

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Westmoreland Beulah Mining LLC
Notice of Violation 2501
Violation

Case No. RC-25-192

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

August 7, 2025

Preliminary Statement

On May 20, 2025, the Reclamation Division of the Public Service Commission (Commission) served Notice of Violation (NOV) 2501 to Westmoreland Beulah Mining LLC (Beulah Mine) for failure to protect topsoil during Suitable Plant Growth Material (SPGM) respread on reclaimed cropland in the SE¼ of Section 22, T143N, R88W of Surface Coal Mining Permit KRSB-8603 which resulted in a loss of topsoil. The Beulah Mine's negligence caused spoil material to mix with topsoil on 3.5 acres, contaminating approximately 1,100 cubic yards of topsoil.

The Beulah Mine completed the prescribed remedial measures within the required abatement time. The violation was terminated on May 30, 2025. 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 2501 states, and the Commission finds, that the Beulah Mine violated North Dakota Century Code (NDCC) Subsection 38-14.1-24(5) and North Dakota Administrative Code (NDAC) Subsection 69-05.2-15-02(1) for failure to protect and prevent suitable plant growth material from any contamination by toxic material and NDAC 69-05.2-15-03(2) for failure to protect stockpiled material from contaminants.
3. The violation was discovered during a mine inspection on April 24, 2025.
4. NOV-2501 required the Beulah Mine to contain the contaminated area to prevent contamination of SPGM on adjacent areas within 5 days, remove the apparent spoil material from the respread topsoil and place it in an area approved by the Reclamation Division, and provide the quantity of contaminated topsoil within 10 days. WBM was also required to submit a remediation plan within 14 days to the Reclamation Division for approval to include: (1) a plan for testing the remaining respread topsoil to determine whether it meets the requirements of NDAC 69-05.2-08-10, (2) measures to alleviate compaction caused by the removal of the contaminated topsoil, (3) the source from which

additional topsoil will be obtained to replace the contaminated material, (4) a plan to notify Reclamation Division staff prior to respreading topsoil to provide an opportunity for inspection, and (5) a description of the measures that will be implemented to prevent future topsoil contamination.

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 2501 on May 30, 2025.
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. This is the third NOV that the Beulah Mine has received within the past three years. However, NOV-2201 issued to the Beulah Mine on May 25, 2022, consolidated three violations that encompassed areas in watersheds/drainage areas for the Gold Pit, Pond 81, and Pond 82. Based on the criteria we have used in the past, and that NOV-2201 consolidated three violations, WBM does have a history of violations. Therefore, a penalty assessment based on history is warranted.
10. The Commission finds that this violation was serious in that the contaminated topsoil within the grade approved area is considered lost and cannot be replaced. A penalty based on seriousness is warranted.
11. The Commission finds that this violation was due to negligence, but not through reckless, knowing, or willful conduct. The Beulah Mine should have noticed the spoil-like material while topsoil was being respread on the grade approved area, and the work should have been stopped immediately. 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 \$6,000 for NOV 2501; \$2,500 for history, \$2,000 for seriousness, and \$1,500 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 provisions of North Dakota Century Code (NDCC) Subsection 38-14.1-24(5) and North Dakota Administrative Code (NDAC) Subsections 69-05.2-15-02(1) and NDAC 69-05.2-15-03(2).
3. A civil penalty for NOV-2501 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 2501 is affirmed.
2. Westmoreland Beulah Mining LLC is assessed a total civil penalty of \$6,000 (\$2,500 for history, \$2,000 for seriousness, and \$1,500 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



Jill Kringstad
Commissioner

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