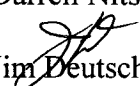
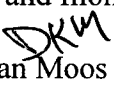



PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Clark, Kalk and Cramer
Darrell Nitschke and Illona Jeffcoat-Sacco

FROM:  Jim Deutsch,  Dean Moos and  Guy Welch

DATE: September 14, 2011

SUBJECT: Variance request to the performance bond responsibility period for areas in Permit NACT-9101 held by Coteau Properties Company, Case No. RC-11-68

Summary - On February 21, 2011, the Coteau Properties Company filed a request for a variance from the 10-year revegetation responsibility period for 2.5 acres of reclaimed hayland in Permit NACT-9101 at the Freedom Mine. This reclaimed tract is located in the SE¼ of Section 16, T145N, R86W, Mercer County. A variance from the 10-year responsibility period will allow a settling feature that was repaired in the fall of 2010 to be bond released with the surrounding lands that were reclaimed in 1994 through 2000. Vegetation has now been re-established on the repair area and the Reclamation Division respectfully recommends approval of the variance request as allowed by Policy Memorandum No. 20.

Discussion - Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year revegetation responsibility period for certain areas so the responsibility period is the same as that of the surrounding reclamation tract. This applies to reclaimed sedimentation ponds and other support facilities, as well as reclaimed areas that are affected by the repair of settling features and drainage improvements. The repair of settling features and drainage improvement work on reclaimed land often occurs after the revegetation liability period was started following the initial seeding of the tract. Variance areas must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. Mining companies must also demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety.

Coteau is requesting a variance from the 10-year responsibility period for 2.5 acres of reclaimed land that was re-affected in 2010 to repair a 0.4 acre size settling feature and to improve drainage of the area. Coteau stripped back the topsoil and reshaped the subsoil in this area to facilitate drainage. Topsoil was replaced and the site was then chiseled and seeded. Removing and replacing topsoil on reclaimed lands typically re-initiates the 10-year revegetation responsibility period. The total area disturbed and reclaimed within Section 16 in the fall of 2010 is 2.5 acres. This area is part of the larger tract, approximately 478 acres, that is included in Bond Release No. 5 to Permit NACT-9101 that was filed on August 31, 2011.

The total area being considered for the variance is approximately 0.5% of surrounding reclamation tract (2.5/478-2.5=0.5%). Policy Memo 20 states that areas re-affected by settling repair and drainage improvement cannot exceed 5% of the total acreage within the larger bond release tract.

If a variance to the 10-year responsibility period is not granted for the area re-disturbed in 2010, bond release could not occur on this area until the fall of 2020. It is unlikely that Coteau would pursue bond release on the larger logical bond release tract without including the area that was repaired in 2010. All of the remaining permitted land in Section 16 is owned by a single surface owner (State of North Dakota).

A map showing the variance areas and the adjacent reclaimed lands is attached. The proposed variance area was inspected in July and August of 2011. In early July water was noted ponding on a very small portion of the repair area and Coteau subsequently carried out additional repairs to facilitate drainage. Ground cover sampling data will be needed on the 2010 repair area before final bond release to demonstrate that the approved seed mixture has established. The Reclamation Division previously informed Coteau that productivity data from this small repair area would not be necessary given the small size of the feature in relation to the surface owner's total acreage.

Based on the field inspections and the information contained in the variance request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 2.5 acres of reclaimed land in the SE¼ of Section 16 within Permit NACT-9101.

A motion and an approval form are attached for your consideration at the September 20, 2011 Commission meeting.