



Public Service Commission

State of North Dakota

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November 25, 2008

Mr. Kurt Martin, President
Martin Construction, Inc.
Box 17
Gladstone, ND 58630

Dear Mr. Martin:

The Reclamation Division has reviewed your November 14th letter and other information regarding coal that was removed from the Fort Stevenson Marina Project south of Garrison that is 100% funded by the U.S. Army Corps of Engineers. You have requested a determination that these activities are exempt from North Dakota's reclamation law and rules covering surface coal mining and reclamation operations. North Dakota Administrative Code (NDAC) Section 69-05.2-01-01(1) states these requirements do not apply to coal extraction that is an incidental part of federal, state, or local government financed by highway or other construction.

Coal was encountered while excavating material for the marina project and the Corps of Engineers considered the coal as a waste product that becomes the property of the contractor. Your contract with the Corps also requires the coal to be removed from the construction site. Based on the information provided in your request and during our telephone conversation on November 24, it is my understanding that all of the coal was removed from Corps of Engineers owned land; however, some of the coal will be temporarily stored on private land that you have leased. Since the coal removed from the Fort Stevenson Marina Project is an incidental part of a 100% government financed construction project, it is my determination that the coal removed as part of this project is exempt from the surface coal mining and reclamation requirements under North Dakota Century Code Chapter 38-14.1 and North Dakota Administrative Code Article 69-05.2.

Please note that NDAC 69-05.2-03-02 requires you to maintain documents onsite that describe and show the boundaries of the areas to be affected and to have evidence that the project is government financed. I recommend that a copy of this letter be kept with those documents as well.

If you have any questions, please contact me.

Sincerely,

James R. Deutsch
Director
Reclamation Division

cc: Illona Jeffcoat-Sacco

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Non-jurisdictional Determination Sent to Martin Construction
Public Service Commission
Jim Deutsch