 2101 was issued to Westmoreland Beulah Mining LLC, (WBM) August 18, 2021 following a July 27, 2021 Beulah Mine inspection during which gray sediment was observed on reclaimed topsoil in the S1/2NW1/4 of Section 21 in Permit KRSB-8603. Surface water runoff from a dragline walkway corridor was allowed to flow over reclaimed cropland and a layer of gray sediment accumulated on respread topsoil. WBM did not request an informal conference or formal hearing regarding this NOV. The Reclamation Division therefore recommends that the Commission adopt the attached order to affirm the violation and assess a \$1,750 penalty.

Discussion: A dragline walkway corridor 100 feet wide was constructed in 2013 in the S1/2N1/2 of Section 21 in Permit KRSB-8603 to walk the dragline from the Gold Pit to the Silver and Iron Pit areas. The dragline walkway corridor was constructed with spoil from the Gold Pit. Surface water runoff from the dragline walkway was to be controlled using best management practices (BMP's) that included silt fence, sumps and straw wattles in the walkway ditch. Surface water runoff from areas affected by the walkway is ultimately controlled by ponds P85 and P87.

DWC failed to maintain appropriate water management practices and sediment from the dragline walkway accumulated on respread topsoil in the NW1/4 of Section 21. The Reclamation Division observed the dragline corridor and the affected adjacent reclaimed land during a June 2021 mine flyover and subsequently inspected the area. This dragline corridor is not frequently used by WBM during the normal course of operations and WBM failed to inspect and maintain surface water BMP's along the dragline corridor.

The site was ground inspected on July 27, 2021 to determine the extent and depth of sediment on reclaimed hayland north of the dragline walkway corridor. Six to eight inches of sediment had accumulated on reclaimed hayland in the area immediately adjacent the dragline walkway and the depth of accumulation gradually decreased downslope (north) of the dragline walkway. Approximately 1.3 acres of land was adversely affected by sediment deposition. The established hayland vegetation, alfalfa, intermediate wheatgrass and smooth brome grass, was killed in areas where the sediment deposition was greater than approximately 4 to 5 inches thick. The hayland stand was thin in areas with 2 to 4 inches of deposition whereas the established vegetation did not appear adversely affected in areas having less than approximately 2 inches of sediment.

The short term remedial action required WBM to direct surface water runoff from the dragline corridor to sediment pond P87 within seven (7) days of receipt of the Notice of Violation. This was accomplished by

removing sediment from the north ditch of the dragline walkway, installing a berm along the north side of the dragline walkway and installing sumps and silt fences. WBM was also required to remove sediment greater than 1 inch deep from affected reclaimed areas while minimizing disturbance to the respread topsoil and adjacent areas. WBM needed additional time to remove sediment from affected lands due to muddy surface conditions. WBM was also required to check the depth of topsoil in areas where sediment was removed to ensure the required depth of topsoil remained in place and to replace topsoil if the amount present was less than the required depth. WBM was then required to reseed the affected area by October 31, 2021. NOV-2101 was terminated October 11, 2021 after staff deemed the remedial actions had been satisfactorily accomplished.

The Commission needs to assess a civil penalty and adopt an order in this matter because WBM did not request an informal conference or a formal hearing. 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. These factors and recommended civil penalty with respect to NOV 2101 are as follows:

History of previous violations: The Commission may assess a civil penalty of up to \$3,500 per day based on the history of previous violations by the operator or permittee at the particular operation. Generally, the history of violations within the preceding three years is considered and a penalty for history has not been recommended if three or fewer violations have occurred in that three-year period. WBM, formerly DWC, has received one other violation within the preceding three years. Based on the criteria we have used in the past, WBM does not have a history of violations that requires a penalty to be assessed.

Recommended penalty assessment for history - \$0

Seriousness: 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 duration of potential or actual damage in terms of impact to the public or the environment. This violation did cause some environmental damage because sediment adversely affected reclaimed land. A penalty based on seriousness is warranted.

Recommended penalty assessment for seriousness - \$750

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. Mining companies are required to construct and maintain sediment control measures to ensure surface water runoff from spoil does not adversely affect respread or undisturbed topsoil. A penalty based on negligence due to lack of diligence is warranted.

Recommended penalty assessment for negligence - \$1250

Good faith in attempting to achieve compliance: 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 which is abatement of the violation within the time set for abatement. A deduction for good faith is warranted because WBM immediately removed sediment from

the north ditch and constructed a berm that directed all surface water runoff to sediment pond P87 without flowing over reclaimed land.

Recommended deduction for good faith - \$250

The Reclamation Division recommends that the Commission adopt the attached order that affirms NOV 12101 and assesses a civil penalty in the amount of \$1,750 (\$750 for seriousness, \$1250 for negligence and a deduction of \$250 for good faith). The order also closes the case upon payment of the penalty. A proposed motion for the November 3rd Commission meeting is also attached for your consideration.

Beulah Mine (Dakota Westmoreland)\Violations\2021\NOV-2101\NOV-2101_Order_Memo_10-29-21