

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Falkirk Mining Company
Revision No. 23, Permit NAFK-8405
Application

Case No. RC-06-526

REVISION OF PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS

September 4, 2007

Based on the application for **Revision Number 23 to Surface Coal Mining Permit NAFK-8405** submitted by the Falkirk Mining Company on December 15, 2006, and revised through August 31, 2007, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2. [NDCC 38-14.1-21(3)(a)].

The applicant verified that all information included in the revision application is true and correct to the best of his knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided and the mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical deficiency letters to the applicant on January 12, 2007; February 16, 2007; March 5, 2007; May 18, 2007; and, August 7, 2007. Responses to each letter were reviewed and changes to the application were made to address the concerns that were noted. The Commission concludes that the application is now accurate and complete. The applicant published the required notices in the Underwood News, McLean County Independent, Washburn Leader News, and Bismarck Tribune in March and April of 2007 and the Commission sent notices to all surface owners in the permit area, numerous local, state and federal agencies and several Indian tribes on March 12, 2007. Advisory committee members also reviewed portions of the application during the review period. Comments from advisory committee members were included with deficiency letters to the applicant.

No objections or requests for an informal conference were received on the application.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit application. [NDCC 38-14.1-21(3)(b)].

Revision Number 23 adds 5022.9 acres to the permit area of Surface Coal Mining Permit NAFK-8405. With the approval of this revision, the total acreage in the permit will total 8776.6 acres. With this additional acreage, the applicant intends to remove coal from about 600 acres and will remove approximately 10 million tons of coal through the current permit term which ends April 15, 2011. Haulroads, overburden and soil stockpiles, sedimentation ponds, pit water ponds and pipelines, and other associated disturbances will occur in other parts of the permit. Reclamation of the disturbed acreage will be carried out using reclamation procedures that have been successful in the past and satisfy the requirements of the North Dakota law and rules. The applicant's reclamation practices have proven effective in the past.

The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22. The postmining topography proposed by the applicant meets the requirement of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The average proposed postmining slope is less than the average premine slope. No thin overburden exists within this permit area. The reclaimed land will be capable of supporting premine uses, or higher or better uses, that existed prior to mining. The predominant premining land uses in the entire permit area consist of cropland (about 71% of the permit) and tame and native grasslands (about 14%). Lesser amounts of land are used as farmsteads, shelterbelts, roads, and fish and wildlife habitat. With regard to postmining land uses, plans show an increase of about 38.5 acres of cropland, 94 acres of native grassland, and 39 acres of fish and wildlife habitat wetland. Twenty-five acres of native grassland associated with steep drainages will be converted to fish and wildlife habitat. The habitat type will be grassland with the areas seeded to native grasses. Most of the increased cropland, native grassland, and fish and wildlife habitat acreage comes from decreases in tame pastureland (3.7 acres), recreation (65.7 acres), farmsteads (63.4 acres), industrial/commercial (12.7 acres), county roads (11.3 acres) and hayland (13 acres). Several landowners requested an increase in cropland acreage. The Falkirk Mining Company determined, and the Reclamation Division concurs, that the soil resources and slopes in these areas are suitable for the conversion to cropland.

With regard to the reclamation schedule, the applicant has demonstrated the need for several variance areas, as allowed by NDAC 69-05.2-21-02, from the contemporaneous reclamation requirement that normally requires rough grading be completed within 180 days of coal removal. The previously approved variance for the temporary mining cessation area on the south side of Highway 200 will continue to remain in effect as boxcut and pre-bench spoil materials from the area north of Highway 200 will be moved with the truck/shovel fleet to backfill the final pits located south of Highway 200. A variance has also been requested for the initial boxcut area in Sections 13, 14, and 18 as the overburden from the boxcut will be used to fill the final pit on the south side of Highway 200 and backfilling of the boxcut will not begin until the dragline begins operations north of Highway 200 a year or two after the boxcut is opened with the truck/shovel fleet. In addition, variances are requested for the diagonal pit endwall areas located directly north of Highway 200. These areas are generally excavated by the truck/shovel fleet in advance of the dragline stripping the adjacent areas. When the dragline strips the adjacent area, these truck/shovel endwalls are backfilled by the dragline when it strips the adjacent area, usually one to two years later. Backfilling variances are also requested along the coal cropline in Sections 12 and 13. Several short final highwalls and out-of-pit spoil areas are created as a result of mining the small fingers or tips of coal along the coal cropline. Reclamation of these areas generally is delayed until the adjacent areas are mined to provide adequate backfill materials and reclamation is best achieved once the entire adjacent area is mined. The applicant also

requested a variance from the 4 spoil peak requirement for the pre-bench area. The truck/shovel fleet will be used to pre-bench much of the area to be mined in the first permit term. In those instances in which the top of the dragline spoil peaks is below the proposed postmine topography, the applicant needs more than four standing spoil peaks to allow the trucks to backfill these areas with the pre-bench materials to the desired elevation. All these variance areas are described in the mining and reclamation plans. The request for variances from the contemporaneous reclamation requirement for these areas has been justified and the Commission is approving the variances.

In addition, the applicant has demonstrated the need for several variances from the three-year contemporaneous reclamation requirement under NDCC 38-14.1-24-14 that normally requires the initial planting to be accomplished within three years from the completion of surface coal mining operations. With the exception of the pre-bench area, the variance areas from the 3-year seeding requirement are the same as those for which a variance from the 180 day rough grading requirement as request and described above. The applicant has demonstrated that it may not be possible to meet the 3-year contemporaneous reclamation requirement in all these areas. The request for variances from the 3-year contemporaneous reclamation requirement for these areas has been justified and the Commission is approving the variances.

Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. [NDCC 38-14.1-21(3)(c)].

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance outside the permit area. The detailed cumulative hydrologic impact assessment is filed with Permit No. NAFK-8405 in the Commission's offices.

Finding No. 4. Lands within the areas being added to the permit are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations. [NDCC 38-14.1-21(3)(d)].

None of the lands within the areas being added to the permit have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally sub-irrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. [NDCC 38-14.1-21(3)(e)].

Based on an examination of the geologic and geomorphic characteristics, soils, and the water quality and quantity of streams within or adjacent to the permit area, it has been determined that no alluvial valley floors occur within or adjacent to the permit area.

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].

The applicant included leases and other documents in the revision application demonstrating compliance with the North Dakota Surface Owners Protection Act, NDCC 38-18. This documentation included the notice that was given to all surface owners before the revision was filed with the Commission.

Finding No. 7. Lands within the areas being added to the permit are not within areas subject to the prohibitions or limitations of NDCC 38-14.1-07 unless the applicant satisfies the review procedures of NDAC 69-05.2-04-01.1 [NDAC 69-05.2-10-03(6)(a)].

Lands within the areas being added to the permit are:

- a. Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not on any federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places.

A cultural resource survey and inventory of the areas being added to the existing permit was conducted (Ethnoscience & Headwaters Cultural Research, 1994 and Ethnoscience, 2006). All sites that were identified have been tested and evaluated with the exception of Site 32ML800 which is only partially within the area being added to the permit and the applicant has committed to not disturbing the site; therefore, it was not evaluated. A total of 7 prehistoric sites and 1 historic site were identified as being significant and eligible for listing on the National Register of Historic Places. No Traditional Cultural Properties were identified in the area being added to the permit area. With regard to the significant sites, the mitigation of 6 of the prehistoric sites and the historic site has been completed and preliminary mitigation reports have been accepted by the State Historical Society. The other remaining prehistoric site within the permit area will not be disturbed by mining activities and the applicant will establish and properly mark a 'no disturbance area' around this site.

The applicant has committed to reporting, testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

- d. Within 100 feet of the outside right-of-way line of a public road. However, the applicant has stated that no disturbance will occur within 100 feet of the outside edge of the existing public road right-of-ways until the appropriate road authority approves mining disturbance within 100 feet of the right-of-way or until the road authority closes the roads.

The North Dakota Department of Transportation (DOT) and Commission have previously approved the applicant's plans to conduct mining related activities within 100 feet of the right-of-way for North Dakota Highway 200. Since the DOT did not provide notice with opportunity for hearing prior to its approval, the Commission provided this notice with Revision No. 22 and no hearing was requested. The Commission found that the public interests would be protected.

The applicant states that its 1973 agreement with DOT allows certain mining activities operations within 100 feet of the right-of-way for North Dakota Highway 83. However, the implied approval under this agreement was not subject to public notice and comment. Therefore, the applicant has stated it will not conduct any mining operations within 100 feet of the Highway 83 right-of-way without first notifying the DOT and until the Commission provides public notice with the opportunity for hearing and makes the written findings required by subsection 3 of NDAC 69-05.2-04-01.3.

The applicant has also committed to provide the Commission with documentation of additional McLean County approvals before any disturbance occurs within 100 feet of the outside edge of any public road right-of-way. The county approval process will include public notice with the opportunity for a hearing. The Commission finds that this approval process will provide for a mechanism for protecting the interests of the landowners and public similar to that provided by NDCC 38-14.1-07(4) and NDAC 69-05.2-04-01.3. In addition, the applicant plans to petition McLean County to close certain section line roads. The county road closure process also provides for public notice and opportunity for hearing.

- e. Not within 300 feet of any public building, school, church, community, or institutional building. The permit area contains nine active farmsteads. However, the applicant has stated that no mining operations will be conducted within 500 feet of any occupied dwelling unless a waiver is obtained from the owner. Also, the applicant has stated that the coal removal area will not come within 500 feet of any farm building unless it first pays the owner the fair market value of the building, moves the building, or otherwise obtains a waiver from the owner. Also, it is possible the applicant will purchase the land where some of the dwellings and other farm buildings are located.
- f. Not within 100 feet of any cemetery.

Finding No. 8. With respect to prime farmland, the postmining land use of reclaimed prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resource Conservation Service, and operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1. The applicant has the technological capability to restore the productivity on reclaimed prime farmlands. [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.121(6)].

The applicant has included a prime farmland reclamation plan for tracts subject to the special requirements that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The postmining land use of the reclaimed prime farmland will be cropland. The Natural Resource Conservation Service has reviewed the prime farmland reclamation plan and has determined that it is adequate to restore the productivity of the prime farmland. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant has the technological capability to

restore the productivity of reclaimed land to a level that is equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices. Only the following tracts within the area being added to the permit are subject to the special prime farmland standards: W½SW¼ of Section 6 and the E½W½ of Section 18, both in T146N, R81W and the SE¼ of Section 8, T146N, R82W. The tract located in Section 6 does contain prime farmland; however, no disturbance is currently proposed under the plans in the permit. The tracts in Sections 8 and 18 contain prime farmland that will be disturbed by associated disturbances (pond construction and soil stockpiles). Prime farmland areas affected by associated disturbance areas are not subject to the special prime soils handling standards but are subject to the reclamation success standards for prime farmland. Falkirk has provided a commitment to the special prime soils handling standards for any areas that will be disturbed by coal removal or spoil placement. The remainder of the area being added to the permit is exempt from the special prime farmland standards because the tracts were leased prior to August 3, 1977 and are part of a continuous mining operation. Each landowner will receive the same acreage of reclaimed prime farmland as was present prior to mining and the postmine land use of the reclaimed prime farmland will be cropland.

Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction of adverse modification of their critical habitats. [NDAC 69-05.2-10-03(6)(d)].

No threatened or endangered species were observed within or contiguous to the areas being added to the permit with Revision 23. Surface coal mining and reclamation activities will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. The whooping crane, bald eagle and gray wolf could occur as occasional migrants through the area. Habitats required for the black-footed ferret, least tern, pallid sturgeon and western prairie fringed orchid were not found in or adjacent to the permit area. Piping plovers and the Dakota skipper butterfly are not likely to occur in the area, as their natural habitat is not found in the pre-mine condition. However, mining and reclamation activities may create temporary habitat that is suitable for piping plovers. There is no designated critical piping plover habitat in or adjacent the permit area.

Finding No. 10. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid. [NDAC 69-05.2-10-03(6)(e)].

The applicant has paid all reclamation fees required by 30 CFR subchapter R. The Office of Surface Mining's Applicant Violator System office was queried to verify that all fees have been paid.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a postmining land use. [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland postmining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture. The postmining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the requirements of NDCC 38-14.1-24 and NDAC 69-05.2-09-04 [NDAC 69-05.2-10-04].

Existing structures currently in the permit area (such as haulroads, remote truck dump, and sedimentation ponds) will be used to support mining activities. In addition, some haulroads, sedimentation ponds, coal handling facilities and other facilities which are within Permit NAFK-8705 will support mining in this permit area. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC 38-14.1-24 and NDAC 69-05.2.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses. [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill holes, boreholes, or wells for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage. [NDAC 69-05.2-16-11].

The chemical characteristics of the overburden materials in the permit area are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream. [NDAC 69-05.2-16-20].

The applicant does not plan to conduct any mining related activities within one hundred feet of a stream that has intermittent flow since there are no intermittent or perennial streams located within the permit area.

Finding No. 16. The applicant does not propose to use any experimental practices in the permit area. [NDAC 69-05.2-27-02].

There are no plans included in the permit application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not show that the applicant controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties. [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Also, the North Dakota Department of Health has not informed the Commission of any unabated violations that the applicant has with regard to air and water environmental protection standards.

Finding No. 19. A performance bond in the amount of \$46,235,443 is sufficient for the proposed surface coal mining operations in the consolidated bond area that includes this permit. [NDAC 69-05.2-12-07].

The Commission has determined that a total bond amount of \$46,235,443 is needed to perform the required reclamation, restoration, and abatement work in the consolidated bond area that includes Permit NAFK-8405. The Falkirk Mining Company has filed surety bonds in the amount of \$50,822,494. The consolidated bond area also includes Permits NAFK-8705 and NAFK-9503.

Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Revision Number 23 to Permit Number NAFK-8405** is hereby granted to the **Falkirk Mining Company** to engage in surface coal mining and reclamation operations on the following described areas subject to the requirements of Chapter 38-14.1 of the North Dakota Century Code, the rules promulgated thereunder, the original permit conditions, and plans in the approved revision application. (Also attached is a copy of the metes and bounds description of the areas being added to the permit.)

LOCATION

MINE	ADDRESS	Sec.	Twp.	Range	County
The Falkirk Mining Company	Underwood, ND	1,2,8,9,10,11,12	146N	82W	McLean
		13,14,15,16,21,22,24			
		6,7,18	146N	81W	McLean

5022.9 TOTAL ACRES

PUBLIC SERVICE COMMISSION

Tony Clark Commissioner	Susan E. Wefald President	Kevin Cramer Commissioner
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**EAST PERMIT NAFK-8405
SIXTH ADDITION**

Metes and Bounds

An area of land located in T146N, R81W and T146N, R82W of the 5th P.M,
McLean County, North Dakota
Described as follows:

Beginning at the west ¼ corner of Section 6, T146N, R81W;
thence S 89°21'51" E a distance of 1195.10 feet to the northeast corner of Government Lot 6 of said Section;
thence S 00°10'52" W a distance of 2647.43 feet to the northeast corner of Government Lot 1 of Section 7, T146N, R81W;
thence S 00°17'14" W a distance of 2645.29 feet to the southeast corner of Government Lot 2, of said Section;
thence S 00°16'31" W a distance of 2642.51 feet to the southeast corner of Government Lot 4 of said Section 7;
thence S 89°24'30" E a distance of 1321.08 feet to the north ¼ corner of Section 18, T146N, R81W;
thence S 00°24'22" W a distance of 5290.88 feet to the south ¼ corner of said Section;
thence N 89°24'23" W a distance of 2581.48 feet to the southwest corner of said Section;
thence N 89°32'48" W a distance of 2640.57 feet to the south ¼ corner of Section 13, T146N, R82W;
thence S 45°11'50" W a distance of 59.93 feet;
thence N 89°34'00" W a distance of 2598.18 feet;
thence N 00°16'16" E a distance of 43.52 feet to the southwest corner of said Section 13, T146N, R82W;
thence N 00°47'29" E a distance of 2644.16 feet to the west ¼ corner of said Section;
thence N 89°34'41" W a distance of 5289.31 feet to the east ¼ corner of Section 15, T146N, R82W;
thence N 89°35'39" W a distance of 2647.17 feet to the center ¼ corner of said Section;
thence S 00°30'29" W a distance of 2645.28 feet to the south ¼ corner of said Section 15;
thence S 00°18'50" W a distance of 39.10 feet;
thence N 89°33'36" W a distance of 2598.37 feet;
thence S 00°32'04" W a distance of 61.52;
thence N 89°32'04" W a distance of 503.32 feet to the Sight Triangle Line on the easterly Right Of Way line of U.S
Highway 83;
thence N 32°12'27" E a distance of 117.18 feet on said Sight Triangle line to the south line of Section 16, T146N, R82W;
thence N 61°08'57" W a distance of 583.50 feet on said Sight Triangle to the easterly Right Of Way line of U.S Highway 83;
Said point being 175 feet easterly of said U.S. Highway 83 alignment;
thence on a non-tangent curve concave to the southwest with an arc length of 1068.06 feet, a radius of 5904.65 feet,
a chord bearing of N 37°28'04" W, and a chord length of 1066.60 feet on said Right Of Way line to the Curve to Spiral (CS) point;
thence on the arc of a 175 foot offset Spiral Curve concave to the southwest with a chord bearing of N 43°23'54" W,
and a chord length of 202.87 feet which at said Highway 83 centerline alignment is a 200 foot exit Spiral to a 1°00'00"
central curve to the Spiral to Tangent (ST) point;
thence N 43°37'36" W a distance of 5134.50 feet on said Easterly Right Of Way line to west line of Section 16, T146N, R82W;
thence N 00°36'24" E a distance of 350.40 feet to the northwest corner of said Section;
thence N 89°38'32" W a distance of 339.71 feet on the south line of Section 8, T146N, R82W to said Easterly Right Of Way line;
thence N 43°37'36" W a distance of 3674.25 feet on said Easterly Right Of Way line to the east-west ¼ line of said
Section 8, T146N, R82W;
thence S 89°33'42" E a distance of 2892.34 feet to the east ¼ corner of said Section;
thence S 89°29'34" E a distance of 5282.77 feet to the west ¼ corner of Section 10, T146N, R82W;
thence S 89°31'41" E a distance of 5292.76 feet to the east ¼ corner of said Section;
thence N 00°29'27" E a distance of 2642.66 feet to the northeast corner of said Section 10;
thence N 00°37'36" E a distance of 2645.38 feet to the west ¼ corner of Section 2, T146N, R82W;
thence S 89°47'23" E a distance of 5299.03 feet to the east ¼ corner of said Section;
thence S 89°24'01" E on the east-west ¼ line of Section 1, T146N, R82W a distance of 5275.95 feet being also
the Point of Beginning.

Said area of land contains 5022.9 acres.

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Wefald, Cramer and Clark
Illona Jeffcoat-Sacco
Bill Binek

FROM: Stephan A. Schroeder, Dean Moos and Jim Deutsch

DATE: August 31, 2007

SUBJECT: Application for Revision No. 23 to Permit No. NAFK-8405 held by the Falkirk Mining Company, Case No. RC-06-526

On December 15, 2006, the Falkirk Mining Company filed the application for Revision No. 23 to Permit NAFK-8405 to add 5022.9 acres to the permit. This included adding the required baseline environmental resource data, updated ownership and control information, and detailed mining and reclamation plans for the added area. The Reclamation Division has completed its review of this revision and respectfully recommends that it be approved.

The 5022.9 acres being added to this permit are located in all or portions of Sections 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, and 22, T146N, R82W and Sections 6, 7, and 18, T146N, R81W; all in McLean County. The area being added to the permit is located east of U.S. Highway 83 and north of Highway 200 (north and east of the city of Underwood) while the remainder of Permit NAFK-8405 is located on the south side of Highway 200. With the added acreage, the total permit area will now contain 8776.6 acres.

The premining land use of the lands that will be disturbed in the added area is primarily cropland with lesser amounts of tame and native grassland, farmsteads and roads, and fish and wildlife habitat. The postmine land use will be similar to premine land use with some slight acreage adjustments. The mining and reclamation procedures will be similar to those presently approved in the permit. Pond construction is expected to begin yet this year and overburden and coal removal in this additional area will begin in 2008. Additional coal removal is also proposed for the previously approved mining cessation area located on the south side of Highway 200. This revision also updated the groundwater hydrology information for the Underwood Coal Field. This updated stand-alone document will now be attached to this permit instead of Permit NAFK-9601 as was the previous version.

With regard to the reclamation schedule for the area being added to the permit and mining cessation area located to the south of Highway 200, Falkirk has requested variances from the contemporaneous reclamation requirements that require rough grading be completed within 180 days of coal removal and all reclamation efforts through initial seeding be completed within 3 years of the completion of coal removal. These requests have been adequately justified and the Reclamation Division recommends the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2). The findings in the attached approval form address the variance areas in more detail.

Revision 23 was deemed a significant revision to Permit NAFK-8405 making it subject to the public notice requirements. Falkirk submitted affidavits of publication of required newspaper notices. We notified the appropriate agencies, affected landowners, and advisory committee members of the revision application. We received no objections or requests for an informal conference on this revision application.

No bond increase was necessary for this revision since the additional disturbance was accounted for in the latest worst-case reclamation scenario approved in Revision No. 14 to Permit NAFK-9503 earlier this year. The consolidated bonds for Permits NAFK-8405, NAFK-8705, and NAFK-9503 total \$46,235,443; which is adequate for the current worst-case scenario.

Attached for your consideration at the September 4th Commission meeting are the proposed motion, revision approval form, and newspaper notice that must be published following revision approval.

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Falkirk Mining Company
Revision No. 23, Permit NAFK-8405
Approval**

Case No. RC-06-526

NOTICE OF PERMIT REVISION APPROVAL

September 4, 2007

Preliminary Statement

On December 15, 2006, The Falkirk Mining Company applied for Revision No. 23 to Surface Coal Mining Permit No. NAFK-8405 to add 5022.9 acres to the permit. The revision added baseline environmental resource data and related information and detailed mining and reclamation plans for the area being added to the permit.

The Public Service Commission has completed its review of this application and approved the permit revision. Approval of the revision adds 5022.9 acres located in all or portions of Sections 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22 and 24, T146N, R82W and Sections 6, 7 and 18, T146N, R81W, McLean County to the permit area and modifies the mining and reclamation plans in Permit NAFK-8405 as described in the application for Revision No. 23.

Notice

Any person with an interest which is or may be adversely affected by the permit revision approval may request a formal hearing with the Commission within thirty days of the publication of this notice. The request should be addressed to the Public Service Commission, State Capitol, Bismarck, North Dakota 58505. For more information you may contact the Public Service Commission at 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY.

PUBLIC SERVICE COMMISSION

**Tony Clark
Commissioner**

**Susan E. Wefald
President**

**Kevin Cramer
Commissioner**