



Public Service Commission

State of North Dakota

COMMISSIONERS

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

July 10, 2009

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

Dear Mr. Frohlich:

The Reclamation Division has completed a review of Dakota Westmoreland's response to our technical deficiency letter on Revision 22 to Permit KRSB-8603. The following items must be satisfactorily addressed before we will recommend Commission approval of this revision:

Section 1.1 – Application and Support Documents

1. The links to the exhibits in the narratives in many sections (e.g. 2.6, 2.7, 3.2, 3.7 etc.) do not work. These exhibits cannot be accessed even when the "allow" button is used. Please fix these links so that the exhibits can be viewed.
2. Follow-up to deficiency #24. Page 2 of 3 of the Listing of Revised Information (which is located on page 25 of Section 1.1) has not been changed to reflect the addition of revised Exhibits 2.3.6, 2.3.7, and 2.3.10. Please update the Listing to accurately document updates associated with this revision. (BEB)

Section 2.1 – Geological Inventory

3. Follow-up to deficiency #84: We accept the explanation given for the number of test holes that provide overburden analysis for acreage added in Section 20 for Revision 22 and the suitable plant growth material redistribution depths shown on Exhibit 3.4.1 which are based on the overburden analysis. It appears, however, that changes that were made to the February 2009 version of Exhibit 2.1.3 in response to deficiency #84 have created additional inconsistencies between the overburden test holes shown on Exhibit 3.4.1 and

the test holes listed as providing overburden analysis on page 1 of the June 2009 version of Exhibit 2.1.3. For example, the nine overburden test holes used to calculate SPGM respread depths in Sections 19 and 20 were removed from the June 2009 version list, while the eight test holes that lie outside the proposed permit boundary in the S½ of Section 22 (17-08 through 24-08) and the three test holes (25-08 through 27-08) that are also outside the permit boundary elsewhere, remain on the list. According to our interpretation, the following 19 test holes should be listed on page 1 of Exhibit 2.1.3 as those providing overburden analysis for the acreage added in Revision 22 to make the list consistent with the Table 3.4.1 Dataset 3 of Section 3.4 - Suitable Plant Growth Material Handling Plan. Please also make the necessary changes to the overburden test hole analysis included in Exhibit 2.1.3. (WTG)

38-04	43-04	10-08	15-08	39-04
44-04	11-08	16-08	40-04	1-07
12-08	1022	41-04	2-07	13-08
1023	42-04	3-07	14-08	

Section 2.2 – Surface Water Hydrology Inventory and Monitoring

4. The stream monitoring locations table on page 2.2.10 lists the monitoring period of site 13CCC-W/ST, one of the new sites for Coyote Creek monitoring, as starting on 1/1/09, while the monitoring period for the other new site for Coyote Creek (31DBD-W/ST) is listed as starting on 6/1/09. It appears that the monitoring period for site 13CCC-W/ST should also start on 6/1/09. Please review the dates, and correct them as necessary. (WTG)
5. In the Surface Water PHC, please include a comparison table of pre-mine watersheds versus post-mining watersheds, including the acres, runoff quantity, and percent of change of both. If the runoff quantity changes more than 5% for any affected watershed, please discuss these watersheds in the narrative to address any possible downstream consequences from these changes, such as overland flooding, lack of water for stockponds, etc. (MDB)

Section 2.3 – Groundwater Hydrology

6. Follow-up to deficiency #21. Please eliminate ground water monitoring well 2006 from the narrative on page 2.3.26 in which this well is described to document the effects of mining on the Beulah-Zap bed and is still listed as being a current active well. (BEB)
7. Follow-up to deficiency #25. Please correct the spelling of landowner Voigt in the newly created Table of Contents in Exhibit 2.3.8. (BEB)
8. The undeveloped spring/seep located in the woodland in the NE¼ of Section 22 does not appear to be identified on Exhibit 2.3.7. Please address. (GAW)

Section 2.4 – Soils Inventory

9. Follow-up to deficiency #36. If it is the intent of Exhibit 2.4.9 to compare NRCS delineated areas of “prime soils” with the soil units as delineated nonprime in the detailed soil survey, this should be explained on page 2.4.4 for clarity of purpose. Please clarify the narrative on page 2.4.4 accordingly. (SAS)

Section 2.6 – Pre-Mining Vegetation Inventory

10. Follow-up to deficiency #57. Please explain why only some of the road corridors are listed as industrial and commercial and others are not. The footnote for Exhibit 2.6.11 doesn't do a good job of explaining this. (SAS)
11. Follow-up to deficiency #51. In the Table of Contents, Exhibit 2.6.15 is still labeled Historic Reference Area Data (Shelterbelt Data). This is very misleading as the exhibit does not contain Historic Reference Area data. Please update the Table of Contents to accurately reflect the title of Exhibit 2.16.15. (GAW)
12. Follow-up to deficiency #48. The woodland discussion on page 2.6.40, for Section 15, Revision 22 Addition area, states that the second sampling point contained 25 low shrubs which equates to 14,370 plants per acre. However, Exhibit 2.6.16 does not list any low shrub species being present in sample site MD2. Please identify the low shrub species or species in the sampling point. (GAW)

Section 2.7 – Land Use

13. Follow-up to deficiency #60: In the second sentence in the first paragraph in Section 2.7, please refer to the section in the permit containing a discussion that addresses whether or not the pre-mine land uses have or have not been in place for the previous 5 years. This information should be clearly discussed in Section 2.7, Land Use. (GAW)
14. Follow-up to deficiency #63: Please update page 2.7.3 to discuss plans for replacing the springs (a livestock water source) that will be affected by mining near the Pleasant Valley Farmstead in Section 20. A sentence has been added on page 2.7.3 of Section 2.7 that states that the springs west of the Pleasant Valley Farmstead will be affected but are expected to re-establish after completion of mining because the springs originate from the Beulah-Zap sands rather than the coal seam (page 14 of Section 2.3). Section 2.3 further states that the impacts will be minimal simply because the downstream stock pond is the major source of water for livestock in the area. However, it appears this section of the PHC was not updated to reflect the additional mining being proposed by Revision 22. We believe it is very unlikely that these springs will re-establish after they are mined through (the Beulah-Zap bed is approximately 30 feet below the surface elevation of the springs). Therefore, Section 2.3 also needs to be updated to address replacement plans for these springs. The requirements of NDAC 69-05.2-16-17 must be fulfilled even if DWC is the current surface owner of the property. (GAW)

15. Follow-up to deficiency #64: Please revise the first paragraph on page 2.7.4 to clarify that 100% of the reclaimed field shelterbelt is a replacement planting and not just certain rows within the shelterbelt. Remove the language that mentions this is a “combination” shelterbelt in the narratives and on the Post-Mine Land Use Map, Exhibit 2.7.1. (GAW)
16. The land use table on Page 2.7.1 indicates that an additional 2.4 acres of shelterbelts will be replaced in Section 20 on DWC owned land. However, the shelterbelt post-mine planting design plans indicate that 4.5 acres of trees will be replaced and Exhibit 2.6.11 shows that there were 4.0 acres of trees in Section 20 prior to mining. Please review and update as necessary to clarify the plans. (GAW)

Section 3.1 – General Mining Plan

17. Follow-up to deficiency #70. Sections 25 and 30 are still listed as part of the extended mine plan area on page 3.1.2. Please remove them from the narrative if they are no longer included in the extended mining plan. (SAS)

Section 3.2 – Water Management Plan

18. Please revise Exhibit 3.2.28 to clarify the exact locations of the diversions. Please include stationing on the drawings as well. (MDB)
19. Please include the necessary calculations and design plans for Sumps 99E and 99W. Even though they are considered sumps, they are still required to meet the design standards that apply to other sedimentation ponds. Also, considering the topography in the areas where these sumps are located, please provide the appropriate drawings and calculations showing that the overflow locations can safely pass flows from a 25-year, 6-hour event when the sumps are full as required by NDAC 69-05.2-16-09(9). Also, since these impoundments are now called sumps rather than ponds, please update the surface water management narratives and other exhibits to identify them as Sumps 99E and 99W, rather than Ponds 99E and 99W. (MDB)
20. Please indicate the status or provide documentation from the State Water Commission that Permits to Construct have been issued for any impoundments with a design capacity over 12.5 acre-feet of water, such as for Sumps 99E and 99W. (MDB)
21. It appears that several watershed boundaries are incorrect on the Water Management Plan Map, Exhibit 3.2.1:
 - A) On the topographic map for Pond 95 it appears that the northwest corner of the watershed south of the road drains to the west-northwest, and not into the pond.
 - B) The watershed break for Sumps 99E and 99W along the eastern edge is a straight line running nearly parallel with the topographic contours, instead of perpendicular.

- C) It appears runoff from an area between Ponds 100 and 101 will flow to the east and go off-permit without being captured by either pond. A diversion may need to be installed on the south side of Pond 100 to ensure the water is captured. Placing a diversion on the north side of Pond 101 would create a short circuit with the emergency spillway.

Please review these concerns and make the necessary corrections. If no changes are made, please provide the proper justification that the map is otherwise correct. (MDB)

22. It appears that a ditch block may be needed along the haul road by Pond 100 to ensure that water is diverted into the pond and not otherwise continue down the haul road ditch. It may not be needed at this time, but may be needed as mining progresses. No response is required at this time and this item is presented for your consideration only. (MDB)

Section 3.4 – Suitable Plant Growth Material Handling Plan

23. The area being added to the permit contains 2.8 acres of prime farmland and DWC is proposing to mix prime and nonprime topsoil and subsoil due to the similarity of the prime and nonprime soil materials. We agree that mixing of the prime and nonprime subsoil is warranted; however, we do have some concerns about mixing of prime and nonprime topsoil. At this point we are unlikely to approve mixing of prime and nonprime topsoil. Significant differences (nearly 10%) in productivity indices for the prime and nonprime areas based on the figures you provided in your justification to mix the prime and nonprime topsoil. If the request to mix prime and nonprime topsoil is not removed from the pending revision, a special condition will be attached to the revision approval indicating the proposal to allow mixing of the prime and nonprime topsoil is not approved. (DKM)

Section 3.5 – Backfilling and Grading

24. In the Silver Pits mine area (Sections 17, 18, 19 and 20), The Post-Mining Topography Map, Exhibit 3.5.3, should be revised to show reaches of secondary drainages where natural drainages meet the mining disturbance boundary. (GAW)
25. Please revise the Area Slope Maps, Pre- and Post-Mining Slopes, Exhibits 3.5.4 (a) and 3.5.4 (b) so that the information is presented clearly and concisely as required by NDAC 69-05.2-05-02 (1). As currently presented the information on the maps is difficult to read and interpret. Identifying the various slope ranges by color code as done in the past will meet the requirements of NDAC 69-05.2. (GAW)

Section 3.7 – Revegetation Plan

26. Follow-up to deficiency #95. The added sentences on page 3.7.11 dealing with prime farmlands under Subsection (1a) is somewhat misleading. We suggest rephrasing the statement in the following manner, "If the prime farmland in the NE¼ of Section 22 is

disturbed, a single cropland yield standard will be used to demonstrate that the post-mining productivity requirements are met for the entire tract as allowed under NDAC 69-05.2-22-07(1)(4). Otherwise, the cropland yield standard will be calculated using the nonprime soils that are disturbed. Calculations for the single yield standard are presented in Exhibit 3.7.4.”(SAS)

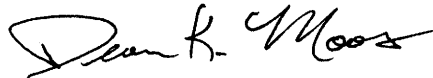
27. Follow-up to deficiency #64: Please edit the last paragraph on page 3.7.6 to clarify that 100% of the reclaimed field shelterbelt is a replacement planting and not just certain rows within the shelterbelt and that the planting details are more than just preliminary plans. NDAC 69-05.2-09-11 requires more details than currently provided. Also, modifications to the plans cannot be made without prior approval from this office. Please revise accordingly. (GAW)

Section 3.9 – Reclamation Cost Estimates and Performance Bond

28. In Table 3.9.6, please adjust the hourly production rates for the dozer similar to what was done in Table 3.9.2. However, if the cubic yard volumes are bank cubic yards and not loose cubic yards then a production rate of 995 BCY/hr. should be used according to the Cat Handbook for 10% swell. $BCY/HR = LCY/HR * Load\ Factor\ (0.909\ for\ 10\%\ Swell)$. (MDB)

If you have any questions, please contact this office.

Sincerely,



for James R. Deutsch
Director
Reclamation Division