



Public Service Commission

State of North Dakota

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March 4, 2009

Mr. Joe D. Friedlander
Environmental Manager
Coteau Properties Company
204 County Road 15
Beulah, ND 58523-9475

Dear Mr. Friedlander:

As discussed with you shortly after Policy Memo 20 was revised in late January, the Reclamation Division intends to recommend Commission approval of the requested variances to the 10-year revegetation liability period for reclaimed areas in the W $\frac{1}{2}$ of Section 20 within Permits NACT-8203 and NACT-8503 and in Section 22 within Permit NACT-9101. However, before recommending approval, Coteau needs to **“affirmatively demonstrate that reclamation carried out on the proposed variance areas provide equal or greater protection to the environment and to public health and safety”**. It should be noted that this requirement was part of the policy prior to the recent revisions. Neither variance request has addressed this requirement.

While we plan to recommend approval of a variance for the areas affected by the settling repairs and drainage improvement work, as well as the former road area, in the W $\frac{1}{2}$ of Section 20 within Permits NACT-8203 and NACT-8503, we will not apply the limits set forth in revised Policy Memo 20 because Coteau submitted this request before the policy was amended.

Also, contrary to statements in your May 23, 2008 letter regarding the Section 20 variance request, please note that the Reclamation Division does not consider the repair of settling features as a normal conservation practice that is commonly used on undisturbed lands in the area. While minor drainage improvement work (i.e. the establishment of grassed waterways) is carried out on some undisturbed lands, the repair of settling features is more unique to mined and reclaimed lands. In addition, we do not consider the repair of settling features as “eliminated wetlands” as noted in Coteau’s July 16, 2008 variance request for areas in Section 22 within Permit NACT-9101.

Mr. Joe Friedlander

March 4, 2009

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If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Deutsch". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James R. Deutsch
Director
Reclamation Division