

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Kroshus, Fedorchak and Christmann
Steve Kahl, Executive Secretary and John Schuh, General Counsel

FROM: *DKM* *ZAB*
Dean Moos, Zanna Brinkman and Guy Welch

DATE: August 28, 2019

SUBJECT: Variance request to the performance bond responsibility period for areas in Permit NACT-9001 held by The Coteau Properties Company, Case No. RC-18-332

On September 6, 2018, the Coteau Properties Company filed a request for a variance from the 10-year revegetation responsibility period for 132.9 acres of reclaimed land in Permit NACT-9001 at the Freedom Mine. This acreage is located in Sections 1 and 2 of T145N, R88W, Mercer County. A variance from the 10-year revegetation responsibility period will allow areas affected by roads, sedimentation ponds and stockpiles to be bond released with the adjacent lands that were reclaimed from 1995 through 2010. It is anticipated that Coteau will submit the bond release for these tracts later this year or early next year. The Reclamation Division has completed its review of the request and respectfully recommends approval of a variance to the 10-year revegetation period for 132.9 acres as allowed by Policy Memorandum No. 20.

Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year revegetation responsibility period for water management features such as sediment ponds, access trails and soil stockpile sites that could not be reclaimed at the same time as the surrounding reclamation tract and for reclamation repair work following the initial seeding of the reclamation tract. Variances must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. Small in size is generally defined in Policy Memorandum No. 20 as comprising not more than approximately 20% of a reclamation tract. The permittee must affirmatively demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety. Reclamation procedures used on variance areas need to provide the same protections as those used on surrounding reclaimed tracts.

The 132.9-acre variance request area includes 30.7 acres in Section 1 and 102.2 acres in Section 2 of T145N, R88W. The 30.7 acres in Section 1 consists of 29.4 acres of reclaimed native grassland and 1.3 acres of county road that will be attached to 216 acres of reclaimed native grassland and 7.7 acres of road, respectively. The Section 1 variance areas were reclaimed in 2011 (6.6 acres) and 2014 (22.8 acres). For the purpose of bond release, these variance areas will be attached to adjacent lands reclaimed from 1995 through 2002. Approval of this variance request will allow Coteau to pursue final bond release four years earlier than otherwise allowed for the lands reclaimed in 2014. The variance request area will consist of approximately 12% of the entire reclamation tract.

The 102.2-acre variance request area in Section 2 consists of a haul road that was later converted to an access road, three sediments ponds and SPGM stockpiles sites that were all reclaimed in 2011. The

variance request area is reclaimed to 97.6 acres of native grassland, a 2.5 acre wetland, 0.6 acres of stockpond and 1.5 acres of county road. The 97.6 acres of native grassland will be attached to 340.6 acres of native grassland that was reclaimed from 1996 through 2010. The 1.5 acres of reclaimed county road and associated right-of-way (Industrial Land) and the 2.5 acre wetland (Fish and Wildlife Habitat) will need to stand alone when revegetation is evaluated at the time of final bond release because no other areas within this reclamation tract were reclaimed to these land uses. There are no revegetation performance standards for stockponds so the 10-year revegetation time-period is not relevant to stockponds. Approval of this variance request will allow Coteau to pursue final bond release for 102.2 acres a year earlier than otherwise allowed. The variance request area consists of approximately 23% of the reclamation tract in Section 2. The reclaimed and undisturbed native grassland in Sections 1 and 2 are owned by Coteau and managed together so the entire variance areas are less than 20% of the entire reclamation tract.

A map of the variance areas and the adjacent reclaimed lands is attached. The proposed variance area was inspected May 29, 2019. The native grassland variance areas are established with a dense stand of perennial vegetation that is providing excellent protection from erosion. Areas seeded in 2014 and 2011 appear to be dominated with the seeded native species, primarily western wheatgrass, green needlegrass, switchgrass, sideoats grama, blue grama and little bluestem. The reclaimed wetland was constructed in native grassland and was not fenced to exclude cattle. Thus, this wetland provides secondary functions as a livestock developed water resource.

A soil compaction probe (penetrometer) was used to evaluate relative compaction at several locations in the variance request area on May 29, 2019. Moist soil conditions facilitated measuring relative compaction and the results indicated that relative compaction in the variance area was not greater than adjacent older reclaimed lands. The reclaimed haul road/access road associated with this variance request was respread with 48 inches of suitable plant growth material (SPGM) which also helps alleviate concerns about compaction in the root zone.

Based on the field inspection and information contained in the variance request, the Reclamation Division recommends approval of the request for a variance from the 10-year performance bond responsibility period for 132.9 acres of reclaimed land in Sections 1 and 2 of Permit NACT-9001.

A motion and an approval form are attached for your consideration at the September 4, 2019 Commission meeting.

