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PUBLIC SERVICE COMMISSION

Box 17 • Gladstone, ND 58630 Ph: (701) 483-3478 • Fax: (701) 483-3479

November 14, 2008

FROM DIRECTOR - RECLAMATION DIV.

Mr. Jim Deutsch  
Director of Reclamation Division  
Public Service Commission  
600E Boulevard Avenue/Department 408  
Bismarck, ND 58505

Date: \_\_\_\_\_

Action: \_\_\_\_\_

Info. Only: \_\_\_\_\_

Info & File: \_\_\_\_\_

Dear Mr. Deutsch:

Martin Construction, Inc. is asking the Public Service Commission for a determination that the coal removed from the Fort Stevenson Marina Project, Federal Project W9128F-07-C-0026 in accordance with ND Century Code 38-14.1 covering surface coal mining is exempt from mining and reclamation laws and does not require a permit for removal of the coal.

The owner of this project is the US Army Corps of Engineers, Omaha District. The Corp is responsible for paying for 100% of this project. This project encompasses the building of the Fort Stevenson Marina. Phase I – Work includes construction of a temporary earth fill coffer dam and permanent earth fill breakwater structures. Phase II – Work includes construction of a concrete pad for the concession stand and extending the boat ramp to a higher elevation. The breakwater embankment will be raised to elevation 1855 and the remainder of the marina footprint will be excavated balancing 500,000 cy of material. Ft. Stevenson’s State Park is located on the north shore of Lake Sakakawea three (3) miles south of Garrison, North Dakota. The location of the filling and excavation would occur in Sections 30 and 31 Township 148 North, Range 84 West, McLean County, North Dakota.

Attached is a letter from the US Army Corps of Engineers informing Martin Construction, Inc. that the coal is unsuitable material for fill and that the coal becomes the property of Martin Construction, Inc. and that is the responsibility of Martin Construction, Inc. to have the coal removed from the project. A second attachment is the portion of the specifications that indicate the coal is the property of the contractor. Also attached is a map of the construction site indicating the location of the coal piles.

If there is additional information needed, please let me know.

Sincerely,

Kurt Martin  
President  
Martin Construction, Inc.

1 RC-08-887 Filed 11/17/2008 Pages: 5  
Request for Jurisdictional Determination Filed  
Martin Construction, Inc.  
Kurt Martin





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, BLACK HILLS AREA OFFICE  
631 SAINT ANNE STREET, SUITE 101  
RAPID CITY, SD 57701-4667

June 26, 2008

SUBJECT: Surplus Materials, Contract W9128F-07-C-0026, Fort Stevenson Marina,  
Garrison, North Dakota

Martin Construction  
ATTN: Kurt Martin  
P.O. Box 17  
Gladstone, North Dakota 58630

Serial Letter  
No. 07-0026-042

Dear Mr. Martin:

Reference your serial letter 42, dated June 19, 2008

As per Specification Section 01550, paragraph 1.1 the bid for excavation was to reflect the wasting of approximately 70,170 cubic yards of lignite encountered. As per Specification Section 02300, paragraph 3.15, lignite is considered an unsatisfactory material and shall become the property of the Contractor and removed from the construction site.

If you have any questions please contact Mr. Loren Nishek at our Minot Resident Office at 701-727-6127.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence C. Jackson".

Lawrence C. Jackson  
Authorized Representative  
of the Contracting Officer

Copies Furnished:  
[ssamuelson@ndsupernet.com](mailto:ssamuelson@ndsupernet.com)  
[khachfeld@ndsupernet.com](mailto:khachfeld@ndsupernet.com)

calibration checks as described in ASTM D 3017; the calibration checks of both the density and moisture gauges shall be made at the beginning of a job on each different type of material encountered and at intervals as directed by the Contracting Officer. ASTM D 2937, Drive Cylinder Method shall be used only for soft, fine-grained, cohesive soils. When test results indicate, as determined by the Contracting Officer, that compaction is not as specified, the material shall be removed, replaced and recompacted to meet specification requirements. Tests on recompacted areas shall be performed to determine conformance with specification requirements. Inspections and test results shall be certified by a registered professional civil engineer. These certifications shall state that the tests and observations were performed by or under the direct supervision of the engineer and that the results are representative of the materials or conditions being certified by the tests. The following number of tests, if performed at the appropriate time, will be the minimum acceptable for each type operation.

#### 3.14.1 In-Place Densities

- a. One test per 2000 square feet, or fraction thereof, of each lift of fill or backfill areas compacted by other than hand-operated machines.
- b. One test per 200 square feet, or fraction thereof, of each lift of fill or backfill areas compacted by hand-operated machines.

#### 3.14.2 Check Tests on In-Place Densities

If ASTM D 2922 is used, in-place densities shall be checked by ASTM D 1556 as follows:

- a. One check test per lift for each 2000 square feet, or fraction thereof, of each lift of fill or backfill compacted by other than hand-operated machines.
- b. One check test per lift for each 2000 square feet, of fill or backfill areas compacted by hand-operated machines.
- c. One check test per lift for each 200 linear feet, or fraction thereof, of embankment or backfill for airfields.

#### 3.14.3 Optimum Moisture and Laboratory Maximum Density

Tests shall be made for each type material or source of material including borrow material to determine the optimum moisture and laboratory maximum density values. One representative test per 1000 cubic yards of fill and backfill, or when any change in material occurs which may affect the optimum moisture content or laboratory maximum density.

#### 3.15 DISPOSITION OF SURPLUS MATERIAL

Surplus satisfactory material shall be incorporated into the breakwater embankment at the location shown on the grading plan drawings, using the same construction requirements as the original laid out breakwater embankment. Unsatisfactory material, not suitable for filling or backfilling, shall be removed and disposed of off-site by the Contractor. The lignite indicated on the borings is considered unsatisfactory material and shall become the property of the Contractor and removed from the

construction site.

-- End of Section --



Truck Haul Road

Garrison, Nd 2.5 miles

Hwy 37

Coal Pile

Coal Pile

Coal Pile

Coal Pile

Image © 2008 DigitalGlobe

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Pointer 47°35'59.78" N 101°25'34.40" W elev 1850 ft

Streaming ||||| 100%

Eye alt 5131 ft