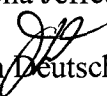
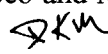


PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Clark, Kalk and Cramer
Darrel Nitschke, Executive Secretary
Illona Jeffcoat-Sacco and Mark Gruman

FROM: Jim  Deutsch, Dean  Moos and Guy Welch

DATE: January 20, 2011

SUBJECT: Application for Revision 25 to Surface Coal Mining Permit No. KRSB-8802 held by Dakota Westmoreland Corporation, Case No. RC-08-612

Summary – Dakota Westmoreland Corporation (DWC) filed the application for Revision No. 25 to Permit KRSB-8802 for the Beulah Mine on July 25, 2008. This revision proposed the cessation of mining in areas east of State Highway 49 south of Beulah and includes reclamation plans for the final pits. In addition, this application addressed required updates that were identified during a midterm review of the permit by staff. The Reclamation Division has completed its review of the application and respectfully recommends that it be approved.

Discussion – Revision 25 to Permit KRSB-8802 was filed to revise mining and reclamation plans to cease all coal mining in DWC’s mine area east of State Highway 49. Since this revision application was filed, coal removal has been completed from these areas and backfilling of the final pit areas has began. Under previously approved plans, DWC had planned to continue mining further to the south. However, due to coal quality and overburden and spoil stability problems, all coal production at the Beulah Mine has been shifted to Permit KRSB-8603, located west of Highway 49 and southwest of the Coyote Station. This revision also updates the postmining land use plans, including changing the location of two postmining wetlands.

The postmining topography of the final pit areas is the most significant change to the reclamation plans as a result of the cessation of mining in this area. The final pit areas will be backfilled and graded over the next three years according to the new grading plan and topsoil and subsoil respreading will be completed by March 1, 2015. DWC has committed to backfill at least three million cubic yards of spoil annually and to submit detailed annual reports showing that reclamation of the final pit area is proceeding as planned. However, as discussed during a Commission meeting last summer, we believe DWC needs to provide quarterly reports on the reclamation work that is completed. We are recommending that a condition be attached to the approval of Revision 25 requiring the quarterly reports with estimated quantities of material moved. We believe this is appropriate since an additional two years is proposed to complete reclamation work. Unless the Commission grants additional time to complete reclamation work,

provisions in the reclamation law require that all reclamation work through the initial seeding be completed within three years of the completion of mining.

Revision 25 also updates other sections of the permit in response to our midterm review of the permit. These include the business entity and compliance information, property ownership information, surface and ground water hydrology, water management plans, and revegetation plans.

We recommend that two conditions be attached to Revision 25. As previously noted, the first requires DWC to submit quarterly reports on the progress of reclamation work on the final pit areas. The second condition requires DWC to obtain the necessary approvals from the road authorities (Mercer and Oliver Counties) if the reclamation activities (backsloping of the final highwall) will disturb areas within 100 feet of the county road on the south side of the permit area.

Dakota Westmoreland published notices of the renewal and revision applications in the Bismarck Tribune, Center Republican and Hazen Star. We also sent notices to the affected landowners, appropriate agencies and advisory committee members as required. Two landowners within the permit area submitted comments with one of them requesting an informal hearing.

Darell Herman, Personal Representative for the Marguerite Herman Estate, surface owner of the W $\frac{1}{2}$ of Section 19, had concerns with the proposed changes to the postmining topography and drainage in the W $\frac{1}{2}$ of Section 19 and subsequently he requested an informal conference. The informal conference was held on July 16, 2009, and Mr. Allen Hoberg was the Hearing Officer. Mr. Hoberg's recommended order that was adopted by the Commission required DWC to address Mr. Herman's concerns when responding to the Reclamation Division's technical review of the revision application. Based on Mr. Herman's and staff concerns, DWC further modified the proposed postmining topography map. Reclamation Division staff members met with Mr. Herman on June 16, 2010, to discuss the modified topography of the final pit area and he seemed satisfied with the latest modification to the proposed postmining topography.

Dennis Neuberger also wrote us a letter in April of 2009 asking if this revision made any changes to his property. No postmining land use changes are being made on his property with this revision and his concerns were addressed in our letter dated April 21, 2009.

Surety Bond No. 64S103557522BCM covers this permit and the bond amount was recently increased to \$10,382,986. This amount is sufficient to cover the remaining reclamation liabilities in this permit area.

Attached are the motion, revision award form, permit conditions, and approval notice for the newspaper publication for your consideration at the January 26, 2011 Commission meeting.

Attachments