



Public Service Commission

State of North Dakota

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November 27, 2013

Mr. Donn Steffen
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-1302 for the Coyote Creek Mine in Mercer County, North Dakota. The permit application was received by the Commission on November 1, 2013. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete.

1.1 – Introductory Information

1. Please resubmit the application form, SFN 10552 (1-2004), that is provided in Section 1.1.1 and add narrative to the application attachment describing that this permit application also includes the proposed permit area for Permit Application NACC-1301 that is currently under PSC review. All maps in the NACC-1302 application include the NACC-1301 permit application area and the distinction regarding what acreage is being permitted under which permit application needs to be clearly presented. (BEB)
2. As allowed by NDCC 38-14.1-12(2), please revise page 1 of the permit application form to indicate a permit term ending February 1, 2020 assuming that a five year permit term is desired. As currently presented on the application form the permit period request is for only 4 years (February 1, 2015 to February 1, 2019). We assume you want the allowable 5-year permit term. (WTG/BEB)

Section 1.2.4 – Newspaper Publication Notice

3. Pursuant to NDAC 69-05.2-10-01(1)(b), please revise the second paragraph of the newspaper publication notice to remove the reference to the Medicine Butte NE, North Dakota USGS

quadrangle map (since it is no longer required) and replace it with a reference to the newspaper publication notice map that will be published. (WTG)

4. The Newspaper Publication Notice, Section 1.2.4, needs to state that this permit application also includes the proposed permit area contained in Permit Application NACC-1301 that is currently under review. The Newspaper Publication Map in Section 1.2.4.1 also needs to depict the NACC-1301 permit area boundary. (BEB)
5. The newspaper notice needs to include the listing of the people who currently have valid title for those tracts which the surface ownership is currently subject to a contract for deed. The sellers under the contract for deed are considered the legal owners until terms of the contract for deed are satisfied. (JRD)
6. Please correct the legal description for Tract 0039 to be described as Township **143** North rather than Township 142 North. (WTG/RLK/BEB/GAW)
7. Please correct the legal description for Tract 0040 to be described as Township **143** North rather than Township 142 North. (WTG/RLK/BEB/GAW)
8. Please correct the legal description for Tract 0049 to be described as Range **89** West rather than Range 88 West. (WTG/RLK/BEB)
9. As required by NDAC 69-05.2-10-01(1)(d), please clarify wording by inserting the emphasized text as follows: "*Coyote Creek Mining Company, L.L.C., proposes to request Mercer County approval to conduct surface coal mining and reclamation operations within 100 feet of the outside right-of-way for the following road right-of-ways:*" (WTG)
10. Please revise the reference to County Road 25 as necessary in item number 1 of section lines that will be proposed for temporary closure if the road segment between Sections 29 and 32 is relabeled as 17th Street SW on the newspaper publication notice map. (WTG)
11. The public notice needs to describe the road closure plans that will be required for the public road that goes through the SW¹/₄ of Section 31, T143N, R88W, and the S¹/₂ of Section 36, T143N, R89W, west of Coyote Creek. This road is identified as 18th Street SW in the recommended relabeling for the newspaper publication notice map. Please describe the intent to close this road and any re-location plans in the public notification as appropriate. NDAC 69-05.2-04-01 (RLK/GAW)
12. The public notice states that during the first permit term CCMC proposes to request Mercer County approval to conduct surface coal mining and reclamation operations within 100 feet of the east side of County Road 13 between the S¹/₂ of Sections 23 and 24, and Sections 36 and 35. However, areas are not identified as such on the Proposed Section Line and Road Closures and Setback Waivers Map, Section 1.2.6.1. Please review and revise the advertisement and/or Section 1.2.6.1 as necessary. (GAW)

13. In the ownership listing portion of the advertisement, Tracts 0058, 0059 and 0060, which includes land in Sections 34 and Section 35 of T143N, R89W, are listed as being wholly owned by Jim and Darleen Swenson, Arlyce Schulte and Bank of America Trustee for Margaret Z. Young Paine Trust Dated 12/7/74. However, Mercer County Highway No. 11, an improved county road, crosses these tracts outside of statutory section line right-of-ways. No easement of record is listed for this road in Section 1.5.1, but the public road is depicted as an improved road on the Pre-Mining Topography and Existing Structures Map, Section 3.1.2. Please review the surface ownership listings of this road and revise accordingly if Mercer County owns the right-of-way for this public road. (GAW)
14. The newspaper notice needs to provide the approximate duration of the planned road closures in the terms of number of years as required by NDAC 69-05.2-10-01(1)(d). This information should also be provided in the appropriate section of the permit as well. (JRD)

Section 1.2.4.1 – Newspaper Publication Notice Map

15. As required by NDAC 69-05.2-10-01(1)(b)(1), please review the following recommendations for roads depicted and labeled on the newspaper publication notice map and revise the roads and labels as necessary. Please note that the ND GIS Hub county road feature class was consulted to identify roads and their names. (WTG/GAW)
 - a. Relocate the label for County Road 25 to indicate that County Road 25 does not extend westward beyond the east-west section line between Sections 28 and 33.
 - b. Label the east-west section line road segment between Sections 29 and 32 as 17th Street SW.
 - c. Label the east-west road segment in the S $\frac{1}{2}$ of Sections 36 and 31 as 18th Street SW.
 - d. Depict County Road 11 on the map and label it as necessary. County Road 11 intersects County Road 13 at the corner of Sections 1, 2, 35 and 36 and extends west-northwest through the S $\frac{1}{2}$ of Sections 34 and 35, then turns north at the west quarter corner of Section 34 and extends north along the west section lines of Sections 34, 27, 22, 15, and 10 on the west side of the proposed permit area.
16. As required by NDAC 69-05.2-10-01(1)(b)(1), please add a scale bar to the newspaper publication notice map. (WTG)

Section 1.2.6 – Relation to Mining Prohibited Areas and Areas Designated Unsuitable

17. The last sentence of Section 1.2.6, Relation to Mining Prohibited Areas and Areas Designated Unsuitable, states that no public roads will be closed so alternate access options will not need to be developed. However, the Proposed Section Line and Road Closures and Setback Map, Section 1.2.6.1, identifies a public road located between County Roads 25 and 13 located in SW $\frac{1}{4}$ of Section 31 and the S $\frac{1}{2}$ of Section 36. It appears this road will be closed during the life of the mining permit. Also, Section 3.1.1.6 of the Permit, Landowner and Public Access, indicates that this road has signage by Mercer County as a minimum maintenance road and that it will be closed during mining, but this is not mentioned in the public advertisement. Please review Section 1.2.6 and revise as necessary to provide clarity

regarding this road. Also, specific plans for replacing this public road need to be added to Section 3.2.1 along with the time schedule for doing so. (GAW/JRD)

Section 1.2.7 – Mercer County Conditional Use Approval Documents

18. If the Mercer County Conditional Use Permit for Coyote Creek Mine has been acquired, please incorporate the approval document(s) into the permit application in Section 1.2.7 at this time. (BEB)

Section 1.4.1 – Surface Owner Consent

19. All persons who presently have valid title to the surface of lands included in the proposed permit area must receive written notice from Coyote Creek Mining Co. showing the type of extent of disturbances proposed on lands where they have a surface ownership interest. This notice must be provided to the sellers under the contract for deed which affects numerous tracts in the proposed permit area as further discussed in the following item. These additional notices must be provided at least 30 days prior to the re-submittal of this permit application based on the requirements of NDCC 38-18-06(1). Post-mining land use preferences should also be requested from the sellers of the tracts listed in Item No. 20. In addition, as required by NDAC 69-05.2-06-03(1), the permit application must include copies of the letters that CCMC sent to each surface owner. (DKM/JRD)

Section 1.5.1 – Permit Area Surface and Coal Interests

20. Casey and Julie Voigt are listed as the surface owners of a number of tracts (e.g., Tracts 0001, 0002, 0018, 0035, 0037, 0038, 0039, 0040, 0041, 0042, 0043, 0043A, 0047, 0048, 0049, 0061) within the proposed permit. This ownership interest is subject to a contract for deed from the current surface owners (Shawn and Maria Voigt, Karmen and Craig Eslinger, Donalda Voigt, and Kenneth Voigt) and they would also be considered legal owners of record per NDCC 38-14.1-14(1)(c)(2) and Casey and Julie Voigt would be considered the equitable owner. The contract for deed was entered into in 2003 (according to the public notice) and the surface and/or coal lease with the Voigt's was entered into in 2010. It appears that Coyote Creek is basing their right to enter on the surface lease with Casey and Julie Voigt and there do not appear to be surface leases with surface owners of record for those tracts that are subject to the contract for deed. NDCC 38-18-06(2) and (3) requires surface owner consent (valid lease) from each surface owner. NDCC 38-18-05(10) defines surface owner as "the person or persons who presently have valid title to the surface of the land...". For some of the tracts, we noted the surface owners of record (the sellers under the contract for deed) also have a coal interest that has been leased and the PSC legal staff will need to determine if those coal leases can be considered surface owner consent for the purposes of NDCC 38-18-06(2) and (3). However, for some tracts, the coal owner(s) is different than the surface owners of record (e.g., Tracts 0043). In those instances, a surface lease with the legal owners of record (the sellers under the contract for deed) will be required. (DKM/JRD)

21. Please correct the legal land description listed in Section 1.5.1, Permit Area Surface and Coal Interests, for the following tracts. (RLK/BEB/WTG)
 - a. Tract 0039 should be described as being in Township 143 North rather than Township 142 North.
 - b. Tract 0040 should be described as being in Township 143 North rather than Township 142 North.
 - c. Tract 0049 should be described as being in Range 89 West rather than Range 88 West.

22. As required by NDAC 69-05.2-06-03(1), and as indicated in Sections 1.5.1 and 1.5.3, please provide a certified copy of the coal lease for the 50 percent coal interest owned by the North Dakota Department of Trust Lands in Tract 0019 located in Section 2, T142N, R89W. This tract will be mined based on the mine areas shown on the Pit Layout and Facilities Map. (WTG/RLK)

23. As required by NDAC 69-05.2-06-03(1), and as indicated in Sections 1.5.1 and 1.5.3, please provide a certified copy of the coal lease for the coal owned by Great Northern Properties Limited Partnership in Tract 0043 located in Section 31, T143N, R88W. This tract will be mined based on the mine areas shown on the Pit Layout and Facilities Map. (WTG/RLK)

24. Please review and revise as necessary the hyperlink to a coal lease with Claire C. Schwalbe and Donald J. Schwalbe that is currently linked to the Robert A. Keogh Revocable Mineral Trust lease (02532) in Tract 0045 in Section 23, T143N, R89W. Section 1.5.3 lists Claire C. Schwalbe and Donald J. Schwalbe as 33.33 percent coal owners in Tract 0045 that is unleased. (WTG)

25. As required by NDAC 69-05.2-06-03(1), and as indicated in Sections 1.5.1 and 1.5.3, please provide a certified copy of the coal lease for the 50 percent coal interest owned by the North Dakota Department of Trust Lands in Tract 0061 located in Section 36, T143N, R89W. This tract will be mined based on the mine areas shown on the Pit Layout and Facilities Map. (WTG/RLK)

26. As required by NDAC 69-05.2-06-03(1), and as indicated in Sections 1.5.1 and 1.5.3, please provide a certified copy of the surface and coal lease for these interests that are owned by the North Dakota Department of Trust Lands for tracts:
 - a. Tract 0062 located in Section 6, T142N, R88W.
 - b. Tract 0063 in Section 12, T142N, R89W.
 - c. Tract 0064 in Section 24, T143N, R89W.
 - d. Tract 0065 in Section 26, T143N, R89W.
 - e. Tract 0066 in Section 36, T143N, R89W.

These tracts will be mined based on the mine areas shown on the Pit Layout and Facilities Map. (WTG/RLK)

27. The surface and leasehold information in Section 1.5.1 does not identify any easements of record for the improved roads located beyond the statutory section line rights-of-way in Sections 31, 34, 35 and 36. Please review and revise if there are easements for these roads and clarify the road authority with jurisdiction over these public roads. Please note that the Mercer County road map published by the ND Department of Transportation clearly depicts these roads as public roads. (GAW)

Section 1.5.2 – Adjacent Surface and Coal Ownership and Leasehold Information

28. Please include bookmarks in Section 1.5.2 so that ownership information can be found without scrolling through this lengthy document. NDAC 69-05.2-05-02 (GAW)

Section 2.2 – Surface Water Hydrology

29. On the table of contents page for Section 2.2, Surface Water Hydrology, please add or repair the link to Section 2.2.5, Surface Water Monitoring Plan. (RLK)
30. As required by NDAC 69-05.2-08-07(1), please label or otherwise show the classification of all streams as ephemeral, intermittent or perennial on the surface water features map in Section 2.2.2. (GAW/RLK)
31. As required by NDCC 38-14.1-14(2)(i)(2), please identify surface water rights (surface water use permits) granted for any surface waters in or near the permit area that may be affected by mining activity. Also provide a description of measures to be taken during the mining and reclamation process to assure protection of the rights of the present users if any such rights exist. (RLK)
32. As required by NDAC 69-05.2-08-04(1), please include a narrative description of the quality characteristics for water features discussed in Section 2.2.1, Physiographic Setting and Surface Water Features of the Permit Area. A narrative discussion of the sample results in Section 2.2.3, Surface Water Features and Water Quantity and Quality, is not provided in the permit. The narrative should also reference the sample results provided in Section 2.2.3 as appropriate. (RLK)
33. As required by NDAC 69-5.2-08-07(3), please include stream flow information for the monitoring sites described in the Surface Water Monitoring Plan and/or other information sufficient to identifying seasonal fluctuations. We have noted that Section 2.2.3.4 contains rating tables for three surface water monitoring stations; however, no actual stream flow monitoring information is provided in Section 2.2.3, Surface Water Features and Water Quantity and Quality. (RLK)

Section 2.3 – Ground Water Hydrology

34. If analyses of water quality samples from permit area and adjacent certified wells have been acquired, please add the data to Section 2.3.2.2, Certified Wells Water Quality. (BEB)

Section 2.4 – Pre-Mining Land Use and Vegetation

35. Please include bookmarks in Section 2.4.2, Narrative, so that specific information in the 63 page document can be found. NDAC 69-05.2-05-02 requires that information be presented clearly and concisely. (GAW)
36. Please include bookmarks in Sections 2.4.11.3a, 2.4.11.3b and 2.4.11.3c so that information for each wetland can be found without scrolling through the documents. NDAC 69-05.2-05-02 (GAW)
37. Please include bookmarks in Sections 2.4.12.1 and 2.4.12.2 so that information for each shelterbelt can be found without scrolling through the whole document. NDAC 69-05.2-05-02 (GAW)
38. Please include bookmarks in Sections 2.4.13.3 and 2.4.13.4 so that information for the woodlands can be found without scrolling through the whole document. NDAC 69-05.2-05-02 (GAW)

Section 2.7 – Fish and Wildlife Resources

39. Please include bookmarks in Sections 2.7.2, Fish and Wildlife Report, so that information in the 39 page report can be found without scrolling through the whole document. NDAC 69-05.2-05-02 (GAW)
40. Please include a plan that describes how Coyote Creek will use the best technology currently available to minimize disturbance and adverse impacts on important fish and wildlife habitats as required by NDAC 69-05.2-09-17. This should include minimizing disturbance to woodlands, drainages containing wetlands, native grasslands and intermittent and perennial streams as required by NDAC 69-05.2-13-08(6). Please also identify habitat areas that are to be avoided and protected as required by NDAC 69-05.2-09-02. (GAW)

Section 3.1 – Operations – General

41. Please revise the Operations/Reclamation Narrative, Section 3.1.1, and other sections as necessary to clarify if Coyote Creek Mining Company is planning on obtaining mineral leases on the tracts containing Federal coal. The Pit Layout and Facilities map identifies these areas for surface disturbance only and the Extended Mine Plan Map does not show mining in these tracts, but the Post Mining Topography Development Map shows topographic changes on areas containing Federal coal in Sections 2, 24, 26, 30, and 34. There is no discussion in the Post-Mining Topography narrative in Section 3.1.1.3, Reclamation Procedures and Schedule, that discusses this issue or the assumptions used. (GAW)

42. In Section 3.1.1.2, Mining Methods Narrative, please include a discussion that describes the location of the “small dragline pit consisting of approximately 100,000 cubic yards” that will be dug in 2015 to test the working of the dragline. (FSE)
43. Narrative in the Coal Utilization and Conservation portion of Section 3.1.1.2, Mining Methods Narrative, describes that after coal is removed from the pit, it will be hauled to the Coyote Generation Station. Other than that particular lone sentence, the permit provides no details regarding transport of coal from the mine to the plant. The Pit Layout and Facilities Map, Section 3.1.3, depicts a haulroad originating from within planned mining areas of the permit (the North-South Haulroad) then crossing Coyote Creek and eventually terminating at County Road 12 in the NW1/4 of Section 19, a substantial distance away from planned coal removal areas. The haulroad essentially terminates at this point with no further explanation of how the coal will be hauled to its final destination. Without additional information provided in the permit, construction of this proposed haulroad across a significant distance of undisturbed land over the Coyote Creek valley, and construction of a Coyote Creek crossing that serves no apparent purpose beyond access to a proposed SPGM stockpile in the NW1/4 of Section 19 cannot be approved as submitted until legalities regarding the “*Future Permit Area*” have been finalized. As required by NDAC 69-05.2-09-01(3) and (4), please supplement the permit with additional information regarding this approximately 1-mile stretch of haulroad that is depicted on the Pit Layout and Facilities Map and in particular, provide information in the permit describing planned transportation or haulage route(s) for coal from the mine to the plant. NDAC 69-05.2-09-06 (BEB)
44. Sections 3.1.1.8.1 through Section 3.1.1.8.5, under the Reclamation Costs, Section 3.1.1, do not open using the hyperlink pathways provided in the permit. Please repair the links so the information provided in these sections can be viewed as intended. (BEB/GAW/FSE/ZAB)
45. Please show on the General Location Map, Section 3.1.1.8.6, each incremental bond area, and also provide a legal description for each increment area. Include a schedule that shows when each increment will be bonded. NDAC 69-05.2-12-01(5) (BAJ)
46. Until Permit NACC-1301 is approved and subsequently deleted or incorporated into Permit NACC-1302, please depict the NACC-1301 permit application area on the Pit Layout and Facilities Map, Section 3.1.3. (BEB)

Section 4.0 – Post-Mining Land Use and Revegetation

47. Please fix the links in the autohtml.exe permit application file so that Sections 4.4, Post-Mining Wetlands and 4.5, Post-Mining Stockponds, are included. These sections are not listed in Section 4.0 when the permit is opened. (GAW/RLK/ZAB)

Section 4.1 – Post Mining Land Use Plans

48. Please describe in detail how the each postmine land use will be reclaimed as required by NDAC 69-05.2-09-13(1). This should include the grade approval process, planned SPGM

respread depths and maximum slope steepness by landuse, and the reclamation timing of planting woodlands and shelterbelts. There is no discussion in Section 4.1.1 regarding reclamation of cropland, native grassland or hayland and the two sentences that describe wetland reconstruction in Section 4.1.1 does not explain in detail Coyote Creek's reclamation processes. The tree planting narratives in Section 4.1.1 is essentially limited to design information with no discussion about aspect, SPGM respread, timing of plantings or deep ripping. Section 3.1.1.1, Soil Handling Narrative, does not explain the reclamation process by land use but does mention that topsoil respread thicknesses are based on average amounts stripped by landowner with differences between cropland and native grassland and includes a narrative predicting the potential for revegetation establishment without ever discussing the practices to be used. (GAW)

49. Please revise the Post Mining Land Use and Topography Map, Section 4.1.2, to not show topographic changes on lands that are not going to be mined according to the Pit Layout and Facilities Map and revise to not show any land use changes on lands that are not going to be disturbed according to the Pit Layout and Facilities Map. This includes the location of wetlands, shelterbelts and woodlands that are not going to be disturbed according to the Pit Layout and Facilities Map. (GAW)
50. Please revise Section 4.1.4 to include any land use preference statements received since this application was submitted and revise Sections 4.1.1, 4.1.2 and 4.1.3 accordingly if feasible land use changes are being requested. (GAW)

Section 4.3 – Vegetation Assessment and Success Standards

51. Please identify proposed native grassland reference areas on a map that shows the mapping units and provide an evaluation that the proposed reference areas adequately represent the permit area as required by NDAC 69-05.2-08-08(2). Reference areas are mentioned in Section 4.3 but detailed information is not provided. (GAW)
52. Please fix the link to Section 4.3.1, Narrative, so that the information can be viewed as intended. (GAW/BEB/RLK/ZAB)

The following items are considered technical deficiencies that can be addressed now or later following our more detailed review of this application:

1. As required by NDAC 69-05.2-15-04(4)(a)(1) and NDAC 69-05.2-21-03, please insert a projected soil respread depth map in Section 2-5 and expand Section 2.5.4.1 - Soil Volume by Landowner to evaluate the required respread volumes necessary to cover toxic forming material with nontoxic material as described in Part 1-A(2) - Method 2 for Sodic Spoil of Policy Memorandum No. 3 to Mine Operators. Please also update Section 2.5.4 and Section 3.1.1.1 narratives as necessary to describe the requirement for nontoxic cover of toxic forming material when suitable plant growth material is redistributed according to NDAC 69-05.2-15-04(4)(a)(1). As currently presented, it is unclear if the total soil depth listed for some landowners on Section 2.5.4.1 is adequate to minimize adverse effects on plant growth

and the approved postmining land use as required by NDAC 69-05.2-21-03. Depending on the evaluation to cover toxic forming material with nontoxic material, it may be necessary to propose selective handling of shallow overburden underlying some soil map units as suggested in items 1 and 2 of suitable plant growth interpretations (pages 57 and 58) in the High Intensity Soil Survey Report. (WTG)

2. In Section 3.1.1.8, Reclamation Costs, please include demolition/reclamation costs for the building floor, dragline erection pad and the road/Coyote Creek crossings (\$50,000 per crossing seems low). The salvage values of the gravel/concrete/precast structures are relative and may not cover the costs of demolition and disposal in a worst case scenario. (FSE)
3. In Section 3.1.4, Extended Mine Plan Map, please indicate what the light brown line in Sections 31, 36, 35, and 34 represents. (FSE)

As of today, November 27, 2013, 93 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