



May 12, 2009

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

Mr. James R. Deutsch
Reclamation Director
ND State Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505

RE: Completeness and Mid-Term Review Items For Revision 13 to Permit NAFK-9601

Dear Mr. Deutsch:

Falkirk submits the following responses to the completeness review of Revision 13 to Permit 9601 dated August 25, 2008 combined with the mid-term review items, as suggested, addressed in your correspondence of March 6, 2009.

Section 1.0 - Introductory, Legal, . . . Information

1. ***Please update the listing of violations in Section 1.1.6. NDAC 69-05.2-06-02(3). (BEB & SAS)***

Please see updated Section 1.1.6.

2. ***Section 1.2.4 (proposed newspaper announcement) the last paragraph states that a “. . . informal conferences on the application or a petition to designate the area as unsuitable for surface coal mining operations may be submitted . . .” Since this revision does not add any areas to the permit, the language on filing a petition to designate areas unsuitable for mining should be deleted. (SAS)***

The language on filing a petition to designate areas unsuitable for mining has been deleted from Section 1.2.4.

3. ***Please include copies of the agreement for transferring ownership of the lands from Falkirk to the NDDOT that is to be filed in Section 1.5.1. Document(s) from participating State Agencies that commits to, and describes management of the lands for the intended post-mine land use (recreational lands) should also be placed in the permit. (GAW)***

Copies of the draft agreement and a letter of intent from the North Dakota Department of Transportation have been included in Section 1.1.5 pursuant to discussions with Dean

Moos and Guy Welch of your staff on April 27, 2009. It was agreed during the ensuing discussions that Falkirk will replace the draft agreement and letter of intent with a final, signed version of the agreement during the technical review process. Please note that Pages 5 and 6 of Section 4.1.1 have been updated to reflect the inclusion of the transfer agreement and map in Section 1.1.5 rather than in 1.5.1 and 1.5.3, respectively.

Section 1.3.5 - Other Licenses and Permits

4. ***Please update the listing of other licenses and permits for any necessary changes or additions. NDAC 69-05.2-06-04. (SAS)***

There have been no changes or additions to this section since the original Revision 13 submittal.

Section 1.5.1 - Permit Area Surface and Coal Interests

5. ***If any changes have occurred, please update the listings of the surface owners in the permitted area. Any changes must also be made on the Ownership Map in Section 1.5.3. NDCC 38-14.1-14(1)(c)(2). (SAS)***

Section 1.5.1 has been updated to reflect the following:

Tract 5

The surface and coal ownership was updated and the supporting documents added.

Tract 6

The coal ownership was updated.

Tract 7

The coal ownership was updated.

Tract 8

The coal ownership was updated.

Tract 10

The surface ownership was updated.

Tract 11

The surface ownership was updated.

Tract 15

The surface ownership was updated.

Tract 16A

The surface ownership was updated.

Section 1.5.2 - Adjacent Surface and Coal Interests

6. ***If any changes have occurred, please update the listings of the surface owners within ¼ mile of the permit area. Any changes must also be made on the Ownership Map in Section 1.5.3. NDAC 69-05.2-06-01(1)(a). (SAS)***

Section 1.5.2 has been updated to reflect current ownership, leasehold information, and addresses and Section 1.5.3 was updated to reflect the changes noted in Sections 1.5.1 and 1.5.2.

Section 3.1 - Operation Plan - General

7. ***Please update the List of Equipment in Section 3.1.4. (BEB)***

Please see updated Section 3.1.4.

8. ***Please update Section 3.1.6, Extended Mining Plan Topographical Map of Mine Phases, to show the areas represented by 2008 mining are mined out and the other changes that were recently made with Revision 31 to Permit NAFK-8705. (MDB)***

Please see updated Section 3.1.6.

Section 3.5.1 - Transportation Narrative

9. ***It appears that the revision number and date for Section 3.5.1 should be updated to reflect that the most recent changes occurred with Revision No. 13 in July, 2008. (WTG)***

Please see updated Section 3.5.1.

Section 3.6.1 - Surface Water Management Plan

10. ***Please update the sedimentation pond reclamation schedule to reflect revised dates for pond reclamation, and also revise this section as necessary to reflect that Ponds P-I25-04 and P-I35-01 will be retained as developed water resources. Also, please update the Water Management Plan Map to note which ponds have been reclaimed. (WTG & MDB).***

Please see updated Sections 3.6.1, Surface Water Management Plan, 3.6.3a, Total Water Management Plan Map.

11. ***Please reword the narrative for DWR-I35-01 to clarify the total amount of SPGM that will be respread to tie into the existing grade at the side slope elevation of 1945. As it is***

written now, it could easily be mistaken that 11 feet of SPGM will be replaced to bring the pond bottom to an elevation of 1945. It is understood this will not be done, but stating the actual thickness of SPGM respread will help clarify the intent. (MDB)

Please see updated Section 3.6.50b, Design of Developed Water Resource DWR-I35-01.

Section 4.0 - Reclamation Plans

12. *Please update the Post-Mining Land Use Map, Section 4.1.2, to clearly delineate the area occupied by the seasonal and more permanent wetlands. The reclaimed wetlands located in the topographic disturbance boundary are properly delineated, but it is not clear which contour elevation line identifies the boundary of the wetlands located beyond the topographic disturbance boundary. All seasonal or more permanent wetlands affected by mining activities should be delineated using a consistent wetlands line color. In some instances, N½ of Section 31, temporary wetland labels are listed on the map but the features are not delineated. Please delineate the features or remove the labels if they are pre-mine temporary wetland labels for features that no longer exist. (GAW)*

Please see updated Post-Mining Land Use Map, Section 4.1.2.

13. *Please delineate and label conservation practices, such as grassed waterways, conservation tree plantings, etc. on the Post-Mining Land Use Map, Section 4.1.2. The grassed waterway in the N½ of Section 36 is not shown on the map yet this is a necessary support feature. (GAW)*

Please see updated Post-Mining Land Use Map, Section 4.1.2.

14. *Please depict wetland conservation grass buffer zones around reclaimed wetlands and wetlands affected by mining activities on the Post-Mining Land Use Map, Section 4.1.2, if they are going to be established to prevent siltation of wetlands. (GAW)*

Please see updated Post-Mining Land Use Map, Section 4.1.2.

15. *Please update the Post-Mine Land Use Map to show the actual location where prime farmland soils were respread. Potential prime farmland areas should only be shown in areas not yet reclaimed. (GAW & SAS)*

Please see updated Post-Mining Land Use Map, Section 4.1.2.

16. *Please update Section 4.1.5, Revegetation Procedures and Establishment, and Section 4.1.6, Sampling Methods and Success Standards, to address the revegetation procedures and success standards for the disturbed areas that are to be reclaimed to recreation land. Although the post-mine land use for the disturbed areas is being changed to*

recreation land, most of the area has already been reclaimed to native grassland, cropland/hayland and a created wetland. The reclaimed wetland is replacing pre-mine wetland acreage so it will need to function as a wetland. The Reclamation Division believes that the previously approved land use categories should be listed and shown on a map as subcategories of the recreation land, similar to what has been done with the proposed developed water resources. (GAW)

Please see revised Sections 4.1.5 and 4.1.6.

Section 4.1.6 - Sampling Methods and Success Standards

17. *The statements in the second and third paragraphs on page 4 regarding the years used to prove reclamation success should be changed to be consistent with NDAC 69-05.2-22-07(4). (SAS)*

Please see revised Section 4.1.6.

18. *Several of the unadjusted cropland standards shown on the map in Section 4.1.6a cover tracts that have more than one surface owner (such as in Sections 25, 26, 30, and 35, for example). In order to use such a standard, a written agreement from each landowner must be obtained agreeing to the use of one standard if this area is to be cropped as one unit. Please obtain and include the agreements to use these standards where required or develop separate standards for each landowner. (GAW & SAS)*

Please see the revised map and standards in Section 4.1.6a.

19. *A PI value of 20% can be used for the areas of the Williams loam - mine sink in Section 30 when calculating the unadjusted standards attached to Section 4.1.6a. This value has been used by other mines for similar conditions. (GAW & SAS)*

Please see the revised standards in Section 4.1.6a.

20. *The soils occupying pre-mine seasonal or more permanent wetlands must not be included in the unadjusted cropland standards. However, if a pre-mine cropland area was converted to a post-mine wetland, then the pre-mine soils must be included within the unadjusted cropland standard. Please update the unadjusted cropland yield standards accordingly. (GAW)*

Please see the revised map and standards in Section 4.1.6a.

21. *The disturbed pre-mine soils included within the post-mine land use boundaries were used to develop the unadjusted cropland and hayland standards. The post-mine land use boundary should only be used to establish the unadjusted standards in instances*

where all of the affected land is being reclaimed to one post-mine land use. Using the post-mine land use boundaries is acceptable in Section 30 because only a few acres of native grassland were disturbed and considerably more acreage is being reclaimed. However, the pre-mine cropland soils must be used to develop the unadjusted standard for the post-mine cropland in Section 25. Likewise, the pre-mining native grassland soils will need to be used to develop the unadjusted standard for the post-mine native grassland in this section. Using pre-mine native grassland soils that are not suited for cultivation to develop the cropland productivity standard reduces the yield standard and is not consistent with NDCC 38-14.1-24 (17). Also, please refer to the "Soil Units" discussion on pages III-B-1 and III-B-2 of the revegetation guidelines. We realize acreage differences exist between the pre- and post-mine land uses but in most instances, this is methodology that should be used to develop the standards. Please revise the unadjusted standards for the lands in Sections 25 accordingly. (GAW)

Please see the revised map and standards in Section 4.1.6a.

22. *Please explain why 112.9 acres was used for developing the unadjusted cropland standard for the NW¼ of Section 30 in Section 4.1.6a when only 109.4 acres was disturbed. Is the other 3.5 acres part of the undisturbed part of the field? (SAS)*

The 3.5 acres are undisturbed and are included because they are part of a whole field harvest. That is why the 112.9 acres were used for developing the unadjusted cropland standards.

23. *Falkirk is using a P.I. value of 40% for the Tonka silt loam soils to develop the unadjusted cropland productivity standards but a P.I. value of 60% was used to develop the standard in Permit NAFK-8705. Although temporary wetlands constitute only 17 percent of the total wetland acreage, we question the use of the undrained P.I. of 40 for the Tonka silt loam map unit because the first paragraph on page 6 of Section 2.7.1 states: "The more shallow, temporary basins (i.e., those that are less than one foot in depth) will remain dry enough to produce a crop and can produce relatively good yields." Why the difference? We believe an average value (average of drained and undrained) should be used as was the case for Permit NAFK-8705. (GAW, SAS & WTG)*

Please see the revised standards in Section 4.1.6a.

24. *In Revision 13, a bookmark in Section 4.1.6a, Revegetation Success Standards Map, for Section 36 is labeled as being "Total - NE¼ of Section 36" but it is actually the SE¼ of Section 36. Please revise accordingly. (GAW)*

Please see revised Section 4.1.6a.

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Section 4.2.6 - Post-Mining Topography Map

25. *If necessary, please update maps 4.2.6b and 4.2.7b to show the as-built contours of the post-mining topography, if this has not already been done. (MDB)*

Please see updated maps 4.2.6b, Post-Mining Contour Map, and 4.2.7b, Post-Mining Area Slope Map.

Other:

26. Section 2.3.11, Structural Contour Map - Top of Hagel A Bed, was updated to include mined out areas.
27. Section 2.3.12, Overburden Thickness Isopach Map, was updated to include mined out areas.
28. Section 2.3.13, Interburden Thickness isopach Map, was updated to include mined out areas.
29. Section 2.3.14, Drill Hole Location and Cross-Section Reference Map, was updated to include mined out areas.

Sincerely,

THE FALKIRK MINING COMPANY



Joe Clarke
Environmental Manager

JWC/dge