

June 25, 2015

James R. Deutsch, Director  
ND Public Service Commission  
600 East Boulevard Ave, Dept. 408  
Bismarck, ND 58505

Dean Moos, Asst. Director  
ND Public Service Commission  
600 East Boulevard Ave, Dept. 408  
Bismarck, ND 58505

Alan Boehms  
Reclamation Specialist  
Office of Surface Mining  
150 East 'B' St, Rm. 1018  
Casper, WY 82602

**Re: Citizen Complaint of Casey Voigt**

Dear Mr. Deutsch, Mr. Moos and Mr. Boehms:

This letter, sent by counsel for Casey Voigt, will serve as a follow-up to yesterday's conversations in which Casey Voigt filed a verbal complaint with OSM and the PSC in regards to recent and continuing environmental damage caused by Coyote Creek Mining Company in violation of PSC Surface Mining Permit # NACC-1302, Rev 1. Mr. Moos indicated that he would send an inspector to the site today. We are providing this written complaint to ensure that the problems described in this letter are investigated quickly and that Coyote Creek Mine is fined accordingly for causing serious environmental harm, even after clear warning from the PSC.

In accordance with Sections 517(h) and 521(a) of the Surface Mining Control and Reclamation Act, we hereby request that you conduct an inspection without prior notice to the operator of the Coyote Creek Mine, located in Mercer County near Beulah, ND. We are

requesting this inspection because of the conditions or practices described below which we believe have resulted in violations of the law.

1. On April 13, 2015, PSC inspectors undertook an inspection of Coyote Creek Mine in response to a request made by Casey Voigt. The follow-up inspection report is attached to this letter as Attachment 1. Pages 3-4 of the inspection report note that Coyote Creek Mine's mining permit requires the company to install four box culverts that redirect the flow of Coyote Creek prior to installation of a much smaller 36 inch culvert for "low flow" situations. The inspection report notes that the mine was installing the culverts in "reverse order of that approved in Permit NACC-1302" and that "serious environmental risks are posed by installing the low flow culvert until box culverts are installed." Specifically, "high stream flow resulting from a heavy precipitation event may overtop the low flow culvert and cut through culvert backfill and the Shop Access Road corridor causing downstream sediment deposition."
2. On June 19, the box culverts still had not been constructed, and the situation continues to present the ongoing serious environmental risk described by the PSC. Attachment 2 provides a photograph from Saturday, June 20, 2015 showing that the box culverts have not been constructed and instead are sitting, unused, on the property. In other words, over two months have now passed and Coyote Creek Mining Company has not remedied this problem even though they were notified of the serious environmental risk posed by this situation both verbally at the inspection itself and in writing in the PSC's follow-up inspection report.
3. Construction in this "reverse" order appears to have allowed the company use of their shop access road to ferry equipment to and from the mine significantly sooner than if they had constructed these facilities in the environmentally safe manner required by the PSC's permit.
4. On June 22, the environmental risk described by PSC inspectors in the inspection report attached to this letter became a reality. Rainfall in the area caused Coyote Creek to overtop the dirt shop access road causing significant deposition of sediments into Coyote Creek. Coyote Creek, a Class III Stream, is a Water of the United States. Thus, Coyote Creek Mine's failure to comply with the terms of their permit and subsequent warnings by PSC inspectors has now led to contamination of a jurisdictional Water of the United States in violation of the

Clean Water Act. Attachment 3 provides two photographs taken at approximately 6PM, CDT, on Monday June 22, 2015 showing this event.

5. On information and belief, this situation has not been remedied as of the time of this letter, more rainfall is currently in the forecast today, and this situation continues to present an imminent and substantial environmental risk. We therefore request the following:
  - a. An immediate inspection to confirm the allegations made above, including into the reasons that this situation has not been corrected;
  - b. That Coyote Creek be required to act with all deliberate speed to minimize additional environmental harm;
  - c. That a significant fine be levied upon Coyote Creek Mine. Should an investigation confirm that Coyote Creek mine was able to initiate construction activities and other mine-related activities in an accelerated fashion by violating the terms of its permit, any fine should, at the minimum, negate any financial advantages allowed by these rushed activities. Such fine should also be sufficient to deter future violations. Small fines, such as the fine recently levied against the mine for \$500 by the PSC, are insufficient in this instance, and much more is required.

In accordance with 30 CFR 842.12(d), we request that the PSC report the results of any inspection or a detailed explanation in the event that no inspection is conducted and/or no enforcement action taken.

Very truly yours,



JJ England  
Attorney at Law



# Public Service Commission

## State of North Dakota

DKM

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### INSPECTION REPORT

DATE OF INSPECTION: April 13, 2015

TYPE OF INSPECTION: Partial

PERMITTEE - MINE: Coyote Creek Mining Company, L.L.C. - Coyote Creek Mine

PERMITS INSPECTED: NACC-1301 and NACC-1302

PERSONS ACCOMPANYING INSPECTORS: Donn Steffen and Brenden Brinkman (Coyote Creek Mining Company, L.L.C.) and Casey Voigt (landowner)

INSPECTION CONDITIONS: The inspection was conducted between 10:00 a.m. and 1:10 p.m. CDT. Sky conditions were clear. The wind was from the west-northwest at 15 to 25 miles per hour and the temperature ranged from the mid 40's to the mid 50's° F as recorded at the Hazen NDAWN weather station. Access was unrestricted to areas of interest.

### SUITABLE PLANT GROWTH MATERIAL REMOVAL/RESPREAD

This inspection was conducted in response to landowner concerns with suitable plant growth material (SPGM) care and removal within permits NACC-1301 and NACC-1302 at the Coyote Creek Mine. Casey and Julie Voigt (landowners) met Reclamation Division inspectors at the mine's security check-in station shortly after 10:00 a.m. CDT to relate their concerns to the inspectors prior to joining Coyote Creek Mining Company, L.L.C. (CCMC) personnel for the mine inspection. Casey and Julie Voigt own the W $\frac{1}{2}$  and the W $\frac{1}{2}$ E $\frac{1}{2}$  of Section 30, and all of Section 31, T143N, R88W that includes a small portion of the mine office-shop facility that has been under construction since mid-2014 (Permit NACC-1301), and where mine development is beginning in the spring of 2015 with construction of access and haul roads, and sedimentation ponds (Permit NACC-1302). The Voigt farmstead is located near the center of Section 31 adjacent Coyote Creek as pictured in Figure 5. Although Julie Voigt planned to attend the inspection, she chose not to because of CCMC vehicle space limitations.

The inspection began by reviewing an area in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 in Permit NACC-1301 where SPGM had not been removed but it was being used for contractor and equipment parking, and also for equipment and material storage as pictured in Figure 1 and outlined on Figure 5. Mr. Voigt expressed his concerns with possible topsoil degradation and erosion caused by vehicle and equipment traffic in the area. Although accelerated erosion or rutting was not evident in the area, the native rangeland vegetation was worn bare in the main traffic path, and it appeared that topsoil degradation and erosion would likely occur if current use of the area continued. SPGM removed from the E $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 30 in Permit NACC-1301 in 2014 for the mine office-shop facility and access road was stockpiled north of the facility as depicted on Figure 5, as was SPGM removed from the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 for contractor and equipment parking. Additional SPGM was removed from the contractor and equipment parking area in 2014 and 2015 when expansion became necessary. The August 7, 2014 and October 30, 2014 Coyote Creek Mine inspection reports noted that idle equipment could be stored on areas where SPGM was not removed, but SPGM should be removed from areas where traffic could cause SPGM degradation. Mr. Steffen explained that SPGM removal had not progressed eastward to the area of concern inspected on April 13, 2015 because CCMC desired to minimize disturbance, but he agreed that SPGM should be removed from the area to accommodate the need for expanded parking and equipment and material storage areas. SPGM removal from 0.3 acres in the area was viewed during an April 16, 2015 Coyote Creek Mine inspection and approved on April 20, 2015. Topsoil from the area is stored in a temporary stockpile west and adjacent 65 $\frac{1}{2}$ <sup>th</sup> AVE SW where it is expected to be used for road ditch revegetation of the reconfigured intersection of 65 $\frac{1}{2}$ <sup>th</sup> AVE SW and 17<sup>th</sup> ST SW to be constructed this year. Existing SPGM stockpiles located in NACC-1301 as depicted on Figure 5 are currently inaccessible for additional SPGM storage. Subsoil from the area was stored in a temporary stockpile south of pond P30-01.

SPGM removal for a four acre segment of the Shop Access Road on both sides of Coyote Creek for which construction has just begun was viewed and approved during the inspection. As depicted on Figure 5, the Shop Access Road will extend westward from the mine office-shop facility to a haul road. CCMC had received prior approval to stockpile topsoil and subsoil in the Shop Access Road corridor until SPGM stockpile locations could be developed on the west side of the North-South Haul Road to be constructed in the W $\frac{1}{2}$  of Section 30. An overview of the SPGM removal area is pictured in Figure 3. SPGM removal monuments retained in the removal area indicated that subsoil had been removed to the depths indicated on the detailed soil survey map (Section 2.5.6 in Permit NACC-1302). The SPGM removal area included some prime farmland acreage on the west side of Coyote Creek but segregation of the prime and non-prime farmland topsoil and subsoil is not required because the access road corridor constitutes associated disturbance rather than actual mining disturbance. Runoff from the temporary stockpiles that are not located within the watershed of pond P30-01 will be managed with SPGM stripping edges, sumps, silt fences, shallow berms or ditches, or a combination thereof.

## STOCKPILES

SPGM stockpiles located north of the mine office-shop facility in Permit NACC-1301 as depicted in Figure 5 were viewed near the close of the inspection after Casey Voigt had departed. These stockpiles and the surrounding associated disturbance had been seeded and mulched in the late summer and early fall of 2014 but it was evident that maintenance is required to repair and stabilize erosional rilling that had developed on the piles and disturbed areas as pictured in Figure 2. Mr. Steffen indicated that seeding and mulching equipment had been ordered and was expected to be delivered shortly whereupon CCMC personnel would repair the erosion and stabilize the stockpiles by reseeding or mulching.

## SURFACE WATER MANAGEMENT

Pond P30-01 was four feet below permanent pool elevation.

Culvert installation for the Shop Access Road Coyote Creek crossings was also viewed while viewing SPGM removal for a four acre segment of the Shop Access Road on both sides of Coyote Creek as previously described. At the time of inspection, the 36 inch low flow steel culvert was being installed as pictured in Figure 4. It should be noted that the approved design for the 36 inch culvert depicts a slight angle near the culvert's midpoint. The design was revised to depict a straight culvert with the application of Revision No. 1 to Permit NACC-1302 that is under review. The proposed design change was approved by the commission via email correspondence on March 19, 2015 and it received U.S. Army Corps of Engineers concurrence on March 20, 2015. Please refer to Figure 5 for the culvert types and locations for the Shop Access Road Coyote Creek crossings. Installation of the 36 inch low flow steel culvert would need to be completed no later than April 14<sup>th</sup> because CCMC's Regional General Permit from the U.S. Army Corps of Engineers does not allow regulated activity in Coyote Creek from April 15<sup>th</sup> to June 1<sup>st</sup>. Installation of the four 10 foot by 10 foot box culverts will follow but it appears that they will not be installed to divert Coyote Creek flow until after June 1<sup>st</sup>. Mr. Steffen indicated SPGM removal will proceed westward along the Shop Access Road corridor toward the location for pond P31-01 after the 36 inch low flow steel culvert installation is complete. Overburden from pond P31-01 excavation will provide the fill necessary to achieve grade for the Shop Access Road.

Upon returning to the mine office-shop facility near the close of the inspection the Reclamation Division inspectors informed CCMC personnel that the sequence of Shop Access Road Coyote Creek crossing culvert installations appears to be the reverse order of that approved in Permit NACC-1302. As described in the permit, the culvert crossings would proceed eastward in conjunction with excavation of pond P31-01 with installation of the four 10 foot by 10 foot box culverts first followed by installation of the 36 inch low flow steel culvert. Excerpts from Permit NACC-1302 relevant to the Shop Access Road Coyote Creek crossing culvert installations are as follows:

“Section 3.2.3 - Shop Access Road

*... This haulroad will be constructed of overburden removed from the basin of pond P31-01. Because pond P31-01 is the first construction project to begin minesite development and furnishes the majority of the Shop Access Haulroad fill, Coyote Creek Mine plans to use the existing Coyote Creek crossing nearby the Casey Voigt farmstead for access to the haulroad and pond until the installation of the box culvert across Coyote Creek has been completed.*

*... Four 10' by 10' box culverts will be installed adjacent to Coyote Creek. The creek will then temporarily be diverted through the culverts until the road is removed. A diversion channel will need to be excavated to the box culverts on the upstream and down stream sides of the Access Haulroad to connect the creek and allow it to flow freely. A 36" culvert will be placed in the original stream bed location for low flow situations as well as to minimize disruption to the ecosystem in this location. The 36" culvert is not scheduled to be installed until after the concrete box culverts structure is installed. Construction in this manner should minimize adverse impacts to water quality of the stream during construction.*

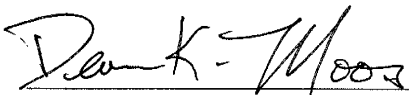
Section 3.2.5 - Haulroad Box Culvert - Diversion Channel

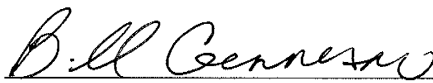
*... The original streambed will flow under the Shop Access Road at approximately Station 6+00. This streambed will remain intact and will be used in low flow situations. The original streambed will have a 36" culvert installation to allow flow under the Shop Access Road. The 36" culvert is not scheduled to be installed until after the concrete box culverts structure is installed. Construction in this manner should minimize adverse impacts to water quality of the stream during construction. The contributing watersheds were modeled with the HEC-HMS to provide peak flow rates to size the culverts. The 36 inch culvert was not included when modeling the safe passage of Coyote Creek under the haulroad. The box culverts are sized to safely pass the peak flow from the 50-year/6-hour precipitation event using available head and storage without the 36 inch culvert being installed. The 36 inch culvert is being installed mainly to keep the original stream channel as unaltered as possible and pass nominal flows.”*

Based on the foregoing permit excerpts and observations from the April 13, 2015 inspection, it appears that CCMC is conducting operations for the Shop Access Road Coyote Creek culvert installations in reverse order of that approved in Permit NACC-1302. CCMC should have requested commission approval to revise culvert installation plans and provided adequate justification for doing so. Furthermore, it appears that potentially serious environmental risks are posed by installing the low flow culvert prior to diverting Coyote Creek flow through the box culverts. The Coyote Creek stream flow is now restricted through the low flow culvert until the box culverts are installed to divert the stream presumably after June 1<sup>st</sup>. High stream flow resulting from a heavy precipitation event may overtop the low flow culvert and cut through culvert backfill and the Shop Access Road corridor causing downstream sediment deposition. CCMC is advised to expedite box culvert installation so Coyote Creek flow can be diverted through the box culverts immediately after the U.S. Army Corps of Engineers spring restriction of regulated activity expires. CCMC is also advised to refrain from building any segment of the Shop Access Road near Coyote Creek that could function as an embankment and cause upstream flooding if stream flow is restricted by the low flow culvert.

WASTE DISPOSAL

Mr. Voigt also expressed his concern with waste that had been blowing off of the mine office-shop facility construction site in Permit NACC-1301 and littering adjacent land. Mr. Steffen agreed that the construction contractors should improve their litter control and recover any litter that is blown off of the site. He added that he would instruct the contractors to improve their litter control. The March 31, 2015 Coyote Creek Mine inspection report noted that three people were observed recovering litter around the mine office-shop facility. It should also be noted that several people were observed recovering litter adjacent the NACC-1301 southeast permit boundary following the April 13, 2015 inspection.

*for*   
\_\_\_\_\_  
Randy Kowalski  
Environmental Scientist

  
\_\_\_\_\_  
Bill Gunnerson  
Environmental Scientist

cc: Donn Steffen  
OSM Casper Area Office  
Mercer County Auditor  
Casey Voigt

Minedata/CoyoteCreek/InspectionReports/2015/150413



**Figure 1.** Area in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 in Permit NACC-1301 where SPGM had not been removed but is being used for contractor and equipment parking, and also for equipment and material storage - facing west with 65 $\frac{1}{2}$ <sup>th</sup> AVE SW in foreground, and scoria capped parking in background - refer to Figure 5 for area location



**Figure 2.** Erosional rilling requiring repair on SPGM stockpiles and the surrounding associated disturbance areas in Section 30 in Permit NACC-1301 - facing southeast toward stockpile TS-3 with the mine office-shop building frame in background – refer to Figure 5 for location

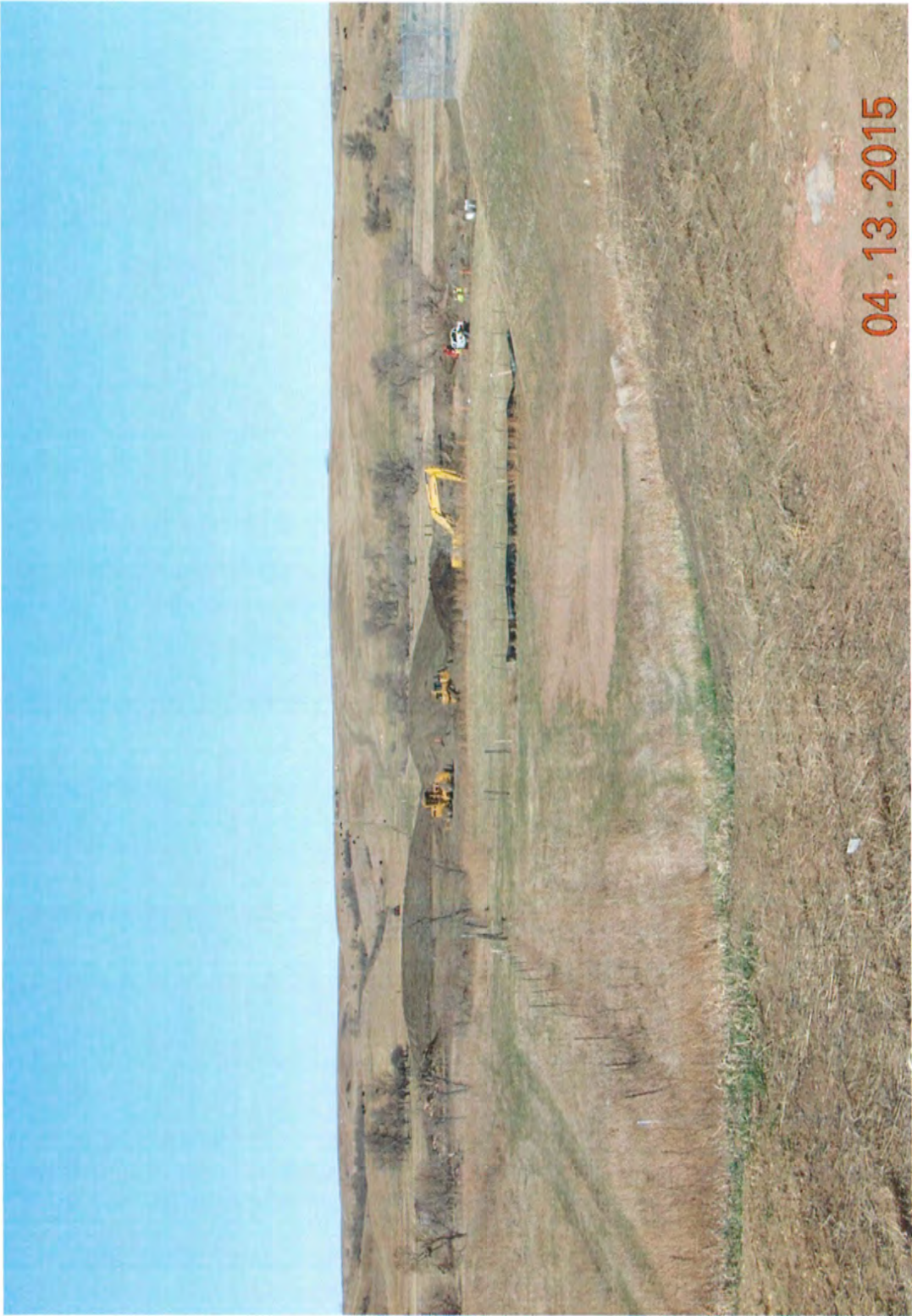


Figure 3. SPGM removal for a four acre segment of the Shop Access Road on both sides of Coyote Creek with a temporary topsoil stockpile in left background and a temporary subsoil stockpile in middle background – facing west with fence line in center-west marking the section line common to Section 30 on right (north) and Section 31 on left (south) – photograph taken south of large white hoop building pictured in right background in Figure 1



Figure 4. Panorama of 36 inch low flow steel culvert installation in Coyote Creek for the Shop Access Road Coyote Creek crossing - facing west on left and rotating to face north on right with temporary culvert in place on center-right for equipment crossing – refer to Figure 5 for culvert location – note temporary topsoil stockpile in left background and a temporary subsoil stockpile in middle background – also note that dozer was in motion when photographs were taken

