

COYOTE CREEK MINING COMPANY, L.L.C.

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION



6502 17th Street SW
Zap, ND 58580

(701) 873-7800 • Fax (701) 873-7810

September 16, 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 three DVDs containing changes as a response to your letter dated August 9, 2019 for Renewal 1 and Revision 9 of Surface Coal Mining Permit NACC-1302. Please see responses below.

Section 1.1 – Introductory Information

1. Follow-up to pre-renewal review Item No. 1: The bookmark for Revision 5 in the Application Forms provided in Section 1.1.1 still does not work. Please review and repair the bookmark. (BEB)
 - a. Requested changes were made to Section 1.1.1.

Section 1.2.6 – Relation to Mining – Prohibited Areas and Areas Designated Unsuitable

2. The Proposed Section Line and Road Closures and Setback Waivers Map, Section 1.2.6.1, depicts the section line between the SE1/4 of Section 30 and the SW1/4 of Section 29 of T143N, R88W as being closed, but relocated County Road No. 12 has been constructed within portions of this right-of-way. Please review and revise if the county reopened this right-of-way. (GAW)
 - a. Requested changes were made to Section 1.2.6.1. Setbacks on the map were also updated to reflect SHPO approval of the cultural resource management plan.

Section 1.3 – Business Entity/Compliance Information

3. Follow-up to pre-renewal review Item No. 6: All references to the North Dakota Department of Health in Section 1.3.5, Other Licenses and Permits, should be changed to the North Dakota Department of Environmental Quality. (BEB)
 - a. Requested changes were made to pages 1-2 of Section 1.3.5.
4. Follow-up to pre-renewal review Item No. 6: The Army Corps of Engineer's Regional General Permit expired in 2018 and the individual permit should have been issued. Please update the information on page 2 of Section 1.3.5. (PJR)
 - a. Requested changes were made to page 2 of Section 1.3.5. The temporary water permit number located on this same page was updated as well.

Section 2.2.4 – Surface Water Hydrologic Reclamation Plan and Probable Hydrologic Consequences

5. Please update the Post-Mine Ephemeral Drainage Map, Section 2.2.4.4, to account for the topographic changes proposed with Revision No. 9. This includes watersheds, land use boundaries and pond and wetland locations. (GAW)
 - a. Requested changes were made to Section 2.2.4.4.
6. Please update the Ephemeral Drain Summary information in Section 2.2.4.5, to account for topographical and land uses changes proposed with Revision No. 9. Surface water runoff peak flow velocity in each reconstructed drainageway should not exceed 5.00 ft/s, or a value greater than was previously approved. (GAW)
 - a. Requested changes were made to Section 2.2.4.5.
7. Please update the Ephemeral Drainage Profiles, Section 2.2.4.6, to account for topographic and land use changes proposed with Revision No. 9. (GAW)
 - a. Requested changes were made to Section 2.2.4.6.

Section 2.7 – Fish and Wildlife Resources

8. Follow-up to pre-renewal review Item No. 15: As previously requested, please update the Protection, Enhancement and Management Plans in Section 2.7.3 to describe the BLM exclusion area in the northeastern portion of the SW1/4 of Section 24 and depict this exclusion area on an appropriate map. (GAW)
 - a. CCMC applied for a federal coal lease on two tracts within the current approved permit area in December 2017. If the lease is obtained following the record of decision on the project, CCMC will propose all related mine plan changes and conditions in a later revision.
9. Follow-up to pre-renewal review Items No. 16 and 17: We strongly encourage Coyote Creek to re-evaluate all lands to be disturbed during the next term of the permit, and an adjacent area, during the summer of 2019 to determine if any areas contain potentially suitable Dakota skipper habitat using the 2018 Dakota skipper survey protocol. The 2019 Dakota skipper habitat assessment survey can be completed by an experienced range scientist, ecologist or botanist and the results of this survey should be provided prior to permit renewal. The reason for requesting this information prior to permit renewal is because the January 2019 Biological Assessment (BA) for federal coal leases identifies potentially suitable habitat on all native grassland surrounding the SW1/4 of Section 24 and the SE1/4 of Section 26 in permit NACC-1302. We suggest a meeting between our offices to discuss this matter further. (GAW)
 - a. Requested changes were made to pages 3 and 4 of Section 2.7.4 after conversations with NDPSC staff. Final compiled results of the USFWS protocol level surveys performed in 2019, showing no occupancy of the Dakota skipper on 840 acres, have not yet been received by CCMC but are expected as soon as October 1. The results will be available to NDPSC staff for review and will be submitted in the Biennial Wildlife Report due early 2020.

10. Follow-up to pre-renewal review Item No. 19: As previously requested, please revise Table 1 of Section 2.7.4, Federal Threatened, Endangered and Candidate Species in North Dakota, so that the information is current. The Rusty Patched Bumblebee is listed as an endangered species and its range includes North Dakota so this species must be added to the North Dakota list. CCMC is also proposing to remove the Black footed ferret and gray wolf from Table 1, but these species are still listed as endangered species in North Dakota. (PJR/GAW)
 - a. Table 1 of Section 2.7.4 has been updated to reflect species listed as candidate, threatened or endangered for North Dakota according to the Information for Planning and Consultation (IPaC) portal on the U.S. Fish & Wildlife Service website, which is the recommended source for accurate and up to date listings. Changes were made to pages 3 and 4 to better explain the contents of the table and their source. Specifically, the historic range of the Rusty Patch Bumblebee only included the eastern edge of North Dakota (<https://www.fws.gov/midwest/endangered/insects/rpbb/factsheetrpbb.html>) and historically never extended to the central or western part of the state.

Section 2.8 – Cultural Resources

11. Based on recent correspondence between Coyote Creek Mine and the Reclamation Division regarding National Register of Historic Places (NRHP) eligible sites and completed mitigation efforts, please update the Cultural Resource Summary Table in Section 2.8.2 with current information. Updates to the cultural resources location map in Section 2.8.3 and any other information or correspondence updates in Section 2.8 should be made at this time. (BEB)
 - a. Requested changes were made to Section 2.8.2. All other maps, information and correspondence is up to date.

Section 3.1 – Operations Plans

12. Most of the many hyperlinks provided between and including Section 3.1.1 through Section 3.1.1.6 do not work. Please activate these links so they connect to their intended sources. (BEB)
 - a. The hyperlink function appears to not be working with the latest updates. Further investigation will follow to see if they can be restored.

Section 3.1.1 – Soils Handling Narrative

13. Please update Section 3.1.1.1 to include a commitment in the permit to document the actual measures used to minimize or alleviate soil compaction at the Coyote Creek Mine including areas respread to date. In addition, Section 3.1.1.1 states that vegetation production is to be measured within 3 years after revegetation but if seedings are delayed it is not clear how CCMC intends to promptly comply with the Commission's Order (Revision No. 2). (GAW)
 - a. As referenced, revision number two to this permit contained the updates necessary to comply with the Commission's Order relating to soil compaction. That revision was contemplated by both NDPSC staff and CCMC staff for three years. The changes approved last June fully satisfy the Commission's Order to describe detailed methods to minimize compaction, to conduct testing to determine if any excess compaction is present and to describe measures to alleviate excessive compaction if detected, as is specifically stated in the order. Seeding delays have been discussed with the surface owner of disturbed tracts and would not impact the methods described and approved in Section 3.1.1.1, would meet the aforementioned conditions listed in the order and would also allow CCMC, the surface owners and the NDPSC to continue our work toward our goal of long-term reclamation success.

Section 3.1.1.2 – Mining Methods Narrative

14. Please update the Fugitive Dust Control Plan narrative that begins on page four of Section 3.1.1.2 to accurately describe all measures and methods that have been used and that will continue to be used to control fugitive dust during the next term of the permit. Details regarding the use of calcium chloride on haul roads as outlined in an email request dated January 16, 2017 should be included in the permit, and wind erosion control measures described in an email dated December 4, 2015 should be described in the permit. The fugitive dust plan narrative should clearly state that CCMC will continually use the best technology currently available to control dust during the next term of the permit. (GAW)
 - a. Requested changes were made to pages 5-6 of Section 3.1.1.2.
15. The hyperlinks provided in Section 3.2.1, Transportation Facilities Narrative, do not work. Please activate these links so they connect to their intended sources. (BEB)
 - a. The hyperlink function appears to not be working with the latest updates. Further investigation will follow to see if they can be restored.

Section 3.1.1.8 – Reclamation Costs

16. Please update the paragraph under Worst Case Analysis in Section 3.1.1.8 where it states that *“the five year term, 2015 through 2019”*, was reviewed in the estimated reclamation cost calculation. The sentence should be updated to state the years 2019 through 2024. (BAJ)
 - a. Requested changes were made to page 3 of Section 3.1.1.8.
17. Please review and update the Haulroads & Ramps portion of Section 3.1.1.8.2 – Overburden Equipment Hours. The total length of haulroads and ramps listed by station is 62,300 feet. From the General Location Map in Section 3.1.1.8.6, the Reclamation Division calculates the length to be 66,132 feet. Some of the haulroads shown on the General Location Map may be in active mining areas and should not be shown, as the roads or ramps would be reclaimed during rough grading. Please review and correct if necessary. (BAJ)
 - a. The total length of haul roads was updated to 64,300 feet to reflect the extended dragline access trail. Total overburden volume was also adjusted to reflect this, as well as surface material removal along haul roads in Section 30. Requested changes were made to Sections 3.1.1.8.1, 3.1.1.8.2, 3.1.1.8.4, 3.1.1.8.6, 3.1.1.8.7 and 3.1.1.8.8.

Section 3.1.3 – Pit Layout and Facilities Map

18. Follow-up to pre-renewal review Item No. 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). The woodlands in the northeast corner of the SW1/4 of Section 24 should be depicted as a tree avoidance area since BLM has classified this area as an exclusion area. (GAW)
 - a. CCMC applied for a federal coal lease on two tracts within the current approved permit area in December 2017. If the lease is obtained following the record of decision on the project, CCMC will propose all related mine plan changes and conditions in a later revision. Other tree avoidance areas are already identified in Section 3.1.3.
19. Please place the discharge point identification numbers along the north haulroad back on the Pit Layout and Facilities Map. These discharge point identification numbers were included in approved Revision No. 8 and previous revisions to the permit, but were deleted from the permit with the application for Revision No. 9. (BEB)
 - a. Requested changes were made to Section 3.1.3.

Section 3.1.5 – Post-Mining Topography Map

20. CCMC is proposing topographic changes in the northeast corner of the SW1/4 of Section 24 where BLM identifies a woodland exclusion area. Please revise the map by removing the disturbance and topography changes depicted in the woodland exclusion area. (GAW)
 - a. CCMC applied for a federal coal lease on two tracts within the current approved permit area in December 2017. If the lease is obtained following the record of decision on the project, CCMC will propose all related mine plan changes and conditions in a later revision.
21. The Post-Mining Topography Map depicts topographical changes in the wooded draws in the SE1/4 of Section 23, NE1/4 of Section 26, SW1/4 of Section 26 and SE1/4 of Section 27 where coal removal is not planned. Please remove the topographical changes depicted in areas of associated disturbance and identify these wooded draws as potential woodland avoidance areas on the Pit Layout and Facilities Map, Section 3.1.3. NDAC 69-05.2-13-05 (GAW)
 - a. Changes were made to Sections 2.2.4.2, 3.1.5, 3.1.6 and 4.1.2.

Section 3.2.1 – Transportation Facilities Narrative

22. Please review the Reclaimed Public Road narrative on page 3 of Section 3.2.1 to clarify landowner requests regarding reconstructed section line rights-of-way. The ND Department of Trust Lands preference statement requests approaches off County Road No. 13 and section line ingress and egress access to their properties and it would seem that suitable road access should be provided along the north and south sides of Section 25 to facilitate equipment access to cropland/hayland fields. (GAW)
 - a. Requested changes were made to page 3 of Section 3.2.1.

Section 3.3 – Surface Water Management

23. Please revise Section 3.3 to discuss if there are any culverts or bridges in drainages along trails used by surface owners or lessees that will be impacted by discharges from sediment ponds. (GAW)
 - a. Requested changes were made to page 4 of Section 3.3.1.
24. Please revise the Surface Water Management Plan, Section 3.3.1, to explain how runoff from disturbance in the watershed above sediment pond P26-04 will be managed prior to the construction of sediment pond P26-04. The pond construction schedule indicates sediment pond P26-04 will be constructed in 2025 but mining is planned in the watershed in 2022. (GAW)
 - a. An additional pond was added to Section 3.1.3, 3.3.2 and 3.3.4.

Section 4.1 – Post-Mining Land Use Plans

25. The hyperlinks provided in Section 4.1.1, Narrative, do not work. Please activate these links so they connect to their intended sources. (BEB)
 - a. The hyperlink function appears to not be working with the latest updates. Further investigation will follow to see if they can be restored.

26. Please revise Section 4.1.1 to clarify the type of roads that will be reconstructed on each section line right-of-way affected by mining activities. The ND Department of Trust Lands preference statement requests approaches off County Road No. 13 and section line ingress and egress access to their properties. Of particular interest is whether a permanent section line road will be constructed along the south or north sides of Section 36 to replace the “unauthorized” road that allowed public access between County Roads 13 and 25. Section 3.1.3.6 states that this road may be replaced but the State does not want this road replaced on their property according to their preference statement. The Reclamation Division encourages CCMC to construct suitable roads along either the north or south side of Section 36 to replace the access that existed prior to mining. This may include a raised roadbed with culverts and approaches that are at least as good as that being provided during mining to replace the “unauthorized” road in Section 36. (GAW)
 - a. Information on roads in reclamation areas can be found in Section 3.2.1 and would be duplicative to include in Section 4.1.1. Page 1 of Section 3.1.1.6 explains the condition of the roads present pre-mine. This section has also been updated to reflect an agreement to clarify both access and the final location of the “unauthorized” road which was signed in May of 2016 by both CCMC and Mercer County, who has the sole authority for roads according to NDCC 24-05-17. The agreement has also been added to Section 1.2.8 as an attachment to the existing road closure document. Annual updates have been given to the county as required in the agreement, and no access issues or otherwise arose during the last meeting on May 1, 2019, at which affected parties were present.

27. Follow-up to pre-renewal review Item No. 38: Please review the locations where woodlands are to be planted in Sections 30 and 31. It appears all five plantings are in areas impacted by long-term features or facilities, such as stockpiles and haul roads, and two woodlands in the SW1/4 of Section 31 are shown on slopes with a south-facing aspect. Please review to determine if some or all of these plantings could be moved to locations where reclamation will be contemporaneous on areas with suitable aspect. (GAW)
 - a. All efforts were made to retain woodlands on tracts they were disturbed so pre- and post-mine acres of all land uses are the same on all tracts, unless requested on the surface owner’s preference statement. The location of the woodlands in Section 31 were relocated to an area with a more suitable aspect in Section 4.1.2.

28. The Post Mining Topography and Land Use Map, Section 4.1.2, depicts three reclaimed woodlands in the SW1/4 of Section 24 and the Woodland Summary table on page 6 of Section 4.2.3, Trees and Shrubs, indicates that 4.22 acres of trees are to be reclaimed on this tract. BLM’s Environmental Assessment identifies the woody draw on this tract as an exclusion area so perhaps 4.22 acres of woodland would not be disturbed. Please review and revise if necessary. Pre-Mining Woodlands within the woody exclusion area should be depicted as undisturbed woodlands on the Post Mining Topography and Land Use Map. (GAW)
 - a. CCMC applied for a federal coal lease on two tracts within the current approved permit area in December 2017. If the lease is obtained following the record of decision on the project, CCMC will propose all related mine plan changes and conditions in a later revision.

29. Woodlands that have been disturbed are depicted as undisturbed woodland in the SW1/4 of Section 30 on the Post Mining Topography and Land Use Map, 4.1.2. Please correct this error. (GAW)
 - a. Requested changes were made to the map in Section 4.1.2. These acres have already been accounted for in reclamation so no further changes are necessary.

30. Woodlands that have been disturbed are depicted as undisturbed woodlands in the W1/2 of Section 31 on the Post Mining Topography and Land Use Map, 4.1.2. Please correct this error. (GAW)
 - a. Requested changes were made to the map in Section 4.1.2. These acres have already been accounted for in reclamation so no further changes are necessary.
31. CCMC is proposing topographic changes in the NW1/4 of Section 6 that include expanding a hill beyond the coal removal boundary. It appears CCMC is planning to place box cut spoil in this area. Topographic changes are also proposed west of this pile (south of created wetland CW-06-02) along a slope that appears less desirable than that currently approved. Please review and revise to minimize topographic changes to areas where coal is not being removed, and revise or retain the previously approved topography south of created wetland CW-06-02. (GAW)
 - a. Requested changes were made to Sections 2.2.4.2, 3.1.5, 3.1.6 and 4.1.2.

Section 4.2 – Revegetation Procedures, Establishment and Management

32. Follow-up to pre-renewal review Item No. 37: NDAC 69-05.2-22-04 requires seeding and planting at the first normal period after topsoil has been respread. Please revise the permit to include a specific request for a variance from this requirement for each area where a perennial seeding delay is planned and include a map that identifies each area. Please also revise the narrative on page 2 of Section 4.3.1 to state that a perennial seed mixture will be planted on areas with slopes exceeding 9 percent and in drainage ways. The Reclamation Division will not approve managing areas to be reclaimed to native grassland with annual seedings in drainage ways or on areas with slopes exceeding 9 percent. Details of management plans must be provided for each area where a perennial seeding (including native grass seedings and woodland plantings) is to be delayed. (GAW)
 - a. As discussed with Mr. Welch during an on-site inspection on July 9, 2019, CCMC commits to tracking all seeding information on the Annual Map, which is already required. The variance language has been clarified on page 2 of Section 4.3.1, along with other requested changes. The administrative code referenced above states “seeding and planting of disturbed areas must be conducted during the first normal period for favorable planting conditions after suitable plant growth materials have been spread.” Over the course of mining and reclamation, it has been found that invasive species enter and eventually overtake reclaimed tracts of native grassland because they weren’t eliminated from the topsoil seed bank from undisturbed lands. The first favorable planting conditions would then have to be considered conditions that support a long-term stand and allow for the elimination of introduced species and the prudent approach of delaying seeding to accommodate such practices and long-term goals.
33. Follow-up to pre-renewal review Item No. 38: Please revise the tree and shrub planting procedures in Section 4.2.3, Trees and Shrubs, to include site-specific detailed procedural and management plans with timelines that will further ensure tree planting establishment success. This must include details about site preparation preceding planting, erosion control, weed control and timelines for planting and applications of wood chips, slough hay or other suitable materials. Perhaps the practices recommended by NRCS Conservation Practice Standard 612, Tree/Shrub Establishment and/or other sources should be used to help ensure planting success that is SMART (specific, measurable, achievable, relevant and time-bound). (GAW)
 - a. Requested changes were made to page 3 of Section 4.2.3.

Mr. Dean Moos
September 16, 2019
Page 8 of 8

Section 4.3 – Vegetation Assessment and Success Standards

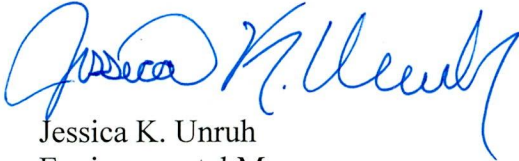
34. Follow-up to pre-renewal review Item No. 39: Please revise the third paragraph on page 1 of Section 4.3.1, Narrative, to state that native grassland reference areas will be established by the end of the second term of the permit (Renewal No. 1 expiration date). (GAW)
- a. As can be found in the language added on page 1 in Section 4.3.1, NDPSC staff and surface owner actions are needed to finalize establishment of native grassland reference areas. CCMC commits to working toward the goal of finalizing reference areas previously identified by CCMC by the end of the second term of the permit.

Section 1.1.2 Revision Summary Changes was also updated to reflect all new changes.

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.