

**PUBLIC SERVICE COMMISSION  
Reclamation Division**

\*\*\*\*\*

**Memorandum**

**TO:** Commissioners Fedorchak, Christmann and Kroshus  
Steve Kahl, Executive Director  
John M. Schuh

**FROM:** Dean Moos, Zanna Brinkman and Guy Welch

**DATE:** July 28, 2021

**SUBJECT:** Application for Revision No. 32 to Permit No. KRSB-8603 held by The Dakota Westmoreland Company, Case No. RC-18-431

On December 27, 2018, the Dakota Westmoreland Corporation filed the application for Revision No.32 to Surface Coal Mining Permit KRSB-8603. This revision addresses items requested by the Reclamation Division during our midterm review of the permit and many of the items identified during our subsequent pre-renewal review were updated with Revision 32, which is being approved simultaneous with Revision 33 and Renewal No. 7. This revision updates operation and reclamation plans including surface water management, the post mining topography in the Gold and Iron Pit areas, the reclamation schedule and the worst-case reclamation cost estimate used to determine the bond amount. The Reclamation Division has completed its review of this permit revision application and respectfully recommends conditional approval.

Revision No. 32 was considered a significant revision because of changes to the post mining topography in the Gold Pit area and changes to the reclamation schedule. DWC had previously indicated there was an overburden material balance shortage in the Gold Pit area that required changes to the approved post mining topography. DWC has not complied with their previously approved reclamation schedule which has further delayed reclamation and increased the worst case bond amount.

DWC is again requesting additional time for completing reclamation of the final pit areas and their proposed timeline may be unrealistic given their available equipment and manpower. This requires a variance from the contemporaneous reclamation requirements that normally requires all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). These variance areas are related to the reclamation of final pits and we determined they are needed in order to properly backfill the final pit areas.

Two surface owners, Terence Schmidt and Ron Gunsch, filed written objections to this revision application and raised a variety of concerns including DWC's lack of progress in reclaiming in the Gold Pit area. Reclamation Division staff met with these surface owners in October of 2020 and informed them of their right to an informal conference and a formal hearing. Neither requested an informal conference.

Memorandum  
July 28, 2021  
Page 2

On July 16, 2021, Terence Schmidt submitted additional comments via email expressing concerns regarding the lack of reclamation progress, weed control, and lease payments. He also requested that the company be required to submit a monthly progress report on reclamation progress in the Gold Pit area.

Reclamation Division staff recommends adding a condition to the approval of Revision No. 32 that requires DWC to submit quarterly reports to the Reclamation Division with the approximate volume of spoil and overburden that has been moved for backfilling the final Gold pit area and the approximate quantities of topsoil and subsoil respread in each pit area during each 3-month period beginning October 1, 2021.

Dakota Westmoreland submitted the affidavits of publication for the newspaper notices. We also notified the appropriate agencies, affected landowners, and the advisory committee members. Evidence of adequate liability insurance is currently on file, and the revision updates the worst case reclamation liability surety bond in the amount of \$14,516,993.00 will cover the current worst-case reclamation condition in this permit.

Attached for your consideration are the proposed motion for the August 4<sup>th</sup> Commission meeting, the revision approval form, and notice that we must publish in newspapers.

Attachments