

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, LLC
Notice of Violation No. 1501
Violation

Case No. RC-15-165

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

June 17, 2015

Preliminary Statement

On April 24, 2015, the Reclamation Division of the Public Service Commission (Commission) issued Notice of Violation (NOV) No. 1501 to Coyote Creek Mining Company, LLC (CCMC) for placement of a mixture of subsoil and overburden on undisturbed in-situ topsoil and up against an adjacent topsoil stockpile at the Coyote Creek Mine.

CCMC completed the prescribed remedial measures within the required abatement time. The NOV was terminated on May 22, 2015. CCMC did not request an informal conference or a formal hearing in the matter.

Findings of Fact

1. CCMC is engaged in surface coal mining operations at the Coyote Creek Mine under permits issued by the Commission.
2. NOV-1501 states, and the Commission finds, that CCMC violated NDAC Section 69-05.2-15-02(1), NDAC Section 69-05.2-15-02(2)(a), NDAC Section 69-05.2-15-02(2)(b)(1), and NDAC Section 69-05.2-15-03(2) by placing a mixture of subsoil and overburden material on in-situ topsoil and for placing the subsoil and overburden mixture against stockpiled topsoil at the Coyote Creek Mine. The violation was observed during a routine mine inspection on April 16, 2015.
3. CCMC completed the remedial actions specified in the notice of violation within the prescribed time.
4. CCMC did not contest the notice of violation by requesting an informal conference or formal hearing in the matter.
5. The Commission terminated NOV-1501 on May 22, 2015.

6. NDAC Section 69-05.2-28-12 requires the Commission to consider four factors in determining the amount of civil penalty. These factors are: 1) history of previous violations; 2) seriousness of the violation; 3) negligence; and, 4) good faith in attempting to achieve rapid compliance.
7. The Commission finds that assessment of a civil penalty based on the history of previous violations at CCMC's Coyote Creek is not warranted. This is the first NOV that CCMC has received. A penalty for history is usually not assessed unless three or more violations are issued within the preceding three-year time period.
8. The Commission finds that this violation was serious in that some minor environmental damage did occur. A mixture of subsoil and overburden materials was placed on in-situ topsoil and up against stockpiled topsoil. A very minor amount of topsoil may have been lost when the mixture of subsoil and overburden materials was removed and the area affected was quite small. A penalty based on seriousness is warranted.
9. The Commission finds that CCMC's violation was not due to reckless or willful conduct. Nonetheless, a contractor placed the mixture of subsoil and overburden materials on in-situ topsoil and up against an adjacent topsoil stockpile. The contractors were installing an electrical substation to support the Coyote Creek Mine and had been instructed by CCMC to not place that material on topsoil areas. The failure was due to lack of diligence and ordinary negligence. A penalty based on negligence is warranted.
10. The Commission finds that CCMC's abatement of the NOV was rapid, demonstrating good faith. 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. CCMC had removed the subsoil and overburden mixture from the in-situ topsoil and adjacent topsoil stockpile within a day of the inspection. All other remedial actions were completed by May 11, 2015. A deduction for good faith is warranted for NOV-1501.
11. Based on these facts, the Commission should assess a penalty of \$250 for seriousness and \$750 for negligence, with \$500 deducted for good faith, with the net amount totaling \$500 for NOV-1501.

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 in North Dakota by CCMC.

2. CCMC violated the provisions of NDAC Section 69-05.2-15-02(1), NDAC Section 69-05.2-15-02(2)(a), NDAC Section 69-05.2-15-02(2)(b)(1), and NDAC Section 69-05.2-15-03(2).
3. A civil penalty for NOV-1501 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. 1501 is affirmed.
2. Coyote Creek Mining Company, LLC is assessed a total civil penalty of \$500 (\$250 for seriousness and \$750 for negligence, with a \$500 deduction for rapid remedial action) for the violation. The penalty must be paid with thirty days of receipt of this Order.
3. The proceeding is closed upon payment of the penalty by CCMC within thirty days.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chairman



Brian P. Kalk
Commissioner