

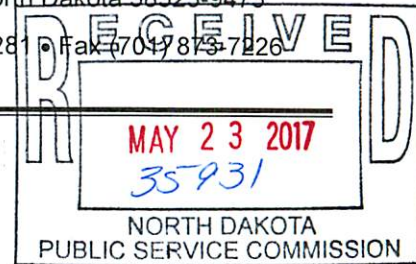
THE COTEAU PROPERTIES COMPANY

A SUBSIDIARY OF THE NORTH AMERICAN COAL CORPORATION

FREEDOM MINE

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May 19, 2017

Mr. Dean K. Moos
Director Reclamation Division
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

Dear Mr. Moos:

Enclosed are three discs containing Final Bond Release #7 to Permit NACT-9101. Responses below refer to technical deficiencies in your December 14, 2016 letter:

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 I, Bond Release Tract Map, has been revised as requested.

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)*

Attachment V, Surface Ownership, Land Use and Soil Depths Map, has been revised to show the area where PTS-285 was.

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 V has been corrected to show where the piles were and to depict correct respreads depths.

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)*

The area reclaimed in 1997 was added. The area under PTS-285 was reclaimed in 1999. No changes were made to the map since last submittal.

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)*

Discussion concerning the sump has been removed from Attachment VII, Surface Water Hydrology Assessment, as the sump was previously bond released and is not part of this bond release package.

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)*

This paragraph and associated data has been removed from Attachment VII.

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)*

This paragraph and associated data has been removed from Attachment VII.

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 VII has been revised to include runoff data pertaining to control point 19-1 as well as discussion on reclamation success and its effects on water quality. Table 1 was added at the end of this section concerning surface water quantity in the pre-mine and post-mine conditions.

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)

The first paragraph of Attachment VIIIa has been revised to include discussion on the piles and County Road 27.

- 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)*

Additional information has been added to the land use table to clarify affected versus unaffected acreages.

- 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)*

References to the tract containing both prime and non-prime farmland were added to Attachment VIIIa. Acreages of prime farmland and acres affected by mining were also added to the land use table in this attachment.

- 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)*

Attachment I incorrectly stated the acreage; it has been corrected to 30.579 acres. Acreage amounts used to calculate the unadjusted yield standard have been corrected to the amounts listed in this bond release. Calculations throughout Attachment VIIIb have been updated accordingly.

- 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)*

The 10-year liability period has been revised to 2007 as the text has been revised to state that data from 2005 or later can be used.

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)*

The Bond Release Application Form has been revised to indicate that information as to how the standards were derived is not included. Please refer to the CVSS for all standard information.

15. *Pease 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)*

Crops grown on the control tract have been added to the revegetation success section. Control area acreages have been updated in the standard, included in Attachment VIIIb; all of Wolf Section 18 was included for 2012.

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)*

Whole field harvest is allowable by the Revegetation Success Standards document and has been used on similar cropland fields (that contain both prime and non-prime farmland) for previous bond release packages.

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)*

The additional acreage associated with the area reclaimed in 1997 was added to the success standards calculation. Please refer to Attachment VIIIb.

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)*

A reference to the reclamation procedures outlined in NACT-9101 has been added. Cover data for the road ditches is not necessary as it not required by regulation, has not been required in previous bond release applications, and the road and associated right-of-way have been inspected by Mercer County.

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)*

The unadjusted yield values included in this bond release package were included in the last submittal of the CVSS document, submitted on October 25, 2016.

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)*

Unadjusted yield standard values have been updated in the most recent version of the CVSS document. The note in Section B-2 of the CVSS document regarding prime farmland acreage is incorrect and will be updated in the next deficiency response.

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)*

The control area acreages provided in the CVSS have been updated to more closely correspond with the acreages provided in this bond release package. These changes to the CVSS will be submitted with Revision 13 to NACT-0401. Occasionally the acreages reported by the producer is slightly different than the acreages listed in the CVSS due to slight variations in farmed field boundaries. Unadjusted yield averages for the control area have been revised to include only crops that correspond to those planted on the reclaimed areas.

Attachment VIIIc – Yield Calculations and Test Weight Comparison

22. *Please include a bookmark for each item in Attachment VIIIId, 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)*

Bookmarks were included in the original submittal and have been retained in this submittal and labeled as:

- 2015 reclaimed
- 2015 Control
- 2013 Reclaimed
- 2013 Control
- 2012 Reclaimed
- 2012 Control

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)*

The 2015 scale ticket correlating to the reclaimed Section 21 tract was incorrect in Attachment VIIc. The corrected scale ticket has been added. The scale ticket is just a representative sample of the field harvest; the Wolfs used the scale on their grain cart to calculate yields.

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)*

The sunflower yield conversion was removed from the control area calculations for 2013. The standard calculations in Attachment VIIIb were adjusted accordingly.

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)*

The 2012 reclaimed bushels were revised to 1,201.5. The average yield was adjusted on Attachment VIIIc, standard calculations.

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)*

The 2013 reclaimed bushels were revised to 1,440 bushels. The average yield was adjusted on Attachment VIIIc, standard calculations.

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)*

Spring wheat was planted on all three subtracts of the Section 18 control area in 2015; the map included with the producer reported information was based on older aerial imagery and does not accurately show what was planted in 2015 or other years.

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)*

The correct scale ticket has been added to Attachment VIIIc.

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)*

Cropland survey forms for 18WOLF6 and 18WOLF7 have been added to Attachment VIIIId.

Mr. Dean K. Moos
May 19, 2017
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If you have any questions, please contact me.

Sincerely,

THE COTEAU PROPERTIES COMPANY



Kayla Torgerson
Environmental Specialist

AJH/KBT
Enc.

cc: Shana Brost, Mercer County Auditor (w/enc.)
Lynelle Kraft, NACoal Land Office (w/enc.)