



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Brian Kroshus  
Julie Fedorchak  
Randy Christmann

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto: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 16, 2020

Mr. Scott Aberle  
General Manager  
Dakota Westmoreland Corporation  
P.O. Box 39  
Beulah, ND 58523-0039

Dear Mr. Aberle:

The Reclamation Division has reviewed the permit transfer application for Permit KRSB-8603 at the Beulah Mine submitted by Westmoreland Beulah Mining LLC (WBM) on March 23, 2020. The application is missing several items required by North Dakota's reclamation laws and rules, such as a copy of the public notice and the assignment of leases that proves WBM's right of entry.

Please resubmit the permit transfer application and include all of the information required by **NDAC 69-05.2-11-06**. The following errors must be corrected or added to the Application for Transfer, Sale or Assignment of Rights before the Reclamation Division can conduct a completeness review of the application.

### **Application for Transfer, Sale or Assignment of Rights**

1. The Application for Transfer, Sale or Assignment of Rights, SFN 10579, was completed and signed over a year ago before the Westmoreland Mining Holdings LLC entities were entered into the Applicant Violator System (AVS) system. The application was signed and verified by Jeffrey Provenza, General Manager; however, Mr. Provenza is not listed as an officer or the General Manager of WBM in the Business Entity information or in the November 5, 2019 AVS information submitted with the application. Please submit a new application that is signed and verified by the current WBM General Manager Scott Aberle or another current WBM officer that is also listed in the AVS system. The signature must be acknowledged by a notary public. The *Approval by Existing Permittee* section of the application must be signed by an authorized officer listed in the current AVS files for Dakota Westmoreland Corporation and the signature must be acknowledged.
2. Please correct the following errors and omissions on the Application for Transfer, Sale or Assignment of Rights, SFN 10579:
  - a. An application date must be entered in the upper right corner of the application.
  - b. Enter a date for WBM to obtain all rights granted under Surface Coal Mining and Reclamation Operations or write "see attached" on the date line and attach a brief explanation of the circumstances and include a copy of the final signed Purchase and Sale Agreement (PSA) entered into by Westmoreland Coal Company and Westmoreland Beulah Mining LLC, a subsidiary of Westmoreland Mining Holdings LLC.

- c. Attach the metes and bounds description of Permit KRSB-8603 as indicated on the application.
3. The Secretary's Certificate provided on page 1.4.2 of the Business Entity Information (pages 1.4.1-1.4.3) and in the AVS filing of Identification of Interests and Compliance Information for Westmoreland Mining Holdings LLC entities was issued, dated and signed on November 5, 2019. The AVS ownership/control and compliance information needs to be reviewed. If any changes to the ownership/control or compliance information have occurred, the AVS filing must be updated and a new Secretary's Certificate must be issued. If no changes to the ownership/control or compliance information have occurred, the *In Witness Whereof* portion of the Secretary's Certificate must be dated, signed and acknowledged on or close to the same date that the replacement Application for Transfer, Sale or Assignment of Rights, SFN 10579, is signed to indicate the November 5, 2019 information remains current as of the date of the transfer application. The original signed and acknowledged document needs to be submitted.
4. Lease assignments for Permit KRSB-8603 must be submitted with the Application for Transfer, Sale or Assignment of Rights to prove WBM's of right of entry.
5. A draft public notice that includes all current surface and coal owners must be submitted with the Application for Transfer, Sale or Assignment of Rights. The Reclamation Division will notify WBM to begin publication of the public notice when the application is deemed complete.
6. WBM must review and update all surface and coal owner addresses and provide the addresses to the Reclamation Division so we may send notices to all surface owners as required by NDCC 38-14.1-18(4).
7. Please provide WBM's Employer Identification Number (EIN) from the Internal Revenue Service and provide a copy of WBM's Certificate of Good Standing from the State of North Dakota Secretary of State to verify WBM is authorized to conduct business in ND.
8. Please include a supporting narrative in the application that addresses each requirement of NDAC 69-05.2-11-06, including the permit application laws and rules referenced in NDAC 69-05.2-11-06.

WBM submitted replacement surety bonds and riders to reduce the current surety bonds. Although these items are a critical part of the permit transfer application, they will be addressed separately from the application items listed above. It is important to note that WBM used an effective date of January 14, 2020 for both the replacement bonds and the riders to reduce the current bonds. While this is a common practice when a permittee replaces a bond, it is not done with a permit transfer. For a permit transfer, the Commission must accept the new surety bonds and approve the permit transfer before riders can be submitted to reduce/cancel the old surety bonds. The riders to reduce the current surety bonds will need to be re-executed after the permit transfer application is approved. A few minor items need to be resolved with the replacement bond documents and the Reclamation Division will continue to work directly with Ms. Dicki Peterson on these items. **Please note that DWC will need to submit the new permit transfer application in a timely manner or the replacement bonds will need to be re-executed with a new effective date.**

WBM also provided a Certificate of Liability Insurance for General Liability Policy 3003-56-24 with the permit transfer application. The Reclamation Division and WBM have been discussing the the general liability policy and the umbrella policies submitted by WBM since July 2019. In January 2020, the

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Reclamation Division conditionally accepted Policy 3003-56-24 (along with an umbrella policy to meet the required aggregate amount) until the end of the permit term. We have determined that the general liability policy does not meet North Dakota's reclamation law and rules and WBM must obtain a general liability insurance policy that does not contain any SIR or deductible. The new policy must list WBM as the primary insured and must provide a minimum coverage of one million dollars for each occurrence and two million dollars aggregate for the Beulah Mine location. **A copy of the new liability insurance policy, a certificate of liability insurance, and a substantive change/cancellation endorsement must be submitted by June 1, 2020 so the new policy can be reviewed and approved before the current policy expires on July 1, 2020.** The permit transfer applications cannot be approved until WBM obtains liability insurance that meets North Dakota's reclamation laws and rules.

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos  
Director  
Reclamation Division

cc: Jesse Noel  
Dicki Peterson