



October 4, 2019

The Honorable Timothy Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 N 14th St., #303
Bismarck, ND 58503
tjdawson@nd.gov

Re: Coyote Creek Mining Company, L.L.C. Renewal No. 1, Permit NACC-1302 Revision No. 9, Permit NACC-1302 Applications, PSC Case Nos. RC-19-189 and Case No. RC-19-190

Judge Dawson:

In the interest of cultivating a productive conversation next week, I am writing to provide additional information and detail about the issues the Voigts intend to discuss with the Public Service Commission (“PSC”) and Coyote Creek Mining Company (“CCMC”) at Tuesday’s informal conference. We previously discussed at the pre-hearing conference that if the Voigts have additional information to provide regarding the details of what they would like discuss at the conference, that we would provide an update. I am providing this update now that CCMC and the PSC have submitted additional rounds of submittals and deficiency letters, respectively, and further now that we have had the opportunity to complete this week’s mine inspection.

Originally, the Voigts raised seven issues. For ease of reference, the issues are summarized here:

1. Issue One: Access
2. Issue Two: Dust
3. Issue Three: Alluvial Valley Floors
4. Issue Four: Cultural Resource Sites
5. Issue Five: Sediment Build-up in Coyote Creek
6. Issue Six: CCMC’s Ability to Reclaim the Mine
7. Issue Seven: Coyote Station’s Control of the Mine

Regarding issue number four (cultural resource sites), the Voigts do not intend to discuss this further at the informal conference. The Voigts have reviewed the additional materials submitted by CCMC to the PSC on this topic after the close of the comment period and are

36 RC-19-190 Filed 10/04/2019 Pages: 4
Letter to Judge Dawson regarding Informal Conference
Casey and Julie Voigt
JJ England, Braaten Law Firm

28 RC-19-189 Filed 10/04/2019 Pages: 4
Letter to Judge Dawson regarding Informal Conference
Casey and Julie Voigt
JJ England, Braaten Law Firm

satisfied that CCMC's additional filings are sufficient to address their concerns on this issue.

Regarding issue seven (Coyote Station control of CCMC and Coyote Station's payment of CCMC's environmental fines), the Voigts remain very concerned that Coyote Station requires its own surface mining permit because it meets the definition of a mine "operator" under N.D.C.C. § 38-14.1-02(10). Specifically, the Station is "controlling a surface coal mining operation." *Id.* Coyote Station exercises this control through the Lignite Sales Agreement discussed in the Voigts' comments. This contract gives Coyote Station direct control over CCMC's mine plans and the vast majority of CCMC's expenditures. This is deeply concerning. Regardless of that concern, however, the Voigts do not intend to discuss this further at the informal conference because Coyote Station is not actively participating in these proceedings and, on further reflection, this will make it difficult if not impossible to address this issue adequately at this time. It frustrates the Voigts that Coyote Station's control over CCMC makes it more difficult to address issues directly with CCMC and the Voigts believe that this control has contributed to many of the issues that have arisen between the Voigts and the Mine. If needed, the Voigts will raise the issue of Coyote Station's role as a mine operator directly with the PSC in a separate proceeding in the future.

Regarding issue six (mine reclamation), when the Voigts originally raised this issue in their comments and objections, they noted at the time that they were not asking for specific relief from the PSC on this topic. However, this week the Voigts came across very concerning findings during their mine inspection. This inspection was the Voigts' first opportunity to see any of the mine's reclamation. During the inspection, the Voigts inspected a tract of land which they understand CCMC was supposed to re-seed to native grassland this year (this land is located in the Variance Area One in the North Pits, and coal was removed from this area in 2016). Previously, CCMC planted a cover crop on this land. Instead of revegetating this land to native grassland after planting this cover crop, it appears that CCMC never re-seeded this land to grassland at all. The entire field is now infested with a thick carpet of weeds that will likely take multiple years to repair. As this was CCMC's first attempt at mine reclamation, this is particularly concerning because it may indicate a pattern for the future. At the informal conference, the Voigts intend to discuss reclamation of this field and what went wrong. The Voigts now also seek specific relief on this topic in the form of a modification to CCMC's mine permit and plans to ensure that this does not happen again in future years. On the basis of the inspection, the Voigts also hereby object to the bond amount and assert that the current bond amount no longer reflects the worst case mine reclamation scenario. The bond amount must be raised, and the Voigts intend to discuss the adequacy of the bond and inclusion of reclamation failure or delay in the worst-case reclamation cost.

Finally, regarding issue seven (alluvial valley floors), the Voigts would like to discuss the fact that they hired a consulting firm, Western Plains Consulting, who completed drilling in the Voigts' alfalfa fields today. Groundwater was located in these fields at approximately

Judge Dawson

October 4, 2019

Page 3 of 3

11 feet, within the rooting zone of the Voigts' alfalfa. There are also soil indicators of subirrigation. This information will be provided to the PSC at the informal conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derrick Braaten", is written over a light blue rectangular background.

Derrick Braaten

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was on October 4, 2019 filed with the Public Service Commission by e-mail to ndpsc@nd.gov and USPS First Class Mail, and that the same was served by e-mail and by USPS First Class Mail upon the following:

The Honorable Timothy Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 N 14th St., #303
Bismarck, ND 58503
tjdawson@nd.gov

Wade Mann
Crowley Fleck, PLLP
PO Box 2798
Bismarck, ND 58502-2798
wmann@crowleyfleck.com

John Schuh
Special Assistant Attorney General
North Dakota Public Service
Commission
600 E Boulevard Dept. 408
Bismarck, ND 58505
jschuh@nd.gov

BRAATEN LAW FIRM

/s/ JJ England

JJ England, ND Bar #08135
109 North 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
jj@braatenlawfirm.com