

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

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

FROM: Jim Deutsch, Dean Moos and Guy Welch

DATE: March 18, 2009

SUBJECT: Variance request to the performance bond responsibility period for areas in Permits NACT-8203 and NACT-8503 held by the Coteau Properties Company, Case No. RC-07-783

Summary - On December 10, 2007, The Coteau Properties Company filed a request for a variance from the 10-year revegetation responsibility period for reclaimed areas that total about 81 acres in Permits NACT-8203 and NACT-8503 at the Freedom Mine. The reclaimed cropland areas are located in a portion of Section 20, T145N, R87W, Mercer County. A variance from the 10-year responsibility period will allow areas that were reclaimed in 2006 and reclaimed lands that were re-affected by the repair of settling features and other drainage improvements in 2003, 2005 and 2007 to be bond released along with the adjacent reclaimed lands that were reclaimed from 1989 through 1999. The Reclamation Division has completed its review of the request and respectfully recommends approval of the variance request pursuant to Policy Memorandum No. 20 to Mine Operators.

Discussion - Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year revegetation responsibility period so that the responsibility period for sedimentation ponds, support facilities, and settling repair and drainage improvement areas is the same as that of the surrounding reclamation tract. State and federal rules do not allow sedimentation ponds to be removed for at least two years after the reclaimed lands within the watershed have had the revegetation period initiated. In addition, the repair of settling features and drainage improve work on reclaimed cropland often occurs after the revegetation liability period was started following the initial seeding. Generally, the variance areas must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. Mining companies must also demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety. Reclamation procedures used on the variance areas need to provide the same protections as those used on the surrounding reclaimed tracts.

With regard to the variance request for areas located in Section 20, approximately 19 acres that were previously used as a haulroad and reclaimed in 2006. The balance of the acreage for which a variance is requested, approximately 62 acres, is reclaimed cropland that has been re-disturbed

by the repair of settling features and other drainage improvement work. After Coteau initially submitted this variance request for the former haulroad area only, we asked them to document the history of the settlings repairs and other drainage improvement work that had been done in Section 20 after the initial seeding. Based on information provided by Coteau, it appears approximately 19.7 acres were re-disturbed by repair work in 2003, 37.4 acres were re-disturbed in 2005 (including about 5 acres previously repaired in 2003), and in 2007, about 14.5 acres were repaired (including about 5 acres previously repaired in 2003 and 2005). On some of the repair areas, Coteau stripped back the topsoil and either reshaped the subsoil or hauled in additional subsoil. Stripping back the topsoil on reclaimed lands re-initiates the 10-year revegetation responsibility period.

The potential bond release tract is 320 acres in size (W $\frac{1}{2}$ of Section 20), of which approximately 285.9 acres was reclaimed in 1999 or earlier. As discussed in Policy Memo 20, the total areas included in variances to the 10-year responsibility period should not normally exceed 20% of the surrounding reclamation tract and areas re-affected by repair and drainage improvement after the sixth year of the 10 year period should not exceed 5% of the total acreage within the larger bond release tract. The total variance area is approximately 33.9% of the surrounding reclamation tract ($81/320=33.9\%$). For areas (about 49 acres) repaired after year six of the 10 year period, they are about 15.3% ($49/320=15.3\%$) of the acreage in the bond release tract. The areas included in Coteau's variance request exceeds these limits; however, the Reclamation Division recommends making an exception to this requirement since the variance request was submitted prior to the recent revisions to Policy Memorandum No. 20. Prior to the January revisions to this policy, it did not specifically address the re-initiation of the 10-year responsibility period due to repair work on reclaimed lands.

A lot of the repair work in Section 20 that was done in 2005 and 2007 involved areas less than one acre in size and much of it did not involve the stripping back of the topsoil which is what re-initiates the responsibility period. The 2007 repair work was primarily limited to blading and the re-distribution of topsoil in drainageways; however, topsoil was removed and respread on a 5.2 acre area. Also, it is possible that the actual bond release tract will be somewhat larger than 320 acres as there are another 80 acres in the E $\frac{1}{2}$ of Section 20 that would probably be included in a bond release application. Including the additional 80 acres in the calculations would reduce the percentages discussed above.

Coteau added a discussion to the variance request to explain how the variance provides equal or greater protection to the environment and to public health and safety. Coteau states that it will allow final bond release and return of the reclaimed land to a private landowner sooner. Not granting a variance for the area reclaimed in 2006 (access/haulroad) and the areas that were repaired in 2005 and late 2007 will delay final bond release of the area until the spring of 2018 since it would not be practical to bond release irregular shaped portions of these fields.

Coteau will be required to demonstrate revegetation success using cropland production data from any three years after 2007. Three years of bond release production data are needed because the reclaimed land contains prime cropland soils. This requirement will ensure that at least one year of production data will be provided after the last year that repair work was completed.

A map showing the variance areas and the adjacent reclaimed lands is attached. The proposed variance areas were inspected during the growing seasons in 2007 and 2008. In August of 2007, the wheat crop on the former haulroad corridor looked better than that on the adjacent reclaimed lands due to weed competition. In 2008, the crop growing on the 5.2 acres where topsoil had been stripped back in the fall of 2007 was noticeably shorter and the seed heads were smaller compared to the crops on the adjacent reclaimed lands.

Based on the field inspections and the information contained in the variance request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 81 acres of reclaimed land in Section 20 within Permits NACT-8203 and NACT-8503.

A motion and an approval form are attached for your consideration at the March 25, 2009 Commission meeting.

18 P. Cropland

N. Grassland

16

N. Grassland Co. Road

Section 20 Variance Request

Farmstead

P. Cropland

P. Cropland

P. Cropland

Cropland
8102

8203

Cropland

Cropland

P. Cropland

19 Cropland

20

21

P. Cropland

R. Wetland

Cropland

8503

Cropland

ND Wetland

Co. Road

ND Wetland

P. Cropland

Cropland

Co. Road

Co. Road

Co. Road

Industrial

30 Cropland

Cropland

Co. Road

Co. Road

28

Former Haulroad Variance Area

Drainage Improvement Variance Areas

29 Cropland

Cropland

Co. Road