



Public Service Commission

State of North Dakota

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October 9, 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 September 25, 2009 response to our September 15, 2009 technical deficiency letter on Revision No. 22 to Surface Coal Mining Permit KRSB-8603. The following items must be satisfactorily addressed before we will recommend Commission approval of this revision.

Section 2.7 – Land Use

1. Follow-up to Item No. 5 of our letter dated September 15, 2009 and Items 15 and 17 of our July 10, 2009 letter: 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 a distance away from the replacement planting such that each planting is clearly a separate and distinct shelterbelt. It appears the revised language is 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. The proposed distance of the strip separating the replacement planting from the conservation planting, 10-20 feet, is a row distance commonly observed in multi-row shelterbelts. (GAW)

Section 3.2 – Water Management Plan

2. Follow-up to Item No. 7 of our letter dated September 15, 2009: The Reclamation Division does not feel that Pond #96 will provide an adequate amount of water for livestock. Annual yield calculations show only 0.08 acre-feet of runoff after evaporation which will be inadequate in terms of quantity. At this time the pond needs to be considered a temporary structure. If the pond proves to provide a stable source of water in the future, it can be revised to permanent status. Also, please update the corresponding reclamation cost estimate. (MDB)

3. The narrative for Diversions 95W and 95N reference Exhibit 3.2.38; however, it appears the correct reference should be Exhibit 3.2.31. Please update accordingly. (MDB)

Section 3.5 – Backfilling and Grading

4. Follow-up to Item No. 14 of our September 15, 2009 review and Item No. 24 of our July 10, 2009 review: Please revise the Post-Mining Topography Map, Exhibit 3.5.3, to depict the lower reaches of secondary drainages where natural drainages meet the mining disturbance boundary in the W $\frac{1}{2}$ of Section 20. The proposed post-mine topography of the lower reaches of these two secondary drainages is quite steep (12-15%) when compared to the pre-mine topography (6%). Due to the steepness of these proposed drainages, we have concerns with erosion and long-term stability. Please modify the post-mine topography in these areas such the slopes are longer and less steep. In a related matter, there are three adjacent 2000' contour lines at 2000 feet in the southern part of the NW $\frac{1}{4}$ of Section 20 (only the middle contour line is labeled). This flat area is about 1800 feet long and up to 300 feet wide. Please revise to eliminate this flat area. By cutting the slope back as discussed above, much of this flat area could be eliminated. As presently proposed, the drainage pattern is indistinct in this area with the exception of the secondary drainage channels. Distinct watersheds should be created for each of these three adjacent secondary drainages to ensure the undisturbed portions of these drainages can handle the anticipated future flows from the area. (GAW)

Section 3.8 – Time Schedule

5. Follow-up to Item No. 16 of our September 15, 2009 review: DWC is proposing to delete information pertaining to previously approved variances in Section 3.8 while adding additional variance areas (and using previous variance area numbers) with this revision. This is unacceptable. Information regarding previously approved variances should be retained even if they are no longer valid as it provides a historical record. Please revise the narratives, tables and exhibits in Section 3.8 to add the new information while retaining the historical information. In addition, please modify the paragraph that begins on the bottom of page 3.8.3 that requests blanket approval of a variance from the 3-year seeding rule (NDAC 38-14.1-24). Variances to this rule must be applied to specific areas and each area must have proper justification for a variance and a specific time for completing reclamation. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division