

# THE COTEAU PROPERTIES COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

FREEDOM MINE

204 County Road 15  
Beulah, North Dakota 58523-9475

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July 13, 2010

Mr. James R. Deutsch  
Director Reclamation Division  
Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

This letter is in response to North Dakota Public Service Commission Notice of Violation Number (NOV) 1003, issued to The Coteau Properties Company on July 8, 2010. This NOV was issued following a June 30 inspection, when an inspector noted no energy dissipator was placed on the outlet end of a discharge pipe from sedimentation pond P-N33-01, which was discharging off-permit at the time.

Remedial action required by this NOV has been completed. An energy dissipator was placed on the discharge end of the pipe immediately following the inspection. The pond has not been discharged since receipt of the NOV. The discharge outlet, with the attached energy dissipator, has been moved east from its previous location, and is now located on thick grass immediately inside the permit boundary, in the SE¼ Section 33, T146N, R87W. Please see Attachment 1 showing the location of the discharge outlet and dissipator east of the fence that serves as the permit boundary. We will not discharge the pond from this point until the PSC gives approval.

The Coteau Properties Company is requesting that NOV 1003 be vacated or amended to eliminate the notice that there was a violation of NDCC 38-14.1-25(2), which states that the permittee may not locate any part of the surface coal mining and reclamation operations outside the permit area. The surface coal mining and reclamation operations referenced here is water discharging, because the discharge outlet was 60 feet outside the permit boundary. However, as you know, we have historically placed discharge outlets outside the permit boundary in some selected situations. These include routing discharge water around downstream off-permit construction or grassed waterways being established, or placing discharge outlets where they cause the least impact to landowners immediately downstream by avoiding flooding immediately off-site. While this is not a very common practice, it has been recognized by both Coteau and the PSC as a suitable measure to mitigate off-site impacts. We do not believe this practice constitutes a "surface coal mining operation."


Mr. James R. Deutsch  
July 13, 2010  
Page 2

We certainly recognize that erosion control at the pond discharge outlet, in combination with off-site placement of the outlet, is a special concern. However, off-site placement of the discharge outlet, in and of itself, has never been considered a violation, and in fact has been viewed as a beneficial alternative in certain situations. We are quite concerned that the NOV as currently written separately and specifically cites Coteau with violation of NDCC 38-14.1-25(2), or operating outside the permit area. The NOV should be limited to the lack of an energy dissipator. Elimination of the separate citation addresses our historically recognized and limited practice, while retaining the central focus of the NOV, control of discharges from sediment ponds in accordance with NDAC 69-05.2-16-10.

If you have any questions, please contact me.

Sincerely,

THE COTEAU PROPERTIES COMPANY

A handwritten signature in black ink, appearing to read "JDF", with a large, stylized initial "J" that loops around the first part of the name.

Joseph D. Friedlander  
Environmental Manager

JDF:lr  
Enc.

