



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
Web: [www.nd.gov/psc](http://www.nd.gov/psc)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone 701-328-2400  
Toll Free 1-877-245-6685  
Fax 701-328-2410  
TDD 800-366-6888 or 711

October 27, 2009

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 the application for Bond Release No. 3 to Permit NACT-9101 for the Freedom Mine. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on this application:

### **General**

1. Please consider using book mark links or subfolders in the Attachments so that the information is organized and can be accessed without scrolling through long pdf documents. For example, the information in Attachment VIII d should be bookmarked or subdivided by surface ownership, operator or year rather than being placed in one 132 page pdf document. Also, it would be helpful if page numbers were included for each of the sections or subparts that are more than a couple of pages in length. (GAW)

### **Attachment II – Metes and Bounds Description**

2. The sixth leg of the metes and bounds description is missing a directional coordinate. Please add the missing direction. (SAS)

### **Attachment V – Surface Ownership, Land Use, and Soil Depths Map**

3. Various photograph dates are listed on Attachment V. October of 2006 and 2007 are listed at the bottom of the map but a flight date from 2009 is listed on the left side of the map. Please clarify the date of the aerial photo. (GAW)

4. Please cross hatch or otherwise clearly distinguish the reclaimed prime farmlands soils on Attachment V. These areas are labeled “PTS” but the print is small and it is difficult to determine the prime farmland areas on the map. (GAW)
5. Please depict the SPGM respread depths of the associated disturbance areas within the bond release tract. (JRD/GAW/WTG)
6. In the legend of Attachment V please consider changing the “mining disturbance boundary” wording to the “mineral removal boundary” or some other language so that a clear distinction is made between the areas where the topography was changed and the areas affected by associated disturbances only. The existing language is not clear. (GAW)

#### **Attachment VI – Contour and Revegetation Map**

7. Please show all of the areas where topsoil was stripped and replaced during the responsibility period to improve surface drainage, and identify reseeding dates for these areas (79.3 acres) on Attachment VI. (GAW)

#### **Attachment VII – General Information**

8. The first sentence of the first paragraph of the General Information section states that this information relates to Section 22, T146N, R86W. However, the bond release application is for Section 22, T145N, R86W. Please correct. (GAW/WTG)
9. In the Ground Water Hydrology narrative of Attachment VII – General Information, please indicate that the Dakota Star Post-Mining Ground Water Assessment was approved by the Public Service Commission with Revision No. 5 to Permit NACT-0401 on June 4, 2008. (BEB)
10. In the Surface Water Hydrology narrative of Attachment VII – General Information, please indicate that the Surface Water Assessment for Coal Creek and Final Bond Release #3 to Permit NACT-9101 was approved by the Public Service Commission with Revision No. 12 to Permit NACT-0401 on September 22, 2009. (BEB)
11. In the Wetlands narrative of Attachment VII, please include a discussion regarding the number and acreage of pre- and post-mine temporary and ephemeral wetlands for each surface owner. (GAW)
12. A sentence in the second paragraph of the Wildlife narrative of Attachment VII, states that there were 36.4 acres of rangeland on this tract prior to mining. A sentence on the second page of Attachment VIIa states there were 36.4 acres of tame pastureland in the NE¼ of this tract prior to mining. We assume these statements are referring to the same area. Please review and correct as necessary. (GAW)

13. In the Wildlife narrative, please include a discussion about whether any fish and wildlife enhancement features or measures were constructed, installed or applied on the bond release tract. NDAC 69-05.2-09-17(1)(d). (GAW)

## **Attachment VIII – Site History, Management and Vegetation**

### **Attachment VIIIa – Vegetation Management and Production**

14. Please mention that the NW<sup>1</sup>/<sub>4</sub> of Section 22 will be referred to as the Malke tract throughout the bond release application. Other than being indicated (and difficult to see) on Attachment V, this is not stated anywhere. (SAS)
15. The Reclamation Division granted a variance from the 10-year revegetation period for 79.3 acres of land in Section 22 (see letter in Attachment IX) not 64.3 acres as indicated in the Liability Period narrative in Attachment VIIIa. Please correct as necessary. (GAW)

### **Attachment VIIIb – Cropland Productivity Standard**

16. Page 132 of Section VIIIb indicates that the undisturbed acres for the Coteau tract have an average yield value of 36.8 bu/ac rather than the 34.8 bu/ac as shown in the calculations. Please correct the values and calculations on all the data sheets for the Coteau tract. This will change the unadjusted yield standard to 30.8 bu/ac and may change some of the other calculated values. (SAS)
17. The Mercer County yield for 2007 is listed as 29.3 bu/ac on the Benz data sheet when it should actually be 29.8 bu/ac. Please adjust accordingly and any other calculations as necessary on the sheet and on other pages in the application as appropriate. (SAS)
18. The wrong formulas were used to adjust the county durum yield for 2003 for the Benz property tract. Please adjust accordingly and any other calculations as necessary on the sheet and on other pages in the application as appropriate. (SAS)
19. There are several instances in this subsection where separate fields have independent yields but the calculations in Attachment VIIIb combines the two fields for one yield value. Please be consistent in how the data is calculated and presented. (SAS)
20. On the Agnes Benz property, continuous cropping practices have been used and more than one crop was grown in two of the years (2007 and 2008) that are being used to demonstrate revegetation success. Coteau is using the “Entire Field Harvest” method as described on page III-D-1 of the revegetation success standards document to prove reclamation success. However, in 2007 and 2008 only the spring wheat yields were used to demonstrate revegetation success. Since the entire field harvest method is used, Coteau needs to include the 2007 yields of the flax and barley crops along with the spring wheat to develop a weighted average yield for all of the crops for demonstrating reclamation success. For 2008,

the barley yield must also be used as well as the spring wheat yield to develop a weighted average yield. (GAW & JRD)

**Attachment VIIIc – Yield Calculations and Test Weight and Dockage Comparisons**

21. For the 2005 Malke yields in field 22Malke3, the weight tickets 14672 and 14673 seem to be reversed from the information listed in Attachment VIIIId. Please change as appropriate. (SAS)
22. Please add a more detailed explanation and table at the end of Attachment VIIIc to show how the average of the reclaimed area test weights and dockages were calculated for use where these measurements were not taken. This should include a discussion on the management (seeding date, use of fertilizer and herbicides) on the reclaimed tract without test weight and dockage samples compared to that used on the tracts where samples were taken. Also, in the future, please be sure that crop samples of each harvested crop are taken to determine the test weight and dockage when truck or bin estimates are used to demonstrate reclamation success. (SAS & JRD)

**Attachment VIIIId – Cropland Management Sheets, Soil Tests, and Field Maps**

23. Please include a map for each year that measurements were taken to show which crops were grown on each strip and those that were summer fallowed. We noted that acreage shown on many of the individual data sheets are not the same as that shown on the map at the beginning of this section for 2003-2009. (JRD)

The Reclamation Division will allow the use of an adjustment factor for the 2008 hail damage on the Benz property in this instance since the actual yields nearly met the climatically adjusted standard without the adjustment. Before such an adjustment will be allowed in future final bond release applications (especially if the hail damaged adjusted yield comes very close to the climatically adjusted standard), you need to provide a detailed description of the methodology used by crop adjustor and results of sampling done by the adjustor. We will then have to determine if that sampling methodology meets the regulatory requirements for conducting sampling with 90% statistical confidence as required by NDAC 69-05.2-22-07.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division