Public Service Commission
State of North Dakota

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January 6, 2016

Casey and Julie Voigt
P.O. Box 454
Beulah, ND 58523

Dear Mr. and Mrs. Voigt:

This letter is in follow-up to a meeting with you on December 10 to discuss a number of concerns you had regarding activities at the Coyote Creek Mine (CCM). In addition, you raised some additional concerns in your December 14 email message. Dean Moos and Randy Kowalski discussed some of your concerns with mine personnel following a regularly scheduled inspection of the Coyote Creek Mine on December 15. A copy of that inspection report is attached. Each of your concerns are discussed below.

- You indicated that topsoil containing noxious weeds (primarily Canada thistle) from the shop/office area in the E½SE¼ of Section 30 was mixed or co-mingled with topsoil owned by you in the remainder of Section 30. It appears that nearly all topsoil from disturbances within the E½SE¼ of Section 30 was stockpiled within that tract for eventual reclamation of the shop/office area. Donn Steffen indicated that a very small amount of topsoil from shop access road in the E½SE¼ of Section 30 may have been taken off that tract and mixed with your topsoil; however, this volume would be very small as only a very short segment of the shop access road is located in the E½SE¼ of Section 30. It should be noted that Reclamation Division staff has noted that CCM has been taking measures to control noxious weeds in the E½SE¼ of Section 30.

- You expressed concerns regarding excessive traffic on undisturbed soils causing rutting and compaction of the in-situ soils especially under wet soil conditions. CCM personnel indicated that they are aware that some contractors caused rutting by driving on wet undisturbed soils. They said that they have repaired the worst of these areas. Areas that were only impacted by compaction were not repaired. These areas were not reviewed during the December 15 inspection due to the snow cover. It was noted that all of the impacted areas will eventually be disturbed by future CCM's mining activities.

- You indicated that the dragline power cable was laid out diagonally across your pastures in Section 25 rather than following fence/pasture boundaries thus bisecting your pastures. CCM personnel indicated that once the dragline is moved off the assembly pad they will consider placing the dragline power cable along the fence/pasture boundaries.

- You indicated that topsoil from the hayfields in the NE¼ of Section 25 was being mixed with topsoil from the native grassland pastures. You felt that soil from the hay fields should be

salvaged separately from the native grass pastures due to productivity differences. Please be aware that there is no requirement to segregate topsoil separately by landuse other than prime farmland soils which must be segregated from other soils in areas that will be mined or used for spoil placement. A review of the detailed soil survey and the Mercer County Soil Survey indicates that the soils of the hayland field in the NE¼ of Section 25 are similar to the adjacent native grassland soils in terms of morphology and productivity. The productivity differences you reference are the productivity differences between the upland hayfields and the lowland hayfields (those along Coyote Creek). There are significant productivity differences between the upland hayfield soils and lowland hayfield soils.

- You were concerned that trees removed from your land have been buried within areas that will not be mined and you were concerned that subsidence could result from these buried trees. During the December 15 inspection, a number of small piles of "grubbed-out" trees and shrubs were noted within areas that have been or will have soil removed within the first years soil removal increment. CCM personnel indicated that these piles of trees and shrubs will be cast into a pit when the dragline strips these areas. They did indicate that trees removed from the haul road corridor were buried approximately 20 feet deep in the a borrow pit in the SW¼ of Section 30. While we do have concerns with shallow buried trees (such as in a reclaimed pond basin), we believe that burying the trees and shrubs at a depth of 20 feet should be satisfactory assuming they are spread out and crushed before being covered with earthen material.

- You inquired why CCM has not consulted with you regarding the reseeding or reclamation that has been done to date. There has been no final reclamation up to this point at the Coyote Creek Mine. Pond embankments and road ditches have been seeded with the approved seed mixture to stabilize these features and control erosion; however, these features are temporary and will be eventually reclaimed. The mulching in the NW¼ of Section 25 that you referred to is actually areas where topsoil has been removed and the in-situ subsoil has been mulched to provide wind and water erosion protection until the subsoil is removed later this winter/spring. Approximately the east half of the 2016 coal removal pit will have subsoil removed this winter/spring and topsoil and subsoil from the remainder of the 2016 pit area, as well as a portion of the 2017 pit area, will be removed later this year as mining progresses.

- CCMC must consult with you when selecting the native grassland reference areas that will be used for proving reclamation success on reclaimed areas that are owned by you as required by the Commission's formal hearing order.

With regard to your December 14, 2015 email, you reference our February 5 second completeness review letter; however, it appears that the correct reference is our May 7, 2015 first technical review letter for Revision No. 1 to Permit NACC-1302. Each of the specific items is addressed below. Please note that each of these items was satisfactorily addressed by Coyote Creek and Revision 1 was subsequently approved.

- Item 11: This deficiency relates to baseline (pre-mine) vegetation data and characterization. Various sections of the permit characterize 2012 as being a normal year or a dry year; however, the general consensus is that 2012 was a dry year but there was ample moisture in the spring which allowed the grassland to yield reasonably well. In this deficiency, the reviewer suggested that CCM clarify why a high expected yield value was used to determine ecological condition. CCM responded that the NRCS representative value (RV) was used and that the dry or wet year issue is addressed in the CPA 33 form which is shown in Section 2.4.7.4, Forage Production Clipping Worksheet. Actual yield estimates as documented in the Similarity Index sheets in Section 2.4.7.4 shows that actual total yields were similar to the NRCS RV values. For example,

the Thin Loamy site in SE¼ of Section 1 (SE1-TLy) yielded 1748 lbs/ac and the RV value is 1700 lbs/ac. Likewise, the Clayey site NE2-Cy yielded 2077 lbs/ac and the expected yield was 2100 lbs/ac. Following the explanation provided by CCM, the reviewer agreed that it was appropriate to use the NRCS RV value. In any event, the similarity index is simply a relative value to ascertain ecological condition and not total yield. This value will not used to determine reclamation success but rather is used to characterize the pre-mine ecological condition of native grassland.

- Items 33 and 34: The haulroad alignment in the E½ of Section 19 (north of the Coyote Creek crossing) was modified slightly in Revision 1 as well as some SPGM stockpile locations were modified. As a result of these deficiencies, CCM added the following language to the permit with Revision 1: "As mining progresses from east to west, section lines and roads will be closed in a stepwise fashion. The network of prairie trails used to provide agricultural access will also be affected. Farmer/rancher access will be made available for all undisturbed fields and pastures during mining operations. Access may include alternate routes through the mine, or for safety reasons, around active operations. Approaches will be provided for farmers and ranchers to cross and use the haulroad as required to access their lands. Farmers and ranchers working on the mine or requiring access through the mine will be provided safety training to make them aware of mining hazards." Construction of the Coyote Creek north crossing did not begin until August and a low water crossing was constructed to the east of this crossing in December. It is our understanding that Coyote Creek provided landowner/tenant access to the fields on the north side of Coyote Creek during the construction of the north crossing.

- Item 63: This deficiency relates to language in the permit which indicates that CCM may use the ecological sites that were sampled for baseline range condition as possible native grassland reference areas for proving reclamation success. This deficiency pointed out that the sandy sites located in Section 23 and the loamy site in Section 12 are dominated with Kentucky blue grass and therefore would not be adequate for use as reference areas. Regardless of this deficiency, Item 2c of the formal hearing order for Permit NACC-1302 requires that Coyote Creek Mining Company add plans to the permit for consulting you when selecting and establishing management practices for the reference areas on undisturbed native grasslands that will be used for demonstrating reclamation success on reclaimed native grasslands that you own. The pending application for Revision No. 2 to Permit NACC-1302 includes CCM's plans for consulting with you prior to selecting native grassland reference areas.

Please contact our office if you have any questions.

Sincerely,

James R. Deutsch
Director
Reclamation Division

Attachment

cc: Donn Steffen

DKM

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INSPECTION REPORT

DATE OF INSPECTION: December 15, 2015

TYPE OF INSPECTION: Partial

PERMITTEE - MINE: Coyote Creek Mine

PERMITS INSPECTED: NACC-1301, NACC-1302

PERSONS ACCOMPANYING INSPECTORS: Tyler Freuer

INSPECTION CONDITIONS: The inspection was conducted between 10:00 a.m. and 1:00 p.m. CST. Skies were overcast. The temperature was near 25 to 30° F. Access was good for winter time conditions.

OVERBURDEN/COAL REMOVAL

The dragline had recently completed testing that included moving the fill material from the north half of the equipment assembly pad to expand the area at the shop/office grade. Coyote Creek Mining Company is planning to walk the dragline from the shop site to the mine area yet this week, weather permitting. The bench had been prepared for the dragline in the SE1/4 of Section 25. A dozer was leveling the shop/access road in preparation for walking the dragline.

SURFACE WATER MANAGEMENT

The sedimentation ponds were empty throughout the permitted area. The following is a list of viewed ponds with approximate water levels and other information:

Pond	Elevation	Comments
P30-01	4 Feet below PPE	
P31-01	Empty	Water not covering bottom
P19-01	Empty	
P24-01	Empty	Accumulating ground water seepage
P24-02	Empty	
P30-02	Empty (>10' below PPE)	
P10-01	Empty	
P10-02	Empty	Rock had been placed at pond inlet recently to prevent erosion

The installation of surface water drainage and erosion controls for the haul road north of Mercer County Road 12 was mostly complete. We noted that rock placement was not yet complete at the slope drain outlet on the south side of the haul road at discharge point number 3 in the SW1/4 of Section 10. The extended open late fall conditions and above normal temperatures allowed for a thin layer of topsoil salvaged from 0/0 lift areas to be applied to some larger cut slopes along the road to reduce erosion potential and improve vegetation establishment.

SUITABLE PLANT GROWTH MATERIAL REMOVAL/RESPREAD

The excavator and truck fleet were removing subsoil in the NE1/4SE1/4 of Section 25 and hauling the material to a subsoil stockpile in the NW1/4 of Section 30. The current SPGM removal edge is located approximately along the north-south quarter-quarter line in the E1/2 of Section 25 and the area south of pond P24-01 in Section 24. Subsoil will continue to be removed over the winter from the north part of Section 25 and in Section 24. The control erosion measures observed on the areas where topsoil has been removed included bladed ridges in the north part of Section 25 and straw mulch on the area in Section 24.

WASTE DISPOSAL

A few small piles of trees removed from the stripped areas during SPGM removal operations were noted in the E1/2 of Section 25. The trees will be disposed of in the mine pit by dozing or casting with spoils by the dragline. The tree disposal methods were discussed briefly with Donn Steffen following the inspection and in particular the trees removed earlier in the year to facilitate the construction of the haul road. The trees removed for the haul road were buried in the borrow pit in the SW1/4 of Section 30. The woody material was estimated to be covered by about 20 feet of overburden material that was excavated from pond P31-01.

The embankments of the waste stabilization lagoon and access route used for pond construction had been seeded. The area disturbed outside of the drainage to pond P30-01 and the material added to topsoil stockpile number 1 were expected to be mulched this week.

ROADS

The low water crossing recently built across Coyote Creek to provide landowner access in the SW1/4 of Section 19 was inspected. The crossing was constructed in a manner to minimize the disturbance to the stream banks necessary to shape the approach ramps to the creek. CCMC had not yet completed the planned addition of gravel sized rock, similar to that in the stream channel, to the lower portion of the stream crossing.

The County Road 12 haul road crossing was nearing completion. A scraper and dozer were shaping the ditch and road just to the north of the multi-plate structure in the SW1/4 of Section 18. Crews from Wanzek construction were completing finish details on the retaining wall. A contract crew with Dakota Fence was installing the guard rail on the section of County Road 12 built over the multi-plate grade separation structure.

Gravel was being delivered by a commercial supplier and was being stockpiled near the coal crushing facility in Section 10 for eventual use on the haul road.

County Road 12 haul road crossing near completion

WILDLIFE

A couple of deer were observed in the SE1/4 of Section 24, just to the west of pond P24-02. A few pheasants were noted along the haul road corridor in the NE¼ of Section 18.

MISCELLANEOUS

It was observed that a new crossing (large concrete box culvert) has been constructed over Coyote Creek south of the Voigt farmstead. This crossing is located just south of the original crossing that was in poor condition. This crossing was installed by Mercer County and is not a mining related activity.

Following the field inspection, a brief meeting was held with Donn Steffen to discuss a number of concerns expressed by Casey Voigt during a December 10, 2015 meeting in the Reclamation Division offices.

A partial GPS point track-log of the inspection route and photographs taken during the inspection are on file with the Reclamation Division.

Randy Kowalski
Environmental Scientist

Dean K. Moos
Assistant Director

cc: Sarah Flath
OSM Casper Field Office
Mercer County Auditor

Minedata/CoyoteCreek/InspectionReport/2015/151215