

February 1, 2022

Ms. Zanna A. Brinkman  
Director Reclamation Division  
Public Service Commission  
600 East Boulevard Avenue  
Department 408  
Bismarck, ND 58505-0480

Dear Ms. Brinkman:

The completeness review of Revision 37 to Permit NACT-9101 has been mailed via the United States Postal Service and uploaded to Permit Services. The completeness review deficiencies listed in your January 04, 2022, letter have been addressed, with responses listed below. Enclosed is an original Renewal 6 application form.

**Renewal No. 6 Application Form (SFN 10566)**

1. *Please update the permit renewal application form (SFN 10566) with the correct permit acreage. The application form lists 7949.7 acres, but the correct acreage is 7949.4 acres according to the legal description in Section 1.2.2a. (JWE)*

The renewal application form has been updated with the correct acreage.

**Section 1.1.1 – Application Forms**

2. *A bookmark shortcut link has not been provided for Revision 37 in Section 1.1.1, Application Forms, even though the information is presented on pages 107 through 109 of the pdf document. Please include a bookmark link for Revision 37 in Section 1.1.1. (GAW/JWE)*

Section 1.1.1 has been updated with a bookmark link for Revision 37.

**Section 1.2 – Legal Information**

3. *The surface ownership map, Section 1.5.2, indicates that Tract 78, E1/2 of Section 9, is subject to contract for deed from Jerome O. Miller and Ardella E. Miller. The Newspaper*

*Publication Notice for Renewal 6, Section 1.2.4.2, needs to include people who currently have valid title for surface tracts. The sellers under a contract for deed are considered the legal owners until terms of the contract for deed are satisfied. (GAW)*

Section 1.2.4.2 (Newspaper Publication Notice) has been updated with the correct ownership for Tract 78.

### **Section 1.5 – Identification of Interests and Rights of Entry**

- 4. Language at the bottom of Section 1.5, Identification of Interests and Rights of Entry, states that the last change to ownership information was Revision 36/Midterm – March 2020 but a new Certificate of Authenticity dated November 16, 2021 was included with Revision 37 and information for several tracts was revised. Please update the revision and date provided for the last change to ownership information. (GAW)*

Section 1.5 (Identification of Interests and Rights of Entry) has been updated to include the latest revision number and date.

### **Section 2.2 – Surface Water Information and Monitoring**

- 5. Please update the Surface Water Probable Hydrologic Consequences information in Section 2.2, Surface Water Information and Monitoring, to account for retaining sediment pond P-D10-01 as a permanent structure (wetland). This would include the appropriate narrative in Section 2.2.10 that discusses potential adverse downstream impacts, the Surface Water Probable Hydrologic Consequences Summary Tables in Section 2.2.10a and a discussion about whether the impoundment will result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreation or domestic uses. (GAW/PJR/JAR)*

There are no updates required to the PHC for this change. Wetlands, when modeled in the PHC, are modeled in worst case and consider to be at capacity. Therefore, the water would pass through the emergency spillway and continue to its destination. Since the wetland is not the outlet, the spillway has little or no effect on the flow rate. Generally, the only time a structure will influence the flow rate is when it is located at the control point of watershed. Since neither amount of runoff nor flow will show any change in results, the PHC was not updated.

### **Section 3.1.4 – Coal Production Schedule**

- 6. Follow-up to item No. 11 of our pre-renewal letter dated September 23, 2021: Please update the anticipated coal production schedule through 2027, the next term of the permit. The values provided for future annual coal removal are not consistent with plans provided on the Pit Layout and Facilities Map. (GAW/JWE)*

Section 3.1.4 has been updated to the latest coal production numbers.

### **Section 3.6 – Surface Water Management**

- 7. Please update Section 3.6, Surface Water Management, to address that sediment pond P-D10-01 will be retained as a wetland and provide renovation design plans to demonstrate the impoundment can safely discharge a 50-year/6-hour precipitation event when the impoundment is at high water elevation in its permanent configuration as required by NDAC 69-05.2-16-09(9). (GAW)*

Section 3.6.1 narrative was updated to include fish and wildlife habitat wetland CW-D10-01 converted from Pond P-D10-01. Section 3.6.27a was added showing stage-discharge calculations for the 50-year/6-hour event. The riser, without modification, will safely pass the event with two plus feet of freeboard.

- 8. Follow-up to item No. 16 of our pre-renewal letter dated September 23, 2021: Please update the Post-Mining Watershed Map, Section 3.6.2a, to depict the W½ of Section 15 as bond released and revise the permit boundary on the map. The tract should be depicted consistently with other bond released areas on the map. Please also depict Pond P-D10-01 as fish and wildlife habitat wetland. (JAR/JWE)*

Section 3.6.2a has been updated to the correct permit boundary as well as fish and wildlife habitat wetland CW-D10-01 and its associated watershed.

### **Section 4.1 – Post-Mining Land Use Narrative**

- 9. Please update the Section 10 Proposed Post-Mining Land Use Discussion that begins on Page 14 of Section 4.1.1 to address changes proposed with Revision 37 and clarify the post mine vegetation types of the fish and wildlife habitat associated with the sediment pond. Acreage that is not expected to pond water in the post mine setting must be classified as something other than wetland fish and wildlife habitat. The Reclamation Division is concerned about not respreading SPGM on the entire 15 acres currently associated with the pool area of sediment pond P-D10-01. The hydrology of the pond in the post-mine*

*setting must be examined to realize the expected normal water elevation of the wetland and acreage higher in elevation than the expected normal water elevation will need to be respread with SPGM to restore the pre-mine capabilities of the land as required by NDCC 38-14.1-24(2). In addition, it is not clear if Diversion D10-02 will be retained or reclaimed. (GAW)*

The excavated pond basin is expected to pond water in the post mine setting and is the boundary of the post mine wetland CW-D10-01. The upper reaches of the basin will be fully reclaimed and are shown as cropland. Sections 4.1.2 and 4.1.1 were revised. Diversion D10-02 will be removed with the adjacent reclamation. The diversion is not shown on the post mining maps.

10. *Please update Section 4.1.3, Land Use Acreage Comparison Table, to account for retaining the existing pool area of sediment pond P-D10-01 as fish and wildlife habitat. (GAW)*

Section 4.1.3 has been adjusted to represent the 9.8 acre wetland.

11. *Please update the permit boundary in Section 4.2.6 (Post-Mining Area Slope Map) to account for the approval of Final Bond Release No. 8. (JWE)*

Section 4.2.6 (Post-Mining Area Slope Map) has been updated as requested.

12. *Please update the permit boundary in Section 4.2.7 (Pre-Mining Area Slope Map) to account for the approval of Final Bond Release No. 8. (JWE)*

Section 4.2.7 (Pre-Mining Area Slope Map) has been updated as requested.

13. *Please update the permit boundary in Section 4.2.9 (Post-Mining Topography Development Map) to account for the approval of Final Bond Release No. 8. (JWE)*

Section 4.2.9 (Post-Mining Topography Development Map) has been updated as requested.

## **Section 5.1 – Post-Mining Wetlands Evaluation**

14. *Please update Section 5.1.4, Post-Mining Wetland Drawings, with a design plan for converting sediment pond P-D10-01 into a fish and wildlife habitat wetland developed water resource. (GAW).*

Since the design plan did not change from the sedimentation pond configuration, the narrative in Section 5.1.4 was updated to redirect user to Section 3.6.28.

Ms. Zanna A. Brinkman  
February 1, 2022  
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**North American**  
**COAL**

**FREEDOM MINE**  
THE COTEAU PROPERTIES COMPANY

If you have any questions, please contact this office.

Sincerely,

THE COTEAU PROPERTIES COMPANY



Sarah J. Flath  
Environmental Manager

SJF:ras

Uploaded via Permit Services and mailed via USPS

cc: Shana Brost, Mercer County Auditor (w/ enc.)