

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**

**REQUESTED SUPPLEMENTAL INFORMATION
REGARDING FORMAL HEARING**

December 13, 2019

¶1. The North Dakota Legislative Assembly has declared the following with respect to the current proceedings:

1. Many surface coal mining operations may result in disturbances of surface areas that adversely affect the public welfare by diminishing the utility of land for commercial, industrial, residential, cultural, educational, scientific, recreational, agricultural, and forestry purposes, by causing erosion, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, other natural resources, and cultural resources.

2. The expansion of coal mining to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

3. Surface mining and reclamation technology as now developed requires effective and reasonable regulation of surface coal mining operations in accordance with the requirements of this chapter to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations.

4. Surface coal mining operations contribute to the economic well-being, security, and general welfare of the state and should be conducted in an environmentally sound manner.

5. Surface coal mining and reclamation operations should be so conducted as to aid in maintaining and improving the tax base, to provide for the conservation, development, management, and appropriate use of all the natural resources of affected areas for compatible multiple purposes, and to ensure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining.

6. Warrantless inspections are necessary in this state to ensure effective enforcement of surface coal mining and reclamation operation requirements.

N.D.C.C. § 38-14.1-01

[¶2]. With respect to the manner in which these goals are accomplished, the Legislative Assembly delegated the following powers and duties to the Public Service Commission:

5. To assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the commission under this chapter.

6. To encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.

[¶3]. In keeping with the policy goals of allowing public participation and encouraging cooperation from affected people, Casey and Julie Voigt filed comments on August 26, 2019 with the Public Service Commission, expressing their concerns regarding applications for Revision No. 9 and Renewal No. 1 of Surface Coal Mining Permit NACC-1302. Following an information hearing at which the Voigts presented additional investigations, testing, and expert testimony, legal counsel for the Public Service Commission requested supplemental information in advance of the Formal Hearing on NACC-1302 in an effort to provide further specificity regarding the Voigts' concerns. The Voigts are submitting the following to help explain the concerns they have with the applications referenced in this proceeding.

[¶4]. Casey and Julie Voigt (the Voigts) reside in Mercer County, North Dakota, near Beulah, North Dakota. The Voigts own the surface of much of Coyote Creek Mining Company's (CCMC) mining operation operated pursuant to NACC-1302 (Mine Permit). The Voigts' house is within the Mine Permit's boundary and is directly adjacent to the active mining area. The Voigts also operate an active cow-calf ranching operation upon the surface of the Mine Permit area.

[¶5]. The Voigts have submitted Concerns to the Mine Plan contained within CCMC's Revision No. 9 and Renewal No. 1 of the Mine Permit and participated in an informal conference regarding the revision and renewal applications. The Public Service Commission adopted the recommended findings resulting from the informal conference and approved CCMC's applications for renewal and revision of the Mine Permit. The Public Service Commission also added a special condition to the mine's permit to log the mine's dust-control efforts. This special condition was added based upon the information provided at the informal conference. The Voigts subsequently requested a Formal Hearing and the same is scheduled to be held before the Public Service Commission on Monday, December 16, 2019.

[¶6]. The Voigts have concerns with regard to renewal and revision of the Mine Permit in five areas: access to their surface land, dust control, the presence of an alluvial valley floor within the Mine Permit area, sediment build-up in Coyote Creek, CCMC's ability to reclaim the Mine.

CONCERN 1: Access to the Voigts' Surface Land

[¶7]. The Mine Plan raises significant concerns regarding the Voigts' ability to access their surface and appears to violate the terms of CCMC's prior agreement with the Voigts and Mercer County.

[¶8]. The Voigt farmstead is located at the center of Section 31, T143N, R88W, on the west bank of Coyote Creek, and the Voigts' ranch includes land between Coyote Creek and County Road 13. Before CCMC's construction of the mine, a public road, identified as 17th St. SW (or County Road 25 on Google Maps), allowed the Voigts to easily access both their lands to the west of their house and County Road 13. 17th St. SW runs east west and includes an improved bridge

over Coyote Creek. That bridge is directly adjacent to the Voigts' house. Essentially, this road was the Voigts' main access to the Voigts' ranch.

[¶9]. Pursuant to N.D.C.C. § 38-01-07.1 (“Road may be closed for surface coal mining operations”), Mercer County granted CCMC’s request to close this road so CCMC could mine coal under the public road. Following several days of hearings, however, Mercer County also required CCMC to provide the Voigts and affected members of the public with access through and across the mine. CCMC indicated to Mercer County, as well as the Voigts and the public, that this road would be reconstructed in the year 2024.

[¶10]. The estimated reconstruction has been put in doubt by the mine plan as indicated by the current significant revision (Revision #9). CCMC’s new proposed mine plan deviates significantly from its previous mine plans and raises significant concerns of how and whether CCMC will reconstruct County Road 25 in the year 2024. If CCMC is unable to comply with the terms of the resolution, that raises significant questions regarding the Voigts’ ability to access their land. The PSC has jurisdiction over this issue pursuant to N.D.A.C. § 69-05.2-09-07, which states:

Each application must describe, with appropriate maps and cross sections, measures to ensure the interests of landowners and the public are protected if the applicant plans to:

1. Conduct surface mining activities within one hundred feet [30.48 meters] of the right-of-way line of any public road, except where mine access or haul roads join that right of way; or
2. Relocate a public road.

[¶11]. The mine’s applications to the PSC regarding Renewal 1 and Revision 9 of NACC-1302 does not contain information regarding measures to protect the public, including “appropriate

maps and cross sections,” regarding the closure of this road or the mine’s originally-planned reconstruction of this road in the year 2024.

REQUESTED ACTION REGARDING CONCERN 1

[¶12]. The Voigts request the Public Service Commission require CCMC to comply with N.D.A.C. § 69-05.2-09-07 by “describ[ing], with appropriate maps and cross sections, measures to ensure the interests of landowners and the public are protected” based upon CCMC’s mining of County Road 25 and apparent plans to not re-open this road in the year 2024.

CONCERN 2: Dust Control.

[¶13]. The Voigts live in the midst of the mine permit area. Their house is within the mine permit area, and the house is also directly adjacent to active mining. The Voigts also run cattle within the boundaries of the Coyote Creek Mine.

[¶14]. The Voigts’ understanding is that this situation does not exist at any other mines in North Dakota. Under the circumstances, it is perhaps unsurprising that dust has been a serious issue for the Voigts and their cattle. Because these circumstances are unique, additional protections need to be considered.

[¶15]. The Mine Plan is insufficient to minimize fugitive dust, which has caused significant problems for the Voigts over the past four years.

[¶16]. The Voigts have witnessed loss soil due to wind erosion, along with attendant fugitive dust, and this has been an ongoing and significant problem at the mine. These issues are compounded by the close proximity of the Voigts’ home, the Voigts’ cattle, and the active mining area. In other words, wind erosion does not just cause loss of soils – it also results in attendant fugitive dust that directly impacts the Voigts’ home. Soil regularly settles outside of the active mining area on the Voigts’ ranch and home. On multiple occasions, the Voigts’ cattle have been

enveloped in dust. The Voigts' yard and entire house have also been caked in a thick layer of dust, and coal trucks send clouds of dust across the mine on a regular basis. The Voigts will further demonstrate these ongoing issues with dust control through evidence submitted at the formal hearing.

[¶17]. Following the informal conference, the PSC added the following special condition on permit NACC-1302:

- a. Coyote Creek Mining Company, L.L.C. shall maintain detailed records of all measures and methods used on a daily basis to effectively control wind erosion and attendant air pollution. These records shall be maintained at the mine office and be available during mine inspections.

REQUESTED ACTION REGARDING CONCERN 2

[¶18]. The Voigts appreciate the special condition that has been added to this permit. However, the permit condition is insufficient to address these serious issues. The Voigts specifically request a condition requiring dust monitors at key locations within the active mining area to ensure that the mine is aware of wind erosion and attendant excessive fugitive dust. This would ensure that the mine can respond more quickly and effectively to wind erosion, and it would also provide notice to the Voigts if their cattle (or the Voigts themselves) are exposed to excessive fugitive dust. It should also be noted that, to the extent the mine is at some point successful in controlling the fugitive dust, these monitors will act as an objective verification.

CONCERN 3: Alluvial Valley Floors

[¶19]. The Voigts have two alfalfa fields along the banks of Coyote Creek that are subirrigated and meet the definition of an alluvial valley floor. The Public Service Commission has previously determined these two fields are not an alluvial valley floor because the fields were

not flood irrigated or subirrigated. At the time this finding was made, no party, nor the Commission's staff, had conducted soil borings to make specific findings related to the water table and soil saturation.

[¶20]. Two years ago, Knife River Corporation drilled four holes in each alfalfa field to determine whether gravel deposits were present. All four cores drilled in the south alfalfa field showed the presence of groundwater at a depth of 11 feet in a seam of gravel approximately two feet thick. All four cores drilled in the north alfalfa field showed the presence of groundwater at a depth of 13 feet in a seam of gravel approximately one and a half feet thick. These depths are in alfalfa's rooting zone.

[¶21]. More recently, the Voigts hired a consultant to drill numerous soil bores within their alfalfa fields. The Voigts intend to present information gathered from this soil boring to the Public Service Commission. The information shows that depth-to-groundwater is within the rooting zone of the Voigts' alfalfa.

REQUESTED ACTION REGARDING CONCERN 3

[¶22]. The Voigts request an updated alluvial valley floor determination that considers the new information gathered by the Voigts. The Voigts also request the installation of monitoring wells within their fields to ensure that their alfalfa fields—which are critical to their ranching operation—are protected from adjacent mining activities, and to establish a baseline for the hydrology of the fields so that, if the active mining ever has a negative impact on the hydrology and natural springs and other potential sources of water in the Creek valley hydrology, the Voigts are able to protect and re-establish the critical hydrologic balance of their subirrigated alfalfa fields.

CONCERN 4: Sediment Buildup in Coyote Creek

[¶23]. Significant buildup of sediment has accumulated directly between CCMC's outfall from P31-02 and CCMC's box culvert crossing Coyote Creek near CCMC's main shop and office. This location is within the Mine Permit.

[¶24]. It appears CCMC's discharges from the outfall have created new land in the middle of Coyote Creek due to sediment buildup from CCMC's retention pond, impacting flow on the stream. The Public Service Commission regulates sediment ponds.



[¶25]. The discharge pipe seen in the photo above discharges water into the Creek. The sediment buildup extending out into the first and second box culvert is recent buildup.

REQUESTION ACTION REGARDING CONCERN 4

[¶26]. The Voigts request a special condition on permit NACC-1302 that requires the mine to visually inspect Coyote Creek on a monthly basis when the creek is not frozen to locate sediment build-up adjacent to the mine's sediment pond discharge pipes, and these inspections should be documented with photo and video evidence, and a report submitted to the PSC. If sediment build-up is located, the condition should also require the mine to determine the root cause of the build-up to ensure that the build-up is not originating from the pipes.

CONCERN 5: Reclamation Issues

[¶27]. CCMC has begun reclamation operations at the mine. During the informal conference, the Voigts requested an inspection of the mine as allowed by statute. The mine objected to the inspection and tried to block the inspection. During the inspection, the Voigts discovered very concerning issues regarding the mine's reclamation and its revegetation efforts. Specifically, a portion of the mine where reclamation has begun is carpeted in uncontrolled weeds. The weeds have been allowed to go to seed, spreading viable seed throughout the area, which will require years of additional control. This could have been prevented by controlling the weeds before they were allowed to go to seed. This is undisputed. The Voigts were unaware of this until the mine inspection that occurred prior to the informal conference.

REQUESTED ACTION REGARDING CONCERN 5

[¶28]. The Voigts request a special condition on permit NACC-1302 requiring the mine to use certified-weed-free mulch, straw, and seed.

[¶29]. The Voigts request an additional special condition on the permit to allow them to inspect reclamation progress annually during the summer months.

OTHER CONCERNS

[¶30]. The Voigts expressed other concerns regarding cultural resources and the apparent lack of responsibility from the Mine in their initial comments. The Mine addressed the Voigts' concerns regarding cultural resources before the informal hearing. While the Voigts continue to have serious concerns about the Mine's ability to reclaim, and its ultimate responsibility for mining reclamation, they are choosing to focus on more immediate and practical concerns at this formal hearing. They would note, however, that asking parent companies to sign off on bonding is an accepted practice before the PSC for wind developers, and believe that when other entities exert

control over active mines, these considerations are relevant and important to the permitting process and to ensuring ultimate reclamation success.

WITNESSES

[¶31]. The Voigts will present testimony from the following witnesses, in addition to expressing their own concerns to the Commission.

[¶32]. Lance Loken: Mr. Loken drilled a series of soil bores on the Voigt alfalfa fields on October 4, 2019. Mr. Loken will testify as to his findings and the drilling process. Specifically, Mr. Loken will testify to the signs of subirrigation he found as a result of the soil bores, and will also explain his findings regarding the depth to the water table. Mr. Loken has extensive experience in this area and is a professional soil classifier, soil scientist, and geologist. His curriculum vitae is attached, as well as a number of pictures he will discuss and present.

[¶33]. Mark Anderson: Mark Anderson is a rangeland specialist with decades of experience working for the Natural Resource Conservation Service. He is an expert in rangeland plantings and vegetation, and the management of health pasture, range, and native prairie environments. Mr. Anderson will testify regarding the failed revegetation efforts at the mine, and specifically about his concerns regarding the lack of weed management on lands where reclamation efforts are underway. Mr. Anderson inspected these lands on a mine visit in October, and copies of his pictures with some brief comments, as well as his curriculum vitae are attached for reference.

[¶34]. Shane Bofto: Mr. Bofto is a chemical and environmental engineer who has extensive experience with air quality monitoring, SMCRA permitting, water control discharge and stormwater control, SPPP permitting, and general coal mine permitting and regulation. Mr. Bofto has worked for numerous clients on these issues, including landowners, coal mines, and Montana

state agencies. Mr. Bofito will discuss his experience with other coal mines and their dust control technologies and offer practical insight into the ways that other coal mines have been able to more successfully control dust. Mr. Bofito will also discuss his opinions regarding the water discharges from sediment pond P31-02 and appropriate measures to minimize risk of sediment build-up from the mine.

Dated this 13th day of December, 2019.

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