

C R O W L E Y F L E C K PLLP

Brian R. Bjella  
400 East Broadway, Suite 600  
P.O. Box 2798  
Bismarck, ND 58502-2798  
701.223.6585  
bbjella@crowleyfleck.com

October 28, 2010

**RECEIVED**

OCT 29 2010

**PUBLIC SERVICE COMMISSION**

Mr. Darrell Nitschke  
Executive Director  
NORTH DAKOTA PUBLIC  
SERVICE COMMISSION  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

Dear Mr. Nitschke:

In re: The Coteau Properties Company  
Case No. RC-10-598  
Our File No. 21-784-005

Enclosed for filing are original and ten copies of Coteau's Request to Vacate Notice of Violation, or in the Alternative, Application for Formal Hearing.

Please call should you have any questions.

Very truly yours,



BRIAN R. BJELLA

bw  
Enc.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

In the Matter of  
The Coteau Properties Company  
Notice of Violation 1004

CASE NO. RC-10-598

---

**REQUEST TO VACATE NOTICE OF VIOLATION,  
OR IN THE ALTERNATIVE,  
APPLICATION FOR FORMAL HEARING  
BY THE COTEAU PROPERTIES COMPANY**

---

The Coteau Properties Company ("Coteau") respectfully alleges as follows:

1. That Coteau is the owner and operator of the Freedom Mine located near Beulah, North Dakota, and at all times herein mentioned was conducting surface coal mining operations under Permit Nos. NACT 8102 and NACT 8203 issued by the Commission.
2. That by Notice of Violation No. 1004 dated October 4, 2010 ("NOV"), received by Coteau on October 5, 2010, the Commission alleges that Coteau failed to install the appropriate measures to control or prevent erosion and siltation from a segment of a haulroad constructed in 2009.
3. That the NOV contains a substantive error in that it states that the legal description of the lands to which it applies is the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 18, Township 145 North, Range 87 West, Mercer County, North Dakota, as there is no haulroad located within said lands.
4. That Coteau is adversely affected by said NOV.

WHEREFORE, Coteau requests that the Commission immediately vacate and dismiss with prejudice the NOV for alleging violations in lands where no haulroad is located. As there is no haulroad in the lands described in the NOV, there can be no violation.

Coteau further requests if the NOV is not vacated and dismissed for describing lands in which no haulroad is located, that this matter be set for formal hearing pursuant to North Dakota Century Code Chapter 38-14.1 and North Dakota Century Code § 38-14.1-30.

Coteau further requests that if a formal hearing is held, that the Commission thereafter vacate and dismiss with prejudice the NOV in all respects, and grant such other and further relief as may be just and equitable in the premises.

Dated this 27<sup>th</sup> day of October, 2010.

CROWLEY FLECK PLLP  
Attorneys for Applicant  
400 East Broadway, Suite 600  
P.O. Box 2798  
Bismarck, North Dakota 58502

By

  
BRIAN R. BJELLA (#03549)