



Public Service Commission

State of North Dakota

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March 23, 2017

Jesse Noel, Engineering Manager
Dakota Westmoreland Corporation
Beulah Mine
PO Box 39
Beulah, ND 58523-0039

Dear Mr. Noel:

The Reclamation Division has conducted a completeness review of the Dakota Westmoreland Corporation (DWC) application for Revision No. 31 to Permit KRSB-8603 at the Beulah Mine. Revision No. 31 adds 320 acres to the permit in the N½ of Section 29 to continue Iron Pit mining progression southward through about 2025. The following items must be adequately addressed before the application can be deemed complete and approval is granted to begin publication of the Revision No. 31 newspaper notice of application. While some of the completeness deficiencies may be more technical in nature, we feel that addressing them now will present repeated submittal to the advisory committee.

General Permit Format

1. It was noted that several new and updated sections of the permit either do not include bookmarks where they are needed within large documents of the permit, or were not revised with updated bookmarks where they were previously provided in the permit. Although this is more of a technical item in nature, you may address this issue at this time or wait until after the revision application has been deemed complete. (BEB)

Revision No. 31 Application (SFN 10562)

2. If other changes are made to the revision application form, then please correct the zip code for Beulah, ND. (ZAB)
3. Please revise the description for Revision No. 31 in the description box of the application to clarify that Revision No. 31 adds 320 acres to the existing permit for coal excavation and mining and associated disturbance activities in support thereof, and that a detailed summary of the revised narratives and exhibits is attached to the application form. (ZAB)
4. Please revise the description for Revision No. 31 under the Revision Summary subheading on the application attachment to clarify that Revision No. 31 adds 320 acres in the N½ of Section 29,

T143, R88W, to Permit KRSB-8603 for future coal mining and associated disturbance activities in support thereof. (ZAB)

5. Please provide a detailed description of all of the changes being proposed with this revision as required by NDAC 69-05.2-11-02(4)(a) under the Revision Summary subheading on the application attachment. In addition to adding 320 acres to the permit that includes a new coal removal subarea, this revision appears to propose postmining topographic changes to the Iron Pit in Section 20 that are not otherwise discussed, and the reclamation time schedule is being revised for portions of the Silver, Gold and Iron Pits. In addition, Section 3.8 of the permit is being revised to include new special variance areas and it appears this new mine plan will necessitate an increase in the reclamation performance bond. All of these details need to be explained in the revision description. (GAW)

Section 1.3 - Legal Description of Property

6. Please revise the following items for the metes and bounds description of the entire Revision No. 31 permit area on page 1.3.1. (WTG)
 - a. Add Section 29 to the list of sections included in the permit area in the tract of land description.
 - b. Reference the NE corner of the SE $\frac{1}{4}$ of Section **18** rather than Section 17 on line number 4 as such point coinciding with corner No. 672 labeled on Exhibit 1.3.1 (Permit Area Map). This error was apparently carried over from the metes and bounds description for acres added with Revision No. 19.
 - c. Reference the west line of **Section 16** rather than the west line of said section (Section 17), or reference the **east** line of said section (Section 17) on line number 10. This error was apparently carried over from the metes and bounds description of the entire Revision No. 27 permit area.

Section 1.4 - Business Entity Information

7. Please revise Subsection B - Property Interests within the permit area on page 1.4.59 to include the land being added to the permit in the N $\frac{1}{2}$ of Section 29 with Revision No. 31. Please also revise the Property Interests adjacent the permit area on page 1.4.61 to specify the S $\frac{1}{2}$ of Section 29 as adjacent the permit area rather than all of Section 29. (WTG/ZAB)
8. Please revise Section 29 **to** the S $\frac{1}{2}$ of Section 29 in the list of operator interests in lands abutting the proposed permit area on page 1.4.69 of Subsection B - Property Interests. (ZAB)
9. Please add information for the N $\frac{1}{2}$ of Section 29 to the right of entry and operation table on page 1.4.69 and to the surface owner notification table on page 1.4.70 of Subsection C - Right of Entry and Operation Information. (ZAB)
10. The Notice of Intent letter to Lyle and Patricia Winkler dated January 12, 2017 in Exhibit 1.4.3 (Notices of Intent to Mine) does not include an affidavit of service that would verify the requirements of NDCC 38-18-06(1) have been met. Please provide a copy of the Notice of Intent letter that includes an affidavit of service or include the certified mail receipt for the Winkler's letter. (ZAB)

11. Please update Exhibit 1.4.4 (Temporary Roadway and Section Line Closures) to include documentation for the Mercer County Commission approval of DWC's petition to relocate Mercer County Road 12 from the east-west section line common to Sections 20 and 29, to a road to be built on the north-south section line common to Sections 29 and 30. (WTG/ZAB/RLK)

Section 1.4 - Business Entity Information Subsection I - Permit Application Advertisement

12. Please revise the Revision No. 31 newspaper notice text to comply with NDCC 38-14.1-18 and NDAC 69-05.2-10-01(1). We recommend that the newspaper notice text for Revision No. 27 that most recently added land to the permit, and public road relocation text from Revision No. 22, be used as a template for the Revision No. 31 newspaper notice text and be revised as necessary to reflect the Revision No. 31 application. We offer the following clarifications for revising the newspaper notice text. (WTG/GAW/ZAB/BEB/RLK)
 - a. As indicated in the first paragraph of the Revision No. 27 newspaper notice, the Revision No. 31 newspaper notice should describe the number of acres being added to Permit KRSB-8603, the legal description of acreage being added, and the revised total permit acreage.
 - b. The USGS quadrangle map covering the permit area listed in the second paragraph of the Revision No. 27 newspaper notice is not required (this requirement was repealed a number of years ago) for Revision No. 31 but may be retained in the notice at your discretion.
 - c. The second sentence in the third paragraph of the Revision No. 31 newspaper notice relating to the coal removal subarea and revision updates for the next permit term that were apparently carried over from the Revision No. 30 newspaper notice does not apply to Revision No. 31.
 - d. NDAC 69-05.2-10-01(1)(d) requires a description of the road segment (Mercer County Road 12) to be relocated, where the relocation is to occur, and its duration, if an applicant is seeking approval to relocate a public road. Please refer to the third and fourth paragraphs of the Revision No. 22 newspaper notice as example text for road relocation and duration that must be added to the Revision No. 31 newspaper notice.
 - e. Notification is required as indicated in the fourth paragraph of the Revision No. 27 newspaper notice that a petition may be submitted to designate the area being added to the permit with Revision No. 31 as unsuitable for surface coal mining operations.
 - f. The reference to the permit renewal application in the fifth paragraph of the Revision No. 31 newspaper notice does not apply to Revision No. 31.
 - g. DWC is only required to provide the legal description (N½ of Section 29) and surface and coal ownership for land being added to the permit with Revision No. 31 as indicated by the last paragraph and ownership listing for the Revision No. 27 newspaper notice.
 - h. Please ensure that the name of each owner of record for surface and coal rights is listed as required by NDAC 69-05.2-10-01(1)(b)(4) for land being added to the permit with Revision No. 31. The surface and coal lease for the N½ of Section 29 is by and between Lyle and Patricia Winkler and DWC, but only Lyle Winkler is listed for surface and coal ownership. Exhibit 1.4.1 (Surface and Mineral Ownership Map) also lists Lyle and Patricia Winkler for surface and coal ownership for the N½ of Section 29.
13. Please depict and label the Emmaus Cemetery located in the NE¼NE¼NE¼ of Section 29 on the Revision No. 31 newspaper notice map. (WTG/GAW)

14. Although not specifically required by NDAC 69-05.2-10-01(1)(d), we recommend that the road segment to be relocated, and where the relocation is to occur, be depicted and labeled on the Revision No. 31 newspaper notice map considering that only one mile of road will be relocated. We also recommend that Mercer County road route numbers be labeled in combination with street names (as currently done with 17th St. SW and Mercer County Road 25) to clarify the Mercer County Road 12 relocation for local residents. (WTG/GAW)
15. Please revise the font of the township, range, and county labels on the newspaper notice map so this information is legible if printed at three columns wide. (ZAB)
16. Please revise the newspaper notice map to depict the existing permit boundary between Sections 20 and 29 and reduce the line weight on the permit boundary around the N½ of Section 29 so the section number is legible. (ZAB)

Section 1.6 - Relationship of Permit Area to Areas Designated Unsuitable for Mining

17. Please update Section 1.6 (Relationship of Permit Area to Areas Designated Unsuitable for Mining) to account for the land being added with Revision No. 31. Mercer County Road 12 and the Emmaus Cemetery should be specifically mentioned since it is being added to the permit with Revision No. 31, and NDAC 69-05.2-09-07 requires a description of measures to ensure protection of public and landowner interest. (GAW/ZAB)

Section 2.2 - Surface Water Hydrology - Inventory and Monitoring

18. Please include appropriate surface water quantity and quality information or narrative for the tributary to Coyote Creek passing through the permit addition area in the N½ of Section 29 as required by NDAC 69-05.2-08-04. (RLK)
19. The narrative in Section 2.2 regarding stock ponds (surface water developed water resources) does not include information for the five surface water stock ponds/DWR's located in the proposed addition area in the N½ of Section 29. Please add information documenting the condition, water quality, and current use of these surface water sources as required by NDAC 69-05.2-08-04. (RLK)
20. The surface water monitoring plan should include monitoring of the stock ponds in the N½ Section 29 to appropriately monitor for potential changes to these water sources that flow into or receive drainage from the proposed mining activity as required by NDAC 69-05.2-08-04. (RLK)
21. Please add the watershed boundary for the tributary of Coyote Creek passing through the proposed permit addition area in the N½ of Section 29 to Exhibit 2.2.7 (Surface Water Monitoring Map). The information is pertinent to the evaluation for probable hydrologic consequences required by NDAC 69-05.2-09-12. (RLK)

Section 2.3 - Groundwater Hydrology

22. Please update Subsection C - Known Uses of Groundwater in Section 2.3 regarding the L. Winkler Springs No. 1 and No. 2. Both of these undeveloped springs were certified in 2005; however, updated permit information is required for them, in particular because they are located upgradient of stock dams and it appears that they supply water to the stock dams. Both springs

were noted as being dry in the certification field forms; however, an updated flow measurement and water quality analyses (or attempt) needs to be made. Please provide narrative in the permit regarding these springs similar to the Schmidt seeps, Voigt springs, Gunsch spring, etc., and update the Probable Hydrologic Consequences of mining and reclamation operations that will occur near these features, and DWC's replacement plans if deemed necessary. Even if weather conditions are favorable for updated spring flow measurement and sample collection, it is recommended that Mr. Winkler be interviewed regarding historic flow information of these springs and the importance of these features to his cattle operation. (BEB)

23. Table 2.3.7 in Subsection D - Probable Hydrologic Consequences in Section 2.3 summarizing premining and post mining changes to surface water drainage areas and potential runoff volumes does not appear to take into account the post mining topography proposed in Exhibit 3.5.3 (Post Mining Topography). Please provide maps with the pre-mine and post-mine watershed areas drawn with appropriate contour lines used in the hydrologic modeling for the surface water probable hydrologic consequences. Please also remove the number 4 strikethrough so the table title clearly reads as 2.3.7. [NDAC 69-05.2-09-12(1), NDCC 38-14.1-14(2)(i)] (RLK)
24. Assuming the data has now been received from the testing laboratory, please supplement the hydrologic baseline information requirements for the addition of the N $\frac{1}{2}$ of Section 29 to the permit by incorporating the 2016 water quality analyses for ground water monitoring wells 2038, 2039, 2040, 2041, and 2042 into the Ground Water Quality Summary table provided in Exhibit 2.3.6 (Groundwater Quality Data). (BEB)

Section 2.6 - Pre-mining Vegetation Inventory

25. The narrative describing wetland series 29-3 beginning on page 2.6.45 of Section 2.6, and the aerial image provided in Exhibit 2.6.9 (Premining Land Uses and Vegetation Map Units), indicate that the wetland area in the NE $\frac{1}{4}$ of Section 29 is substantially different from the wetland area associated with the stream channel located in the NW $\frac{1}{4}$ of Section 29. Please inventory and label the two wetland areas separately in accordance with NDAC 69-05.2-08-08(1). (RLK)
26. The wetland delineations added to Exhibit 2.6.12b (Wetland Delineations) do not appear to adequately depict the wetland areas located in the proposed addition area in the N $\frac{1}{2}$ of Section 29. The exhibit contains a single drawing labeled Wetland 29-3 indicating the feature is 2 feet wide and no information is provided for the other wetlands in the permit addition. Please revise to include information in accordance with NDAC 69-05.2-08-08(1). (RLK)

Section 2.7 - Land Use

27. Please revise Exhibit 2.7.2 (Land Use Preference Statements) to include a landowner preference statement from the surface owners for the N $\frac{1}{2}$ of Section 29 being added to the permit with Revision No. 31, or include correspondence containing DWC's request for a landowner preference statement for compliance with NDCC 38-14.1-14(2)(b) and (c). (GAW/BEB/WTG)

Section 3.1 - General Mining Plan

28. Please revise the permit to clarify which map shows the location and current use of all buildings on and within $\frac{1}{2}$ mile of the proposed permit area as required by NDAC 69-05.2-08-02(1)(e). The Reclamation Division is aware of buildings in the proposed revision addition area located

near the center of the W½ of Section 29, and it is not clear where detailed information exists in the permit for the buildings associated with Lyle and Pat Winkler's farmstead. Coyote Creek Mining Company, LLC's shop and office facilities are also located within ½ mile of the proposed revision addition area. This information is not provided on Exhibit 3.1.6 (Facilities Area Map), nor is it clear where this information can be found in the permit. (GAW)

29. Please update the Intermittent Stream Buffer Disturbance narrative in subdivision 3 of Subsection C of Section 3.1 (General Mining Plan) to discuss if Ponds 110 and 111 and the associated diversions will impact lands within 100 feet of an intermittent stream. NDAC 69-05.2-16-20 prohibits disturbance within 100 feet of an intermittent stream unless the Commission, after consulting with other agencies, finds no adverse affects to water quality and quantity. Please update the permit to thoroughly discuss this issue if operations are planned within 100 feet of an intermittent stream. (GAW)
30. Please revise Exhibit 3.1.2 (Pit Layout and Facilities Map) to depict all planned sediment ponds, diversions, haulroads, SPGM stockpiles, overburden stockpiles, and all other mining related features and facilities in Section 29 so that one can determine the area to be affected by mining activities as required by NDAC 69-05.2-09-02(2). (GAW)
31. Please include pit numbers on Exhibit 3.1.2 (Pit Layout and Facilities Map) so that the information provided in Table 3.8.2 (Time Schedules) is meaningful. Currently, it is not possible to understand where variances from contemporaneous reclamation requirements are being requested for the pits listed in Table 3.8.2. (GAW/ZAB)
32. Please revise Exhibit 3.1.2 (Pit Layout and Facilities Map) to depict the intermittent stream in Section 29 and identify areas where activities are planned within 100 feet of this intermittent stream. (GAW)
33. Please depict the location of ramps that will be used for coal haulage from the N½ of Section 29 on Exhibit 3.1.8 (West Haul Road Extension). The ramps must be depicted because they will eventually be certified as haulroads as mining progresses in the N½ of Section 29. [NDAC 69-05.2-09-02(7) and Policy Memorandum No. 23 to Mine Operators] (BAJ)

Section 3.2 - Water Management Plan

34. Please include a certification that the Water Management Plan has been prepared by, or under the direction of, a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist with assistance from experts in related fields. Maps, plans, and cross sections submitted according to NDAC 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor. [NDAC 69-05.2-09-02] (BAJ)
35. Please label all diversion ditch routes in the N½ of Section 29 on Exhibit 3.2.1 (Water Management Plan). (WTG)
36. Please include a table or graph illustrating elevation - area for Pond 109 (Exhibit 3.2.58), Pond 110 (Exhibit 3.2.60), and Pond 111 (Exhibit 3.2.62) as required by NDAC 69-05.2-09-09(2)(f). Currently only a graph and table illustrating elevation - capacity is provided for each pond. (BAJ)

Section 3.5 - Backfilling and Grading

37. Exhibit 3.5.3 (Post Mining Topography) has been revised such that one cannot determine the terrain modification boundary as was depicted on the currently approved version of the map, and it appears that topographic changes are being proposed for the Iron Pit in Section 20 even though the revision summary makes no mention of topographic changes in this area. Please revise to depict the terrain modification boundary of all disturbed areas and clarify if any currently approved topographic changes are being proposed. (GAW/RLK)

Section 3.8 - Time Schedules

38. DWC is proposing numerous changes in Section 3.8 (Time Schedules) but the currently approved version of this section was not used and a number of proposed changes were not highlighted. It appears that an older version of Section 3.8 was updated with this revision, or that changes initially proposed with Revision No. 30 were not carried forward. In any event, please revise the currently approved version of Section 3.8 while retaining historical information, and provide ample justification for any new requests for variances from the contemporaneous reclamation requirements. Each new variance request should clarify if a variance is being requested for the 180 day backfilling rough grading rule (NDAC 69-05.2-21-01(2)) or from the three-year seeding rule (NDCC 38-14.1-24(14)). DWC might also update this section to address short-term reclamation delays as outlined in our January 24, 2017 letter in response to DWC's December 13, 2016 letter in follow-up to our November 22, 2016 meeting. (GAW/ZAB)

Please contact us if you have any questions.

Sincerely,



Dean K. Moos
Director
Reclamation Division

cc: Jody Mann
Mercer County Auditor