

**SCANNED**

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Date 3.17.09

March 16, 2009

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File Ek-3-16-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 American 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 top-soil 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

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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 large, stylized "J" and "C".

Joe Clarke  
Environmental Manager

JWC/dge



# APPLICATION FOR RENEWAL OF PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS

PUBLIC SERVICE COMMISSION  
RECLAMATION DIVISION  
SFN 10566 (1-2004)

Date 3.17.09  
File Ren 4 application (31349)

Date	March 16, 2009
Permit Number	NAFK-8705
State	ND
Zip Code	58576

Name of Permittee	The Falkirk Mining Company		
Address	City	State	Zip Code
2801 1st Street SW	Underwood	ND	58576

The above named hereby makes application for Renewal Number 4 of the above Permit Number in order to continue to engage in surface coal mining and reclamation operations within the area described below in the permit during the period from July 6, 2009 to July 6, 2011.

The reasons for requesting the renewal is attached and any changes to the matters set forth in the approved Permit are particularly described in the accompanying revision application.

The applicable public notice provisions of Section 38-14.1-18 of the North Dakota Century Code have been complied with. A copy of the advertisement is attached and affidavits of publications will be furnished to the Commission prior to issuance of the Permit Renewal.

Bond for surface coal mining and reclamation operations and liability insurance will be provided for the proposed period of renewal. Attached is a statement evidencing that the bond is sufficient and will continue in full force for the renewal period and that liability insurance will be provided for the renewal period.

SECTION	TOWNSHIP	LOCATION		ACRES
		RANGE	COUNTY	
3, 4, 5, 6, 8, 9	T145N	R82W	McLean	
19, 20, 27, 28, 29, 30, 31, 32, 33, 34	T146N	R82W	McLean	
1	T145N	R83W	McLean	
22, 23, 24, 25, 26, 27, 35, 36	T146N	R83W	McLean	
<b>TOTAL ACRES</b>				<b>10,880.9</b>

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

Name of Official <i>D. W. Swetich</i>	Dan W. Swetich
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I, the above named, being first and duly sworn, verify that the information contained in the Permit Renewal 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 16<sup>th</sup> day of March, 2009.

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

