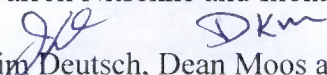


**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**

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**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 Permit NACT-9101 held by the Coteau Properties Company, Case No. RC-08-576

**Summary** - On July 16, 2008, The Coteau Properties Company filed a request for a variance from the 10-year revegetation responsibility period for 79.3 acres of reclaimed cropland in Permit NACT-9101 at the Freedom Mine. This acreage is located in Section 22, T145N, R86W, Mercer County. A variance from the 10-year responsibility period will allow a pond and soil stockpile areas that were reclaimed in 2000 and reclaimed areas that were repaired in 2007 to be bond released with the surrounding lands that were reclaimed in 1997 and 1998. The Reclamation Division has completed its review of the request and respectfully recommends approval of the variance request as allowed by Policy Memorandum No. 20.

**Discussion** - Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year responsibility period so that the responsibility period of reclaimed sedimentation ponds, other 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. 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.

Most of the areas (64.3 acres) within Coteau's variance request for Section 22 were not reclaimed when the adjacent lands were reclaimed because these areas were being used for sediment ponds and associated areas such as diversions and soil stockpiles. The adjacent croplands were reclaimed in 1997 and 1998. The sediment ponds and associated features were reclaimed in 2000. During our review of this request, we noted that Coteau had done settling repair and drainage improvement work on some of the reclaimed areas in 2007. Based on discussions with Coteau and the pending changes to Policy Memo 20, we decided that these

areas should also be subject to the variance request. Therefore, Coteau is also requesting a variance from the 10-year responsibility period for about 15 acres of reclaimed land that were re-affected in 2007 for settling repairs and drainage improvement. On some of this land, Coteau stripped back the topsoil and either reshaped the subsoil or hauled in additional subsoil. Removing and replacing topsoil on reclaimed lands re-initiates the 10-year revegetation responsibility period. The total disturbed and reclaimed area within Section 22 that may be part of a future bond release tract is 628.7 acres.

The total area being considered for the variance is approximately 14.4% of the surrounding reclamation tract ( $79.3/628.7=14.4\%$ ). Policy Memo 20 states that the total acreage of the variance areas should not normally exceed 20% of the surrounding reclamation tract. As recently amended, the policy also states that areas re-affected by settling repair and drainage improvement cannot exceed 5% of the total acreage within the larger bond release tract. The repaired areas comprise 2.4% of the total acreage within the larger tract ( $15/628.7=2.38\%$ ).

If a variance to the 10-year liability period is not granted for the areas reclaimed and seeded in 2000, bond release could not occur until the spring of 2010. If a variance is not granted for the areas repaired in late 2007, then bond release for Section 22 would be delayed until early 2018.

A map showing the variance areas and the adjacent reclaimed lands is attached. The proposed variance areas were inspected in April and August of 2008. Following the April inspection, Coteau was verbally notified that the fall 2007 repair work reinitiated the 10-year revegetation period because of the degree of disturbance of the repair work. During the August inspection, the crops growing on the repaired areas where topsoil had been stripped back were noticeably shorter and the seed heads were smaller compared to the crops on the adjacent reclaimed lands. Cropland production data will be needed on the 2007 repair areas to demonstrate that these lands are producing at least comparable to the adjacent reclaimed lands (2008 or later). The Reclamation Division has no concerns with the productivity capabilities of the cropland reclaimed in the year 2000. It was not possible to distinguish these lands from the adjacent, older reclaimed lands during field inspections.

Coteau added a discussion to the variance request to explain how 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.

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 79.3 acres of reclaimed land in Section 22 within Permit NACT-9101. However, when demonstrating reclamation success for final bond release, we will require Coteau to provide yield measurements to show that the areas repaired in 2007 produce at least as good as similar reclaimed areas in Section 22 that were not affected by any repair work.

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

16

Hayland Co. Road P. Cropland Co. Road

Section 22 Variance Request

14

P. Cropland Orph Sp Dist

Orphan Spoil

Cropland

Co. Road

N. Grassland

21

Orph Sp Dist Orphan Spoil

Cropland

Variance Area

Variance Area

Variance Area

Variance Area

Variance Area

P. Cropland

Cropland

P. Cropland

22

Cropland

2000

Cropland

2000

ND Shelterbe Co. Road

27

28

23

26

