



Public Service Commission

State of North Dakota

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May 26, 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 the applications for Revision No. 32 and Renewal No. 4 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. The following items were noted during the review of the revision and must be satisfactorily addressed prior to Commission approval of the revision and renewal:

Section 1.5.1 - Permit...Interests

1. The current address for the Soo Line Railroad Company at PO Box 530 in Minneapolis is incorrect. Please correct and make the changes where appropriate in Section 1.5.1 and Section 1.5.2 if necessary. (SAS)
2. The current address for Eileen Gutknecht for Tract 58 should be corrected to read 2425 Hillview Ave, Bismarck, ND 58501 in Section 1.5.1 and Section 1.5.2 if necessary. (SAS)

Section 2.3 - Description of Geology

3. Please restore the original contour elevation information for previously mined areas on the Structure Contour Map – Top of Hagel Bed in Section 2.3.10, the Overburden Thickness Isopach Map in Section 2.3.11, and the Interburden Thickness Isopach Map in Section 2.3.12. Please insert the “date mined out” blocks and adjust the transparency of the mining block overlays so that both the elevation information and the years of mining information is viewable similar to the revised maps that were updated with Revision 25 to Permit NAFK-8405, and as currently provided in Permits NAFK-9503 and NAFK-9601.

With this update, the Isopach Maps from all of Falkirk's active permit areas will be of the same format and consist of the same type of information. (BEB)

Section 3.0 – Operation Plans

4. Section 3.1.5, Pit Layout and Facilities Map, shows the proposed location of a new haul road to the ash pit disposal area. As proposed, the haul road will segregate several quarter sections into separate areas. Also, the proposed location goes into the northern edge of the large reclaimed wetland and steeper slopes in Sections 25 and 30. Please consider locating the proposed haul road near or along quarter and section lines which are more distinct breaks, instead of running it through the center of the quarter, and avoid the reclaimed wetland. Alternatively, with the limited amount of ash now being disposed of in the site in the N½ of Section 26, is it possible that County Roads 16 and 19 can be used to access the ash pit, instead of a road through reclaimed lands? (MDB, GAW & JRD)
5. A statement in the operations plan indicates that detailed plans for the proposed ash haulage road will be submitted with a later revision. Since detailed design plans for this road are not submitted with Revision 32, the proposed location of the road cannot be approved at this time. Therefore, the associated land use change for reclaimed lands in the N½ of Section 26 as proposed in Section 4.1 needs to be deleted from this revision. (JRD)
6. Please include design standards and a cross sectional view for county roads and section line roads that have been or will be reconstructed within the permit area. (MDB)
7. In Section 3.6.4.26, the narrative for the water supply pond indicates that if suitable construction material is lacking when excavating the pond a borrow area nearby will be used. Since this pond will remain in place for a long period, we recommend that material be brought in from elsewhere. If that is not possible, then the borrow area needs to be reclaimed to original contour at the same time the pond is constructed. In summary, we do not believe a borrow pit should be left un-reclaimed for the long-term life of the pond. (MDB)
8. The revised narrative near the bottom of page 1 of Section 3.6.1 in regard to subsoil removal plans from ponds is somewhat confusing. Please review and clarify. (MDB)

Section 4.0 – Reclamation Plans

9. Falkirk is classifying the Ash Pit Haul Road in the eastern portions of Sections 5 and 32 and in the northern portion of Section 26 as Industrial Land where the haul road passes through fish and wildlife (grassland) habitat. Elsewhere, ash haul roads will be reclaimed to cropland or the other previously approved post-mine land uses. This appears to be an inconsistency with no explanations. Why should the haul road be retained within the fish and wildlife habitat land use and reclaimed elsewhere? Please revise Section 4.0, Reclamation Plans, of the permit to show the haul road corridors being reclaimed to fish

and wildlife habitat grassland and discuss restoring the pre-mine capabilities of the land being converted to fish and wildlife habitat. (GAW)

10. Please update the Grassland (Dense Nesting Cover) Subcategory of Fish and Wildlife Habitat narrative on page 9 of Section 4.1.5 with updated acreages and legal descriptions to account for the changes proposed with Revision 32. (GAW)
11. NDAC 69-05.2-22-02(4) and (6) require fish and wildlife habitat be planted to a diverse, effective and permanent vegetative cover with seasonal variety, succession and regenerative capabilities native to the area, and approval of species composition must be based on local and regional recommendations following consultation with the state game and fish department, state forester, natural resource conservation service. Please provide copies of written correspondence from these agencies regarding their concurrence with the proposed habitat types of the fish and wildlife lands and the species composition of the seed mixtures and planting arrangements. Please revise the reclamation plans as needed based upon these comments. (GAW)
12. Please revise the narrative on page 15 of Section 4.1.1 to clarify that the increased size of the fish and wildlife habitat grassland is not necessary in order to achieve long-term stability of the fly ash disposal site. Buffer zones of permanent vegetative cover around fly ash disposal sites are not required by PSC or Health Department rules. Since the ash disposal sites must be mounded and seeded to permanent vegetative cover as part of the Health Department closure requirements, we do not believe there is a 'need' for buffer zones around these sites. (GAW & JRD)
13. Falkirk needs to demonstrate that the pre-mine agricultural potential of the proposed fish and wildlife habitat grassland buffer zone will be restored as required by NDCC 38-14.1-24 (2). Please demonstrate that the proposed land use change meets the requirements of NDAC 69-05.2-09-13 and NDAC 69-05.2-23-03. If Falkirk considers the fish and wildlife habitat grassland buffer zone as a fish and wildlife enhancement measure as allowed under NDAC 69-05.2-09-17(1)(d), that needs to be discussed. (GAW)
14. The last sentence in the second paragraph on page 4 of Section 4.1.6 indicates prime yield standards will be achieved for at least three years with "...at least two years being after year six." Item 5 on page II-C-4 of the revegetation guidelines it states that demonstration of productivity on a tract containing a mixture of prime and non-prime cropland may start no sooner than the sixth year. Please clarify this language accordingly. (SAS)
15. Please change the reference to Permit NAFK-8704 to NAFK-8705 in the fourth paragraph on page 1 of Subsection 4.2.2. (SAS)
16. Please label the requested variance area in Section 26, Area T according to page 3 in Subsection 4.2.2, on the map in Section 4.2.3. (SAS)

17. Please describe the detailed reclamation plans for the former dragline erection site in Section 22. Please indicate when the dragline parts were removed from this area and when the 3-year contemporaneous reclamation period began following the removal of these parts. The history of this area should be described in the operation plan narrative, Section 3.1.1. Also, we noted this area is not included within any described variance area. The Reclamation Schedule Table on page 4 of 4.2.2 does not list this area and the Falkirk Annual Map shows no respread activities in the area. (SAS & JRD)

This revision and Renewal No. 4 to Permit NAFK-8705 need to be approved prior to July 6th in order for Falkirk to continue active mining operations in the permit area. The revision and renewal must be on the agenda for the June 24 Commission meeting in order to be acted upon by the Commission prior to the renewal date of July 6, 2009. Items that go on the agenda for the June 24th meeting must be ready by June 17th. Therefore in order to allow enough time for staff review of the deficiency response, the above items should be addressed and changes submitted no later than June 5, 2009.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division