

# COYOTE CREEK MINING COMPANY, L.L.C.



A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

May 20, 2019

Mr. Dean K. Moos  
Director Reclamation and AML Divisions  
North Dakota Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, ND 58505-0480

Dear Mr. Moos:

Enclosed are seven DVDs containing responses to your letter dated February 13, 2019 in preparation for renewal of Surface Coal Mining Permit NACC-1302. This revision will be considered Revision 9 of the permit. Upon notice from your office that the revision has been deemed complete, Coyote Creek Mining Company, L.L.C. will begin public notice of the permit renewal as can be found in Section 1.2.4. Please see responses below for other changes.

## **Section 1.1 – Introductory Information**

1. The bookmark for Revision 5 in the Application Forms in Section 1.1.1 does not work. Please connect the bookmark to its intended location. (BEB)
  - a. The requested changes were made to the bookmark in Section 1.1.1.

## **Section 1.2 – Legal Information**

2. Please replace the certificate of liability insurance in Section 1.2.5 with the most recent certificate. (PJR)
  - a. Requested changes have been made to pages 2-4 of Section 1.2.5.
3. Page 1 of the Mercer County Conditional Use Approval Documents in Section 1.2.7 states “*All conditional use and zoning approval documents obtained from Mercer County for Permit NACC-1302 can be found in this section, including those originally obtained for Permit NACC-1301, which is now included in this permit.*” The only document provided in this section relates to the haulroad addition that was approved with Revision No. 1 to NACC-1302. We have noted the initial application for Revision No. 7 dated 6/26/17 contained the complete set of approval documents but the subsequent deficiency response versions and the application for Revision No. 8 contain only the haulroad addition approval. Please review and update as necessary. (BEB)
  - a. Requested changes were made to Section 1.2.7.

4. Please replace the current narrative provided in Section 1.2.9, Filing with County Auditor, as follows: *“As this Permit is revised, copies of the most recently approved revision will be filed with the County Auditor of Mercer County.”* (BEB)
  - a. Requested changes have been made to Section 1.2.9.

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

5. Please update the Consolidated Legal Information Report covering Sections 1.3.1 – Names of Officers, Directors and Share Holders, and Organizational Structure; 1.3.3 - Current Permits and Permit Applications, and 1.1.6 - Schedule of Violations referenced in Permit NACC-1302 if any changes have occurred since the most recent consolidated report dated January 30, 2019. A copy of the updated consolidated report or a written certification that the information in the most recent report is still accurate will be required prior to approval of significant revisions and permit renewals. (RLK)
  - a. The Consolidated Legal Information Report was last submitted April 3, 2019 and is up to date.
6. Please update Section 1.3.5 (Other Licenses and Permits) as required by NDAC 69-05.2-06-04 if there are any changes to the listings since the most recent update with Revision No. 7. (PJR/BEB/RLK)
  - a. The Consolidated Legal Information Report was last submitted April 3, 2019 and is up to date.

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

7. Please update Section 1.5.1, Permit Area Surface and Coal Interests as required by NDCC 38-14.1-14(1)(c)(2). If any changes are made to Section 1.5.1, please make the corresponding updates to Section 1.5.3, Surface and Coal Ownership Map. (GAW/RLK/PJR)
  - a. Changes have been made to page 1 of Section 1.5 to update the Certificate of Authenticity of Documents and current revision number and date.
  - b. The tract summary was updated to reflect the current revision number and date and changes to the description of Tracts 43 and the removal of Tract 43A. Following is a table identifying updates to individual Tracts.

Tract No.	Address change to surface and/or coal ownership	Corporate officers and/or registered agents change	Documentation added – Lease, Warranty Deed, AOE, Continuation Provision, or Other	Easement information updated	Leasehold status change	Note added, removed, or modified	Ownership change to surface and/or coal	Tract added or tract description changed
1	X						X	
2							X	
3	X	X						
5	X	X		X				
18	X						X	
35	X			X			X	
36				X				
37							X	
38							X	
39	X						X	
40	X			X			X	
41							X	
42				X			X	
43							X	X
43A								X
45						X		

47							X	
48							X	
Tract No.	Address change to surface and/or coal ownership	Corporate officers and/or registered agents change	Documentation added – Lease, Warranty Deed, AOE, Continuation Provision, or Other	Easement information updated	Leasehold status change	Note added, removed, or modified	Ownership change to surface and/or coal	Tract added or tract description changed
49	X			X			X	
60	X						X	
61	X						X	
70		X						
71		X						

c.

8. Please update Section 1.5.2, Adjacent Surface and Coal Ownership and Leasehold Information as required by NDAC 69-05.2-06-01(1)(a) and make the corresponding updates to Section 1.5.3, Surface and Coal Ownership Map, if necessary. (GAW/RLK/PJR)
  - a. Requested changes were made to Sections 1.5.2 and 1.5.3.

**Section 2.2 – Surface Water Hydrology**

9. Please review the Surface Water Hydrologic Reclamation Plan and Probable Hydrologic Consequences in Section 2.2.4 to ensure that it specifically addresses any potential adverse impacts identified in the probable hydrologic consequences determination for mining activities that will occur during the next permit term and include preventive and remedial measures for those impacts as required by NDAC 69-05.2-09-12. (GAW)
  - a. The sections referenced above were reviewed and no changes were necessary.

**Section 2.3 – Ground Water Hydrology**

10. Please update the Ground Water Monitoring plan narrative in the fourth paragraph of page 1, Section 2.3.4, which states, “*Water level measurements and water quality sampling will be performed by contractors, currently D&L Enterprises.*” Please indicate who is currently, or will be, providing the water level measurements and water quality sampling for Coyote Creek Mine. (BEB)
  - a. Requested changes were made to page 1 of Section 2.3.4.

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

11. Please review Section 2.4, Pre-Mining Land Use and Vegetation, and update as necessary if any land use changes have occurred on permitted lands since the permit was originally approved. (GAW)
  - a. No changes were required.

**Section 2.7 – Fish and Wildlife Resources**

12. Please review and update Section 2.7.3, Fish and Wildlife Resources Mining Impacts, to discuss potential adverse impacts to all currently listed threatened and endangered species and species proposed for listing on lands to be affected during the next term of the permit. Please also revise the permit to include updated information about any planned disturbance to lands designated or proposed as critical habitat for threatened, endangered and proposed species or the proximity of the permit area to areas designated or proposed critical habitat. The USFWS IPaC should be used

during this process and information gained through the Biological Opinion developed by USFWS for lease of federal coal. [NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08] (GAW/PJR)

- a. Requested changes were made to page 5-6 of Section 2.7.3. Discussion on threatened and endangered species can be found in Section 2.7.2 and listed in Section 2.7.2.8. As documented on page 1 of Section 2.7.3, there are no lands designated as critical habitat in the permit area. As required by law, if the presence of any listed species is detected within the permit, CCMC would promptly report the sighting to the PSC and follow all applicable requirements from the USFWS.
13. Please revise the Protection and Enhancement plan in Section 2.7.3 to include a species-specific protection and enhancement plan for the Dakota skipper. The protection and enhancement measures listed in Section 5.3 of the USFWS Biological Assessment for federal coal lease by application No. NDM 110277 may be used as a template or other appropriate measures developed in cooperation with NDGF and USFWS. (GAW)
    - a. Requested changes were made to pages 6-7 of Section 2.7.3.
  14. Please update Section 2.7.3, Fish and Wildlife Resources Mining Impacts, to discuss whether the permit area includes suitable habitat for the monarch butterfly and regal fritillary. The USFWS has received petitions to list these species and has made a “substantial finding” which means the petition provides enough information to substantiate that listing these species may be warranted. The Reclamation Division recommends that the surveys be completed for these species if the permit or adjacent area contains suitable habitat. [NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08] (GAW)
    - a. In 2014, the USFWS was petitioned to list the monarch butterfly under the ESA. After reviewing the petition, the USFWS then published a 90-day substantial finding, which indicated the monarch butterfly may require listing under the ESA. In addition, they announced that they would conduct a thorough assessment of the status of the species using the Species Status Assessment framework. The findings of the special assessment, and the decision on how to proceed with the species, is due to be published in June of 2019. At that time, CCMC will review the findings and proceed accordingly.

The USFWS began review of the regal fritillary in 1984. In September of 2015, a 90-day finding was published stating a status review was being initiated. No additional findings or conservation plans have been published since 2015 and the species is currently under review. When new information is published by the USFWS, CCMC will review the findings and proceed accordingly.
  15. Please update the Protection, Enhancement and Management Plans in Section 2.7.3 to ensure compliance with NDAC 69-05.2-09-17(1) during the next term of the permit. NDAC 69-05.2-09-17(1) requires a plan that will be used during active mining that must include protective measures for fish and wildlife resources, and a plan that must include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. (GAW/PJR)
    - a. Requested information can be found on page 2 of Section 2.7.3, existing language in this same section and the biennial wildlife report. As mining and reclamation progresses, additional detail regarding enhancement will be added.

16. Please revise the Threatened or Endangered Species narratives that begin on Page 3 of Section 2.7.4 to state that Dakota skipper surveys will be completed as recommended by the USFWS. Please also revise the sentence in the third paragraph on page 3 that incorrectly states, “there appears to not be suitable habitat for the Dakota skipper within the study area” because USFWS has determined with the federal coal Biological Opinion that potential suitable habitat does exist. (GAW)
  - a. Requested changes were made to pages 3-4 of Section 2.7.4.
  
17. Please revise the Threatened or Endangered Species. Dakota Skipper Surveys narrative on Page 3 of Section 2.7.4 to state that Coyote Creek Mine will conduct a USFWS protocol level assessment of Dakota skipper habitat and occupancy on all lands planned to be disturbed during the next term of the permit, as will likely be recommended by USFWS. The habitat and occupancy surveys should include a buffer zone at least 0.6 miles wide around the planned disturbance area. The narrative should clearly state that potential Dakota skipper habitat will not be affected until a Dakota skipper Protection and Enhancement Plan has been approved by NDPS. (GAW)
  - a. A letter dated May 1, 2019 from the NDPS states previously completed Dakota skipper surveys are sufficient to allow mining related disturbance to progress. An evaluation of additional Type B habitat will be completed as is feasible and allowed given the timing. Determining the need for future investigations and/or occupancy surveys will be analyzed at that time in conjunction with the results of the required occupancy survey to be completed in 2019.
  
18. Please revise the Breeding Songbird Surveys narrative in Section 2.7.4 to state that the annual sampling data will be included in the Biennial Wildlife report so that one can determine the species and numbers observed in each habitat type during the sampling period. (GAW)
  - a. Requested changes have been made to page 2 of Section 2.7.4.
  
19. Please revise Table 1, Federal Threatened, Endangered and Candidate Species in North Dakota, on page 4 of Section 2.7.4 so the information is current. The Rusty Patched Bumblebee is listed as endangered species and its range includes North Dakota. [NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08] (GAW/PJR)
  - a. Requested changes have been made to page 4 of Section 2.7.4. The table was updated according to the IPaC list for the state of North Dakota.

### **Section 2.8 – Cultural Resources**

20. If there are any updates or modifications to cultural resources information, mitigation status or SHS correspondence, please revise the appropriate cultural resource subsections of Section 2.8. (BEB)
  - a. Requested pages were made to pages 1, 3 and 5 of Section 2.8.1, pages 29-30 of Section 2.8.5 and Section 3.1.3 was updated.

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

21. Please update the narrative in Section 3.1- Operations Plan to reflect any anticipated changes in the mining plan for the next permit term if necessary. (BAJ)
  - a. Requested changes were made to page 1 of Section 3.1.1.

22. Please update Section 3.1.1, Operation/Reclamation Narrative, to include a discussion about how Coyote Creek Mine will use the best technology currently available, minimize impacts to wildlife and avoid disturbance to habitats of high value to wildlife during the next permit term. [NDAC 69-05.2-13-08(6)] (GAW)
  - a. Discussion on wildlife can be found in Section 2.7.3 – Mining Impacts.
23. Please update the Soils Handling Narrative on pages 1 and 2 of Section 3.1.1.1 that begins with the sentence “*All subsoil will be removed.*” as that is no longer the case at Coyote Creek Mine. (BEB)
  - a. Requested changes were made to page 1 of Section 3.1.1.1.
24. Please update Haulroads and Maintenance narrative on page 2 in Section 3.1.1.2 to describe Coyote Creek’s usage of flyash to stabilize soft spots in the haulroad. (BEB)
  - a. Requested changes were made to page 2 of Section 3.1.1.2. Additional explanation can be found in more detail in Section 3.2.1.
25. Please update Section 3.1.1.3, Reclamation Procedures and Schedule, for the next permit term. If there are changes to the Projected Reclamation Time Schedule table provided on page 2 of Section 3.1.1.3, please make those updates at this time. Also, please review the reclamation variance narratives that begin on page 3 and update to reflect current conditions and changes anticipated during the next term of the permit. (BAJ/BEB/RLK)
  - a. Requested changes were made to pages 2-4 and 7-10 of Section 3.1.1.3.
26. If necessary, please make applicable updates to the Coal Production Schedule in Section 3.1.1.4 through the next permit term as required by NDAC 69-05.2-09-01(1). (BEB/RLK)
  - a. Requested changes were made to Section 3.1.1.4.
27. If necessary, please make applicable updates to the List of Equipment in Section 3.1.1.5. (BEB)
  - a. Requested changes were made to Section 3.1.1.5.
28. Please update Section 3.1.1.8 – Reclamation Costs for the next permit term showing the new worst-case pit area and using the most current variable cost update. (BAJ)
  - a. Requested changes were made to Section 3.1.1.8.1, Section 3.1.1.8.2, Section 3.1.1.8.3, Section 3.1.1.8.4, Section 3.1.1.8.5, Section 3.1.1.8.6, Section 3.1.1.8.7, Section 3.1.1.8.8 and Section 3.1.1.8.10.
29. Please update the Pit Layout and Facility Map, Section 3.1.3, as necessary, to incorporate new or expanded overburden and SPGM stockpiles, haulroads or access trails, diversions, sediment ponds, proposed pit layout and sequencing, and mining facilities, etc. The map must clearly identify the next 5-year coal removal subareas as required by NDAC 69-05.2-09-02(3). (BEB/RLK/GAW/BAJ)
  - a. Section 3.1.3 updated years of mining, cultural sites, the mine disturbance boundary, the associated disturbance boundary, pile locations, utilities, ramps, roads, sumps, ponds, variance areas, aggregate storage sites and tree avoidance areas.
30. As is customary with other North American Coal mining permits, we ask that proposed sedimentation ponds and constructed sedimentation ponds be depicted on the Pit Layout and Facilities Map in Section 3.1.3 with different colors (or different shades of blue) so the viewer can readily distinguish between proposed sediment ponds and sediment ponds already constructed. (BEB)
  - a. Requested changes were made to Section 3.1.3.

31. It appears the 1.2-acre temporary parking lot (depicted as PARKING) and associated topsoil stockpile (TS-7) located directly south of the shop/office complex in the NE1/4 of Section 31 can be eliminated from the Pit Layout and Facilities Map in Section 3.1.3. Grade approval request COY-003 was approved on July 24, 2018 and the area has been respread with SPGM. (BEB)
  - a. Requested changes were made to Section 3.1.3.
32. Please revise the Pit Layout and Facilities Map, Section 3.1.3, to depict each habitat area to be used to protect and enhance fish and wildlife habitat as required by NDAC 69-05.2-09-02(11). As Coyote Creek Mine is aware, NDAC 69-05.2-09-17(1) requires a plan that must include protective measures that will be used during active mining and must include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. (GAW)
  - a. Discussion on wildlife can be found in Section 2.7.3 – Mining Impacts.
33. If updates to your long-term mining plan are necessary, please make those changes to the Extended Mining Plan map in Section 3.1.4. (BEB/PJR/BAJ)
  - a. Requested changes were made to Section 3.1.4.

### **Section 3.3 – Surface Water Management**

34. Please update Section 3.3.2, Surface Water Management Plan Map, to reflect any changes with the status or presence of water management structures; SPGM stockpiles; overburden stockpiles; and haul roads that may have occurred since the map was last updated with Revision No. 8 as required in part by NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09. (BAJ/RLK)
  - a. Requested changes were made to Section 3.3.2.
35. Please update Section 3.3.4, Pond Construction and Reclamation Schedule, as required by NDAC 69-05.2-09-09(1)(d) if there are any changes to the schedule since the most recent updates with Revision No. 8. (BAJ/RLK)
  - a. Requested changes were made to Section 3.3.4.
36. Please update Section 3.3.10 by identifying the locations of the sumps located upstream of Impoundment P24-02 and providing plans for regular sump monitoring and maintenance. The plan should include provisions to access the sumps for maintenance and sediment removal as appropriate for the stage of mining activity or reclamation. We also recommend that CCMC take advantage of opportunities during mining to minimize runoff and sediment deposition to the sumps by routing drainage back to the pit and/or construction of detention sumps in spoil areas. (PJR/RLK)
  - a. As the details for a BMP management plan in cases of tree preservation are included in both Sections 3.1.3 and 3.3.1, they have not been included in the design details.

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

37. A sentence in the first paragraph on page 1 of Section 4.2.1-Narrative states that native grassland seedings may be delayed until a year after SPGM respread so any introduced species that have germinated during the first year can be sprayed. NDAC 69-05.2-22-04 requires seeding and planting at the first normal period after topsoil has been respread. Please revise to specifically request a variance from this requirement and provide details of the measures that will be used to protect respread topsoil from erosion and how the area will be managed before initiating the revegetation responsibility period. (GAW)
  - a. Requested changes were made to page 2 of Section 4.3.1. An additional seed mix was also added to page 2 of Section 4.2.2. This seed mix was previously approved by NDPSC staff to utilize in the areas described in Section 4.2.2.
38. Please review the native grass and woodland reclamation plans and revise as necessary if any establishment or management plans have changed. (GAW)
  - a. Requested changes were made to page 6 of Section 4.2.3 and Section 4.1.2 to adjust for the tree avoidance areas.

#### **Section 4.3 – Vegetation Assessment and Success Standards**

39. A sentence in the third paragraph on page 1 of Section 4.3.1-Narrative states that new potential native grassland reference area sites were selected after the 2013 field season was over and that data collected in 2014 will be added to the permit. Please revise the narrative to clarify where in the permit vegetation sampling data for these potential reference area sites is located and provide current sampling data to ensure the sites are being maintained in reasonable ecological condition. (GAW)
  - a. Requested changes were made to page 1 of Section 4.3.1.

The post-mining topography was revised to better reflect mining progression during the first term of the permit and allow for the preservation of woodlands, slope reductions and the natural shift in overburden. As a result of the topography changes, changes were made to the following sections:

Section 3.1.1.3 was revised to discuss changes, rationale and updated the dirt balance.  
Sections 3.1.5, 3.1.6, 3.1.7, 3.1.8 and 4.1.2 were all revised to include topography changes.  
Section 4.1.3 was updated to reflect the change in size of proposed stock pond replacements.  
Section 4.4.2.2 was updated to reflect the changes to proposed wetland replacements.  
Section 4.5.2.1 was updated to reflect the changes to proposed stock pond replacements.

The worst case bond amount was updated and the following sections were updated:  
Section 3.1.1.8.1, Section 3.1.1.8.2, Section 3.1.1.8.3, Section 3.1.1.8.4, Section 3.1.1.8.5, Section 3.1.1.8.6, Section 3.1.1.8.7, Section 3.1.1.8.8 and Section 3.1.1.8.10.

Sections 1.2.4 and 1.2.4.3 were updated with the newspaper publication information for this revision/renewal. Sections 1.1.1 and 1.1.2 were updated with the remaining new information pertaining to this revision.

Mr. Dean Moos  
May 20, 2019  
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Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

COYOTE CREEK MINING COMPANY, L.L.C.



Jessica K. Unruh  
Environmental Manager

JKU  
Enc.