



# Public Service Commission

## State of North Dakota

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September 15, 2009

Mr. Jeff P. Frohlich  
Manager, Engineering and Environmental  
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 August 17, 2009 response to our July 10, 2009 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. Follow-up to July 10, 2009 deficiency No. 1. The links to the exhibits in the narratives in many sections (e.g. 1.6., 2.1, 2.4, 2.7, 3.7, and 3.8) do not work. Exhibits in these sections cannot be accessed even when the “allow” button is pressed. These links must be fixed so the linked exhibits can be viewed. DWC's response as stated in the June 3<sup>rd</sup> letter and reiterated in the August 17<sup>th</sup> response is insufficient, and incorrectly states the links work when the “allow” button is pressed. The hyperlinks in Sections 2.2, 2.3, 2.5, 2.6, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.9 do work when the security warning “allow” button is pressed. (GAW & WTG)

### **Section 1.4 – Business Entity Information**

2. Please update the Preliminary County Road Relocation Plan Map in Exhibit 1.4.4 and Subsection H of Section 1.4 to reflect the most recent road closure and relocation plans. We understand that plans for the new county road segment for the section line between Sections 22 and 23 to the north, and Sections 26 and 27 to the south, have been withdrawn with the county's approval. (GAW & WTG)

### **Section 2.2 – Surface Water Hydrology Inventory and Monitoring**

3. Follow-up to July 10, 2009 deficiency No. 5. The information provided in the PHC narrative assumes the sediment ponds will remain in place (remain as permanent ponds); however, not all of these ponds will remain permanent, and the ones which will remain permanent may have an impact on downstream landowners, such as a shortage of water in stock dams. Please address the impacts to all watersheds (not just the area being added to the permit) in accordance with NDAC 69-05.2-08-04(4). (MDB)

### **Section 2.3 – Groundwater Hydrology**

4. Please revise the first sentence in the paragraph on page 19 that describes the permanent or temporary status of Ponds 81 and 86. The word “likewise” conveys the impression of similar status when it actually differs. Replacing “likewise” with “however” would alert the reader to the contrasting status between the ponds. (WTG)

### **Section 2.7 – Land Use**

5. Follow-up to July 10, 2009 deficiencies No. 15 and 27. Please edit the third paragraph on page 4 of Section 2.7 and the third paragraph on page 6 of Section 3.7 to clearly state that the conservation shelterbelt will be planted at a distance away from the replacement planting such that each planting is clearly a separate and distinct shelterbelt. It appears the revised language was just another way to state that the outside row of the replacement planting will be a conservation planting. Exhibit 2.7.1 will need to be revised accordingly. (GAW)

### **Section 3.1 – General Mining Plan**

6. As required by NDAC 69-05.2-09-02, please make the following additions or modifications to Exhibit 3.1.6 – Facilities Area Map:
  - a. Depict the locations of the recently installed substation for the BE 1570 dragline in Section 16 and the power line that feeds the substation. Please also depict the locations of all other substations located within the permit areas and add a substation symbol to the legend;
  - b. Add section, township and range, and county lines and numbers or names; and,
  - c. Move the text block for the “current fiber optic line” label to somewhere off the permit area so that it doesn’t obscure the permit boundary of land added with Revision 22. (WTG)

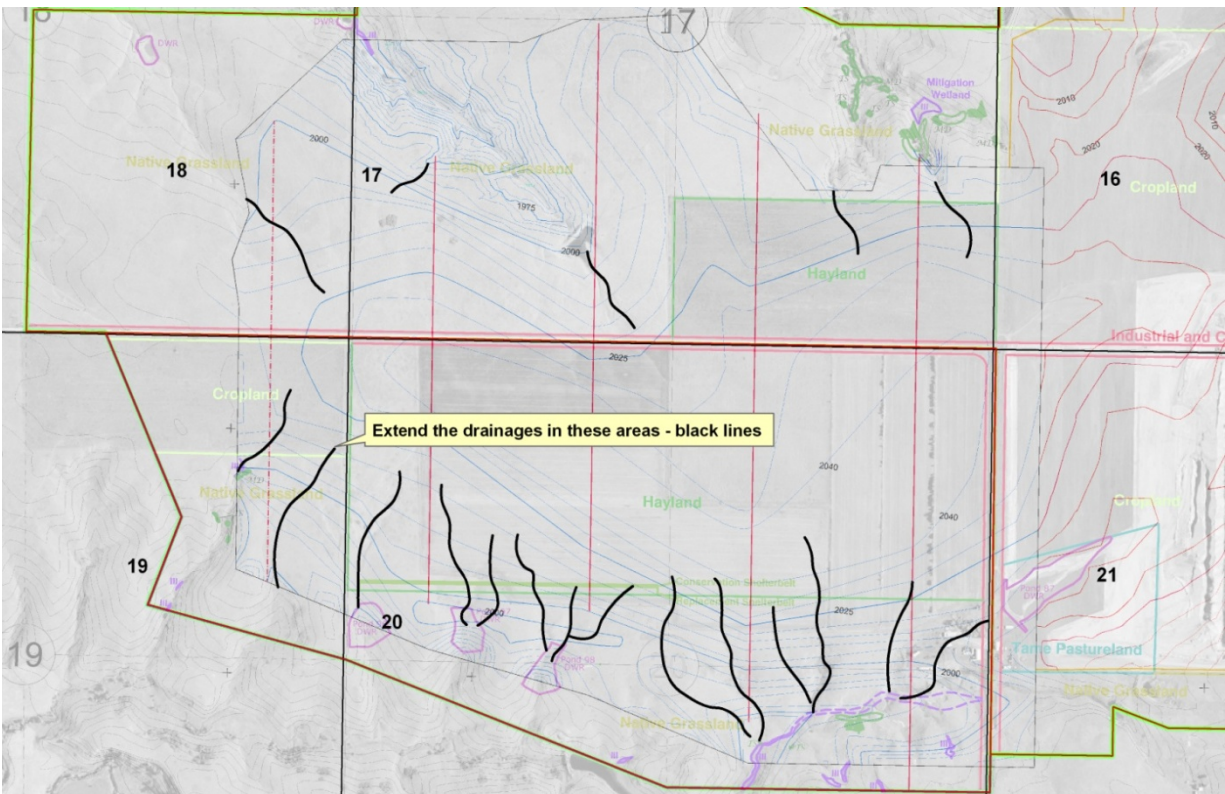
### **Section 3.2 – Water Management Plan**

7. Ponds 95, 96, 97, and 98 have been changed to permanent status but the annual yield calculations for Ponds 96, 97, and 98 indicate that these ponds will have little or no water. Without adequate contributing watersheds to provide adequate water for these ponds, the ponds cannot be retained as permanent structures. Please address. (MDB)
8. We understand that Sumps 99E and 99W are over-designed; however, there are no stipulations in the regulations allowing a pond or sump to be constructed without a spillway. If it can be shown that the natural drainage will act as a spillway and safely pass the 25-year, 6-hour event that will be acceptable; however, DWC must provide the necessary documentation and calculations. Please address. (MDB)
9. The narrative for Sumps 99E and 99W states that the incised volume (overburden) will be spread over 40 acres causing a rise of 2-3 feet in the Silver Pit area. It is not clear whether the spoil from each sump will cover 40 acres or if the total of all spoil will cover 40 acres. Please clarify this discussion and also the raise in topography must also be incorporated into the proposed post-mining topography. (MDB)
10. The narrative for Sumps 99E and 99W in Section 3.2 still has at least one place in which the sumps are referred to as ponds or vice versa. Please correct the narrative to keep the wording consistent. (MDB)
11. Follow-up to July 10, 2009 deficiency No. 21A. With the change in watershed size of Pond 95, it appears as though a portion of the area that is not controlled by the pond is planned to be mined through according to the Extended Mine Plan Map. Please address how this watershed will be controlled when the area is disturbed per NDAC 69-05.2-16-04(1)(a). MDB
12. Follow-up to July 10, 2009 deficiency No. 21C. In viewing Exhibit 3.2.1, the emergency spillway of Pond 100 was not shown therefore it was suggested that a diversion be placed on the south side of Pond 100. However, in reviewing the design of the pond the new diversion location is not acceptable as the pond will “short circuit” (flow in through the diversion and directly out the emergency spillway). Either the spillway will have to be redesigned or the diversion will have to be moved. Please address. (MDB)

### **Section 3.5 – Backfilling and Grading**

13. Please correct the error on the bottom of page 3.5.16 that states that Pond 86 is a permanent pond at the request of the landowner, when it is actually a temporary pond. (WTG)
14. Follow-up to July 10, 2009 deficiency No. 24. Please revise the Post-Mining Topography Map, Exhibit 3.5.3, to show extended reaches of secondary drainages where natural drainages meet the mining disturbance boundary. The black lines in the image below show where the Reclamation Division believes that secondary drainages should be

extended in the post-mine topography so that the drainage complements the surrounding terrain as required by NDCC 38-14.1-24(3). (GAW)



15. Follow up to July 10, 2009 deficiency No. 25. Please revise the Area Slope Maps, Pre- and Post-Mining Slopes, Exhibits 3.5.4a and 3.5.4b, to include the required information for all of the permit area that has been or will be affected by mining activities and make the map fit on the page so that it can be printed without an excessively large white border. NDAC 69-05.2-08-02(3)(b). The table of contents indicates there are Exhibits 3.5.4 (Sheets 1 and 2) but these exhibits are not included in the permit. Are these exhibits being replaced with Exhibits 3.5.4a and b? (GAW)

### **Section 3.8 – Time Schedule**

16. DWC is requesting a variance from the contemporaneous reclamation requirements, Variance Area Zone 1, for the haul road through the Gold Pits Area (Pit 8); however, a variance is not needed for the haul road corridor since it is being used to support active mining. However, you may keep the variance request for this area in the permit since it includes a slightly larger area than the haul road. The justification for a variance for Variance Area Zone 3 is questionable. The variance is requested because material will be used from this area to widen the haul road and because a portion of the area will be temporarily used as a haul road when mining occurs immediately south of the existing haul road (Variance Area Zone 1). The justification for granting a variance for the balance of Variance Area Zone 3 is not sufficient as written. (GAW)

17. The Special Variance Zones narrative on page 3.8.6, subsection c., states that the final pit (8) will be used as a haul road and as a walkway for the 1570 dragline. We understand that this plan changed and the dragline was moved over rough graded spoil to the south. Please edit the narrative accordingly, if necessary. (GAW)

**Section 3.9 – Reclamation Cost Estimate**

18. The cost of reclaiming Diversion D100S must be included in the reclamation cost estimate used to set the bond amount. (MDB)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division

cc: Mercer County Auditor