

**North Dakota Department of Environmental Quality Public Notice**  
**Reissue of an NDPDES Permit**

Public Notice Date: 7/25/2024

Public Notice Number: ND-2024-017

**Purpose of Public Notice**

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

**Permit Information**

Application Date: 4/9/2024

Application Number: ND0026697

Applicant Name: Coyote Creek Mining Company, L.L.C.

Mailing Address: 6502 17th Street Southwest, Zap, ND 58580

Telephone Number: 701.873.7826

Proposed Permit Expiration Date: 9/30/2029

**Facility Description**

The reapplication is for a surface lignite coal mine located southwest of Beulah, ND. Discharges consist of ground water and surface runoff, and wash water from the washdown bay. Discharges are to Brush Creek, Coyote Creek, and Mud Creek, all Class III streams, and the Knife River, a Class II stream. Discharges covered by this permit are subject to the surface water management conditions and the designated locations described in surface mining permits approved following public review under NDCC Chapter 38-14.1. The current and proposed discharge structures are located within the boundaries of Coyote Creek Mining Company, L.L.C.'s surface mining permits, which encompass all or part of the following: T142N, R88W; T142N, R89W; T143N, R88W; and T143N, R89W.

**Tentative Determinations**

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by August 24, 2024 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. Language assistance services are available free of charge to you. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or [deqEJ@nd.gov](mailto:deqEJ@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

**FACT SHEET FOR NDPDES PERMIT  
ND0026697**

**PERMIT REISSUANCE**

**COYOTE CREEK MINING COMPANY, L.L.C.  
ZAP, ND**

**DATE OF THIS FACT SHEET – July 2024**

**INTRODUCTION**

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) has oversight authority. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality (NDDEQ), hereafter referred to as “department”, has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department’s authority and obligations for the wastewater discharge permit program is in the NDAC 33.1-16 (North Dakota Administrative Code) which was promulgated pursuant to NDCC chapter 61-28 (North Dakota Century Code). The department uses North Dakota Pollutant Discharge Elimination System (NDPDES) as its permitting title.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33.1-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to the North Dakota Administrative Code (NDAC) section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet, and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC chapter 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see Appendix A – Public Involvement. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in Appendix D - Response to Comments.

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**BACKGROUND INFORMATION****Table 1 – General Facility Information**

Applicant:	Coyote Creek Mining Company, L.L.C.
Facility Name and Address:	Coyote Creek Mining Company, L.L.C. 6502 17 <sup>th</sup> Street SW Zap, ND 58590
Permit Number:	ND0026697
Permit Type:	Minor Industrial, Permit Reissuance
Type of Treatment:	Sedimentation Ponds
SIC Code:	1221 (Bituminous Coal and Lignite Surface Mining)
NAICS Code:	212111 (Bituminous Coal and Lignite Surface Mining)
Discharge Location:	Various locations within the permitted mining area which include – 1) T143N, R88W; 2) T143N, R89W; 3) T142N, R88W; 4) T142N, R89W
Hydrologic Code:	10130201 – Knife

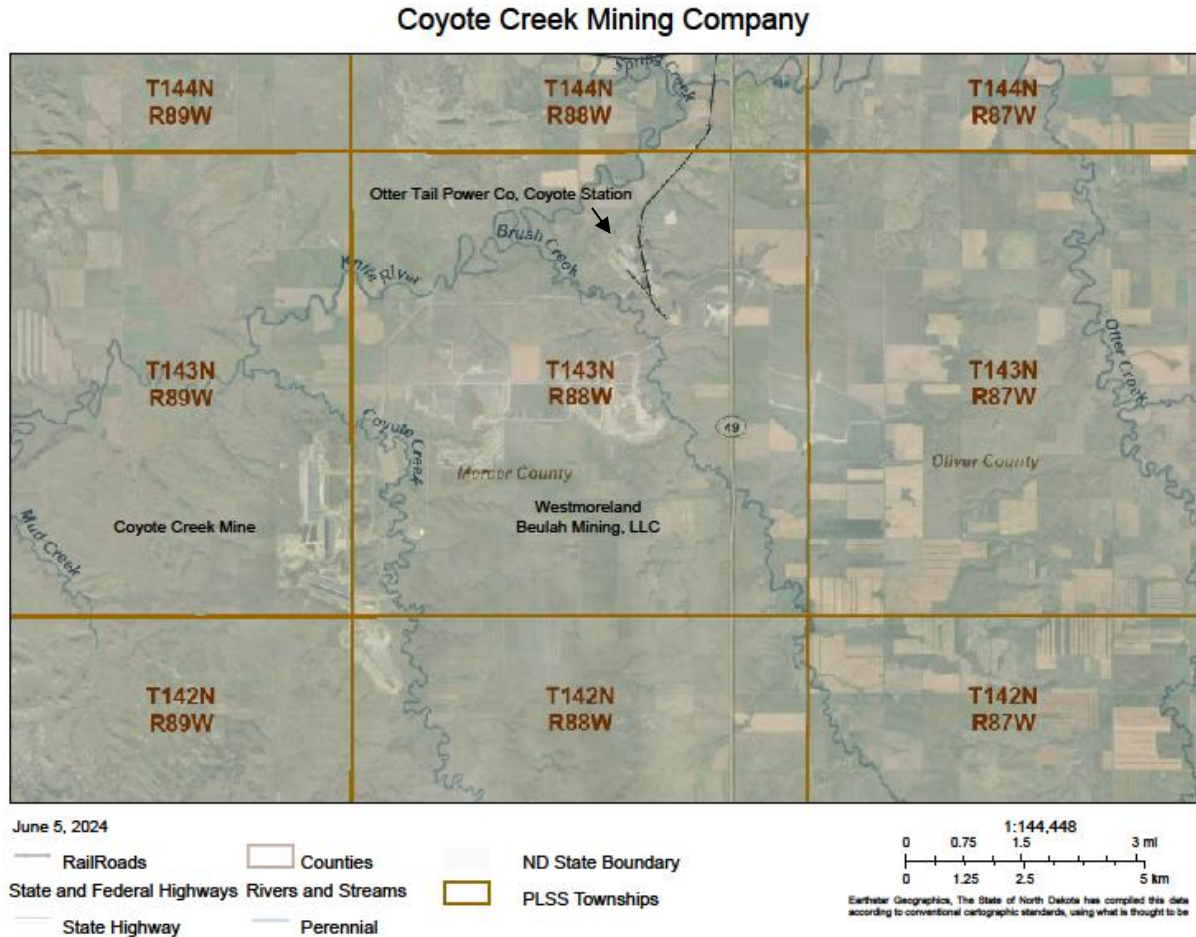


Figure 1 – Aerial Photograph of Coyote Creek Mining Company, L.L.C., Zap, ND (North Dakota Geographic Information System, map generated June 2024)

## FACILITY DESCRIPTION

Coyote Creek Mining Company L.L.C, Coyote Creek Mine (facility) is a lignite coal mining operation located southwest of Beulah, North Dakota. The operation supplies approximately 2.5 million tons of coal per year to Otter Tail Power Company’s Coyote Station. All discharges are located within the boundaries of the approved surface mining permit (NACC-1302) issued by the North Dakota Public Service Commission (PSC), the state’s Surface Mining Control and Reclamation Act (SMCRA) authority. Surface mining permits are required in the state under North Dakota Century Code (NDCC) Chapter 38-14.1. The permitted mine and regulated discharge points are located in: (1) T143N, R88W; (2) T143N, R89W; (3) T142N, R88W; (4) T142N, R89W.

Mining permit applications show where surface coal mining operations are expected to occur over the life of the mining permit, and the size, sequence, and timing of mining operations. The

applications also show the location of proposed water ponds, impoundments, and diversions used for surface water management. All surface drainage from disturbed areas must pass through a sedimentation pond or other sediment control measure. These structures must be constructed prior to the start of mining operations. Once a pond or measure is constructed, the discharge point is added to the list of discharge points. These structures must be maintained until removal is approved by the PSC. Removal must follow Policy Memorandum No. 19 to Mine Operators, July 12, 2006 (Revised), issued by the PSC.

Typically, sedimentation ponds are used, and required under North Dakota Administrative Code (NDAC) 69-05.2-16-04, to control runoff from areas directly involved in the recovery of coal and to provide treatment prior to discharge off site. All surface drainage from disturbed areas must pass through a sedimentation pond or other sediment control measure as required in NDAC 69-05.2-16-04. Discharges from this mining operation, like others in the state, must meet federal standards established for the coal-mining point source category (40 CFR Part 434). The requirements specified in this permit are based on the provisions outlined in the federal requirements applicable to alkaline mine drainage and western alkaline coal mining. The requirements consist of separate limitations and monitoring requirements for two phases of mining activity: (1) active mining areas, and (2) reclamation areas. Alternate limitations and monitoring requirements for discharges attributable to certain precipitation events are provided.

Discharges from the washdown facility are authorized under this permit provided all conditions in the permit are met. Wastewater from the washdown facility is sent to pond P30-01. Prior to entering the pond, the water goes through a mud trap in the washdown facility. Pond P30-01 is oversized, so evaporation keeps the water in the pond below permanent pool elevation without the need to discharge. Should the pond need to be discharged, the facility's protocol and permit conditions for discharging ponds will be followed.

Runoff outside of active mining and reclamation areas is covered by the NDPDES stormwater discharge general permit associated with mining, extraction, and paving material preparation activities (NDR32-0000). The NDR32-0000 permit requires facilities to develop a stormwater pollution prevention plan (SWPPP) to minimize pollutants that could be discharged in runoff from areas outside of mining areas as well as routine sampling of stormwater runoff. The facility's coverage number under the permit is NDR320772.

Sanitary waste from the office building and shop is managed with a two-cell, waste stabilization system. This system is permitted through the NDPDES general permit associated with the discharge of domestic waste from waste stabilization systems to class III streams, NDG32-0000. Any discharge of treated domestic wastewater must meet the effluent limitations and monitoring requirements of the NDG32-0000 permit. The facility's coverage under this permit is NDG326808.

### **Discharge Outfall**

Permitted mining areas discharge to: (1) Knife River; (2) Coyote Creek; (3) Mud Creek; and (4) Brush Creek. The Knife River is listed as a class II stream in the Standards of Quality for Waters of the State (NDAC 33.1-16-02.1). All other receiving waters for the facility are not specifically classified in the standards and are considered class III streams. The list of discharge points as of January 1, 2019 is provided in Appendix E.

Discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic conditions from mine areas. The discharge location, structure description and hydrologic considerations are identified in the surface mining permit(s) issued by the PSC, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The permittee must request and obtain an NDPDES discharge point number from the department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards. Upon the assignment of the NDPDES discharge point number, discharges may be made in accordance with the limitations, record keeping and reporting requirements outlined in this permit. Once a discharge point is activated it will be subject to reporting under NDPDES until such time it is authorized for removal.

The department and the permittee maintain an up-to-date list of all discharge points covered by the NDPDES permit and the status of each point. The most up-to-date list of discharge points is provided in Appendix E. Beginning with the issuance of the 2014 permit, the description of the discharge point will include:

- The serial number
- The contributing area (i.e., active mining, reclamation) or wastewater source
- Treatment structure
- Company designation
- Date the point was first regulated under the NDPDES permit
- Location
- Receiving stream
- Date designated as a reclamation area or sedimentation pond removal site
- Date point was no longer active

The source of runoff to each discharge point depends on the status of the area draining to the point. These areas may be an "Active Mining Area" or "Reclamation Area" (refer to definitions). The types of wastes, fluids, and pollutants that could be generated include runoff from suitable plant growth material piles, overburden piles, haul roads, exposed coal seams, and underlying strata. The quantity generated varies based on the amount of precipitation received. However, sedimentation ponds generally must provide treatment for a ten-year, twenty-four-hour precipitation event (NDAC 69-05.2-16-09.3). All discharge points except for the sanitary waste stabilization system are regulated under the coal mining effluent limitations.

## **PERMIT STATUS**

The department issued the current permit for this facility on October 1, 2019. The permit will expire September 30, 2024. The current permit includes monitoring requirements for total iron (TFe), total suspended solids (TSS), settleable solids (SS), oil and grease, pH, flow, total amount drained, and total days discharging.

The western alkaline coal mining subcategory was added to the federal regulations in 2002. The provisions of the subcategory were discussed between the department, the PSC, and an industry trade group when the provision was first proposed. The consensus being that the western mine provisions have only limited applicability in the state. North Dakota's coal mining activity is on the extreme eastern margin of the area defined as western coal mining operations which is limited to operations west of the 100<sup>th</sup> meridian west longitude. The landscape and

mining practices would best be described as transitional, sharing aspects of mid-western and western mining practices rather than the typical western mine conditions considered in the rule development. The mining operations in the state occur on rolling landscapes with deep soils that are primarily used for continuous crop production and to a lesser extent grazing.

The only reasonable application of the western alkaline subcategory in the state would be in reclamation areas where pond removal occurs prior to vegetation reestablishment. In addition to reclamation areas, the subcategory applies to brushing and grubbing areas, topsoil stockpiling areas, and regraded areas. Brushing and grubbing is not practiced or necessary for soil removal in the state. Topsoil as well as subsoil is stockpiled for use in reclamation and the storage areas must be designed to drain to a sediment pond or have erosion and sediment controls that conform to the state's surface mining standards and the stormwater permit for mining activity. Due to the depth of soil that must be replaced on mined land in the state, the definition for a regraded area cannot be met until the subsoil and topsoil has been replaced which is essentially the definition for a reclamation area. The western mining subcategory does not apply to active mine areas.

During the 2019 renewal, the department updated the pH limitation for discharges from reclamation areas from "shall be between 7.0 and 9.0 standard units (s.u)" to "shall be between 6.0 and 9.0 s.u." The limitation "shall be between 7.0 and 9.0 s.u." was applicable for discharges to lakes, reservoirs, and Class IA streams. The facility does not discharge to lakes, reservoirs, or Class IA streams. Therefore, the pH limitation was updated to "shall be between 6.0 and 9.0 s.u." in accordance with 40 CFR 434.55(a) and to maintain consistency between the facility's permit and associated fact sheet.

Also, during the 2019 renewal, precipitation amount used to determine the 10 year, 24-hour precipitation alternate limitation and subsequent pond design was reduced from 3.1 inches to 2.97 inches. The change was based on the release of the *National Oceanographic and Atmospheric Administration Atlas 14 (NOAA Atlas 14)*. Prior to the adoption of *NOAA Atlas 14*, the precipitation-based effluent limitation and sediment pond design was based on the technical paper *Rainfall Frequency Atlas of the United States (1961)*. The change did not result in less stringent effluent limitations for ponds designed prior to 2012 using *Rainfall Frequency Atlas of the United States*. Since 2016, ponds were designed using *NOAA Atlas 14*.

## **SUMMARY OF COMPLIANCE WITH PREVIOUS PERMIT ISSUED**



Department staff conducted one routine, non-sampling compliance inspection since the effective date of the current permit (October 1, 2019). The department's assessment of compliance is based on review of the facility's Discharge Monitoring Reports (DMRs) and inspections conducted by department staff.

The facility submitted EPA NPDES Application Form 1 and EPA NPDES Application Form 2F for permit renewal. The department received and accepted the application forms on April 9, 2024.

### Past Discharge Data

DMR information from October 2019 through March 2024 is shown in Tables 2 and 3, below. Table 2 illustrates the number of discharge days by year, including the total amount drained per year, and number and type of exceedance. Table 3 provides a summary of the reported DMR information.

**Table 2 – Discharge Summary by Year**

Year	Number of Discharge Days <sup>a</sup>	Total Drain (Mgal)	Number of Exceedances			
			TSS	TFe	pH	O&G
2019	30	48.903	0	0	0	0
2020	52	63.427	0	0	0	0
2021	13	17.753	0	0	0	0
2022	96	109.053	0	0	0	0
2023	183	174.7	0	0	0	0
<b>Notes:</b>						
a. Number of discharge days is the cumulative number of days discharged by all discharge points throughout the year.						

**Table 3 – Data Summary by DMR**

Year	pH min (S.U.)	pH max (S.U.)	TFe avg (mg/L)	TFe max (mg/L)	TSS avg (mg/L)	TSS max (mg/L)	SS <sup>a</sup> avg (mL/L)	SS <sup>a</sup> max (mL/L)	O&G avg (mg/L)	O&G max (mg/L)
2019	7.39	8.33	1.22	2.13	15.625	37	N/A	N/A	N/A	N/A
2020	7.8	8.94	1.45	6.83 <sup>b</sup>	17.263	121 <sup>b</sup>	0.1	0.1	N/A	N/A
2021	7.29	8.51	1.2	1.55	14.5	27	N/A	N/A	N/A	N/A
2022	6.99	8.78	1.39	20.4 <sup>b</sup>	16.933	400 <sup>b</sup>	0	0	N/A	N/A
2023	7.57	8.89	1.39	16.5 <sup>b</sup>	11.435	167 <sup>b</sup>	N/A	N/A	N/A	N/A
<b>Notes:</b>										
a. Settleable Solids reported as "0.1" on April 2020 through October 2020 DMRs and as "0" on April 2022 through September 2022 DMRs. Settleable Solids reported as a conditional limit not required during the monitoring period on all other DMRs reviewed.										
b. Alternate limitations allowed as provided in Part I(B) of the current permit.										

N/A Not Applicable
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## PROPOSED PERMIT LIMITS

### EFFLUENT LIMITATIONS

Discharges from mining operations are regulated by national effluent guidelines which establish technology-based effluent limitations. The technology based effluent limitations may be found in Title 40 of the Code of Federal Regulations, Part 434 – or 40 CFR 434. Discharges from the washdown facility (Outfall 001) are subject to technology-based effluent limitations for active mining areas.

The department may generate additional limitations using Best Professional Judgment (BPJ) to ensure reasonable control technologies are used to prevent potential harmful effects from the discharge. The department also must consider and include limitations necessary to protect water quality standards applicable to receiving waters.

Discharges from active mining and reclamation areas caused by a volume of precipitation greater than a 10-year, 24-hour precipitation event (or equivalent volume of snowmelt) may be eligible for alternate effluent limitations in accordance with 40 CFR 434.63(a). In these instances, the department may waive the limitations for total iron, TSS, or settleable solids for pond overflows (40 CFR 434.63(a)(2)).

To qualify for overflow waivers, the facility must be able to measure precipitation amounts by gauge, which is representative of the mining operation. In addition, ponds must be designed, constructed, operated, and maintained to treat runoff from a 10-year, 24-hour precipitation event. The 10-year, 24-hour precipitation event volume is incorporated into pond designs. The volume lies between the permanent pool elevation (PPE) and the overflow elevation of the pond. It should be noted that the PPE is always lower than the overflow elevation.

When the water level in a pond is above the PPE, the pond must be managed to regain the capacity for the 10-year, 24-hour precipitation event or equivalent snowmelt. Pond dewatering must be done within 10 days of the last precipitation event when practicable. Instances where it may not be practicable to discharge include times when the quality of the water in the pond exceeds effluent limitations. Additional time is allowed when the permittee can demonstrate that dewatering was delayed due to activities or conditions downstream that can be affected by the discharge (e.g., agricultural activities, landowner accessibility, drainage channel stability/capacity).

Limitations based on numeric nutrient criteria are not being included in the proposed permit. Numeric nutrient criteria have yet to be developed for the state of North Dakota. Currently, the WQS contain a narrative standard stating that the surface waters must be free from nutrients in concentrations or loadings that cause objectionable growth of vegetation, algae, or other impairments.

The proposed effluent limitations shall take effect upon the effective date of the proposed permit. The effluent limitations and the basis for the limitations are provided in the Tables 4 through 7.

**Table 4: Active Mining Areas**

<b>Effluent Parameter</b>	<b>Monthly Average</b>	<b>Daily Maximum</b>	<b>Basis<sup>c</sup></b>
Total Iron <sup>a</sup>	3.0 mg/L	6.0 mg/L	40 CFR 434.45
Total Suspended Solids <sup>a</sup> (TSS)	35.0 mg/L	70.0 mg/L	40 CFR 434.45
Settleable Solids <sup>a</sup>	N/A	0.5 mL/L	40 CFR 434.63(a)(2)
Oil & Grease – Visual <sup>b</sup>	N/A	N/A	WQS
Oil & Grease <sup>b</sup>	*	10 mg/L	BPJ
pH	6.0 – 9.0 S.U.		40 CFR 434.45, WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.			BPJ; Previous Permit
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.			BPJ
<b>Notes:</b>			
<p>a. <u>Alternate Limitations:</u> The department may waive the limitations for total iron and total suspended solids for overflows caused by a single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions of the permit. During overflow discharges total suspended solids sampling shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p> <p>The settleable solids limit may be waived if there is a precipitation event greater than 2.97 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>To qualify for these limitations, the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.97 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>			
<p>b. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted, and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis</p>			

**Table 4: Active Mining Areas**

	and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
c.	<p>The basis of the effluent limitations is given below:</p> <p>"Previous Permit" refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>"BPJ" refers to best professional judgment.</p> <p>"WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.</p>
N/A	Not applicable
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.

**Table 5: Reclamation Areas**

<b>Effluent Parameter</b>	<b>Daily Maximum</b>	<b>Basis <sup>c</sup></b>
Settleable Solids <sup>a</sup>	0.5 mL/L	40 CFR 434.55(a)
Total Suspended Solids <sup>b</sup> (TSS)	70 mg/L	BPJ; Previous Permit
pH	6.0 – 9.0 S.U.	40 CFR 434.55(a); WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.		BPJ; Previous Permit
All components of the treatment systems and discharge structures shall be maintained to maximize effluent quality and preserve the integrity of structures. If necessary, best management practices shall be used upstream and downstream of a discharge structure to ensure that effluent quality is maximized. As a general practice, sediment ponds should be dewatered by late fall.		Previous Permit

**Table 5: Reclamation Areas**

<p>The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.</p>	<p>BPJ</p>
<p><b>Notes:</b></p>	
<p>a. The settleable solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.97 inches in 24 hours. The limitation may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>	
<p>b. The total suspended solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow, discharge sampling for total suspended solids shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.</p>	
<p>c. The basis of the effluent limitations is given below:</p> <p>“Previous Permit” refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>“BPJ” refers to best professional judgement.</p> <p>“WQS” refers to effluent limitations based on the State of North Dakota’s “Standards of Quality for Waters of the State,” NDAC Chapter 33.1-16-02.1.</p>	
<p>N/A Not applicable</p>	

**Table 6: Pond Removal Sites**

<p>Discharges from sediment pond removal and pond site reclamation operations must be controlled to provide the best quality attainable through the implementation of best management practices (BMPs).</p>	<p>BPJ</p>
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**Table 6: Pond Removal Sites**

<p>The permittee must follow the guidelines for sedimentation pond removal and pond site reclamation outlined in Policy Memorandum No. 19 to Mine Operators, issued by the North Dakota Public Service Commission (PSC) and the North Dakota Department of Health, Division of Water Quality – now referred to as the North Dakota Department of Environmental Quality (NDDEQ), Division of Water Quality. The conditions and procedures outlined in the policy accommodate the rules and requirements of both the NDDEQ and the PSC. In summary, the policy contains the following:</p> <p>The prerequisite discharge water quality history and land reclamation conditions that must be present in the watershed of a structure before removal may be considered;</p> <p>The content and considerations for a site specific reclamation plan that must be submitted for review and approval;</p> <p>A description of the BMPs for erosion and sediment control that must be used and maintained;</p> <p>The timing for designating a discharge point as a sedimentation pond removal site regulated by the use of BMPs and the procedures outlined in the site specific reclamation plan;</p> <p>The notifications to the NDDEQ and PSC required during the course of the pond removal activity.</p>	BPJ
<p>The BMPs and all procedures identified in the approved site specific reclamation plan must be followed throughout the course of the pond removal activities.</p>	BPJ
<p>The assignment of a discharge point to pond removal status does not become effective until any final dewatering of the pond is completed and pond removal activities begin.</p>	BPJ
<p>The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards.</p>	BPJ

**Table 7: Outfall 001, Washdown facility**

Effluent Parameter	Monthly Average	Daily Maximum	Basis <sup>c</sup>
Total Iron	3.0 mg/L	6.0 mg/L	40 CFR 434.45; BPJ
Total Suspended Solids (TSS)	35.0 mg/L	70.0 mg/L	40 CFR 434.45; BPJ
Oil & Grease – Visual <sup>a</sup>	N/A	N/A	WQS

**Table 7: Outfall 001, Washdown facility**

Oil & Grease <sup>a</sup>	*	10 mg/L	BPJ
pH	6.0 – 9.0 S.U.		40 CFR 434.45, WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.			BPJ; Previous Permit
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.			BPJ
<b>Notes:</b>			
a.	There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.		
c.	<p>The basis of the effluent limitations is given below:</p> <p>"Previous Permit" refers to limitations in the previous permit. The NPDES regulations 40 CFR Part 122.44(1)(1) Reissued permits require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR Part 122.62.</p> <p>"BPJ" refers to best professional judgment.</p> <p>"WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.</p>		
N/A	Not applicable		
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.		

**SELF-MONITORING REQUIREMENTS**

Samples obtained from active mining and reclamation areas must be taken prior to the discharge water leaving company property or entering any receiving stream.

Nutrient monitoring is being added to the proposed permit to coincide with the state's finalized "North Dakota Nutrient Reductions Strategy for Surface Waters." Sources of nutrients from coal

mining activity are from typical non-point sources of pollution (crop, livestock production, failing septic systems), nitrogen-based explosives, nutrients bound in overburden and coal, and reclamation practices.

Mining progresses in a planned, defined direction from year to year which can result in mining activity (soil removal, coal removal, reclamation) crossing multiple watersheds. Because mining progresses in a defined direction, sources of nutrients can be present upstream or downstream of mining activity.

Surface water is monitored at watershed sites (Table 9) designated in the PSC surface mining permit. These sites are located downstream on NDPDES discharge points which can be at different stages of mining activity within the watershed. The proposed NDPDES permit will include semiannual nutrient monitoring at these watershed sites. A watershed monitoring site will be removed from the NDPDES permit after all NDPDES discharge points upstream of the site have been inactivated.

**Table 8: Self-Monitoring Requirements**

Effluent Parameter	Frequency	Sample Type <sup>a</sup>
<i>Active Mining Areas:</i>		
Total Iron	Monthly	Grab
TSS	Weekly	Grab
Settleable Solids	Weekly	Grab
Oil & Grease – Visual	Daily	Visual
Oil & Grease	Conditional	Grab
pH	Weekly	Instantaneous
Flow, Total <sup>b</sup>	Monthly	Calculated
Drain, Total <sup>b</sup>	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
<i>Reclamation Areas:</i>		
TSS	Quarterly	Grab
Settleable Solids	Quarterly	Grab
pH	Quarterly	Instantaneous
Flow, Total <sup>b</sup>	Monthly	Calculated
Drain, Total <sup>b</sup>	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
<i>Discharge Point 001:</i>		
Total Iron	Monthly	Grab
TSS	Weekly	Grab
Oil & Grease – Visual	Daily	Visual
Oil & Grease	Conditional	Grab
pH	Weekly	Instantaneous
Flow, Total <sup>b</sup>	Monthly	Calculated



**Table 8: Self-Monitoring Requirements**

Effluent Parameter	Frequency	Sample Type <sup>a</sup>
Drain, Total <sup>b</sup>	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
<b>Notes:</b>		
a. Refer to Appendix B for definitions.		
b. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.		

**Table 9: Watershed Monitoring Sites**

Monitoring Site <sup>a</sup>	Facility Site Name	Location	Stream	Status	Period of Record
M01	MS-CC2	T143-R89-13 CCC	Coyote Creek	Active	2024-Present
M02	MS-MCT1	T142-R89-03 ABC	Unnamed Tributary to Mud Creek	Active	2024-Present
M03	MS-KRT1	T143-R89-23 BCD	Unnamed Tributary to Knife River	Suspended <sup>b</sup>	2024-Present
M04	MS-KR2	T143-R89-13 BBC	Knife River	Active	2024-Present
<b>Notes:</b>					
a. The department will utilize the monitoring site name for watershed monitoring sites for department records.					
b. Suspended status refers to monitoring sites that are suspended due to impoundments. Monitoring at this site is suspended. The site shall be monitored if the impoundments are removed during the effective period of this permit.					

**Table 10: Nutrient Monitoring Requirements**

Parameter	Frequency <sup>a</sup>	Sample Type <sup>a,b</sup>
Nitrogen, Total <sup>c</sup>	2 runoff events annually	Grab
Phosphorus, Total	2 runoff events annually	Grab
Flow, cfs	2 runoff events annually	Calculated
<b>Notes:</b>		
a. Samples and measurements shall be representative of the nutrient monitoring activity. Samples shall be collected when a runoff event or standing water at the monitoring site provides a measurable sample volume for analysis.		
b. Refer to Appendix B for definitions.		
c. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).		

**SURFACE WATER QUALITY-BASED EFFLUENT LIMITS**

The North Dakota Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1), or Water Quality Standards (WQS), are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include

conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed to reduce pollution from all sources.

The Knife River is listed as a class II stream in the WQS. The quality of water in class II streams must be suitable for resident fish and other aquatic life, as well as recreational use. The quality of water in class II streams also must be suitable for irrigation, stock watering and wildlife. The quality must be able to meet the bacteriological, physical, and chemical requirements for municipal or domestic use with additional treatment. Streams in this class may be intermittent in nature which makes them of limited value for municipal water, fish life, irrigation, bathing, and swimming.

Coyote Creek, Mud Creek, and Brush Creek are not classified in the WQS. Streams that are not specifically mentioned in the WQS are classified as class III streams (NDAC 33.1-16-02.1, Appendix I). Class III streams must be suitable for agricultural and industrial uses. These streams generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of water in class III streams must be suitable for secondary contact recreation uses (e.g., wading) as well as fish and aquatic biota and wildlife uses.

The department identified the recreational use of Coyote Creek and Brush Creek as being fully supported, but threatened, by fecal coliform bacteria (fecal coliform bacteria are used as an indicator of recreational use risk). As a result, a TMDL for fecal coliform bacteria was developed for Coyote Creek and Brush Creek ([Fecal Coliform Bacteria TMDLs for the Knife River Tributaries in Mercer County, North Dakota, 2010](#)). The TMDL is intended to reduce fecal coliform bacteria counts in Coyote Creek and Brush Creek to meet the beneficial use of the creeks. The TMDL applies to the main branch of Coyote Creek from Beaver Creek downstream to its confluence with the Knife River. The TMDL does not apply to the tributaries to Coyote Creek. The TMDL also applies to Brush Creek and its tributaries.

The department also identified the recreational use of the section of the Knife River near the mine as impaired for *Escherichia coli* (*E. coli*) bacteria (*E. coli* bacteria also are used as an indicator of recreational use risk). The recreational use of the Knife River ranges from not supporting (from Branch Knife River downstream to the confluence with Coyote Creek) to being fully supported but threatened (from Coyote Creek downstream to the confluence with Spring Creek). A TMDL for *E. coli* bacteria was subsequently developed for the segment of the Knife River ([E. coli Bacteria TMDL for the Knife River in Dunn and Mercer Counties, North Dakota, 2017](#)). The TMDL is intended to reduce *E. coli* bacteria counts in the Knife River to meet the beneficial use of the river. The TMDL applies to the main branch of the Knife River and does not apply to its tributaries.

Fecal coliform and *E. coli* count reductions described in the TMDLs have generally been allotted to non-point sources of pollution (e.g., failing septic systems, livestock, etc.). The TMDL prescribes BMPs such as livestock management to achieve load reductions for non-point sources of pollution. Wasteload allocations for fecal coliform and *E. coli* bacteria were not given to the facility.

Sources of fecal coliform or *E. coli* bacteria from mining activity that could contribute to fecal coliform or *E. coli* bacteria counts include the waste stabilization system, portable sanitary facilities, manure application, and grazing activity. These sources are managed as follows:

1. The waste stabilization system is located in the Coyote Creek watershed. Discharges from the system are permitted through the NDPDES general permit associated with the discharge of domestic waste from waste stabilization systems to class III streams, NDG32-0000. Any discharge of treated domestic wastewater must meet the effluent limitations and monitoring requirements of the general permit.
2. Sanitary waste from portable facilities is collected by a septic pumper and transported offsite. Proper management of sanitary waste from portable facilities is not expected to contribute fecal coliform to Coyote Creek or Brush Creek, or *E. coli* to the Knife River.
3. Manure is not spread in the active mining or reclamation areas and is not expected to be a point source of pollution for fecal coliform or *E. coli*.
4. Reclamation activities will begin within the effective period of the proposed permit. As part of reclamation, the facility manages active areas with haying until a tract is large enough to be fenced and grazed. Farmland is also managed by the facility until the tract is large enough to be managed by producers. Once reclamation activities upstream of a pond are complete, the pond and associated discharge point will be removed, and no longer subject to permitting requirements.

Grazing is managed with prescribed grazing plans. The grazing plan indicates the number of animals and specific days of grazing. A diversity of plants is required to achieve final bond release, so the facility will use cattle as a management tool to help achieve this diversity. Lands may be grazed at different times of year depending on what species of plants are dominate and field conditions from the previous year's grazing. Land in advance of mining activity that has not been disturbed is managed by the tenant or landowner. These areas are generally not within one-quarter mile of coal removal due to stripping and prebench operations in advance of mining.

Cattle are not allowed to enter ponds. Cattle will be fenced out of active area ponds with at least a 50-foot buffer from the disturbance of the pond. An additional 100 to 200 feet of vegetation may be in place depending on the design of the pond and water elevation. In some situations, the pond may be one-quarter mile away from cattle.

The management of grazing operations with appropriate best management practices would be in accordance with the TMDL for Coyote Creek, Brush Creek, and the Knife River.

These sources are managed appropriately and reduce the contribution of fecal coliform and *E. coli* bacteria to discharges from the surface mining area. The department does not believe it is necessary to add requirements for fecal coliform or *E. coli* bacteria to the proposed permit since the proper BMPs are in place and contributions would be from a typical non-point source of pollution.

### **Numerical Criteria for the Protection of Aquatic Life and Recreation**

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Chapter 33.1-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent, or potentially more stringent, than technology-based limits, the discharge must meet the water quality-based limits.

### **Numerical Criteria for the Protection of Human Health**

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish, and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

### **Narrative Criteria**

Narrative water quality criteria (NDAC Chapter 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

### **Antidegradation**

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33.1-16-02 (Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

### **Mixing Zones**

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

## EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA

### Oil & Grease

The WQS state that waters of the state must be free from oil or grease attributable to wastewater which causes a visible sheen or film upon the water. Using BPJ, the department has determined that a daily maximum limitation of 10 mg/L is appropriate for active mining areas if a visible sheen is detected. Other treatment systems in the state have similar limitations.

### HUMAN HEALTH

North Dakota's water quality standards include numeric human health-based criteria that the department must consider when writing NDPDES permits. These criteria were established in 1992 by the U.S. EPA in its National Toxics Rule (40 CFR 131.36). The National Toxics Rule allows states to use mixing zones to evaluate whether discharges comply with human health criteria. The department determined the applicant's discharge is unlikely to contain chemicals regulated to protect human health. The department will re-evaluate this discharge for impacts to human health at the next permit reissuance.

## MONITORING REQUIREMENTS

The department requires monitoring, recording, and reporting (NDAC Chapter 33.1-16-01-(21 through 23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

### DISCHARGE MONITORING REPORT (DMR) REQUIREMENTS

The proposed permit requires the permittee to monitor discharges and submit discharge monitoring reports (DMRs) to the department. DMRs summarize monitoring results obtained during specified monitoring periods. If no discharge occurs during a monitoring period, "no discharge" must be reported. The monitoring periods for active mining and reclamation areas are monthly and quarterly, respectively. The monitoring period for nutrient monitoring is annually.

The proposed permit includes specified intervals for submitting DMRs (Table 11). DMRs must be submitted electronically to the department in accordance with 40 CFR 127 unless otherwise waived and in compliance with 40 CFR 3. The requirement to submit DMRs quarterly for active mining and reclamation areas is similar to other mining facilities.

**Table 11: DMR Submittal Requirements**

Coverage Point	Report Designator	Report Type	Report Interval
Active Mining Area	A	Conventional and Non-Conventional Pollutants, Flow and Volume Information	1/quarter
Reclamation Area	R	Conventional and Non-Conventional Pollutants, Flow and Volume Information	1/quarter
Nutrient Monitoring	N	Nutrients, Receiving Stream Flow	1/year

## **TEST PROCEDURES**

The collection and transportation of all samples shall comply with the preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

## **OTHER PERMIT CONDITIONS**

The proposed permit contains no additional conditions.

## **PERMIT ISSUANCE PROCEDURES**

### **PERMIT ACTIONS**

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **PROPOSED PERMIT ISSUANCE**

This proposed permit meets all statutory requirements for the department to authorize a wastewater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

## APPENDIX A – PUBLIC INVOLVEMENT INFORMATION

The department proposes to reissue a permit to **Coyote Creek Mining Company, L.L.C.** for its coal mining operation. The permit includes wastewater discharge limits and other conditions. This fact sheet describes the facility and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **July 25, 2024**, in the **Beulah Beacon** to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210, or by writing to the address listed below.

North Dakota Department of Environmental Quality  
Division of Water Quality  
4201 Normandy Street  
Bismarck, ND 58503-1324

The primary author of this permit and fact sheet is Kylee Dettling.

**North Dakota Department of Environmental Quality Public Notice  
Reissue of an NDPDES Permit**

Public Notice Date: 7/25/2024

Public Notice Number: ND-2024-017

**Purpose of Public Notice**

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

**Permit Information**

Application Date: 4/9/2024

Application Number: ND0026697

Applicant Name: Coyote Creek Mining Company, L.L.C.

Mailing Address: 6502 17th Street Southwest, Zap, ND 58580

Telephone Number: 701.873.7826

Proposed Permit Expiration Date: 9/30/2029

**Facility Description**

The reapplication is for a surface lignite coal mine located southwest of Beulah, ND. Discharges consist of ground water and surface runoff, and wash water from the washdown bay. Discharges are to Brush Creek, Coyote Creek, and Mud Creek, all Class III streams, and the Knife River, a Class II stream. Discharges covered by this permit are subject to the surface water management conditions and the designated locations described in surface mining permits approved following public review under NDCC Chapter 38-14.1. The current and proposed discharge structures are located within the boundaries of Coyote Creek Mining Company, L.L.C.'s surface mining permits, which encompass all or part of the following: T142N, R88W; T142N, R89W; T143N, R88W; and T143N, R89W.

**Tentative Determinations**

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCAA will be protected.

**Information Requests and Public Comments**

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: <https://deq.nd.gov/PublicCommentTips.aspx>. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by August 24, 2024 will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. Language assistance services are available free of charge to you. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or [deqEJ@nd.gov](mailto:deqEJ@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.



## APPENDIX B – GLOSSARY

### DEFINITIONS Standard Permit BP 2019.05.29

1. “**Act**” means the Clean Water Act.
2. “**Average monthly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. “**Average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the  $n^{\text{th}}$  root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. “**Grab**” for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
13. “**Instantaneous**” for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. “**Maximum daily discharge limitation**” means the highest allowable “daily discharge.”
15. “**Salmonid**” means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.
16. “**Sanitary Sewer Overflows (SSO)**” means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. “**Severe property damage**” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. “**Total drain**” means the total volume of effluent discharged.
19. “**Upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

#### **DEFINITIONS Permit Specific**

1. “**Active Mining Area**” means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. “**Daily maximum concentration**” means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. “**Monthly Average Concentration**” means the average discharge concentration during 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.
4. “**NDPDES**” means North Dakota Pollutant Discharge Elimination System.

5. **“Reclamation Area”** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

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### **APPENDIX C – DATA AND TECHNICAL CALCULATIONS**

The development of the permit did not require technical calculations by the North Dakota Department of Environmental Quality. The department reviewed the NDPDES permit application, DMR information, and applicable water quality standards for class II and III streams to determine the appropriate requirements to be placed in the permit. In addition, the department reviewed Total Maximum Daily Load information for Brush Creek and Coyote Creek and the department's 2020-2022 North Dakota Section 303(d) List of Waters Needing Total Maximum Daily Loads (303(d) List).

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**APPENDIX D – RESPONSE TO COMMENTS**

Comments received during the public comment period will be placed here.

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### APPENDIX E – DISCHARGE OUTFALLS

Discharge points effective November 22, 2022, for the Coyote Creek Mining Company, ND-0026697. The discharge serial number is followed by a description of the structure, any company designation, the date the point was first regulated by the permit program, its location, and to where the structure discharges. The points are active mining areas unless otherwise noted.

- Discharge 001 - Settling pond P30-01 (11-12-2014) located in the SE 1/4, SE 1/4, Section 30, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 002 - Settling pond P30-02 (11-12-2014) located in the NE1/4, NW 1/4, Section 30, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 003 - Settling pond P30-03 (11-12-2014) located in the NE1/4, SW 1/4, Section 30, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 004 - Settling pond P30-04 (11-12-2014) located in the NW 1/4, SW 1/4, Section 30, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 005 - Settling pond P19-01 (11-12-2014) located in the SW 1/4, SW 1/4, Section 19, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 006 - Settling pond P24-01 (11-12-2014) located in the NW 1/4, SW 1/4, Section 19, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 007 - Settling pond P24-02 (11-12-2014) located in the NE 1/4, SE 1/4, Section 24, Township 143 North, Range 89 West to Coyote Creek via an unnamed drainage.
- Discharge 008 - Settling pond P31-01 (11-12-2014) located in the NE 1/4, NW 1/4, Section 31, Township 143 North, Range 88 West to Coyote Creek via P31-01 spillway.
- Discharge 009 - Settling pond P10-01 (11-12-2014) located in the SE 1/4, SW 1/4, Section 10, Township 143 North, Range 88 West to Brush Creek via an unnamed drainage.
- Discharge 010 - Settling pond P10-02 (11-12-2014) located in the SE 1/4, SW 1/4, Section 10, Township 143 North, Range 88 West to Brush Creek via an unnamed drainage.
- Discharge 012 - Settling pond P31-02 (01-02-2017) located in the SW 1/4, Section 31, Township 143 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 013 - Settling pond P06-03 (01-02-2017) located in the NW 1/4, Section 6, Township 142 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 014 - Settling pond P24-03 (09-29-2017) located in the SE 1/4, Section 24, Township 143 North, Range 89 West to Coyote Creek via an unnamed drainage.
- Discharge 015 - Settling pond P24-04 (09-29-2017) located in the SW 1/4, Section 24, Township 143 North, Range 89 West to Coyote Creek via an unnamed drainage.
- Discharge 016 - Settling pond P25-01 (01-01-2019) located in the NW 1/4, Section 25, Township 143 North, Range 89 West to Knife River via an unnamed drainage.
- Discharge 017 - Settling pond P06-02 (01-01-2019) located in the NE 1/4, Section 6, Township 142 North, Range 88 West to Coyote Creek via an unnamed drainage.

FACT SHEET FOR NDPDES PERMIT ND0026697

Coyote Creek Mining Company, L.L.C. - Zap

**EXPIRATION DATE: September 30, 2029**

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- Discharge 018 - Settling pond P06-01 (09/11/2020) located in the SE¼ Section 6, Township 142 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 019 - Settling pond P07-01 (08/26/2021) located in the NW 1/4, NE 1/4, Section 7, Township 142 North, Range 88 West to Coyote Creek via an unnamed drainage.
- Discharge 020 - Settling pond P25-02 (10/20/2021) located in the NW 1/4, SW 1/4, Section 25, Township 143 North, Range 89 West to Knife River via an unnamed drainage.
- Discharge 021 - Settling pond P25-03 (11/22/2022) located in the NW 1/4, NW 1/4, Section 25, Township 143 North, Range 89 West to Coyote Creek via an unnamed drainage.

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Permit No: ND0026697  
Effective Date: October 1, 2024  
Expiration Date: September 30, 2029

AUTHORIZATION TO DISCHARGE UNDER THE  
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33.1-16-01 of the North Dakota Department of Environmental Quality rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

Coyote Creek Mining Company, L.L.C.  
Zap, North Dakota

is authorized to discharge from its coal mining operation located near Zap, ND  
  
from the specified locations and to specified receiving streams per page 5  
  
provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,  
September 30, 2029.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Karl H. Rockeman, P.E.  
Director  
Division of Water Quality



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**DEFINITIONS Standard Permit BP 2019.05.29**

1. “**Act**” means the Clean Water Act.
2. “**Average monthly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
3. “**Average weekly discharge limitation**” means the highest allowable average of “daily discharges” over a calendar week, calculated as the sum of all “daily discharges” measured during a calendar week divided by the number of “daily discharges” measured during that week.
4. “**Best management practices**” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
5. “**Bypass**” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “**Composite**” sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.
7. “**Daily discharge**” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.
8. “**Department**” means the North Dakota Department of Environmental Quality, Division of Water Quality.
9. “**DMR**” means discharge monitoring report.
10. “**EPA**” means the United States Environmental Protection Agency.
11. “**Geometric mean**” means the  $n^{\text{th}}$  root of a product of  $n$  factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
12. “**Grab**” for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.
13. “**Instantaneous**” for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.
14. “**Maximum daily discharge limitation**” means the highest allowable “daily discharge.”
15. “**Salmonid**” means of, belonging to, or characteristic of the family Salmonidae, which includes the salmon, trout, and whitefish.

16. **“Sanitary Sewer Overflows (SSO)”** means untreated or partially treated sewage overflows from a sanitary sewer collection system.
17. **“Severe property damage”** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
18. **“Total drain”** means the total volume of effluent discharged.
19. **“Upset”** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

#### **DEFINITIONS Permit Specific**

1. **“Active Mining Area”** means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.
2. **“Daily maximum concentration”** means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.
3. **“Monthly Average Concentration”** means the average discharge concentration during 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.
4. **“NDPDES”** means North Dakota Pollutant Discharge Elimination System.
5. **“Reclamation Area”** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

## **FACILITY DESCRIPTION**

The discharges regulated by this permit consist of drainage from active mining and reclamation areas subject to effluent limits under 40 CFR 434. The discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic considerations identified in the surface mining permit(s) issued by the North Dakota Public Service Commission, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The current and proposed discharge structures are located within the boundaries of approved surface mining permits which encompass all or part of the following:

1. Township 142 North, Range 88 West
2. Township 142 North, Range 89 West
3. Township 143 North, Range 88 West
4. Township 143 North, Range 89 West

and discharge to:

1. Knife River, a Class II stream
2. Coyote Creek, a Class III stream
3. Mud Creek, a Class III stream
4. Brush Creek, a Class III stream

## **OUTFALL DESCRIPTION**

The permittee must request and obtain an NDPDES discharge point number from the department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards. Upon the assignment of the NDPDES discharge point number, discharges may be made in accordance with the limitations, record keeping and reporting requirements outlined in this permit. Once a discharge point is activated it will be subject to reporting under NDPDES until such time it is authorized for removal.

Unless otherwise described in this permit, a discharge point is subject to active mining area requirements until the permittee submits a change of status to the department stating the contributing area has changed from an active mining area to a reclamation area or sedimentation pond removal site. Discharge points assigned to clean water ponds or diversions are not subject to NDPDES requirements.

The permittee and department will maintain an up-to-date list of all discharge points. The list will include the discharge serial number, a description of the contributing area (i.e., active mining, reclamation) or wastewater source, a description of the treatment structure, any company designation, the date the discharge point was first regulated by the permit program, the location, and the receiving stream. Discharge points receiving runoff from reclamation areas must include the date the contributing area was designated as a reclamation area. Inactive discharge points will list the date the point was no longer active.

<b>Outfall 001. Active. Final.</b>			
Latitude: 47.172222	Longitude: -101.874722	County: Mercer	
Township: 143N	Range: 88W	Section: 30	QQ: DDB
Receiving Stream: Coyote Creek		Classification: Class III	
Outfall Description: The permittee is authorized to discharge from its washdown facility per conditions included in this permit. Discharges are to Coyote Creek.			

**PERMIT SUBMITTALS SUMMARY**

Coverage Point	Submittal	Monitoring Period	Submittal Frequency	First Submittal Date
Active Mining Areas	Discharge Monitoring Report	Monthly	Quarterly	January 31, 2025
Reclamation Areas	Discharge Monitoring Report	Quarterly	Quarterly	January 31, 2025
001A	Discharge Monitoring Report	Monthly	Quarterly	January 31, 2025
Watershed Monitoring Sites	Discharge Monitoring Report	Annually	Annual	October 31, 2025
Application Renewal	NPDES Application Renewal	None	1/permit cycle	March 31, 2029

**SPECIAL CONDITIONS**

No special conditions have been determined at this time.

## I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

### A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfall as specified to the following: **Coyote Creek, Brush Creek, Mud Creek, and Knife River.**

This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

### B. Effluent Limitations and Monitoring

#### ACTIVE MINING AREAS:

Table 1: Effluent Limitations and Monitoring Requirements <b>Active Mining Areas</b>				
Parameter	Effluent Limitations		Monitoring Requirements	
	Avg. Monthly	Daily Max.	Sample Frequency	Sample Type
Total Iron <sup>a</sup>	3.0 mg/L	6.0 mg/L	Monthly	Grab
Total Suspended Solids (TSS) <sup>a</sup>	35.0 mg/L	70.0 mg/L	Weekly	Grab
Settleable Solids <sup>a, b</sup>	N/A	0.5 mL/L	Weekly	Grab
Oil & Grease – Visual <sup>c</sup>	N/A	N/A	Daily	Visual
Oil & Grease <sup>c</sup>	*	10 mg/L	Conditional	Grab
pH	6.0 – 9.0 S.U.		Weekly	Instantaneous
Flow Effluent (gpm) <sup>d</sup>	N/A	N/A	Monthly	Calculated
Drain Total (MG)	N/A	N/A	Monthly	Calculated
Total Days Discharging	N/A	N/A	Monthly	Calculated

#### Notes:

- a. Alternate Limitations: The department may waive the limitation for Total Iron and Total Suspended Solids for overflows caused by a single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions (Part III(F)). During overflow discharges Total Suspended Solids sampling shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring of Settleable Solids is not required for routine discharges.

The Settleable Solids limit may be waived if there is a precipitation event greater than 2.97 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.

To qualify for these limitations the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.97 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10

Table 1: Effluent Limitations and Monitoring Requirements <b>Active Mining Areas</b>	
	<p>days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>
b.	The Settleable Solids test procedure shall conform with 40 CFR 434.64.
c.	There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
d.	The permittee shall maintain the capability to measure the instantaneous flow rate, daily.
	N/A Not Applicable
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.
Stipulations:	
Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.	
The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.	
When alternate limitations are granted, the test results for parameters not subject to limitations shall be included as an attachment to the report for the applicable monitoring period.	
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.	

**RECLAMATION AREAS:**

Table 2: Effluent Limitations and Monitoring Requirements <b>Reclamation Areas</b>			
Parameter	Effluent Limitations	Monitoring Requirements	
	Daily Max.	Sample Frequency	Sample Type
Total Suspended Solids (TSS) <sup>a</sup>	70.0 mg/L	Quarterly	Grab
Settleable Solids <sup>b, c</sup>	0.5 mL/L	Quarterly	Grab
pH	6.0 – 9.0 S.U.	Quarterly	Instantaneous
Flow Effluent (gpm) <sup>d</sup>	N/A	Monthly	Calculated
Drain Total (MG)	N/A	Monthly	Calculated
Total Days Discharging	N/A	Monthly	Calculated
<b>Notes:</b>			
<p>a. The Total Suspended Solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow discharge, sampling for Total Suspended Solids shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring for Settleable Solids is not required for routine discharges.</p>			
<p>b. The Settleable Solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.97 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.</p> <p>Precipitation shall be measured by gauge and recorded daily by the permittee.</p>			
<p>c. The Settleable Solids test procedure shall conform with 40 CFR 434.64.</p>			
<p>d. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.</p>			
<p>N/A Not Applicable</p>			
<b>Stipulations:</b>			
<p>All components of the treatment systems and discharge structures shall be maintained to maximize effluent quality and preserve the integrity of structures. If necessary BMPs shall be used upstream and downstream of a discharge structure to ensure that effluent quality is maximized. As a general practice, sediment ponds should be dewatered by late fall.</p>			
<p>Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.</p>			



Table 2: Effluent Limitations and Monitoring Requirements <b>Reclamation Areas</b>
The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.
The results for Total Suspended Solids obtained during overflow conditions shall be included as an attachment to the report for the applicable monitoring period.
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.

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**SEDIMENTATION POND REMOVAL SITES:**

Table 3: Effluent Limitations and Monitoring Requirements <b>Sediment Pond Removal Sites</b>
Stipulations:
The discharges from sedimentation pond removal and pond site reclamation operations must be controlled to provide the best quality attainable through the implementation of BMPs.
<p>The permittee must follow the guidelines for sedimentation pond removal and pond site reclamation outlined in Policy Memorandum No. 19 to Mine Operators, issued by the North Dakota Public Service Commission (PSC) and the North Dakota Department of Health, Division of Water Quality – now referred to as the North Dakota Department of Environmental Quality, Division of Water Quality (department). The conditions and procedures outlined in the policy accommodate the rules and requirements of both the department and the PSC. In summary, the policy contains the following:</p> <ul style="list-style-type: none"> <li>The prerequisite discharge water quality history and land reclamation conditions that must be present in the watershed of a structure before removal may be considered.</li> <li>The content and considerations for a site specific reclamation plan that must be submitted for review and approval.</li> <li>A description of the BMP for erosion and sediment control that must be used and maintained.</li> <li>The timing for designating a discharge point as a sedimentation pond removal site regulated by the use of BMPs and the procedures outlined in the site specific reclamation plan.</li> <li>The notifications to the department and PSC required during the course of the pond removal activity.</li> </ul>
The BMPs and all procedures identified in the approved site specific reclamation plan must be followed throughout the course of the pond removal activities.
The assignment of a discharge point to pond removal status does not become effective until any final dewatering of the pond is completed and pond removal activities begin.
The status, stage or estimated percentage of completion for pond removal activities must be provided in the report for the applicable monitoring period. Once the pond removal activity is completed and the discharge point is released from the NDPDES permit, the reporting for the discharge point in monitoring reports is not required.
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards.

**OUTFALL 001, Washdown Facility:**

Table 4: Effluent Limitations and Monitoring Requirements <b>Outfall 001</b>				
Parameter	Effluent Limitations		Monitoring Requirements	
	Avg. Monthly	Daily Max.	Sample Frequency	Sample Type
Total Iron	3.0 mg/L	6.0 mg/L	Monthly	Grab
Total Suspended Solids (TSS)	35.0 mg/L	70.0 mg/L	Weekly	Grab
Oil & Grease – Visual <sup>a</sup>	N/A	N/A	Daily	Visual
Oil & Grease <sup>a</sup>	*	10 mg/L	Conditional	Grab
pH <sup>b</sup>	6.0 – 9.0 S.U.		Weekly	Instantaneous
Flow Effluent (gpm) <sup>c</sup>	N/A	N/A	Monthly	Calculated
Drain Total (MG)	N/A	N/A	Monthly	Calculated
Total Days Discharging	N/A	N/A	Monthly	Calculated
Notes:				
a. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.				
b. For pH, the limitation shall be between 6.0 (s.u) and 9.0 (s.u.).				
c. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.				
N/A Not Applicable				
*. This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.				
Stipulations:				
Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.				
The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.				
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.				

**C. Nutrient Monitoring**

Nutrient monitoring shall occur at the following watershed monitoring sites. The department shall be given advance notice of any changes to watershed monitoring sites that result in a new location for a monitoring site, removal of a monitoring site, or addition of a monitoring site. Watershed monitoring sites shall remain active until all NDPDES discharge points are inactivated in the watershed.

<b>Table 9: Nutrient Monitoring Location Watershed Monitoring Sites</b>				
<b>Monitoring Site <sup>a</sup></b>	<b>Facility Site Name</b>	<b>Location</b>	<b>Stream</b>	<b>Status</b>
M01	MS-CC2	T143-R89-13 CCC	Coyote Creek	Active
M02	MS-MCT1	T142-R89-03 ABC	Unnamed Tributary to Mud Creek	Active
M03	MS-KRT1	T143-R89-23 BCD	Unnamed Tributary to Knife River	Suspended <sup>b</sup>
M04	MS-KR2	T143-R89-13 BBC	Knife River	Active
<b>Notes:</b>				
a. The department will utilize the monitoring site name for watershed monitoring sites for department records.				
b. Monitoring at this site is suspended due to impoundments. This site shall be monitored if the impoundments are removed during the effective period of this permit.				

<b>Table 10: Nutrient Monitoring Requirements Watershed Monitoring Sites</b>		
<b>Parameter</b>	<b>Sample Frequency <sup>a</sup></b>	<b>Sample Type <sup>a,b</sup></b>
Nitrogen, Total, mg/L <sup>c</sup>	2 runoff events annually	Grab
Nitrogen, Total, lb/day <sup>c</sup>	2 runoff events annually	Calculated
Phosphorus, Total (as P), mg/L	2 runoff events annually	Grab
Phosphorus, Total (as P), lb/day	2 runoff events annually	Calculated
Flow, cfs	2 runoff events annually	Calculated
<b>Notes:</b>		
a. Samples and measurements shall be representative of the nutrient monitoring activity. Samples shall be collected when a runoff event or standing water at the monitoring site provides a measurable sample volume for analysis.		
b. Refer to Appendix B for definitions.		
c. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).		

**II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09**

**A. Representative Sampling (Routine and Non-Routine Discharges)**

All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited under **Part I Effluent Limitations and Monitoring** requirements of this

permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with B. Test Procedures. The permittee must report all additional monitoring in accordance with D. Additional Monitoring.

**B. Test Procedures**

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

**C. Recording of Results**

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

**D. Additional Monitoring**

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with B. Test Procedures, shall be included in the summary on the Discharge Monitoring Report.

**E. Reporting of Monitoring Results**

1. Monitoring results shall be summarized and reported to the department using Discharge Monitoring Reports (DMRs). If no discharge occurs during a reporting period, "No Discharge" shall be reported. The permittee must submit DMRs electronically using the electronic information reporting system unless requirements in subsection 3 are met.
2. Prior to December 21, 2025, the permittee may elect to electronically submit the following compliance monitoring data and reports instead of mailing paper forms. Beginning December 21, 2025, the permittee must report the following using the electronic reporting system:
  - a. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];
  - b. Municipal separate storm sewer system program reports;
  - c. Pretreatment program reports;

- d. Sewer overflow/bypass event reports; and
  - e. Clean Water Act 316(b) annual reports
3. The permittee may seek a waiver from electronic reporting. To obtain a waiver, the permittee must complete and submit an Application for Temporary Electronic Reporting Waiver form (SFN 60992) to the department. The department will have 120 days to approve or deny the waiver request. Once the waiver is approved, the permittee may submit paper versions of monitoring data and reports to the department.
- a. One of the following criteria must be met in order to obtain a waiver. The department reserves the right to deny any waiver request, even if they meet one of the criteria below.
    - 1. No internet access,
    - 2. No computer access,
    - 3. Annual DMRs (upon approval of the department),
    - 4. Employee turnover (3-month periods only), or
    - 5. Short duration permits (upon approval of the department)

All reports must be postmarked by the last day of the month following the end of each reporting period. All original documents and reports required herein shall be signed and submitted to the department at the following address:

ND Department of Environmental Quality  
Division of Water Quality  
4201 Normandy Street  
Bismarck ND 58503-1324

#### **F. Records Retention**

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the department or EPA.

### **III. COMPLIANCE RESPONSIBILITIES**

#### **A. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

#### **B. Proper Operation and Maintenance**

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

#### **C. Planned Changes**

The department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of

pollutants shall be reported to the department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

**D. Duty to Provide Information**

The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

**E. Signatory Requirements**

All applications, reports, or information submitted to the department shall be signed and certified.

All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

The authorization is made in writing by a person described above and submitted to the department; and

The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under E. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**F. Twenty-four Hour Notice of Noncompliance Reporting**

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The following occurrences of noncompliance shall be included in the oral report to the department at 701.328.5210:

- a. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;
- b. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or

- c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.
2. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:
    - a. A description of the noncompliance and its cause;
    - b. The period of noncompliance, including exact dates and times;
    - c. The estimated time noncompliance is expected to continue if it has not been corrected; and
    - d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

Reports shall be submitted to the address in **Part II.E. Reporting of Monitoring Results**. The department may waive the written report on a case by case basis if the oral report has been received within 24 hours by the department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next Discharge Monitoring Report submittal. The report shall include the four items listed in this subsection.

#### **G. Bypass of Treatment Facilities**

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.
2. Bypass exceeding limitations-notification requirements.
  - a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.
  - b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.
3. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - c. The permittee submitted notices as required under the 1. Anticipated Bypass subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.

#### **H. Upset Conditions**

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination



made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);
2. The permitted facility was, at the time being, properly operated;
3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of Noncompliance Reporting and
4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

**I. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

**J. Removed Materials**

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

**K. Duty to Reapply**

Any request to have this permit renewed should be made six months prior to its expiration date.

**IV. GENERAL PROVISIONS**

**A. Inspection and Entry**

The permittee shall allow department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

**B. Availability of Reports**

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

**C. Transfers**

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the department of the possible change.

**D. New Limitations or Prohibitions**

The permittee shall comply with any effluent standards or prohibitions established under Section 306(a),

Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

**E. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

**F. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**G. State Laws**

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

**H. Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

**I. Property Rights**

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

**J. Severability**

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.