

Thompson, Pamela J.

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Filing Accepted

Envelope Number: 5273267
Case Number: 08-2023-CV-01338
Case Style: Casey Voigt, et al. vs. North Dakota
Public Service Commission, et al.

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Filing Details	
Court	Burleigh County
Case Number	08-2023-CV-01338
Case Style	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
Date/Time Submitted	7/18/2023 2:30 PM CST
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Filing Description	CR Exhibit 55 - Informal Conference Exhibit Midterm prmt rwv ltr 5-25-22
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Filed By	Pamela Thompson
Filing Attorney	John Schuh

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Public Service Commission

State of North Dakota

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sent via email only

May 25, 2022

Mr. Jeremy Eckroth
Environmental Manager
Coyote Creek Mining Company, LLC
6502 17th St. SW
Zap, ND 58580
Jeremy.Eckroth@nacoal.com

Dear Mr. Eckroth:

The Reclamation Division has conducted a midterm review of Permit NACC-1302 for the Coyote Creek Mine as required by NDAC 69-05.2-11-01(1). We identified the following items during our review that require updating or modification as appropriate in a permit revision that should be submitted by **July 25, 2022**. The revision submittal will be not subject to the public notice requirements unless significant changes requiring public notice are included in the corresponding revision application.

General

1. Several blue highlighted and underlined references to other sections of the permit appears to be hyperlinks, but no link was established when these blue highlighted and underlined references were checked. It is not clear if these are intended to be hyperlinks or are intended to only reference section of the permit. Please review the intent of the blue highlighted and underlined text references in the permit and update if necessary. (JAR)

Table of Contents

2. Please update the Printable Table of Contents to include Sections 2.2.1.2 and 4.2.4. Please update page 3 of 9 for Section 2.3.3 to be properly indented independently. Please update pages 8 and 9 to include the full title of "Section 3.3.15 Design of Impoundment P10-01 and D10-01" and "Section 3.3.24 Design of Impoundment P06-01 and D06-03," respectively. (BSM)

Section 1.2 – Legal Information

3. The legend description in Section 1.2.6.1 (Proposed Section Line and Road Closures and Setback Waivers Map) has been partially cut off from view. Please adjust the legend position so all of the descriptions are viewable. Also, no symbol and description are provided for "Eligible Cultural Resources Site" areas shaded in yellow within the legend. Please include the identification symbol and description within the legend. (BSM)

Section 1.3 – Business Entity/Compliance Information

4. Please update Section 1.3.5 (Other Licenses and Permits) as required by NDAC 69-05.2-06-04 if there are any changes to the listings since the most recent update with Revision No. 11. (JAR/GAW)
5. The ND DEQ 918 E. Divide Ave address is outdated within Section 1.3.5 (Other Licenses and Permits). Please update the address for the ND DEQ to 4201 Normandy Street, Bismarck, ND 58503-1324. (BSM)

Section 1.5 – Identification of Interests and Rights of Entry

6. Please update Section 1.5.1 – Permit Area Surface and Coal Interests and Section 1.5.2 – Adjacent Surface and Coal Ownership and Leasehold Information for any changes since the approval of Revision No. 11. Any updates to these sections should also be reflected on the Surface and Coal Ownership Map in Section 1.5.3 as required by NDCC 38-14.1-14(1)(c) and NDAC 69-05.2-06-01(1). (JAR)

Section 2.5 Soil Resources

7. Section 2.5.8.1 (Deep Lift Soil Survey Map - dated 12/29/16) approved with Revision No. 5 to Permit NACC-1302 erroneously indicates salvage depths greater than 120 inches in some delineations. Please revise the Deep Lift Soil Survey Map so the available other suitable strata is limited to depths of 120 inches or less. (MLJ)
8. The Prime Farmland acreage total (226.21 acres) within NACC-1302 shown in Section 2.5.5.1 – Prime Acres by Landowner appears to be approximately 30 acres less than what is shown in Section 2.5.6 (Soil Survey and Prime Farmland Map). The cause of the acreage discrepancy may be due to the prime farmland hatched polygon located in the N½ of Section 30. It appears that the south portion of the polygon is not closed with a polyline. The non-closed portion accounts for the approximate 30 acres discrepancy. Please review and/or revise this acreage discrepancy. (MLJ)

Section 2.7 – Fish and Wildlife Resources

9. Please review the Wildlife Protection, Enhancement and Management Plan, which begins on page 2 of Section 2.7.3, and update or modify as necessary to ensure the information provided is accurate. The Wildlife Protection, Enhancement and Management Plan states that winter feeding and artificial habitats will be installed. Perhaps these narratives should be updated, and the Northern Long Eared Bat narrative should be updated to mention that USFWS is in the process of classifying this species as Endangered which would eliminate incidental take through the 4(d) rule. (GAW)
10. Please review the Wildlife Monitoring Plan discussion in Section 2.7.4 and update, so the information provided is current and up to date. The Threatened and Endangered Species discussion that begins on page 3 of Section 2.7.4 and Table 1 incorrectly indicates that the Dakota skipper is not listed in Mercer County. Section 2.7.4 should state that USFWS' IPaC site will be periodically reviewed to ensure appropriate precautions are being applied to all listed and proposed species and designated critical habitats. (GAW)

Section 3.1 – Operations - General

11. Please review the subsoil compaction discussions on pages 2 and 3 of the Soils Handling Narrative, Section 3.1.1.1, to clarify if any compaction testing has been conducted or if Coyote Creek's compaction testing plans have changed because of NDSU's recent research study of mined lands. The permit should clarify if any vegetative production testing has been completed to identify any low producing areas associated with compaction issues and describe any practices applied to alleviating subsoil compaction after SPGM respread. (GAW)
12. Please review the Coal Production Schedule, Section 3.1.1.4, and update the anticipated coal production amounts if production changes are anticipated through the permit term. It appears the Coal Production Schedule was updated to include actual tons of coal produced from 2016 through 2019. Please provide actual tons of coal produced in 2020 and 2021 if this Schedule is to be periodically updated to include actual amounts mined. (GAW)
13. Please review the equipment listed in Section 3.1.1.5, List of Equipment, and update if necessary. (SMN)
14. Please update the Pit Layout and Facilities Map in Section 3.1.3 to incorporate changes/additions since Revision 11 with regards to stockpiles, haul roads, diversions, sedimentation ponds, proposed pit layout and mining facilities, etc. (JAR)

Section 3.2 – Transportation Facilities

15. If CCMC utilizes the temporary farmer access road (18th St SW) that connects the Voigt ranch with County Road 13 for coal-mining related transportation, please update Section 3.2 - Transportation Facilities Narrative accordingly. (JAR)

Section 3.3 – Surface Water Management

16. Please review the Pond Dewater Procedures narrative that begins on page 4 of Section 3.3.1, Surface Water Management Plan, and update it to address the total suspended solids (TSS) and Iron issues that have been preventing timely sediment pond discharges. The Reclamation Division encourages CCMC to develop an alternative dewatering plan that includes methods that will enable CCMC to maintain sediment pond water elevation at or below permanent pool elevation (PPE) in an instances where TSS and Iron are above discharge limits, as has been the case with sediment pond P31-01 and P06-03. This may include pumping water that cannot be discharged to a pit or a spoil pond and/or constructing sumps in drainages above problematic ponds to create additional storage space for runoff. (GAW)
17. Please depict the field engineered diversion southeast of sediment pond P06-03 that transports runoff into pond P06-03 on the Surface Water Management Plan Map, Section 3.3.2. (GAW)
18. A sump is depicted and labeled adjacent to the west side of sediment pond P06-03. Please discuss the purpose of this water management feature in the surface water management plan, Section 3.3.1, or in the design of sediment pond P06-03, Section 3.3.19. (GAW)

Section 4.1 – Post-Mining Land Use Plans

19. Please clarify if Casey Voigt has been consulted on selecting and establishing management practices for reference areas on undisturbed native grasslands that will be used to demonstrate reclamation success on reclaimed native grasslands that Mr. Voigt owns. Please provide updated information as required by Order Provision No. 2 of the April 14, 2013, Findings of Fact, Conclusion of Law and Order for Permit NACC-1302 (Case No. RC-13-50). The proposed reference areas need to be formally approved for use as native grassland reference areas. Please provide recent similarity index ratings of the proposed native grassland reference areas and arrange for the areas to be inspected and approved. (GAW)
20. Please review the location of reclaimed wetland CW-07-01 to ensure the site continues to be the preferred location for a replacement wetland. (GAW)
21. Please review the location of reclaimed woodland W36-03 to ensure the site is the preferred location for a small woodland. (GAW)

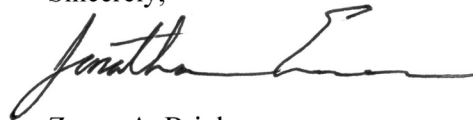
Section 4.5 – Post-Mining Stockponds

22. Please consider providing detailed design plans for stockpond SP25-02 since it appears the entire watershed could be reclaimed during the existing term of the permit. (BSM)

The nine standard permit conditions and two special conditions for Permit NACC-1302 remain in effect. The Certificate of Liability Insurance on file for Coyote Creek Mine expires on February 1, 2023. The business entity/compliance information referenced in Section 1.3.1, 1.3.2, 1.3.3, and 1.3.4 was last updated in the stand-alone Consolidated Legal Information Report effective November 12, 2021.

If you have any questions, please contact this office.

Sincerely,



for Zanna A. Brinkman
Director
Reclamation Division

cc via email only: Derrick Braaten (derrick@braatenlawfirm.com)