

Dakota Westmoreland Corporation

Beulah Mine – P.O. Box 39, Beulah, North Dakota 58523-0039
Phone: (701) 873-4333 • Fax: (701) 873-7784

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PUBLIC SERVICE COMMISSION

January 23, 2009

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

Mr. James R. Deutsch
Director, Reclamation Division
Public Service Commission
600 E Boulevard Ave, Dept. 408
Bismarck ND 58505-0480

Dear Mr. Deutsch:

Re: Revision No. 22
KRSB-8603

The following information is submitted in response to the completeness questions dated December 23, 2008. Individual comments are set forth below followed by Dakota Westmoreland's responses and a listing of revised information. Three CDs containing the revised information are enclosed.

General Formatting, Public Advertisement, Application Form, Miscellaneous

1. Most all of the html hyperlinks to exhibits that are provided in the application narrative sections do not work. Please enable or repair the links. (ALL REVIEWERS)
 - The html hyperlinks have been repaired. Although the disks have been thoroughly checked to ensure they are working, please let us know as soon as possible if the hyperlinks continue not to connect.
2. Please update the public notice to include the requirements of NDAC 69-05.2-10-01(1)(d) which states that the advertisement must include a notice if the applicant is to conduct mining operations within 100 feet of the outside right-of-way of a public road or to relocate a public road. The public notice must include a statement describing the road, the particular part to be relocated, where the relocation is to occur and its duration. In addition, please include a more descriptive narrative of the changes being made to the permit proposed with the revision. The map included with the advertisement must be updated to include the following: a) the township and range; b) county or township roads; and, c) rivers, streams or other local landmarks. Since newspaper advertisements are not published in color the additional area symbol in the legend should be hatched. Ideally, a broken or dashed line should be used for the addition area boundary while the existing permit area boundary would be a solid line. (GAW)
 - The public notice has been updated as requested and is included in Narrative 1.4.

3. Please include a more descriptive narrative of the changes being made to the permit with the proposed revision and/or reference where additional information regarding the changes being proposed can be found. Is this the purpose of the Summary pdf? (GAW)
 - After discussing the question with Guy Welch via phone (January 9, 2009), we determined that the Application form should contain additional information and reference the summary of changes. Also, we determined that this information should be placed into Narrative 1.1. Thus, Narrative 1.1 has been updated to satisfy the information request. Likewise, Narrative 1.1 has been updated with information dating back to Revision 19 (the first electronic submittal).
4. Please update the Resource Recovery and Protection Plan to include all federal coal tracts proposed for mining. It appears that the following federal coal tracts are not included in the R2P2: the NW $\frac{1}{4}$ of Section 20, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 20, T143N, R88W. Please provide our office with a copy of the updated R2P2 information that is submitted to the BLM. (BEB & DKM)
 - After discussing the R2P2 process with Dean Moos via phone (January 9, 2009), all R2P2 information will be sent to the PSC upon submittal. Typically, the R2P2 cannot be submitted until the Federal Coal Lease is approved. After a meeting with the BLM on January 9, 2009, DWC expects the Federal Coal Lease to be approved early this spring. Upon approval, the R2P2 will be submitted and copied to the PSC.

Section 1.4 – Business Entity Information

5. Please include Items B through I of Section 1.4 in the revision application. Currently, only the Identification of Interests (Item A) information is included with the application submittal and Items B through I are missing. Additionally, the Business Entity Information that is provided is footnoted as Revision 24 to KRSB-8802. (BEB & MDB & SAS & GAW)
 - Items B through I have been included in Narrative 1.4. The footnotes have been changed to correspond to Revision 22, KRSB-8603.
6. Exhibit 1.4.1, Ownership Map, indicates only one owner in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20 but the newspaper advertisement shows more. Please correct as necessary. (SAS)
 - After discussing the question with Stephan Schroeder via phone (January 14, 2009), we determined that the “et. al.” designation will suffice for this exhibit with respect to the coal owners of this property.
7. The newspaper advertisement lists Janice Siman as a coal owner in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20 but the notification of intent to mine went to a Janice Sigman. Please correct as necessary. (SAS)
 - The correct spelling is “Sigman”. The newspaper advertisement was an inadvertent misspelling, and will be corrected in future advertisements.

8. Page 2 indicates that the federal coal lease for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 20 is pending. According to the information on Federal Coal Lease NDM 041765 on page 233, these areas are already leased. Please explain or correct as needed. (SAS)
 - The cover pages to Exhibit 1.4.2 have been corrected. Page 233 is correct and the cover page has been adjusted to match to true lease area.
9. Please explain reasons for the second lease referred to on page 216 for the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20. (SAS)
 - The second lease referred to on page 216 was an attempt to state that the original lease had been extended. DWC agrees that referral to the second lease is confusing; thus, Exhibit 1.4.2 has been updated containing only the active lease to the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20.
10. Please update Exhibits 1.4.4, Temporary Roadway & Section Line Closures and Exhibit 1.4.5, 100-Foot Buffer Zone Waivers for the activities planned with this revision to include road closure documentation between Sections 16 and 19, between Sections 17 and 20, which runs east and west, and between Sections 20 and 21 running north and south. Additionally, please address traffic routing plans after road closures. Also, include copies of documents from Mercer County granting approval to mine within 100 feet of the outside right-of-way of the additional public roads within or near the added lands. NDCC 38-14.1-07 & NDAC 69-05.2-06-05(1). (GAW & MDB)
 - Exhibit 1.4.4 has been updated to include road closure documentation and traffic routing plans after road closure. Documents from Mercer Country granting approval to mine within 100 feet of the outside right-of-way have been added to exhibit 1.4.5.

Section 2.0

11. Please update the pre-mine facilities map or other maps that show the location of all surface and subsurface manmade features within, passing through, or passing over the permit area, including electric transmission lines, pipelines, agricultural features, wells, roads, highways, railroads and the other features listed in NDAC 69-05.2-08-02 for the Revision 22 addition area. NDAC 69-05.2-08-02(1)(d) requires documentation of the location and current use of all buildings on and within one half mile of the permit area. It is not clear in the table of contents where this information can be found. (GAW)
 - Exhibit 3.1.6 has been updated to represent all facilities not including supportive hydrologic facilities and legal information (as written in the narrative). You are correct in ascertaining that some features required by NDAC 69-05.2-08-02 were not shown on the exhibit. Railroads, public roads, and cemeteries, and fiber optic lines were all added to the exhibit. The following summary of NDAC 69-05.2-08-02(1) should clarify the particulars:

Sub-Section	Brief Description	Location Within Permit
(a)	land owners	Exhibit 1.4.1
(b)	legal boundaries	Exhibit 1.4.1
(c)	permit area	Exhibit 1.3.1
(d)	drill hole information	Exploration: Exhibit 2.1.4 Hydrology: Exhibit 2.3.1
(e)	buildings/residences	ON MAP
(f)	infrastructure	Transmission: ON MAP Roads: ON MAP Railroads: ON MAP Fiber Optic: ON MAP
(g)	public roads	ON MAP
(h)	cemeteries	ON MAP
(i)	monitoring stations	Wildlife: Exhibit 2.5.2 Hydrology: Exhibit 2.3.1
(j)	underground mines	None present
(k)	previously mined areas	None present
(l)	mining surface structures	Ponds only: ON MAP
(m)	oil and gas wells	None present
(n)	public parks	None present

Section 2.2 – Surface Water Hydrology

12. Please update Section 2.2, including the combined surface and groundwater PHC in Section 2.3(D), to account for the acreage being added with Revision 22. Narratives on pages 2.2.3 and 2.2.4 have not been updated to account for the acreage being added. The only information that has been updated in this section is the potential new NDPDES discharge points. NDAC 69-05.2-08-04. (GAW)

- One Developed Water Resource (DWR) exists in the added Revision 22 acreage. It has now been included in the Section 2.2 Narrative. Likewise, Exhibits 2.6.9 was updated to include the developed water resource.

Section 2.3 – Groundwater Hydrology

13. Updates to Table 2.3.3 now indicate the Beulah-Zap Sand hydrostratigraphic unit to be the probable source of stock, domestic and even irrigation water for supply wells and springs for half a dozen or so locations within or adjacent to the permit area. Please provide a narrative discussion of this important aquifer unit similar to the narratives already provided for the Twin Buttes, B-Z, Spaer, etc. (BEB)

- Per your recommendation, the narrative of Section 2.3 has been expanded to include the summary noted above. DWC felt that the Beulah-Zap coal section of the narrative was the best place to add narrative discussion because the aquifer unit is only present over a small portion of the permit area.

Section 2.4 – Soils Inventory

14. Please remove the yellow highlights from text on pages 15, 16, 21, and 22 of Exhibit 2.4.8. As submitted with the Revision 22 application, the highlighted text indicates that these portions are new to Revision 22. According to our review, however, the entire exhibit appears to be unchanged from Revision 19. (WTG)
 - The highlights have been removed from this exhibit; no changes were made for this revision.
15. As required by NDAC 69-05.2-08-10(2), please submit the chemical and physical analyses reports for properties of suitable plant growth material identified by the 2005 Ken Thompson soil survey for Sections 18, 19, and 20. Although page 4 of Exhibit 2.4.8 states that laboratory analyses were completed, and results shown on included pages, the laboratory analyses do not appear to be included in the exhibit. (WTG)
 - The analytical reports have been appended to Exhibit 2.4.8.
16. As required by NDAC 69-05.2-08-10, please submit the soil survey completed by Lawrence Haugen for 240 acres in Section 20, and 320 acres in Section 22. Please also submit the chemical and physical analyses reports for properties of suitable plant growth material identified by the soil survey. Please also ensure that the title sheet for Exhibit 2.4.2 accurately reflects the soil survey area completed by Lawrence Haugen. (DKM & WTG)
 - The information for Haugen's survey in portions of Sections 20 and 22 can be found in Exhibits 2.4.1 and 2.4.2. These areas were part of his 1979 survey that included lands outside of the original 8603 permit area. The title sheet for Exhibit 2.4.2 has been revised so that surveyed properties are more accurately described.
17. As required by NDAC 69-05.2-08-09, please depict the prime farmland mapping units in the SW¼NE¼ of Section 22 on Exhibit 2.4.7. Although it states on page 2.4.4 in Section 2.4 that the mapping units are shown on Exhibit 2.4.7, our review of the exhibit indicates that they are not shown. (WTG)
 - Exhibit 2.4.7 now shows the prime farmland map unit locations.

Section 2.6 – Pre-Mining Vegetation Inventory

18. Please include the 2007 and 2008 native grassland sampling data that was used to determine range condition, and label the sample sites on Exhibit 2.6.13. NDAC 69-05.2-08-08. (GAW)
 - Exhibit 2.6.13 has been expanded by adding the sample data for native grassland range sites surveyed in 2007 and 2008. This data follows the data for the revision 19 sites.

19. Please include 2006 and 2007 native grassland reference area sample data for the silty, sandy, shallow and thin upland range sites. The sampling data should be organized so the range condition of the reference areas can be determined. NDAC 69-05.2-08-08. (GAW)
 - Exhibit 2.6.14 has been expanded by adding the available sample data for 2006 and 2007. This data includes range condition evaluations performed in 2006. Only the Sandy and Silty reference areas, our principal reference areas, have been sampled in recent years.

20. Please include a narrative discussing if the existing native grassland reference areas adequately represent the native grassland being added with this revision. NDAC 69-05.2-08-08. (GAW)
 - The narrative 2.6 has been revised to include a discussion on the suitability of the reference areas, particularly the Sandy and Silty sites.

21. Please include wetland water quality data for the wetlands being added with this revision. A sentence on page 2.6.33 states that the information has been included in Exhibit 2.2.9; however, the wetland water quality information for the area being added to the permit is not in this exhibit. NDAC 69-05.2-08-08. (GAW)
 - The exhibit 2.2.9 has been updated with the wetland water quality information.

22. Please include the woodland sampling data that was collected in the Revision 22 addition area. Also, please include cover data for herbaceous species associated with each woodland type. NDAC 69-05.2-08-08. (GAW)
 - Sample numbers have been added to the narrative. Ground cover evaluations were not quantitative; however, qualitative descriptions have been added to the narrative.

23. The Pleasant Valley farmstead shelterbelt is not being recognized as a shelterbelt. Please provide ample justification as to why this old shelterbelt should not be considered a shelterbelt, or include information as required by NDAC 69-08-08 and our Guidelines Document. Also please explain why the Pleasant Valley farmstead area is not being identified as a separate land use. NDAC 69-05.2-08-08. (GAW)
 - When we looked at the woodies in the vicinity of the farmstead we considered the fact that most of the woody plants appear to be volunteers. Only 15 trees appear to constitute a planting configuration of a single row with a couple of perpendicular wings. These are on the south and west sides of the house, in the midst of the farmstead. The only other apparent planting is a single row of common lilac on the south edge of the woody concentration. The rules definition for shelterbelt notes that shelterbelts are planted adjacent to the features they are designed to shelter. We considered the location of the apparent plantings within the farmstead area and their limited size and concluded that non-definition was reasonable. Regarding segregating the farmstead, we have historically included farmsteads in adjoining agricultural land uses such as cropland and native grassland. This was done because of the close functional ties between certain agricultural land uses and support facilities such as farmsteads. The definitions for these land uses recognize this association and

specifically include land used for facilities that support the agricultural use. These specific provisions, as well as lack of a formal land use that would be a better fit (such as “farmstead”); have provided the justification historically as well as in this case.

24. Please update the narrative in Section 2.6, Pre-Mining Vegetation Inventory, to discuss the shelterbelts that are being permitted as required by NDAC 69-08-08(1)(6), (1)(b), (c)(6), (1)(d). The information in Exhibit 2.6.15 provides only part of the required information. NDAC 69-05.2-08-08. (GAW)

➤ A narrative for shelterbelts has been added to Section 2.6 as Section F.

Section 2.7 – Land Use

25. Exhibit 2.7.2 which provides Land Use Preference Letters appears incomplete. The only preference statements provided and associated with Revision 22 are from Martha Gunsch for acreage in Sections 20 and 22 and the Keogh Trust for portions of the S½ of Section 15. Please provide land use preference statements from Terence and Tammy Schmidt for the NE¼ of Section 22, from Donald Voigt for the NE¼ of Section 19, and any others that should be included. If these people did not return land use preference statements, please note that in the narrative. (BEB & SAS)

➤ A land use preference letter for Terence Schmidt has been added to Exhibit 2.7.2. The narrative has been revised to indicate which landowners have not signed preference statements.

Section 2.9 – Alluvial Valley Floor Inventory

26. Currently, all AVF narrative subsections (A through G) are missing from the revision application and all of the listed narrative information of Section 2.9 has been replaced by Exhibit 2.9.10 which depicts the mapped locations and direction of color infrared photograph sequences. Please incorporate the required alluvial valley floor inventory information into Section 2.9. (BEB)

➤ Narrative 2.9 has been updated to include subsections A through G, and exhibit 2.9.10 has been removed from Narrative 2.9.

Section 3.1 – General Mining Plan

27. Exhibit 3.1.3 indicates that Pond 100 will be constructed; however, no information can be found on this pond in Section 3.2. Please correct the discrepancy by either providing the necessary data for the pond or updating Exhibit 3.2 accordingly. (MDB)

➤ Exhibit 3.1.3 now shows Pond 100 as not being constructed. Capacity has been met in the drainage basin by incising Pond 99. Exhibit 3.1.3 now corresponds with Exhibit 3.2.

28. The summary page indicates that Exhibit 3.1.8 which contains haulroad information was updated; however, information in the exhibit indicates Revision 21 information, including the permit boundary. Please update accordingly. (MDB)

- Exhibit 3.1.8 has been updated with the revision 22 permit boundary. Other than the boundary and haulroad ramps, the main haulroad location has not changed since revision 21.

Section 3.2 – Water Management Plan

29. Exhibit 3.2.1 depicts several SPGM piles located outside of the watersheds of the ponds. These stockpiles, specifically subsoil, need to have a topsoil berm placed around them or other BMP's that are appropriate for water management purposes. If berms are used, they will need to have capacity to contain a 10-year, 24-hour storm event. Please update accordingly. NDAC 69-05.2-16-04(1). (MDB)
 - Exhibit 3.2.1 has been updated to show the stockpiles being located on reclaim ground with the exception of the first pits stockpile south of the county road. Those will be located directly west of the coal outcrop and controlled by Pond 95. Topsoil berms or BMP's will be positioned around the stockpiles as needed.
30. Please provide a letter of certification for the pond designs per NDAC 69-05.2-09(1)(h). (MDB)
 - Exhibit 3.2.17 has been updated to provide a letter of certification for the pond designs.

Section 3.5 – Backfilling and Grading

31. The Table of Contents indicates that the narrative in Subsection M of Section 3.5, Backfilling and Grading, provides information concerning the Silver Pit Laydown Area and associated special considerations. Item M was not included with the submittal. Please include this previously approved subsection. (BEB)
 - Subsection M, silver pit laydown area, special considerations, has been added to Narrative 3.5.
32. Exhibit 3.5.2(a) which represents topographic cross sections of the Red-Gold Pits does not display when opened. Please enable or repair the link. (BEB & MDB)
 - The exhibit 3.5.2(a) link has been repaired.
33. New Exhibits 3.5.4(a) and 3.5.4(b) which represent Pre and Post-Mining Slopes respectively do not display when opened. Please enable or repair these links. (BEB & MDB)
 - The links to exhibit 3.5.4(a) and exhibit 3.5.4(b) have been repaired.

In addition, please provide the Reclamation Division with updated information and a timeline for new ground water monitoring well installations associated with the additional acreage of Revision 22 as was previously discussed for areas in Sections 21 and 22, T143N, R88W. Please discuss the possibility of installing additional well clusters or at least a transfer of the proposed well cluster from the E½ of Section 22 to a new location in the NE¼ of Section 19 and/or the W½ of Section 20 for the B-Z and Spaer downgradient coverage of new areas associated with the proposed Silver Pit extension to the south with Revision 22 to Permit KRSB-8603.

- In accordance with ongoing discussion with Bruce Beechie, three new well clusters (of three wells each; Schoolhouse, B-Z, and Spaer) and one spoil well were installed late in October of 2008. Because of drilling demand in the area, October 2008 was the earliest we were able to hire a driller to drill the monitoring wells. These wells have been added to the Narrative of Section 2.3 and in Exhibit 2.3.2 (well completion summaries). The summaries were not available at the time of original submittal.

Sincerely,



Paula Koble Gores
Permit Coordinator

/s/

Enclosures: 3 CDs
c: Jesse Noel