



August 26, 2009

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

Date: _____
Action: _____
Info. Only: _____
Info & File: _____

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

Dear Mr. Deutsch:

Falkirk submits the following responses to the technical review of Revision 13 to Permit 9601 dated July 27, 2008.

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 mid-term review and provide a summary of those changes. (SAS)*

The Revision Summary, Section 1.1.2, has been updated accordingly.

- 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)*

Reference text and the corresponding link to the transfer agreement in the narrative of Section 1.1.2, Revision Summary, has been updated and redirected, respectively.

- 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.*

Section 1.1.3, Revision List of Changes for Revision 13, has been updated to include the changes to the four parts of Section 2.3 submitted with the May 12th response letter.

- b) Please add the section number (4.1.2) to item #27 which describes that the Post-Mining Land Use Map has been replaced.**

The Section number (4.1.2) has been added to previous Item #27, now Item #32.

- 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.**

Item #4 has been updated to refer to the Certificate of Zoning Change as Page 4.

- 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.**

The word "Map" has been added to the "Haul Road Section B Coal Lake Crossing Reclamation Plan" text in previous Item #21, now Item #25.

- 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)**

Previous Items #30 and #31 of the original Revision List, now Items #35 and #37, have been reversed to maintain numerical consistency.

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.

As per the telephone conversation on Monday, August 17th, between Jim Deutsch, Dean Moos, Joe Clarke, Gerry Lannoye, and Diana Edinger, it was agreed that beginning with this revision and from this point forward, a complete listing of changes submitted with each revision will be included together with all corresponding letters listing review requests and responses. It was also agreed that the listing of changes for Revisions 9 and 12 will remain in place as is.

- 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)***

A copy of the fully executed agreement between Falkirk and the DOT, including referenced documents, have been added to Section 1.1.5.

- 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)***

The listing of violations for Falkirk has been updated in Section 1.1.6.

- 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)***

Section 1.3.5 has been updated to include the above referenced State Water Commission water and/or construction permits for Ponds DWR-I25-04 and DWR-I35-01. A notation was added that both permits are pending at the present time.

- 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 1.5.3 has been updated to include the coal ownership percentage for Robert A. Sitz and Jean Sitz which was missing for Tract 15. Also, Tracts 10, 11, 15, and 16A have been updated in Section 1.5.1, Permit Area Surface and Coal Interests, to include links to the ND Department of Transportation Agreement and Exhibits.

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)***

Please see updated Section 3.1.5, Pit Layout and Facilities Map.

- 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)

Written requests from the NDDOT and NDGFD concerning the former haul road embankment across Coal Lake and a pond maintenance agreement have been included in Section 1.1.5.

- 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 re-claimed section line trail. (MDB)***

Section 3.5.10 has been updated to clarify that the former Coal Lake Crossing will not be accessible by the public.

Section 3.6 - Surface Water Management Plan

- 11) ***Follow-up to mid-term 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)***

Section 3.6.1, Surface Water Management Plan, was revised to maintain the historical information in the permit and the appropriate changes were made to the ponds that are to be re-claimed.

- 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)***

Section 3.6.50b, Design of Developed Water Resource DWR-I35-01, was updated to reflect obtaining a Conditional Water Permit from the State Water Commission.

- 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)***

As per discussion with Matt Klingenstein on 8/18/09, Sections 3.6.50b, Design of Developed Water Resource DWR-I35-01, and 3.6.59b, Design of Developed Water Resource DWR-I25-04, have been updated to reflect topsoil respread of the embankments and sediment removal.

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)*

Please see the highlighted changes in updated Section 4.1.3, Land Use Acreage Comparison Table.

- 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)*

Section 4.1.1, Post-Mining Land Use Narrative, has been updated.

- 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)*

Please see updated Section 4.1.3.

- 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)*

Please see updated Section 4.1.3. The recreational acres were not shown in the post-mining column. They have been added and the pre- and post-mine acres balance. The 160.27 acres in the Deleted Undisturbed Area is not factored into the totals.

- 18) *Follow-up to mid-term 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)*

A bookmark for the Recreation Land Use in Section 4.1.6, Sampling Methods and Success Standards, has been added.

- 19) *Follow-up to mid-term 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 revegetated 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)

Please see updated Page 12 in Section 4.1.5; no changes were needed in Section 4.1.6.

- 20) *Follow-up to mid-term 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)*

Please see updated Section 4.1.6a.

- 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)*

Pursuant to a phone conversation on Monday, August 17th between Joe Clarke, Josey Milbradt, and Mike Berg, it was agreed that the contour lines for the above referenced features would not be submitted at this time as they are currently unavailable.

Other:

- 22) Replaced the Organizational Structure and Names of Officers, Directors, and Shareholders in Section 1.3.1.

Sincerely,

THE FALKIRK MINING COMPANY



Joe Clarke
Environmental Manager