

**Public Service Commission
Reclamation Division**

Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Fedorchak
Steven Kahl - Executive Director
John Schuh, General Counsel

FROM: ^{JE} Jonathan Emmer, ^{MJ} Monty Johnson, and ^{Bm} Brandon Myran

DATE: March 27, 2024

SUBJECT: Approval of Revision No. 12 to Permit No. NACC-1302 held by Coyote Creek Mining Company, L.L.C., Case No. RC-22-233

On March 17, 2022, Coyote Creek Mining Company, L.L.C. (Coyote Creek) filed the application for Revision No. 12 to Surface Coal Mining Permit No. NACC-1302 to revise the post-mining topography in portions of Section 1, T142N, R89W, Sections 6 and 7, T142N, R88W; revise the reclamation schedule and variance map; revise the operation and reclamation plans; add design plans for three sedimentation ponds; and update the worst-case bond cost estimate. The Reclamation Division has completed its review of this revision application and respectfully recommends that it be approved.

Revision No. 12 clarifies the management and timeline for seeding native grassland and it adds Variance Areas No. 7 and No. 8. Revision No. 12 revises conflicting language in the permit about delayed native grass seedings and limits delayed seedings to small (<10 acres) isolated tracts that cannot be properly managed. Variance Area No. 7 includes approximately 21 acres in Section 6, T142N, R88W where there was not adequate room in 2022 to redistribute all the box cut spoil that was mined in 2019. Variance Area No. 8 includes approximately 27 acres in Sections 24 and 25 that is adjacent to federal coal. This variance area is a direct result of delayed federal mine plan approval to mine the federal coal in the SW $\frac{1}{4}$ of Section 24. This variance area will be reclaimed when mining is able to proceed on the federal coal tract.

Revision No. 12 was deemed a significant revision to Permit No. NACC-1302 and was subject to the public notice requirements. Coyote Creek submitted affidavits for publication of the required newspaper notices. We notified the appropriate agencies, the permit area landowners, and advisory committee members of the revision application.

An informal conference was requested by landowners Casey and Julie Voigt with concerns about dust, projected topsoil and subsoil respread depths, reclamation variances, and the timing of revegetation. The informal conference was held on October 12, 2022. The Hearing Officer issued the Informal Conference Findings and Recommended Order stating that Coyote Creek Mining Company, L.L.C. shall provide a final native grassland seeding timeline for delayed native grassland seedings to initiate the 10-year revegetation period, describe how these variance areas will be managed prior to seeding to initiate the 10-year revegetation period, and provide a map depicting variance from the 3-year seeding rule (N.D.C.C. 38-14.1-24(14)) for Commission review prior to Revision No. 12 approval. This information was provided within the Revision No. 12 application and deemed satisfactory by the Commission.

The performance bond was increased to cover the projected worst case mining disturbance and to include the 2022 variable cost update. A surety bond was increased to \$25,219,975 and is sufficient for the proposed mining and reclamation operations in the bond area of Permit NACC-1302.

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Attached for your consideration at the April 10th Commission meeting are the proposed motion, revision approval form, and newspaper notice that we must publish following revision approval.

Attachments

Coyote Creek Mine\Permits\NACC - 1302\Revisions & Renewals\No. 12\Rev12_Apprvl_memo_03-27-24