

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**American Colloid Company**  
**Revision No. 7, Permit ACPG-9701**  
**Application**

**Case No. RC-10-670**

**REVISION OF PERMIT TO ENGAGE IN**  
**SURFACE COAL MINING AND RECLAMATION OPERATIONS**

**April 8, 2015**

Based on the application for **Revision No. 7 to Permit Number ACPG-9701** submitted by American Colloid Company for the Page Mine on December 27, 2010, and as revised through January 30, 2015, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

**Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].**

The application for Revision No. 7 to Surface Coal Mining Permit ACPG-9701 proposes to add 149.28 acres located in the SE1/4 of Section 35, T131N, R99W, Bowman County, to the existing permit area. The additional area is located one half mile north of the applicant's existing Perkins Mine Area and is situated adjacent to and just north of U.S. Highway 12. A new pit sequence will be developed in the added area that is identified as the Tompkins Mine Area. The applicant verified that all information included in the application is true and correct to the best of their knowledge. Commission staff conducted completeness and technical reviews to ensure the required information was provided and that updated mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical deficiency letters to the applicant on January 27, 2011, March 15, April 24, May 14, and July 25, 2013, July 16, October 28, and December 26, 2014, and January 23, 2015. Responses to each letter were reviewed and changes to the application were made to address the concerns that were noted. The Commission concludes that this significant revision application is now accurate and complete.

The applicant published the required newspaper notices in the Bowman County Pioneer and Dickinson Press and the Commission sent notices to all surface owners affected by the revision and to numerous local, state and federal agencies. Advisory committee

members were provided copies of the application for their review and comments were received from several agencies. No objections or requests for an informal conference were received on this application and no major issues were raised during the review of this application.

The applicant provided evidence that it has the right to disturb the surface of all lands within the area being added to the permit area. The applicant has these rights based on coal and surface leases, copies of which are included in the application. Two sediment ponds are proposed for construction in the Tompkins Mine Area and these ponds are designed to be total containment or evaporation ponds and off-permit discharge of collected surface water and/or pit water from the ponds is not anticipated. However, usage of the evaporation pond water for dust suppression within the permit area is anticipated and ACC must apply for, and keep current, a temporary (issued every 12 months) water use permit from the Water Appropriations Division of the State Water Commission if usage of sediment pond water for dust suppression or other beneficial uses is conducted.

**Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit revision application [NDCC 38-14.1-21(3)(b)].**

Revision No. 7 adds 149.28 acres to the permit, adds mining and reclamation plans for the added acreage, and updates nearly all other sections of the permit accordingly, including the update of ownership and control information to reflect the acquisition of American Colloid Company by Minerals Technology, Inc. With the addition of this acreage, Permit ACPG-9701 now contains 656.72 acres. The acreage being added to the permit is located along the north side of U.S. Highway 12 and one half mile directly north of the existing permit area, about 3.5 miles west of Reeder and 2.5 miles east of Gascoyne. Leonardite (oxidized lignite) removal will occur from a large portion of the additional acreage and other areas will be used for sedimentation ponds, soil stockpiles, and other associated disturbance. The additional area will be called the Tompkins Mine Area and it will be mined in a series of two pit sequences. The Tompkins Mine Area is expected to be mined out by 2022 and completely reclaimed by 2024.

The disturbed acreage will be reclaimed using procedures that have been successful in the past and satisfy the requirements of the North Dakota law and rules. The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22. The proposed postmining topography meets the requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The average postmining slope proposed by the reclamation plans is less than the average premine slope. The Tompkins Mine Area qualifies as a thin overburden area according to the provision of NDAC 69-05.2-21-04 and all available spoil is being used to attain the lowest practicable grade.

The reclaimed land in the added area will be capable of supporting the uses, or higher or better uses, that were capable prior to mining. Cropland is the predominant premining land use with lesser amounts of native grassland and one temporary wetland. As requested by the surface owner, the postmining land use for all areas to be disturbed by American Colloid will be cropland.

With regard to the reclamation schedule for the Tompkins Mine Area, the applicant has requested variances from the contemporaneous reclamation requirements that requires rough grading to be completed within 180 days of coal removal, NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). The requested variances described in the application are related to safety issues and the order of stripping and backfilling equipment operations in conjunction with Leonardite hauling operations, which are usually suspended during the winter months. The requested variances from the 180 day grading and three-year seeding requirements have been justified and are being approved by the Commission as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

**Finding No. 3. Based on the assessment of the probable cumulative impacts of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].**

An assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance outside the permit area. The detailed cumulative hydrologic impact assessment includes the area being added to the permit with Revision No. 7 is on file with Permit ACPG-9701 in the Commission's offices. The 149.28 acres being added to Permit No ACPG-9701 are located directly north and east of two ephemeral tributaries to Buffalo Creek.

**Finding No. 4. Lands being added to the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].**

None of the lands being added to the permit have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

**Finding No. 5. The proposed mining operations will not interrupt, discontinue, or preclude farming on alluvial valley floors that are flood irrigated or naturally sub-irrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].**

Based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams occurring within or adjacent to the entire permit area, it has been determined that there are no alluvial valley floors within or adjacent to the permit area. Detailed alluvial valley floor investigation reports and determinations are on file with the Commission.

**Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].**

For the areas being added to the permit, the applicant included certified copies of leases and other documents in the application demonstrating compliance with the North Dakota Surface Owner Protection Act, North Dakota Century Code Chapter 38-18. Additional documentation certifying the recent lease extension with the landowner has been incorporated into the permit.

**Finding No. 7. Lands being added to the permit area are not within areas subject to the prohibitions or limitations of NDCC 38-14.1-07, unless such areas meet the application review procedures of NDAC Chapter 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].**

Lands being added to the permit area are:

- a) Not within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers, designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b) Not on any federal lands within the boundaries of any national forest.
- c) Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. A cultural resource survey and inventory of the area being added to the permit was conducted. Ethnoscience, Inc. completed the cultural resource survey and inventory of the area being added to the permit in 2007 and the inventory identified one isolated find. Six previously identified isolated finds could not be verified because the material was collected during the previous survey. The sites identified in the area being added to the permit were determined to be insignificant (not eligible for listing on the National Register of Historic Places) by the State Historic Preservation officer (SHPO). Also, the applicant has committed to reporting, testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.
- d) Within 100 feet of the outside right-of-way of Township Road 127<sup>th</sup> Ave. SW that is located along the east side of the area being added to the permit. The applicant has received approval from the Fischbein Township Board to conduct mining activities within one hundred feet of the right-of-way of the township road that is located between Sections 35 and 36, T131N, R99W. The Fischbein Township Board also approved a Road Use Permit to allow the applicant and its contractors to conduct Leonardite hauling operations on the Township Road using road licensed trucks. The Fischbein Township Board's approval process included public notice with an opportunity for hearing. No hearing requests were received and the Commission finds that the public and interested landowners were protected as required by NDAC 69-05.2-04-01.3. The south boundary of the area being added to the permit is located on the north right-of-way of US Highway 12. Although no disturbance is planned within 100 feet of the right-of-way, a special condition is being included with

the approval of Revision No. 7 to prohibit any mining related disturbances within 100 feet of the outside right-of-way of US Highway 12 unless the appropriate waivers are obtained from the proper road authority and the necessary approval is granted by the Commission.

- e) Not within 300 feet of any public building, school, church, community, or institutional building, nor will any mining operations be conducted within 500 feet of any occupied dwelling. No public buildings, schools, churches, or community or institutional building are within 300 feet of the area being added to the permit with Revision No. 7. No dwellings or farm building are included in or within 500 feet of the area being added to the permit.
- f) Not within 100 feet of any cemetery.

**Finding No. 8. With respect to prime farmland within the area being added to the permit, the postmining land use for the premining prime farmland will be cropland. The reclamation plan was reviewed by the Natural Resources Conservation Service (NRCS) and they concurred with the prime farmland reclamation plan. Operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].**

The applicant included a prime farmland reclamation plan for the area added to Permit ACPG-9701 with Revision No. 7. The plan satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The Natural Resources Conservation Service reviewed the prime farmland reclamation plan and determined that prime farmland matters are adequately addressed and that the plan is adequate to restore the productivity of prime farmland. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than non-mined prime farmland in the surrounding area under equivalent management practices. Prime farmland performance standards apply to 18.9 acres of cropland that have been identified as prime farmland by the Natural Resources Conservation Service soil survey for Bowman County. The applicant will segregate prime and nonprime soils materials from all areas to be disturbed by mining activities including associated disturbance areas. Since the entire area being added to the permit is owned by the same surface owner, the surface owner will receive the same acreage of reclaimed prime farmland as existed prior to mining. The postmine land use of the reclaimed prime farmland will be cropland.

**Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats [NDAC 69-05.2-10-03(6)(d)].**

Surface coal mining and reclamation activities in the added area will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. No federal threatened or endangered species or their critical habitats were observed within or contiguous to the tract being added to the permit area. The U.S. Fish and Wildlife Service and ND Game and Fish Department were

consulted during the wildlife inventory process (June 6, 2007). The U.S. Fish and Wildlife Service was again notified of this revision and they indicated in their response dated June 18, 2013, that no significant impacts on fish and wildlife resources will occur and that no endangered or threatened species are known to occupy the project area.

The permit area is located in the whooping crane (a listed species) migration corridor where mining and reclamation activities “may affect, but are not likely to adversely affect” this species. The likelihood of whooping cranes occurring in or adjacent the permit area is very low because desirable stop-over roosting habitat does not exist in the area. Whooping crane feeding sites are often found adjacent to roosting sites. The permit and adjacent area does not contain any large (>5 acres) seasonal or more permanent wetlands. Adjacent ephemeral tributaries to Buffalo Creek are unlikely to provide the stop-over habitat that whooping cranes require. Thus, the Commission finds that suitable whooping crane wetland habitat does not exist within or adjacent to the permit area.

The permit and adjacent area does not contain habitat for other listed species including the Black-footed ferret, Pallid Sturgeon, Interior Least Tern, Piping Plover or Western Prairie Fringed Orchid. The Gray Wolf could conceivably be an occasional migrant visitor to western North Dakota and the permit area.

Specific surveys were completed during the baseline wildlife inventory and no habitat that the U.S. Fish and Wildlife Service has designated critical habitats or high value wildlife habitats occur in or adjacent to the area being added to the permit. There were no threatened, endangered, proposed, or candidate species observed on or adjacent to the area being added to the permit nor is there any habitat in the permit area that would be deemed suitable for any of these species. Only one Species of Conservation Priority listed by the North Dakota Game and Fish Department was observed and that was the grasshopper sparrow (*Ammodramus savannarum*). The permit and adjacent areas do not contain any trees or riparian forest or hibernacula so it is unlikely that suitable habitat exists for the Northern Long-eared Bat. Suitable habitat does not exist for the other listed Proposed or Candidate species which includes the Dakota Skipper, Poweshiek Skipperling, Rufa Red Knot and Greater Sage Grouse. It is very unlikely that the small acreage of native grassland (5.8 acres) within the addition area would provide habitat for the Sprague’s Pipit which was listed as a Candidate species. This species prefers high quality native grassland which does not exist within or adjacent to the permit area.

**Finding No. 10. The applicant is not subject to the reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].**

The applicant is not subject to the reclamation fees required by 30 CFR subchapter R since the federal Office of Surface Mining determined that leonardite is not subject to the federal Surface Mining Control and Reclamation Act of 1977. However, leonardite mining is subject to North Dakota’s reclamation law based on the definition of coal in NDCC 38-14.1-02(3).

**Finding No. 11. The applicant has satisfied the requirements for approving cropland as a postmining land use [NDAC 69-05.2-10-03(6)(f)].**

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture. The post-mining topography and soils are suitable for cropland in the areas that are designated as cropland in the reclamation plan.

**Finding No. 12. No existing structures will be used to support mining activities within the permit area and the requirements of NDAC 69-05.2-09-04 do not apply to the permit area [NDAC 69-05.2-10-04].**

No existing structures in the permit area will be used to support mining activities. Design information for the support structures to be used in the area being added to the permit is provided in the revision application.

**Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].**

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

**Finding No. 14. No spoil in the area being added to the permit is known to cause toxic mine drainage [NDAC 69-05.2-16-11].**

The chemical characteristics of the overburden materials in the added area are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit revision application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

**Finding No. 15. The applicant does not propose to disturb land within one hundred feet of any perennial and intermittent stream channels [NDAC 69-05.2-16-20].**

The areas being added to Permit ACPG-9701 with Revision No. 7 are not within one hundred feet of any perennial or intermittent stream channel.

**Finding No. 16. The applicant does not propose to use any experimental practices in the federal coal tract area [NDAC 69-05.2-27-02].**

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02. There is no federal coal in the addition area.

**Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].**

Commission records show that the applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other state laws that are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to

comply with the provisions of these laws. The applicant does not conduct surface coal mining operations in any state other than North Dakota.

**Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].**

Commission records do not indicate that the applicant, nor any affiliated companies, has any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Health also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

**Finding No. 19. A performance bond in the amount of \$1,092,445 is sufficient for the surface coal mining operations proposed in the first bond increment for this permit [NDAC 69-05.2-12-07].**

A surety bond currently covers Permit ACPG-9701. An updated worst-case reclamation cost estimate for this permit was prepared with Revision No. 7 and the Reclamation Division determined that a bond of \$875,334 is sufficient to perform the required reclamation, restoration, and abatement work in the entire permit area. The applicant has on file a surety bond in the amount of \$1,092,445 that provides adequate coverage at this time. Upon the approval of Revision No. 7, the total permit area will be 656.72 acres.

Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Revision No. 7 to Permit Number ACPG-9701** is hereby granted to **American Colloid Company** to engage in surface coal mining and reclamation operations, on the following described areas subject to the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands to be included in the permit area.)

LOCATION						
<u>MINE</u>	<u>ADDRESS</u>	<u>ACRES</u>	<u>SECTION</u>	<u>TWP.</u>	<u>RANGE</u>	<u>COUNTY</u>
Page	Gascoyne, ND	149.28	35	131N	99W	Bowman

149.28 – Total Area Added

**PUBLIC SERVICE COMMISSION**

 Randy Christmann Commissioner	 Julie Fedorchak Chairman	 Brian P. Kalk Commissioner
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Section 1.2.1(d) – Metes and Bounds Description for Revision No. 7 Addition Area

The Tompkins Mine Area is located in portions of the South East Quarter of Section 35, Township 131 North, Range 99 West, located west of 127<sup>th</sup> Ave. SW, and north of U.S. Highway 12 as described in the following Metes and Bounds description:

**Metes and Bounds Description: Tompkins Mine Area**

**Portions of the SE1/4 of Section 35, T131N, R99W, Bowman County, North Dakota**

Beginning at the East Quarter Corner Marker of Section 35, which is common Quarter Corner marker between Section 35 and Section 36 at a found ½-inch rebar located in the center of 127<sup>th</sup> Ave. SW that runs north and south. This marker being located ½ mile north of the intersection of 127<sup>th</sup> Ave. SW and Highway 12. Thence N 88°07'32" W a distance of 33.00' to a point located on the west side of 127<sup>th</sup> Ave. SW, said point being the said point of beginning. Thence N 88°07'32" W a distance of 2609.69' to a marker labeled S35 ¼; thence S 01°48'52" W a distance of 2494.70' to a found ½" rebar, which is indicated as being the North Right of Way Marker for Highway 12; thence, S 88°11'35" E a distance of 2602.56' following the North Right of Way Markers for Highway 12 to a point located on the west side of 127<sup>th</sup> Ave. SW; thence N 01°53'11" E a distance of 2491.64' along the west side of 127<sup>th</sup> Ave. SW to the point of beginning, having an area of **149.28 acres**.