

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

\*\*\*\*\*

**Memorandum**

**TO:** Commissioners Fedorchak, Christmann and Kalk  
Darrell Nitschke, Executive Secretary  
Illona Jeffcoat-Sacco and Jack Schuh

**FROM:** *JH DKM GW*  
Jim Deutsch, Dean Moos and Guy Welch

**DATE:** October 19, 2015

**SUBJECT:** Revision Application No. 18 to Permit No. NACT-0201 held by the Coteau Properties Company, Case No. RC-14-439

**Summary** - On June 18, 2014, Coteau Properties Company filed the application for Revision No. 18 to Permit NACT-0201 for the Freedom Mine. This revision application adds detailed mining and reclamation plans for the northern portion of the permit area, adds 119.7526 acres to the permit area that are currently part of Permit NACT-9001, and modifies mining and reclamation plans for the southern portion of the permit area including a 16-year temporary cessation of mining activities that affects about 400 acres. This revision also updates baseline resource information for areas not yet disturbed by mining activities and changes the approved post-mining land uses and post-mining topography in the southern portion of the permit. The Reclamation Division respectfully recommends that Revision 18 be approved.

**Discussion** - Coteau has stated this revision contains mine plan changes that allow them to meet customer coal quality requirements and allow for a balanced overburden stripping ratio during the term of the coal delivery contract. One of the two draglines operating in the southern portion of the permit area will be moved to the northern portion of the permit in 2018 to open a new mine area (Mine Area 3). The pit area where this dragline was operating will be stabilized and remain idle for a period of 16-years, until the year 2034, when mining will again resume in the area. Approximately 400 acres of land associated with this cessation pit will remain at overburden grade during the cessation period. Topsoil and subsoil will not be respread on this area to avoid re-affecting it when mining resumes in 2034. This revision includes a request for a variance from the contemporaneous reclamation requirements for this 400 acre cessation pit area.

The Reclamation Division required Coteau to develop a contingency closure plan for the cessation pit area in the event that mining does not resume in this area as planned. The contingency plan ensures that the pre-mining topography and land use capabilities of this area are restored if mining is not resumed in this area. This revision also includes reclamation variances for the initial pits associated with Mine Area 3 and other areas where reclamation delays are necessary. These reclamation variances have been adequately justified and the Reclamation Division recommends the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2).

This revision contains design plans for the construction of a number of sediment ponds, sumps, diversions and hauls roads. In addition, changes were made to the proposed location of post-mining cropland and native grassland. Changes were also made to the approved post-mine

33 RC-14-439 Filed: 10/19/2015 Pages: 3  
Memorandum

Public Service Commission Staff  
Jim Deutsch, Dean Moos, Guy Welch

topography of the south mine area (Mine Area 1) and the post-mine topography of the north mine area was developed in conjunction with the new mine plan. The permit contains measures to ensure that mining activities will not adversely affect any threatened and endangered species.

This revision includes plans to mine the federal coal tracts located in the N $\frac{1}{2}$  of Section 10 and all of Section 14, T145N, R88W (Mine Area 3). The Bureau of Land Management issued federal coal lease NDM 91535 to the Coteau Properties Company effective June 1, 2006 for these tracts and others in Permit NACT-0201, totaling 5,333.56 acres. These federal coal tracts were included in the original 17,051 acre permit area that was approved in 2003. In 2011, Coteau updated the permit to mine most of the federal coal tracts located in the southern portion of the permit area. Revision 18 now provides detailed mining plans to mine some of the federal coal acreage in the northern portion of the permit.

Leased federal coal cannot be mined until the Secretary of the Department of the Interior approves a federal mine plan as required by 30 CFR 746.11. A condition attached to the approval of Permit NACT-0201 prohibits Coteau from removing overburden or coal from federal coal tracts until the Department of the Interior approves the mine plan or mine plan modification. Coteau is anticipating Federal mine plan approval later this year or in early 2016. Surface disturbance is allowed on these lands prior to Department of the Interior approval only to the extent necessary for the mining on the adjacent private lands. The surface of the federal coal tracts is owned or leased by Coteau. The Reclamation Division will be sending additional documents to OSM that will be used as part of the federal mine plan approval process.

This revision also adds 119.7526 acres to Permit NACT-0201 that are presently in Permit NACT-9001. These lands were not disturbed by mining activities while in Permit NACT-9001 but disturbance is now planned on this area in association with this revision. This acreage will be double permitted upon the approval of Revision 18. However, Coteau will eventually file a revision to remove this acreage from Permit NACT-9001.

Two isolated intermittent stream segments located in the northern mine area will eventually be mined through with the changes proposed by Revision 18. The Reclamation Division consulted with the State Engineer and State Health Department regarding this disturbance as required by NDAC 69-05.2-16-20.

Coteau also filed Revision 27 to Permit NACT-0401 for the Freedom Mine shortly after the submittal of Revision 18 to NACT-0201 to revise the worst-case reclamation cost estimate for the consolidated bond area that covers all permits at the Freedom Mine. Most of these changes were due to the mining and reclamation plan changes proposed by Revision 18 and they increase the reclamation cost estimate that is used to set the minimum bond amount. Coteau submitted a rider to increase the current self-bond and a new collateral bond is replacing the existing collateral bond to cover the increased liability. A bond rider that effectively cancels the existing collateral bond for the Freedom Mine will also need to be executed.

The total bond amount for the consolidated bond area covering all permits at the Freedom Mine had been \$119,000,000. The new minimum bond amount was determined to be \$143,733,543. The increase to the self-bond and the new collateral bond provided by Coteau totals \$146,000,000. This amount includes a \$2,266,457 contingency for future increases in reclamation costs.

The amount of the new collateral bond is \$14,600,000 and the self-bond amount is being increased to \$131,400,000 with Basin Electric Power Cooperative as the third party guarantor. Mining companies are allowed to provide up to 90% of the bond amount in the form of a self-bond. The other 10% must be in the form of a collateral or surety bond. Funds from collateral or surety bonds would be more readily available than funds from a self-bond to begin reclamation work in the unlikely event of bond forfeiture.

We have reviewed the self-bond documents and found they have been properly executed. Coteau and Basin meet the applicable self-bonding requirements. Certain financial criteria must also be met in order to guarantee a self-bond. Basin has met these criteria by having current bond ratings of "A2" from Moody's Investors Service and an "A" rating from Standard and Poor's.

With regard to the new collateral bond, Coteau will roll-over the funds for the existing collateral bond (Collateral Bond No. CB-9501-7) being held in escrow at the Bank of North Dakota into the new bond. A check for the additional \$2,700,000 will be provided prior to October 21, 2015. Coteau will use the funds from the existing collateral bond, plus an additional \$2,700,000, for the new collateral bond that will be in the amount of \$14,600,000. The escrow agreement for the new collateral bond (CB-9501-8) will need to be executed by the Commission as well as the Bank of North Dakota following Commission approval of the new collateral bond.

Coteau has also submitted a rider that effectively cancels the existing collateral bond for the Freedom Mine. Collateral Bond No. CB-9501-7 must be canceled in order to roll the funds into the new collateral bond. We also recommend that the Commission approve the self-bond increase and the replacement collateral bond.

Revision No. 18 was deemed a significant revision to Permit NACT-0201 making it subject to the public notice requirements. Coteau submitted affidavits of publication of the required newspaper notices, the Bismarck Tribune, Beulah Beacon and Hazen Star indicating that the notice was published on October 23<sup>rd</sup>, 30<sup>th</sup> and November 6<sup>th</sup> and 13<sup>th</sup>, 2014. We notified the appropriate agencies, affected landowners and advisory committee members of this revision application. The revision application was updated to address comments received (NRCS). We received no objections or request for informal conferences on this revision application.

Also attached for your consideration are the proposed motion, revision approval form, and revision approval notice that we will publish in the appropriate newspapers.

Minedata/Freedom/Permits/NACT-0201/Revisions/No.18/Rev18\_memo\_10-19-15.docx

Attachments