

APPROVED

DATE: 10-22-08  
[Signature]

**MOTION**

**October 22, 2008**

**Dakota Westmoreland Corporation  
Revision No. 24, Permit KRSB-8802  
Approval**

**Case No. RC-08-162**



I move the Commission approve Revision No. 24 to Surface Coal Mining Permit KRSB-8802 held by Dakota Westmoreland Corporation to add 54.5 acres to this permit for the Beulah Mine and to update the appropriate sections of the permit for the added area.

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**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**Memorandum**

**TO:** Commissioners Wefald, Cramer and Clark  
Darrell Nitschke  
Illona Jeffcoat-Sacco

**FROM:** Mike Berg, Jim  Deutsch and Dean  Moos

**DATE:** October 15, 2008

**SUBJECT:** Application for Revision No. 24 to Permit No. KRSB-8802 held by Dakota Westmoreland Corporation, Case No. RC-08-162

On April 15, 2008, Dakota Westmoreland Corporation (DWC) filed an application for Revision No. 24 to Permit No. KRSB-8802 to add 54.5 acres to this permit at the Beulah Mine. The added acreage is located in the N½ of Section 14, T143N, R88W, Mercer County. The permit revision updates the appropriate sections of the permit to reflect the area being added to the permit and adds plans for the construction of the walkway for moving a dragline and loading shovel. The Reclamation Division has completed its review of this revision and respectfully recommends that it be approved.

The area being added to the permit is located along the west side of the existing permit boundary (just west of State Highway 49) and adjoins Permit KRSB-8603. A portion of the area being added to the permit was previously permitted and bond released as industrial land used in support of Coyote Station's nearby ash disposal pit.

The addition of 54.5 acres to the existing permit will allow for the construction of a walkway for moving a large dragline and loading shovel from Permit KRSB-8802 (east of Highway 49) to Permit KRSB-8603 (west of Highway 49) at the Beulah Mine. Construction of the dragline walkway on the west side of Highway 49 will begin shortly after the revision is approved and it is anticipated that the dragline and loading shovel will be moved in April 2009. Construction of the walkway also requires the re-disturbance of reclaimed land on the east side of the highway. The walkway will cross Highway 49 and DWC has provided plans for a temporary detour of Highway 49. These plans have been reviewed and approved by the North Dakota Department of Transportation (DOT).

With the added acreage, the total permit area will now contain 4,905.9 acres. The surface of the added area is owned by Coyote Power Plant Partners and the coal is under federal ownership. However, no coal will be mined from this added acreage as only surface disturbances are proposed. Construction and reclamation procedures will be similar to those presently approved in the permit. The pre-mine and proposed post-mine land use of the additional area is primarily native grassland.

DWC proposes delaying reclamation of the portion of the walkway corridor west of Highway 49 until a decision is made on extending its current contract with the Coyote Power Station. If this contract is extended, or if DWC enters into a contract for additional customers, mining would resume east of Highway 49. In any event, DWC plans to reclaim the walkway in 2016. A variance from the three-year reclamation requirement under NDCC 38-14.1-24(14) is justified and we recommend a variance be allowed for the walkway corridor on the west side of State Highway 49.

Revision No. 24 was deemed a significant revision to Permit No. KRSB-8802 making it subject to the public notice requirements. DWC submitted affidavits of publication of the required newspaper notices. We notified the appropriate agencies, affected landowners, and advisory committee members of the revision application. We received no objections or requests for informal conferences on this revision application.

As previously noted, DWC received approval from DOT to conduct mining activities within and adjacent to the highway right-of-way. However, DOT's approval process did not provide for public notice with an opportunity for a hearing. Therefore, we published a newspaper notice on August 3, 2008 of the applicant's plans to conduct mining related activities within and adjacent to the highway right-of-way and stated that any interested person could request a public hearing with the Commission on the matter. No written comments, objections or requests for a hearing were received.

The updated worst-case reclamation bond cost estimate for this permit area (including the area being added to the permit) shows that the current bond amount of \$9,028,304.67 is sufficient to cover the worst-case reclamation condition that will occur during the current permit term. DWC has filed a stipulation of surety bond increase to add the 54.4 acres to the bond area.

Attached for your consideration at the October 22<sup>nd</sup> Commission meeting are the proposed motion, revision approval form, and newspaper notice that must be published following revision approval.

#### Attachments

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