



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

July 27, 2009

Mr. Joe Clarke
Technical Group Manager
Falkirk Mining Company
P.O. Box 1087
Underwood, ND 58576-1087

Dear Mr. Clarke:

The Reclamation Division has conducted a technical review of Falkirk's application for Revision No. 13 to Surface Coal Mining Permit NAFK-9601 that proposes to change the post-mining land use on 428 acres to recreational use and updates other sections of the permit in response to our recent mid-term permit review. The following items were noted during our review that will need to be satisfactorily addressed before we will recommend Commission approval of this application:

Section 1.0 – Introductory, Legal ...Information

- 1) Please update the Revision Summary (page 14 of Section 1.1.2) to indicate that this revision application also addresses the items that were identified by the latest midterm review and provide a summary of those changes. (SAS)
- 2) The narrative in the first paragraph of the Revision Summary pages in Section 1.1.2 provides a link to Section 1.5.1 which is designed to navigate to a copy of the transfer agreement; however, this link leads to a page entitled "*DEPARTMENT OF TRANSPORTATION AGREEMENT TO BE INSERTED*". Section 1.5.1 is the Identification of Interests and Rights of Entry information and it appears the correct link should be to page 7 of Section 1.1.5, which is an unsigned copy of the Agreement between Falkirk and the North Dakota DOT. Please repair or redirect the Section 1.5.1 link and/or the reference to that section as necessary. (BEB)
- 3) Please update Section 1.1.3 (Revision List of Changes) for Revision 13 to address the following corrections.
 - a) The list should be updated to include the changes to four parts of Section 2.3 that were updated as part of the May 12 response.
 - b) Please add the section number (4.1.2) to item #27 which describes that the Post-Mining Land Use Map has been replaced.

- c) Item #4 indicates that the Certificate of Zoning Change has been added as page 2 of Section 1.1.5; however, the added page number is actually page 4. Please update accordingly.
- d) Item #21 indicates that Falkirk has added the Haul Road Section B Coal Lake Crossing Reclamation Plan of Section 3.5.10a to the permit, and it appears this should be revised to indicate that this section represents the map that was added to the permit.
- e) Please reverse the listed order of items #30 and #31 of the Revision List to maintain numerical consistency with the remainder of the replaced and/or added information. (BEB)

In our review of Section 1.1.3 and the listing of changes for previous revisions, we noted that the original listing of changes for Revisions 9 and 12 are missing. These listings should be added back into Section 1.1.3. Also, if additional sections of the permit are changed during the review of a revision application, the listing of all changes for that revision should be updated prior to approval. The final listing of changes should be complete for each revision.

- 4) A copy of the fully executed agreement between Falkirk and the DOT, including the other documents that are referenced in that agreement, need to be added to Section 1.1.5 before this revision can be approved. (JRD)
- 5) Follow-up to deficiency item #1: Please update the listing of violations for the Falkirk Mine in Section 1.1.6. (SAS & BEB & MSK)
- 6) Please update the listing of other permits in Section 1.3.5 to include the water permit that will be needed (please refer to the June 9th letter from the Water Commission that was forwarded to you earlier) to retain Pond DWR-I35-01 as a permanent structure. (JRD)
- 7) Follow-up to deficiency item #5: The coal ownership percentage for Robert A. Sitz and Jean Sitz for Tract 15 is missing from the map in Section 1.5.3. Please insert the correct percent of ownership. (SAS)

Section 3.5 – Operation...Facilities

- 8) Please add a legend to the Pit Layout and Facilities Map, Section 3.1.5, to identify the areas that are now cross-hatched in red on this map. Also, the delineation of the haul road that crossed Coal Lake should be retained on this map for historical purposes since this map is typically used to identify all significant mining related disturbances within a permit area. (JRD)
- 9) The narrative in Section 3.5.10 states that the NDDOT and Game and Fish Department requested that the former haul road embankment across Coal Lake remain in place. Please include a written request to that effect from those two agencies in the revision application. If desired, this could be part of the draft management agreement between NDDOT and NDGF that will be included in Section 1.1.5. Also, we recommend obtaining pond maintenance agreements from the NDDOT and NDGF for permanent Ponds DWR-I35-01 and I25-04 at the same time. (JRD)
- 10) Please include a statement in the narrative of Section 3.5.10 clarifying that the former haul road crossing of Coal Lake will not be open to public vehicle traffic. If this area is open to public vehicle traffic, the road should be designed to meet the specifications for a reclaimed section line trail. (MDB)

Section 3.6 - Surface Water Management Plan

- 11) Follow-up to midterm item 10: Although the sedimentation pond reclamation schedule and the Total Water Management Plan Map were updated satisfactorily, we request that the sedimentation pond reclamation schedule retain all of the historical information in the permit for ponds that were constructed, the construction date, and the reclamation date (or proposed reclamation date). In the May 14, 2009 submittal, this historical pond information is proposed to be deleted. (WTG & MDB)
- 12) We recommend adding a statement to the narrative in Section 3.6.50b that a water permit for permanent Pond DWR-I35-01 must be obtained from the State Water Commission before this pond can be retained as a permanent structure. (JRD)
- 13) Please indicate if topsoil will be respread on the embankments of both of the developed water resources (DWR-I25-04 and DWR-I35-01) in Sections 3.6.50b and 3.6.59b. If topsoil respread of the embankments is not proposed, please provide the necessary justification. Also, in Section 3.6.59b, please discuss the need to remove any sediment from this pond in order to achieve original as-built elevations and contours. (MSK)

Section 4.0 – Reclamation Plans

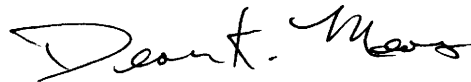
- 14) The narrative in Section 4.1.1 indicates that changes were made to the agricultural and industrial post-mine land use acreages in order to increase the recreational land use acreage. Please highlight these changes in Section 4.1.3 so that the changes can be verified since the current values do not add up to the amount of this change for the three sections of land that are affected by these changes. (SAS)
- 15) Please update the Section 4.1.1 narrative to include design specifications for culverts being installed in reclaimed section line roads as was done in other permits. (MDB)
- 16) The information on page 3 in Subsection 4.1.3 shows the net change for the recreational use for Sections 25, 26, and 35, but the changes have not been listed under the Post-Mining Acreage column. Please list the acres in that column. (SAS)
- 17) There seems to be a difference of 267.83 acres between what is left (post-mining acreage) in the permit (2516.51) and what was in the permit (pre-mining) minus the deleted undisturbed acres ($2944.61 - 160.27 = 2784.34$) as currently shown in the last two rows on page 4 of 4.1.3. Please correct or explain this discrepancy. (SAS)
- 18) Follow-up to midterm item 16: Please consider including a bookmark for the Recreation Land Use in Section 4.1.6, Sampling Methods and Success Standards, as has been done for all the other land uses. (GAW)
- 19) Follow-up to midterm item 16: The Post-Mine Land Use and Topography Map indicates that cropland (subcategory) is going to be reclaimed in the Recreation Land in Sections 25 and 35. Please clarify if this cropland is going to be annually tilled for agricultural production, annually tilled and left as wildlife food plots or established with perennial vegetation prior to final bond

release. The last paragraph on page 12 of Section 4.1.5 states that the areas will be re-vegetated to their subcategories as shown on the Post-Mine Land Use Map, but it is not clear how this cropland and the other recreation land subcategories will be managed during the responsibility period. Please update Section 4.1.5 to clarify how the recreation land will be managed during the responsibility period in accordance with NDAC 69-05.2-09-11(6)(f). In addition, if the cropland within the recreation land is going to be annually tilled, how will the cover standard for this land use be achieved given that the standard requires that live cover must be perennial species? Please address this issue as necessary in Section 4.1.6. (GAW)

- 20) Follow-up to midterm item 16: Please revise the unadjusted cropland yield standard for Section 25. It appears that the soil map unit (38D) from the pre-mine native grassland area is being converted to cropland and being used to develop the standard. This is incorrect since a similar acreage of native grassland is being reclaimed in this tract and this map unit is not suited for cropland. In other words, pre-mine native grassland that consists of soil mapping unit 38D must be used to develop the native grassland standard, not the cropland standard, in Section 25. Please review and revise as necessary. (GAW)
- 21) The Post-Mining Land Use Map, Section 4.1.2, shows topographical contour lines that do not reflect the as-built post-mining topography. The contour lines for the pond embankments for DWR-I25-04 and DWR-I35-01 should be depicted on this map. Also, the contours of the Coal Lake Crossing and the Boat Ramp Access Road should be shown on this map. (MSK)

If you have any questions, please contact this office.

Sincerely,



for James R. Deutsch
Director
Reclamation Division

cc: McLean County Auditor