



Public Service Commission

State of North Dakota

COMMISSIONERS

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sent via email only

April 6, 2022

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 conducted a technical review of the application for Revision 37 to Surface Coal Mining Permit NACT-9101 at the Freedom Mine. The revision application, filed on November 29, 2021, contains updates for the next permit term and responses to our September 23, 2021 pre-renewal letter. The following items must be addressed prior to Commission approval of the revision and corresponding Renewal No. 6. Since the current permit term will expire June 30, 2022, please respond to this letter promptly to ensure Commission action prior to the expiration date.

Index Page

1. Please update the HTM Index page by removing Revision 36 information and inserting Revision 37 information. (JAR)

Section 1.2 – Legal Information

2. Please add the most current certificate of liability insurance in Section 1.2.5. (MJF)

Section 1.5 – Identification of Interests and Rights of Entry

3. Please update Kayla Benz's mailing address in Section 1.5.1, Permit Area Surface and Coal Interests, to 4626 Marsh Hawk Drive, Bismarck, ND 58503. (GAW)
4. Please review all leases and add a written certification stating that all leases in the tracts where mining will occur in the next five-year permit term will remain valid until the end of the next permit term, and that leases on land already mined are valid or contain provisions that grant Coteau right of entry for reclamation activities. (MJF)

Section 3.6.1 – Surface Water Management Plan

14. Please update the table on page 1 of Section 3.6.1, Surface Water Management Plan, to remove Pond P-D10-01 as a projected reclamation project in 2025. (JAR)
15. Please update State Water Commission to the Department of Water Resources in paragraph four on page 6 of the Surface Water Management Plan. (MJF)

Section 4.1 – Post-Mining Land Use and Revegetation

16. Hyperlinks in Section 4.1.1, Post-Mine Land Use Narrative, are not functioning. Please repair the hyperlinks to function as intended. (JAR)
17. Please identify the changes being made on pages 14-24 in section 4.1.1 as described in your revision summary page, Section 1.1.2. Currently, only page 13 has highlighted language. The revision date stamp at the bottom of pages 14-24 should not be changed if language on those pages was not altered. (PJR)
18. Please revise the Post-Mining Topography and Land Use Map, Section 4.1.2, such that the mining disturbance boundary (dashed blue line) is depicted around all areas affected by associated disturbance or include another line type on this map to show the boundary between reclaimed and undisturbed lands. Currently, the mining disturbance boundary is not shown around sediment ponds and areas affected by SPGM stockpiles. (GAW)
19. The first paragraph on page 10 of Section 4.1.5, Revegetation Procedures and Establishment, references Permit NACT-8601. Please update the permit reference to Permit NACT-1801. (JAR)

Section 5.0 – Post-Mining Wetlands

20. Page 7 of Section 5.1.2, Preliminary Wetland Data, indicates that the bottom elevation of wetland CW-D10-01 is identical to the excavated bottom elevation of the sediment pond, 1940.0, but the sediment pond was designed to handle 3,447 tons of sediment per year. Please determine the current bottom elevation of sediment pond and revise the wetland design specifications accordingly. (GAW)
21. Wetland design specifications at the bottom of page 7 of Section 5.1.2 provides wetland surface area information for CW-D10-01 at the high-water elevation, but the 50% annual water yield is only a fraction of the pond's design capacity (32.25 ac ft vs 98.4 ac ft). Please provide the wetland's expected surface area based on water supply from a normal year precipitation as described by the ND Department of Water Resources, or on basin configuration and the 50% annual water yield from the contributory watershed as required for reclaimed wetlands in the Revegetation Success Guidelines document. (GAW)
22. Please include design details for wetland CW-D10-01 in Section 5.1.4, Post-Mining Wetland Drawings, in a manner similar to other sediment ponds that were converted to wetlands (wetlands CW-16-02, CW-17-03 and CW-17-04). (GAW/PJR)

Section 2.1 - Geology

5. Please update Geology Reference Map in Section 2.1.9 to show current permit boundaries and bond released tracts. (MJF)
6. Please update Overburden Isopach Map in Section 2.1.11 to show current permit boundaries and bond released tracts. (MJF)
7. Please update Structural Contour Map in Section 2.1.12 to show current permit boundaries and bond released tracts. (MJF)

Section 2.2 – Surface Water Hydrology

8. Page 3 of Section 2.2.10, Surface Water Probable Hydrologic Consequences, includes narrative describing discharges from Pond P-D10-01. Please update this narrative to discuss discharges from a wildlife enhancement area/wetland rather than a sediment pond structure. (JAR)
9. Please update the Post-Mining Probable Hydrologic Consequences Map (Sheet 3) in Section 2.2.12 to depict P-D10-01 as a permanent wetland. (MJF)

Section 2.7 – Fish and Wildlife Resources

10. Please update the Fish and Wildlife Protection, Enhancement and Management Plan, Section 2.7.7, to address the comments received from USFWS on March 22, 2022 regarding Revision 37 and Renewal No. 6, copy attached. This would include utilizing the USFWS IPAC tool to determine if mining activities planned during the next term of the permit could potentially adversely affect any listed or proposed threatened or endangered species, or any designated or proposed critical habitat. Please also provide an analysis about whether the permit and adjacent areas have any suitable habitat for the Dakota skipper using survey protocol established with the 2018 Dakota skipper North Dakota Survey Protocol. The narrative should specifically state whether the permit and adjacent areas have any native grassland that could provide suitable habitat for the Dakota skipper. (GAW)

Section 3.1- Operations Plans

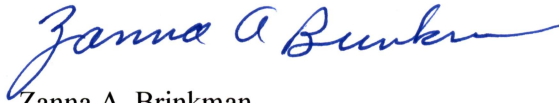
11. Please revise the Pit Layout and Facilities Map, Section 3.1.6, to identify the federal coal in the NW1/4 of Section 6 as not leased and only surface disturbance is currently approved. (GAW)
12. Please incorporate the most up to date Extended Mine Map into Section 3.1.7. The version included with Revision 37 shows 2020 and 2021 as *Future Mining Areas*. (PJR)
13. Please update the Pit Layout and Facilities Map (Section 3.1.6) and the Surface Water Management Plan Map, Section 3.6.2, to depict Pond P-D10-01 as a permanent wildlife enhancement area. Also, it is not clear what the text “NOT LOADED DUE TO QUALITY” in the N½ of Section 10 on both maps is referencing. Please remove or define this text accordingly. (JAR)

Ms. Sarah Flath
April 6, 2022
Page 4

Enclosed are comments we received from the USFWS and NDDEQ on the revision application.

If you have any questions, please contact this office.

Sincerely,



Zanna A. Brinkman
Director
Reclamation Division

Enclosure: USFWS March 22, 2022 Comments
NDDEQ March 24, 2022 Comments

cc w/enclosures via email only: Amanda Hoffer (amanda.hoffer@nacoal.com)
Dillon Belisle (Dillon.Belisle@Nacoal.com)
Tyler Freuer (tyler.freuer@nacoal.com)
Rylan Sundsbak (Rylan.Sundsbak@nacoal.com)

Mine Data\Freedom Mine\Permits\NACT - 9101\Revisions\No. 37 & Renewal 6\Rev37_Tech1_rvw_ltr_4-6-22



United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501
(701) 250-4481, ndfieldoffice@fws.gov

In Reply Refer To:
2022-CPA
Coteau Revision 37

March 22, 2021

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

Dear Ms. Brinkman:

Thank you for your letter of March 10, 2022, please reference the Renewal Application No. 6 and Revision No. 37 from the Coteau Properties Company for Surface Coal Mining Permit NACT-9101 at the Freedom Mine in Mercer County, North Dakota, PSC Cases RC-21-447 & RC-21-448.

The U.S. Fish and Wildlife Service (Service) offers the comments under the authority of and in accordance with the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). The Service would recommend using the USFWS IPAC tool to obtain a current species list for the project area. New species ranges have been developed to determine if a species may be found in an area.

The Dakota skipper is a small prairie butterfly listed as a threatened species under ESA. Dakota skippers are obligate residents of high quality prairie ranging from wet-mesic tallgrass prairie to dry-mesic mixed grass prairie. In Northwestern North Dakota, Dakota skippers inhabit dry-mesic hill prairies with abundant purple coneflower (*Echinacea angustifolia*).

The Service would offer the following recommendations in relation to these proposed permit revisions. The coordinates provided for the proposed mining indicates that the operations would impact undisturbed native prairie grasslands. Surveys for Dakota skipper butterflies with positive results for occupancy have been conducted near the proposed mining activities. The Service would recommend habitat surveys on the permitted areas to identify areas of suitable habitat per the 2018 Dakota skipper Survey protocol be completed. In the event that suitable habitat is observed, the Service would recommend occupancy surveys prior to mining. Information relative to positive occupancy surveys should be shared with the Service for

consultation. Avoidance of impacts to native prairie habitat is recommended to reduce the risk of adverse effects to this species.

The Service appreciates the opportunity to work with the PSC to ensure the conservation of natural resources. Should you have any questions regarding these comments, please have your staff contact Jerry Reinisch of my staff at (701) 425-2133, or contact myself at (701) 319-0127.

Sincerely,

**DREW
BECKER**

Digitally signed by DREW
BECKER
Date: 2022.03.23 09:36:56
-05'00'

Drew N. Becker
ND Ecological Services Supervisor

Cc: Greg Link, ND Game and Fish Department

NORTH
Dakota | Environmental Quality
Be Legendary.™

March 24, 2022

RECEIVED

MAR 30 2022

Geri Schmaltz
Administrative Officer
ND Public Service Commission
600 E Boulevard Avenue Dept 408
Bismarck, ND 58505-0480

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Re: Project Code: RC-21-447 & RC-21-448, Coteau Properties renew and revise Surface Coal Mining Permit in Mercer County

Dear Ms. Schmaltz:

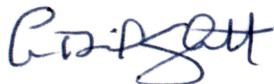
The North Dakota Department of Environmental Quality has reviewed the information concerning the above-referenced project received at the department on March 14, 2022 with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have no comments.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,



L. David Glatt, P.E., Director
North Dakota Department of Environmental Quality

LDG:csc
Attach.

918 East Divide Avenue | Bismarck ND 58501-1947 | Fax 701-328-5200 | deq.nd.gov

Director's Office 701-328-5150	Division of Air Quality 701-328-5188	Division of Municipal Facilities 701-328-5211	Division of Waste Management 701-328-5166	Division of Water Quality 701-328-5210	Division of Chemistry 701-328-6140 2635 East Main Ave Bismarck ND 58501
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Construction and Environmental Disturbance Requirements

The following are the minimum requirements of the North Dakota Department of Environmental Quality for projects that involve construction and environmental disturbance in or near waters of the State of North Dakota. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect waters of the state. All projects must be constructed to minimize the loss of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion and sediment loss using erosion and sediment controls. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, and land resources must be prohibited against compaction, vegetation loss and unnecessary damage.

Surface Waters

All construction must be managed to minimize impacts to aquatic systems. Follow safe storage and handling procedures to prevent the contamination of water from fuel spills, lubricants, and chemicals. Stream bank and stream bed disturbances must be contained to minimize silt movement, nutrient upsurges, plant dislocations, and any physical chemicals, or biological disruption. The use of pesticides or herbicides in or near surface waters is allowed under the department's pesticide application permit with notification to the department.

Fill Material

Any fill material placed below the ordinary high-water mark must be free of topsoil, decomposable materials, and persistent synthetic organic compounds; including, but not limited to, asphalt, tires, treated lumber, and construction debris. The department may require testing of fill material. All temporary fills must be removed. Debris and solid waste must be properly disposed or recycled. Impacted areas must be restored to near original condition.