



Public Service Commission

State of North Dakota

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January 6, 2014

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 reviewed DWC's December 10, 2013 response to our March 1, 2013 completeness deficiency letter on the application for Revision 27 to Permit KRSB-8603. The following items must be satisfactorily addressed before the Reclamation Division will deem the revision application complete:

General

1. Follow-up to Item No. 1: The format and structure of the electronic permit document as modified with the December 10th submittal by creating one extremely large Adobe pdf file is unacceptable. With this format the permit document is very difficult to navigate and the functionality of an electronic permit is lost. A good electronic format will aid staff in carrying out a faster and more efficient technical review of this application that proposes to add nearly 900 acres to the permit. With the December 10th format, a user cannot have text and a map open at the same time and a user has to continually adjust the view size when going between text and maps. Each map needs to be presented as a separate document as was previously done and a single pdf document should not contain more than one subsection of a particular section as outlined in the table of contents. DWC first converted Permit KRSB-8603 to an electronic format with Revision 19 and was subsequently revised through Revision 28, including pending Revision 27. With the exception of the December 10th submittal of Revision 27, the electronic format of this permit was generally acceptable to the Reclamation Division. While the electronic format of the original submittal of Revision 27 is preferred over the December 10th format, our completeness review letter requested that hyperlinks be used throughout the permit and to add bookmarks to aid in navigating through the permit document. While we prefer that hyperlinks be used within text for quick and easy access to maps and other exhibits, we will consider not requiring hyperlinks in narratives as long as the original electronic structure is retained (i.e., various sections, subsections and exhibits that open from the table of contents). However, we still request that descriptive bookmarks be added throughout the document as a navigation aid. A format that also allows the use of the "back arrow" would also be helpful in navigating the permit document. (all staff)

Section 1.1 - Application and Support Documents

2. Please insert the application form and the one page Revision Narrative and Listing of Revised Information for Revision 28 approved October 21, 2013 in Subsection I. Application History of Section 1.1. (WTG)
3. The Listing of Revised Information attached to the permit revision application and each successive revision review response is required by NDAC 69-05.2-11-02(4)(a) and the application form instructions (SFN 10562) to provide a historical reference for approved permit changes. Upon Revision 27 approval, the list must present an accurate and complete summary of all approved permit revision changes. To accomplish this, the revision application list should be maintained as the master list and be updated cumulatively, but not duplicately, by marking each change with each successive review response. The cumulative list should be incorporated within the permit for each successive revision review response rather than being attached to the cover letter. Please update the January 31, 2013 Listing of Revised Information (master list) to identify the December 10, 2013 changes and the successive completeness and technical response changes and incorporate the cumulative list within the permit. Please note, however, that you should not track the addition of the approved Revision 28 permit changes that are requested for inclusion in the permit elsewhere in this letter. (WTG)
4. Follow-up to Item No. 3: The *Listing of Revised Information* that is provided on page 52 in the permit still states that the Table of Contents was “updated to reflect all additions for Revision 22” and needs to be revised to state that the TOC was updated to reflect all additions for Revision 27. (BEB)

Exhibit 1.3.1 Permit Area Map

5. Follow-up to item No. 4: It appears that Exhibit 1.3.1 in the December 10, 2013 version of Revision 27 is unchanged from that in the January 31, 2013 permit revision application. As required by NDAC 69-05.2-05-02(1) and 69-05.2-08-02(1)(c), please depict the KRSB-8603 permit boundary proposed with Revision 27 as one polygon of the area defined by the metes and bounds description of the 3,558.3 acres on pages 1.3.1 and 1.3.2 of Section 1.3. In addition, it is recommended that a separate map or exhibit depicting the original permit area and the various additions (revisions) to the permit be retained in the permit (similar to what is currently depicted on Exhibit 1.3.1) for historical reference. (WTG)

Section 1.4 – Business Entity Information

6. Please update pages 2 through 14 of Section 1.4 as necessary to reflect the changes to officers, directors, or shareholders for Westmoreland Coal Company and subsidiary companies submitted to the Office of Surface Mining in April 2013. (WTG)
7. Follow-up to Item No. 10: The statutory right-of-way between sections 22 and 23 has not been closed by Mercer County according to Exhibit 1.4.4, Temporary Roadway and Section Line Closures. The Pit Layout and Facilities Map, Exhibit 3.1.2, depicts this section line being mined through in 2015. Section line right-of-ways are public roads, by definition, and NDCC 38-14.1-07(4) prohibits mining within 100 feet of the outside right-of-way, unless closed by the appropriate road authority. As required by NDAC 69-05.2-10-01(1)(d), please revise the draft

newspaper notice to identify this and any other right-of-ways or public roads that will be closed or that will have mining operations conducted within 100 feet of the outside right-of-way as a result of mining operations proposed by this revision. NDAC 69-05.2-04-01.3(2), (3) and (4). (GAW)

8. Follow-up to item No. 18: As indicated in the December 10, 2013 response letter, and as required by NDAC 69-05.2-06-03(1), a certified copy of the coal lease with the Bureau of Land Management for mining in the S½ of Section 22 must be included in the revision application. We prefer that the coal lease be added to the permit document before the revision application is deemed complete. (WTG)
9. Follow-up to Items No. 5 and 20: Revised Notice of Intent letters have been included in Exhibit 1.4.3, but the letters are not dated nor do they include "Affidavit of Service" information as was included with previous notices. Copies of the actual letters that are sent out with additional information must be included in Exhibit 1.4.3 along with the "service" information for the 'supplemental' notices. However, the original letters that were sent out November 15, 2012 for Revision 27 must be also retained in Exhibit 1.4.3 to show that notice was provided to the surface owners at least thirty days before the revision application was submitted as required by NDCC 38-18-06. (GAW/JRD)
10. Follow-up to item No. 20: Please address the following edits to Exhibit 1.4.3 prior to mailing the Notice of Intent as required by NDCC 38-18-06(1):
 - a. Please edit the last paragraph of the notice as follows because a topographic map is not used to show the plan of work: "~~Attached hereto please find a topographic map, similar to a U.S. Geological Survey Quadrangle Topographical map, which shows the plan of work and operations ...~~" (WTG)
 - b. Please depict the entire section line between Sections 22 and 23, and label Section 23 on the map. Please also consider adding the routes of Brush and Coyote Creeks to the map that would serve the intent of a USGS topographic map. (WTG)
 - c. Please revise wording in the Legend of the Map that is to be included with the Landowner Notice of Intent (page 576 of 1.4) to improve clarity. The terminology "Proposed Permit Line" and "Proposed Permit Acreage" is not descriptive. (GAW)
 - d. Please clearly identify the existing permit boundary and revise the terminology to "Revision 27 Addition Area" or "Proposed Permit Addition Area" for clarity. In addition, please clarify what the green polygons located in the SE1/4 of Section 21 are supposed to represent as it is not the current permit line (boundary). (GAW)
11. Follow-up to Items No. 21 and 22: Please update Exhibits 1.4.4 and 1.4.5 to address closure plans for the section line between Sections 22 and 23, which is an area where mining is prohibited (unless otherwise approved by the road authority pursuant to NDCC 38-14.1-07(4) and NDAC 69-05.2-04-03.1). Temporary closure approval documents by the road authority should be included in the permit application if available. (GAW)

Section 1.6 – Relationship of Proposed Permit Area

12. Follow-up to Item No. 24: As required by NDAC 69-05.2-08-02(e), please identify the current use of all buildings on and within one-half mile of the proposed permit area. Also, please clarify if the cemetery located in the northeast corner of Section 29 is within 100 feet of the proposed permit boundary and/or if a buffer zone must be established to ensure any mining related

activities do not occur within 100 feet of the cemetery. In addition, Exhibit 3.3.1 (Blasting Map) does not identify all buildings on and within one-half mile of the proposed permit boundary as stated at the end of page 647. (GAW)

Section 3.1 – General Mine Plan

13. Follow-up to Item No. 46: On Exhibit 3.1.2, Pit Layout and Facilities Map, please depict the 100 foot buffer along the intermittent streams in the permit area. (RLK)
14. Follow-up to Item No. 46: On Exhibit 3.2.1, Water Management Plan Map, please depict the streams within the permit area and label as appropriate. (RLK)
15. Follow-up to Item No. 47: Section 3.1, General Mining Plan, please provide a description of the mining activities (including any associated disturbances) that will take place within 100 feet of an intermittent stream. The areas must be clearly identified for reviewing agencies to make a determination regarding planned operations to be located within 100 feet of an intermittent stream in accordance with NDAC 69-05.2-16-20. (RLK)

Section 3.2 – Water Management Plan

16. Follow-up to Item No. 51: Please include a statement that the water management plan has been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent engineering practices and any design requirements established by the commission. NDAC 69-05.2-09-09(1)(h) (BAJ)
17. Exhibit 3.2.7 (Pond No. 85 (table)) and Exhibit 3.2.20 (Pond No. 87 (table)) were updated with Revision 28 approved October 21, 2013 to reflect runoff from the dragline walkway disturbance but neither table has been added to Revision 27. Please add the updated tables to Revision 27. (WTG)

Section 3.9 – Reclamation Cost Estimates and Performance Bond

18. The worst-case reclamation cost estimate needs to be updated using the 2013 variable costs. (FSE)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division