

THE COTEAU PROPERTIES COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

FREEDOM MINE

204 County Road 15
Beulah, North Dakota 58523-9475

(701) 873-2281 • **RECEIVED**

May 23, 2008

Mr. James R. Deutsch
Director Reclamation Division
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

This is in response to your April 24, 2008 letter describing the reason you are requesting additional information on activities in the W½ of Section 20, T145N, R87W, before you recommend a waiver of the 10-year liability period for a 19 acre area in this half-section. Your request was for information on repairs and improvements outside the area being requested for a waiver, stating in your April 24 letter that this information is necessary to determine if any of the activities were significant enough to restart the liability period.

Land improvements are separate from a liability period waiver, and do not affect the waiver request. However, it appears your office is somehow linking these items. Although these are separate issues, we are addressing your request for additional information to avoid further delays in processing the waiver request. No activities conducted on this tract were significant enough to restart the liability period, in accordance with Appendix A of the revegetation success standards and NDAC 69-05.2-12-09. They were all normal conservation practices to improve drainage, and have been practiced on local unmined agricultural lands. Drainage improvements on unmined land, through draining and filling wetlands, were common, and were funded through the Soil Conservation Service, for several years until the practice was severely restricted by the federal government. In the PSC's desire to improve drainage on reclaimed croplands through wetland destruction, we need to make sure we aren't eliminating a greater acreage of wetlands than existed prior to mining.

Sites outlined on the map and discussed here have had improvements to make them more conducive to farming. These include differential settling areas, SPGM respread edges, ponding areas in ephemeral drainages, and areas that held water as a result of farming practices (tillage ridges, tractor ruts, etc.). Acreages provided here are based on a review of aerial photos, along with supervisor and staff knowledge. Some areas were specifically chosen and planned for improvements. In many areas heavy equipment operators used their own discretion in the field to make miscellaneous small cuts and fills in topsoil as they saw fit to improve drainage. Affected acreages were not surveyed, and include surface tilled acres which may extend far beyond areas that were cut or filled. This was done to tie improved areas into adjacent land. Areas actually affected by heavy equipment earthwork per se are much smaller than the overall described area.

In this half-section tract seven areas were improved in 2003, ranging from approximately 0.12 acres to 6.79 acres in size, and totaling approximately 19.71 acres. Land improvements were made by an outside contractor in conjunction with Coteau trucks. Poorly drained areas generally less than 1 acre in

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PUBLIC SERVICE COMMISSION

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

5 RC-07-783 Filed: 5/27/2008 Pages: 2
Response to Deficiency Letter Filed

Coteau Properties Company

Joe Friedlander

Mr. James R. Deutsch
May 23, 2008
Page 2

size were filled with less than one foot of topsoil. Areas larger than an acre had topsoil stripped from them and they were filled with subsoil. This additional subsoil was then graded with smaller scrapers and small motor graders to create positive drainage. After the subsoil fill was graded, topsoil was replaced and the areas were tilled and picked of rock.

There were 18 areas, totaling 37.4 acres, improved in 2005, ranging from approximately 0.3 acres to 9.0 acres in size. This work was conducted concurrent with soil spreading activities on the 18.96 acre north/south SPGM access trail that ran through the area. Poorly drained areas of less than ½ - 1 acre in size were filled with additional topsoil. Larger areas had topsoil stripped and they were filled with subsoil. Tillage and rock removal followed.

In 2007 29 sites totaling 14.53 acres, ranging in size from 0.01 to 5.02 acres, were improved. The 5.02 acre tract had topsoil removed and the area was graded with underlying subsoil to drain to the north into the south ditch of the east/west section line road. The road ditch was also graded to improve drainage to the east. One small area on the west side of the tract had topsoil removed and subsoil cut to improve drainage into the east ditch of the north/south section line road. Topsoil was then replaced after drainage was established. Some narrow drainages were worked with a 627 class tractor scraper or motor grader, making minor cuts and fills with topsoil, to enhance water flow. Small areas that had evidence of water retention or ponding were filled using topsoil cut from high spots in drainages or topsoil skimmed from high spots in reclaimed fields.

All improvements were made without disrupting normal farming schedules or crop rotations.

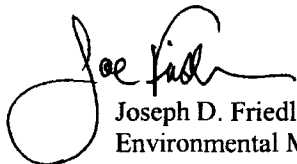
The median size of all improvement sites was 0.45 acres. The median size of all sites one acre or less in size was 0.21 acres, and the median size for all sites greater than one acre was 2.70 acres.

We believe you will agree that all improvements conducted following final reclamation were considered normal conservation practices, or at least were previously considered common until severe restrictions were imposed on wetland drainage. This land is ready for final bond release, and it would be unfortunate for the Reclamation Division to impose any delays. Coteau strongly disagrees with a suggestion that the liability period be restarted on this stable reclaimed land that has been successfully cropped for the past several years and would vigorously challenge such a finding that results in any unnecessary delay in final bond release.

We look forward to your approval of the liability period waiver presented in our December 10, 2007 request. If you have any questions, please contact me.

Sincerely,

THE COTEAU PROPERTIES COMPANY



Joseph D. Friedlander
Environmental Manager

JDF
Attach.