

October 13, 2023

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

Dear Ms. Brinkman:

Revision 28 to Permit NACT-0201 has been mailed via the United States Postal Service and uploaded to Permit Services. Deficiencies listed in your August 11, 2023, letter have been addressed, with responses listed below. Enclosed is an original signed application form for revision 28 of permit NACT-0201 renewal #4, and 3 copies of this permit. All changes have been tracked in track changes.

### **Section 1.2 – Legal Information**

1. *Please review Section 1.2.7, Relation to Mining - Prohibited Areas, and update as necessary to show currently occupied dwellings with five hundred feet setbacks and approved Mercer County temporary road closures. The Pit Layout and Facilities Map, Section 3.1.3, shows mining during the next permit term through roads not yet closed according to the Proposed Section Line and Road Closures and Setback Waivers Map, Section 1.2.7.1. A special permit condition requires that Coteau provide the PSC with copies of the road authority's approval documents to close, relocate, or mine within one hundred feet of an outside right-of-way. [NDAC 69-05.2-04-01.3(2)(c)] (GAW)*
2. *Please update Section 1.2.6, Certification of Liability Insurance, with the current certificate of liability insurance and the correct endorsements. [NDCC 38-14.1-14(3)]. (JAR/PJR)*

Section 1.2.6 has been updated and is current.

### **Section 1.3 – Business Entity/Compliance Information**

3. *Please provide an updated Consolidated Legal Information Report covering Sections 1.3.1 (Ownership and Control Information), 1.3.2 (Current Permits and Permit Applications), and 1.3.3 (Schedule of Violations) referenced in the NACT-0201 permit if*

**Freedom Mine – Coteau Properties Company**

204 County Road 15

Beulah, ND 58523

P: 701.873.2281

[NACoal.com](http://NACoal.com)

Coteau Properties Company, a subsidiary company of The North American Coal Corporation

*there are any changes to ownership and control information, the list of current or previous coal mining permits held during the past five years, or the schedule of violation notices in the past three years since the most recent consolidated report dated May 1, 2023. (PJR/GAW)*

Section 1.3 updates have been updated and uploaded to Permit Services by Belinda Coleman out of the Dallas Office.

- 4. Please update Section 1.3.5 (Other Licenses and Permits) as required by NDAC 69-05.2-06-04 if there are any changes to the listings since the most recent update with Revision No. 27. (JAR/GAW)*

Section 1.3.5 has been updated and is current.

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

- 5. Please update Section 1.5.1 (Permit Area Surface and Coal Interests) required by NDCC 38-14.1-14(1)(c)(2) and make the corresponding updates to Section 1.5.3 (Surface and Coal Ownership Map) to indicate any ownership changes since the most recent updates with Revision No. 27. Also, please provide proof of right of entry for any lease that may have expired or will expire in the next permit term. (PJR/JAR/GAW)*

Section 1.5.1 and 1.5.3 have been updated to reflect any changes.

- 6. Please update Section 1.5.2 (Adjacent Surface and Coal Ownership and Leasehold Information) required by NDAC 69-05.2-06-01(1)(a) and make the corresponding updates to Section 1.5.3 (Surface and Coal Ownership Map) to indicate any ownership changes since the most recent updates with Revision No. 27. (JAR/GAW)*

Section 1.5.2 has been updated to reflect any changes.

### **Section 2.2.4 – Surface Water Probable Hydrologic Consequences**

- 7. Please review the hydrologic reclamation plan to ensure that it specifically addresses any potential adverse impacts identified in the probable hydrologic consequences determination for mining activities that are to occur during the next term of the permit, and ensure it contains preventive and remedial measures for those impacts as required by NDAC 69-05.2-09-12. The PHC may need to be updated if changes to the approved post-mining topography are proposed. (JAR/GAW)*

Coteau is in the process of updating the post mining topography in the northern mine area of Permit NACT-0201 with a planned submittal by the end of this year. The PHC will be reviewed at the time the topography is updated. As of this time no changes have occurred and the PHC is still valid.

8. *Section 2.2.4 does not provide a pre- and post-mining effects analysis of the peak flows and runoff volumes for watersheds LS-03, LS-04, LS-05, LS-06, or LS-07 but Tables 1 through 3 indicate that mining related changes are planned in these watersheds. Please provide a descriptive analysis of the individual and cumulative effects of mining in the Lake Sakakawea watershed basin and consider revising the post-mining topography and/or land uses such that the cumulative expected peak discharges and runoff volumes are not greater than that which existed prior to mining. (GAW)*

Please see response 7

### **Section 2.3 Ground Water Hydrology**

9. *Please update any necessary narrative in section 2.3.1, Hydrogeology of the Permit, and adjacent area since it has not been updated since 2014. Also, please update all necessary tables and figures located in this section (i.e., Figure 1). (PJR)*

Section 2.3.1 text and Figure 1 and Figure 2 have been updated as requested.

10. *Please update all aquifer potentiometric maps under Section 2.3.3 while still retaining the prior maps for reference. (PJR)*

Minor changes were made to the potentiometric maps. In Section 2.3.3.2, monitoring well locations (MP82-P27, MP01-P12D, MP03-P05D) were added to the map to match the hydrographs in Section 2.3.5.2. In Section 2.3.3.3, monitoring well locations (MP82-P22, MP01-P08C, MP03-P05B, MP03-P05C, MP16-P01B, MP16-P02B) were added, and a monitoring well ID was changed (MP82-P19 to MP82-P20) to match the hydrographs in Section 2.3.5.3. In Section 2.3.3.4, monitoring well locations (MP81-P33, MP03-P05A, MP16-P01A, MP16-P02A) were added to match the hydrographs in Section 2.3.5.4.

The Potentiometric Surface contours will not be changed in these maps due to the need to preserve and understand the pre-mining ground water conditions. Changes due to mining cannot be addressed properly in this section. As mining occurs and progresses within each permit area, aquifer changes and impacts due to mining are, and will continue to be, addressed and explained thoroughly in the Annual Ground Water Monitoring Reports for the Freedom Mine, submitted under Appendix C of the Consolidated Ground Water Monitoring Plan (CGWMP). As mining progresses, monitoring wells are abandoned due to mining, and monitoring wells are added back

into reclaimed areas. Therefore, with the constant changes and differences in what is being monitored (i.e., in-place lignite vs. base of spoil), the CGWMP is the place to address these changes properly.

11. *Please update all of the hydrographs under section 2.3.5, Groundwater potentiometric Surface Information, as well as any necessary narrative in this section. (PJR)*

Section 2.3.5 text has been updated, along with the hydrographs under this section that were able to be updated.

12. *Information provided in Sections 2.3.7.1 and 2.3.7.2 has not been updated since 2018 with Revision 22 to NACT-0201. Changes to well/spring ownership and any other changes will need to be updated at this time. Any additional well and developed spring or significant natural spring certifications or re-certifications that may have been conducted since the last update should also be updated. (PJR)*

Sections 2.3.7.1 and 2.3.7.2 has been updated in the permit. Both of these sections have been revised to reference Section C-1 in the Consolidated Ground Water Monitoring Plan as this is where any changes to well/spring ownership or condition of water source will be updated moving forward. Please see Sections 2.3.7.1 and 2.3.7.2 for further details.

### **Section 2.5 – Soil Resources**

13. *Please add a "Totals" row to the bottom of Section 2.5.6.2 (Table 2 – Soil Volume Summary) so that the overall permit wide calculations for each column can be viewed — since soil mixing agreements exist throughout Permit NACT-0201. (MLJ)*

Section 2.5.6.2 has been updated to show a "Totals" row.

14. *Section 2.5.11 (Deep Lift Soil Survey Map) shows multiple deep lift polygon lines that do not have a deep lift soil stripping depth label. Please review and revise the map as necessary so that all applicable delineations are labeled correctly. (MLJ)*

Section 2.5.11 has been updated with correct depth labels in polygons.

15. *The water body labeled in the NE¼ of Section 14 within Section 2.5.11 (Deep Lift Soil Survey Map) does not match the symbology shown in the map legend (green instead of blue). Furthermore, the map legend shows labels for W (Water Body) and N (No Deep Lift Soils Available), but it does not appear that any delineations possess those labels on the map except for the one "W" label found in the NE¼ of Section 14. Please*

*review and revise the map as necessary so that all applicable delineations are labeled correctly. (MLJ)*

Section 2.5.11 has been updated so symbology matches the map legend and all applicable delineations were labeled correctly.

16. *The last paragraph on page 3 of Section 2.5.2 (Methodology) states that "Soil map unit polygons not investigated during the deep lift survey were either less than 5 feet to bedrock or gravel, or sodium affected (a Natriboroll or Natriaquoll). These units were labeled as "<60/<60" on the Deep Lift Soil Survey Map." However, it does not appear that any delineations are labeled as "<60/<60" in Section 2.5.11 (Deep Lift Soil Survey Map). Please review and revise Section 2.5.11 as necessary to account for the narrative provided in Section 2.5.2. (MLJ)*

Section 2.5.11 was updated to show the soil map unit polygons that were supposed to be labeled as <60/<60.

### **Section 2.7 – Fish and Wildlife Resources**

17. *Please update Section 2.7.3, Fish and Wildlife Resources Mining Impacts, to provide up-to-date Threatened and Endangered species information and discuss potential adverse impacts to all species in and adjacent to the permit according to IPAC, with an emphasis on lands to be affected during the next term of the permit. The Northern Long Eared Bat narrative needs to be updated to mention that the species has been up listed to endangered status and please clarify if any areas in the permit are included in the species' range. Please also provide up-to-date information for the Dakota skipper so that the Commission can find, based upon information provided in the permit, that mining and reclamation will not adversely affect this species. Currently, only outdated historical information is provided for the Dakota skipper. [NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08] (GAW)*

Narrative has been updated with the requested changes.

18. *Please review the Protection, Enhancement, and Management Plans in Section 2.7.3 and update as necessary to ensure it is accurate and that it complies with NDAC 69-05.2-09-17(1) for the next term of the permit. NDAC 69-05.2-09-17(1) requires a fish and wildlife resources plan that includes protective and enhancement measures, and the development of aquatic and terrestrial habitat. (GAW)*

Narrative has been updated with the requested changes.

**Section 3.1.1 – Operations/Reclamation Narrative**

19. *Please update the Overburden Stockpiles table on page 5 of Section 3.1.1.2 (Mining Methods Narrative) to ensure the information provided is complete and accurate. The table is missing the large overburden pile in Section 14 in MA3 and several new piles in MA1. Overburden stockpile OB-W06-01 should be included in the table with zero volume if it is depleted. Also, please update with any other necessary changes to constructed or depleted stockpiles.[NDAC 69-05.2-11-01(2) and NDAC 69-05.2-09-02(4)] (JAR/GAW)*

Section 3.1.1.2 was updated to include all current overburden piles information.

20. *The last sentence in the Human Burials and National Register of Historic Places Eligible Sites subsection on page 8 of Section 3.1.1.2 states that site boundaries within the next term of the permit, 2019 to 2024, are shown on the Pit Layout and Facilities Map of Section 3.1.3. Please revise this narrative to cover the next term of the permit. [NDAC 69-05.2-11-01(2)] (JAR)*

The narrative has been updated with the requested changes and the map was checked to confirm all sites were depicted.

21. *Please update the Waste Disposal section on page 10 of Section 3.1.1.2 (Mining Methods Narrative) to remove the highlighted and strike-through text that was part of Revision 24. (JAR)*

Section 3.1.1.2 has been updated as requested.

22. *Please review the Reclamation Procedures and Schedule in Section 3.1.1.3 and update if any variance areas have been reclaimed or if an extension to the reclamation timeline is necessary. Please provide proper justification for any reclamation extension. (GAW)*

Section 3.1.1.3 has been updated as requested.

23. *Please review the Reclamation Procedures and Schedule, Section 3.1.1.3, and update to reflect current conditions and changes anticipated during the next term of the permit. Narrative describing reclamation activities that have occurred in the past should be updated accordingly with dates when operations were completed. [NDAC 69-05.2-11-01(2)] (JAR)*

Section 3.1.1.3 has been updated as requested.

24. Please review the Overburden Pile Reclamation narrative starting on page 6 in Section 3.1.1.3 and update it as necessary to provide current information for the next 5-year term of the permit. (PJR)

The Overburden Pile Reclamation narrative in Section 3.1.1.3 was updated as requested.

25. Please update the Coal Production Schedule in Section 3.1.1.4 through the next permit term as required by NDAC 69-05.2-09-01(1). (JAR/PJR)

Updated as requested.

### **Section 3.1.3 – Pit Layout and Facilities Map**

26. Please update the Pit Layout and Facility Map, Section 3.1.3, to show current field conditions and proposed mining advances. This may include, but is not limited to, new or expanded SPGM and overburden stockpiles, haul roads, water management structures, buildings, facilities, utilities, and pit sequence changes. The Pit Layout and Facility Map must clearly identify the next 5-year coal removal subareas as required by NDAC 69-05.2-09-02(3). (JAR/GAW)

Section 3.1.3 has been updated as requested.

27. Please label all overburden piles on the Pit Layout and Facility Map, Section 3.1.3. (GAW)

Section 3.1.3 has been updated as requested.

28. Please review and update the expected mining disturbance boundary on the Pit Layout and Facilities Map, Section 3.1.3, for the next term of the permit and for areas where mining has been completed. [NDAC 69-05.2-11-01(2) and NDAC 69-05.2-09-02] (JAR/GAW)

Section 3.1.3 has been updated as requested.

29. Please revise the Pit Layout and Facility Map, Section 3.1.3, to clearly identify the culturally significant "No Disturbance" lands in Sections 4, 5, and 9 of T145N, R88W. The brown dashed line that appears to depict the no disturbance boundary looks like the line used to depict ramps and two of these lines are shown in SE¼ of Section 9. In addition, the Pit Layout and Facility Map shows the no disturbance boundary on the section line between the SE¼ of Section 4 and the NE¼ of Section 9 but the Post-Mining Topography and Land Use Map, Section 4.1.2, displays topographical changes

*along the south side of the section line dividing the SE¼ of Section 4 and the NE¼ of Section 9. (GAW)*

The no disturbance areas are outlined by the orange dashed line. The disturbance area is setback from the actual section line. The brown line that appears on the actual section line in this area is a planned future haulroad.

### **Section 3.1.4 – Extended Mining Plan Map**

30. *Please update the Extended Mining Plan Map, Section 3.1.4, with the most recent Freedom Mine Extended Mining Plan Map as required by NDAC 69-05.2-07-03. (MLJ/PJR/JAR/GAW)*

Section 3.1.4 has been updated with the most current Extended Mining Plan Map.

### **Section 3.1.5 – List of Equipment**

31. *Please update Section 3.1.5 (List of Equipment) if any changes have occurred since Revision No. 27 [NDAC 69-05.2-09-01(01)]. (PJR)*

Updated as requested.

### **Section 3.1.9 – Post-Mining Topography Development Map**

32. *The Post-Mining Topography Development Map, Section 3.1.9, shows highwall back-sloping northwest of the mineral removal boundary in the SE¼ of Section 9, T145N, R88W. If other changes are being made to this map, please revise the map to minimize disturbance to woodlands beyond the coal removal boundary as required by NDAC 69-05.2-13-05. (GAW)*

Disturbances have been minimized to the extent possible to ensure all available coal can be removed without causing highwall failures. With the next upcoming revision Coteau will reevaluate this section to ensure disturbances to woodlands beyond the coal removal boundary are minimized.

### **Section 3.2 – Transportation Facilities**

33. *Section 3.2.1 (Transportation Facilities Narrative) specifies that an access road was constructed from the current ramp 110 haulroad to sediment pond P-W32-02 in Sections 3 and 4, T145N, R88W to enable Ramp 1 to be reclaimed in 2022. Please update this narrative to include the current status of Ramp 1. (JAR)*

Section 3.2.1 narrative has been updated with language regarding the current statuses of Ramp 1.

34. Please update Section 3.2.3 (Equipment Access Road), which discusses past plans to build equipment access roads and equipment movements. The existing language is outdated. (JAR)

Section 3.2.3 has been updated as requested.

### **Section 3.3 – Surface Water Management**

35. Please update Section 3.3.2 (Surface Water Management Plan Map) to reflect any changes with the status or presence of water management structures (i.e. P-W08-04); SPGM stockpiles; overburden stockpiles; and haul roads that may have occurred since the map was last updated with Revision No. 27 as required by NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09. (SMN/JAR/GAW)

Section 3.3.2. has been updated as requested.

36. The watershed for sediment pond P-W08-03 extends into the pool area of existing sediment pond P-W08-04. Please revise this watershed boundary. (SMN)

Watershed boundary has been updated as requested.

37. Please update Section 3.3.4, Pond Construction and Reclamation Schedule, as required by NDAC 69-05.2-09-09(1)(d) if there are any changes to the schedule since last updated with Revision No. 26. The Pond Construction and Reclamation Schedule incorrectly indicates that ponds P-W16-01 was constructed in 2020 and that P-W08-03 was constructed in 2022. (JAR/GAW/SMN)

Section 3.3.4 has been updated as requested.

38. The Pond Construction and Reclamation Schedule indicates that Coteau is planning to construct sediment pond P-W08-01 in 2024. Please clarify how Coteau is planning to manage surface water runoff while avoiding disturbance to the woodland above this pond. The majority of this woodland is outside of the mineral removal area and the mining disturbance boundary. This woodland overlies federal coal and may be considered a woodland exclusion area with multiple use conflicts according to ND's 1988 BLM Resource Management Plan. (GAW)

Coteau is no longer planning on constructing P-W08-01. The surface water management plan has been updated to reflect how runoff will be controlled in the future.

#### **Section 4.1.1 – Post-Mining Land Use Plans Narrative**

39. *The approved version of NACT-0201 contains Revision No. 24 highlighted, underline and strike-through narrative in Section 4.1.1, Post-Mining Land Use Plans Narrative. Accept the Revision 24 changes in Section 4.1.1 before the next submittal. (GAW)*

Updated as requested.

#### **Section 4.1.2 – Post-Mining Topography and Land Use Map**

40. *Please review the Post-Mining Topography and Land Use Map, Section 4.1.2, and update if any errors or post-mining land use changes are planned. The Reclamation Division understands that Coteau was planning to convert the disturbed tame pastureland in the SW $\frac{1}{4}$  of Section 3 in MA1 to native grassland. (GAW)*

Section 4.1.2 has been updated to show the land use change in the SW $\frac{1}{4}$  of Section 3 in MA1 from tame pastureland to native grassland.

41. *The potential post-mining prime farmland landscape area located in the N $\frac{1}{2}$  of Section 35, T145N, R88W of Section 4.1.2 (Post-Mining Topography and Land Use Map) appears to be overlaying and concealing the post-mining topographic contours. Please revise this area so that the contours are visible. (MLJ)*

Updated as requested.

42. *If necessary, please update the "Actual Prime Farmland Respread" delineations in Section 4.1.2 (Post-Mining Topography and Land Use Map) to account for the most up to date representation of prime farmland reclamation. (MLJ)*

Map has been updated and now has the current information for the permit area.

#### **Section 4.2 – Revegetation Procedures, Establishment, and Management**

43. *Please revise Section 4.2.2, Seed Mixes, to clarify where tree and shrub planting plans can be found in the permit. (GAW)*

Narrative has been updated to include the location of the reclaimed tree planting information as requested.

*44. Section 4.2.3, Trees and Shrubs, includes highlighted, strike-through and underlined language. Accept the changes in Section 4.1.1 before the next submittal. (GAW)*

Updated as requested.

*45. Please revise Section 4.2.3, to clarify the page number of Section 4.1.1 that describes Coteau's tree and shrub planting plans or consider moving the tree and associated replacement plans to Section 4.2, Revegetation Procedures, Establishment, and Management, where one would expect to find such information. (GAW)*

Section 4.2.3 has been updated to describe the page number where information pertaining to Coteau's tree and shrub planting plans can be found in Section 4.1.1.

*46. Section 4.2.3.1, Post-Mining Replacement Woodlands, includes highlighted, strike-through and underlined language. Accept the changes in Section 4.1.1 before the next submittal. (GAW)*

Updated as requested.

#### **Section 4.4 – Post-Mining Wetlands**

*47. Please provide design plans for created wetlands CW-W36-03, CW-W36-04, and any other wetlands that may be reclaimed in the next few years. (GAW)*

Sections 4.4.8 and 4.4.9 have been added to Section 4.4 Post-Mining Wetlands to show the design plans for wetlands CW-W36-03 and CW-W36-04.

*The nine standard conditions attached to the permit remain in effect. Special Condition No. 2 was satisfied with Revision No. 1 to the permit and Special Conditions No. 1, 3, and 4 remain in effect. The current total bond amount for this permit and others in the consolidated bond area in the amount of \$200,000,000 was last updated with Revision No. 50 to Permit NACT-0401 that was approved on June 28, 2023, and the current bond amount is deemed adequate at this time.*

Ms. Zanna Brinkman  
October 12, 2023  
Page 12 of 12

If you have any questions, please contact this office.

Sincerely,

THE COTEAU PROPERTIES COMPANY

A handwritten signature in blue ink, appearing to read "Michael D. Berg".

Michael D. Berg P.E.  
Environmental Supervisor

MDB  
Enc.

Uploaded via Permit Services

cc. Carmen Reed, Mercer County Auditor (w/enc)