



Brian Schweitzer, Governor

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March 14, 2011

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Western Energy Company  
Rosebud Coal Mine Area B  
P.O. Box 99  
Colstrip, MT 59323-0099

Permit ID: C1984003B  
Revision Type: Amendment  
Permitting Action: Deficiency  
Subject: Third Round Deficiency Comments for Application 00184

Dear Dicki:

The Department reviewed Western Energy's response to the Second Round of Technical Deficiencies received on November 15, 2010. There are several outstanding deficiencies that must be addressed before the Department can determine Application 00184 technically acceptable. Please provide an adequate response to the following deficiencies:

17.24.303(1)(r): There appears to be inconsistencies within the statistics depicted for "Total Coal Permitted" and "Total Coal Mined" on page 18. Rather than make corrections, the Department recommends deleting these statistics from the table.

17.24.303(1)(r): As per a phone call between Department and Western Energy staff, the mine sequence data on page 19a and associated maps require a thorough review and changes. At a minimum, the following must be changed:

- All mine passes must be numbered and accounted for on the maps and tables.
- The mine passes are not mined continuously and in sequence. The approximate location of all end-walls must be clearly marked on the maps and the table must depict a feasible sequence.

Please work with the Department (Peter Mahrt and Tom Golnar) as the tables are corrected for review of the revised tables prior to submittal of your deficiency response.

17.24.304(1): WECO is citing a rule that does not exist on pages 36 and 37 (17.24.304(1)(e)(a) and (b) are incorrect). And again on page 38, 39, and 40 the rule citations do not correspond to the text.

17.24.304(1)(k):

- 1) The first paragraph discusses the soil survey; however, the year of the soil survey is not included. Insert the year(s) the survey was carried out.
- 2) There are multiple tables representing soil salvage acreages. In section 17.24.304(1)(k) Table 15: "Area B extension; Premine Soil Acreages, Salvage Depths

and Volumes” (Page 81a) totals the pre-mine soils for Area B extension with their respective acreages and volumes. Additionally, the soil resource report Volume I contains the above mentioned table and an earlier table “Area B (7, 8, 17, 18) Premine Soil Acreages, Salvage Depths and Volumes”. The total of the acreage column in the Area B extension table is 2,102 ac and for the Area B (7, 8, 17, 18) table the total is 1,627 acres. Neither of these acreage numbers are consistent with any of the disturbance acres indicated in 303(1)(r) application 184, page 18 (unnamed table). The page 18 table has total Area-B disturbance listed as 5,421 ac. and B-East listed as 3,316 ac. The acreages appear to need some updating and validation. The following clarification is required:

- i) Validate the acreages for soil salvage and disturbance then update the soils tables to match the other sections in the permit.
- ii) Create one table to represent all Area B mining, and locate it either in the permit or the soil resource volume. Additionally, reference the table appropriately.

17.24.304(1)(j): The applicant must clearly identify what area is included in the baseline wildlife monitoring plan for the amendment area. Currently the proposed amendment is covered within the annual wildlife monitoring area depicted in the 2009 annual report. However, the spatial extent of the monitoring plan is not permitted, i.e. buffer zone. This can be accomplished by updating E-2 or by making a reference in 304(1)(j) for the reader to refer to ARM 17.24.723. Then a commitment must be made in ARM 17.24.723 that the area to be surveyed is identified in the annual wildlife monitoring report. This text should also make it clear what buffer (year of annual report) is being applied to the amendment application number. This is necessary to verify that the appropriate baseline was conducted for the amendment.

17.24.312: The Fish and Wildlife plan has some good points; however, it does not address the requirements of the rule. The plan must:

- 1) Describe how the applicant will minimize disturbance and adverse impacts on fish, wildlife, and related environmental values during mining and reclamation operations.
- 2) How enhancement of these resources will be achieved.
- 3) How the plan will comply with the endangered species act.

Alternatively, if Western energy so chooses, a case under 17.24.312(1)(c) that it is not practicable to achieve enhancement of wildlife resources could be proposed. Western Energy would have to demonstrate that enhancement is not practicable.

Additionally, the “wildlife enhancement” discussion should be relocated to 312(1)(b) and the discussions currently stated under (1)(c) are actually for (1)(d).

17.24.313(1)(d)(ii): Exhibits T-2a and 2b must be updated. The Department would prefer changing the exhibits to just pre and post mine “Slope Histograms” and not include a map.

17.24.313(1)(e),(1)(f); 314, 501, 631, and 634: Western Energy made several PMT and related drainage profile adjustments that largely address the surveyed profile problems listed. Western Energy must commit that during final regrading they will include similar PMT adjustments as needed mine-wide, including unprofiled larger and smaller tributaries, to ensure appropriate drainage profiles and cross sections, and to provide valley bottom, terrace and slope characteristics similar to pre-mining.

Note that the Area B East (and B-Extension) Channel Profile Comparisons should include an Exhibit ID (as in other Western Energy permits). The recent submittal also needs to include an appropriate date of revision (currently 3/11/10, same as the last version, and prior to the August 2010 PMT revisions).

17.24.313(1)(h): Table 18 proposes significant shifts in post mine landuse (agriculture and pastureland). These proposed shifts require, at a minimum, approval from the post-mine landowner. Alternatively, Western Energy can reclaim the landuse as it existed pre-mine.

	Pre-mine Disturbed	Post-Mine	Proposed Result
GRAZING LAND	4611.6	4755.1	3% Increase
CROPLAND	431.6	527.2	22% Increase
PASTURELAND	503.1	272	46% Decrease
Total	5546.3	5554.3	

17.24.313(1)(h): Table 18. Comment 2 states that 135.6 acres of pre-mine pastureland are “to be determined” as to the post-mine land use. Western Energy must indicate what land use these 135.6 acres will be reclaimed as.

17.24.313(1)(h): Western Energy is proposing to relocate all of the agriculture pre-mine landuse from sections 5 and 10 (owned by WPP LLC) to sections 8 and 17 (owned by Western Energy). At a minimum, Western Energy must provide written approval from the post-mine landowner documenting acceptance of this shift in post-mine landuse. A similar situation exists with the pastureland and will also require documentation.

17.24.313(1)(h)(i): Page 130d. If Western Energy wishes to remove their commitment to plant deciduous species in the silver sagebrush vegetation type (commitment under the objectives heading), then they must commit to planting more acres in the deciduous tree/shrub vegetation type.

17.24.313(1)(h)(i): Western Energy must commit to creating wildlife enhancement features on all post-mining land uses other than wildlife post-mining land use. This includes cropland, pastureland, and grazing land.

17.24.313(1)(h)(iii): Western Energy did not address the second round request to add Wyoming big sagebrush to the Upland seed mix. The comment stating, “For all post-mine vegetation types except lowland and upland grasslands, Western Energy must specify the shrub seed or transplant amount (plants per acre), species, and method of planting. For example, the permit states that in the upland skunkbush sumac type, the conifer seed mix will be seeded at 50% of the normal rate. There is no discussion of how shrubs will be established on the site, what species will be used, or how dense they will be seeded or planted,” also was not addressed.

17.24.313(1)(h)(iii): Please stop the use of the “#” symbol to mean both pounds and number when referring to seed mixes. For example, in seed mix tables it is used to mean number of seeds, and in Table 23B, Seed Rate Formulas, it is used to mean pounds and number.

17.24.313(1)(h): The Area B East Postmine Vegetation Plan is on a different topography than the proposed PMT and therefore cannot be evaluated; please correct this situation.

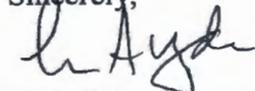
17.24.315: Western Energy's response to the second round of technical deficiencies indicated that a revised/updated Hydrologic Control Plan and associated materials would be submitted when the Post-mine Topography (PMT) is approved. The Department found no problems with the proposed PMT; therefore, please submit the updated materials. Please ensure that all aspects of the rule are properly addressed including proper certification of drawings.

17.24.322(2)(a)(ii): The response was adequate but there are only 46.2 million tons of reserves identified and the table on page 19 depicts a total mine production of nearly 60 million tons. Once the correct numbers are identified, the Department also requires an estimation of the reserves and production added as a result of the amendment – this should be made by Area B-East and Area B-West. Additional reserves are the foundation of the amendment and must be addressed in the environmental assessment.

17.24.322(2)(b): Western's response is not adequate. The "location, quantity, and quality of all coal left un-mined, accompanied by a detailed explanation of the reasons why the coal will not be mined" must be included in the permit. The annual report does not address this rule.

Please feel free to contact me if you have any questions.

Sincerely,



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FC: 620.112 (Application 00184)