

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

Coyote Creek Mining Company, L.L.C.
Renewal No. 1, Permit NACC-1302
Revision No. 9, Permit NACC-1302
Applications

Case No. RC-19-189
Case No. RC-19-190

**COYOTE CREEK MINING COMPANY, L.L.C.’S OPPOSITION TO REQUEST TO
CONDUCT MINE INSPECTION PURSUANT TO N.D.C.C. § 38-14.1-19(3)**

[¶1] Coyote Creek Mining Company, L.L.C. (“Coyote Creek”) filed an Application for Renewal of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Renewal Application”) on May 23, 2019 (Docket No. 1 in Case No. RC-19-189) and an Application for Revision of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Revision Application”) on May 20, 2019 (Docket No. 1 in Case No. RC-19-190. (hereinafter collectively referred to as the “Applications”). The Renewal Application relates to Coyote Creek’s request to renew Surface Coal Mining Permit No. NAAC-1302 (“Permit”) to allow Coyote Creek to continue to operate its mine within the existing permit area until October 22, 2024. The Revision Application incorporates changes requested by the North Dakota Public Service Commission (“PSC”). (Docket No. 2 in Case No. RC-19-189 and Docket No. 4 in Case No. RC-19-190).

[¶2] The PSC issued a Notice of Receipt of Renewal and Revision Applications on July 10, 2019. (Docket No. 2 in Case No. RC-19-189 and Docket No. 4 in Case No. RC-19-190). Pursuant to N.D. Cent. Code § 38-14.1-18, Casey Voigt and Julie Voigt (“Voigts”) had the right to provide written comments and objection to the Revision Application and to request an informal conference on the Revision Application and they exercised that right. Through their counsel in the captioned matters, the Voigts filed comments, objected to the mine plan and requested an informal hearing

on the Applications on August 26, 2019. (Docket No. 3 in Case No. RC-19-189 and Docket No. 8 in Case No. RC-19-190).

[¶3] The Voigts rights under 38-14.1-18 are not unlimited. The PSC clearly stated that “[w]ritten comments, objections, or requests for informal conference **must** be made by August 26, 2019.” (Docket No. 2 in Case No. RC-19-189 and Docket No. 4 in Case No. RC-19-190) (emphasis added). Despite the deadline for comments and objections having passed a month ago, the Voigts are now requesting permission to further observe and comment in an effort to gather more comments and objections.

[¶4] At some point, the games must stop and the PSC imposed deadlines must be enforced. Coyote Creek’s Permit is set to expire in less than a month on October 22, 2019, and its Applications are currently pending. There is a very real risk of prejudice to Coyote Creek if the Renewal Application is delayed and mine operations are impacted. Under N.D. Cent. Code § 38-14.1-22, a Permit has “the right of successive renewal...and such renewal must be issued within a reasonable time ...” unless it established that one of five conditions identified in the statute are met. *Id.* A reasonable time within which to issue the renewal must be prior to its expiration in less than a month. The Voigts continue to employ tactics to delay the renewal.

[¶5] The Voigts are seeking to gather additional reclamation related information well outside the scope of what they have previously identified as “Issue Six” in their written comments. (Docket No. 3 in Case No. RC-19-189 and Docket No. 8 in Case No. RC-19-190). In “Issue Six” they specifically pointed to reclamation performed by another party to support their argument that “CCMC’s recent reclamation efforts raise questions as to CCMC’s ability to reclaim the mine.” *Id.* They also stated that they are not requesting a specific fix for this issue at this time, but they are nonetheless taking this opportunity to alert the PSC to their concerns that if CCMC cannot

successfully reclaim even this small area of land, that CCMC seems ill-equipped to reclaim the rest of the mine.” *Id.* Bearing in mind that “[o]n an application for renewal, the burden is on the opponents of renewal”, the Voigts are now hoping to supplement their false accusations and comments with further blanket investigations over a month past the PSC imposed deadline with additional reclamation information, likely in an attempt to remedy their own mistake. N.D. Cent. Code § 38-14.1-22(2).

[¶6] Even if not time barred, the information the Voigts are seeking will not help in consideration of the renewal factors set forth in 38-14.1-22(1)(a-e) nor is it relevant to their comments. They request access to reclamation variance areas number one and number two and any other locations upon which CCMC has restored subsoil, topsoil, or conducted any re-seeding or planting. (Docket No. 17 in Case No. RC-19-189 and Docket No. 23 in Case No. RC-19-190). It is important to note that this is an active mine, not currently at the stage where any reclamation has been fully completed. There are areas at various stages of reclamation but none are far enough along in the process to properly evaluate success. Permit expiration is less than a month away. An inspection to gather incomplete reclamation information that cannot be used in comments or objections because we are a month past the deadline is not helpful in this case. Allowing the Voigts to ignore clearly stated deadlines and circumvent the renewal process set forth in N.D. Cent. Code Ch. 38-14.1 poses a significant prejudicial impact to Coyote Creek’s mining operations and should not be condoned.

[¶7] The Voigts do not have an absolute right to an inspection under N.D. Cent. Code § 38-14.1-19(3). Under that provision, the PSC “may” arrange access to the “proposed mining area for the purpose of gathering information relative to such conference.” In this case, the Voigts are not seeking access to the “proposed mining area” but to multiple areas that are in various stages of the

reclamation process. Any attempt to expand their comments into these multiple areas that in are various stages of the reclamation process is purposefully misleading at best. Furthermore, this is not a mine access issue. Unfortunately, it appears to be nothing more than a tactic to sidetrack Coyote Creek's Permit renewal. Finally, it should again be emphasized that the area for which the Voigts are requesting access is not "relative to the conference" because as stated, these areas were not the subject of their comments and no reclamation exists on these areas from which information may be gathered for the stated purpose of their comments. How much information must be gathered, and at what expense, for an issue for which they are "not requesting a specific fix." (Docket No. 3 in Case No. RC-19-189 and Docket No. 8 in Case No. RC-19-190)

[¶8] The Voigts negotiated and then executed a lease with Coyote Creek. The lease they negotiated gives them rights to inspect the mine in accordance with the lease provisions. Coyote Creek has granted the Voigts access to the mine on multiple occasions and will continue to welcome them on to the premises for legitimate purposes in accordance with the terms and provisions agreed to by the parties in the lease. Coyote Creek will not, however, sit idly by while counsel for the Voigts attempts a fishing expedition where anything they think they will find cannot even be used. With expiration of the permit less than a month away, these delay tactics result in prejudice to the mine and should not be condoned. Furthermore, the lease signed by the Voigts in favor of the mine also grants Coyote Creek the right to conduct mining operations. Delay tactics by the Voigts which in any way jeopardizes permit renewal could constitute a breach of the contractual obligations. For the reasons set forth herein, Coyote Creek respectfully requests that the request to conduct mine inspection be denied.

Dated this 27th day of September, 2019.

Respectfully submitted,

Coyote Creek Mining Company, L.L.C.

CROWLEY FLECK PLLP

Attorneys for Applicant

100 West Broadway, Suite 250

P.O. Box 2798

Bismarck, North Dakota 58502

(701) 223-6585

By: /s/ Wade C. Mann

WADE C. MANN (Bar ID No. 05871)

wmann@crowleyfleck.com