

**Public Service Commission
Reclamation Division**

Memorandum

To: Zanna Brinkman, Jonathan Emmer, Jack Schuh
From: Monty Johnson
Date: September 30, 2022
Subject: MLJ response to “Comments of Casey and Julie Voigt, Objection to Mine Plan, and Request for Informal Hearing

Casey and Julie Voigt (Voigts) have requested an informal hearing before the Public Service Commission (PSC) in a letter submitted to the PSC by Braaten Law Firm on August 29, 2022, regarding Coyote Creek Mining Company’s Revision 12 to Permit NACC-1302. The Voigts made specific objections to the revisions made to Sections 2.5.4 and 2.5.7 to NACC-1302, among other revisions outside of my expertise. The following is a copy of the specific objections to Sections 2.5.4 and 2.5.7 with my response to each item.

1. *Sections 2.5.4, 2.5.7*
 - a. *According to CCMC, “the projected respread thicknesses in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 were corrected to 36” based on overburden Sample analyses. They were inadvertently labeled as 48” respread areas.”*
 - i. *The Voigts have not been made aware of any “overburden sample analyses” that justify this revision, nor has CCMC explained the source of its figures for the available topsoil and available subsoil in Section 2.5.4.2 – Soil Respread Depth Table.*

Response to 1(a)(i):

The projected Suitable Plant Growth Material (SPGM) thicknesses in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 are based on the physical and chemical properties (soil texture and sodium absorption ratio (SAR)) of overburden samples CC12020C, CC12018C, and CC12015C, respectively. All three samples were sampled in June of 2012, and the laboratory reports are listed in Permit NACC-1302 Section 2.1.7 – Overburden Sample Analyses. The laboratory reports were included in Section 2.1.7 in the original permit application and have remained unchanged in subsequent permit revisions, including Revision 12. The three samples appear to justify a projected 36-inch SPGM respread in the samples’ respective locations based on Coyote Creek’s proposed mining methods described in Section 2.5.4 – Soil Volume Methods and Section 3.1.1.3 – Mining Methods Narrative. In general, Section 2.5.4 and Section 3.1.1.3 state that Coyote Creek will use their truck-shovel fleet to remove the overburden that is greater than 85 feet above the target coal seam to be mined. The overburden material removed by the truck-shovel fleet is then hauled to an adjacent fill area where it is placed on top of the spoil created by the dragline and used for the final grading of the graded spoil surface. Because the overburden removed by the truck shovel-fleet is used to achieve the final graded spoil surface, option 2c in Policy Memorandum No. 17 To Mine Operators is used to project the pre-mining SPGM thicknesses in 40-acre increments. The projected respread thickness for the area represented by each drill hole will be specified based on the most undesirable material occurring in twenty percent or more of the overburden removed by the truck-

shovel fleet. The example worksheets used to calculate the projected SPGM thicknesses in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25 will be submitted as an exhibit.

Coyote Creek does in fact explain the source of its figures for the available topsoil and available subsoil in Section 2.5.4.2 – Soil Respread Depth Table. This explanation can be found in Section 2.5.4 – Soil Volume Methods under the Soil Inventory Calculations section.

- ii. *It is clear that the depths of soil respreading were not “inadvertently labeled” as the entire table is being revised to reduce the amounts of topsoil and subsoil being respread based on what CCMC has represented it has available. The obvious concern and primary question is how CCMC determined what amount is “available” and why it is now proposing to respread subsoil and topsoil contrary to the table is previously utilized at N.D.A.C. § 69-05.2-15-04(4).*

Response to 1(a)(ii):

It’s unclear what table is being referenced in the statement “*It is clear that the depths of soil respreading were not “inadvertently labeled” as the entire table is being revised to reduce the amounts of topsoil and subsoil being respread based on what CCMC has represented it has available*”. The Soil Volume Table in Section 2.5.4.1 and the Soil Respread Depth Table in Section 2.5.4.2 have remained unchanged since Revision 1 in December 2014 and Revision 5 in June 2016, respectively. The amount of SPGM available was determined based on a professional soil survey conducted by Prairie Soil Consulting found in Section 2.5.2 – Soil Report, and a further explanation can be found in Section 2.5.4 – Soil Volume Methods. Coyote Creek is not proposing to respread subsoil and topsoil contrary to the table in NDAC 69-05.2-15-04(4). Coyote Creek still must respread SPGM in accordance with NDAC 69-05.2-15-04(4) and Policy Memorandum No. 17 To Mine Operators.

- iii. *CCMC proposed to conduct its respreading operation based on the provisions of N.D.A.C. § 69-05.2-15-04(4) and made calculations based on soil chemistry regarding what amount of subsoil and soil would need to be respread to successfully reclaim the land. CCMC has not explained how significantly reducing the amount of suitable plant growth material being respread is going to achieve the same success with reclamation as its prior plans. Without a compelling justification, CCMC should not be allowed to so significantly reduce the amount of suitable plant growth material being respread across the mine*

Response to 1(a)(iii):

The only item that Coyote Creek has made changes to in Revision 12 regarding SPGM respread are the projected respread depths in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25. Just because Coyote Creek has projected a certain SPGM respread thickness does not mean that the actual required respread thickness will be the same as projected. The actual SPGM respread thickness will be determined based on graded spoil properties in accordance with NDAC 69-05.2-15-04(4) and Policy Memorandum No. 17 To Mine Operators.