

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Kalk, Christmann and Fedorchak
Darrell Nitschke
Illona Jeffcoat-Sacco

FROM: Guy Welch, Dean Moos and Jim Deutsch

DATE: May 22, 2014

SUBJECT: Application for Revision No. 27 to Permit No. KRSB-8603 held by Dakota Westmoreland Corporation, Case No. RC-13-70

On January 28, 2013, Dakota Westmoreland Corporation (DWC) filed an application for Revision No. 27 to Permit No. KRSB-8603 to add 892.2 acres to this permit for the Beulah Mine. The added acreage is located in portions of Sections 20, 21, 22 and 23, T143N, R88W, Mercer County. The permit revision provides baseline environmental data and updates mining and reclamation plans for the additional area. The Reclamation Division has completed its review of this revision and respectfully recommends that it be conditionally approved.

The area being added to the permit adjoins the south side of the existing permit area. The addition of 892.2 acres to the existing permit will allow the continuation of mining in an existing pit sequence and DWC will also begin a new pit sequence in the West Brush Creek Mine Area at the Beulah Mine. DWC needs to remove topsoil and subsoil from some of this addition area as soon as possible to allow coal removal to continue in the existing permit area. The construction of additional sedimentation ponds and associated diversions and haul roads will also begin shortly after this revision is approved. Coal removal from the areas being added with Revision 27 is scheduled to begin later this year. The added acreage contains coal that is owned by private individuals, the State of North Dakota, and federal government. The federal coal is managed by the Bureau of Land Management (BLM) within the Department of the Interior.

With the added acreage, the total permit area will increase to 3,558.3 acres. Mining and reclamation procedures will be similar to those presently approved in the permit. The pre-mining and post-mining land uses of lands that will be disturbed in the addition area are native grassland, hayland, cropland and tame pastureland. A small amount of pre-mine woodland and wetland acreage within the area being added to the permit will be disturbed by mining operations and will be replaced with similar acreage as was disturbed.

Mining in the existing Silver Pit sequence will be completed this year and some of the box cut spoil from a new pit area identified as the Iron Pit will be used to backfill the final Silver Pit.

Coal will be removed from the current Gold Pit until 2016 when DWC's contract with the Coyote Power Station ends. Reclamation work in the Gold Pit area will be delayed beginning in 2015 when seven or eight spoil ridges will be left to provide enough spoil material to backfill the final pit in this pit sequence, which will end near a natural drainage. DWC is also requesting a variance from the three-year contemporaneous reclamation for the final pit areas in the Silver and Iron Pit sequences. In addition, DWC has requested a general variance from the rule that requires rough grading be completed within 180 days of coal removal. These requests have been adequately justified and the Reclamation Division recommends the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2). The Extended Mine Plan shows mining continuing southward from the Iron Pit area as DWC is working to extend their current contract with the Heskett Station which will also expire in May of 2016.

A condition will be attached to the approval of Revision 27 that pertains to federal coal tracts within the area being added to the permit. BLM issued an amendment to DWC's existing federal coal lease in late 2013 to an additional federal coal tract (S½ of Section 22) that is included in this revision. BLM has now approved the federal Resource Recovery and Protection Plan for this and other federal coal tracts in the Revision 27 addition. However, a federal mine plan modification must also be approved by the Secretary of the Department of the Interior before mining can begin as required by 30 CFR 746.11. The surface of these federal coal tracts is either owned or leased by DWC. The permit condition will prohibit DWC from removing overburden and coal on the federal tracts added to the permit with Revision No. 27 until the Department of the Interior approves the mine plan modification. Until that mine plan modification is approved, surface disturbances on these federal coal tracts will be limited to those activities that are needed for carrying out mining on the adjoining federal coal tracts previously approved for mining or where the coal is private and state owned.

Revision No. 27 was deemed a significant revision to Permit No. KRSB-8603 making it subject to the public notice requirements. DWC submitted affidavits of publication of the required newspaper notices. We notified the appropriate agencies, affected landowners, and advisory committee members of the revision application. We received no objections or requests for informal conferences on this revision application.

An updated worst-case reclamation cost estimate for bonding was also included in Revision 27 and that cost estimate totaled \$7,932,554.81. However, the current surety bond for this permit is in the amount of \$8,168,895.00. The Reclamation Division has determined the current amount is sufficient to cover the existing worst-case reclamation condition that will occur in 2016. Also, DWC has filed a stipulation to increase the bond area by 892.2 acres to include the area being added to the permit.

Attached for your consideration at the May 28th Commission meeting are the proposed motion, revision approval form, permit condition, and newspaper notice that we must publish following revision approval.

Attachments