



Public Service Commission

State of North Dakota

COMMISSIONERS

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Sent via email only

February 17, 2021

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Ms. Sarah Flath
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523
sarah.flath@nacoal.com

Dear Ms. Flath:

The Reclamation Division has reviewed Coteau's December 22, 2020 response to our technical review of final bond release No. 1 to surface coal mining permit NACT-9001. The following issues will need to be resolved prior to the Reclamation Division recommending Commission action.

Attachment IV - Letters to Interested Parties

1. Follow-up to Item No. 2 of our (November 18, 2020) technical review letter: As previously requested, please provide signed copies of the letters sent to adjacent surface owners and government agencies as required by NDCC 38-14.1-17(1)(b). (GAW)

Attachment VI - General Information

2. Follow-up to Item No. 15 of our November 18, 2020 technical review letter. A new sentence in the second paragraph on page 2 of Attachment VI, General Information, incorrectly states that "prime soils associated with cropland were replaced elsewhere within NACT-9001". The Reclamation Division believes that stockpiled prime cropland stockpile PTS-251 was respread in Permit NACT-9501. Please review your records and revise the statement accordingly. (GAW)
3. A new sentence of the end of the second paragraph on page 2 of Attachment VI, General Information, incorrectly states that "The soils found in the pre-mine cropland were included when developing the post-mine revegetation performance standards for native grassland." Please review Coteau's Consolidated Vegetation Success Standard document (CVSS) and the Reclamation Division's Standards for Revegetation Success document and revise the sentence accordingly. (GAW)
4. Please revise the statement in the third paragraph on page 2 of Attachment VI, General Information, to clarify that buckbrush may return to the landscape when native grassland topsoil is respread on reclaimed native grassland rather than implying that this species will otherwise naturally return to the landscape. (GAW)

Attachment VIa, Revegetation Initiation Dates and Land Use Map

5. Follow-up to Item No. 13 of our November 18, 2020 technical review letter. Please identify the boundary between the 2011 and 2009 revegetation initiation periods in the SW1/4SE1/4 of Section 2. The blue line distinguishing the boundary was inadvertently removed. (GAW)

Attachment X – Native Grasslands

6. Please include a description of Tables 1 through 27 in the bookmark the section of Attachment X so that one does not have to page through 50 pages of table documents to realize what each table represents. (GAW)
7. The 2013 and 2015 production standard values for Sections 1 and 2 in second paragraph on page 1 of Attachment X are incorrect. Please revise these values after updating Attachment Xa, Production Standard Calculations. (GAW)
8. Please update the native grassland reference area discussion on page 1 of Attachment X to clarify that several approved native grassland reference areas are being used to demonstrate revegetation success as required by the updated ND PSC Revegetation Success Standards document. The first sentence of this narrative is misleading as other dominant range sites other than silty were disturbed by mining. (GAW)
9. The ground cover narrative on page 2 of Attachment X incorrectly states that Tables 21 and 22 contain basal cover data for the Section 9 WMA silty range site.
10. A new sentence in the Diversity subsection states that “Both Sections 1 and 2 demonstrate that at least five native grass species are present.” Please clarify how Section 1 and 2 make this demonstration. (GAW)
11. The Section 2 Diversity summary on page 3 of Attachment X incorrectly indicates that the 2013 cover data shows that at least five native grass species are present. Only four native grass species are listed in Table 7. Please correct this error and provide justification why the Reclamation Division should consider this performance standard achieved. (GAW)
12. It seems a cumulative table should be developed to demonstrate the Diversity standard since the bond release tracts, Section 1 and 2, were divided into two or more sampling units during 2013 and 2015. Although cover data from subsets of each tract shows that at least 4 species comprise at least 3 percent relative cover and that at least 5 native grass species are present each year, it is not clear if 4 species comprise at least 3 percent relative cover when the data is cumulated. (GAW)
13. A sentence in the Diversity subsection on page 3 of Attachment X states that “non-native species are not present in quantities that are detrimental to the native grassland post-mine land use”. Please consider removing this language from the Diversity narrative since it is not a requirement of the 2018 native grassland performance standards and is not consistent with NRCS ecological site state and transition models. NDAC 69-05.2-22-07 (3)(a) states that ground cover must be determined using perennial species not detrimental to the approved postmining land use so compliance with this statement should be included in the Cover subsection. (GAW)

14. Please edit the sentence in the second paragraph on page 4 of Attachment X that states the diversity is equal or greater than the approved standards with 90% statistical confidence. Statistical confidence cannot be applied to species diversity measurements. (GAW)
15. Please explain or show how the Section 1 2013 and 2015 warm season composition values were derived as listed on page 4 of Attachment X. The 2013 value, 19 percent, is not a weighted average and the 2015 value, 33 percent, is not a simple average of two data sets. (GAW)
16. Please explain or show how the number of native warm season species and number of native cool season species were derived for Sections 1 and 2 in 2013 and 2015 as listed on page 4 of Attachment X. It appears cover sampling data tract subsets should be cumulated to demonstrate the seasonality performance standard. (GAW)
17. Please edit the sentence in the paragraph near the bottom of page 4 of Attachment X that states the seasonality is greater than or equal to the approved standards with 90% statistical confidence. Statistical confidence cannot be applied to species seasonality measurements. (GAW)
18. Please revise Tables 21, 22, 23, 24, 25, 26 and 27 to include who with KLJ collected the information in the Tables, the date(s) the information was collected, and sampling methodology as required by the Revegetation Success Standard Document. (GAW)

Attachment Xa – Production Standard Calculations

19. Please provide the ecological site associated with each soil mapping unit listed to calculate 2013 and 2015 climatic correction factors, Step 1 on pages 1 and 3 of Attachment Xa, Production Standard Calculations. Ecological site information is needed to determine if the appropriate yield value was used to calculate the annual climatic correction factor. (GAW)
20. Vebar and Parshall sandy ecological sites are listed separately in Step 1 on pages 1 and 3 of Attachment Xa but the approved sandy reference area consists largely of soil mapping unit 27D which is a Vebar-Parshall complex. Please explain why this sandy reference area is split into two sandy sites and how sampling was conducted to separate the mapping unit complex. Or otherwise explain the logic of evaluating this sandy site by soil mapping unit. Sample points within this sandy reference area will need to be provided if Coteau intends to separate this sandy ecological site by soil mapping unit. (GAW)
21. Please provide 2013 and 2015 production sampling data from each ecological site used as a reference area to develop the climatic correction factors in Step 1 on pages 1 and 3 of Attachment Xa. (GAW)
22. Please list the ecological site associated with each soil mapping unit listed in Step 2 and 3 on pages 1 and 3 of Attachment Xa, Production Standard Calculations. Ecological site information is needed to determine if the appropriate yield value was calculated. (GAW)
23. The NRCS production estimates for the reference areas in the table in Steps 2 and 3 on pages 1 and 3 of Attachment Xa, Production Standard Calculations are not correct. Please revise with values provided in Table 2 of Section II-D of our revegetation success standard

document and update the values listed in Steps 4 and 5 of Attachment Xa and Attachment X accordingly. (GAW)

24. Follow-up to Item No. 28 of our November 18, 2020 letter: Step 5 on pages 2 and 4 of Attachment Xa was adjusted to provide a weighted average yield from two sample subsets in Section 1. The Section 1S subset and Section 1 subsets are listed as comprising 123.6 acres and 114.6 acres, respectively, but tract was fenced, managed, and sampled as two grazing units with approximately 90 acres and 162 acres of reclaimed land in each subset, Section 1S and Section 1, respectively. Please revise the calculations in Step 5 on pages 2 and 4 of Attachment Xa or otherwise explain the values used. (Note- only reclaimed land should be included in the calculations- not whole field harvest.) (GAW)
25. Follow-up to Item No. 28 of our letter dated November 18, 2020: Step 5 on page 4 of Attachment Xa was adjusted to provide a weighted average yield from three sample subsets in Section 2. The Section 2NE, Section 2NW and Section 2SE subsets are listed as comprising 156.2, 198.9 and 154.8 acres, respectively, but Section 2 was fenced, managed, and sampled as three grazing units with approximately 106, 188, and 146 acres of reclaimed land respectively. Please revise the calculations in Step 5 on page 4 of Attachment Xa or otherwise explain the values used. (Note- only reclaimed land native grassland should be included in the calculations- not whole field harvest.) (GAW)

Attachment Xb – Basal Cover Standard Calculations

26. Please include the ecological site corresponding with each pre-mine range site listed in Step 1 of Attachment Xb, Basal Cover Standard Calculations as required by the 2018 Revegetation Success Standards document. (GAW)
27. The Section 9 reference area listed in Step 2 on pages 1 and 2 of Attachment Xb should be classified as a loamy site rather than a silty site. This site is identified as a loamy ecological site in Permit NACT-0201 and the 2018 Revegetation Success Standards document has been updated with ecological sites in accordance with NRCS updated information. (GAW)
28. The total acreage value listed in Step 3 on pages 1 and 2 of Attachment Xb cumulates to 2,017 acres but a value of 2,016 is provided. Please correct this error and the corresponding 2013 and 2015 cover standards. (GAW)

Attachment Xc – 2013 Production Sampling Locations

29. Attachment Xc incorrectly shows that Section 1 is divided into sampling subtracts on the quarter line in the W1/2 of Section 1. Please correct this error so that the sample point data within each subtract is correct and label the two sampling points depicted near the north end of the W1/2 of Section 1. (GAW)
30. Table 13 in Attachment X shows that 20 plots were sampled in the north subtract and Table 14 in Attachment X shows that 10 plots were sampled in the south subtract in 2013 but Attachment Xc identifies 11 sampling locations in the north subtract and 6 sample locations in the south subtract. Please revise Attachment Xc to provide clarity or otherwise explain how each production plot correlates to sample locations. (GAW)

31. Attachment Xc shows Section 2 divided into three subtracts but the sampling points would indicate that the E1/2 of Section 2 was sampled as a single unit in 2013. Please also clarify how 20 plots were sampled from 10 sample points or otherwise clarify the correlation between the sample locations on Attachment Xc and the 20 sample plots in Table 15. (GAW)

Attachment Xd – 2015 Production Sampling Locations

32. Attachment Xd incorrectly shows that Section 1 is divided into sampling subtracts on the quarter line in the W1/2 of Section 1. Please correct this error so that the sampling data within the each subtract is correct and label the two sampling points depicted near the north end of the W1/2 of Section 1. (GAW)
33. Table 16 in Attachment X shows that 20 plots were sampled in the north subtract and Table 17 in Attachment X shows that 10 plots were sampled in the south subtract in 2015 but Attachment Xd identifies 11 sampling locations in the north subtract and 6 sample locations in the south subtract. Please revise Attachment Xd or otherwise explain how production plots correlate to sample locations. (GAW)
34. Tables 18, 19 and 20 in Attachment X indicate that 20 plots were sampled in each subtract in 2015 but Attachment Xc only identifies 6 or 7 sampling sites. Please revise Attachment Xd to provide clarity or otherwise explain how production plots correlate to sample locations. (GAW)
35. Attachment Xd, 2015 Production Sampling Locations, does not show sampling points in areas seeded in 2011 and 2014. Policy Memorandum to Mine Operators states that vegetation measurements to prove reclamation success for a reclaimed tract... must include samples taken from each variance area. The variance request letter dated July 26, 2019, in Attachment VIb states that Coteau will provide 2019 data that will include the 2014 variance area in the bond release application. Please revise the application to include data demonstrating revegetation success of the Variance Area in Section 1 as required by NDAC 69-05.2 and Policy Memorandum No. 20. (GAW)

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos
Director
Reclamation Division

cc via email only: Amanda Hoffer (amanda.hoffer@nacoal.com)
Kayla Torgerson (Kayla.Torgerson@nacoal.com)