

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

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

FROM: ZB JE ew
Zanna Brinkman, Jonathan Emmer and Guy Welch

DATE: December 29, 2021

SUBJECT: Variance request to the performance bond responsibility period for 19.7 areas in Permit NACT-9501 held by The Coteau Properties Company, Case No. RC-21-417

On October 15, 2021, the Coteau Properties Company filed a request for a variance from the 10-year revegetation responsibility period for 19.7 acres of reclaimed native grassland in Permit NACT-9501 at the Freedom Mine. This acreage is in Section 22, T146N, R88W, Mercer County. A variance from the 10-year revegetation responsibility period will allow areas affected by a sedimentation pond, SPGM stockpiles and three conservation tree plantings to be bond released with the adjacent lands that were reclaimed in 2011 and 2012. The Reclamation Division has completed its review of the request and respectfully recommends approval of a variance to the 10-year revegetation period for 19.7 acres of native grassland 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 defined in Policy Memorandum No. 20 as an area comprising less 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 19.7-acre variance request area will be attached to 163 acres of adjacent reclaimed native grassland that was seeded in 2011 and 2012. The variance request areas were reclaimed and seeded in 2014. Approval of this variance request will allow Coteau to pursue final bond release

two years earlier than otherwise allowed. Thus, a 2-year variance from the 10-year revegetation responsibility period is being requested for these lands. The variance request area, 19.7 acres, is approximately 10.7% of the reclamation tract.

A map showing the variance area and the adjacent reclaimed lands is attached. The proposed variance area was inspected on November 3rd and again on December 15, 2021 to confirm that a drainage way was properly repaired. The variance area is established with a dense stand of native perennial vegetation that is providing excellent protection from erosion. Western wheatgrass, green needlegrass, switchgrass, sideoats grama, blue grama and little bluestem are the principal native species established. Kentucky bluegrass, smooth brome grass and tall wheatgrass are present in lesser quantities.

Based on the field inspection and information contained in the variance request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 19.7 acres of reclaimed land in Section 22 of Permit NACT-9501.

A motion and an approval form are attached for your consideration at the December 29, 2021 Commission meeting.

