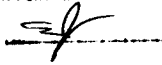


APPROVED

DATE: 7-16-08


MOTION

July 16, 2008

**Coteau Properties Company
Bond Release No. 3, Permit NACT-8601
Approval**

Case No. RC-06-428

I move the Commission approve Bond Release No. 3 for Surface Coal Mining Permit No. NACT-8601, held by the Coteau Properties Company for the Freedom Mine, to release all reclamation liabilities on 397.567 acres located in Mercer County in the NW¼ and E½ of Section 7, T145N, R87W. No reduction in the bond amount was requested and the release of reclamation liabilities will become effective August 18, 2008, unless a formal hearing is requested.

SAS & JRD

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coteau Properties Company
Bond Release No. 3, Permit NACT-8601
Approval

Case No. RC-06-428

RELEASE OF BOND
FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

July 16, 2008

Based on the application for **Bond Release Number 3 for Surface Coal Mining Permit Number NACT-8601**, received October 2, 2006 and as later modified, and all information and documentation contained therein, the North Dakota Public Service Commission finds that:

1. Attached to the Application for Release of Bond were copies of all letters sent by the Permittee as required by NDCC §38.14.1-17(1)(b). Affidavits of publication for the advertisement required by NDCC §38.14.1-17(1)(a) have now been filed and have been made part of the Application for Release of Bond. The last date of publication was October 26, 2006.
2. On November 15, 2006, the Commission conducted an inspection and evaluation of the reclamation work involved, as required by NDCC §38.14.1-17(3). The surface owner, agent, or lessee was given notice of the bond release inspection and had the opportunity to participate in the inspection. Additional inspections of the area have also been conducted since the formal bond release inspection.

In accordance with NDCC §38.14.1-17, Final Bond Release is hereby granted as requested in the application for Bond Release No. 3 for Surface Coal Mining Permit No. NACT-8601 from Coteau Properties Company. The release on this acreage will be effective August 18, 2008, unless a formal hearing is requested. No monetary release was requested by the applicant and none is approved. The bond release area is described by the attached metes and bounds descriptions and as follows:

A portion of the NW¼ and E½ of Section 7, T145N, R87W, in Mercer County, releasing all reclamation liabilities on 397.567 acres.

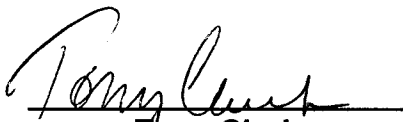
This decision to release all of the bond liabilities on the 397.567 acres is made for the following reasons:

The post-mining land uses of public road right-of-ways and cropland, including grassed waterways and reclaimed prime farmland, have been implemented as approved in the reclamation plan, the applicable revegetation success standards have been met (including special standards for reclaimed prime farmland), and all other requirements of the applicable laws and rules have been satisfied.

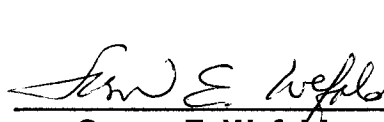
IMPORTANT – PLEASE READ

1. If bond release has been approved, actual release of bond shall not occur until the effective date of this decision. If a formal hearing is requested on this bond release decision by a person with a valid legal interest or by the head of any state or local government agency with appropriate jurisdiction, the actual release of bond may not occur until after a final decision is issued following the formal hearing. A request for formal hearing by any such person must be filed with the Public Service Commission within 30 days of this bond release decision.
2. If bond release has been disapproved or if you are unsatisfied with the amount of bond approved for release, you have the right to request a formal hearing regarding this decision by filing an application for a hearing with the Public Service Commission within 30 days of the date of this decision.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

Bond Release No. 3 – Permit NACT-8601

METES AND BOUNDS DESCRIPTION

A tract of land for final bond release in Section 7, T145N, R87W of the 5th P.M., Mercer County, North Dakota, described as follows:

Beginning at the northwest corner of said Section; thence S 89°31'21" E a distance of 2625.16 feet, on the north line to the north ¼ corner of said Section; thence S 89°31'33" E a distance of 2626.47 feet, on the north line to the northeast corner of said Section; thence S 00°50'41" W a distance of 2639.29 feet, on the east line to the east ¼ corner of said Section; thence S 00°50'56" W a distance of 1313.68 feet, on the east line to the south 1/16 corner of said Section; thence N 89°24'28" W a distance of 2630.98 feet, to the center-south 1/16 corner of said Section; thence N 00°54'36" E a distance of 1307.92 feet, to the center ¼ corner of said Section; thence N 89°31'37" W a distance of 2628.40 feet, to the west ¼ corner of said Section; thence N 00°59'00" E a distance of 2639.88 feet, on the west line of said Section to the point of beginning.

Said tract having an area of 397.567 acres of land.

All bearings and distances are based on the North Dakota State Plane Coordinate System, South Zone, N.A.D. 27.

**PUBLIC SERVICE COMMISSION
Reclamation Division**

Memorandum

TO: Commissioners Wefald, Cramer and Clark
Gloria Geiger
Illona Jeffcoat-Sacco

FROM: Stephan Schroeder, Dean Moos and Jim Deutsch

DATE: July 10, 2008

SUBJECT: Bond Release No. 3 to Permit NACT-8601 from Coteau Properties Company, Case No. RC-06-428

On October 2, 2006, the Coteau Properties Company filed the application for Bond Release No. 3 to Permit NACT-8601 for final bond release on 397.567 acres of reclaimed land at the Freedom Mine. The Reclamation Division has completed its review of this application following corrections that were made last fall by Coteau to address technical deficiencies that we had noted. The Reclamation Division now recommends that the application be approved.

The application for Bond Release No. 3 to Permit NACT-8601 covers 397.567 acres located in the NW $\frac{1}{4}$ and E $\frac{1}{2}$ of Section 7, T145N, R87W, in Mercer County. All of this acreage was disturbed by mining activities. Lands in the bond release tract were mined under the 1979 reclamation law thus making the tract subject to the 10-year revegetation liability period and production standards for demonstrating reclamation success. No previous partial bond releases have been requested for this tract.

With the exception of the section line roads on the east and west sides of the bond release tract and a wider county road along the north edge of the tract which total about 14 acres, the entire area has a cropland post-mining land use. Of the cropland acreage, 75.16 acres are considered reclaimed prime farmland. There are several grassed waterways that have been installed in the cropland tracts to facilitate surface drainage and minimize water erosion.

The proposed bond release areas were mined from 1989 through 1992 and reclamation activities through the initial seeding began in 1990 and ended in 1995. Average respread depth of topsoil was about 10-12 inches over approximately 12-25 inches of subsoil on the nonprime areas. The prime farmland areas had 14-16 inches of topsoil respread over 32-34 inches of subsoil; all prime areas have 48 inches of total respread depth. The bond release tract was soil probed by Reclamation Division staff to verify the soil respread thicknesses. The actual topsoil and subsoil thicknesses were close to the approved respread depths and any variation was within acceptable limits.

Areas reclaimed from 1990 to 1994 were seeded to a pre-crop grass/legume mixture containing several wheatgrasses and alfalfa. The area reclaimed in 1995 was seeded to a cover crop and the pre-crop stand was broken in 1995 and 1996. The cropland areas have been in a small grain/fallow crop rotation since 1996. Wheat has been grown on the reclaimed cropland every year since then.

Significant repair work to fill numerous differential settling features was done on this tract in 2000 and 2005 and less significant repair work was completed in 2002 and the fall of 2007. The most extensive repairs were needed in the NW¼ of Section 7 (much of it on the reclaimed prime farmland areas) to improve surface drainage and to fill-in differential settling features in the area. In the fall of 2000, the repair of several deep (more than two feet deep) features required the removal of the respread topsoil, filling the settled areas with additional subsoil, and replacement of the topsoil. Based on the air photo submitted with the 2005 annual map, it appears the repair work in the fall of 2005 involved significant acreage in the NW¼ of Section 7. Ponded water was again observed in some areas in June of 2007 after several heavy rains. Coteau hauled in additional topsoil last fall to fill the shallow (up to 6 inches deep) depressions that held water earlier in the year. The farmer who owns this land also deep tilled about 80 acres in the NW¼ in the fall of 2007 to increase infiltration into the subsoil which may help alleviate future ponding. No ponded water or drowned out spots were observed during the early June mine flyover with OSM or during other field inspections of the Freedom Mine in June.

Following the repair work that was carried out by Coteau last fall, we checked on the history of repair work in the bond release tract by reviewing past inspection reports and old aerial photos of the area. Based on the history of the repair work, including that done last fall, we decided it was prudent to delay recommending Commission action on this bond release until this summer to see if any additional settling has occurred over the winter and spring months. We also required Coteau to provide more details on the history of settling repair work in the bond release application. While no further ponding or new settling features have been observed this year, it is possible that additional settling will occur in the future. All areas in this bond release tract were initially reclaimed more than 13 years ago, but the long term stability of the area remains a concern.

With regard to proving reclamation success for the reclaimed cropland in Section 7, a control area was established on a nearby undisturbed area for comparison purposes. This area has been farmed most years using practices similar to those used on the reclaimed tract and it was used to climatically adjust the production standard of the reclaimed field. While one field in the reclaimed tract was over-fertilized in the one of the years that yield measurements were taken, it was determined this did not have any significant effect on the yield since rainfall was the most limiting factor that year.

Coteau was required to demonstrate that the reclaimed cropland areas produce at levels equal to or greater than the premine level for at least three years because of the presence of reclaimed prime farmland. Coteau made this demonstration for three consecutive years, 2003, 2004, and 2005. A combined prime/nonprime unadjusted yield standard of 31.7 bu/ac of spring wheat was developed for the reclaimed cropland in the bond release application. The adjusted yield standard for spring wheat in 2003 was 35.58 bu/ac while the average reclaimed yield was 36.29 bu/ac; for 2004 the adjusted yield standard was 35.56 bu/ac and the average reclaimed yield was 38.16 bu/ac; and the adjusted yield standard for 2005 was 40.69 bu/ac and the average yield on the reclaimed tract was 46.43 bu/ac. These yields were based on full field harvests. Based on these results, the required productivity standards were met for three years as required by the prime farmland reclamation standards.

Several grassed waterways, a normal conservation practice on cropland, have been established on the reclaimed cropland. The most recent one located in the E½ of Section 7 was shaped and seeded in the fall of 2007.

With regard to the reclaimed section roads on the east and west sides of Section 7 and the county road that is on the north side of the proposed bond release tract, Coteau submitted a letter dated October 6, 2005 from the Mercer County Road Superintendent accepting the condition of these roads.

Coteau also prepared post-mining surface and ground water hydrologic assessments covering this area showing that hydrologic impacts of mining have been minimized and that no material hydrologic damage has occurred outside this permit area. These assessments were added by permit revision to the consolidated surface and ground water monitoring plans that include this area. No water wells or other water supplies were present on the proposed bond release tract prior to mining.

The formal bond release inspection was held on November 15, 2006. Participating in the inspection were Reclamation Division staff members Jim Deutsch, Dr. Steve Schroeder, and former staff member Dr. Melisa Toepke-Peterson, plus Coteau personnel Jerry Becker and Sarah Flath. The landowner (Wayne Renner) and the Mercer County Commissioners were notified of the bond release inspection, but did not participate in the inspection.

Notice of the final bond release application for the area was published by Coteau Properties for four consecutive weeks in the official county newspaper, the Hazen Star, and the Beulah Beacon in October 2006. No objections to the bond release were received.

Collateral Bond Number CB 9501-4 and Self Bond SB 9501-1 cover the proposed bond release tract plus several other permits at the Freedom Mine. However, Coteau has not requested any bond reduction at this time due to the worst-case method use to calculate the bond amount. If Bond Release No. 3 to Permit NACT-8601 is approved, Coteau will be released from all reclamation liabilities on the 397.567 acres located in the NW¼ and E½ of Section 7, T145N, R87W, following the 30 day period that an interested party has to request a formal hearing on the decision.

Attached is a proposed motion and bond release award form for consideration at the July 16, 2008 Commission meeting.

Attachments

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