



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

April 24, 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 April 14, 2014 response to our March 25th technical review of Revision No. 27 to Permit KRSB-8603. The following items need to be satisfactorily addressed before Commission action.

General Formatting - Table of Contents

1. The hyperlinks for all Sections in Volumes 1 and 2 of the Table of Contents are inactive. Please repair the hyperlinks in the Table of Contents for these volumes so that all permit sections can be opened from the Table of Contents in the manner similar to the January 29, 2014 submittal. (BEB/GAW)

Section 1.1 - Application and Support Documents

2. Please update Volume 1, Section 1.4 of the Revision Narrative and Cumulative Listing of Revised Information, to indicate that Exhibit 1.4.8 (Island Creek Settlement) was added to the permit with the April 11, 2014 technical response. (WTG)
3. Please update Volume 1, Section 1.4 of the Revision Narrative and Cumulative Listing of Revised Information, to indicate that Exhibit 1.4.1 (Surface and Coal Ownership Map) was updated with the April 11, 2014 technical response (updated and corrected surface and coal ownership contiguous to the permit area in the E½E½ of Section 30). (WTG)

Section 2.3 – Groundwater Hydrology

4. Follow-up to item No. 29: Updated narrative on the top of page 2.3.34 describes the Revision No. 27 addition of Beulah-Zap ground water monitoring well 3033. However, this well number should be changed to 2033, as there is no monitoring well No. 3033. (BEB)

5. Follow-up to item No. 31: The bookmark for monitoring well 2022 is labeled as 2020. Please change the bookmark to well Completion Summary 2022. (BEB)
6. Follow-up to item No. 33: To provide clarification in the permit for all springs and seeps listed in revised Table 2.3.6, please add a note under the *Intake Depth* column to state whether or not the springs/seeps are, or were developed or naturally occurring. Simply noting either “Developed” or “Natural” in the column beneath the spring/seep designations is all that is required. As a reminder, all water quality and quantity is required for springs (developed and natural). In addition, we strongly encourage that all springs be certified. Please update the table. (BEB)

Section 2.5 – Wildlife Inventory and Plan

7. Follow-up to Original Items No. 45 and 46: Please include bookmarks in Exhibits 2.6.13 and 2.6.14 so that specific information can be found without paging through the lengthy pdf documents. (GAW)

Section 2.7 – Land Use

8. Follow-up to Item No. 52: Only one land owner preference statement is being added with Revision 27. Page 1 of Section 2.7.1, Land Use, states that preference letters have not been secured for the NE1/4 of Section 19, E1/2 of the SW1/4 of Section 22, W1/2 of the SW1/4 of Section 22 or the W1/2 of Section 23. Please update Exhibit 2.7.2 if any preference statements have been received since the revision application has been filed and include copies of the letters sent to each of the surface owners showing that DWC solicited surface owner input regarding the postmine land use as required by NDAC 69-05.2-09-13(3). (GAW)
9. Follow-up to Item No. 2: Please revise Exhibit 2.7.4, Pre-mining and Postmining Land Use Acres, to include the legal description of each tract, and a column with the total acres of each land use in the permit. The pre and postmine land use maps, Exhibits 2.6.9 and 2.7.1, do not identify tracts by surface ownership as listed in Exhibit 2.7.4, and the Surface Ownership Map, Exhibit 1.4.1, does not distinguish the Gunsch land as listed in Exhibit 2.7.4. Please revise to provide clarity. (GAW)
10. Follow-up to Item No. 54: As previously requested, please revise Section 2.7 to discuss why a third stockpond is proposed in the SE1/4 of Section 18. (GAW)
11. Follow-up to Item No. 56: Please revise Section 2.7 to clearly discuss replacing affected pre-mine developed water resources located in the S1/2 of Section 17 and revise Exhibit 2.7.1, Post Mining Land Use Map, Exhibit 2.7.3, Alternative Postmining Land Uses, and Exhibit 2.7.4, Premining and Postmining Land Use Acres, accordingly. The disturbed pre-mine stockpond must be replaced as it is a necessary support facility for the postmine land use and as required by NDAC 69-05.2-16-17. The landowner preference statement sent to the surface owner did not list Developed Water Resources as a possible land use option and the landowner did not specifically request that this pre-mine stockpond not be replaced. (GAW)
12. Follow-up to Item No. 74: Please revise the Postmine Land Use Map, Exhibit 2.7.1, to show the linear replacement wetland in the bottom of the newly designed drainage way located in the NW1/4 of Section 22 rather than along the bottom of the drainage that existed prior to Revision 27 changes. Please also consider re-locating the wetland that is to be constructed in the southeast

corner of the NW1/4 of Section 22 in the bottom of the major drainage where wetlands were located prior to mining. DWC mentions in its response to Item No. 74 that the surface owner does not want any wetlands replaced on this tract. If this is the case, then DWC should consider replacing this wetland acreage on DWC owned land in Section 20. (GAW)

Section 2.10 – Cultural Resources Inventory and Protection Plan

13. Please address the following inconsistencies between the Cultural Resources Inventory table on pages 2.10.4 and 2.10.5 and the Cultural Resource Site Location Map, Exhibit 2.10.2: (BEB, DKM)
 - a) The table describes 32ME446 as being located in Section 16; however, the map depicts this site as being located in Section 21; also, the map depicts sites 32MEX25 and 32ME438 as being located in Section 16; however, information regarding these sites are not provided on the table.
 - b) In Section 19, site 32ME2227 appears to be located within the permit area and if that is correct, it should be added to the table. Because of the close proximity of several cultural resource sites to the permit boundary, please depict the permit boundary on the map.
 - c) The listing for site 32ME831 in the Cultural Resources Inventory table indicates that the site was determined to not be significant in a letter from the SHPO dated July 9, 1986. However, this letter does not include a significance determination for this site. Please reference the correct significance determination for site 32ME831.

14. In the Table of Contents, Narrative 2.10 and Section 2.10 that are provided as separate sections at the beginning and end of Section 2.10, Cultural Resources Inventory, appears to provide the same information. If that is the case, feel free to eliminate one of the duplicative sections. (BEB)

Section 3.1 – General Mining Plan

15. Cultural resource site 32ME2232 located in the SE1/4 of Section 20 has been deemed potentially significant and narrative on page 2.10.2 as well as the Cultural Resources Inventory listing on page 2.10.5 indicates the site will be preserved and avoided. The Pit Layout and Facilities map indicates the disturbance boundary with mining progression of Iron Pits 5 and 13 will come extremely close to this cultural resource site. Please depict and label this site location on the Pit Layout and Facilities Map, Exhibit 3.1.2, with an appropriate setback and address avoidance of this site on page 3.1.18 that is located in subsection F – General Compliance, which currently states the permit area is not connected with, in any manner, any public park or historic place needing protection. (BEB)

Section 3.2 – Water Management Plan

16. Please revise Exhibit 3.3.56, Wetland Design for the NW1/4 of Section 22, to show this created wetland in the bottom of the primary drainage way located in the NW1/4 of Section 22 where it existed prior to mining rather than on an upland area with a small watershed. (GAW)

Section 3.7 – Revegetation Plan

17. Follow-up to Item No. 74: With the change in the native grassland seed mixture proposed on page 3.7.4 of the revegetation plan, please make the appropriate update to Exhibit 3.7.10, Historical Seed Mix Information. (RLK)

18. Please revise the prime and non-prime farmland narrative on page 12 of Section 3.7 that discusses demonstrating cropland revegetation success to clarify that a single combined standard will not be used. The prime farmland soils in the Revision 27 addition area, Arnegard A and B slopes, have a productivity index of 100% and 95% respectively, which is much higher than the average yield value listed for the fields containing prime farmland, Exhibit 3.7.4, and the ratio of non-prime to prime farmland acreage in the fields is too disproportionately high to allow a combined standard. Likewise, DWC has not demonstrated that the prime and non-prime yields for the NE1/4 of Section 22 are similar enough to allow combining. (GAW)

Section 3.9 – Reclamation Cost Estimates and Performance Bond

19. Follow-up to Item No. 90: Table 3.9.5-Scraper & Truck-Loader Production for Soil Respreading: For mining area Iron Section 20 – Topsoil, the one-way haul distance is listed at 5500 feet. The Reclamation Division calculates this distance to be 6500 feet. Please correct. (BAJ)

The worst case bonding scenario in Revision 26 established a minimum bond amount of \$8,168,895.00 and the worst-case condition described in Revision 27 has reclamation costs that total \$7,932,555.00. While the bond amount does not have to be increased prior to the approval of Revision 27, DWC will need to file a Stipulation to Increase the Bond Area to reflect the area being added with Revision 27.

Regarding the status of the cultural resource survey and inventory for the S1/2S1/2 of Section 20, the draft inventory report for this area must be filed with the SHPO and the necessary information must be incorporated into Revision 27 for the approval of the revision. In addition, the Resource Recovery and Protection Plan (R2P2) prior to the federal coal tract in the S1/2 of Section 22 that was recently added to Lease No. NDM041765 must be filed with the BLM and Commission prior to the approval of Revision 27. Pursuant to 30 CFR 740.13(b)(3)(ii), the permit application package must include the R2P2 for federal coal tracts that will be mined.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor