

**Thompson, Pamela J.**

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**Sent:** Wednesday, July 19, 2023 11:15 AM  
**To:** Thompson, Pamela J.  
**Subject:** Filing Accepted for Case: 08-2023-CV-01338; Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.; Envelope Number: 5274551

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**North Dakota  
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## Filing Accepted

Envelope Number: 5274551  
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	
<b>Court</b>	Burleigh County
<b>Case Number</b>	08-2023-CV-01338
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	7/19/2023 10:54 AM CST
<b>Date/Time Accepted</b>	7/19/2023 11:14 AM CST
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<b>Filing Description</b>	CR Exhibit 77 - Response to First Technical Review Letter
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<b>Filed By</b>	Pamela Thompson
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# COYOTE CREEK MINING COMPANY, L.L.C.

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*A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION*

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April 19, 2023

Ms. Zanna Brinkman  
Director Reclamation Division  
Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, ND 58505-0480

**RE: Technical Review Responses for Revision 12 to NACC-1302**

Dear Ms. Brinkman:

Coyote Creek Mine submits the following responses to the technical review items for Revision No. 12 to Surface Coal Mining Permit NACC-1302 for The Coyote Creek Mine in your letter dated September 12, 2022. Coyote Creek also incorporated the responses to the Midterm Review items noted in your letter dated May 25, 2022. The technical review deficiencies responses are listed first in this letter followed by the Midterm Review Items.

**TECHNICAL REVIEW ITEMS**

**Section 2.2 – Surface Water Hydrology**

1. **Please include the deactivation year of MS-CCT1 within Section 2.2.5.2 (Surface Water Monitoring Sites and Monitoring Schedule). (BSM)**

Please see updated Section 2.2.5.2 - Surface Water Monitoring Sites and Monitoring Schedule.

**Section 2.5 – Soil Resources**

2. **It appears that the potential SPGM respread depth associated with boring CC12016C, located in the SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 25, was incorrectly changed to a respread depth of 36 inches in Section 2.5.7 (Projected Soil Respread Depth Map). Based on the spoil sample analyses from Section 2.1.7 (Overburden Sample Analyses), the projected soil respread depth for the area associated with CC12016C should be 48 inches due to one spoil sample within the pre-bench fleet removal interval (0-25 feet below ground surface) having a sodium absorption ratio (SAR) greater than 20. This undesirable spoil property makes up twenty percent or more of the overburden material that will be removed by the pre-bench fleet. Also, the respread depth change associated with boring CC12016C was not listed in Section 1.1.2 (Revision Summary). Please revise Section 2.5.7 (Projected Soil Respread Depth Map) as necessary. (MLJ)**

Please see updated Section 2.5.7 – Projected Soil Respread Depth Map. The potential SPGM respread depth was inadvertently labeled as 36 inches when the lines delineating the surrounding areas were updated to 36 inches. The error has been corrected.

3. **Please revise Section 2.5.4.2 (Soil Respread Depth Table) to account for the changes made to the 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 $\frac{1}{4}$  of Section 25. (MLJ)**

Please see updated table in Section 2.5.4.2.

### **Section 3.1 – Operations- General**

4. **Please revise the Reclamation Procedures and Schedule, Section 3.1.1.3, to discuss that contemporaneous reclamation may not be possible for the 2019 and 2020 coal removal areas adjacent to the federal coal in the SW $\frac{1}{4}$  of Section 24 because of delayed federal mine plan approval. A variance from the contemporaneous reclamation requirements might be needed for pits adjacent to the federal coal if mine plan approval is further delayed. The situation might be considered an unplanned cessation of mining. (GAW)**

Please see the updated narrative in Section 3.1.1.3 - Reclamation Procedures and Schedule and updated Section 3.1.1.3.1 – Reclamation Schedule and Variance Map.

5. **Section 3.1.1.8.2 (Overburden Calculations) does not include sedimentation pond P25-03 in the calculation. Please update the calculation to include the reclamation of P25-03. Additionally, please update any subsection of Section 3.1.1.8 (Reclamation Costs) to reflect this change. (BSM)**

Please see the updated worst case bond costs. The variable costs were also updated.

### **Section 3.3 - Surface Water Management**

6. **The Reclamation Division believes the construction of sediment ponds P24-05 and P24-06 and the removal of additional SPGM in the SW $\frac{1}{4}$  of Section 24 other than that necessary to mine private coal should be delayed until federal mine plan approval has been granted to remove federal coal in the SW $\frac{1}{4}$  of Section 24. Please consider revising the pond construction narratives, Sections 3.3.27 and 3.3.28, to mention that construction of the ponds may be delayed until federal mine plan approval. (GAW)**

Please see the updated narratives in Sections 3.3.27 - Design of Impoundment P24-05 and 3.3.28 - Design of Impoundment P24-06.

### **Section 4.1.1 – Post Mine Land Use Narrative**

7. **Please review the public road discussion on page 4 of Section 4.1.1 and update if easements have been secured in Section 36 for the final location of a post-mining public road. The Post Mining Topography and Land Use Map, Section 4.1.2, continues to show this road on the east-west quarter line in Section 36 as described in the agreement in Section 1.2.8, Road Closure Documents. This road needs to be addressed in grade approval requests. Please**

**clarify if easements have been secured for this road through Section 36, included them in Section 1.5.1 if obtained, and discuss if any changes are planned for the final location of this road. It is not clear if the road embankment will be constructed with spoil or if it will be constructed with subsoil after subsoil has been respread on grade approved areas. (GAW)**

Please see updated narrative in Section 4.1.1 – Post-Mining Land Use Narrative and the updated road alignment in Section 4.1.2 - Post-Mining Topography and Land Use Map.

### **Other**

Please see the updated pits in the federal coal tract in the SE4 Sec. 24, T143N, R89W caused by the delayed approval of the federal mine plan decision document by OSM.

Updated maps are:

Section 3.1.1.3.1 – Reclamation Schedule and Variance Map

Section 3.1.3 - Pit Layout and Facilities Map

Section 3.3.2 Surface Water Management Plan Map

### **MIDTERM REVIEW ITEMS**

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)**

The blue highlighted sections are only for reference they are not intended to hyperlink sections.

### **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)**

Please see the updated Printable Table of Contents.

### **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)**

Please see the updated Section 1.2.6.1 - Proposed Section Line and Road Closures and Setback Waivers Map.

### **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)**

No changes required.

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)**

Please see updated Section 1.3.5 - Other Licenses and Permits.

### **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)**

Please see updated Sections 1.5.1, 1.5.2, 1.5.3 and the Certificate of Authenticity of Documents.

### **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)**

Section 2.5.8.1 was revised to show correct salvage depths.

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 2.5.5.1 was revised to show the correct Prime Farmland acreage.

### **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)**

Please see updated narrative in Section 2.7.3.

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)**

Please see the updated narrative in Section 2.7.4 – Wildlife Monitoring Plan.

### **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)**

Please see updated narrative in Section 3.1.1.1 – Soils Handling Narrative.

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)**

Please see updated Section 3.1.1.4 - Coal Production Schedule.

13. **Please review the equipment listed in Section 3.1.1.5, List of Equipment, and update if necessary. (SMN)**

No updates required.

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)**

Please see updated Sec. 3.1.3 – Pit Layout and Facilities Map.

### **Section 3.2 – Transportation Facilities**

- 15. If CCMC utilizes the temporary farmer access road (18<sup>th</sup> 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)**

Coyote Creek does not use the temporary farmer access road for coal-mining related transportation.

### **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)**

Coyote Creek has rented a dredge to clean out multiple ponds over the past few years to assist in the timely dewatering of the sediment ponds. Coyote Creek currently utilizes sumps and will continue to utilize sumps that are constructed in the drainages upstream to catch sediment before it is deposited in the pond. These sumps are easier to clean sediment out of than the ponds. However, as discussed with PSC staff last spring, it is not economically feasible to build sumps large enough to fully contain precipitation events similar to the snow/rain events that occurred in the early Spring of 2022. Also, in order to clean out ponds in a timelier manner, CCMC purchased the dredge in 2022 and will utilize it to keep ponds cleaned out.

- 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)**

Section 3.3.2 was updated to show the field engineered diversion to the southeast of sediment pond P06-03.

- 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)**

The sump located just west of sediment pond P06-03 was joined into P06-03. Section 3.1.3 and Section 3.3.2 were both updated to show this. P06-03 was also recertified to include the added capacity.

**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)**

Coyote Creek hired KDK Consulting in the summer of 2022 to conduct ecosite sampling on potential reference areas on lands owned by the Voigts. Casey was made aware that this initial sampling was taking place. The plan is to finalize these sites in the summer of 2023 with the NDPSC and the Voigts field touring the proposed sites. The permit will be updated in an upcoming revision when the native grassland reference areas are finalized and formally approved.

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)**

No change was made to the location of reclaimed wetland CW-07-01.

21. **Please review the location of reclaimed woodland W36-03 to ensure the site is the preferred location for a small woodland. (GAW)**

Please see the updated Post Mine Topography and Land Use Map - Section 4.1.2. The woodland W36-03 was moved into a more desirable location in the drainage to the east of the original proposed area. This new location is north facing and will allow for more water availability for the trees.

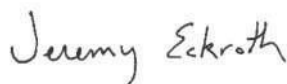
**Section 4.5 – Post-Mining Stockponds**

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)**

SP-25-02 is still 2-3 years from construction. CCMC would like to consult with the Voigts to ensure that their preferences are met prior to finalizing design details. CCMC will add it to the next revision.

Sincerely,

**THE COYOTE CREEK MINING COMPANY, L.L.C**



Jeremy Eckroth  
Environmental Manager