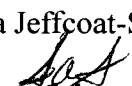
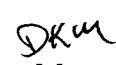



PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Cramer, Clark and Kalk
Darrell Nitschke
Illona Jeffcoat-Sacco

FROM:  Stephan Schroeder,  Dean Moos and  Jim Deutsch

DATE: March 5, 2009

SUBJECT: Bond Release No. 3 for Permit No. HKHK-8105 held by Royal Oak Enterprises, Inc., Case No. RC-04-409

Summary - On August 4, 2004, Royal Oak Enterprises, Inc. filed the application for Bond Release No. 3 to Surface Mining Permit HKHK-8105 for final bond release on 76.82 acres of reclaimed and undisturbed land at the Royal Oak Mine near Dickinson, ND. Royal Oak has since installed a drop structure in a drainageway and provided additional information to address the deficiencies that were noted during the review of the application. With the recent submittal of additional information, we now recommend that the bond release application be approved.

Discussion - The application for Bond Release No. 3 to Permit HKHK-8105 covers 76.82 acres located in portions of Sections 16 and 17, T139N, R95W, Stark County. Of this acreage, 7.94 acres have an industrial post-mine land use (former haulroad in Section 17) and the other 68.88 acres have an approved post-mine land use of tame pastureland (Section 16), which includes a few acres that were not disturbed by mining activities. The haulroad tract was initially disturbed by mining activities in the early 1970's when it was used for hauling coal and the placement of spoil from the initial mine pits in the Section 17 mine area that has already been bond released. Part of this area is still being used by the railroad-car cleaning facility that occupies some of the former charcoal briquetting facility.

Most of the areas having a tame pastureland land use were either mined or disturbed by placement of soil stockpiles and for the disposal of initial pit spoil under the 1975 and later reclamation laws. However, one tract is an old oxbow of the Heart River system that was used as a sedimentation pond for the Royal Oak Mine. It was minimally disturbed and the native vegetation has remained on this area.

Final grading and respreading of soil on the reclaimed tame pastureland was completed by the spring of 1990. Approximately 16 to 20 inches of topsoil was respread over 13 to 35 inches of subsoil depending upon the tract. Over half of the acreage was initially seeded with

a mixture containing alfalfa, switchgrass, western wheatgrass, green needlegrass, sideoats grama, slender wheatgrass, and little bluestem. About 30 acres were seeded to a mix of alfalfa, smooth brome grass, tall wheatgrass, sweet clover, faultsgrass, and pubescent wheatgrass with oats as a cover crop. Seeding in the eastern portion began in the late 1970's and moved westward and was completed in 1992. The year of seeding was dependent upon the rate of mining disturbance and reclamation of the stockpile areas. A small portion of the haulroad area was seeded in the late 1990s when part of Section 17 was enrolled in the USDA's Conservation Reserve Program by the landowner. However, vegetation on this early law area did not establish well since there was no topsoil or subsoil available to respread on it.

Royal Oak was required to demonstrate that the productivity of the tame pastureland was at least equal to the pre-mine level since these areas were disturbed and mined after July 1, 1975. Measurements were taken near the end of the ten-year revegetation liability period since some of this area was mined under the 1979 reclamation law. The minimum ten-year revegetation liability period applies to all tame pastureland since the areas that were mined prior to July 1, 1979 were also re-permitted as part of Permit HKHK-8105 following enactment of the 1979 reclamation law.

Once the re-seeded areas in Section 16 became well established, they were occasionally hayed and/or grazed. Royal Oak installed a well in the tame pastureland tract in June of 2001 to provide a livestock watering source. Due to erosion features noted during the September 2004 bond release inspection, Royal Oak had to install a concrete-lined drop structure in the drainageway near the section line between Sections 16 and 17. This work was not completed until the fall of 2006. Bond release approval has been delayed in part to allow vegetation to establish on areas that were affected by this construction activity and to ensure these areas are stable with sufficient ground cover to prevent or minimize erosion.

The unadjusted yield standard for the tame pastureland in Section 16 was determined to be 1.09 tons per acre using productivity values assigned to the pre-mine soil mapping units. No standards are required for the haulroad area in Section 17 since these areas were disturbed before July 1, 1975. Royal Oak decided to apply 1979 law reclamation success standards, including the ground cover requirement, to the entire tame pastureland tract. The unadjusted yield standard was climatically adjusted each year that yield measurements were taken through the use of the average county yield for Stark County that is published by the North Dakota Agricultural Statistics Service. The required ground cover standard for all years was 73% basal ground cover. The following table shows that the required tame pasture yield and cover standards were met for 2000, 2001, and 2003.

Year of Data	Yield Standards (tons/acre)			Cover Standard (%)	
	Unadjusted	Adjusted	Actual	Standard	Actual
2000	1.09	1.37	1.55	73	95
2001	1.09	1.32	2.24	73	93
2003	1.09	1.30	1.77	73	98

A portion of the tame pastureland tract previously received 40% bond release for completion of backfilling and grading. The tame pastureland tracts were soil probed several years ago to verify the topsoil and subsoil respread thicknesses and variations from the proposed respread thicknesses were found to be acceptable.

The formal bond release inspection was held on September 1, 2004. Attending the inspection were former Commissioner Susan Wefald, Jim Deutsch, Larry Larson, Guy Welch, Steve Schroeder and Dean Moos from the PSC Reclamation Division; Paul McAllister, Ernie Capitolo, and Ralph Privatsky representing Royal Oak; Michael Haupt representing the State Land Department; and Mike Wolf representing landowner Travis Wolf (Mike's son). Pictures taken during the inspection have been filed with the written inspection report within the Reclamation Division.

Notice of the final bond release application was published in the official county newspaper, the Dickinson Press, once a week from August 12 to September 2, 2004. No objections or comments were received on this bond release application.

Surety Bond No. K00780625 in the amount of \$228,070.95 covers the permit area. The amount of the bond release requested for the 76.82 acres will be \$228,070.95 and, if approved, it will become effective April 13, 2009 (unless a formal hearing is requested). If the bond release is granted, Royal Oak will be released from all remaining reclamation liabilities on the 76.82 acres. Assuming this bond release is approved, no acres will remain in Permit HKHK-8105 once the bond release becomes effective and the permit will be effectively terminated at that time.

Attached is a proposed motion and award form for consideration at the March 11, 2009 Commission meeting.

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Attachments