



Public Service Commission

State of North Dakota

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November 6, 2013

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

Dear Mr. Steffen:

The Reclamation Division has reviewed Coyote Creek Mining Company's responses to our September 18, 2013 technical review letter for the application for Surface Coal Mining Permit NACC-1301. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on this permit application.

Section 2.4 – Pre-Mining Land Use and Vegetation

Section 2.4.2 – Narrative

1. New Item: Please revise the cropland narrative on page 1 of Section 2.4.2 to clarify the species of "volunteer plants" that have invaded the cropland that has sat idle since the flood of 2009 as required by NDAC 69-05.2-08-08(1)(d). Please also review the narrative in the third paragraph on page 6 of Section 2.4.2 to clarify the presence of Canada thistle on the cropland in the permit area. The sentence states that there is a presence *Cirsium arvense*, primarily along the crop edge, but an inspection of September 17, 2013 revealed that this species is abundant throughout the cropland field and there was no evidence of any control measures having been implemented. (GAW)
2. New Item: The last sentence of the first paragraph on page 2 of Section 2.4.2 states that most grasslands are used for grazing livestock with limited idle areas. Please clarify where the idle areas are within the two tracts of native grassland within the proposed permit area. (GAW)
3. Follow-up to Items No. 23 and 69: Please revise the first paragraph on page 6 of Section 2.4.2 to clarify management and species composition of the native grassland. The narrative states that the native grassland is dominated by early season grasses, but blue grama comprised 53% of the yield in 2012. The narrative goes on to state that management has lowered the vigor of the blue grama and its relative production, but it comprised 53% of the

relative yield in 2012. The sampling data does not support the narrative description of the management of the tract and the listed effects of that management are not technically correct. Please describe how the tract was actually managed and revise the narrative accordingly for the management and its effects on the tract. (GAW)

Section 2.4.5 – Plant Species List

4. Follow-up to Item No. 25: Please identify the source for the nomenclature used for the species scientific names as required by NDAC 69-05.2-05-02(1). This can be listed at the end of Section 2.4.5, Plant Species List, or mentioned in the Methods Section 2.4.1, and listed in the References section of the permit, Section 2.4.12. (GAW)
5. Follow-up to Item No. 25: The last 10 pages of Section 2.4.5, Plant Species List, are either blank pages or pages that have only a few land use abbreviations. Please review and correct as necessary. NDAC 69-05.2-05-02. (GAW)

Section 2.4.7 – Native Grassland Data

6. Follow-up to Item No. 30: A sentence in the third paragraph on page 3 of Section 2.4.2, Narrative, states that grassland sampling was completed after a season of grazing. Please clarify if the two tracts of native grassland within the proposed permit area were grazed during the 2012 growing season. Please provide a properly completed Forage Production Clipping Worksheet that corresponds with Rangeland Similarity Index sheet for the permit area rather than the example one included with NRCS's GRASS bundle form. It is not clear whether it was necessary to adjust the sampling data utilization or what values were used to compensate for species growth curve or moisture content. Please provide specific information for the sampling data used to represent conditions in the permit area. NDAC 69-05.2-05-02(1) (GAW)

Section 2.7.2 – Fish and Wildlife Report

7. Follow-up to Item No. 38: The second paragraph under the native grassland discussion on page 13 of Section 2.7.2 states that cropland provides a source of invasive species. The cropland narrative preceding the native grassland discussion clarifies that cropland consists of annually seeded grain crops. Please revise the native grassland narrative to clarify if these annually seeded grain crops are the invasive species and specifically state which cropland species (or other species) are invasive. NDAC 69-05.2-05-02 (GAW)
8. Follow-up to Item No. 39: Please revise the native grassland narrative to discuss the relative abundance of western snowberry in grassland communities in the proposed permit area and study area. This low shrub community should be considered a distinct habitat type and specifics regarding the presence of this community type in the permit area must be documented rather than simply providing general information for ecological sites in NRCS Major Land Resource Area 54. A sentence in the last paragraph on page 13 references Section 2.4.2, but details regarding the wildlife study area is not discussed in this section. NDAC 69-05.2 -08-08(1)(d) (GAW)

9. Follow-up to Item No. 39: Sentences in the last paragraph on page 13 of Section 2.7.2 states that western snowberry is an invasive species in native grassland under improper management (Grant et. al, 2005) and suggests that the study area has been improperly managed. However, the fourth paragraph on page 14 of Section 2.7.2 states that this species is shorter than normally encountered due to moderate grazing pressure and that grazing has opened the canopy more than normally observed. Please clarify the statement regarding improper management and include a tract by tract discussion about whether or not the study area has been improperly managed. Grant et. al, 2005 is not included in the Section 2.7.5, References. Please revise to include the specific information. NDAC 69-05.2-05-02 and NDAC 69-05.2 -08-08(1)(d) (GAW)
10. Follow-up to Item No. 43: New language that begins on page 29 of Section 2.7.2 regarding Sprague's pipit does not appear to be consistent with the survey data or actual precipitation during the surveys. The discussion clarifies that 2011 was a normal year with decent fall precipitation and that 2012 started out normal but ended up very dry while 2013 turned out to be a very wet year. However, the table on Page 29 documents that all 2012 sightings occurred between May 4th and May 23rd so the summer drought would have had no bearing on the 2012 data. Likewise, it appears that the 2012 late summer dry conditions that carried over into Mid-May of 2013 would have affected the 2013 survey more that the wet conditions that began later during the spring period. Please clarify when 2013 Sprague pipit surveys were conducted and revise the narrative discussion regarding precipitation and vegetative growth accordingly. Please also clarify if the utilization values provided are representing the previous year's vegetative growth or the current year's production. The values seem excessively high in instances where no cattle were present in May at the time of the sightings. NDAC 69-05.2-05-02. (GAW)
11. Follow-up to Item No. 35: Please revise Section 2.7.2 where appropriate to clarify the dates surveys were conducted for Sprague's pipit. Although no Sprague pipits were seen in 2013, the dates that the surveys were completed needs to be documented. (GAW)
12. Follow-up to Item No. 44: A new sentence at the bottom of the second paragraph on page 38 of Section 2.7.2 states "While no criteria standards are in place for significant ecological communities, it is likely reclaimed areas will meet or exceed what is present currently for any potential sites". Please clarify how it is likely that reclaimed areas will meet or exceed the pre-mine ecological diversity documented in NRCS's ecological site descriptions and that in NDNHI significant ecological communities when Coyote Creek's proposed reclamation plan has uniform SPGM respread depths and a native grassland seed mixture consisting of only 7 native grass species. NDCC 38-14.1-24(17) requires that native grassland be rehabilitated with a diverse, effective and permanent vegetative cover established with the same seasonal variety native to the area ... and at least equal in extent to cover and productivity to the natural vegetation of the area. Please address. NDAC 69-05.2-05-02. (GAW)
13. New Item: Please revise the Wildlife Studies Map, Section 2.7.2.1, Sheets 1 and 2 to make a clear distinction between the Permit Boundary and Sprague Pipet transects. Although the features are shown differently in the map legend, the broken black lines on the map appear the same in both instances. (GAW)

Section 2.7.3 – Mining Impacts

14. Follow-up to Item No's. 53 and 69: Please revise the Protection, Enhancement and Management Plans in Section 2.7.3 to specifically identify the measures that will be used to minimize, enhance and protect fish and wildlife habitat and related environmental values as required by NDAC 69-05.2-09-17 and NDAC 69-05.2-13-08. The plan presently states that certain techniques "may" be installed or may be installed when "operationally feasible". Please revise to affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved and discuss compliance with each of the items listed in NDAC 69-05.2-13-08(6). Please also discuss enhancement measures that will be used to develop aquatic and terrestrial habitat as required by NDAC 69-05.2-09-17(1)(d). Please also include the map required by NDAC 69-05.2-09-02(11) identifying habitat areas to be used to protect and enhance fish and wildlife habitat and related environmental values.
(GAW)

Section 2.7.4 – Wildlife Monitoring Plan

15. Follow-up to Item No. 54: Please revise the Dakota Skipper survey discussion on page 3 of Section 2.7.4, to state that the Dakota Skipper survey will be completed at least once during the biennial report period rather than discontinuing the survey's after 2014 if no observations have been made. This issue was discussed with John Schumacher, NDGF on October 29, 2013 and he did not believe the surveys should be discontinued as proposed.
NDAC 69-05.2-09-17 (GAW)

Section 3.1.1 – Operation/Reclamation Narrative

16. Follow-up to Item No. 57: Please review the following and revise Section 3.1.1.8, Reclamation Costs, as appropriate. (BAJ)
- a. The costs cited in the Wyoming Guideline No. 12 shows the demolition cost for the shop/office but they do not include disposal costs (see page 39, footnote no. 2). Please include disposal costs of the building.
 - b. The narrative in Section 3.1.1.8 states that the concrete from the building and dragline will be recycled and costs were not included for this. Costs must be included for recycling the concrete, i.e., mobilization/demobilization for a crusher, and costs to crush the concrete. Alternatively, costs could be included to haul the concrete to an existing crushing facility.
 - c. Please include demolition costs for the shop/office floor and concrete portion of the dragline pad. The costs may be taken from the Wyoming DEQ Guideline No. 12 – Concrete Footings and Foundations. Also, please include disposal costs. (Demolition of concrete footings and slabs must be calculated separately as the demolition for structures is for the building volume only and not the concrete from Doug Emme, WY DEQ-Sheridan).
 - d. Please use the costs from WY Guideline No. 12 (updated Oct. 22, 2013).
17. New Item: The Topsoil and Subsoil Disturbance Area Maps, Sections 3.1.1.8.7 and 3.1.1.8.8, do not include the disturbance associated with the road that is to be constructed on the section line between Sections 30 and 31 or portions of the roads from the section line to

the dragline and shop office complex. Please review and revise Section 3.1.1 as appropriate. (GAW)

18. New Item: The Revegetation Cost Summary, Section 3.1.1.8.5, does not include reclamation of the woodland that is to be reclaimed in the permit and this cost is thus not represented in Section 3.1.1.8.1, Final Cost Summary. Likewise, removal and reclamation associated with the "Improved County Road" that will be constructed between Sections 30 and 31 is not included in the Reclamation Costs, Section 3.1.1.8. Please review and revise accordingly. (GAW)

Section 3.2 – Transportation Facilities

19. New Item: The second paragraph on page 1 of Section 3.2.1 states that Coyote Creek is currently in talks with Mercer County concerning "improving and extending" the county road leading into the shop/office site. Please revise this misleading statement as there is no existing road on the section line between Sections 30 and 31 beyond the section corner common to Sections 29, 30, 31 and 32. This road is shown on the Pit Layout and Facilities Map as an Improved County Road. Please revise the Transportation Facilities Narrative, Section 3.2.1, to discuss final plans for constructing this road. (GAW)

Section 3.3 – Surface Water Management

20. New Item: The first paragraph of Section 3.3.1, Surface Water Management Plan, states that sediment pond P30-01 will be constructed prior to facility construction activities and the schedule, Section 3.3.4, indicates this pond will be constructed in 2015. The first paragraph of Section 3.1.1.1, Soil Handling Narrative, indicates that this pond will be constructed in 2014. Please review and revise to clarify if this pond will be constructed in 2014 or 2015. (GAW)

Section 4.1 – Post Mining Land Use Plans

21. Follow-up to Item No. 69: Please revise the native grassland seed mixture listed in Section 4.2.2, Seed Mixtures, to include a more diverse mix of native grasses, forbs and shrub species as required by NDCC 38-14.1-24(17) and NDAC 69-05.2-22-02(3), and that it meets the NRCS Range Planting standards and specifications for MLRA 54. NDCC 38-14.1-24(17) requires a permanent vegetative cover of the same seasonal variety native to the area to be affected and NDAC 69-05.2-22-02 requires species of grasses, legumes, forbs and half-shrubs to provide a diverse, effective, and permanent vegetative cover with seasonal variety, succession and regenerative capabilities native to the area. NDAC 69-05.3-13-05 requires use of the best technology currently available and NRCS's Conservation Practice 550, Range Planting, appears to be the best technology currently available. Conservation Practice 550 includes a list of grasses, forbs and shrubs suited to each ecological site. Please revise the native grassland seed mixture to design a seeding mixture that will reflect the plant diversity of the ecological sites that are to be disturbed in the permit area. NRCS Conservation Practice 550, Range Planting, standards and specifications can be found at http://efotg.sc.egov.usda.gov/references/public/ND/range_planting_550.pdf (GAW)

Section 4.2 – Revegetation Procedures, Establishment and Management

22. New Item: Please include a noxious weed control plan that specifically states how the Canada thistle infestation on the idle cropland in the permit area will be controlled for compliance with North Dakota's noxious weed laws and rules, NDCC 4.1-47 and Article 7-06. On September 17, 2013 it appeared that the entire cropland field in the proposed permit area was dominated with this species and this weed will need to be controlled on undisturbed and disturbed lands in the permit area. (GAW)

Section 4.2.3 – Trees and Shrubs

23. Follow up to Item No. 53: Please update Section 4.2.3, Trees and Shrubs, to identify the species and planting rates of the temporary tree planting discussed in Section 2.7.3 that will be used to offset the loss of woodlands to the facilities area for life-of-mine disturbance. Tree planting design plans with maps showing the location of these plantings is required by NDAC 69-05.2-9-11(6). (GAW)

24. New Item: The last sentence of the first paragraph of Section 4.2.3, Trees and Shrubs, states that for more information on replacement and conservation tree plantings, refer to Section 4.1.1. However, there is nothing in Section 4.1.1 regarding this issue. Please review and revise as necessary. (GAW)

As of today, 104 days of the Commission's second 120 day review period remain. As allowed by NDAC 69-05.2-05-01(4)(b), the review period has been extended an additional 120 days.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor