

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
OAH File No. 20150091

**ORDER GRANTING REQUEST TO CONSIDER EVIDENCE
SUBMITTED AFTER CLOSE OF HEARING**

September 8, 2015

On September 3, 2015, counsel for Public Service Commission Advocacy Staff filed a request for the Commission to consider evidence provided to the Commission after the close of the hearing in the above-referenced matter. Specifically, Advocacy Staff has requested that the Commission consider the Conference Officer Manual of the Office of Surface Mining, Department of the Interior (“Manual”). The relevant provisions of the Manual referenced by Advocacy Staff are contained at pages 57 and 58. These provisions provide guidelines and instruction regarding the negligence standard incorporated into the enforcement provisions of state and federal coal mining and reclamation programs. Advocacy Staff has requested that only the electronic version of the manual be admitted into the record but has agreed to provide paper copies of the document to any party who requests one.

The Commission has the authority to consider information not presented at the hearing. North Dakota Century Code section 28-32-25 states:

In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at the hearing. It may do so after first transmitting a copy of the information or evidence or an abstract thereof to each party of record in the proceeding. The agency must afford each party, upon written request, an opportunity to examine the information or evidence and to present its own information or evidence and to cross-examine the person furnishing the information or evidence. Any further testimony that is necessary shall be taken at a hearing to be called and held, giving at least ten days’ notice. Notice must be served upon the parties in the manner

allowed for service under the North Dakota Rules of Civil Procedure. This section also applies to information officially noticed after the hearing when the issuance of any initial or final order is based in whole or in part on the facts or materials noticed.

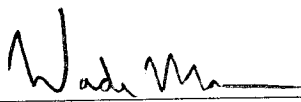
Advocacy Staff has complied with the requirements set forth in this section in requesting that the Manual be considered by the Commission. All parties to the matter have stipulated to admission of the Manual and its consideration by the Commission and have also waived their statutory right to present rebuttal evidence and to cross-examine the person furnishing the evidence. At a September 4, 2015, work session in this matter, the Commission expressed its preference that the Manual be admitted as part of the record to be considered. In accordance with the request of the Commission and the stipulation of the parties, the Manual should be identified as PSC Advocacy Staff exhibit 14 and admitted into the record for consideration by the Commission.

Having considered the written submissions of the parties, the applicable statutory provisions and administrative rules, it is hereby ORDERED that:

Advocacy Staff's request that the Conference Officer Manual of the Office of Surface Mining, Department of the Interior, be admitted into the record for consideration by the Commission is granted. The Manual shall be identified as PSC Advocacy Staff Exhibit 14 and admitted into evidence in PSC Case No. RC-15-495.

Dated at Bismarck, North Dakota, this 8th day of September 2015.

State of North Dakota
Public Service Commission

By: 

Wade C Mann
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **ORDER GRANTING REQUEST TO CONSIDER EVIDENCE SUBMITTED AFTER CLOSE OF HEARING** was mailed, inside mail, at the State Capitol, on the 8 day of September 2015, to:

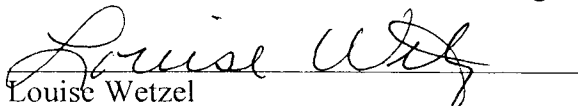
Darrell Nitschke
Executive Secretary
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that true and correct copies of the above document was mailed, regular mail, on the 8 day of September 2015, to

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OFFICE OF ADMINISTRATIVE HEARINGS
Wade C. Mann, Administrative Law Judge


Louise Wetzel