

Public Service Commission

Public Service Commission
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July 22, 2024

Mr. Jesse Noel
Director, Environmental & Regulatory Affairs
Westmoreland Beulah Mining LLC
Beulah Mine
P.O. Box 39
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Dear Mr. Noel:

The Reclamation Division has completed an initial review of Partial Bond Release No. 4 to Surface Coal Mining Permit KRSB-8802 at the Beulah Mine submitted on June 4, 2024. This application requests release of bond for completion of backfilling and grading (Stage 1) and suitable plant growth material (SPGM) respread (Stage 2) on 3,268 acres located east of Highway 49. The following issues must be resolved prior to publishing the public notice and mailing the notification letters. An inspection of the property as required by N.D.C.C. 38-14.1-17 will be delayed until the public advertisement has been published and the notification letters have been mailed.

General:

1. Please include bookmark links in the bond release pdf application that will enable quick access to Attachments I through VII and all Exhibits. (GAW)
2. WBM is requesting the release of \$6,271,338.60 for reclamation work completed in Permit KRSB-8802, but the bond release amount has been calculated incorrectly. As required by NDAC 69-05.2-12-12(10), WBM must first update the existing Reclamation Cost Estimate in Section 3.8 of Permit KRSB-8802 to establish the amount of money required to complete all remaining reclamation obligations in Permit KRSB-8802. This would include the costs to remove roads, road underpasses, ponds and other features, and facilities including gravel for reconstructed public roads. The cost-estimate for reclaiming the remaining features and facilities must be subtracted from the current bond amount. A disturbed and undisturbed dollar amount can then be established on a per acre basis. Lands not disturbed by mining activities should be assigned a dollar amount of \$200.00 per acre. The disturbed acreage amount is then determined by dividing the disturbed acreage by the amount of money remaining after subtracting the costs of reclaiming the remaining obligation and the undisturbed acreage amount. (GAW/AAC)
3. In prior correspondence with Reclamation Division staff, WBM has indicated they may need to re-disturb approximately 16 acres of land in the S $\frac{1}{2}$ of Section 8 to repair differential settling that has occurred on reclaimed land. This area should not be included in the bond release application if it is likely that SPGM will need to be removed from the site and if the approved grade contours may be altered. (GAW/PJR)

4. Water has been observed ponding in low areas in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19. It is questionable whether these areas should be included in the bond release application if the respread SPGM will need to be re-disturbed to repair these features. (GAW/PJR)

Application SFN 19812

5. Please revise and resubmit the application form SFN 19812 to account for changes requested in Item No. 2 above. (PJR)

Attachment I – Bond Release Area Map: Exhibit I-1

6. Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) is listed as the Bond Release Area Map in the Table of Contents, but the map legend identifies the map as “Stage 1 and 2 Bond Release 4 Areas”. Please revise to reference this map in a consistent manner. (GAW)
7. The pool areas of reclaimed sediment ponds 4, 5, 6, and 25 are included in the bond release area on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) but the reclaimed embankment areas associated with these ponds are not included in the bond release area. It seems the reclaimed embankments associated with these ponds should be included in the bond release area. (GAW)
8. Please review the Stage 1 & 2 Bond Release Area around the sump in the southeast corner of the NE $\frac{1}{4}$ of Section 19 to ensure the boundary is accurately depicted on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas). It appears that a portion of an old haul road that has not been reclaimed is included in the bond release area. (GAW)
9. Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) depicts the areas requested for Stage 1 and 2 bond release completion. This includes areas around pond P71. It was noted in the Commission’s November 15, 2023 inspection that 2 acres immediately north of the pool area of pond P71 had not yet been reclaimed. This area needs to be graded and respread prior to stage 1 and 2 bond release. (AAC/JAR)
10. Old transmission lines and power poles are present in Permit KRSB-8802. These need to be removed to complete reclamation of the site. Please update Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) with the locations of the transmission lines and power poles to ensure they are not present in the bond release request area. (AAC)
11. Please add and label Highway 49 on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) for general reference. (PJR)
12. The county line is illegible on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas). Please change the coloring so it is visible. (PJR)

Attachment II – Stage 1 and Stage II Bond Release Boundary

13. Please revise the acreage listed in Attachment II (Stage 1 and Stage II Bond Release Boundary) to 3,268 as indicated throughout the bond release application. (MLJ/GAW/SMN)

14. Please revise Attachment II (Stage 1 and Stage II Bond Release Boundary) to include a metes and bounds description of the partial bond release boundary as required by the application form (SFN 19812). (JWE/GAW)

Attachment III – Public Notice

15. Please revise the last sentence of the first paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) to state that Permit KRSB-8802 was “originally” approved on October 24, 1990. Also, please consider revising this sentence to make it clear that the 4,906 acres refers to the size of the permit area and not the size of the bond release area. (PJR/MLJ)
16. Attachment III (Public Notice) states the current bond amount for Permit KRSB-8802 is \$10,452,231 but our records indicate the amount is \$10,382,986.00, effective October 13, 2021. Please review and correct if necessary. (GAW)
17. The third paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) states that WBM is requesting the release of \$6,271,338.60 for reclamation work completed to date, \$4,180,892.4 for backfilling and grading and \$2,090,446.20 for SPGM respread. Please update these values after addressing Item No. 2 above. (GAW/PJR)
18. The first sentence of the fourth paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) states that coal removal began in the bond release area in 1969 but the bond release area includes lands that were mined or affected by mining activities prior to 1969. Please revise to provide clarity. (GAW)
19. Attachment III (Public Notice) specifies that the notice will be published in the Beulah Beacon, Hazen Star, and the Center Republican. The Beulah Beacon is not the official newspaper of Mercer County, so the notice is only required to be published in the official newspapers of Mercer County (Hazen Star) and Oliver County (Center Republican) and not required to be published in the Beulah Beacon (NDCC 34-14.1-18(1) & Subdivision a of Policy Memo No. 9). (JAR)
20. Please add Highway 49 as a bold line on Exhibit III-1 (Public Notice Map) for general reference. (PJR/WWS)
21. Please include a scale bar on Exhibit III-1 (Public Notice Map). (WWS)

Attachment IV – Letters to Affected Parties

22. Please provide a list of names and addresses of the surface owners whose land is proposed for bond release and a list of the names and addresses of adjoining property owners whose land is contiguous with any area proposed for partial bond release. Signed copies of the letters sent to all surface and adjacent surface owners, agencies and governmental bodies will need to be included in the bond release application after publication of the public notice. (GAW/JAR)
23. Attachment IV (Letter to Affected Parties) indicates that WBM is planning to notify coal owners of proposed partial Bond Release No. 4. NDCC 38-14.1, NDAC, and Policy Memorandum No. 9

to Mine Operators do not require coal owner notification. Please review and clarify if WBM is planning to send notification letters to all affected coal owners. (GAW/JAR)

24. A sentence in the second paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states “The bond release area also includes 127 acres of mine area reclaimed prior to mining law and reclamation bonding”. Please revise to clarify if this statement is referring to pre-law areas that were initially affected by mining activities that occurred prior to the enactment of North Dakota’s first mining law in 1969. Areas of pre-law mining disturbance that were used to support current law mining activities are subject to the reclamation standards that were in effect at the time of coal removal from such lands. These re-disturbed pre-law areas were not “reclaimed prior to mining law and reclamation bonding”. (GAW)
25. The surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) state the current bond amount for Permit KR5B-8802 is \$10,452,231 but our records indicate the amount is \$10,382,986.00, effective October 13, 2021. Please review and correct if necessary. (GAW)
26. The third paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states that WBM is requesting the release of \$6,271,338.60 for reclamation work completed to date, \$4,180,892.4 for backfilling and grading, and \$2,090,446.20 for SPGM respread. Please update these values after addressing Item No. 2 above. (GAW/PJR)
27. The first sentence of the fourth paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states that coal removal began in the bond release area in 1969 but the bond release area includes lands that were mining or affected by mining activities prior to 1969. Please revise to provide clarity. (GAW)

Attachment V – Stage 1 & 2 Detail Maps

28. Please depict and label all PSC approved grade approvals in the bond release area on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please realize that grade approvals were not submitted when haul road corridors and the final pit in the SW¼ of Section 19 were reclaimed in 2020 because these areas simply needed to be shaped to tie into adjacent reclaimed lands. (PJR/GAW)
29. Please revise Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map) and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) to show the Mercer/Oliver County line in bold to easily denote where the county line is located. (WWS)
30. A small area in the NW¼ of Section 24 that was respread with SPGM in 2015 does not depict the SPGM respread depths on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please update Exhibit V-2 with the SPGM respread depths required for this area. (JAR)
31. The SPGM respread depths provided for the final pit in the SW¼ of Section 19 and haul road corridors in Sections 12, 13, 18, 19, and 24 that were initially seeded in 2020 and 2021 appear incorrect on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please delineate these areas and provide accurate SPGM respread depths for these areas. (GAW)

32. Please provide the year SPGM was respread (Respread Year) of all respread areas on Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map). A respread year is not provided for the final pit in SW $\frac{1}{4}$ of Section 19 and haul road corridors in Sections 12, 13, 18, 19, and 24. Recent WBM annual mine maps should provide you with this information. (GAW/JAR)
33. Please review the Stage 1 & 2 Bond Release Area around the sump in the southeast corner of the NE $\frac{1}{4}$ of Section 19 to ensure the boundary is accurately depicted on Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map). It appears that a portion of haul road, that has not been reclaimed, is included in the bond release area. (GAW)
34. The pool areas of reclaimed sediment ponds 4, 5, 6, and 25 are included in the bond release area on Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map), but the reclaimed embankments associated with these ponds are not included in the bond release area. It seems the reclaimed embankment areas associated with these ponds should be included with the pool areas and these areas should be labeled 0/0 on Exhibit V-2. (GAW)

Attachment VI – Reclamation Narrative

35. In the Background subsection of Attachment VI (Reclamation Narrative), please provide a brief history of the backfilling, grading, and SPGM respreading timeline in the bond release areas. (WWS)
36. A sentence in the second paragraph of Attachment VI (Reclamation Narrative) states pre-law areas (127 acres) are excluded from the bond release, but Exhibits I-1 (Stage 1 and 2 Bond Release 4 Areas), Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) include pre- and early law areas that were used to support current law mining. Please clarify if the 127 acres is pre-law mining disturbance that was not used to support SMRCA mining. These areas are hatched and labeled as undisturbed on the Exhibits. (GAW)
37. A sentence in the second paragraph of Attachment VI (Reclamation Narrative) incorrectly states that pre-law areas are not bonded and that these areas were reclaimed prior to passage of reclamation bond laws. Some pre-law areas in Permit KRSB-8802 that were used to support current law mining are included in the current bond area and are subject to the bond stage criterion and 10-year revegetation responsibility period requirement. Pre-law areas that were used to support current law mining activities were not reclaimed prior to passage of reclamation bonding laws as stated. Please revise the narrative in the second paragraph of Attachment VI to clarify that pre-law disturbance that was not used to support current law mining is not subject to any reclamation performance standards. However, pre-law disturbance used to support current law mining must be reclaimed in accordance with plans in the permit and to the satisfaction of the Commission. This would include re-establishing drainage and erosion control. (GAW)
38. The last sentence of the first paragraph under the Stage 2 Bond Release subsection of Attachment VI (Reclamation Narrative) states that soil replacement and seeding occurred between 1984 and

2023 but Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) shows 1982 and 1983 seedings in the bond release area. Please review and revise to provide clarity. (GAW)

39. The last sentence of the second paragraph under the Stage 2 Bond Release subsection of Attachment VI (Reclamation Narrative) states the minimum topsoil respread depth was 0.75 feet but Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map) provides that no (0) topsoil was respread on areas subject to 1969 and 1971 reclamation laws and that 0.5 feet of topsoil was respread on an area subject to the 1973 reclamation law. Please review and revise as appropriate. (GAW)
40. Please remove the last paragraph in Attachment VI (Reclamation Narrative) that pertains to the public notice as this information is already covered by Attachment III (Public Notice). (PJR)

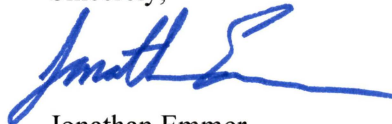
Attachment VII – KRSB-8802 Performance Bond Release Calculations

41. As previously stated in Item No. 2 and required by NDAC 69-05.2-12-12(10), please revise the entirety of Attachment VII (KRSB-8802 Performance Bond Release Calculations) to accurately portray the correct amount of bond to be released. The costs to complete all remaining reclamation work needs to be calculated and retained in the bond, and then up to 60% of the remaining amount may be calculated for the 3,268 acres in the bond release area for the first two stages or release after establishing the amount needed for undisturbed land in Permit KRSB-8802. (PJR/GAW/AAC)

Please be aware the Reclamation Division must conduct SPGM depth verification probing on the bond release area to ensure that all grade approved areas were respread to the approved topsoil and subsoil respread depths prior to bond release approval. Consequently, Item No. 28 above must be satisfactorily addressed so the Reclamation Division can corroborate each grade approval tract and their corresponding approved SPGM respread depths prior to conducting the SPGM depth verification probing. The Reclamation Division will coordinate with the Beulah Mine prior to any work being conducted.

If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

cc via email only: Juris Ore (jore@westmoreland.com)
 Nettie Ore (nore@westmoreland.com)
 Todd Briggs (tbriggs@westmoreland.com)
 Bob Smith (rsmith@westmoreland.com)