



June 4, 2009

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, North Dakota 58505

RE: Revision 32, Renewal #4 Technical Review Responses for Permit NAFK-8705

Dear Mr. Deutsch:

Falkirk submits the following responses to the technical review items in your May 26, 2009 letter required to be addressed prior to approval for the above-referenced permit 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)***

The address for the Soo Line Railroad has been updated in Sections 1.5.1 and 1.5.2.

- 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)***

In March of 2009, we were notified that all correspondence to Eileen Gutknecht should be sent to her son's address at 4625 Trenton Dr. This address remains the current address for notifications from our company to Eileen. The ownership in Tract 58 has been updated to reflect this address.

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)

Please see updated Sections 2.3.10, 2.3.11, and 2.3.12. Please note that Section 2.3.13 was also updated to include the "years of mining" information.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, the proposed haul road location was selected to maximize acres available for bond release as well as minimize disturbance to reclaimed lands. The route avoids the reclaimed wetland, and the final highwall slopes in Sections 25 and 26 are gentle enough to support the road. Also, as discussed, the county roads are not an option to operate the 777 trucks to haul ash.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, Falkirk will submit the land use change of the haul road through the N½ of Section 26 to an industrial land use. As discussed during the meeting, the change will be conditionally approved on the future design and actual placement of the road.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, Section 4.1.1 has been updated to reflect design standards and cross-sectional view for county roads and section line roads and trails.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, borrow will come from the hill to the east of the fuel farm north of the shop/office complex.

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)***

As per e-mail to Mike Berg dated 6/2/09, Section 3.6.1 has been revised to clarify subsoil removal plans for ponds.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, the land use change to industrial is needed to facilitate timely bond release of the entire ash disposal facilities as well as the fish and wildlife (grassland) buffer. Please see updated Section 4.1.1.

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)***

Please see updated Section 4.1.5.

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)***

Pursuant to our discussions during the May 28, 2009 meeting, the North Dakota Game and Fish Department is the State Agency that must be consulted with to determine plant species needed in the fish and wildlife (grassland) mix. Falkirk consulted with John Schumacher, Conservation Biologist with the ND Game and Fish Department. Please see the referenced letter and updated seed mix in Section 4.1.5.

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)***

Please see updated Section 4.1.1.

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)***

Please see updated Section 4.1.1.

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)***

Please see updated Section 4.1.6.

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- 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)**

Please see updated Section 4.2.2.

- 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)**

Please see updated Section 4.2.3.

- 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)**

Information regarding the history, future use, and reclamation of the above referenced support facility have been added to Section 3.1.1 as requested. As discussed with Dean Moos on June 1, 2009, because the area is designated as a support facility, it will be reclaimed in a manner consistent with other such support features as noted in the Reclamation Schedule narrative in Section 4.2.2. A reference to this effect has been added to Section 3.1.1. with respect to this feature. Please note that the area is also depicted on the Pit Layout and Facilities Map in Section 3.1.5.

Redisturbance of a portion of reclaimed cropland (that was partially bond released in Section 5, T145N, R82W) is also addressed in Section 3.1.1 and depicted on the Pit Layout and Facilities Map in Section 3.1.5, pursuant to conversations with yourself and Dean Moos on May 28, 2009.

Sincerely,

THE FALKIRK MINING COMPANY



Joe Clarke
Environmental Manager

JWC/dge