



May 9, 2015

North Dakota Public Service Commission  
600 E Boulevard Ave., Dept. 408  
Bismarck, North Dakota 58505-0480

**RE: Comments and request for informal hearing regarding surface mining permit application NACC-1302, Revision 1**

The Dakota Resource Council (“DRC”) respectfully submits the following comments regarding mining permit application NACC-1302, Revision 1, for Coyote Creek Mine (“CCM”) in Mercer County, North Dakota. In addition, DRC incorporates by reference into this comment the comments of Casey Voigt submitted on May 9, 2015 for this mining permit application and requests an informal hearing as provided under N.D.C.C. § 38-14.1-18 and N.D.C.C. § 38-14.1-19 to further discuss the issues raised in this comment. DRC is a grassroots, member-run organization, whose mission includes ensuring effective regulation of coal mining development. Our membership includes persons who are directly and adversely affected by the proposed Coyote Creek Coal Mine.

CCM’s mining permit adds a haul road, eight acre coal pile, and a coal processing facility to the mine permit area, all of which, once in operation, will be the primary sources of air emissions from this mine. Because CCM’s permit application meets almost none of the SMCRA’s air quality requirements and this mine will be a *significant* contributor to particulate emissions in the area, this comment focuses solely on air quality issues of concern. Ultimately, because this permit fails to address a number of important air quality requirements, it is incomplete and therefore not ripe for consideration by the PSC.

**I. The permit application does not comply with air quality rules that apply to western coal mines.**

Specific SMCRA air quality rules apply to CCM because it is a western coal mine with projected production greater than 1,000,000 tons per year of coal.<sup>1</sup> These rules require that CCM’s permit application include the following information:

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<sup>1</sup> 30 C.F.R. § 780.15(a) (specifying mines for which air quality rules apply).

1. An air quality plan for fugitive dust describing methods to ensure that “surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion;”<sup>2</sup>
2. “An air quality monitoring program to provide sufficient data to evaluate the effectiveness of [these] fugitive dust control practices.”<sup>3</sup>

CCM’s fugitive dust control plan, which is located in Section 3.1.1.2 of its application, consists of barely more than a page of text, the entirety of which is vague to the point of unenforceability. While this plan discusses sources of fugitive emissions (coal pile, haul roads, and the coal processing facility), it provides only vague methods of controlling these emissions. For example, CCM repeatedly explains that it will use control methods “periodically,” if “necessary,” or if existing methods are not “effective” or “not enough.” No definition is given to these words and phrases, rendering this section of the permit application essentially useless and unenforceable. DRC requests that the PSC, at the minimum, require CCM to incorporate detail into its fugitive dust control plan on the following points:

1. Acceptable levels of fugitive emissions;
2. Methods of fugitive emissions control for above-freezing, below-freezing, and windy conditions;
3. Necessary moisture levels to ensure fugitive emissions are minimized;
4. Specificity as to when, how often, and to what extent specific control methods must be used.

While CCM’s application at least makes an attempt to address fugitive emissions, it makes no attempt at all to include an “air quality monitoring” program, even though this is required by law.<sup>4</sup> In fact, a complete review of CCM’s entire permit reveals that the words “monitor” / “monitoring” and “air” / “dust” do not appear in the same sentence anywhere in the permit. The permit simply does not discuss this important point. The upshot is that CCM’s fugitive dust control plan is not merely driven by standards that are vague and thus unenforceable, but that CCM further plans to collect no hard data regarding whether its proposed methods of fugitive dust control will be effective. This is true even though SMCRA requires CCM to collect this information and include a monitoring plan in its mining permit application. For these reasons, this permit, if approved, would be in violation of SMCRA.

## **II. The permit application does not explain how CCM will comply with the Clean Air Act and other air quality rules, as required by law.**

Federal law requires this permit to include “[a] description of steps to be taken to comply with the requirements of the Clean Air Act.”<sup>5</sup> Similarly, North Dakota law states that “the applicant shall specify the measures to comply with the air pollution control requirements of the state

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<sup>2</sup> 30 C.F.R. § 816.95(a); N.D.C.C. § 38-14.1-24(4) (state performance standard); N.D.C.C. § 38-14.1-14(2)(j) (requirement that methods to achieve performance standard be provided in permit application).

<sup>3</sup> 30 C.F.R. § 816.95(a) (requiring monitoring plan).

<sup>4</sup> 30 C.F.R. § 780.15(a)(1).

<sup>5</sup> 30 C.F.R. § 780.18(b)(9).

Department of Health and any other measures necessary to effectively control wind erosion and attendant air pollution.”<sup>6</sup>

Rather than describing how CCM will comply with the Clean Air Act, its mining permit application does precisely the opposite. Section 3.1.1.2 of NACC-1302 Revision 1 reasserts an argument from its Clean Air Act permit application to describe why Clean Air Act New Source Performance Standards (NSPS) do not apply to its proposed eight acre open coal pile. Specifically, CCM states that “[t]he open storage pile at CCMC is not a regulated emission source or fugitive emission source subject to the ‘Fugitive Dust Control Plan’ requirement of New Source Performance Standard Subpart Y – Standards of Performance for Coal Preparation and Processing Plants – because the coal processing facility constitutes the start of the affected facility....”<sup>7</sup>

This is clearly an incorrect reading of the law. NSPS Subpart Y’s “provisions...are applicable to...coal processing and conveying equipment (including breakers and crushers), coal storage systems, transfer and loading systems, **and open storage piles.**”<sup>8</sup> This Clean Air Act NSPS goes on to define “open storage piles” as “any facility, including storage area, that is **not enclosed** that is used to store coal, including the equipment used in the loading, unloading, and conveying operations of the facility.”<sup>9</sup> Finally, the NSPS lists performance standards that apply to open storage piles, including submittal of an air quality control plan to NDDH that sets forth at least one method of control for fugitive emissions at the coal pile as well as an explanation of how the “measures selected are applicable and appropriate for site conditions.”<sup>10</sup> Rather than following this procedure, CCM has taken precisely the opposite position, i.e., expressly stating in its mining permit application that it does not have to comply with this provision of the Clean Air Act. As such, CCM is not in compliance with the parallel requirements of 30 C.F.R. § 780.18(9) and N.D.A.C. § 69-05.2-09-05 that this mining permit application contain an explanation of how CCM will comply with air quality laws. This error must be corrected.

Finally, DRC notes that if the open coal storage pile is properly treated as a regulated source subject to NSPS subpart Y of the Clean Air Act, there may be other important Clean Air Act considerations for the rest of the mine. Specifically, inclusion of this storage pile would change the mine’s potential to emit calculation.<sup>11</sup> Properly accounting for these emissions could add additional Clean Air Act regulatory requirements to the mine such as the need to obtain a Title V permit and more stringent emission control standards.

### **III. CCM’s fugitive emissions will have important impacts on human health, agricultural productivity, and the environment.**

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<sup>6</sup> N.D.A.C. § 69-05.2-09-05 (North Dakota, through the Department of Health, has assumed responsibility for most of the Clean Air Act’s federal requirements and has incorporated these federal laws by reference into its own regulations).

<sup>7</sup> Application for mining permit NACC 1302, Rev. 1, Section 3.1.1.2, at 5.

<sup>8</sup> 40 C.F.R. § 60.250(d) (emphasis added).

<sup>9</sup> 40 C.F.R. § 60.251(m).

<sup>10</sup> 40 C.F.R. § 60.254(c)(2).

<sup>11</sup> See 40 C.F.R. § 70.2(definition of major source)(2)(xxvii) (potential to emit calculation must include fugitive emissions from sources subject to NSPS); 40 C.F.R. § 52.21(b)(1)(iii)(aa) (same).

The above-described laws do not operate in a vacuum. Rather, they are intended to ensure that fugitive emissions from mines like Coyote Creek have a minimal impact on health, agriculture, and the environment. A recent University of North Dakota study clearly documented the impacts of fugitive dust emissions on agricultural productivity and livestock health.<sup>12</sup> That study explained that plants near roads typically have reduced ability to photosynthesize and experience stomatal interference due to collected dust and that dust emissions can affect livestock grazing patterns. The study further explained that fugitive dust emissions from unpaved roads impact livestock health, contributing to diseases such as dust-induced livestock pneumonia and pink eye. These impacts are in addition to the very well documented impacts of particulate matter pollution on human health, which is a significant contributor to asthma and other lung diseases.

Emissions from coal mines are one of the state's largest sources of particulate emissions. Because most of these emissions are fugitive in nature, the above-described laws are particularly important.

#### **IV. Conclusion**

CCM's current mining application inadequately addresses or ignores a number of important air quality requirements that apply to this mine under SMCRA, thus rendering this permit incomplete. As currently written, the PSC must deny this permit application<sup>13</sup> and should only accept this permit for further review when these important errors have been resolved.

Sincerely,

/s/

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<sup>12</sup> Dr. Daba S. Gedafa, University of North Dakota, Measuring Dust from Unpaved Roads and Its Impact on Crops & Livestock, available at <http://ndenergy.org/usrfiles/lr/Dust%20Study%20Final%20Presentation.pdf>

<sup>13</sup> N.D.A.C § 69-05.2-05-01 (PSC may only review permit that is complete).