

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Westmoreland Beulah Mining LLC
Notice of Violation No. 2101
Violation

Case No. RC-21-419

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

November 3, 2021

Preliminary Statement

On August 18, 2021, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 2101 to the Westmoreland Beulah Mining LLC (WBM, formerly DWC) for sediment deposition on reclaimed topsoil and for failure to maintain appropriate sediment control measures.

WBM installed the prescribed remedial measures within the required abatement time periods. The NOV was terminated on October 11, 2021. WBM did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. WBM is engaged in surface coal mining operations at the Beulah Mine under permits issued by the Commission.
2. NOV 2101 states, and the Commission finds, that WBM violated North Dakota Century Code (NDCC) Subsection 38-14.1-24(4) for failure to protect reclaimed areas to effectively prevent sediment deposition, North Dakota Administrative Code (NDAC) 69-05.2-16-01(1) and 69-05.2-16-08 for failure to install and maintain sediment control measures, NDAC 69-05.2-24-01(2)(a) for failure to control or prevent erosion from dragline walkway corridor and Permit KR5B-8603 for failure to install and maintain sediment control measures as stated in Section 3.1.
3. The violation was initially noticed during our review of the June 2021 flyover photographs of the Beulah Mine and was subsequently ground inspected July 27, 2021.
4. WBM completed the remedial actions specified in the notice of violation within the prescribed time periods.
5. WBM did not contest the notice of violation by requesting an informal conference or formal hearing.
6. Commission staff terminated NOV 2101 on October 11, 2021.

7. 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.
8. The Commission finds that assessment of a civil penalty based on the history of previous violations at the Beulah Mine is not warranted. The former mine operator, DWC, received one other violation within the past three years. A penalty for history is usually not assessed unless more than three violations are issued within three years.
9. 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 deposition adversely affected topsoil on reclaimed hayland. A penalty based on seriousness is warranted.
10. The Commission finds that WBM's violation was not due to reckless or willful conduct. Nonetheless, the NOV resulted from WBM's failure to maintain sediment control measures from the dragline walkway corridor. The failure was due to lack of diligence and ordinary negligence. A penalty for negligence is warranted.
11. The Commission finds that WBM's abatement of the NOV was prompt. 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 warranted.
12. Based on these facts, the Commission should assess a penalty totaling \$1,750 for NOV 2101; \$750 for seriousness, \$1,250 for negligence, and a deduction of \$250 for good faith.

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 WBM in North Dakota.
2. WBM violated the provisions of North Dakota Century Code Subsection 38-14.1-24(4) and North Dakota Administrative Code 69-05.2-16-01(1), 69-05.2-16-08, 69-05.2-2-24-01(2)(a), and Section 3.1 of Permit KRSB-8603.
3. A civil penalty for NOV 2101 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. 2101 is affirmed.
2. Westmoreland Beulah Mining LLC is assessed a total civil penalty of \$1,750 (\$750 for seriousness, \$1,250 for negligence and a deduction of \$250 for good faith) for the violation. The penalty must be paid within thirty days of receipt of this Order.
3. The proceeding is closed upon WBM's timely payment of the penalty.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

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