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Date 3.17.09

March 16, 2009

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File FK-316-rsp-1-9-09-Hr(31349)

FROM DIRECTOR - RECLAMATION DIV.

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: Revision 32 Pre-Renewal Review Responses for Permit NAFK-8705

Dear Mr. Deutsch:

Falkirk submits the following responses to the pre-renewal review items listed in your January 9, 2009 letter required to be addressed for the fourth renewal of the aforementioned permit.

Section 1.0 - Introductory Information

- 1. If required, please update the listings of violations in Section 1.1 that have occurred during the 3-year period preceding the date of the upcoming renewal application. NDAC 69-05.2-06-02(3). (BEB & SAS)***

The most recent listing of violations, Section 1.1.6, was submitted with the Technical Review Responses to Revision 31 on February 6, 2009.

- 2. Please update the Certificate of Liability Insurance in Section 1.2 as the current expiration date is February 1, 2009 and will become invalid prior to permit renewal. (BEB)***

The current Certificate of Liability Insurance has been added to Section 1.2.5.

- 3. Please update the listings of the officers, directors, etc. in Section 1.3 as necessary if changes have been made since the submittal of Revision 31. NDCC 38-14.1-14(1)(e). (SAS & BEB)***

Pages 3 through 55 of Section 1.3.1, Names of Officers, Directors, and Shareholders, have been updated.

4. ***Please update the Section 1.3 information to reflect permits pending or held during the 5-year period preceding the date of the upcoming renewal application. This should include the Otter Creek Mining Company, LLC application on the listing in Sections 1.3.2 and 1.3.3. NDAC 69-05.2-06-02(1). (SAS & BEB)***

Pursuant to a telephone conversation between Dean Moos, Joe Clarke, and Diana Edinger on March 4, 2009, the Otter Creek Mining Company, LLC is not included on the listing in Section 1.3.2, Names of Other Mines, because it has not been operated in the five years preceding the date of this application. The most recent listing of Section 1.3.3, Current Permits and Permit Applications, Including Pending Applications Held By North Americal Coal and Affiliates, which does include the Otter Creek Mining Company, LLC, was included in the Technical Review Responses to Revision 31 submitted February 6, 2009.

5. ***If changes or additions are necessary, please update the listing of other licenses and permits in Section 1.3. NDAC 69-05.2-06-04. (BEB)***

Please see updated Section 1.3.5, Other Licenses and Permits.

6. ***If any surface or subsurface ownership changes have occurred within the permit area or within ¼ mile of the permit area since the submittal of Revision 31, then please update the appropriate subsections of Section 1.5 including the surface and coal ownership map of Section 1.5.3. NDCC 38-14.1-14-(1)(c)(2) and NDAC 69-05.2-06-01(1)(a). (SAS & BEB)***

The following Tracts in Section 1.5.1, Permit Area Surface and Coal Interests, were updated:

Tract 1

The easements of record were updated.

Tract 2

The easements of record were updated.

Tract 5

The coal ownership information has been updated.

Tract 6

Corporate officers under the coal ownership have been updated.

Tract 13

The easements of record were updated.

Tract 14

The easements of record were updated.

Tract 15

The easements of record were updated.

Tract 17

The easements of record were updated.

Tract 18

The easements of record were updated.

Tract 19

The easements of record were updated.

Tract 20

The easements of record were updated.

Tract 21

The easements of record were updated.

Tract 22

The easements of record were updated.

Tract 23

Corporate officers under the coal ownership and the easements of record were updated.

Tract 24

Corporate officers under the coal ownership have been updated.

Tract 25

Corporate officers under the coal ownership have been updated.

Tract 39

The tract description was corrected.

Tract 39A

The tract was removed from Section 1.5.1 and placed in Section 1.5.2.

Tract 40

The easements of record were updated.

Tract 42

The easements of record were updated.

Tract 52

The easements of record were updated.

Tract 53

The easements of record were updated.

Tract 55

The easements of record were updated.

Tract 57

The coal ownership information has been updated.

Tract 69

Coal ownerships, addresses, and corporate officers have been updated.

Tract 70

Corporate officers under the coal ownership have been updated.

Tract 72

Corporate officers under the coal ownership have been updated.

Tract 73

Addresses under the coal ownership have been updated.

Section 1.5.2, Adjacent Surface and Coal Ownership and Leasehold Information, was updated to reflect current ownership and leasehold information.

Section 1.5.3, Surface and Coal Ownership Map, was updated to reflect the changes noted in the sections above.

Section 3.0 - Operation Plans

- 7. Please update Section 3.1 (General Operations), including the Pit Layout and Facilities Map (Section 3.1.5), to reflect current and ongoing mining operations, anticipated acres of land that will be disturbed and other relevant narrative in this section pertaining to operations in Permit NAFK-8705. Also update any other maps, plans, time schedules, etc. that may be affected by these changes in the mining plan. The next 5-year coal removal sub-area must clearly be shown on Section 3.1.5. (MDB & BEB)***

Sections 3.1.1 (Operations Description) and 3.1.5 (Pit Layout and Facilities Map) have been updated to reflect current and on-going mining operations and anticipated acres of land that will be disturbed.

- 8. Please update the estimated and total production of coal from Permit NAFK-8705 for the next 5-year removal period in Section 3.1.3. (BEB)***

Please see revised Section 3.1.3.

- 9. Please update the Extended Mining Plan Map, Section 3.1.6, to show the current extended mining plans for the Falkirk Mine. (BEB)***

Please see updated Map, Section 3.1.6.

10. *Please update the equipment listing in Section 3.1.4 if required, to reflect the equipment currently being used. (BEB)*

No changes have been made to Section 3.1.4, List of Equipment, since Revision 31.

11. *In Section 3.1.1 (page 5), please address plans (including a specific time schedule) for the reclamation of the Haulroad A used to access the Section 26 ash disposal facility. It appears this haulroad is no longer needed for reclamation of nearby areas nor is it being used to haul ash to the Section 26 disposal facility. Also, the general haulroad reclamation schedule discussed in Section 4.2.2 states that the reclamation will be completed within one year after it is no longer needed to support mining activities. In addition, please update the current plans for utilization of the Section 26 ash disposal facility as it appears that it is not currently being used for ash disposal. (JRD & DKM)*

Sections 3.1.1, 4.2.2 and 4.2.3 have been updated to address plans for future utilization, reclamation and access to the Section 26 ash disposal facility.

12. *Please include a maximum width for primary haulroads in the Transportation Section 3.5. The maximum width should also be shown on the typical cross-section in Section 3.5.3. NDAC 69-05.2-24-01(3). (MDB)*

Section 3.5.3 has been updated to reflect the maximum width for primary haulroads.

Section 4.0 - Reclamation Plans

13. *Section 4.1.1 states that all pre-existing section line trails and county roads affected by mining will be reclaimed and Map 4.1.2a shows a cross-section of these roads; however, it does not indicate the design criteria for any culverts that may be needed. Please update the narrative to include the culvert design criteria for reclaimed roads and trails per NDAC 69-05.2-24-01(3). (MDB)*

Section 4.1.1 has been updated to reflect minimum culvert design criteria.

14. *Please clearly identify and label all improved county and township roads on the Post-Mining Land Use Map, Section 4.1.2. Presently, the county/township roads between Sections 19 & 20, 29 & 30, 6 & 31, 22 & 23, 28 & 29, 23 & 26 and possibly in other locations are not clearly depicted and identified on the map. The road between Sections 31 and 32 is labeled as a section line trail, but the same road exists between Sections 29 &*

30 and is a rebuilt county road. Please review and revise the map as necessary to show the locations of all county roads. (GAW)

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

- 15. The gravel pit area in Section 3 is depicted as an area that is to be reclaimed to cropland on the Post-Mining Land Use Map, Section 4.1.2. The Annual Map shows that only topsoil is to be replaced on this area. Please review the feasibility and suitability of reclaiming cropland on this area and revise if appropriate. Consideration should be given to the suitability of the soil resources (topsoil only) to warrant the cropland post-mine land use. (GAW)***

Please see updated Post-Mining Land Use Map, Section 4.1.2 and Post-Mining Land Use Narrative, Section 4.1.1.

- 16. If other changes are being made to the Post-Mining Land Use Map, Section 4.1.2, please clearly label the Fish and Wildlife Habitat Grassland that is to be reclaimed in the central part of the S½NW¼ of Section 26. (GAW)***

Please see updated Post-Mining Land Use Map, Section 4.1.2 and Section 4.1.3, Pre- and Post-Mining Land Use Acreage Comparison Table.

- 17. Please update the Post-Mining Land Use Map, Section 4.1.2, to identify where the prime cropland soils were actually respread in the S½ of Section 33. (GAW)***

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

- 18. Please update Section 4.1.6, Sampling Methods and Success Standards, for consistency with the NDAC 69-05.2-22-07. These rules have been changed to allow data from any two years after year six to be used to demonstrate revegetation success on most land uses. Revegetation success on reclaimed woodlands, shelterbelts and fish and wildlife habitat grassland must be demonstrated on the last year of the responsibility period. Please edit Section 4.1.6 accordingly. (GAW)***

The requested changes were added in Revision 31 to NAFK-8705.

- 19. In the Sampling Methods and Success Standards section of the permit, Falkirk includes grassed waterways with industrial lands for the purposes of demonstrating revegetation success. This is not appropriate. Typical grass waterways, those 30 - 40 feet wide, should simply be considered conservation practices within cropland. Grass waterways***

that are much wider than what is necessary as a conservation practice should be considered perennial hayland (such as the grassed waterway in Section 6). In some instances, it might be appropriate to consider the grassed waterway as hayland and the area might be represented by the adjacent cropland for proving reclamation success. Please separate grassed waterways from the industrial land use section in Section 4.1.6. (GAW)

Please see updated Post-Mining Land Use Map, Section 4.1.2 and Sampling Methods and Success Standards Narrative, Section 4.1.6. The wider portion of the grassed waterway on the south end was reclassified as cropland (hayland).

Other:

20. Falkirk has updated the permit to include plans to meet the water related requirements of the washbay associated with the recent shop addition including construction of a water supply pond and expansion of the existing washbay pond. The narratives and design details in Sections 3.6.4.26 and 3.6.4.26b, respectively, have been updated to reflect the addition of the new water supply pond, whereas the narratives and design details in Sections 3.6.4.24 and 3.6.4.24d, respectively, have been updated to reflect the expansion of the existing washbay pond. A portion of Haulroad Section A in Section 5, T145N, R82W will be relocated northward to accommodate the expansion of the existing washbay pond. The maps in Sections 3.1.5 (Pit Layout and Facilities) and 3.6.3a (Total Water Management Plan) have been updated to reflect the above described plans.
21. The fourth paragraph on Page 2 of Section 2.8.1 has been updated to reflect prior PSC approval to collect spoil samples using a 400- rather than a 200-foot grid as indicated under Procedure #3 in the third paragraph on Page 4 of Section 3.1.2 which was revised as part of Revision 13 in 1995.
22. The narrative in Section 3.6.1 (Surface Water Management Plan) was updated to incorporate previously approved sedimentation pond construction plans presented in the NAFK-9503 and 8405 mining permits.
23. The Road Relocation and Closing Plan Map (Section 3.5.20) has been updated to reflect the replacement of County Road 19 to its original location along the section lines between Sections 22, 23, 26 and 27, T146N, R83W.
24. The industrial land use footprints comprising the ash disposal facilities were updated to reflect the true boundaries in Sections 26 and 32. Also, the fish and wildlife buffer zones in Sections 31 and 32 were updated to ensure protection and long-term stability of the fly ash

Mr. James R. Deutsch
March 16, 2009
Page 8

disposal sites. The Pre- and Post-Mining Land Use Acreage Comparison Table, Section 4.1.3 was also updated to reflect the changes in acres.

Sincerely,

THE FALKIRK MINING COMPANY

A handwritten signature in black ink that reads "Joe Clarke". The signature is written in a cursive style with a long, sweeping underline.

Joe Clarke
Environmental Manager

JWC/dge



APPLICATION FOR REVISION OF PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS
 PUBLIC SERVICE COMMISSION
 RECLAMATION DIVISION
 SFN 10562 (1-2004)

SCANNED

Date 3.17.09
 File Rev 32 - application (31349)

Date March 16, 2009

Name of Company, Corporation, Partnership, or Individual The Falkirk Mining Company	Permit Number NAFK-8705	Revision Number 32	
Address 2801 1st Street SW	City Underwood	State ND	Zip Code 58576

The above named hereby makes application for the above Revision Number to: (include a brief description of the surface coal mining and reclamation operation being revised.)

This revision updates introductory, legal and business entity/compliance information; rights of entry; and post-mining land use, reclamation, surface water, transportation, and operations plans for the 4th Renewal of this permit allowing Falkirk to continue to engage in surface coal mining and reclamation operations in the permit from July 6, 2009 to July 6, 2011.

Attached to this Permit Revision Application are a narrative describing the proposed permit revision, reasons for requesting the revision, and appropriate maps, cross-sections, graphs, construction details, revised reclamation plans and other data which demonstrate compliance with Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and the permit conditions of the approved permit. If an incidental boundary revision involving an acreage adjustment is being requested as part of the permit revision application, the following information shall be included (attach a copy of a metes and bounds description):

NAME OF MINE	ACRES	LOCATION			
		SEC.	TWP.	RANGE	COUNTY
The Falkirk Mine	-0-				
ADDRESS					
2801 1st Street SW					
Underwood, ND 58576					
TOTAL ACRES	-0-				

Based upon the proposed changes and any incidental boundary revisions to the permit as stated herein, a new or adjusted bond, or its equivalent, duly executed in accordance with Section 38-14.1-16 of the North Dakota Century Code and Chapter 69-05.2-12 of the North Dakota Administrative Code will be delivered to the Public Service Commission prior to issuance of the surface coal mining and reclamation operations permit herein requested. A check for filing fees, pursuant to Section 38-14.1-13 of the North Dakota Century Code, in the amount of \$ -0-, is included with the revision application.

Name of Official Authorized to Represent the Applicant
Joe Clarke, Environmental Manager

- I, the above named, certify that:
- All information and documents required by Sections 38-14.1-13, 38-14.1-14, and 38-14.1-15 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, are submitted as part of this permit application;
 - Information and documentation contained in the permit application affirmatively demonstrate that:
 - The permit revision application is accurate and complete and all the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code have been complied with;
 - Reclamation as required by Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code can be accomplished under the reclamation plan contained in this permit revision application;

- c. An assessment of the probable cumulative impact of all anticipated mining in the general area on the hydrologic balance as specified in subdivision o of subsection 1 of Section 38-14.1-14 has been made and the proposed operation has been designed to prevent material damage to the hydrologic balance both on and off the mine site;
 - d. The area proposed to be affected is not included within an area designated unsuitable for all or certain types of surface coal mining and is not within an area under study for such designation in an administrative proceeding;
 - e. The proposed surface coal mining operation will not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated and will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors; and
 - f. The permit revision applicant has the legal right to surface mine the land for which this permit revision application is made and all of the requirements of Chapter 38-18 of the North Dakota Century Code have been complied with.
3. The area proposed to be affected is not included within an area where mining is prohibited pursuant to Section 38-14.1-07 of the North Dakota Century Code; unless specifically allowed in accordance with the provisions of Section 69-05.2-04-01 of the North Dakota Administrative Code; and
 4. The surface coal mining and reclamation operations contained in this permit revision application will be carried out at all times in a manner which ensures that all of the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and any permit conditions attached thereto are complied with.

Signature of Official <i>Joseph W Clarke III</i>	Title Environmental Manager
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VERIFICATION

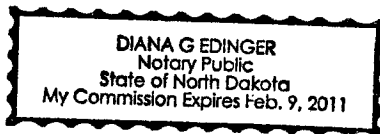
I, Dan W. Swetich, being first and duly sworn, verify that the information contained in this Permit Revision Application is true and correct to the best of my knowledge and belief.

Signature of Official <i>D. W. Swetich</i>	Title President
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STATE OF North Dakota)
COUNTY OF McLean)ss.

Subscribed and Sworn before me, this 16th day of March, 2009.

(SEAL)



Diana G. Edinger
Notary Public
My Commission Expires: Feb. 9, 2011