

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Westmoreland Beulah Mining LLC
Notice of Violation 2201
Violation

Case No. RC-22-228

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

January 11, 2023

Preliminary Statement

On May 25, 2022, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) 2201 to Westmoreland Beulah Mining LLC (Beulah Mine) for failure to provide adequate surface water runoff storage for a watershed in the Gold Pit area. The Beulah Mine's negligence resulted in the failure of two sediment pond embankments and resulted in an uncontrolled discharge into an undisturbed drainage located in Section 15, T143N, R88W, that exceeded the maximum total suspended solids allowed by the NDPDES permit resulting in sediment deposition in an undisturbed drainage.

The Beulah Mine completed the prescribed remedial measures within the required abatement time. The violation was terminated on December 9, 2022. The Beulah Mine did not request an informal conference or a formal hearing on the matter.

Findings of Fact

1. The Beulah Mine is engaged in surface coal mining operations at the Beulah Mine under permits issued by the Commission.
2. NOV 2201 states, and the Commission finds, that the Beulah Mine violated North Dakota Century Code Subsection 38-14.1-24(8)(b) and North Dakota Administrative Code (NDAC) 69-05.2-16-02, NDAC 69-05.2-16-08(1)(a) and NDAC 69-05.2-16-08(1)(d) for failure to prevent excessive suspended solids from streamflow, NDAC 69-05.2-16-09(2&3) for failure to provide adequate storage for sediment and surface water in the Gold Pit area, and NDAC 69-05.2-16-04(2) for failure to maintain sediment ponds.
3. The violation was discovered during a mine inspection on April 28, 2022.
4. NOV 2201 required the construction and certification of Pond 112 within 90 days and the construction of Pond 113 within 180 days. The Beulah Mine requested two modifications to NOV 2201. On July 26, 2022, the Reclamation Division approved the mine's request to complete the construction and certification of Pond 112 within 180 days and the construction of Pond 113 within 90 days from date NOV 2201 was issued. On August 23, 2022, the Reclamation Division approved the mine's request to extend the completion date for Pond 113 by two weeks and to reduce the construction time for Pond 112 by two weeks.

5. The Beulah Mine completed the remedial actions specified in the notice of violation within the prescribed time periods.
6. The Beulah Mine did not contest the notice of violation by requesting an informal conference or formal hearing.
7. Commission staff terminated NOV 2201 on December 9, 2022.
8. 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.
9. The Commission finds that an assessment of a civil penalty based on the history of previous violations at the Beulah Mine is warranted. A penalty for history is usually not assessed unless more than three violations are issued within three years. NOV 2201 is the third violation issued to the Beulah Mine within three years for water management violations and it is the second violation issued within 3 years for failure to construct and maintain adequate water management in the Gold Pit area. NOV 2201 included violations in three watersheds/drainage areas. The Reclamation Division chose to write one composite violation instead of a violation for each watershed.
10. The Commission finds that this violation was serious in that repeated failure to maintain adequate surface water management in one watershed and diverting water to other watersheds caused the breach of two sediment pond embankments and an uncontrolled discharge into an undisturbed drainageway. A penalty based on seriousness is warranted.
11. The Commission finds that this violation was due to reckless and knowing conduct. The Beulah Mine had been informed numerous times and over several years that surface water runoff was not being managed in accordance with the surface water management plan outlined in Permit KRSB-8603. The violation was due to a lack of diligence, lack of reasonable care, and reckless conduct. A penalty for negligence is warranted.
12. The Commission finds that the Beulah Mine 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.
13. Based on these facts, the Commission should assess a penalty totaling \$5,000 for NOV 2201; \$1,000 for history, \$1,500 for seriousness, and \$2,500 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 the Beulah Mine in North Dakota.

2. The Beulah Mine violated the provision of North Dakota Century Code (NDCC) Subsection 38-14.1-24(8)(b) and North Dakota Administrative Code NDAC 69-05.2-16-02, NDAC 69-05.2-16-08(1)(a), NDAC 69-05.2-16-08(1)(d), NDAC 69-05.2-16-09(2&3), and NDAC 69-05.2-16-04(2).
3. A civil penalty for NOV-2201 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. 2201 is affirmed.
2. Westmoreland Beulah Mining LLC is assessed a total civil penalty of \$5,000 (\$1,000 for history, \$1,500 for seriousness, and \$2,500 for negligence) for the violation. The penalty must be paid within thirty days of receipt of this Order.
3. The proceeding is closed upon Westmoreland Beulah Mining LLC's timely payment of the penalty.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

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