



Public Service Commission

State of North Dakota

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Kevin Cramer
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600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

January 27, 2011

Mr. Rodney Raber
Environmental Coordinator
American Colloid Company
P.O. Box 2010
Belle Fourche, SD 57717

Dear Mr. Raber:

The Reclamation Division has conducted a completeness review of the application for Revision No. 7 to Surface Coal Mining Permit ACPG-9701 for the American Colloid Mine. Revision No. 7 to ACPG-9701 was received on December 27, 2010, in response to the Reclamation Division's November 10, 2010, midterm permit review and also proposes to add 149.28 acres to the permit with the Tompkins Mine Area addition. The addition of new land to the permit constitutes a significant revision to the approved permit and once the application has been deemed complete, public notice must be given as required by NDCC 38-14.1-18 and NDAC 69-05.2-10-01. The following items must be addressed prior to the application being deemed complete and prior to publishing the newspaper advertisement:

Electronic Permit Formatting

1. It appears that several narrative sections of the electronic permit that existed as PDF files in Revision 6 have been converted to HTML files in Revision 7. Although the Reclamation Division has not established electronic permit format standards, we request that PDF files be used for narrative sections of the permit. The HTML files should be limited to navigation pages of the permit (home page, section and subsection headings), or narrative sections that have very limited text and consist primarily of hyperlinks. For example, Section 2.2.2 - Ground Water Narrative in Revision 6, is a PDF file, but it has been changed to an HTML file with Revision 7. Given the specific nature of mining permits, we have concluded that narrative sections of electronic permits should have the page structure of a PDF file whereby specific sections of the narrative can be identified by page and paragraph number, and proposed permit changes are easily discernible (it appears that HTML files must be printed to identify a page number). Please reconfigure as PDF files all narrative sections of the permit that were converted to HTML files with

Revision 7, such as Section 2.2.2 described above, and retain any hyperlinks that were added to the narrative sections with Revision 7. Also, please ensure that your method of identifying additions to the permit with Revision 7 (yellow highlighting) is also visible on a printed page. It appears that the yellow highlighting is visible as yellow or gray on PDF printed pages, but is not visible on HTML pages, whether printed in color or black and white. (WTG & GAW)

2. We suggest that the electronic permit HTML file be renamed to something more informative or descriptive, such as "ACPG-9701 Electronic Permit". As currently named (Cover_Table_of_Contents), it may not be clear to our Advisory Committee members or the general public how to access the electronic permit. (WTG)
3. Please include the print scale or a scale bar on all of the maps being added with this revision so that one inch equals 400 feet as indicated in the map legends. (GAW)

Newspaper Publication

4. Please add a footnote to the newspaper notice, Section 1.2.4, listing the newspapers in which the advertisement will be published. A listing of newspaper(s) is not required to be in the published notice, but the information needs to be noted in the permit. (BEB)
5. Please revise the newspaper publication notice headline to read "*NOTICE OF FILING OF A REVISION TO ADD ADDITIONAL AREA TO AN EXISTING COAL MINING PERMIT*" to more clearly state the main objective of the revision application. Additionally, the word Revision is misspelled in the fourth paragraph of the public notice. (BEB)
6. Please change the sentence in the first paragraph in Section 1.2.4 describing the land being added to the permit to read "Revision No. 7 proposes to add 149.28 acres in the SE¼ of Section 35, T131N, R99W, Bowman County, to the existing permit" for compliance with NDCC 38-14.1-18 (1) which requires the precise location. (GAW)
7. Please label State Highway 12, Buffalo Creek, 127th Ave. SW, the railroad tracks/line, and the map scale on the publication map and move the section number label for Section 35 on the map so that it is legible. (BEB, GAW, WTG, & SAS)
8. Since it appears that American Colloid Company plans to conduct operations within 100 feet of the outside right-of-way of 127th Ave. SW, NDAC 69-05.2-10-01(d) requires a concise statement in the newspaper notice describing the road, proposed changes or usage of the road for mining operations and duration of the planned usage. Please incorporate language into the public advertisement describing ACC's plans concerning the road and for obtaining the necessary road authority's approval to conduct mining within 100 feet of the public road right-of-way. (BEB, GAW & WTG)

Section 1.0 – Introductory Information

9. On the application form, please carry the total acres that are being added to the permit down to the box in the table that is marked “TOTAL ACRES”. (SAS)
10. On page 2 of the application form, please indicate the year of the notary’s signature. (SAS)
11. The Metes and Bounds Description of the Tompkins Mine Area that was attached to the revision application form and is provided in the permit in Section 1.2.1(d) provides several places within the legal description narrative where 127th Ave. W is described as being a County road; however, draft approval forms for road permits in Sections 1.1.5.2(c) and 1.1.5.3(c) provide correspondence with only the Township, not the County. Other permit narrative in Section 1.3.6 describes the road as being owned by the Township. Please clarify ownership of the road. (BEB & SAS)
12. Please attach a bearing/distance table to the legal description provided in Section 1.2.1(d) and include coordinates for the point of beginning of the 149+ acre tract. (MSK)
13. Please update and highlight the footnote on the revision summary page, Section 1.1.2, to read Revision No. 7 and its date. (WTG)
14. Please remove the strikethrough from the highlighted Revision 7 Filing Instructions, Section 1.1.3. (WTG)

Section 2.0 – Environmental Resource Information

15. Please provide data and information in the permit concerning possible water wells located at occupied residences or farmsteads in the SE¼ of Section 34 and W½ of Section 25, T131N, R99W, and any other private water wells that may be located near the proposed new permit area. Appropriate data would include Well Drillers Reports available from the State Water Commission or if those are not available, personal correspondence information from the well owners or field verification information providing well depth, static water level data, and available water quality data. Information provided in the permit should include narrative describing the rationale for either including or excluding annual water quality sampling of the well(s) as a permit requirement. NDAC 69-05.2-08-06(1)(b) requires the permittee to provide the location of all water wells within the permit and adjacent areas (the Water Well Location Map of Section 2.2.2(b) would be the appropriate map to show any additional water well locations near the Tompkins Mine Area). (BEB)
16. Section 2.9, Probable Hydrologic Consequences, provides PHC information for the Page and Perkins Mine Areas, but needs to be updated to provide PHC ground water data and information for the proposed Tompkins Mine, since this new mine area appears to be geo-hydrologically separated from the Page/Perkins Mine areas. The PHC is required to

describe the anticipated effects proposed mining and reclamation operations at the Tompkins Mine Area may have on ground water resources within and adjacent to the permit area. Please update the PHC to include reference to the Tompkins Mine Area. NDAC 69-05.2-08-04(4). (BEB)

17. As required by NDAC 69-05.2-08-04(4), 69-05.2-09-09(1), and 69-05.2-09-12(1)(a) and (b) please update the PHC section of the permit in Section 2.9 to include mining and reclamation of the Tompkins Mine Area and the effects on surface water. Most importantly, describe what impact the proposed watershed changes will have on the hydrologic balance of the permit and adjacent areas by comparing the premine watershed discharges to the postmine watershed discharges. The analysis of watershed changes should include suitable maps and comparison tables of premine and postmine acreages and discharges at the watershed control points. Please note that although Section 4.2.7(b)(3) is suitable for use as a postmine watershed map, a suitable premine watershed map is not included in the permit. We suggest that you use Section 4.2.7(a)(3), the premine topographic map, as a base for the premine watershed map so that premine and postmine watershed visual comparisons can be made on topographic maps of identical scale and format. At your discretion, the surface water PHC for the Tompkins Mine Area could be made into a new subsection in Section 3.6, but wherever it is located, the PHC should include the maps, tables, and narrative all in one permit subsection. (WTG)
18. Section 2.3.2(c) is labeled as being the Leonardite Lab Testing Results for the Tompkins Mine; however, the information provided in this section is the same overburden analysis information that is provided in Section 2.3.3(c), and not the coal quality information. Pursuant to NDAC 69-05.2-08-05(2)(d), please provide the coal/leonardite analysis information (% sodium, ash, sulfur, and BTU/lb. content) that belongs in this section. (BEB)
19. NDAC 69-05.2-08-05(b) requires the submittal of geophysical logs as verification of lithologic characteristics and thickness of each stratum and coal seam to be mined within the permit area. American Colloid has not previously provided these logs in the permit for the Page and Perkins Mine Areas and we agree that logging of these holes is unnecessary to accurately determine lithologic characteristics due to the shallow cover involved and that requirement has apparently been waived in the past. However, please provide a short narrative in the Overburden Characteristics Narrative of Section 2.3.3 describing the rationale for not providing geophysical logs of the drill holes in the permit area. (BEB)
20. Please incorporate the results in Section 2.4 of the plan to acquire fish and wildlife information for the proposed addition area that was submitted to the PSC and approved on August 7, 2007. The plan states that there will be a description of the fish and wildlife utilization of the area during field reconnaissance and that special consideration will be given to species listed as threatened, endangered or candidates for listing by the USFWS. The plan also states that sightings of the 100 species of conservation priority in ND will be documented and assessed. The dates of survey and other field reconnaissance that was

completed must be documented. In addition, the permit needs to be updated to include a discussion about compliance with NDAC 69-05.2-09-17 and NDAC 69-05.2-13-08. (GAW)

Section 3.0 – Operation Plans

21. Please update the Transportation Narrative, Section 3.5.1, to discuss how leonardite is going to be transported from the Township/County Road 127th Ave. SW adjacent to the Tompkins property. In addition, the Transportation Facilities Map, Section 3.5.2, needs to be updated to show all approved and proposed haul roads and transportation corridors. NDAC 69-05.2-09-06 (1). (GAW, BEB & MSK)
22. Although a prime farmland soils handling plan was provided for the Tompkins Area, there is not a SPGM removal storage, and redistribution plan as required by NDAC 69-05.2-09-11(5). This plan should include projected topsoil and subsoil respread depths and which method will be used to determine total SPGM respread thicknesses. NDAC 69-05.2-15-04(4)(a)(1) and (2). (MSK & DKM)
23. Please provide justification in the narrative that explains why the roadway depicted in Section 3.5.4(c) is classified as an ancillary road according to NDAC 69-05.2-24-01. Otherwise please provide the necessary detailed design documents and certification required for a primary road. (MSK)
24. The location, configuration, and size of both of the sedimentation ponds as depicted in Section 3.6.1(c) differs from that provided in the Pit Layout and Facilities Map located in Section 3.1.3(c). Please explain or revise accordingly. (MSK)
25. As required by NDAC 69-05.2-09-09-1(h), please include a statement that the Surface Water Management plans in Section 3.6 have been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent engineering practices. (WTG)

Section 4.0 – Reclamation Plans

26. Please revise Section 4.1.5(c), Revegetation Procedures and Establishment, to address the revegetation procedures that will be implemented. Presently, this section appears to be more of a reclamation schedule rather than a revegetation plan and it states that the seedings (wheat) will be completed in the fall. Please clarify the soil stabilizing and conservation practices that will be used when reclamation delays prevent the seeding of wheat (presumably winter wheat) during the normal seeding time frames. In addition, please include a discussion about capability of the reclaimed lands to support a variety of uses. Finally, since a small amount of premine native grassland is going to be reclaimed to cropland, please address the criteria for approving an alternative postmining land use

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as required by NDAC 69-05.2-23-03. [NDAC 69-05.2-09-15, NDAC 69-05.2-22, and NDCC 38-14.1-14(2)]. (GAW)

27. In Section 4.1.3, please provide a listing of the seed mixes that will be used in the Tompkins Mine Area. NDAC 69-05.2-09-11(6)(6). (GAW)

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch", written in a cursive style.

James R. Deutsch
Director
Reclamation Division