

Thompson, Pamela J.

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Filing Accepted

Envelope Number: 5616439
Case Number: 08-2024-CV-00694
Case Style: Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.



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Filing Details	
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Case Number	08-2024-CV-00694
Case Style	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
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Before the Public Service Commission of North Dakota

Casey and Julie Voigt,)	Case No.:
)	
Complainant,)	
)	
v.)	
)	COMPLAINT
Coyote Creek Mining Company, L.L.C.,)	
)	
Respondent.)	
)	
)	
)	

I. INTRODUCTION

[¶1] The Coyote Creek Mining Company, L.L.C. (“CCMC”), a subsidiary of The North American Coal Corporation (NACoal), in turn a wholly-owned subsidiary of publicly traded NACCO Industries, is the owner and operator of Coyote Creek Mine (the “Mine”), an active lignite surface mining operation. The Mine is located approximately nine miles southwest of Beulah, North Dakota, in Mercer County, about 75 miles northwest of Bismarck. CCMC holds 86 leases granting the right to mine approximately 8,129 acres of coal interests, and the right to utilize approximately 15,168 acres of surface interests, and owns in fee approximately 160 acres of surface interest, with four easements on approximately 352 acres.

[¶2] All production from the Mine is delivered to Coyote Station power plant, owned by Otter Tail Power Company, Northern Municipal Power Agency, Montana-Dakota Utilities Company (MDU) and Northwestern Corporation under a long-term sales-plus lignite sales agreement expiring in 2040. There have been no previous operators of the Mine.

[¶3] Casey and Julie Voigt (“Voigts”) own the surface of much of the mine. The Voigts house is in Section 31 of T143N, R88W, Mercer County, North Dakota, directly adjacent to the active mining area for the mine and is within the permit boundary. The Voigts operate an active cow-calf ranching operation upon the surface of the mine permit area.

[¶4] This Complaint is filed pursuant to Chapter 28-32 of the Administrative Agencies Practice Act and Article 69-02 of the Administrative Code.

II. FACTUAL AND LEGAL GROUNDS

[¶5] The Voigts entered into a Surface and Coal Lease Agreement with NACoal on December 29, 2010. The Voigts’ coal lease requires at a minimum that all suitable plant growth material be restored to the property, or similar suitable plant growth material. On October 11, 2013, the Voigts signed a Landowner Post-Mining Preference Statement (“Preference Statement”). “No commingling of Top Soils, especially from the South or the East” was indicated on the Preference Statement. *See* Exhibit A.

[¶6] On May 9, 2023, the PSC granted CCMC’s grade approval request COY-035 submitted on January 13, 2023 and resubmitted January 26, 2023. *See* Exhibit B.

[¶7] On May 9, 2023, the PSC granted CCMC’s grade approval request COY-036 submitted on April 4, 2023. *See* Exhibit C.

[¶8] On May 9, 2023, the PSC granted CCMC’s grade approval request COY-037 submitted on April 11, 2023. *See* Exhibit D.

[¶9] On June 8, 2023, the Voigts filed a Notice of Appeal and Specification of Errors regarding COY-035, COY-036, and COY-037 and served the PSC, CCMC, and the North Dakota Attorney General (“AG”) on that date. *See* Case No. 08-2023-CV-01338, Index ##1-4.

[¶10] On August 7, 2023, the PSC granted CCMC's grade approval request COY-034 submitted on September 6, 2022, resubmitted on July 12, 2023, and subsequently revised on August 7, 2023. *See* Exhibit E.

[¶11] On August 18, 2023, the Voigts served the PSC (through the Attorney General) and CCMC with a Notice of Appeal and Specification of Errors regarding COY-034 and filed the appeal on August 23, 2023. *See* Case No. 08-2023-CV-01964, Index ##1-5.

[¶12] On September 6, 2023, the parties filed a Stipulated Motion to Consolidate and to Extend Deadlines. *See* Case Nos. 08-2023-CV-01338, Index #115 and 08-2023-CV-01964, Index #9.

[¶13] On September 7, 2023 and September 8, 2023, the Court entered its Order to Consolidate and to Extend Deadlines. *See* Case Nos. 08-2023-CV-01964, Index #12 and 08-2023-CV-01338, Index #118.

[¶14] On September 26, 2023, the parties entered into a Stipulation and Request for Stay and the Court entered its Order for Stay. The parties agreed that the Voigts would file a complaint with the PSC asking to hold a formal hearing and address the matters raised in the appeals of the grade approvals through an adjudicative proceeding under the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32 and if the PSC accepts the complaint for adjudication and holds a formal hearing, and issues a final decision adjudicating the claims, the Voigts would file a motion to voluntarily dismiss the appeal with prejudice within three business days of the PSC order. *See* Case No. 08-2023-CV-01338, Index ## 119, 122.

[¶15] On September 27, 2023, the PSC granted CCMC's grade approval request COY-038 submitted on September 12, 2023. *See* Exhibit F.

[¶16] On October 2, 2023, the PSC granted CCMC's grade approval request COY-039 submitted on September 14, 2023. *See* Exhibit G.

[¶17] On October 24, 2023, the Voigts served the PSC (through the Attorney General) and CCMC with a Notice of Appeal and Specification of Errors regarding COY-038 and COY-039 and filed the appeal on October 26, 2023. *See* Case No. 08-2023-CV-02561, Index ##1-5.

[¶18] The parties entered into a Stipulation and Request for Stay and the Stipulation was filed on November 8, 2023. *See* Case No. 08-2023-CV-01338, Index #123 and 08-2023-CV-02561, Index #8. The Court entered its Order Consolidating 08-2023-CV-02561 to 08-2023-CV-01338 and granted the stay. *See* 08-2023-CV-01338, Index #126 and 08-2023-CV-02561, Index #11. As with the prior stipulation, the parties agreed that the Voigts would file a formal complaint with the PSC and attempt to resolve the dispute before the agency through a formal hearing on the additional grade approvals.

[¶19] Revision 12 to NACC-1302, CCMC's mine permit, includes the following language at

Section 2.5.4:

Where overburden depths are less than 85 feet above coal, respread depths were calculated by identifying the best sample from the worst 20% of samples at each borehole location. Where overburden depths are greater than 85 feet above coal, a different method will be utilized to calculate projected respread depths. Overburden up to 85 feet in depth is typically spoiled by the dragline using a simple side casting method. When overburden depths exceed 85 feet, a truckshovel pre-bench fleet will normally remove any overburden greater than 85 feet above coal. Prebench material is usually hauled across the active pit and placed on spoils created by the dragline. Because of this mining method, where pre-benching operations occur, the projected respread thickness will be based on the best sample from the worst 20% of samples of the overburden removed by the pre-bench fleet. This depth from the surface will be determined by subtracting 85 feet from the total depth of overburden, which would account for the overburden removed by the dragline. The 85 foot cover limit line is shown on the Projected Soil Respread Depth Map of Section 2.5.7. Holes have not been drilled on tracts with unleased Federal Coal, so these areas were assumed to require the maximum 48 inch respread depth. Since most of the land surrounding these tracts requires 48 inches, it is likely that this will be the actual depth required.

[¶20] At the informal conference in a related matter, Monty Johnson, PSC staff member, testified that it is a practice of the PSC to allow different methods for calculation of projected respread

depths when a truck shovel pre-bench fleet is used, consistent with this narrative in CCMC's Section 2.5.4 of its permit.

[¶21] This “practice” of the PSC does not comply with and violates the requirements of N.D.A.C. § 69-05.2-15-04.

[¶22] This “practice” of the PSC is based on the PSC’s Policy Memorandum Number 17.

[¶23] There is no basis in the underlying surface mining law implemented by the PSC to justify thinner respread depths where a truck shovel method of removing overburden has been used. Although Policy Memo 17 refers to N.D.A.C. § 69-05.2-15, there is no legal basis for creating a method of calculating respread depths shallower than N.D.A.C. dictates. In releasing and relying upon Policy Memo 17, the PSC therefore acted outside its regulatory mandate.

[¶24] Any projected or actual respread depths for property owned or ranched by the Voigts should be set at forty-eight inches pursuant to N.D.A.C. § 69-05.2-15-04(a)(2).

[¶25] Any projected or actual respread depths for property owned by the Voigts should be set at forty-eight inches pursuant to the Voigt’s coal lease.

[¶26] Any grade approval requests that are approved and which result in a calculation for respraying of suitable plant growth material must require that all property owned or ranched by the Voigts will have suitable plant growth material respread at a minimum thickness of forty-eight inches pursuant to N.D.A.C. § 69-05.2-15-04(a)(2).

[¶27] A forty-eight inch depth for SPGM on Voigt property is required by the equation set forth at N.D.A.C. § 69-05.2-15-04(a)(2).

[¶28] The PSC has granted an exception to this legal requirement at N.D.A.C. § 69-05.2-15-04(a)(2) by issuing several of the grade approvals challenged in this complaint.

INJURY COMPLAINED OF

[¶29] The Voigts are keenly concerned about the reclamation and future productivity of their soil. They have spent decades building the soil health on their ranch, both on fee and rented lands they ranch. It takes hundreds and sometimes thousands of years for an inch of topsoil to form. The Voigts have spent their lives building up the soil health on their ranch, and that soil is now being removed. As is required by the lease they signed with the Mine, and as is required by the relevant regulations, the Voigts are entitled to have the suitable plant growth material, or similar material, returned to their ranch. This is the only and the best way to ensure successful reclamation of the ranch and its soils and productivity.

[¶30] The Voigts also have an ongoing dispute with CCMC regarding how to compensate for loss of production on disturbed acreage. Any downward adjustment of reclamation standards, including soil respread depths, will have a direct impact on reclamation duration and success; the Voigts' livelihood; and the overall productivity of the ranch. In signing their surface mining leases, the Voigts relied on the PSC to enforce the applicable reclamation law rather than provide exceptions to returning the suitable plant growth material to the ranch required by law and the Voigt's coal lease.

PRAYER FOR RELIEF

[¶31] WHEREFORE, the Voigts request an Order against the Respondent as follows:

- a. Reversing the grade approval requests;
- b. Requiring Respondent, Coyote Creek Mining Company, L.L.C. and its affiliates to have suitable plant grown material respread at a minimum of forty-eight inches on all lands covered by the grade approval requests challenged here as required by the equation set forth at N.D.A.C. § 69-05.2-15-04(a)(2);

- c. Requiring all SPGM respread depths on Voigt property to be calculated pursuant to N.D.A.C. § 69-05.2-15-04(a)(2) in the future;
- d. Any and all other relief to which the Voigts may be entitled.

Dated: November 22, 2023.

Respectfully submitted,

/s/ Derrick Braaten

Derrick Braaten (ND #06394)

derrick@braatenlawfirm.com

BRAATEN LAW FIRM

109 North 4th Street, Suite 100

Bismarck, ND 58501

Phone: 701-221-2911

Attorneys for Complainants

Casey and Julie Voigt

Exhibit A to Complaint

LANDOWNER POST-MINING PREFERENCE STATEMENT

Subsection 3 of Section 69-05.2-09-13 of the North Dakota Administrative Code requires a surface coal mining company to obtain a preference statement from a landowner owning land located within a proposed coal mining permit area. The Coyote Creek Mining Company, L.L.C is applying for a surface coal mining permit. This land use statement will be included as part of the proposed application. The following information describes the pre-mining land use of property in the proposed permit area owned by you:

LOCATION IN PERMIT: E $\frac{1}{2}$ E $\frac{1}{2}$ Section 6, T142N, R88W
Section 1, T142N, R89W
W $\frac{1}{2}$ Section 19, W $\frac{1}{2}$, W $\frac{1}{2}$ E $\frac{1}{2}$ Section 30, Section 31, T143N, R88W
S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ Section 24, Section 25, SE $\frac{1}{4}$ Section 36, T143N, R89W

ACRES	LAND USE
125.55	Cropland
244.54	Cropland (Hayland/CRP)
2,676.63	Native Grassland (prairie)
	Tame Pastureland
2.38	Shelterbelt
96.00	Woodland
7.26	Wetland
30.20	Rivers & Streams (Coyote Creek)
2.9	Developed Water Resource (stockpond)
12.43	Residential
52.08	Roads
3,249.97	TOTAL ACRES

Please review this information and state your preference for the post-mining land use for lands owned by you in the proposed permit area. If these are different from the pre-mining land uses, please describe reasons for the changes.

See Attachment A

LANDOWNER: Casey Voigt and Julie Voigt

SIGNATURE: Casey Voigt Julie Voigt

DATE: 10-11-2013 10-11-2013

ADDRESS: PO Box 454, Beulah, ND 58523

Once released from performance bond, the landowner will be responsible for future management and maintenance of any permanent stockponds constructed for their use. By signing below, I hereby commit to follow a sound management plan for the stockponds that I am requesting as part of the post-mining land use.

SIGNATURE: Casey Voigt Julie Voigt

DATE: 10-11-2013 10-11-2013

Attachment A
Casey and Julie Voigt
Preference Statement

October 2013

- 1) Replace inequivalent to:
 - A.) Water Wells
 - B.) Water Pipelines
 - C.) Water Tanks
 - D.) Fences
 - E.) Cattle Crossings
 - F.) Cattle Handling Facilities
- 2) No commingling of Top Soils,
especially from the South or the East.
- 3) Replace Trees as in the varieties removed.
- 4) Reclaim as much land to cropland as
demend possible in sections 24 & 25.
- 5) Pasture lands to be reclaimed to
native grasses not tame grasses.
- 6) Reserve the right to make further
changes at a later date.



Public Service Commission
State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

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Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Sent via email only

May 9, 2023

Mr. Lee Becker
Senior Mining Engineer
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
lee.becker@nacoal.com

Dear Mr. Becker:

This letter is in follow-up to grade approval request COY-035 that was originally submitted on January 13, 2023 and resubmitted January 26, 2023 for approximately 16.1405 acres in Section 6, T142N, R88W in Permit NACC-1302. The postmine land use of native rangeland for the entire area as depicted on the SPGM respread map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) approved with Revision No. 11 and remains unchanged with pending Revision No. 12. Conditional grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel. The grade approval request area was graded to the conditionally approved postmine topography proposed with Revision No. 12 Plate 3.1.5 (Post-Mining Topography Map) dated 3/9/22; therefore, grade approval is contingent upon the approval of Revision No. 12 to Permit NACC-1302. Furthermore, slopes exceeding 12% must be scarified to eliminate slippage prior to subsoil respread as stated in the Soils Handling Plan, Section 3.1.1.1, of the permit.

The proposed topsoil respread depth of 13.6 inches for North Dakota Department of Trust Lands (State) ownership postmine native rangeland is approved. The total SPGM respread thickness of 48 inches for the area depicted on the submitted SPGM respread map is also approved.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05. Slopes exceeding 12% should be seeded and mulched as soon as practical after topsoil respread.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Assistant Director
Reclamation Division

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



Public Service Commission
State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
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Sent via email only

May 9, 2023

Mr. Lee Becker
Senior Mining Engineer
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
lee.becker@nacoal.com

Dear Mr. Becker:

This letter is in follow-up to grade approval request COY-036 that was submitted on April 4, 2023 for approximately 16.2392 acres in Section 25, T143N, R89W in Permit NACC-1302. The postmine land use of cropland and native rangeland as depicted on the SPGM respread map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) approved with Revision No. 11 and remains unchanged with pending Revision No. 12. Grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel. Furthermore, slopes exceeding 12% must be scarified to eliminate slippage prior to subsoil respread as stated in the Soils Handling Plan, Section 3.1.1.1, of the permit.

The proposed topsoil respread depth of 18.2 inches for Voigt ownership postmine cropland and 12.2 inches for Voigt ownership postmine native rangeland is approved. The total SPGM respread thickness of 24 inches, 36 inches, and 48 inches for the areas depicted on the submitted SPGM respread map is also approved. Blending will be necessary in areas having different total respread thicknesses, but without reducing the thickness of the area requiring the greater thickness and ensuring the proper drainage through the transition area.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05. Slopes exceeding 12% should be seeded and mulched as soon as practical after topsoil respread.

If you have any questions, please contact this office.

Sincerely,

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Jonathan Emmer
Assistant Director
Reclamation Division

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



Public Service Commission
State of North Dakota

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Sent via email only

May 9, 2023

Mr. Lee Becker
Senior Mining Engineer
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
lee.becker@nacoal.com

Dear Mr. Becker:

This letter is in follow-up to grade approval request COY-037 that was submitted on April 11, 2023 for approximately 9.9892 acres in the SE $\frac{1}{4}$ of Section 25, T143N, R89W in Permit NACC-1302. The postmine land use of native rangeland as depicted on the SPGM respread map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) approved with Revision No. 11 and remains unchanged with pending Revision No. 12. Grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel. Furthermore, slopes exceeding 12% must be scarified to eliminate slippage prior to subsoil respread as stated in the Soils Handling Plan, Section 3.1.1.1, of the permit.

The proposed topsoil respread depth of 12.2 inches for Voigt ownership postmine native rangeland is approved. The total SPGM respread thickness of 24 inches and 36 inches for the areas depicted on the submitted SPGM respread map is also approved. Blending will be necessary in areas having different total respread thicknesses, but without reducing the thickness of the area requiring the greater thickness, and ensuring the proper drainage through the transition area.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05. Slopes exceeding 12% should be seeded and mulched as soon as practical after topsoil respread.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Assistant Director
Reclamation Division

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



Public Service Commission
State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

Sent via email only

August 7, 2023

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Mr. Lee Becker
Senior Mining Engineer
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
lee.becker@nacoal.com

Dear Mr. Becker:

This letter is in follow-up to grade approval request COY-034 that was submitted originally on September 6, 2022 for approximately 4.92 acres, which was withdrawn. Grade approval COY-034 was resubmitted on July 12, 2023 and subsequently revised on August 7, 2023 for approximately 16.09 acres in Section 36, T143N, R89W in Permit NACC-1302. The postmine land use of native rangeland and potential cropland for the area as depicted on the SPGM respread map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) most recently approved with Revision No. 11 and remains unchanged with pending Revision No. 12 with the exception for the reclaimed farmer access road shown in Revision No. 12. Grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel.

The proposed topsoil respread depth of 12.0 inches for Voigt ownership postmine potential cropland and 13.2 inches for North Dakota Department of Trust Lands (State) ownership postmine potential cropland and native rangeland is approved. The total SPGM respread thickness of 24 inches and 36 inches as depicted on the submitted SPGM respread map is also approved. Blending will be necessary in areas having different total respread thicknesses, but without reducing the thickness of the area requiring the greater thickness and ensuring the proper drainage through the transition area.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Assistant Director
Reclamation Division

cc via email only: [Jeremy Eckroth \(jeremy.eckroth@nacoal.com\)](mailto:jeremy.eckroth@nacoal.com)
[Derrick Braaten \(derrick@braatenlawfirm.com\)](mailto:derrick@braatenlawfirm.com)
[Desirae Zaste \(desirae@braatenlawfirm.com\)](mailto:desirae@braatenlawfirm.com)



Public Service Commission
State of North Dakota

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Sent via email only

September 27, 2023

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Mr. Jason Friedt
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
jason.friedt@nacoal.com

Dear Mr. Friedt:

This letter is in follow-up to grade approval request COY-038 that was submitted on September 12, 2023 for approximately 10.86 acres in the SE $\frac{1}{4}$ of Section 36, T143N, R89W in Permit NACC-1302. The postmine land use of potential cropland as depicted on the Post-Mining Contour Map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) most recently approved with Revision No. 11 and remains unchanged with pending Revision No. 12 with the exception for the reclaimed farmer access road shown in Revision No. 12. Grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel.

The proposed topsoil respread depth of 12.0 inches for Voigt ownership postmine potential cropland is approved. The total SPGM respread thickness of 24 inches for 9.66 acres and 36 inches for 1.20 acres as depicted on the submitted Post-Mining Contour Map is also approved. Blending will be necessary in areas having different total respread thicknesses, but without reducing the thickness of the area requiring the greater thickness, and ensuring the proper drainage through the transition area.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05.

If you have any questions, please contact this office.

Sincerely,

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Jonathan Emmer
Assistant Director
Reclamation Division

cc via email only: [Jeremy Eckroth \(jeremy.eckroth@nacoal.com\)](mailto:jeremy.eckroth@nacoal.com)
 [Derrick Braaten \(derrick@braatenlawfirm.com\)](mailto:derrick@braatenlawfirm.com)
 [Desirae Zaste \(desirae@braatenlawfirm.com\)](mailto:desirae@braatenlawfirm.com)



Public Service Commission
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October 2, 2023

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ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Mr. Jason Friedt
Coyote Creek Mining Company, L.L.C.
6502 17th St. SW
Zap, ND 58580
jason.friedt@nacoal.com

Dear Mr. Friedt:

This letter is in follow-up to grade approval request COY-039 that was submitted on September 14, 2023 for approximately 7.10 acres in the NW¹/₄ of Section 6, T142N, R88W in Permit NACC-1302. The postmine land use of native rangeland for the entire area as depicted on the submitted Post-Mining Contour Map is consistent with Section 4.1.2 (Post-Mining Topography and Landuse Map) approved with Revision No. 11 and remains unchanged with pending Revision No. 12. Conditional grade approval is granted based on a review of the submitted materials and a field inspection by PSC personnel. The grade approval request area was graded to the conditionally approved postmine topography proposed with Revision No. 12 Plate 3.1.5 (Post-Mining Topography Map) dated 3/9/22; therefore, grade approval is contingent upon the approval of Revision No. 12 to Permit NACC-1302. Furthermore, slopes exceeding 12% must be scarified to eliminate slippage prior to subsoil respread as stated in the Soils Handling Plan, Section 3.1.1.1, of the permit.

The proposed topsoil respread depth of 13.2 inches for North Dakota Department of Trust Lands (State) ownership postmine native rangeland is approved. The total SPGM respread thickness of 48 inches for the entire area as depicted on the submitted Post-Mining Contour Map is also approved.

Please be reminded that methods must be used to minimize subsoil and topsoil compaction as specified and approved in Revision No. 2 to Permit NACC-1302. Upon completion of the SPGM respread in the approved area, the area must be stabilized to prevent erosion as required by NDAC 69-05.2-15-04(5) and NDAC 69-05.2-22-05. Slopes exceeding 12% should be seeded and mulched as soon as practical after topsoil respread.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Assistant Director
Reclamation Division

cc via email only: Jeremy Eckroth (jeremy.eckroth@nacoal.com)
 Derrick Braaten (derrick@braatenlawfirm.com)
 Desirae Zaste (desirae@braatenlawfirm.com)