



Public Service Commission

State of North Dakota

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Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
TDD 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

May 12, 2009

Mr. Jesse Noel, P.E.
Manager, Engineering & Environment
Dakota Westmoreland Corporation
Beulah Mine
P.O. Box 39
Beulah, ND 58523-0039

Dear Mr. Noel:

The Reclamation Division has completed a technical review of the application for Revision 25 to Permit KRSB-8802 which proposes to cease mining activities east of Highway 49 and responds to items in our latest midterm review. The following items must be satisfactorily addressed prior to Commission approval:

Section 1.4 - Business Entity Information

1. If necessary, please update the ownership and control information in Section 1.4 to reflect the most recent changes in officers and directors. (DKM)
2. Pages 1.4.16 and 1.4.39 plus Exhibit 1.4.1 indicate that the USA owns the coal in the SE¼ of Section 14; however, pages 1.4.30 and 1.4.36 list Jonathan W. A. Liebelt. Please explain or make the necessary corrections. (SAS)

Section 2.2 - Surface Water Hydrology - Inventory and Monitoring Plan

3. Please make the following corrections to the list of ponds in the discussion of surface water discharge from the permit area on page 2.2.3: (1) Remove Pond 63 from the list of ponds because it was reclaimed in 2007; and, (2) Add Pond 71 to the list of ponds because it is still in operation and is assigned an NDPDES discharge point in an active mining area. (WTG)

4. Please make the following updates to Exhibit 2.2.7, the Surface Water Monitoring Map, with regard to NDPDES points and watershed boundaries: (1) Please remove the discharge point notations for sedimentation Ponds 41, 63, and 64 because the discharge points were released from the NDPDES permit on July 12, 2002; (2) Please remove the discharge point notations for sedimentation Ponds 50 and 69 because they have never been assigned a discharge point for the NDPDES permit; and, (3) Please depict the watersheds for Ponds 70 and 71 consistent with those shown on Exhibit 3.2.1, and add a discharge point notation for Pond 71 because it was assigned a discharge point for the NDPDES permit on March 6, 2006. (WTG)
5. Please address the inconsistencies on page 2.2.5 for annually sampling the three intermittent stream Sites 09DDD-E/ST, 16DDA-E/ST, 20AAD-E/ST and perennial stream Site 25DCC-E/ST after a runoff event during the fall, versus sampling the stream sites annually during low base flows in the fall. Also, please address the limited sampling data collected during the past five years. As shown on the 2008 fourth quarter NDPDES discharge monitoring report, sampling for all four sites has been attempted in late November or December since 2004 which has resulted in sampling the intermittent sites only two times since 2004. (WTG)
6. Please update the Probable Hydrologic Consequences section to describe how the post-mine topography proposed in Revision 25 will change watersheds, and how the proposed changes will affect flow of intermittent tributary streams to Brush and Otter Creeks and the undisturbed wetland in the southeast corner of Section 19. For example, it appears that the watershed for the intermittent tributary to Brush Creek that is presently controlled by temporary Pond 70 will increase significantly. As shown on attached Figure 1 near the end of this letter, the pre-mine watershed of Pond 70 was about 480 acres, but it appears that the watershed will increase to about 700 acres based on the post-mine topography shown by Exhibit 3.5.3. Also, address any changes to the watershed of the undisturbed wetland located in the southeast corner of Section 19. The update should also include a discussion of how the post-mining watersheds have been designed to prevent any material damage to the hydrologic balance outside the permit area, as required by NDAC 69-05.2-08-04(3) and NDAC 69-05.2-16-01(1). (WTG/MDB)

Section 2.3 - Ground Water Hydrology

7. The narrative response and update of Table 2.3.2 in response to Midterm Item No. 11 is adequate; however, the beginning of the paragraph on page 2.3.24 indicates there are no water supply wells screened in the Spaer interval within the permit, adjacent or general areas. Although we do not dispute that statement, the interpretation of the Aquifer Material column of Table 2.3.2 should be more specifically labeled, so that those screened intervals or zones that are generically labeled as "coal" should have the named coal seam listed for future reference. (BEB)

8. It would be beneficial if the legend data map text, borders, croplines, etc. of the Exhibits could all be bolded. Also Exhibit 2.3.6 has a green line (assumed to be watershed delineation) on the right side of the map that probably doesn't need to be there. Please consider addressing these issues. (BEB)
9. As a reminder to DWC and as was discussed during our August 5, 2008 meeting, please incorporate language into the ground water monitoring plan of Permit KRSB-8802 that outlines the location details and an estimated timeline for installation of post-mining ground water monitoring wells within the Charlie and Orange Pit areas following reclamation. (BEB)

Section 2.7 - Land Use

10. Please make the following corrections to the permanent pond table on page 2.7.4: (1) Pond 11 is located in the NE $\frac{1}{4}$ of Section 10, rather than the SE $\frac{1}{4}$; and, (2) Pond 30 is located in the SW $\frac{1}{4}$ of Section 11, rather than the SE $\frac{1}{4}$ of Section 10. (WTG)
11. The first paragraph on page 2.7.5 has been revised to indicate that the reclaimed wetland will no longer also serve as a water source for the tame pastureland. The paragraph states that cattle will use the water source inland located south of the county road, but we understand that the underpass in the road was removed due to potential runoff events from Pond 70. Please review and address in the narrative how water will be supplied to the tame pastureland in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24. If the cattle underpass in the road was removed because of mining activities, then a replacement water source will need to be provided. (GAW)
12. Follow-up to Midterm Item No. 13: DWC is proposing to change the post-mine land use of lands disturbed prior to 1969 from hayland and fish and wildlife grassland habitat to cropland in the S $\frac{1}{2}$ of Section 12. In addition, the post-mining land use of a portion of the area in the SE $\frac{1}{4}$ of Section 12 is being changed from hayland to cropland. Please update the permit with information showing that this land is suitable as cropland, i.e. slopes and topsoil and subsoil respread depths, and include updated landowner preference statements, if necessary. (GAW)

Section 3.1 - General Mining Plan

13. Please update the coal production schedule, Exhibit 3.1.1 - Extended Mine Plan and 5 Year Subareas, and Exhibit 3.1.2 - Pit Sequence and History of Mining, to reflect that the 1570 dragline will now be operating in the Charlie Pit longer than previously anticipated. (MDB/WTG)

Section 3.2 - Water Management Plan

14. Please update Exhibit 3.2.1 with the most recent topography. (WTG)

15. Please depict the quarter and section line boundaries on Exhibit 3.2.4 so that one can more easily determine the location of the proposed recreated wetlands and identify the watershed boundary for each wetland. (GAW)
16. Please include calculations showing that the watershed of the wetland located in the southeast corner of Section 19 is of adequate size for the wetland to function properly. This can be accomplished by annual runoff calculations for both pre-mine and post-mine watershed conditions. Please identify steps to mitigate watershed size changes if they have been changed by more than 10 percent to comply with NDAC 69-05.2-16-01(1). (GAW/MDB)
17. Table 3.8.6 indicates that Pond 52 will be reclaimed; however, in the pond summary it is listed as a permanent pond. Please correct the inconsistency. (MSK)
18. With the post-mine watershed of Pond 70 increasing in size (see Figure 1), please review and update the runoff calculations for Pond 70 to ensure that it is adequately sized. This pond is currently designed for a 315 acre watershed. If the pond is no longer capable of storing the runoff from a 10-year, 24-hour precipitation event, or if a spillway has to be modified, please include the appropriate design plans. (DKM)

Section 3.5 - Backfilling and Grading

19. Please update Exhibit 3.5.3, Post-Mining Topography, to address the following:
 - a. Please label the contour elevations on the map so they are clearly legible.
 - b. Please depict the topographic disturbance boundary (all areas where the topography has been changed due to mining) for all areas within Permit KRSB-8802.
 - c. Please update the disturbance boundary in Section 19 to reflect the southward extension of the Charlie Pit beyond what was planned in Revision 24.
 - d. Please remove the contours associated with the SPGM stockpiles in the N½ of Section 19 as these stockpiles will be removed and will not be part of the post-mine topography of the area.
 - e. Numerous post-mine topo contour lines converge near the southeast corner of Section 19 making it difficult to determine how the post-mine topography ties into the adjacent undisturbed topography. Please clarify the topography in this area. (GAW/MDB)
20. Due to concerns with the proposed post-mine topography of the final pit area in Sections 19 and 24, please address the following items:
 - a. To the extent possible, please reduce the slope of the highwall in Sections 19 and 24 to less than 6% to support the intended post-mine land use of cropland. As currently proposed, some long highwall slopes are about 8 percent.
 - b. Please provide a comparison of the pre- and post-mine acreages by slope groups for the SE¼ and SW¼ of Section 19. There was very little pre-mining acreage

with slopes exceeding 6% for these tracts; however, there appears to be a significant increase in the acreage with slopes greater than 6%.

- c. The “pit floor” area in Sections 19 and 24 is extremely flat, having an average slope of less than 0.5% over much of the area. Consideration should be given to modifying the post-mining topography to increase the drainage slope to about 1%, or if that is not possible, to construct a better defined drainage channel through this area. Considering the flat gradient of this area, please discuss what measures will be taken to ensure positive gradient and to prevent differential settling from occurring.
- d. If necessary based on the PHC assessment, please revise the topography to ensure that the undisturbed wetland located in the southeast corner of Section 19 will have a watershed of adequate size.
- e. Please indicate what measures will be taken to ensure that the undisturbed wetland located in the southeast corner of Section 19 will not drain out to the northwest into the final pit area under the current grading plan.
- f. Consideration should be given to extending the watershed/drainage boundary of the northeast watershed of the delayed reclamation area (SE¹/₄NE¹/₄ and NE¹/₄SE¹/₄ of Section 19) further to the southwest.
- g. The long uniform sideslopes proposed in Section 19 and 24 need to be broken up. This can be accomplished by incorporating secondary drainages, additional backsloping into adjacent reclaimed and undisturbed areas, carrying the sideslopes out further, breaking the slopes up with terraces, etc. (GAW, MDB, DKM)

(Once these items are addressed along with the effects of an additional pit(s) in this area, we will conduct a more detailed review of the grading plan to ensure there is sufficient material available to backfill the final pits and achieve the proposed contours.)

Section 3.6 - Revegetation Plan

21. The discussion on page 3.6.9 concerning the “...primary control area...” depicted on Exhibit 3.6.2a seems to indicate that this control area will be used mine wide. This is **not** the case. The approval given for use of this control area was for only cropland areas being farmed by the same operator. Please revise the annual cropland discussion to clarify this. (SAS)
22. Page 3.6.9 refers to a second control area supposedly depicted on Exhibit 3.6.2a to be used for the Heth properties. This area currently is not depicted. Please show this control area on the exhibit. (SAS)

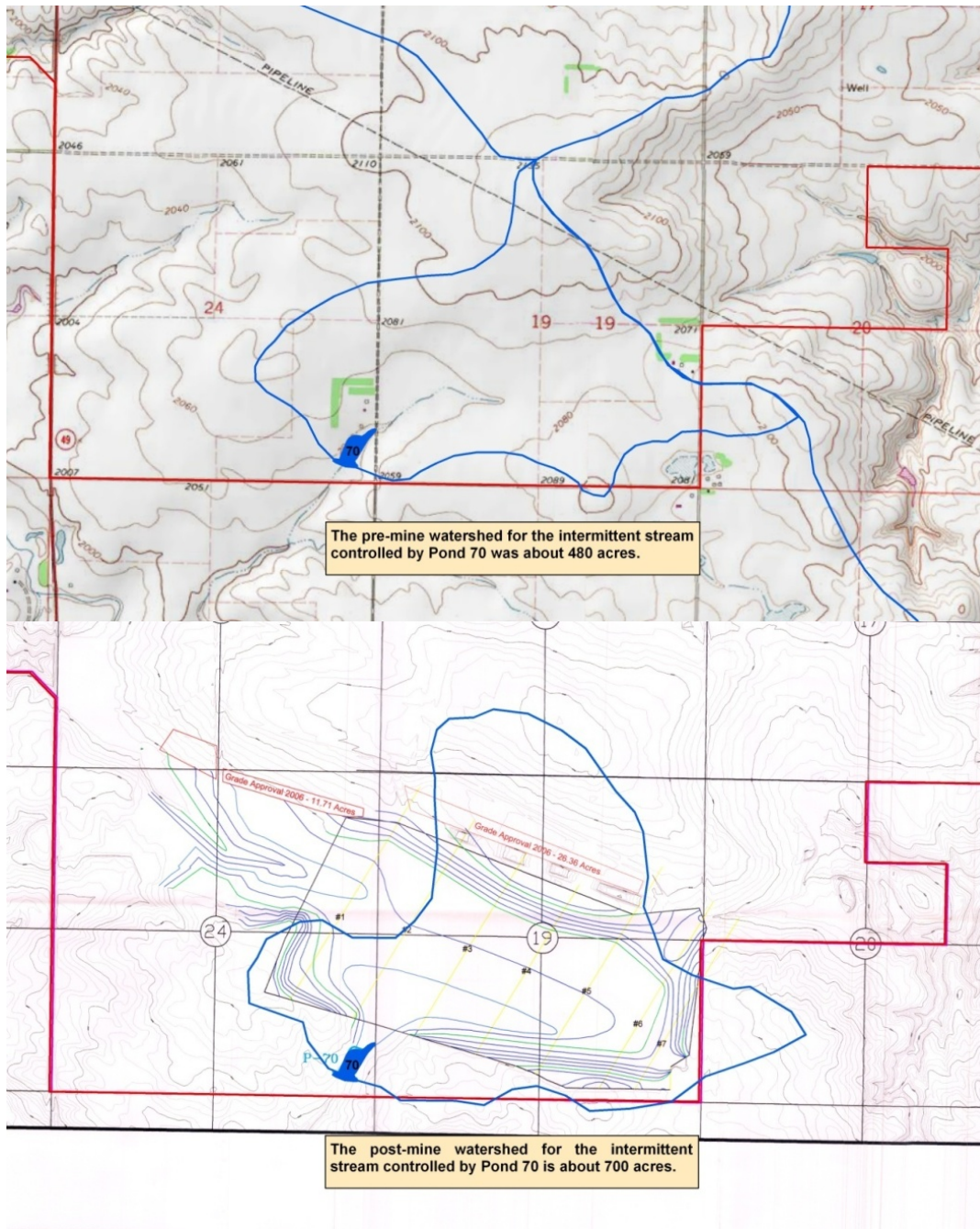
Section 3.7 - Time Schedules

23. Please update Table 3.7.1 and the appropriate narrative for the Orange and Charlie Pits to reflect the variances or delays needed to reflect the delayed reclamation of these final pit areas. The delayed reclamation areas should be clearly identified and the appropriate

justification to support the delayed reclamation must be provided. An estimated schedule for completing reclamation of all delayed reclamation areas must also be provided. (SAS & DKM)

Section 3.8 - Reclamation Cost Estimates and Performance Bond

24. The reclamation cost estimate was not reviewed at this time and will be reviewed once it is determined that the post-mine topography is acceptable. No updates are required to this section at this time, but the January 2009 Variable Cost updates may be used in calculating the bond amount when updates are required. (MDB)



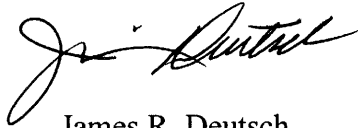
Mr. Jesse Noel
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Figure 1. Changes in watershed size of the intermittent stream controlled by temporary Pond 70 from pre-mine conditions (upper) to post-mine conditions (lower) based on topographic changes proposed with Revision 25 to Permit KRSB-8802.

We also received the enclosed letters from Darell Herman expressing his concerns regarding the post-mining topography and elevation changes in the W½ of Section 19 and requesting an informal conference on this application. We will be contacting Mr. Herman to discuss his concerns prior to scheduling the informal conference. Also, enclosed are two letters we have received from Dennis Neuberger on the application. Please address his concerns about the land use for the 1.5 acres that he is concerned about.

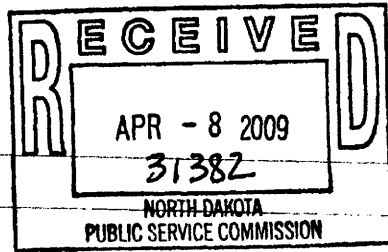
If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

Enclosures



Beulah, N.D.
4-7-09

P.S.C.

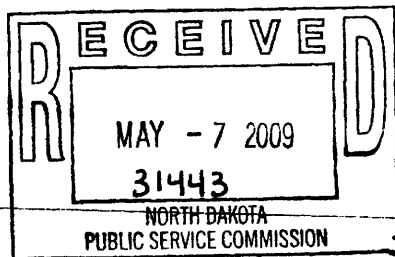
I received by Certified Mail from your office that addresses the revision of Mining permit No. 25 KR5B-8802 which includes the S $\frac{1}{2}$ of section 7-143-87 located in Oliver County.

As the Surface and Mineral owner of that tract of land I am asking if the revision of the permit changes anything as far as post mining and reclamation activities on that property.

I will appreciate a response to the question as to any changes and if any, what they would be.

Sincerely,

Lennis Neulinger
2044 59th Ave S.W.
Beulah, N.D. 58523.



Beulah, N.D.
5-5-09

Mr. James Deutsch:

Subject: Revision 25 to permit KRSB-8802

I am not in agreement to change any acreage of land to hayland from a crop land designation including the 1.5 acres as described in your April 21 letter.

When I purchased this property, that area was designated as cropland, pre-mining and post mining and I paid a price based on cropland values.

By changing cropland to hayland as proposed I stand to lose crop base acres.

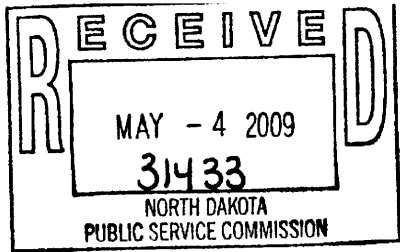
The U.S.D.A. also requires cropland acres for the maximum monetary return on the land.

This change could also affect other lands that is on in section 17.-142-87

I have both maps that indicate those acres as cropland, both pre and post mining.

I am requesting that no change be made because I stand to lose a lot from U.S.D.A. if change is made, it would also drop the land value on that property from cropland to pastureland prices.

Alennis Neulanger - 2044 59th Ave S.W.
Beulah, N.D. - 58523



DAKOTA WESTMORELAND
COAL

REVISION NO 25
PERMIT KRSB-8802

CASE NO RC-08-612

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

April 29, 2009

State of North Dakota
Public Service Commission

Dear Sirs:

I am Darell Herman, Personal Representative for the Marguerite Herman Estate which owns the West 1/2 of Section 19-143-87 in Oliver County. I am responding and expressing disappointment to the Dakota Westmoreland Surface Coal Mining Permit KRSB-8802 at the Beulah Mine.

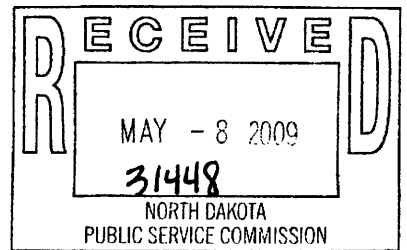
Your letter of March 25, 2009 states that there is significant changes to the post-mine topography of this property. I have met with representatives of the Dakota Westmoreland and do not agree with the huge elevation differences that they are proposing for the property. The family has owned the property for many years and I have farmed this land since 1970 prior to mining and am currently farming the portion of land that is not being mined.

I do feel that Dakota Westmoreland has a legal obligation to bring the W 1/2 of 19-143-87 closer to original topography levels.

I appreciate the notice from the Public Service Commission sharing my concerns about the post-mine topography of Section 19-143-87 and would like to meet with someone from the PSC staff to review the drainage issues and the major elevation changes. Thank you for any consideration given this letter.

Sincerely,
Darell Herman

Darell Herman
Personal Rep.
Marguerite Herman Estate



FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

May 5, 2009

State of North Dakota
Public Service Commission

Dear Sirs:

I would request an informal conference with the Public Service Commission on Dakota Westmoreland Corporation Revision No 25, Permit KR5B-8802 Application, Case No. RC-08-612.

I request an informal conference because of the significant changes to the proposed post-mine topography and drainage issues on the W $\frac{1}{2}$ -19-143-87 in Oliver County.

Thank you for your consideration.

Sincerely

A handwritten signature in cursive script that reads "Darell Herman".

Darell Herman
Personal Rep.
Marguerite Herman Estate