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June 5, 2008

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

Dear Mr. Friedlander:

The Reclamation Division has completed a technical review of Revision No. 7 to Surface Coal Mining Permit NACT-0401 in accordance with NDCC 38-14.1-03, NDCC 38-14.1-14, NDAC 69-05.2-05-01, NDAC 69-05.2-05-02 and NDAC 69-05.2-11-02. The following issues must be resolved prior to this office recommending Commission action.

Section 1.0 – Introductory...Information

1. Please update Section 1.2, Legal Information, to include the section line and prairie trail that were recently closed by Mercer County. NDAC 69-05.2-05-02 (MDB)
2. Please update Section 1.2.2 with the new metes and bounds description for the entire permit as required by NDCC 38-14.1-14(1)(a). (SAS)
3. The metes and bounds description on the map in Section 1.2.2.1 does not include the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 and thus makes the new permit acreage 40 acres less than it should be. Please adjust the description accordingly. NDAC 69-05.2-05-02 (SAS)
4. The metes and bounds description of the second tract in Section 1.2.3 and Section 1.2.3.2 does not equal 80.7609 acres as indicated; nor does the survey close properly. Please make the necessary corrections to the metes and bounds descriptions in both sections. NDAC 69-05.2-05-02 (SAS)

Section 1.5 – Identification of Interests and Rights-of-Entry

5. Please correct the coal ownership information for Tract 43, W½E½SE¼, W½SE¼ of Section 4, in Sections 1.5.1, Permit Area Surface and Coal Interests, and 1.5.3, Surface and Coal Ownership Map, of the permit. An email dated April 17th from Lisa Ryan states that The Estate of Arthur R. Oberlander is part coal owner of this tract. NDAC 69-05.2-05-02 (GAW)

Section 2.1 – Geology

6. Somewhere in the Site Specific Geology Narrative of Section 2.1.2, please add a brief explanation on your methodology of determining the Beulah/Beulah-Zap coal crop line for mapping purposes on the overburden isopach map, structure contour map, extended mining plan map and others. Based on a review of drillhole lithology and other data for some of the areas being added to the permit, it appears that the mapped Beulah-Zap cropline on the various permit maps does not represent actual physical crop locations, but maybe the soft coal/hard coal interface located some distance inside the actual cropline. Please explain the cropline mapping procedure or protocol in the narrative to augment our interpretation of mapping requirements of the resource and structure as required in NDCC-38-14.1-14.1(r)(5) and NDAC-69-05.2-08-05-1(g). (BEB)

Section 2.2 – Surface Water Hydrology

7. If disturbed wetland acreage will be increased in Sections 4 and 9 due to construction of the haulroad, please revise the disturbed acreage narrative in the second paragraph of the *Pre-Mining Wetlands* narrative in Section 2.2.3 as required by NDCC-38-14.1-14.2(i)(1,3). (BEB)
8. Please update Section 2.2.4 - Surface Water Probable Hydrologic Consequences, to reflect the additional permitted acreage, disturbed acreage, number of stockponds, and any other changes associated with Revision 7. (WTG)

Section 2.3 – Ground Water Hydrology

9. Please indicate if well certifications for any of the three Wayne Boeshans wells have been completed. If well certification information is available, please incorporate the information into the appropriate permit sections as required by NDAC-69-05.2-08-06.1. The permit currently indicates certification data is pending for these wells. (BEB)
10. Please discuss the current status and whether any of the three pre-mine Oberlander water supply wells associated with the abandoned farmstead in the SE¼ of Section 4 will be retained to supply water for the surrounding post-mine land use of native grassland. Data concerning the wells needs to be incorporated into the *Ground Water Use Information* section and tables, as well as into the ground water probable hydrologic consequences narrative of *Probable Impact to Pre-mining Domestic Wells and Developed Springs* section as required in NDAC-69-05.2-16-17. It was also noted that these wells were not certified. Please indicate if Coteau plans to certify these wells. (BEB)

Section 2.4 – Pre-Mining Land Use and Vegetation

11. The first paragraph of Section 2.4.1, Methods, states that pre-mining assessments of vegetation and land use information were conducted from 2002 to 2004. The first paragraph on page 2 of Section 2.4.1 indicates that vegetation sampling was conducted primarily in 2003. However, information in other sections of the permit (2.4.9.1, 2.4.9.2, 2.4.12, 2.4.13) shows that vegetation inventory work was completed in 2005 and 2007 on the lands being added with Revision No. 7. Please review and edit as necessary to clearly document what has transpired. NDAC 69-05.2-05-02(3). (GAW)
12. Please update the wetlands discussion in Section 2.4.1, to discuss delineation and inventory of the wetlands identified in the Revision 7 addition area. Please indicate when the work was completed and who compiled the data listed in Sections 2.4.11 and 2.4.12. NDAC 69-05.2-05-02(3). GAW
13. The narrative for Tract 43 in Section 2.4.2 states that the native grassland is dominated by Poa species, but that it is still in good condition. In the permit, please explain how the tract can be considered to be in good condition with a condition rating of 23.7 percent or revise the condition of this tract. NDAC 69-05.2-05-02. (GAW)
14. In the narrative for Tract 43 in Section 2.4.2, please discuss the native grassland reference areas located on this tract. Is the sampling data in Section 2.4.9.2 from the silty and overflow reference area sites? Discuss if the reference area sites are/were fenced enclosures and if the reference floristic community properly represents the balance of the native grassland in this tract. NDAC 69-05.2-05-02(3), NDAC 69-05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)
15. The landowner listed for Tracts 7 and 19-22 in Section 2.4.4 is Raymond E. Galster, but Section 1.5.1 indicates that the surface landowner is the Raymond E. Galster Life Estate. Please review and correct as appropriate. NDAC 69-05.2-05-02. (SAS)
16. The total acreage in Section 2.4.4 is correct with the additional area being added by this revision; however, Tract 45 is missing from the table. In addition, Tract 44 is listed as being in Section 9 when Section 1.5.3 shows Tract 44 in the SE¼ of Section 4. Please add the acreage in Tract 45 to the table, correct the location of Tract 44, and correct the other acreage values as needed. NDAC 69-05.2-05-02. (SAS)
17. Table 2.4.10.2, Wetland Acreage Summary by Feature, lists seasonal Wetlands W9-05 and W9-06 and temporary Wetlands W9-02, W9-03, W9-04 and W9-06 but these features are not identified on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3. It appears these wetlands are labeled with different numbers on the Land Use Map. Wetland W09-07 and W09-08 are listed on the map, but not in Table 2.4.10.2. Also, please note that Wetland W9-06-145-87 is listed as both a temporary and seasonal wetland. Please review and correct as necessary. NDAC 69-05.2-05-02. (GAW)

18. The area between seasonal Wetlands W09-08-145-87 and W09-07-145-87 is mapped as cropland in Section 2.4.3; however, this area appeared to be wetland acreage as noted on the March 18, 2008 inspection. The National Wetlands Inventory, although not always accurate, also identifies this area as a temporary wetland and the NRCS Mercer County Soil Survey identifies the area as having hydric soils. Please review, update if necessary, and include a discussion regarding this area. We also noted that the detailed soil survey does not identify this area as having hydric soils; please mention this issue in regards to classifying the area as wetland. NDAC 69-05.2-05-02(3), NDAC 69-05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)
19. In Revision 7, Coteau is changing the approximate size of all of the shelterbelts as indicated in Section 2.4.13. In the shelterbelt narrative of Section 2.4.2, please explain the reasons for the acreage adjustments being made with Revision No. 7. NDAC 69-05.2-05-02(3), NDAC 69-05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)
20. The north half of Shelterbelt SB 21-1-146-87 is being added with Revision No. 7. However, the size (acreage) of the shelterbelt was not changed on the pre-mine shelterbelt inventory form. The S $\frac{1}{2}$ of this shelterbelt was 697.46 feet in length and after this revision it is listed as being only 700 feet in length. Please review and update as necessary (Sections 2.4.4, 2.4.13, etc). It appears this shelterbelt is 1.77 acres in size based on information in Section 4.0. NDAC 69-05.2-05-02(3), NDAC 69-05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)

Section 2.5 – Soil Resources

21. The permit area description in Section 2.5.1 appears to be incorrect. The description for the portions of Sections 4 and 9 in T145N, R85W should be corrected to read **R87W**. Furthermore, the description of the acreage in Section 9 should be corrected to read the **W $\frac{1}{2}$ NE $\frac{1}{4}$** (80 acres), rather than the W $\frac{1}{2}$ Section 9 and the NE $\frac{1}{4}$ Section 9 (480 acres). NDAC 69-05.2-05-02. (WTG)
22. The references to Zahlbar and Wilbar soils on pages 2 and 3 of Section 2.5.1 appear to be remnants of the first permit application or an earlier revision when these map units were devised to describe soils formed in thin glacial till over soft sandstone bedrock on well drained landscape positions within the mine permit boundary. There are no references to these map units in Section 2.5.3 (map unit legends) or Section 2.5.7 (map unit descriptions) because they apparently have been superseded by the Zahl-Williams-Parshall complex or Zahl-Parshall complexes with sandstone substratum phases (map units 85C, D, or E). Please delete any references to Zahlbar or Wilbar soils in Section 2.5.1. NDAC 69-05.2-05-02. (WTG)
23. The Soil Series Mapping Units section on page 1 of Section 2.5.3 states that there are 110 mapping units that would be shown on Section 2.5.10 (Soil Survey and Prime Farmland Map), and on the alphabetical or numerical map unit legends in Section 2.5.3. By our

count, however, the map units appear to number in the mid-70's. Please correct the number of map units, if necessary, described in Section 2.5.3. NDAC 69-05.2-05-02. (WTG)

24. The total acreage by tract in Section 2.5.3.1 is correct with the additional area being added by this revision; however, Tract 45 is missing from the table. Please provide the acreage from Tract 45 to the table and correct the acreage values for the other tract as needed. NDAC 69-05.2-05-02. (SAS)
25. The total acres shown by mapping unit in Section 2.5.3.2 does not add up to the new total of acres in the permit. Please correct as necessary. NDAC 69-05.2-05-02. (SAS)
26. The table in Section 2.5.6.1 indicates 6.4 acres of prime farmland in Tract 44, but Section 2.5.10 does not show any while Tract 45 is not listed within the prime farmland table. However, the prime farmland map in Section 2.5.10 indicates prime farmland in the tract. Please correct accordingly. NDAC 69-05.2-05-02. (SAS)
27. In order to be consistent with Section 1.5.1, the Galster ownerships in Sections 2.5.6.1 and 2.5.6.2 should be listed as the Raymond E. Galster Life Estate. NDAC 69-05.2-05-02. (SAS)
28. Tract 45 is not listed in Section 2.5.6.2. Please explain or show it with no projected disturbance the same as Tracts 43 and 44. NDAC 69-05.2-05-02. (SAS)
29. There are two errors in each of the 9 and 9B Belfield silt loam map unit descriptions in Section 2.5.7. Please delete the words "glacial till" in the first sentence of both map unit descriptions because Belfield soils formed in clayey alluvium derived from sedimentary rock. NDAC 69-05.2-05-02. (WTG)

Section 2.7 – Fish and Wildlife Resources

30. In Section 2.7.2, please include a narrative that discusses the results of the studies that were conducted for the Revision 7 addition area as listed in the September 19, 2005 wildlife study plan. The Consolidated Wildlife and Habitat Monitoring Plan is referenced, but there is no mention of the results of the studies in the 2006-2007 Wildlife Monitoring Report. NDAC 69-05.2-05-02, NDAC 69-05.2-09-17 and NDAC 69-05.2-13-08. (GAW)

Section 3.1 – Operations/Reclamation Narrative

31. Please address the closure of the section line and prairie trail which were recently approved by Mercer County into Section 3.1.1.6, Landowner and Public Access. NDAC 69-05.2-05-02. (MDB)

Section 3.2 – Transportation Facilities

32. Several proposed culverts in the Section 9/4 haulroad have erosive velocities at the outlet. Please update the narrative to explain how the outlets will be controlled to prevent erosion. (Consider using similar wording that was placed in Revision 21 to Permit NACT-9001.) NDAC 69-05.2-05-02. (MDB)

Section 3.3 – Surface Water Management

33. All three additional ponds discharge into the Highway 1806 road ditch and then flow through a 36 inch concrete culvert. The drainage area for the culvert has not changed, but the runoff curve number for these areas has increased causing more water to flow to the ponds. Please provide documentation that the culvert has adequate capacity to handle all three ponds discharging from a storm event, plus the runoff not diverted from the remaining undisturbed area. (MDB)
34. Follow-up to Midterm Review Item No. 19. Please correct the description of the *LS* factor in the Universal Soil Loss Equation to read “slope length and steepness factor” rather than “soil loss ratio”. According to the Federal Register, Volume 6, No. 108 of Tuesday, June 4, 1996/ Rules and Regulations, 7 CFR Part 610, *LS* is the slope length and steepness factor for both the USLE and RUSLE. Although no operational or administrative changes have occurred, this error needs to be corrected. NDAC 69-05.2-05-02. (WTG)

Section 4.0 – Post-Mining Land Use and Revegetation

35. The Post-Mining Topography and Land Use Map, Section 4.1, indicates a holding pond (lagoon) will be replaced at the previous Wayne Boeshans property. In a discussion with the NDDH, this is a permitted livestock facility with a holding pond which appears to be incorporated into Pond P-N21-03. If the existing holding pond is to be decommissioned, the contents of the pond are required to be recycled in an agronomic use or disposed of properly in a permitted landfill. Also, prior to reconstructing the holding pond, design plans for the pond will need to be submitted and approved by the NDDH. Please add a narrative to reflect that these steps will be taken pre- and post-mining. For more detail concerning animal feeding operations please contact Matt Klingenstein of the NDDH at 328-5219. (MDB)
36. Please label the post-mine land use of the property located in the NW¼ of Section 33 on the Post-Mining Topography and Land Use Map, Section 4.1.2. NDAC 69-05.2-09-13. (GAW)
37. Section 4.1.3 should change the ownership for Tracts 7 and 19-22 to the Raymond E. Galster Life Estate to be consistent with Section 1.5.1. NDAC 69-05.2-05-02. (SAS)
38. The Tract 45 data in Section 4.1.3 is missing, yet the total acreage is correct. Please add the acreage for Tract 45 to the table and correct the acreages for the other tracts accordingly. NDAC 69-05.2-05-02. (SAS)

39. Follow-up to April 3rd Midterm Review Item No. 20: In the Seed Mixes narrative at the top of the first page of Section 4.2.2, Seed Mixes, please retain the sentence that states that introduced species will not be used when a wetland lies within a rangeland tract, and please clarify if a wetland seed mixture will be seeded around the perimeter of wetland basins located in land uses other than cropland. NDAC 69-05.2-09-11 (6) & NDAC 69-05.2-13-08 (6) (i) (GAW)
40. Coteau is adding approximately 3.64 acres of shelterbelts and field windbreaks to the permit with Revision No. 7 while also proposing to reduce the post-mine acreage of shelterbelts from 19.02 acres to 18.05 acres. Please revise reclamation plans to show that additional shelterbelt acreage will be planted to offset the additional acreage planning to be disturbed by mining activities. It is not acceptable to increase the planned disturbance of pre-mine shelterbelt acreage while reducing the replacement acreage given the requirements of NDAC 69-05.2-13-08(j), NDAC 69-05.2-09-17(1)(a) and NDAC 69.52-08-15(3)(b). (GAW)
41. In Section 4.2.3, please identify the size of each replacement shelterbelt. The replacement shelterbelt information in Table 1 of Section 4.2.3 is confusing as portions of several pre-mine plantings are being replaced by portions of several replacement plantings in several tracts. For example, Shelterbelt SF21-1 is being replaced with a planting in Tract 4, 0.89 acres, but all of this planting, 1.58 acres, was already being used to replace pre-mine shelterbelts in Tracts 30 or 32. Please revise to provide clarity. NDAC 69-05.2-05-02, NDAC 69-05.2-09-11, NDCC 38-14.1-14 and NDCC 38-14.1-24. (GAW)
42. Follow-up to Midterm Review Item No. 22: The answer provided in your April 3, 2008 letter is not sufficient to resolve the original deficiency. Page 2 of Section 4.3.1 indicates that the "...CVSS will add a numerical standard for each land use..." which "...will be initiated once the permit is approved." This original deficiency was asking when this process will be started since the permit has been approved for several years. NDAC 69-05.2-05-02. (SAS)
43. Follow-up to Midterm Review Item No. 23. Coteau is proposing to delete language in Section 4.4.1 that states that wetland topsoil will be separately salvaged and respread, based upon a conversation with former PSC employee Melissa Toepke-Peterson. We agree with most of what Coteau has stated in response to this review item. However, we believe that at least some wetland topsoil should be salvaged and directly respread in created wetlands where operationally feasible and in instances where SPGM is to be salvaged from pre-mine wetlands that are supporting desirable native wetland vegetation, i.e., pre-mine wetlands located in tracts of native grassland. Please revise the narrative accordingly as discussed with Ms. Flath on May 16, 2008. NDAC 69-05.2-05-02 & NDAC 69-05.2-09-11. (GAW)

Mr. Joe Friedlander
June 5, 2008
Page 8 of 8

44. Please revise the Consolidated Vegetation Success Standards (CVSS) document to discuss if the native grassland reference areas in Section 4 will be destroyed or otherwise impacted by the haulroad corridor proposed with Revision No. 7. NDAC 69.05.2-08-08, NDAC 69.05.2-09-11 and PSC Revegetation Success Standards Document. (GAW)
45. Please update the CVSS to include detailed soil survey information for the native grassland reference areas located in Section 4 and revise the narrative regarding this matter on page 10 of Section B-1, as necessary. NDAC 69.05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)
46. Please revise the CVSS to include sampling data for the proposed claypan, shallow, sandy, thin upland and overflow native grassland reference area sites to show that they characterize the mapping units which they represent as listed on pages II-D-2 & 3 of the PSC Revegetation Success Standards Document. Recent sampling data should also be included for the other native grassland reference area to show that they are being maintained in good range or acceptable ecological condition and that they characterize the range sites they are designed to represent. NDAC 69.05.2-08-08 and PSC Revegetation Success Standards Document. (GAW)
47. Please update the Vegetation Success Standards Maps, Section B-8, of the CVSS to show the permit boundary of Permits NACT-0401 and NACT-0201. The soils, land use boundaries, proposed disturbance boundaries, surface ownership, and pre-mine prime farmlands should be designated as currently provided for other permit areas. NDAC 69.05.2-09-11 and PSC Revegetation Success Standards Document. (SAS/GAW)

Attached is a copy of a letter containing recommendations from the USFWS Office in Bismarck regarding Revision 7. The USFWS was informed of this revision with our mailing of the "notice of receipt of an application". Please review the USFWS letter and update the permit as appropriate to address these recommendations, especially with regard to threatened and endangered species.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

Enclosure