



# Public Service Commission

## State of North Dakota

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June 25, 2013

Mr. Donn Steffen  
Engineering and Environmental Manager  
Coyote Creek Mining Company  
204 County Rd. 15  
Beulah, ND 58523

Dear Mr. Steffen:

The Reclamation Division has conducted a completeness review of Coyote Creek Mining Company's application for Surface Coal Mining Permit No. NACC-1301 for the Coyote Creek Mine in Mercer County, North Dakota. The permit application was received by the Commission on May 31, 2013. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete.

### **Section 1.2 – Legal Information**

1. The Newspaper Publication Notice, Section 1.2.4, indicates that the distance to the city of Beulah is shown on the Newspaper Publication Notice Map but the map only shows the distance to the city of Zap. Please either update the map to show the distance to Beulah as stated in the notice, or change the notice to state that the distance to the city of Zap is shown on the map. (BEB, GAW)
2. In the Newspaper Publication Notice, Section 1.2.4, please review the land description for Tract 43 and revise as appropriate. The angular direction from the northeast corner of Section 31 (N 89°05'19" E) does not appear to agree with the metes and bounds survey information or the description provided for the south line of the tract (S 89°05'10" E). The same description appears in Section 1.5.1. (RLK)
3. As required by NDAC 69-05.2-10-01(1)(b)(1), please depict and label the course of Coyote Creek on the Newspaper Publication Notice Map. Please also depict and label the cemetery located in the NE¼NE¼ of Section 29, T143N, R88W. (WTG, GAW)

4. The second paragraph on page 2 of the newspaper publication notice states that Coyote Creek Mining Company, LLC, proposes to request Mercer County approval to temporarily close the east-west section line between the E1/2E1/2 of Section 30 and Section 31, T143N, R88W to conduct surface coal mining and reclamation operations. County Road 25 passes through the northeast corner of this section line. Please revise to clarify that the existing county road portion of the section line will not be closed to public access as discussed in Section 3.1.1.6. (GAW)
5. Prehistoric Cultural Resource Site 32ME2350 that is located within the permit area has been determined eligible for listing on the National Register of Historic Places and mitigation is required prior to site disturbance. Therefore, at this time the Road Closures and Setback Waivers Map, Section 1.2.6.1, should show a 300 foot setback from Site 32ME2350 and site avoidance procedures enacted until mitigation work is completed and approved by SHPO. The permit application needs to show current conditions at the time of application. Please address. (BEB)

### **Section 1.3 – Business Entity/Compliance Information**

6. Item 6 of Section 1.3.5, Other Licenses and Permits, depicts your State Coal Exploration Permit MER-66-13-500 as having been issued on April 8, 2014. We expect that this date is either a typographical error or that the date provided is possibly the expiration date. Please review and address. (BEB)

### **Section 1.5 – Identification of Interests and Rights of Entry**

7. In Section 1.5.1, Permit Area Surface and Coal Interests, please review the land description for Tract 43 and revise as appropriate. The angular direction from the northeast corner of Section 31 (N 89°05'19" E) does not appear to agree with the metes and bounds survey information or the description provided for the south line of the tract (S 89°05'10" E). (RLK)

### **Section 2.4 – Pre-Mining Land Use and Vegetation**

8. Please include a map and a table that identifies the acres of each soil mapping unit of each tract of cropland, by surface ownership, and provide an assessment of the productivity of each tract of cropland as required by NDAC 69-05.2-08-08 and as further explained in Section II-C of our Revegetation Guidelines. Although the cropland is delineated on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3, the soils are delineated on the Soil Survey and Prime Farmland Map, Section 2.5.6, and Table 2.4.6 provides a productivity assessment of all of the soils in the permit area, there is no assessment of the productivity for cropland by surface ownership. (GAW)

### **Section 2.7 – Fish and Wildlife Resources**

9. Please consider revising the first paragraphs of Section 2.7.1, Introduction, and Section 2.7.2, Fish and Wildlife Report, to clarify that the approved wildlife study area encompasses approximately 25,000 acres of land not 8,330 as listed. In addition, please also include the names, titles and qualifications of all individuals who assisted KDK Consulting in the wildlife inventory process and please revise Sheets 1 and 2 of Section 2.7.2.1, Wildlife Studies Map, to include the locations where breeding songbird surveys were conducted. While these are not typical completeness items, addressing these issues at this time will help the Advisory Agencies to better interpret and understand the Fish and Wildlife Resources section of the Permit. It is also recommended to remove all references that indicate that the peregrine falcon is a threatened, endangered or candidate species (Page 19 of Section 2.7.2 and Page 3 of Section 2.7.4). (GAW)
10. The ND Parks and Recreation Department included data showing that Bell's Vireo has been documented on lands included and adjacent to the proposed permit area, specifically in Sections 30, 31 and 32 of T143N, R88W. Although some information regarding this species is included on page 28 of Section 2.7.2, the narrative does not mention that NDNHI data base indicates that this species was once observed in the proposed permit area nor is there any discussion about how rare this species is in North Dakota. Please thoroughly discuss the habitat needs for this species, its habitat range and whether or not we should be concerned with the potential presence of this species, and if there are any regulations limiting affecting known habitat for this species given its state listed classification. Also include a discussion about the individuals and agencies contacted to determine whether or not additional survey work should be completed once it was known that this species was previously documented to exist in the area. (Personal communications with Sandra Johnson, NDGF, indicated that their office is not concerned with the presence of this species.) (GAW)

### **Section 2.9.1 – Climatological Information**

11. In Section 2.9.1, Climatological Information, please include information on the direction and velocity of the prevailing winds in the area of the land to be permitted as required by NDCC 38-14.1-14(1)(p). (RLK)

### **Section 3.1 – Operations – General**

12. Please update Section 3.1.1, Operations/Reclamation Narrative, and Section 3.1.2, Pre-Mining Topography and Existing Structures Map, to clarify if any buildings are located within one-half mile of the proposed permit area and identify the current use of any building located within one-half mile of the permit boundary as required by NDAC 69-05.2-08-02 (1) (e). (GAW)

**Section 4.1 – Post-Mining Land Use Plans**

13. Please supplement the Landowner Post-Mining Preference Statements in Section 4.1.4 with a signed preference statement from Casey Voigt and Julie Voigt for property they own in the NE1/4 NE1/4 of Section 31, T143N, R88W, if one has been returned by the surface owner. (BEB)

**Section 4.2 – Revegetation Procedures, Establishment and Management**

14. Please revise Sections 4.2.2, Seed Mixes, and/or Section 4.2.3, Trees and Shrubs, as necessary to include a woodland planting design plan that includes the species to be planted and the planting rates as required by NDAC 69-05.2-09-11 (6). Please also state that the replacement woodland will be planted within a year or two of disturbance of the woodland so that this habitat is not lost for life-of-mine. (GAW)

The following technical deficiencies were noted by Staff while conducting the completeness review. You can either address these items at this time or wait until we conduct the technical review of this application.

1. NDAC 69-05.2-13-06 states that surface coal mining activities may not be conducted closer than five hundred feet of an underground mine unless the activities result in improved resource recovery, etc. While we acknowledge that coal removal will not be conducted within the NACC-1301 permit area, the removal and stockpiling of SPGM as well as other excavations required for sediment pond and diversion construction are considered to be surface coal mining activities. Please update the operations narrative to describe whether or not any abandoned underground mines have been identified through field reconnaissance, cultural resource investigations or literature review within the permit area or within 500 feet of the permit area. Although not a complete record, an office review of the PSC's AML Inventory identifies only one abandoned mine in T143N, R88W, and that site appears to be located several miles to the east of the permit area in Section 36. Also, please add narrative to the permit operations section describing measures to comply with NDAC 69-05.2-09-10 in the event that active mining operations results in the discovery of a previously unknown or unrecorded abandoned mine, particularly an abandoned underground mine. (BEB)
2. Please review the second to last sentence in the Blasting Plan narrative of Section 3.1.1.7, which reads, "Coyote Creek Mine does not expected any significant sandstone or rock lenses in the overburden thus blasting of overburden will be required." It appears the end of the sentence should state no blasting of overburden will be required. (ZAT, RLK)
3. The first paragraph of Section 4.1.1, Narrative, states that grassed waterways will be utilized in cropland as needed, although it is not anticipated that they will be needed. Please discuss if a grass waterway will be needed in the cropland below Pond P30-01 and clarify if runoff will enter Coyote Creek where it did prior to disturbance, or if stabilization will be needed adjacent Coyote Creek if the pre-mine watershed drainage way path is being altered. (GAW)

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4. In Section 4.2, please discuss management of the cropland and native grassland that will not be disturbed by the construction of the Coyote Mine facilities. We understand that the cropland has not been seeded since 2009 and that it is established with volunteer weedy species. If this area is not going to be utilized by a farmer/rancher then it should be stabilized with desirable vegetation that is beneficial to wildlife. NDAC 69-05.2-09-17 (1) (d). (GAW)

As of today, June 25, 94 days of the Commission's 120 day review period remain. The 120-day review period is suspended until all of the items listed above have been satisfactorily addressed. If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division