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NORTH DAKOTA PUBLIC SERVICE COMMISSION

March 16, 2010

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, ND 58505

**RE: Completeness Review Responses for Otter Creek Mining Permit No. NAOC-0802**

Dear Mr. <sup>Jim</sup>Deutsch:

Otter Creek submits the following responses to the completeness review items from your November 2, 2009 letter required to be addressed prior to completeness approval for the above-referenced permit revision.

**Section 1.1 - Introductory Information**

- 1. The first page of the application in Section 1.1.1 indicates that the legal description of the permit area is attached, however no attachment is provided in the document. Please add the attachment to the application form. (SAS)***

Pages 3 - 5, the legal description of the permit area, have been attached to Section 1.1.1.

- 2. Please reference Section 1.1.5 - Approval Forms (County). Since the east-west section line between Section 32 and Section 5 will be used for mine traffic and will be reconstructed into a haul road in the first year of the permit, at a minimum, the east half will need to be closed to public traffic. County approval of closure will be required prior to approval of the permit. (MDB)***

The affected half of the referenced section line will be petitioned to the Oliver County Board of Commissioners for closure in advance of any development work taking place on its alignment or within 100' of the outside of its right-of-way. Since such development may not take place until some time after the anticipated permit approval, which is needed to market the future coal mined from this area, Otter Creek Mining Company requests that permit approval proceed with this commitment of closure prior to construction. Otter Creek Mining Company remains committed to full compliance with State road rights-of-way laws and regulations regarding such development.

**Section 1.2 - Legal Information**

3. *Under the temporary road closing narrative in the newspaper notice, Section 1.2.4, listing No. 2 states "The east-west section line between Section 6, T142N, R84W and Section 41, T143N, R84W". It appears the description should be changed to indicate Section 31, not Section 41 as stated. (MDB)*

Please see updated Section 1.2.4.

4. *Under the Newspaper Notice of Section 1.2.4, please delete the SE¼ from the Tract 5 listing that covers portions of Section 6, T142N, R84W, as that quarter section is neither within the proposed permit area nor is it owned by Dennis and Lucinda Beckman according to the property ownership listing and map in Section 1.5. (JRD)*

Please see revised Section 1.2.4.

5. *The proposed newspaper notice indicates that Otter Creek will request approval from the Oliver County Commissioners prior to conducting mining operations within 100 feet of the outside right-of-way for a number of section lines including the east sides of the north-south section lines between Sections 34 and 35, T143N, R85W and the north half between Sections 2 and 3, T142N, R85W. However, these two section lines are actually part of State Highway 31 and any approval to conduct mining operations within 100 feet of the highway right-of-way will have to be obtained from the North Dakota Department of Transportation. This part of the newspaper, and a similar discussion in Section 1.3.6 relating to areas unsuitable for mining, need to be revised accordingly. (JRD)*

Please see revised Sections 1.2.4 and 1.3.6.

**Section 1.3 - Business Entity/Compliance Information**

6. *The first paragraph of Section 1.3.2 indicates that Falkirk is the applicant and will be operating the mine. However, the application lists the applicant as Otter Creek Mining Co., LLC. Please update accordingly or clarify the arrangement between Falkirk and Otter Creek. (MDB)*

Please see revised Section 1.3.2.

**Section 2.6 - Surface Water Information and Monitoring Plan**

7. *Follow-up to original completeness deficiency No. 18. Your response to this deficiency is satisfactory, but please label Table 1 in Section 2.6.5. (WTG)*

Table 1 in Section 2.6.5 has been labeled.

8. *Follow-up to original completeness deficiency No. 13. The link at the bottom of the page of Section 2.6.1 is supposed to direct the reader to the Pre-Mining PHC Map; however, it directs the reader to the Surface Water Features and Monitoring Sites Map of Section 2.6.4. Please correct the link. (BEB)*

The link has been corrected to direct the reader to Section 2.6.5a, Pre-Mining PHC Map.

9. *The Surface Water Probable Hydrologic Consequences data of Table 1 in Section 2.6.5c does not correspond with Table 2. Table 1 indicates 23 control points whereas Table 2 indicates only 22 control points. Additionally, none of the acreages appear to match. Please review and address accordingly. (MDB)*

Section 2.6.5c has been updated to reflect the correct data.

**Section 2.8 - Soil Resources**

10. *The surface ownerships listed by tract number in the table in Section 2.8.3a do not agree with the ownerships listed in Section 1.5.1. Therefore, the acreages listed do not agree with what is shown in Section 2.8.2c (or should that be 2.8.3b). Please correct as necessary at this time since this section will be forwarded to other agencies for review. (SAS)*

KDK Consulting GIS soil survey tract numbers and boundaries have been added to Section 2.8.3b, Prime Farmland Map. Section 1.5 surface and coal ownership tract numbers are unrelated to KDK GIS tract numbers used in Sections 2.4, 2.7, and 2.8.

The hyperlink originally referring to Section 2.8.2c has been changed to Section 2.8.3b.

11. *We are unable to determine whether or not the prime soils map that is depicted in Section 2.8.3b is from the cooperative soil survey. This map is never referenced in Section 2.8.3. It also seems as though the map units are somehow shown differently than those shown in Section 2.8.2c. Please explain or review and correct as necessary. (SAS)*

Section 2.8.3b, Prime Farmland Map, has been updated to show source was NRCS. Sections 2.8.3 and 2.8.3a have corrected links to Soils Map.

### **Section 3.1 - Operation Plan - General**

- 12. It appears that the cross-sections are mislabeled for the Shop\Office Overburden Pad Plan View in Section 3.1.1a. The cross-section for A-A' is shown as B-B' and vice versa. Please correct. (MDB)**

Cross-section labels in Section 3.1.1a, Boxcut Pit and Shop/Office Overburden Pad Cross-Sections and Volumes, have been corrected.

- 13. The Operations Description under Section 3.1.1 states that any excess overburden will be hauled to an overburden stockpile; however, an area to place the excess overburden has not been identified on the Pit Layout and Facilities Map of Section 3.1.5. Please update the Pit Layout and Facilities Map to include the overburden pile. (MDB)**

Section 3.1.5, Pit Layout and Facilities Map, has been updated to show a revised Shop/Office pad and added overburden piles.

### **Section 3.2 - Operations - Existing Structures**

- 14. Under the existing structures narrative in Section 3.2.1, it is stated that there are no county or township roads within the mine area; however, the permit boundary on the south, west, and east sides include a gravel road and/or state highway. Our records also indicate the section line roads along the north permit boundary as well as the section line road between Sections 36 and 31, and Sections 1 and 6 have been improved through grading and drainage. Please update the narrative to include these features. (MDB)**

Please see revised Section 3.2.1.

### **Section 3.5 - Operations - Transportation Facilities**

- 15. The Road Relocation and Closure Plan Map in Section 3.5.21 does not correspond with the roads listed for closure in Sections 1.2.4 or 1.3.6. The previous mentioned sections also include road closure of a portion of the south side of Section 25, south and east sides of Section 30, and the west half of the section line between Sections 20 and 29. Please update the map accordingly. (MDB)**

Please see updated Section 3.5.21, Road Relocation and Closing Plan Map.

**Section 4.2 - Reclamation - General**

- 16. In the narrative of Section 4.2.4, it is indicated that the boxcut spoil will be used to construct the shop/office/dragline site, while Section 3.1.1 states the boxcut spoil will be used to construct the base for the shop/office complex, dragline erection pad, and base of the coal stockpile. Please indicate if the dragline erection pad is separate from the office/shop complex or the same pad. If the erection site is a different location, please provide plans for the erection pad in Section 3.1 as well as the cost of reclamation associated with it and depict the location on the appropriate maps. (MDB)**

The dragline will be erected on the same pad as the office/shop complex.

- 17. Subsection h of bullet point 5 - Associated Disturbance that is located under Section 4.2.4 states that the structures associated with the site are temporary or are the type wherein the salvage value equals removal cost. We have no way of knowing whether or not this will be the case. Policy Memo 16 requires that the reclamation cost estimate include the costs for dismantling or the demolition of such facilities. The spoil used in constructing the pad will be removed and used for reclamation, meaning that all structures will have to be removed from the pad. Please provide a description of the structures which will need to be removed and the cost of removal. This should also include the amount of concrete, culverts, etc. for which the \$50,000 has been included. (MDB)**

Please see revised Section 4.1.1, Post-Mining Land Use Narrative and Section 4.2.4, Reclamation Costs (Worst Case). Section 4.2.4a, Worst Case Bonding Plan Map, has also been updated to show the revised shop/office pad.

**Other:**

- 18.** Updated Section 1.1.6, Schedule of Violations.
- 19.** Added Page 2 to Section 1.2.5, Certificate of Liability Insurance, to show current Certificate.
- 20.** Updated Section 1.3.1, Names of Officers, Directors, and Share Holders, and Organizational Structure.
- 21.** Updated Section 1.3.3, Current Permits and Permit Applications, Including Pending Applications, Held By North American Coal and Affiliates.
- 22.** Revised Section 2.4.1a, Pre-Mining Wildlife Habitat and Study Area Location Map, to add KDK Tract numbers and boundaries.

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23. Revised Section 2.7.2a, Pre-Mining Land Uses and Associated Mapping Unit, to add KDK tract numbers and boundaries.
24. Revised Section 2.8.2c, Soil Survey Map, to add KDK tract numbers and boundaries.

Sincerely,

**OTTER CREEK MINING COMPANY, L.L.C.**



D. Randall Crooke  
Permit Manager

DRC/dge