



Public Service Commission

State of North Dakota

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December 14, 2016

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

Dear Mr. Leingang:

The Reclamation Division has completed a technical review of Final Bond Release No. 7 to NACT-9101. The following items must be addressed prior to this office recommending Commission action.

Attachment I – Bond Release Tract Map

1. Surface ownership of the S1/2SE1/4 of Section 21 is listed as Hurbert Zuern on the FBR Tract Map in Attachment I and this typo should be changed to Herbert Zuern. Please update the map. (BEB)

Attachment V - Surface Ownership, Land Use and Soil Depths Map

2. Please revise Attachment V to clearly depict the area affected by prime farmland topsoil pile PTS-285 that was revegetated in 1997 according to the 1997 Annual Mine Map. (GAW)
3. Please revise Attachment V to clearly depict the topsoil and subsoil respread depths on the areas affected by mining. As currently present, this information is confusing on the Attachment V as it appears to show that subsoil was respread on an area affected only by a topsoil stockpile, TS-283, and that subsoil was respread under subsoil stockpile SS-156. Please review and revise to clearly depict SPGM respread depths on affected areas. (GAW/ZAB)

Attachment VI – Contour and Revegetation Map

4. Please revise Attachment VI to identify the area affected and reclaimed in 1997 (topsoil stockpile PTS-285). (GAW)

Attachment VII – Surface Water Hydrology Assessment

5. Narrative in the fourth paragraph on page 4 states that “*Other small drainage areas not previously discussed generally drain toward the orphan spoils*” ...and the narrative goes on to describe the spoils sump to the north that was included in FBR 4 to NACT-9101. As can be

determined in the Contour and Revegetation Map, Attachment VI, drainage within the bond release tract is generally to the south with the notable exception being a small area at the west end of the tract that drains to the orphan spoils, not the sump. We are not opposed to including the sump narrative in this section; however, the location of the sump should be placed in perspective to FBR 7 release tract and it should be specifically noted if the FBR 4 sump receives surface water drainage from this bond release tract. Please update the narrative accordingly. (BEB/RLK)

6. The last sentence in the fourth paragraph on page 4 of Attachment VII, referring to the removal of Sump S-D21-01 used for surface water management during active mining operations in 1999 does not seem relevant to land use and ground cover conditions being evaluated at this time for final bond release. The removal of settling ponds is allowed (and expected) when the reclaimed drainage area is adequately revegetated as provided in NDCC 38-14.1-24(8)(d) or for permanent water impoundments as provided in NDCC 38-14.1-24(7). Perhaps the background information related to the NDPDES discharge points and attendant data summary could be moved to earlier in the section or left to the discussion in the post mine hydrologic assessment. The qualifications for removal of sediment ponds and the accompanying effluent limits coincide with the requirements outlined for third stage bond release for vegetation establishment. A reference to the vegetative cover and productivity measured for the purpose demonstrating revegetation success at this time may be more relevant and better support a determination that the bond release area should not be contributing additional suspended solids to streamflow or runoff outside the permit area. (RLK)
7. The fourth paragraph on page 4 of Attachment VII, refers to North Dakota Department of Health effluent limitations but it is not clear why effluent limitations would be applicable to this bond release since to our knowledge there are no impoundments or other treatment facilities in the bond release tract that are being used to manage wastewater or runoff from a regulated point source of pollutants. The effluent limitations specified in NDPDES permits must be considered under NDAC 69-05.2-16-04 if an impoundment were to be retained for an industrial purpose or to provide ongoing treatment for a particular discharge or drainage from the mining activity. The performance standards outlined in NDAC 69-05.2-16-04 must be reviewed as part of a request for third stage bond release for vegetation establishment as required by NDAC 69-05.2-12-12(7). Also, as specified in NDAC 69-05.2-16-04(b) sedimentation ponds and other sediment control measures may be removed when established vegetation is effectively controlling erosion. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes as provided in NDAC 69-05.2-22-07(3)(b). The revegetation performance standards (NDAC 69-05.2-22-07) also specify the level of productivity that must be achieved on reclaimed cropland tract. As part of the documentation that the areas are not contributing suspended solids to streamflow or runoff outside the permit area in accordance with NDAC 69-05.2-12-12(7)(b), perhaps a brief narrative could refer to the cropland management practices and yield measurements for this tract in relation to the management and productivity for cropland located near the bond release tract. The application must demonstrate that proper agricultural management and conservation practices are being employed on the tract. Please clarify as appropriate. (RLK)
8. The probable hydrologic consequences information provided in Permit NACT-9101 includes proposed changes to the watershed area contributing to control point 19-1 that appears to have been located at the south end of the bond release tract. Please provide a post mine surface water assessment for the drainage area or identify where this information is located and summarize the information in this bond release application. (RLK)

Attachment VIIIa – Vegetation Management and Production

9. The first paragraph of Attachment VIIIa states that a sediment pond was the only disturbance on this tract. The 1997 Annual Mine map shows areas affected by topsoil and subsoil piles and it identifies two areas where the revegetation period was initiated in 1997. It also appears to show that a small portion of the northeast corner of the tract was mined since it is listed as having had grade approval and SPGM respread in 1997. Please revise the narrative to accurately characterize the mining and reclamation activities associated with this tract. There should also be a discussion about rebuilt County Road No. 27. (GAW/WTG/ZAB)
10. Please update the first paragraph of Attachment VIIIa to clarify how many acres of undisturbed land is included in this bond release application in a manner such that one can determine the acreage of reclaimed land by land use. (GAW)
11. Please add narrative to the Revegetation Success section of Attachment VIIIa that states the tract contains both prime and non-prime farmland and include the acreages of the prime and non-prime farmland that were affected by mining. (ZAB/WTG)
12. Please review the acreages listed in the land use table in the Vegetation Management and Production narrative in Attachment VIIIa because it is not consistent with the metes and bounds description/acreage for the tract, the acreage used to calculate the unadjusted yield standard in step 1 of Attachment VIIIb, or the acreages listed on the field maps in Attachment VIIIc. Please explain why the standard was calculated based on 26.7 acres instead of the entire 29.179 acres of cropland in the bond release request. (ZAB/RLK)
13. The Liability Period subsection of Attachment VIIIa incorrectly states that data from 2004 and later can be used since it is the sixth year of the responsibility period. NDAC 69-05.2-22-07(4)(c) required data from any two years after year six of the responsibility period. In addition, the last sentence of this subsection incorrectly states that 2009 is the 10th year of the liability (revegetation responsibility) period. (GAW)
14. As indicated on page 3 of the Addendum to Final Bond Release Application, please provide a soils map of the pre-mine area used to derive the standard that includes pre-mine land use and property ownership. If a portion of Sheet 5 from Section B-8 in the CVSS is used for the map, please revise so the soil mapping units along the north boundary of the tract are legible. Also, please include a table of the acreages of the soil mapping units for the bond release tract and the calculations used to derive the standard. (ZAB/GAW)
15. Please revise Attachment VIIIa to include a detailed evaluation of the annual management of the reclaimed tract and the control area which is being used to demonstrate revegetation success. It appears that only a portion of the Wolf Section 18 control area was used to demonstrate revegetation success in 2012 but the expected yield of the control area was not updated accordingly. Also, all of the crops grown on the reclaimed and the control area need to be listed for each year since 2011 to demonstrate that the reclaimed tract and control area have been managed equivalent in effect. (GAW)
16. Please update Attachment VIIIa to include a discussion about why, in this instance, it is acceptable to whole field harvest an area that contains prime and non-prime farmland and undisturbed land. (GAW)

17. The current version of the CVSS on file with the Reclamation Division does not appear to recognize the disturbance associated with the area reclaimed in 1997 (topsoil stockpile PTS-285). This may or may not change the unadjusted yield standards for the Dakota Star Region, but this should be evaluated to ensure accuracy and the acreage values in Attachment VIIIb may need to be updated accordingly. (GAW)
18. As briefly mentioned in Attachments VI and VIIIa, the proposed bond release application contains 1.4 acres associated with County Road 27, of which a portion was disturbed by mining activities. Please discuss the reclamation activities associated with this road and either provide ground cover data for the road ditch, or explain why it is not necessary in this instance. (GAW/RLK)

Attachment VIIIb – Cropland Productivity Standards

19. Attachment VIIIb, Cropland Productivity Standards, includes prime and non-prime farmland unadjusted yield values for the undisturbed cropland in the tract (field). These unadjusted yield values are not included in the current version of the CVSS that is on file with the Reclamation Division. Please include this information in the bond release application in the form of a legible soils map and a table showing the unadjusted yield standards as listed in Step 1 of Attachment VIIIb, Cropland Productivity Standard. (GAW/RLK)
20. Attachment VIIIb, Cropland Productivity Standards, contains unadjusted yield standard (UYS) values different than those shown in the most current version of the CVSS. Please review and revise to correct as necessary. In addition, the Section 21 Table in Section B-2 of the CVSS contains a discrepancy. The table indicates that there were 15.60 acres of prime farmland soils in Section 21 while a note at the bottom of the table indicates the value to be 13.84 acres. Please review to ensure the values listed in this bond release application are correct. (GAW)
21. The control area acreages and boundaries provided in Attachment VIII differ from the control area information provided in the CVSS document. Also in each of the three years' productivity information that is provided, only a portion of the control area was planted to a crop that could be used for determining the annual climatic correction on the proposed bond release tract. Please calculate the weighted average productivity indices for each part of the control area to determine the appropriate NRCS productivity index (unadjusted yield) for the area where harvest data was collected to determine climatic correction for this bond release tract. (RLK)

Attachment VIIIc – Yield Calculations and Test Weight Comparison

22. Please include a bookmark for each item in Attachment VIIIc, Control Area and Reclaimed Area Cropland Surveys, so that the information is understandable. It is currently not entirely clear which year is being represented with the maps, elevator samples and receipts. (GAW)
23. Gerald Wolf indicates that the Section 18 control area produced 1500 bushels of wheat in 2015 but an elevator scale ticket value of 1175.3 bushels was used to develop the standard. Conversely, Gerald Wolf's estimated yield value of 1800 was used for the reclaimed tract while the scale ticket shows that only 1,029.67 bushels were harvested. Please provide justification or explanation for these inconsistencies. (GAW)

24. The yield demonstration in Attachment VIIIc for 2013 uses control area yields from spring wheat and sunflower crops to calculate a correction factor for the wheat crop grown on the bond release tract. Please revise the 2013 Yield Calculations and Test Weight Comparison information to not include the sunflower yield information. It is not appropriate to convert sunflower yields to wheat yields on a control area to demonstrate revegetation success. (RLK/GAW)
25. The 2012 gross total bushels entered for the reclaimed tract (21WOLF3) of 1205.5 in Attachment VIIIc does not agree with the grain cart scale weight of 72,090 lbs listed on the 2012 Reclaimed Cropland Survey form in Attachment VIIIId, which would equate to 1201.5 bushels. Please revise as appropriate. (RLK)
26. The 2013 gross total bushels entered for the reclaimed tract (21WOLF3) of 1410 in Attachment VIIIc does not agree with the grain cart scale weight of 86,400 lbs listed on the 2013 Reclaimed Cropland Survey form in Attachment VIIIId which would equate to 1440 bushels. Please revise as appropriate. (RLK)
27. The yield demonstration in Attachment VIIIc for 2015 indicates that all three subtracts of the Section 18 control area were planted to spring wheat for a total control area acreage of 35.7 but photography from the summer of 2015 appears to indicate that canola or a similar crop was grown on the 18WOLF7 portion of the control area. Please revise as appropriate. (RLK)
28. The Reclaimed Cropland Survey form provided in Attachment VIIIId for the 2015 crop year indicates that the reclaimed cropland tract in Section 21 was seeded to winter wheat and was harvested on July 29, 2015 but the elevator scale ticket containing the dockage and test weight information 2015 in Attachment VIIIc appears to be for hard red spring wheat delivered on July 1, 2016. Please clarify. (RLK)
29. Attachment VIIIc includes 2012 yield information for control area tract 18WOLF5 and 18WOLF6, but a Control Area Cropland Survey form and sample information are provided for only the 18WOLF5 tract in Attachment VIIIId. Please include information in Attachment VIIIId that shows that the 18WOLF6 field yielded 296 bushels of wheat in 2012 as indicated in Attachment VIIIc or revise to use only the available yield information in Attachment VIIIId, as appropriate. (RLK/GAW)

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos
Director
Reclamation Division