



Public Service Commission  
State of North Dakota

COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Brian P. Kalk

Executive Secretary  
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600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

31 July 2015

Wade Mann, Director  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, ND 58503

Re: Coyote Creek Mining Company, LLC  
Notice of Violation No. 1502  
Violation

Case No. RC-15-495

Dear Mr. Mann:

Enclosed is a request for an Administrative Law Judge in the captioned case. A Public Hearing is scheduled to begin 27 August 2015, at 8:30 a.m. CDT, in the Commission Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota. A copy of the Notice of Violation and the Notice of Hearing is attached.

The Administrative Law Judge will serve as a procedural law judge and the hearing will be electronically recorded.

If you have any questions, please contact me. Thank you.

Best regards,

Illona A. Jeffcoat-Sacco  
General Counsel

enclosure  
c: w/encl. Donn Steffen  
Brian Bjella



**REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION**  
**NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS**  
 SFN 17819 (Rev. 06-2007)

Name of Agency, Board, or Commission  
 North Dakota Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the Coyote Creek Mining Company, LLC - Notice of Violation No. 1502 - PSC Case No. RC-15-495

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in North Dakota Century Code Chapter 38-14.1 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:  
 On 7 July 2015, the Public Service Commission's Reclamation Division issued a Notice of Violation to Coyote Creek Mining Company, LLC. On 28 July 2015, Coyote Creek Mining Company, LLC filed a request for a formal hearing.

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 28-32-31(5). See NDCC 54-57-04.
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

**PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.**

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY See attached	Address	Telephone Number
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments  
 Copies of the Notice of Hearing and N.O.V. are attached.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Illona A. Jeffcoat-Sacco, General Counsel	Date 7/31/2015
Signature of Requesting Person x <i>Illona A. Jeffcoat-Sacco</i>	Telephone Number (701) 328-2407

Attachment  
 Request for ALJ  
 31 July 2015

Re: Coyote Creek Mining Company, LLC  
 Notice of Violation No. 1502  
 Violation

Case No. RC-15-495

<b>AGENCY</b>	<b>Address</b>	<b>Telephone Number</b>
North Dakota Public Service Commission	600 E. Blvd. Ave. Dept. 408 Bismarck, ND 58505-0480	701-328-2400
<b>Representation</b> Illona A. Jeffcoat-Sacco General Counsel	<b>Address</b> Same as above	<b>Telephone Number</b> 701-328-2407
<b>PARTY</b> Coyote Creek Mining Company, LLC	<b>Address</b> 5340 Legacy Dr. Bldg. 1, Suite 300 Plano, TX 75024	<b>Telephone Number</b> 972-448-5400
<b>Local contact name:</b> Donn Steffen, Environmental Manager	<b>Local contact address:</b> Coyote Creek Mining Company 6502 17 <sup>th</sup> St. SW Zap, ND 58580	<b>Local contact Telephone:</b> 701-873-7800
<b>Representation</b> Brian R. Bjella, Crowley Fleck, PLLP (Pending Notice of Appearance)	<b>Address</b> CROWLEY FLECK 400 East Broadway, Suite 600 P.O. Box 2798 Bismarck, ND 58502-2798	<b>Telephone Number</b> 701-224-7532



**NOTICE OF VIOLATION**  
**NORTH DAKOTA PUBLIC SERVICE COMMISSION**  
 SFN 18099 (10-91)

		N.O.V. Number 1502	
Name of Permittee Coyote Creek Mining Company, L.L.C.		Permit Number NACC-1302	
Address 6502 17th St. SW	City Zap	State ND	Zip Code 58580
Telephone Number 701-873-7800	Mine Coyote Creek Mine	County Mercer	
Name of Operator (if other than permittee)			
Address		City	State Zip Code
Date of Inspection June 30, 2015		Time of Inspection From: 1:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m. To: 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	
<p>Under the authority of North Dakota Century Code Chapter 38-14.1, the undersigned authorized representative of the Commission has conducted an inspection of the above mine on the above date and has found a violation of the statute, rules, permit condition(s), or section(s) of the approved operations and reclamation plan listed on page 2 of this Notice of Violation.</p> <p>You must abate this violation within the designated abatement time.</p> <p>The undersigned authorized representative finds that cessation of surface mining activities <input type="checkbox"/> is <input checked="" type="checkbox"/> is not expressly or implicitly required by this Notice of Violation.</p> <p>This Notice of Violation shall remain in effect until it expires as provided on the reverse side of this page, or is terminated or vacated by written notice by an authorized representative of the Commission.</p>			
Print Name of Person Served Donn Steffen		Print Title of Person Served Engineering and Environmental Manager	
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail		Date of Service 07-07-2015	
Signature of Person Served		Signature of Authorized Representative 	

Nature of Violation
A runoff event in late June caused erosion downstream of the outlet of the 60" low flow culvert in the Coyote Creek Mine shop access road. Flows from the culvert created an erosion feature on the opposite stream bank ("island area") that was approximately 15-20' wide, 15-20' long and about 10' deep. No special erosion control or stabilization measures were in place at the culvert outlet.(Continued
(if applicable, include the extent to which the violation cannot be corrected)

**IMPORTANT - PLEASE READ THE REVERSE OF THIS PAGE**

Coyote Creek Mining Company  
June 30, 2015 Inspection

**Nature of Violation**

Water flows in Coyote Creek had been diverted through this culvert while the adjacent larger high flow box culverts were being installed.

Notice of Violation Number  
NOV-1502

Provision(s) of the Statute, Rules, or Permit Violated
NDCC 38-14.1-24(15): Failure to control erosion
NDAC 69-5.2-24-03(5)(b): Failure to control erosion at the culvert outlet

Portion of the Operation to which this Notice Applies (include legal description)
The area below the Coyote Creek culvert outlet located in the SE¼ of Section 30, T143N, R88W.

Remedial Action Required (including interim steps, if any)
Submit a plan for stabilization and protection of the outlet area of the low flow culvert and/or removal of the stream bed island for review and approval by the Reclamation Division. Upon approval, implement the approved plan.

Time for Abatement (including interim steps, if any)
The stabilization and protection plan and/or island removal plan must be submitted within 5 days of receipt of the NOV. The approved plan must be implemented within 10 days of approval.

**IMPORTANT - PLEASE READ CAREFULLY**

1. **MINESITE HEARING.** A Notice of Violation which requires cessation of surface mining activities, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public minesite hearing has been held at or near the minesite within that time or the hearing has been waived. On the reverse of this page, an authorized representative has made a finding as to whether this Notice requires cessation of surface mining activities. If cessation of mining is required, an informal public minesite hearing will be automatically scheduled by the North Dakota Public Service Commission and will be held within thirty (30) days of the service of this Notice, unless you or your agent waive that hearing in writing.
2. **INFORMAL CONFERENCE.** Notwithstanding the informal minesite hearing provided for in paragraph 1, you must apply for an informal conference with the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice in order to preserve your appeal rights. You may apply for an informal conference by submitting a written request for an informal conference to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. The informal conference will be held in the locality of the mine if requested. A stenographic record will be made of the informal conference unless waived by all parties.
3. **FORMAL PUBLIC HEARING.** If you do not desire an informal conference, you may apply for a formal hearing regarding this Notice by submitting a written request for a hearing to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. If you do not request an informal conference or a formal public hearing within thirty (30) days, your right to appeal will be forfeited. Please note that you will also have the opportunity to request a formal hearing within thirty (30) days of the decision on the informal conference held under paragraph 2.
4. **TEMPORARY RELIEF.** You have the right to request temporary relief from this Notice pending completion of any investigation and hearing procedures being conducted. A request for temporary relief must be in writing as set forth in subsection 4 of North Dakota Century Code Section 38-14.1-30 and filed with the North Dakota Public Service Commission. The request for temporary relief must include a detailed statement giving reasons why such temporary relief should be granted. The request for an informal conference or a formal public hearing will not stay enforcement of this Notice unless temporary relief is requested and granted.

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.  
Notice of Violation (NOV) No. 1502**

**Case No. RC-15-495**

**NOTICE OF FORMAL HEARING**

**July 31, 2015**

**Preliminary Statement**

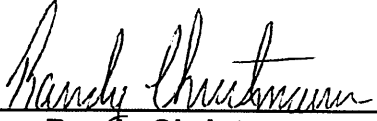
Coyote Creek Mining Company, L.L.C. was issued Notice of Violation (NOV) 1502 on July 7, 2015 for failure to provide erosion protection to a portion of Coyote Creek affected by the construction of culvert crossing for a mine access road within Surface Coal Mining Permit NACC-1302. Coyote Creek Mining Company, L.L.C. has requested a formal hearing with the Commission and requests that the violation be vacated.

**Notice of Formal Hearing**

Notice is hereby given that the captioned matter is set for a Formal Hearing, commencing at 8:30 a.m. CDT, on August 27, 2015, in the Public Service Commission's Hearing Room, 12<sup>th</sup> Floor, State Capitol, Bismarck, North Dakota.

If you require any auxiliary aids, such as readers, signers, or Braille materials, please notify the Commission, at (701) 328-2400, or Relay North Dakota TTY: 1-800-366-6888 at least 24 hours prior to the hearing.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Randy Christmann**  
Commissioner

  
\_\_\_\_\_  
**Julie Fedorchak**  
Chairman

  
\_\_\_\_\_  
**Brian P. Kalk**  
Commissioner