

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**

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**Memorandum**

**TO:** Commissioners Kalk, Christmann and Fedorchak  
Illona Jeffcoat-Sacco, Darrell Nitschke

**FROM:** Jim Deutsch, Dean Moos and Guy Welch

**DATE:** November 13, 2014

**SUBJECT:** Bond Release No. 3 for Surface Coal Mining Permit NACT-8503 held by the Coteau Properties Company, Case No. RC-14-97

**Summary** – On February 18, 2014, the Coteau Properties Company filed Final Bond Release Application No. 3 to Surface Coal Mining Permit NACT-8503 requesting release of all reclamation liabilities on 11.182 acres of industrial land at the Freedom Mine. This property is owned by the Dakota Gasification Company (DGC) and is being used by DGC as a parking lot. Coal was not mined from this tract but approximately 2 acres were affected by Coteau for a storage site. In addition, DGC has previously used a portion of this site as an inert waste disposal facility prior to being permitted under Permit NACT-8503 and the site has been reclaimed to the standards of the North Dakota Department of Health. The affected industrial lands are subject to our current reclamation law and rules and Coteau has demonstrated that these lands have met the applicable final bond release performance standards. The Reclamation Division recommends approval of this bond release application based on the findings discussed below.

**Discussion** – Bond Release Application No. 3 to NACT-8503 pertains to 11.182 acres located in the SE¼SE¼ of Section 24, T145N, R88W, Mercer County. This property was initially affected by American Natural Gas during construction of the DGC gas plant and a portion of the area was used as an inert waste disposal site which was authorized by the ND Department of Health. This property was subsequently permitted by Coteau and the inert waste disposal site was capped with subsoil and topsoil and closed in January of 1989. The eastern portion of the tract was re-affected by Coteau for use as a wood storage site from 2006 through 2013. In the spring of 2013, DGC and Coteau requested the wood storage area and portions of the remainder of the tract be converted to a parking lot to accommodate DGC contractors during plant maintenance and construction events. DGC was granted a special use permit by the ND Health Department to modify the existing inert waste site for use as a parking lot. Approval to construct the parking lot was granted May 17, 2013.

The eastern portion of the proposed bond release area, which includes the area previously occupied by Coteau's wood storage site and an additional approximately 4 acres of land, were converted to a parking lot during the summer of 2013. The topsoil stockpile that was dedicated to Coteau's wood storage area was moved to the north end of the bond release tract and the topsoil that was stripped from the balance of the parking lot area was added to this pile. The topsoil pile and disturbance around the perimeter of the parking lot was disked and seeded to Coteau's stockpile seed mixture in the summer of 2013. The parking lot area was covered with scoria and DGC has been using the site as planned since that time. The north and east sides of the bond release tract are marked with a chain-link fence. The township and section line rights-of-way adjacent to this tract have been closed by Mercer County.

Runoff from the parking lot area is directed southwestward where it is treated with best management water management practices that includes sumps and silt fences. Surface water runoff from adjacent permitted areas that are affected by coal mining operations are directed to Coteau water management features located on nearby permitted areas. The remainder of the bond release tract was not affected by Coteau and is considered undisturbed land for the purposes of our regulations.

Coteau completed ground water postmine hydrologic assessments for the bond release and adjacent area. This ground water assessment is in the Mine Area 4 Post-Mining Ground Water Assessment section of the Consolidated Ground Water Monitoring Plan. The reports show that there is no material damage to the hydrologic balance outside the permit area. Ground water will continue to be monitored by DGC as required by the permit issued by the ND Department of Health. No pre-mining water delivery systems are required to be replaced within the bond release area. The Joseph Walker No. 1 well was identified and decommissioned for purposes other than mining sometime after the well was certified in 1978 but prior to landfill development and mine permit approval. The Reclamation Division believes there will be minimal changes to surface and ground water quantity and quality as a result of surface mining and reclamation in the bond release and adjacent areas. As previously stated, the area was affected by an inert waste disposal site prior to being permitted by Coteau and the topography was not changed by mining.

Although areas mined under the 1979 reclamation law are normally subject to the 10-year liability period, Policy Memorandum No. 15 to Mine Operators allows final bond release sooner for industrial areas if certain conditions are met. These include issuance of the proper permits and implementation of the industrial land use. As mentioned above, the appropriate permits have been issued and DGC has been using the parking lot area as planned. Therefore, the requirements set forth in Policy Memorandum No. 15 have been satisfied.

NDAC 69-05.2-22-07(4)(j) requires adequate ground cover on the vegetated portions of industrial sites at the time of final bond release. In this instance this would include the topsoil stockpile and areas around the perimeter of the parking lot. The ground cover standard is 73% basal cover and Coteau has included ground cover sampling data in the bond release application showing that this standard has been achieved. There have been no previous partial bond releases on this property and the third-stage bond release standard requires vegetation establishment and that the bond release area must not be contributing suspended solids to stream flow or runoff outside the permit area. Sumps and silt fences constructed below the parking area site keeps suspended solids from stream flow and the undisturbed area is well vegetated. This area had an industrial land use at the time it was permitted by Coteau which means that no wildlife habitat land uses changes have not occurred as a result of mining. Figure 1, attached shows the bond release area in relation to DGC's facilities.

**General Information** - The formal final bond release inspection was conducted on June 25, 2014. The ND State Health Department, OSM, County Commissioners and surface owners were invited to participate in the inspection. Jessica Unruh and Troy Leingang from the Coteau Properties Company, and Mike Dietz and Jacob Dow representing DGC participated in the final bond release inspection. No concerns were identified during this inspection that would prevent final bond release approval. Canada thistle and wormwood were identified growing on the property during the bond release inspection and these noxious weeds were subsequently controlled with a herbicide application.

Notice of the bond release application was published in the official county newspapers, the Hazen Star and Beulah Beacon weekly from June 5<sup>th</sup> through June 26<sup>th</sup>, 2014. No objections to this bond release application were received.

Coteau is not requesting any reduction in the bond amount since this area is currently bonded under a worst-case reclamation condition that still exists at the Freedom Mine. The bond release area is part of a

consolidated bond area that includes Permit NACT-8503 and others at the Freedom Mine. If Bond Release No. 3 to Permit NACT-8503 is approved, Coteau Properties Company will be released from all reclamation liabilities on the 11.182 acres of land. Assuming this bond release will be approved November 20<sup>th</sup>, it will become effective on December 22, 2014, unless a formal hearing is requested.

Attached are a motion and award form for consideration at the November 20, 2014 Commission meeting.

Minedata/Freedom/Permits/NACT-8503/Bond Release/No.3/BR3\_apprvl\_memo\_11-13-14

Figure 1:

