



Public Service Commission

State of North Dakota

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December 12, 2022

Mr. Kyle Boger
Environmental Supervisor
Coteau Properties Company
204 County Road 15
Beulah, ND 58523
Kyle.Boger@nacoal.com

Dear Mr. Boger:

The Reclamation Division has completed a technical review of final bond release application No. 3 to Permit NACT-9501. The following issues will need to be resolved prior to recommending Commission action.

General

1. Please provide a copy of the newspaper advertisement that was published and an affidavit of publication of the public notice as required by NDAC 69-05.2-12-12 (3). (GAW)

Attachment IV – Letters to Interested Parties

2. Please include actual copies of letters sent to adjacent surface owners and government agencies as required by NDCC 38-14.1-17(1)(b). (MJF)

Attachment V – Topographic and SPGM Respread Depths Maps

3. As stated in the Reclamation Division's Final Bond Release No. 3 publication approval letter dated August 26, 2022, a large area in the NE¹/₄ of Section 22 that is shown as having 48-inch SPGM respread depths was deemed inadequate for total SPGM respread depths. As shown in **Figure 1**, ten soil cores were collected within this area and eight of the soil cores were observed to have total SPGM depths of 36 inches or less. As stated in NDAC 69-05.2-15-04(4)(a)(2)(a), the minimum thickness of redistributed suitable plant growth material in any random location must be within 6 inches of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. Since the sampling locations showing noncompliant SPGM depths lie within the coal removal boundary and no spoil sampling was conducted in this area, the Reclamation Division agrees that this area requires a 48-inch respread. Coteau must address this issue before final bond release will be approved. (MLJ)

Attachment VI – General Information

4. Please include a short description about the reclamation history of the associated disturbance area located near the quarter line in the W¹/₂ of the W¹/₂ of Section 22. (MJF)
5. Please include a stock pond symbol in the legend on Attachment VIa, Revegetation Initiation Dates and Land Use Map. (MJF)
6. Please update the soil unit symbology in the legend to be the same color as the mapped soil units boundary on Attachment VIc, Pre-Mine Soils Map. (MJF)

Attachment X – Native Grassland

7. Although the second paragraph on page 1 of Attachment X, Native Grasslands, states that KLJ was contracted to collect grassland sampling data in 2018 and 2020, please provide the names and qualifications of the individuals who collected the data for KLJ. (GAW)
8. Attachment Xa1, Production Data, shows that sample adequacy was not achieved when portions of the reclaimed native grassland tract were sampled for production in 2018. However, data from the NW¹/₄ of Section 22 is combined with the S¹/₂ of Section 22 to provide a weighted average yield. It is not clear why the data is not simply combined to show that sample adequacy was achieved. Please explain in Attachment X, Native Grassland, why the bond release tract was sampled as two separate tracts and why the data is then being combined to provide a weighted average yield value. The data is being combined in Attachment Xd to demonstrate seasonality and diversity success and it is not clear why this same methodology is not being used to demonstrate revegetation productivity success. (GAW/JAR)
9. Attachment Xc, 2018 and 2020 Sampling Point Locations, shows that the reclaimed native grassland in the SE¹/₄ of Section 22 was not sampled to demonstrate revegetation success. Please revise Attachment X, Native Grassland, to provide justification as to why the reclaimed native grassland in the SE¹/₄ of Section 22 was not sampled. Given that this tract of land is fenced separately from the W¹/₂ of Section 22 it seems it would have been most appropriate to use a stratified sampling procedure to ensure this portion of the tract was represented in the sampling data. (GAW)
10. Attachment Xb1, Cover Data, shows that absolute ground cover was calculated using annual and biennial species. NDAC 60-05.2-22-07(3)(a), requires that ground cover be determined using perennial species not detrimental to the approved postmining land use. Please correct this error in Attachments X, Xb, and Xb1. (GAW)
11. Attachment Xb1, Cover Data, shows that live cover comprised only 0.5 percent of the absolute cover in 2018. Live basal cover is typically between 3 and 10 percent with a 10-point frame. Moreover, the data indicates that clubmoss accounted for nearly 50% of the live cover hits in 2018 while the species was not detected in 2020. Club moss, (*Selaginella densa*) does not tolerate mechanical disturbances so it is unlikely the species has established on this reclaimed land. Please review the 2018 cover data to ensure the information provided is accurate. (GAW)
12. Please update the sample adequacy calculations in Attachment Xd to clarify if statistically valid data is provided in 2018 and 2020. The sample adequacy calculations in Attachment Xd were not updated when the yield data was combined. (GAW/JAR)

13. Please depict the associated disturbance boundary in Attachment Xc (2018 - 2020 Production Sampling Locations). (MJF)

Attachment XI – Developed Water Resources

14. Please include a discussion of how plans for sound future management of stockponds SP-H22-01 and SP-H22-02 located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$, respectively, of Section 22 have been implemented by the landowner or permittee as required by NDAC 69-05.2-12-12(7)(c). Also, please include a written commitment from the landowner to follow a sound management plan for the impoundment. (JAR/GAW)
15. Please include documentation that suspended solids are not being contributed to stream flow or runoff outside the permit area in excess of that allowed by NDAC 69-05.2-16-04. (JAR)

If you have any questions, please contact this office.

Sincerely,



Zanna A. Brinkman
Director
Reclamation Division

cc via email only: Sarah Flath (sarah.flath@nacoal.com)
Dillon Belisle (dillon.belisle@nacoal.com)
Rylan Sundsbak (Rylan.Sundsbak@nacoal.com)

Figure 1: Non-compliant SPGM Respread Depths

