

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Cramer, Clark and Kalk
Darrell Nitschke

FROM: Steve Schroeder, Dean Moos and Jim Deutsch

DATE: March 4, 2010

SUBJECT: Application for Revision No. 13 to Permit No. NAFK-9601 held by the Falkirk Mining Company, Case No. RC-08-640

Summary – On August 1, 2008, the Falkirk Mining Company filed the application for Revision No. 13 to Permit No. NAFK-9601 to change the post-mining land use on 428 acres located in the W½ of Section 25; SE¼ of Section 26; and N½NE¼ of Section 35, T146N, R82W, McLean County, from primarily agricultural use to recreational use. This revision application was later amended by Falkirk to update other information and plans in response to our most recent midterm review of this permit. The Reclamation Division has completed its review of this revision application and respectfully recommends it be approved.

Discussion – Falkirk is requesting a post-mining land use change to recreational on the 428 acres because these lands are part of a transfer agreement whereby Falkirk and Great River Energy have agreed to transfer 729.4 acres of land to the North Dakota Department of Transportation (NDDOT). The NDDOT will use this acreage to eliminate all of the “No Mow” areas within the rights-of-way of the state highway system in McLean County. In 2003, legislation was enacted that authorized the NDDOT to acquire lands to eliminate the No-Mow areas on rights-of-way within the state highway system.

While Revision 13 to Permit NAFK-9601 proposes to change the post-mining land use on 428 acres, only 132 acres were disturbed by mining and the remaining acres were not disturbed by Falkirk’s mining activities. The pre-mine land uses on the 428 acres were cropland, native grassland, woodland, a portion of a water body (Coal Lake), and section line rights-of-way. Under the previously approved reclamation plan, the post-mining land uses on the 132 acres that were disturbed by mining activities were cropland (86 acres), native grassland, woodland, and developed water resources.

Falkirk is currently the surface owner of the entire 428 acres; however, the ownership of this acreage will eventually be transferred to the NDDOT. The NDDOT also entered into an agreement with the North Dakota Game and Fish Department to manage these lands

near and around Coal Lake for recreational purposes. Wildlife production and public access and use will be allowed on these lands. On July 1, 2008, the McLean County Commission changed the zoning on these lands from agricultural and industrial to primitive recreational use. Lands zoned as primitive recreational use cannot be developed for private purposes. Also, the lands will be assessed and valued the same as other lands in the vicinity for tax purposes for which the Game and Fish Department will make these payments to McLean County.

A condition needs to be attached to the approval of this revision as the deed to transfer ownership of the land to the NDDOT will not be executed until Falkirk obtains all of the approvals required for the land use change. In addition, Falkirk needs to obtain Construction and Water Use Permits from the State Water Commission in order to retain two sedimentation ponds as permanent impoundments. The condition will require Falkirk to submit copies of these documents to the Commission before the land use change becomes effective and for the recreational area to become eligible for final bond release.

This revision also updates the business entity and surface and coal ownership information, other reclamation plans, and some other sections of the permit in response to the Commission's most recent midterm review of Permit NAFK-9601. Items that were noted by the midterm review have been satisfactorily addressed.

This revision was considered a significant revision application making it subject to the public notice requirements. The notice was published on June 11, 18, 25, and July 2, 2009, in the Bismarck Tribune, The Underwood News, The McLean County Independent, and The Washburn Leader. On August 4, 2009, a letter was received from the Dakota Resource Council (DRC) requesting that the 86 acres of post-mining cropland affected by the land use change remain as cropland rather than being used for recreational purposes. The Commission discussed the DRC comments during the administrative portion of the October 14, 2009, meeting and determined that Falkirk's proposed land use change was appropriate. The DRC will be notified of the revision decision and they will have the opportunity to request a hearing on the Commission's decision since Revision 13 was deemed a significant revision to Permit NAFK-9601.

It should be noted that action on this revision application was delayed until the final transfer agreement between Falkirk, GRE and NDDOT was executed and a copy added to the application. Attached is the motion, revision approval form, permit condition and approval notice for your consideration at the March 10, 2010, Commission meeting.