



# Public Service Commission

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*sent via email only*

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Mr. Michael Berg  
Environmental Manager  
Coteau Properties Company  
204 County Rd. 15  
Beulah, ND 58523-9475  
michael.berg@nacoal.com

Dear Mr. Berg:

The Reclamation Division has conducted a completeness review of the application for Revision 31 to Surface Coal Mining Permit NACT-0201 for the Freedom Mine. Revision 31 has been determined to be a significant revision and is therefore subject to the notice, hearing, and procedural requirements. The following items must be addressed prior to the revision being deemed complete. Please note our rationale for many of the items is based on the requirement in NDAC 69.05.2-05-02(1) that information be presented clearly and concisely.

Items No. 98 through No. 116 below are technical in nature. These items may be addressed at this time or during the technical review period. If the items are not addressed at this time, please indicate that in your response letter.

## **General**

1. Please revise the narrative in Attachment 1 of the Revision 31 application (Form SFN 10562), Section 1.1.1 (Application Forms); the revision summary narrative on page 43 of Section 1.1.2 (Revision Summary Pages); the letters to surface owners in Section 1.4.2 (Surface Owner Notification), if necessary; the public notice in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31); and all other relevant portions of the permit to accurately describe all changes proposed in Revision 31. The revision summaries in these sections currently omit significant alterations to the permit being proposed with the revision, and the revision summary narratives need to properly account for all changes being proposed with the revision. More specific update requests are provided in the succeeding deficiencies in this letter. (PJR)
2. Revision 31 includes plans for mining a new subarea in the S½NE¼ in Section 1, T144N, R89W during the current term of the permit in 2027. As discussed during the February 23, 2026, meeting with the Reclamation Division and Freedom Mine staff, the Freedom Mine may wish to consider addressing this new mine area outside of the Revision 31 application, if the revision process is projected to delay mining activities in this area. (GAW)

## **Section 1.1 – Introductory Information**

3. The Revision 31 application form SFN 10562 in Section 1.1.1 (Application Forms) lists an incorrect range location for the 320 acres being added to the permit in Section 32. Please revise the range location to 88W instead of the incorrect 89W. (JWE/TLD)
4. Please revise Section 1.1.2 (Revision Summary Pages) to include a comprehensive description of the mining and reclamation operations being revised with Revision 31. The current summary that lists sections of the permit being revised does not provide a description of the significant changes being proposed to the mining and reclamation operations. (GAW)
5. Please specify what page numbers were added to Section 2.1.7 for the 2024 and 2025 Overburden Sample Analyses in Section 1.2 (Revision Summary Pages). (TLD)

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

6. Please redact the account number on the check for the filing fee for Revision 31 in Section 1.2.1 (Proof of Filing Fee). (JWE)
7. Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) incorrectly indicates that the only significant change being made to the permit is the addition of 2,225 acres to Permit NACT-0201. However, Revision 31 indicates a new coal removal subarea will be mined in the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 1, T144N, R89W, and the timing of mining and reclamation activities is being altered on other lands in the existing permit area. Moreover, the revision includes plans for mining federal coal in the S $\frac{1}{2}$  of Section 2 and the W $\frac{1}{2}$  of Section 12, T144N, R89W, and it alters the timing of mining of federal coal in the E $\frac{1}{2}$  of Section 4, T145N, R88W. Mining is also being expanded into the Revision 31 addition area during the current term of the permit (W $\frac{1}{2}$  of Section 1, T144N, R89W), and it provides plans for sediment ponds, stockpiles, and other associated disturbance in the addition area. Revision 31 proposes significant post mining topography and land use changes in areas not yet reclaimed in Mine Area 1. It also appears that the township right-of-way between the SW $\frac{1}{4}$  of Section 33, T145N, R88W and the NW $\frac{1}{4}$  of Section 1, T144N, R89W, which has not been closed by the County, will be affected by mining according to the mining disturbance boundary line in Section 3.1.3 (Pit Layout and Facilities Map). Please revise Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) to include a brief, comprehensive description of the mining and reclamation operations proposed with Revision 31. (GAW)
8. Section 1.2.5.19 (Newspaper Publication Notice Map – Revision 31) depicts the areas being added to the permit in Revision 31, but other significant alterations to the permit are not depicted on the map. Please depict the areas affected by mining and reclamation plan changes proposed with Revision 31 in Section 1.2.5.19 to allow one to realize the lands being affected by the Revision 31 application. This would include new coal removal subareas to be mined during the current term of the permit and areas where postmining topography and land use changes are being proposed. (WWS)
9. Update Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) and Section 1.2.5.19 (Newspaper Publication Notice Map – Revision 31) to satisfy N.D.A.C. 69-05.2-10-01(1)(d). (JWE)
10. Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) does not specifically state that Coteau plans to mine new areas of federal coal as part of Revision 31. Please add narrative in

the notice stating that Coteau is adding plans to mine federal coal in the W½ of Section 12 and the S½ of Section 2, T144N, R89W. (PJR/JAR)

11. Please revise the second paragraph in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31) for clarity. This paragraph lists the sections encompassing the current permit area but then lists the permit acreage that includes the addition area. Please correct the total acreage listed to state the area currently permitted. (WWS)
12. Darlene Neubauer is listed under coal ownership for Tract 7 in Section 1.5.3 (Surface and Coal Ownership Map) but is not listed under coal ownership in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31). Also, Gordon L. Castleman and Nancy L. Castleman, Deceased, are identified under coal ownership in Section 1.2.5.18, but they are not identified as coal owners in Section 1.5.3. Please review the coal ownership information for Tract 7 and make the applicable updates to Section 1.2.5.18 and/or Section 1.5.3. (JAR)
13. Nicole L. Alberson and Jodi D. Hendrickson are identified under coal ownership as Remaindermen in Section 1.5.3 (Surface and Coal Ownership Map) for Tract 34, but they are not listed as Remaindermen in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31). To remain consistent with other Remaindermen included in the Newspaper Notice, please include Nicole L. Alberson and Jodi D. Hendrickson as Remaindermen for Tract 34 in Section 1.2.5.18. (JAR)
14. Tract 90 lists Dawn Mamer under coal ownership in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31), but Dawn Wolf is identified under coal ownership for Tract 90 in Section 1.5.3 (Surface and Coal Ownership Map). Please review the coal ownership information for Tract 90 and make the applicable updates to Section 1.2.5.18 and/or Section 1.5.3. (JAR)
15. Tract 91 identifies Carol Hartman under coal ownership in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31), but she is not listed in Section 1.5.3 (Surface and Coal Ownership Map). Also, Kevin L. Renner is listed under coal ownership in Section 1.5.3, but he is not listed under coal ownership in Section 1.2.5.18. Please review the coal ownership information for Tract 91 and make the applicable updates to Section 1.2.5.18 and/or Section 1.5.3. (JAR)
16. Vicki Waugh Eidman, Trustee of the Vickin Waugh... is listed under coal ownership for Tract 107 in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31); however, Vickin appears to be a typographical error that should be Vicki. Please correct this typographical error in Section 1.2.5.18. (JAR)
17. Tracts 111, 112, 113, and 114 do not include Floyd Lucas III under coal ownership in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31), but Floyd Lucas III is listed under coal ownership in Section 1.5.3 (Surface and Coal Ownership Map) for those Tracts. Also, Tracts 113 and 114 identify Mitchell M. Weigum and Angela J. Weigum under coal ownership in Section 1.2.5.18 but not in the coal ownership listed in Section 1.5.3. Please review the coal ownership information for the specified tracts and make the applicable updates to Section 1.2.5.18 and/or Section 1.5.3. (JAR)
18. Tract 117 is incorrectly identified as Tract 116-A in Section 1.2.5.18 (Newspaper Publication Notice – Revision 31). Please correct this typographical error. (JAR/WWS)

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

19. Freedom Mine was issued a Department of the Army Individual Permit on June 29, 2016, with an expiration date of June 17, 2046, as indicated in Section 1.3.5 (Other Licenses and Permits). However, as part of Revision 31, Freedom Mine is proposing to disturb a short segment of an intermittent stream in the NW¼ of Section 12, T144N, R89W. Please ensure the current Individual Permit issued for the Freedom Mine is valid for the disturbance of the intermittent stream located in the NW¼ of Section 12, T144N, R89W of the Revision 31 addition area. (JAR)

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

20. Section 1.5.1 (Permit Area Surface and Coal Interests) and Section 1.5.3 (Surface and Coal Ownership Map) indicate that Tracts 117, 118, and 120 are being permitted for surface disturbance only; however, Section 3.1.3 (Pit Layout and Facilities Map) and Section 3.1.4 (Extended Mining Plan) show mining through these tracts. Please review and update Sections 1.5.1, 1.5.3, 3.1.3, and/or 3.1.4 as needed. (AAC/JWE/GAW)
21. The links for Lease No. 01988 appear to access Lease No. 01998 in Section 1.5.1 (Permit Area Surface and Coal Interests) for Tracts 111, 112, 113, and 114. Please update the link for Lease No. 01988 in Section 1.5.1 to ensure the proper coal lease is attached. (AAC)
22. Lease No. 06023 is not linked in the surface ownership section of Tract 112 in Section 1.5.1 (Permit Area Surface and Coal Interests). Please update Tract 112 to ensure Lease No. 06023 is linked. (AAC)
23. Lois Fifer and Rober Dale Fifer are listed under coal ownership for Tract 107 in Section 1.5.3 (Surface and Coal Ownership Map); however, Rober appears to be a typographical error that should be Robert. Please correct this typographical error in Section 1.5.3. (JAR)
24. Please add the Remainderman, Dallas Dean Buchfinck, to the Merrill Buchfinck, Life Estate under coal ownership for Tract 117 in Section 1.5.3 (Surface and Coal Ownership Map). (JAR)
25. Please ensure that all changes made in Section 1.5.1 (Permit Area and Surface and Coal Interests) are properly tracked as required by NDAC 69-05.2-05-02(6). For example, the table at the bottom of Tract 28 contains no information as to when the last change occurred. (WWS)

### **Section 2.1 – Geology**

26. Please fix the hyperlinks for Sections 2.1.6.6, 2.1.6.7, 2.1.6.15, 2.1.8.5, 2.1.8.6, 2.1.9.9, and 2.1.9.10 so they connect with the intended source. (PJR)
27. Test borings and overburden sample results were not included in Section 2.1 (Geology) for the S½ of Section 2, T144N, R89W, and the NW¼ and the S½ of Section 12, T144N, R89W. Since Revision 31 adds plans to mine these federal coal tracts with Revision 31, test borings and overburden sample results must be provided as required by NDAC 69-05.2-08-05(2). (PJR/MLJ)

### **Section 2.2 – Surface Water Hydrology**

28. For compliance with NDAC 69-05.2-08-07(1), please update Section 2.2.2 (Surface Water Features Map) to include the names and locations of watersheds, streams, lakes, ponds, wetlands, springs, drains, water bodies and water supply intakes on lands north, south, and west of the Revision 31 addition area. Please also include the adjacent topography and watershed information as required by NDAC 69-05.2-09-02 in Section 2.2.2. (GAW/WWS)
29. Please update Section 2.2.1.1 (Table 1 – Comprehensive Surface Water Features) to include pre-mining surface water features in the Revision 31 addition area. (GAW)
30. Please update the standalone Consolidated Surface Water Monitoring Plan to include the Revision 31 addition area in Permit NACT-0201. As required by NDCC 38-14.1-14(1)(o), the permit applicant must provide a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems so that an assessment can be made by the Commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. (PJR/GAW)
31. Two new surface water monitoring sites were established on the south and west perimeter adjacent to the area added with Revision 31, and the locations of these sites are referenced in Section 2.2.3 (Surface Water Features and Water Quality Data Narrative) to be shown on the Surface Water Monitoring Map of Section B-7 in the standalone Consolidated Surface Water Monitoring Plan. However, no surface water monitoring updates have been provided in the Consolidated Surface Water Monitoring Plan. Please update the appropriate portions of the Consolidated Surface Water Monitoring Plan as part of Revision No. 31 to Permit NACT-0201. (JAR)

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

32. Please update the standalone Consolidated Ground Water Monitoring Plan to show the Revision 31 addition area in Permit NACT-0201. As required by NDCC 38-14.1-14(1)(o), the permit applicant must provide a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems so that an assessment can be made by the Commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. (PRJ/GAW)

### **Section 2.4 – Pre-Mining Land Use and Vegetation**

33. Please provide bookmarks for Tracts 111 through 121 in Section 2.4.2 (Narrative), and add Tracts 111 through 121 to Table 1, Pre-Mining Native Grassland Management Units and Water Sources Permit NACT-0201. (GAW)
34. Please revise Section 2.4.2 (Narrative) to include a detailed narrative describing the variability of the vegetation within the ecological sites in the Revision 31 addition area as required by NDAC 69-05.2-08-08(1)(d). (GAW)
35. Please include native grassland vegetation sampling points in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map) for the Revision 31 addition area so that one can realize where the sampling data was collected. The map legend has “clipped for range condition” and “species list” symbols for the existing permit area. (GAW)

36. Please retain the original aerial photography for the original permit area and provide current aerial photography for the Revision 31 addition area in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map), so that pre-mine ground conditions throughout the permit area are not diminished or lost. (GAW/WWS)
37. Please incorporate Similarity Index information for Tracts 111 through 121 into Section 2.4.9.1 (Range Site Assessments/Ecological Similarity Index) using the established format, which is to provide a bookmark for each Tract. The Revision 31 information is being added to Section 2.4.9.1 by Ecological Site rather than by ownership Tract, which is confusing. (GAW)
38. Please revise Section 2.4.9.1 (Range Site Assessments/Ecological Similarity Index) to include NRCS form CPA-20 to provide Rangeland Similarity Index information for the Revision 31 addition area. It is not clear how the Similarity Index values listed on pages 102 through 129 were calculated. (GAW)
39. Please provide information for wetlands 25-WET08B and 25-WB04B in Section 2.4.12 (Wetland Maps and Photos) and clarify why wetlands 25-WET09B and 25-WET21B are missing. Please consider renaming the wetlands in the Revision 31 addition area, consistent with the naming convention previously used in the permit. (GAW)
40. Please include the Public Land Survey System (PLSS) legal description information on the Revision 31 wetland maps in Section 2.4.12 (Wetland Maps and Photos) to provide some sense as to where the wetland is located. (GAW)
41. Please provide a description of the vegetation zones or plant communities of the sampled pre-mine wetlands in the Revision 31 addition area in applicable subsections of Section 2.4 (Pre-Mining Land Use and Vegetation). These descriptions should be provided through the use of line drawings of appropriate scale; descriptions of the relationship among vegetation, soil, and surface groundwater hydrology in the wetlands; and descriptions of observed or historical anthropogenic use for each sampled wetland. Also, please provide a species list for each vegetation zone or plant community as required by Section II-H of the Reclamation Division's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments document. (GAW)
42. Section C-3 of the Freedom Mine Consolidated Ground Water Monitoring Plan depicts the Alma Buchfink Spring 1 in the E½NW¼ of Section 12, T144N, R89W and the Section C-1 Table provides the spring flows 3.6 gallons per minute. The spring certification in Appendix B of the Consolidated Ground Water Monitoring Plan states the spring was developed in the 1920's and is a good water supply. The area occupied by this spring is classified as a temporary wetland in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map). Please review the classification of the wetland in the spring seep area to ensure proper classification. (GAW)
43. Please depict woodland density and cover sampling locations in Section 2.4.13 (Native Trees and Shrubs Map). (GAW)
44. For the original permit area, tree and shrub species information is provided for each woodland depicted in Section 2.4.13 (Native Trees and Shrubs Map). However, tree and shrub species information is not provided for each woodland community in the Revision 31 addition area. Please revise to provide species information for each woodland community in the Revision 31 addition area, consistent with the format used for the existing permit area. (GAW)

45. Please revise Section 2.4.14.1 (Tree Density Table) to include a bookmark link for the Revision 31 Tree Density Data. (GAW)
46. The woodlands in Section 2.4.14.1 (Tree Density Table) are labeled differently than the names provided in Section 2.4.13 (Native Trees and Shrubs Map). Please revise Section 2.4.14.1 so the woodland labels are consistent with the names provided in Section 2.4.13. (GAW)
47. The shrubs in table 2.4.14.2 (Shrub Density Table) are labeled differently than the names provided in Section 2.4.13 (Native Trees and Shrubs Map). Please revise Section 2.4.14.2 so the shrub labels are consistent with the names provided in Section 2.4.13. (GAW)
48. Please revise Section 2.4.15.1 (Tree Understory Cover Table) to include a bookmark link for the Revision 31 Tree Understory Cover Table. (GAW)
49. Please revise Section 2.4.15.1 (Tree Understory Cover Table) to include the name(s) of the sampled woodlands. The woodland names provided should be consistent with the names provided in Section 2.4.13 (Native Trees and Shrubs Map). (GAW)
50. Please revise Section 2.4.15.2 (Shrub Density Table) to include a bookmark link for the Revision 31 Shrub Density Table. (GAW)
51. Please revise Section 2.4.15.2 (Shrub Density Table) to include the name of the shrub communities sampled. The shrub names provided should be consistent with the names provided in Section 2.4.13 (Native Trees and Shrubs Map). (GAW)

## **Section 2.5 – Soil Resources**

52. One sentence was added to page one of Section 2.5.2 (Methodology) to reference the soil survey conducted on the Revision 31 addition area; however, no other narrative within Section 2.5.2 was updated. Please update all applicable narratives in Section 2.5.2 with regard to the soil survey conducted on the Revision 31 addition area. (MLJ/TLD)
53. The narrative in Section 2.5.3 (Results) does not appear to have been updated with information from the soil survey conducted on the Revision 31 addition area. Please update Section 2.5.3 as necessary. (MLJ/TLD)
54. As required by NDAC 69-05.2-08-09, please revise Section 2.5.5 (Prime Farmlands) to clarify if there are any prime farmland soils in the Revision 31 addition area on areas that are not cropland for which Coteau will be requesting a negative prime farmland determination. The general narrative should be updated to include greater details of prime farmland where standards apply and where negative determinations are being requested or have already been granted. The narrative should also include details describing the acreage of prime farmland where standards apply and the acreage of negative determination. Please refer to Section 2.8.5a of Falkirk Mining Company's Permit NAFK-8405 for an example of detailed prime farmland narrative, and the Reclamation Division can provide the example upon request. (GAW/TLD/MLJ)
55. Please update Section 2.5.6.1 (Table 1 – Prime Farmland Acreage Summary) by including an additional column in the table that clearly denotes the acreage for each tract where prime

farmland standards apply so it can be easier to identify and realize how much of the prime farmland in the permit must be reclaimed. (MLJ/TLD)

56. Section 2.5.9.1 (Pedon Analyses) appears to omit the pedon sample results from the latest soil survey conducted on the Revision 31 addition area. Please add these results to Section 2.5.9.1 and include applicable bookmarks to the section. (MLJ/TLD)
57. In addition to Item No. 62 above, please update Section 2.5.10 (Soil Survey and Prime Farmland Map) by including two different polygons depicting prime farmland. One polygon should depict the prime farmland where a negative determination has been made, or is requested, for prime farmland located in native grassland and for areas where it has not been historically cropped. The other polygon should depict the prime farmland where performance standards apply. (MLJ/TLD/GAW)
58. The prime farmland tracts listed in Section 2.5.6.1 (Table 1 – Prime Farmland Acreage Summary) are delineated in Section 2.5.10 (Soil Survey and Prime Farmland Map) with the exception of the Revision 31 addition area. Please label all prime farmland tracts in Section 2.5.10. (MLJ/TLD)
59. Test borings and overburden sample results were not included in Section 2.1 (Geology) and are omitted from Section 2.5.12 (Projected Soil Respread Depth Map) for the S½ of Section 2, T144N, R89W, and the NW¼ and the S½ of Section 12, T144N, R89W. Without these sample results, the projected SPGM respread depths for these areas cannot be realized. Please review and revise Section 2.5.12 as necessary. (TLD/MLJ)
60. The Deep Lift Survey Boundary Line depicted in Section 2.5.12 (Projected Soil Respread Depth Map) appears to incorrectly include the Revision 31 addition area and does not match the line depicted in Section 2.5.11 (Deep Lift Soil Survey Map). The Reclamation Division is not aware of a deep lift soil survey occurring on the Revision 31 addition area, and other sections in Section 2.5 (Soil Resources) do not include updates regarding an additional deep lift soil survey. Please review and revise Section 2.5.12 as necessary. (MLJ/TLD)

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

61. Please include the results of the baseline fish and wildlife inventory for the Revision 31 permit addition area in Section 2.7.2 (Fish and Wildlife Summary) of the permit application as required by NDAC 69-05.2-08-15. Also, please remove language on page 1 of Section 2.7.1 (Methodology) suggesting baseline wildlife resource information for the Revision 31 addition area be included in Coteau's biennial Consolidated Wildlife Habitat Monitoring Report. NDAC 69-05.2-10-03(6)(d) states that no permit or significant revision will be approved unless the applicant affirmatively demonstrates and the Commission finds, in writing, on the basis of information in the application or otherwise available that the operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their habitats. (GAW/AAC)
62. The second paragraph on page 1 of Section 2.7.1 (Methodology) incorrectly lists the township for Section 32 as T144N. Please change the township to T145N. (JWE/GAW/AAC)
63. Please update Section 2.7.3 (Mining Impacts) with information about how Coteau will minimize disturbance and adverse impacts on fish and wildlife and important habitats, including

compliance with the Endangered Species Act, during mining and reclamation operations in the Revision 31 addition area as required by NDAC 69-05.2-09-17. (GAW/AAC)

64. Please update Section 2.7.5 (Correspondence) to include the Plan for Completion of Fish and Wildlife Baseline Inventory for the Revision 31 permit addition area. This would include correspondence with the Reclamation Division regarding plans for acquiring baseline fish, wildlife, and habitat information and correspondence with the ND Parks and Recreation Department regarding the Natural Heritage Database. (GAW/AAC)
65. As required by NDAC 69-05.2-13-08(1), please update the Consolidated Wildlife and Habitat Monitoring Plan to incorporate annual fish and wildlife monitoring plans for the Revision 31 addition area. This would include updating Section B-1 with current information about North Dakota's State Wildlife Action Plan, a current list of threatened, endangered and proposed species and discussions about important habitats and surveys that will be conducted on lands in the Revision 31 addition area. The permit boundary and a buffer area adjacent to the Revision 31 addition area will need to be provided on the Monitoring Area Map in Section B-2 of the Consolidated Wildlife and Habitat Monitoring Plan. (GAW/AAC)

### **Section 2.8 – Cultural Resources**

66. Please update Section 2.8 (Cultural Resources) with cultural resource information for the proposed addition and adjacent area as required by NDCC 38-14.1-14 (1)(u) and include a statement evidencing compliance with the requirements of Chapter 55-03. The cultural resource inventory should include all buildings, structures, and objects referred to in Section 55-03-01 and an evaluation of each cultural resource that will be affected by surface coal mining operations in accordance with guidelines developed by the State Historic Preservation Officer (SHPO) and superintendent of the State Historical Board. (GAW/PJR)
67. Due to stated inadequacies in the application letter and verified in the permit application, the revision cannot be deemed complete until Section 2.8 (Cultural Resources) has been submitted and verified in accordance with NDCC 38-14.1-14(u) and NDAC 69-05.2-05-02(3). (PJR)

### **Section 2.9 – Climatological Data**

68. Please update section 2.9.1 (Climatological Information) to include up to date information. (PJR)
69. Please update section 2.9.2 (Air Quality) to include information from the NDDEQ, as it still references outdated information from NDDOH. (PJR)

### **Section 3.1 – Operations – General**

70. NDAC 69-05.2-05-08(1) states that “The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction.” However, there are tracts within the proposed permit addition area, the E½ of Section 32, T145N, R88W and the SW¼ of Section 11, T144N, R89W, that are a quarter section or larger in size where no mining or support activities are proposed. Please provide the details of any disturbance proposed in each quarter section and clearly depict the anticipated disturbance boundary on the appropriate maps as required by NDAC 69-05.2-09-02. Also, if specific disturbances are planned for these quarter sections, the surface owners of these tracts must be renotified as

required under NDCC 38-18-06(1) as that notice “must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the extent of the land disturbance on the surface owner’s use of the property”. The maps that were previously provided to the surface owners did not provide the required information for these tracts. If no land is to be affected, the statutory application elements cannot be satisfied; therefore, those lands cannot be permitted. Please remove Section 32 and the SW¼ of Section 11 from the permit addition area as the application does not show any necessity for permitting. NDCC § 38-14.1-15 & NDAC § 69-05.2-05-02. (GAW/PJR)

71. With Revision 31, Coteau is proposing to modify the mineral removal boundary in Sections 28 and 33, T145N, R88W. Please provide justification for this mine plan change in Section 3.1 (Operations – General). If mining is not planned through all of Section 33 then Reclamation Variance Area No. 4 should be pulled back to the mineral removal boundary in Section 34. (GAW)
72. Please update the Human Burials and National Register of Historic Places Eligible Sites narrative on page 7 of Section 3.1.1.2 (Mining Method Narrative) to include cultural resource information for the Revision 31 addition area and depict cultural resource sites in the addition area in Section 3.1.3 (Pit Layout and Facilities Map) as required by NDAC 69-05.2-08-02(1)(h). (GAW)
73. Please update the Federal Coal narrative on page 8 of Section 3.1.1.2 (Mining Method Narrative) to include information about new federal coal tracts proposed to be mined with Revision 31. (GAW)
74. Please update the Projected Reclamation Time Schedule on page 2 of Section 3.1.1.3 (Reclamation Procedures and Schedule) to include mining and reclamation activities beyond the year 2025 and clarify if Coteau is anticipating a variance from contemporaneous reclamation requirements for the final pit area. (GAW)
75. For compliance with NDAC 69-05.2-08-02(1)(e), please update Section 3.1.1.6 (Landowner and Public Access) to include the location and current use of all buildings on and within one-half mile of the permit area. Buildings south and west of the addition area are not depicted in Section 3.1.2 (Pre-Mining Topography and Existing Structures Map) and current building use information provided in Section 3.1.2 for farmsteads in the addition area does not satisfy the requirements of NDAC 69-05.2-08-02(1)(e). (GAW)
76. For compliance with NDAC 69-05.2-08-02(1)(f & g), please update Section 3.1.1.6 (Landowner and Public Access) such that it includes a discussion about all surface and subsurface manmade features within, passing through, or passing over the permit area, and public roads within 100 feet of the permit area. (GAW)
77. Please update the Consolidated Blasting Plan to include plans for blasting in the Revision 31 addition area. This would include updating the Blasting Map (Section B-2) to include the Revision 31 addition area and updates to the permit boundary of Permit NACT-0201. The plan should identify protected and unprotected structures in and adjacent to the Revision 31 addition area with limited and alternate blast weights and provided blast weight isopleths for occupied buildings in the Revision 31 addition area. Please also update Section C-4 (Owners of Structures Who Have Received a Pre-blast Notice and Opportunity for Pre-blast Survey) and Section D-1 (Ground Vibration and Airblast Monitoring Program Narrative) if necessary. (GAW/JAR)

78. For compliance with NDAC 69-05.2-09-02, please include the pre-mine topography of lands north, south, and west of the addition area in Section 3.1.2 (Pre-Mining Topography and Existing Structures Map). (GAW)
79. For compliance with NDAC 69-05.2-08-02(1)(e, f & g), please update Section 3.1.2 (Pre-Mining Topography and Existing Structures Map) to depict all surface and subsurface manmade features within, passing through, or passing over the permit addition area. This would include farmsteads, roads, electric lines, pipelines and features and facilities on and within one-half mile of the permit addition area. County Road No. 13 is not depicted along the west side of the addition area and an Oliver-Mercer underground electric line dead ends in the SE¼ of Section 31, T145N, R88W. (GAW)
80. Section 3.1.3 (Pit Layout and Facilities Map) depicts mining features within 500 feet of an occupied dwelling in the W½ of Section 12 and the E½ of Section 11, T144N, R89W. This includes the 2033 and 2034 pits within 500 feet of the occupied dwelling on land owned by Dallas and Rachel Buchfinck (Tract 120). Please update the Pit Layout and Facilities Map by removing all mining activities within 500 feet of occupied dwellings or provide a signed waiver from the landowner that authorizes Coteau to conduct mining activities within 500 feet of any occupied dwelling. NDCC 38-14.1-07(5) prohibits disturbance within 500 of any occupied dwelling unless approved by the owner. These agreements need to be secured prior to depicting disturbances within 500 feet of an occupied dwelling on the Pit Layout and Facilities Map. (JAR/GAW/JWE/MLJ)
81. In addition to Item No. 88 above, Section 3.1.3 (Pit Layout and Facilities Map) depicts future sediment pond P-W11-05 as being constructed on a road that appears to access the Dallas and Rachel Buchfinck (Tract 120) farmstead in the E½ of Section 11, T144N, R89W. Page 2 of Section 3.1.1.6 (Landowner and Public Access) states that this road provides access to adjacent cropland and pastureland and that it will be disturbed by mining. However, Section 3.1.1.6 does not mention access to the farmstead and Coteau's plans to maintain access if this farmstead is to remain in place. (MLJ)
82. Please identify the intermittent stream in the NW¼ of Section 12, T144N, R89W in Section 3.1.3 (Pit Layout and Facilities Map) for compliance with NDAC 69-05.2-16-20. Also, update Section 3.1.1.9 (Intermittent Stream Buffer Zones) to clarify if Coteau is planning to avoid this stream segment or if disturbance is planned within 100 feet of the stream corridor. (GAW)
83. Please revise the Consolidated Blasting Plan (Section 3.1.1.7) to include the necessary updates for the seismographs as stated in an email from Michael Berg dated March 13, 2024. Also, please include any other necessary updates to the blasting plan as considered necessary for mining in the Revision 31 addition area. (PJR)
84. Please update Section 3.1.8 (Temporary Cessation of Mining Plan) to clarify why Section 3.1.8.1 (Temporary Cessation of Mining Plan View and Typical Cross-Section) is being updated with Revision 31. If this is a result of post-mining topography changes proposed with Revision 31, then that should be stated. (GAW)

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

85. For compliance with NDAC 69-05.2-13-05, please reconsider proposing SPGM stockpiles in the watershed above sediment pond P-W02-03 in the N½ of Section 2, T144N, R89W to eliminate the need for sediment pond P-W02-03. Perhaps these SPGM piles could be temporarily placed on regraded lands to minimize disturbance on lands where coal is not being removed. The surface owner notification map does not depict SPGM stockpiles or the disturbance boundary in Section 2 for compliance with NDCC 38-18-06(1). (GAW/PJR)
86. Section 3.3.2 (Surface Water Management Plan Map) does not include the watershed boundaries on the adjacent areas to the land being added with Revision 31 as required by NDAC 69-05.2-09-09(1)(a)(1). Please extend each watershed boundary to include areas adjacent to the land being added to the permit with Revision 31. (JAR)

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

87. In areas where no disturbance is planned, please correct Section 4.1.2 (Post-Mining Topography and Land Use Map) and all applicable tables in Section 4.1 (Post-Mining Land Use Plans), since Section 4.1.2 incorrectly shows native grassland in the NE¼ of Section 33 and the SE¼ of Section 28 when the current land use is cropland in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map). (WWS)
88. Please depict undisturbed and replacement native shrubs and tree communities in the Revision 31 addition area in Section 4.1.2 (Post-Mining Topography and Land Use Map) consistent with the legend and the permit's established protocol. (GAW)
89. Please depict undisturbed farmsteads (residential) and shelterbelts in the Revision 31 addition area in Section 4.1.2 (Post-Mining Topography and Land Use Map) consistent with established procedure. (GAW)
90. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) indicates that 2.2 acres of wetland are being restored in the SE¼ of Section 1 (Tract 29), but no wetland acreage is depicted in the SE¼ of Section 1 in Section 4.1.2 (Post-Mining Topography and Land Use Map). Please correct this error. (GAW)
91. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) indicates that 0.8 acres of wetland are being restored in the W½ of Section 1 (Tract 113), but no wetland acreage is depicted in the W½ of Section 1 in Section 4.1.2 (Post-Mining Topography and Land Use Map). Please correct this error. (GAW)
92. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) indicates that 0.8 acres of wetland are being restored in the NW¼ of Section 12 (Tract 121), but no wetland acreage is depicted in the NW¼ of Section 12 in Section 4.1.2 (Post-Mining Topography and Land Use Map). Please correct this error. (GAW)
93. Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) indicates that pre-mine woodland and seasonal and more permanent wetland acreage are to be replaced in the SW¼ and SE¼ of Section 1 (Tracts 113 & 20, respectively), but these features are not depicted in Section 4.1.2 (Post-Mining Topography and Land Use Map). Please depict these land uses and provide design plans for Reclamation Division to review. (GAW)

94. Section 4.1.2 (Post-Mining Topography and Land Use Map) proposes four new wetlands in the S½ of Section 27, T145N, R88W, but Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) has not been updated to account for this acreage. Please update Section 4.1.3 and Section 4.1.1 (Post-mining Land Use Narrative) to provide rationale for creating wetlands in Section 27 where wetland acreage did not exist prior to mining. (GAW)
95. Section 3.1.3 (Pit Layout and Facilities Map) indicates that prime farmland is to be mined in the SE¼ of Section 28 and NE¼ of Section 33 in Mine Area 1, but no potential prime farmland landscapes are depicted for these areas in Section 4.1.2 (Post-Mining Topography and Land Use Map). Please revise to clarify where this prime farmland is to be replaced. (GAW)
96. Please include the full legal description of each tract in Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table). (WWS)

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

97. Narrative in Section 4.4.1 (Narrative) states that temporary wetlands will be replaced by differential settling. The Reclamation Division believes it unlikely that sufficient temporary wetland acreage will form on the Revision 31 addition area given the gradient of the proposed post-mining slopes. Please consider revising Section 4.4.1 to state that temporary wetlands are expected to form in recreated ephemeral drainages, where they existed prior to mining, on each ownership tract. (GAW)

#### **Additional Items – More Technical**

##### **Section 2.2 – Surface Water Hydrology**

98. The third sentence of the third paragraph on page 1 of Section 2.2.4 (Surface Water Probable Hydrologic Consequences) references 14,500 acres. Please revise this sentence to update the acreage reference to account for the current permitted acreage including the added acreage for Revision 31. (JAR)

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

99. Please consider replacing wetlands near their original positions to allow for the contribution to the localized groundwater recharge of these areas. The repositioning of wetlands may diminish groundwater systems that may have long-term impacts and would need to be addressed in the PHC. This may be necessary to achieve the post-mining hydrologic balance and prevent long-term degradation to water quantity. (PJR)

##### **Section 2.4 – Pre-Mining Land Use and Vegetation**

100. The last sentence of the first paragraph in the Methods (Expansion Area) subsection on page 5 of Section 2.4.1 (Methods) lists the incorrect Range location for Section 32. Please revise the Range location to 88W instead of the incorrect 89W. (WWS)
101. Please review the land use classification of the drainageway in the SE¼ of Section 32. This drainageway is classified as cropland in Section 2.4.3 (Pre-Mining Land Use and Vegetation Map). Aerial imagery indicates this area has been hayed for the past 5 years and is not part of the adjacent cropland fields. Given the size and use of the drainageway (12 acres), it seems it should be classified as something other than cropland. (GAW)

102. Section 2.4.4 (Pre-Mining Land Use and Ownership Table) has been revised with Revision 31 to classify 19.7 acres of low shrub communities as woodland acreage. Please clarify if all this low shrub acreage is associated with tall shrubs and/or trees. Low shrub communities not associated with tall shrub or tree communities should not be classified as woodland acreage according to narrative in Section 2.4.1 (Methods). Please review and revise to provide clarity. (GAW)
103. Section 2.4.17 (Pre-Mining Woodland Acreage Table) provides a breakdown of the woodland community types within each ownership tract, so it is not necessary to include woodland community types in Section 2.4.4 (Pre-Mining Land Use and Ownership Table). Please review and revise to provide clarity. (GAW)

### **Section 2.5 – Soil Resources**

104. Please add symbols in the map legend of Section 2.5.10 (Soil Survey and Prime Farmland Map) for the Pedon Sampling Borehole, Saline Seep, and Sodic Spot. These features are currently included in the map legend but their respective map symbols are not included. (MLJ/TLD)

### **Section 3.1 – Operations – General**

105. The sediment pond in the SW¼ of Section 26, T145N, R88W appears to be labeled as P-W26-06 and P-W26-06R in Section 3.1.3 (Pit Layout and Facilities Map). Please review and revise the label of this pond as necessary in Section 3.1.3. (MLJ)
106. Please correct the associated disturbance boundary in the SW¼ of Section 2, T144N, R89W in Section 3.1.3 (Pit Layout and Facilities Map) as it does not match the map in Section 4.1.2 (Post-Mining Topography and Land Use Map). Additionally, the mining disturbance limit is also depicted beyond the associated disturbance boundary in the SW¼ of Section 2, T144N, R89W and the SW¼ of Section 34, T145N, R88W. (WWS/PJR)
107. Please correct the associated disturbance boundary in the N½ of Section 8, T144N, R88W in Section 3.1.3 (Pit Layout and Facilities Map) as it currently shows overburden stockpile OB-W08-01 and subsoil stockpile SS-460 outside of the disturbance boundary. (PJR/WWS)
108. Please include the federal coal tract in the N½ of Section 2 in Section 3.1.4 (Extended Mining Plan Map). (WWS)

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

109. The sediment pond in the SW¼ of Section 26, T145N, R88W appears to be labeled as P-W26-06 and P-W26-06R in Section 3.3.2 (Surface Water Management Plan Map). Please review and revise the label of this pond as necessary in Section 3.3.2. (MLJ)

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

110. Please add the associated disturbance boundary to the legend in Section 4.1.2 (Post-Mining Topography and Land Use Map). (WWS/PJR)

Mr. Michael Berg

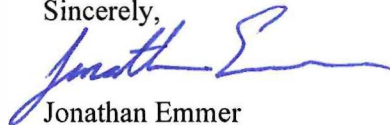
March 4, 2026

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111. Please label the cropland in the SW¼ of Section 21 in Section 4.1.2 (Post-Mining Topography and Land Use Map). (WWS)
112. Please reconsider proposing to convert pre-mine native grassland to cropland in the NW¼ of Section 12, T144N, R88W (Tract 121). The Reclamation Division believes the slopes proposed are too long and too steep to accommodate cropland. Two ephemeral stream drainages should be restored in the NW¼ of Section 12 to complement the surrounding terrain and to restore the approximate original contour. Although the surface owners of the NW¼ of Section 12 requested areas with gentler slope be reclaimed to cropland, the Reclamation Division believes more prominent drainages should be created to restore the hydrologic corridors and the approximate original contour. (GAW)
113. Please reconsider proposing to convert pre-mine native grassland to cropland in the SE¼ of Section 1 (Tract 29). Two ephemeral stream drainages should be restored in the SE¼ of Section 1 to complement the surrounding terrain and to restore the approximate original contour. Although the surface owners reference a post-mining topography map in their preference statement, they did not request land use change on this tract. It is concerning that a large block of contiguous pre-mine native grassland in the S½ of Section 1 and Section 12, T144N, R89W and Sections 6 and 7 of T144N, R88W is to be fragmented with cropland which is inconsistent with Coteau's stated plans to create large blocks of native grassland. (GAW)
114. Please reconsider proposing to convert pre-mine native grassland to cropland along the northern portion of the N½NW¼ of Section 11 (Tract 118) where slopes exceed 6 percent, and consider revising the plan to eliminate creating a small, isolated tract of unmanageable native grassland. The drainageway below created wetland CW-W02-02 should be returned to native grassland to maintain stability, and a water source should be provided for the native grassland that is to remain undisturbed in the NW¼ of Section 11. (GAW)
115. Please move stock pond SP-W01-01 to a location in the W½ of Section 1 (Tract 113) where the watershed for the pond is at least 40 acres in size. The watershed above this pond appears to be only about 10 acres in size. (GAW)
116. Please revise Section 4.1.3 (Pre- and Post-Mining Land Use Comparison Table) to reflect the correct total permitted acreage. The permit is listed as containing 19,395.4 acres but the table states the total as 19,471.6 acres. (WWS)

If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer  
Director  
Reclamation Division

cc via email only: Dillon Belisle (dillon.belisle@nacoal.com)