

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Notice of Violation 2202
Violation

Case No. RC-22-227

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July 27, 2022

Preliminary Statement

On May 25, 2022, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 2202 to BNI Coal, Ltd. (BNI) for removing overburden from the federal coal tract in the NE¼ of Section 20, T142N, R84W. BNI violated the special condition added to Permit BNCR-9702 with Revision 42 that prohibits overburden and coal removal until mine plan approval is received from the U.S. Department of the Interior.

BNI completed the prescribed remedial measures within the required abatement time. The NOV was terminated on July 20, 2022. BNI did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. BNI is engaged in surface coal mining operations at the Center Mine under permits issued by the Commission.
2. NOV 2202 states, and the Commission finds, that BNI violated North Dakota Century Code (NDCC) Section 38-14.1-28(1)(b). BNI violated the special condition added to Permit BNCR-9702 with Revision 42 that states no overburden or coal removal may occur on federal coal tracts located within Section 20, T142N, R84W until the mine plan for the federal coal is approved by the United States Department of the Interior. Until the mine plan is approved by the Department of the Interior, surface disturbances on the federal coal tracts are limited to those activities that the Commission determines are necessary for carrying out mining on the adjoining tracts where BNI Coal, Ltd. has all of the rights necessary to mine the coal.
3. The violation was initially noticed during our review of the May 10, 2022 inspection report and was subsequently field inspected on May 18, 2022.
4. BNI completed the remedial actions specified in the notice of violation within the prescribed time periods.
5. BNI did not contest the notice of violation by requesting an informal conference or formal hearing.

6. Commission staff terminated NOV 2202 on July 20, 2022.
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 Center Mine is not warranted. 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 approximately 275,000 cubic yards of overburden were removed over federal coal without mine plan approval from the U.S. Department of the Interior and a special condition of the permit was violated. A penalty based on seriousness is warranted.
10. The Commission finds that this violation was due to reckless and knowing conduct. The NOV resulted from BNI's removal of overburden over federal coal without mine plan approval from the U.S. Department of the Interior. However, overburden can be removed over federal coal without mine plan approval from the U.S. Department of the Interior if the mine submits a request to the Reclamation Division and we obtain concurrence from the Bureau of Land Management (BLM) through the Office of Surface Mining and Enforcement (OSMRE), but BNI did not submit a request or have concurrence at the time when the overburden was removed. BNI is familiar with obtaining concurrence from BLM through OSMRE to remove overburden over federal coal and they submitted a request on March 25, 2022 to the Commission for concurrence in Permit BNCR-9401. The violation was due to a lack of diligence, lack of reasonable care, and reckless conduct. A penalty for negligence is warranted.
11. The Commission finds that BNI'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.
12. Based on these facts, the Commission should assess a penalty totaling \$5,000 for NOV 2202; \$2,000 for seriousness and \$3,000 for negligence.

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 BNI in North Dakota.
2. BNI violated the provision of North Dakota Century Code (NDCC) Section 38-14.1-28(1)(b).
3. A civil penalty for NOV-2202 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. 2202 is affirmed.
2. BNI Coal, Ltd. is assessed a total civil penalty of \$5,000 (\$2,000 for seriousness and \$3,000 for negligence) for the violation. The penalty must be paid within thirty days of receipt of this Order.
3. The proceeding is closed upon BNI's timely payment of the penalty.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Sheri Haugen-Hoffart
Commissioner

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