



# Public Service Commission

## State of North Dakota

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July 16, 2014

Mr. Troy Leingang  
Environmental Manager  
Coteau Properties Company  
204 County Rd. 15  
Beulah, ND 58523

Dear Mr. Leingang:

The Reclamation Division has conducted a completeness review of the application for Revision 18 to Permit NACT-0201 which was submitted June 18, 2014. Revision 18 has been determined to be a significant revision and is therefore subject to the notice, hearing and procedural requirements. This revision also constitutes a mine plan modification that will require federal approval since additional federal coal tracts will be mined under the plans in the revision. The following items must be addressed prior to this office deeming the application complete.

### Section 1.1 – Introductory Information

#### Subsection 1.1.1 – Application Form

1. Please revise Attachment 1 to the Revision 18 Application Form SFN 10562 as necessary to clarify that the 119.7526 acres being transferred from Permit NACT-9001 to Permit NACT-0201 have not been disturbed by Coteau's mining or reclamation operations. Please also delete the phrase stating that mining and reclamation is complete in Permit NACT-9001 because reclamation is not complete in the permit and a haul road in the permit is used to support current mining operations in Permit NACT-0401. (WTG/BEB)
2. Please revise Attachment 1 of the Application Form in Section 1.1.1 and Subsection 1.1.2, to provide a detailed description of all of the changes being proposed with Revision 18. The description as presented provides very few details of the changes being proposed with this revision. For example, it is not clear that postmining land use and topographic changes are being proposed in the South Mine Area, that a cessation pit is proposed to remain open for 16 years and that a variance from the contemporaneous reclamation requirements is being proposed for a large area associated with the temporary cessation of mining. The revision description also does not mention the addition of design plans for seven sediment ponds. (GAW)

### **Subsection 1.1.2 – Revision Summary Pages**

3. Please revise the Revision Summary to clarify that the 119.7526 acres being transferred from Permit NACT-9001 to Permit NACT-0201 have not been disturbed by Coteau's mining or reclamation operations. Please also delete the phrase stating that mining and reclamation is complete in Permit NACT-9001 because reclamation is not complete in the permit and a haul road in the permit is used to support current mining operations in Permit NACT-0401. (WTG/BEB)

### **Section 1.2 – Legal Information**

#### **Subsection 1.2.3 – Metes and Bounds Description for Area Added by Revision 18**

4. The legal description for the 119.7526 acre addition area that is provided in the first sentence of Section 1.2.3 - *Metes and Bounds Description for Area Added by Revision 18*, should be revised. The tract location is provided as the N1/2SE1/4NE1/4 of Section 11, T145N, R88W, which represents only a 20-acre parcel of land and should be changed to the N1/2NE1/4 and SE1/4NE1/4 of Section 11 Please review and update the description. (BEB)

#### **Subsection 1.2.5.10 - Newspaper Publication Notice – Revision 18**

5. Please revise the first paragraph of the newspaper publication notice to clarify that the 119.7526 acres being transferred from Permit NACT-9001 to Permit NACT-0201 have not been disturbed by Coteau's mining or reclamation operations. Please also delete the phrase stating that mining and reclamation is complete in Permit NACT-9001 because reclamation is not complete in the permit and a haul road in the permit is used to support current mining operations in Permit NACT-0401. (WTG/BEB)
6. Please review the coal ownership listed for Tract 82 in Section 1.2.5.10 (Newspaper Publication Notice - Revision 18) and revise it as necessary because it does not appear to reflect the Revision 18 updates to coal ownership (Lyle D. Weiss and Weiss Trust) for Tract 82 in Section 1.5.1 (Permit Area Surface and Coal Interests) and Section 1.5.3 (Surface and Coal Ownership Map). (WTG/ZAB)
7. Betty Weise is listed as a coal owner for Tract 89 in the newspaper public notice but she is not listed as a coal owner for Tract 89 in Section 1.5.1 Permit Area Surface and Coal Interests. Please review and revise as appropriate. (ZAB)
8. The notice as presented provides few details of the changes being proposed with this revision. Please revise the public notice to provide details of all of the changes being proposed with Revision 18. This should include describing and depicting the area that Coteau is proposing the 16-year temporary cessation of mining. The narrative needs to mention the revised mining and reclamation plans for the southern portion of the permit and changes to the approved postmining topography and land uses. (JRD/GAW)
9. NDAC 69-05.2-10-01(1)(d) requires that the revision public notice state whether Coteau is planning to conduct any operations within 100 feet of the outside right of way of a public road or to relocate a public road or close any section lines. Section 3.1.1.6 of the permit states that Mercer County has already approved closing County Road 15 between Sections 11 and 12 and

that an alternative route is planned. Likewise, Section 3.1.1.6 indicates that access to the Keller farmstead will be disrupted in 2016 and that an alternative route will be provided, if necessary. This information needs to be included in the public advertisement as required by NDAC 69-05.2-10-01(d). Please revise the advertisement to describe and depict all planned impacts to public roads with the proposed mine plan changes during the remaining term of the permit. (GAW)

#### **Subsection 1.2.5.11 – Newspaper Publication Notice Map – Revision 18**

10. Please depict and label the 119.7526 acres in Section 11 of T145N, R88W, being transferred from Permit NACT-9001 to Permit NACT-0201 on the newspaper publication notice map. (WTG/RLK/FSE)
11. Please revise the Newspaper Publication Notice Map to identify the northern portion of the permit area where detailed mining and reclamation plans are being added with Revision 18, and depict the proposed mining cessation area in the southern portion of the permit area. (JRD)

#### **Subsection 1.2.7 – Relation to Mining – Prohibited Areas**

12. Please revise Section 1.2.7.1, Proposed Section Line and Road Closures and Setback Waivers Map, to show the new mining sequence so one can determine planned impacts to public roads. (GAW/FSE)
13. Please update Section 1.2.9, Mercer County Section Line Right-of-way Closure and Setback Waiver Documents, to include all existing Mercer County resolutions regarding public roads. Section 3.1.1.6 states that Mercer County has approved closure of County Road 15 between Sections 11 and 12 but the resolution has not been included in Section 1.2.9. Pond P-W06-01 is shown on the section line between Sections 5 and 6 of T144N, R88W, but the appropriate closure documents showing that Mercer County has closed this section line road were not included in the revision. (GAW)

#### **Section 1.4 – Surface Owner Protection Act Compliance Information**

14. The Surface Owner Protection Act, Subsection 1 of NDCC 38-18-06, requires that mining companies notify all surface owners, in writing, of the type of land disturbance planned to enable the surface owners to evaluate the extent of land disturbance planned on their lands. The Pit Layout and Facilities Map, Section 3.1.5, now shows that Rudolph Sasse's land in Sections 27, 33 and 34 is going to be mined where previously it was not going to be mined and that Keller's land located in the SW1/4 of Section 11 will be mined much earlier than previously planned. Please provide the notice to the appropriate surface owners affected by the revised mine plan changes with Revision 18 and update Section 1.4, Surface Owner Protection Act Compliance Information, to comply with this provision. (GAW)

#### **Section 1.5.3 - Surface and Coal Ownership Map**

15. Please review the coal ownership listed for Tract 96 on Section 1.5.3 (Surface and Coal Ownership Map) and revise it as necessary because it does not appear to reflect the Revision 18 updates to coal ownership (Fuller Trust and Amburg Life Estate) completed for Tract 96 in Section 1.5.1 (Permit Area Surface and Coal Interests) and Section 1.2.5.10 (Newspaper Publication Notice - Revision 18). (WTG)

16. Please review the coal ownership listed for Tract 105 on Section 1.5.3 (Surface and Coal Ownership Map) and revise it as necessary because it does not appear to reflect the Revision 18 updates to coal ownership (Doffee Estate) completed for Tract 105 in Section 1.5.1 (Permit Area Surface and Coal Interests) and Section 1.2.5.10 (Newspaper Publication Notice - Revision 18). (WTG)
17. Please draw ownership boundary tract lines in Section 3 (T144N, R88W) to clearly separate Tracts 3 and 5-B, and also in Section 11 (T145N, R88W) to clearly separate Tracts 58, 109, and 110 on Section 1.5.3 (Surface and Coal Ownership Map). (WTG)

### **Section 2.2 – Surface Water Hydrology**

18. Please provide information in the permit showing that the longitudinal profile and shape planned for the reclaimed streams approximate the pre-mining stream characteristics as required by NDAC 69-05.2-16-06(5) and NDAC 69-05.2-16-07(4). In addition to the modeled flow information provided in PHC, the permit should include the stream profile and length information for the intermittent streams and larger ephemeral streams such as those identified on the Post-Mine Probable Hydrologic Consequences Map, Section 2.2.6, as watersheds WAC-01, SC-08 and WAC-17. (RLK)

### **Section 3.1.8 – Temporary Cessation of Mining Plan**

19. Coteau is proposing to cease mining operations in Mine Area 1 from 2018 through 2034 to “keep a balanced strip ratio for the term of the contract”. This cessation area includes a reclamation variance area that involves approximately 400 acres of land will not be reclaimed during the cessation period. Justification for this cessation of mining is currently inadequate given the requirements of NDCC 38-14.1-24(14). In addition, the contingency plan is deficient in that it shows 10% slopes on areas to be reclaimed to cropland which is unacceptable. Please revise and provide more details for the long term cessation of mining. (GAW)

### **Section 3.3 – Surface Water Management**

20. Please provide details on how the rain fall amount data is obtained from the publication mentioned in *Section 3.3.3 Hydrologic Parameters and Design Procedures*. Also, include in *Section 3.3.5*, the source for the precipitation data used for the design of water structures. (FSE)

### **Section 4.0 – Postmining Land Use and Revegetation**

21. Please include an assessment that shows the pre-mine capabilities will be restored on each tract of land, preferably by quarter section, to be affected in the permit area. According to the Postmine Topography and Land Use Map, Coteau is proposing to not reclaim about 120 acres of cropland and about 130 acres of hayland in Section 4, T144N, R88W, where the approved topography is changing drastically. The pre-mine soils in these areas was primarily Williams loam complexes with B and C slopes and the NE1/4 of Section 36 also contained soils and topography that had the capability of being farmed. Although Coteau owns this property, the pre-mine capabilities of this area must be restored as required by NDCC 38.14.1-24(2). It appears Coteau is proposing to replace pre-mine cropland located in the southern portion of Mine Area 1 west of the proposed cessation pit area. Pre-mine cropland disturbed in the southern portion of Mine Area 1 must be

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replaced in this same portion of the permit area that will not be affected by the 16-year cessation of mining. (GAW/JRD)

Also, the Reclamation Division did not have time to carefully review the proposed changes to the post-mining topography in Mine Area 1 as requested in the cover letter accompanying this revision. At first glance it appears the proposed revised postmine topography is an improvement over what is currently approved for some areas, but in some instances the slope lengths are too long, for example, the SE1/4 of Section 34. In the SE1/4 of Section 36 Coteau is proposing to reclaim 14.6% slopes that are over 400 feet in length and 9% slopes in the NW1/4 of Section 3 are over 700 feet in length. Consideration should be given to reducing slope length and/or slope steepness in these areas to more closely resemble pre-mine conditions. In Section 36, Coteau is proposing to increase the acreage of all slope ranges above 6% range with Revision 18. Our initial reaction is to say that the topography of this tract should not be any steeper than that which was previously approved. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division