



Public Service Commission

State of North Dakota

COMMISSIONERS

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Executive Secretary
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600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

January 11, 2016

Mr. Jason Frye
Environmental Specialist
Falkirk Mining Company
P.O. Box 1087
Underwood, ND 58576-1087

Dear Mr. Frye:

The Reclamation Division has conducted a technical review of Falkirk's application for Revision No. 35 and Renewal No. 6 to Surface Coal Mining Permit NAFK-8405. The following items must be satisfactorily addressed before the revision and renewal application can be approved:

General

1. Falkirk has written "Revision 35, Renewal #6" at the bottom of every page in numerous sections of the permit where no changes have been made, for example every page in Sections 2.4.2, 2.4.3, 3.1.2 and 4.1.1. This Revision 35, Renewal#6 wording should only be listed at the bottom of pages where changes are being made with this revision. Please revise to provide clarity and accuracy. (GAW)

Section 1.2 – Legal Information

2. The Certification of Liability Insurance as provided in Section 1.2.5 will expire on February 1, 2016. If an updated certificate is available, please incorporate that document into the permit at this time. (BEB)

Section 2.1 – Cultural and Historic Resources

3. The last paragraph of the Cultural Resources Narrative on page 7 of Section 2.1.1 describes that pre-historic cultural resources site 32ML823 will be marked in the field and on the Pit Layout and Facilities Map as a "no disturbance" area; however, this feature is no longer required to be marked on the map since data recovery was completed for this site in 2012. Please update the narrative in this section for site 32ML823. (BEB)

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Section 2.8 – Soils Resources

4. Please review the soils narrative in the third paragraph of page 3 of Section 2.8.1 because the narrative makes reference to the existing overburden stockpile location in the S1/2 of Section 1, T146N, R826W. Please correct the typographical error in this legal description. (BEB)

Section 2.4.2 – Fish and Wildlife Management Plan

5. Follow-up to Item No. 5: The Northern Long-Eared Bat discussion that has been added on page 5 of Section 2.4.2 is inadequate as a Protection and Enhancement Plan (PEP) for the species given that we must assume the species may be present in the absence of surveys. Please revise to include a detailed PEP that identifies and characterizes all suitable habitats in the permit area and include Species Specific Protection Measures (SSPM) that will ensure there are no adverse impacts or take of this species. The SSPM must, at a minimum, include language that states that there will be no disturbance of potential nesting habitat during the species maternity period. It is recommended that Falkirk prepare this species PEP for the entire mine. (GAW)
6. Follow-up to Item No. 6: A new sentence at the end of the Dakota skipper paragraph on page 9 of Section 2.4.3, Wildlife Monitoring Plan, states that “Annual surveys will be conducted on areas with suitable habitat”. Please clarify where in the permit suitable habitat exists for this species and where annual surveys are planned. This sentence is buried at the end of Section 2.4.3 behind the Threatened and Endangered Species Table but there is no mention of monitoring for this species in the “Wildlife Monitoring” section of the Monitoring Plan. Please revise to clarify the potential presence of this species in the permit area and include a Protection and Enhancement Plan (PEP) and Species Specific Protection Measures (SSPM) if this species could be present in the permit area or clarify why a PEP is not necessary for this species at this time. The last sentence of the Dakota skipper narrative on page 5 of Section 2.4.2 incorrectly states that no observations have been made in McLean County since the USFWS Dakota Skipper guidance document dated February 2015 (Table 1, page 3) indicates that this species has been recorded in McLean County and may still be present even though no designated critical habitat is present in McLean County. Furthermore, the January 2015 USFWS Threatened and Endangered Species County occurrence table indicates that this species may be present in McLean County. (GAW)

Section 3.1 – Operations Plan – General

7. Follow-up to Item No. 16: Please update the Pit Layout and Facilities map, Section 3.1.5, to not show any mining related features or activities within 500 feet of occupied dwellings where written waivers are not in place as required by NDAC 69-05.2-04-01.1(4). The Pit Layout and Facilities map shows a pit and a pond, PW-E16-04, within 500 feet of the Portras occupied building and pits are shown through occupied farmsteads in Sections 9, 10 and 15 where it appears waivers have not been executed. (GAW)
8. Please update the operations description narrative in Section 3.1.1 because page 1 describes that Falkirk is currently dewatering the existing final pit in preparation for future mining activities in 2007 south of Highway 200, and continuing narrative describes that a bridge will be constructed under Highway 200 during 2007. Please review all other narrative in this section and update to provide current information in the permit as necessary. (BEB)

9. The Extended Mine Plan Map in Section 3.1.6 depicts Highway 200 as being a U.S. Highway and it should be properly labeled as a State Highway. Please update this labeling if any other changes were made to the map. (BEB)
10. Please add to the legend of the Extended Mine Plan Map in Section 3.1.6 to indicate what the irregular dashed blue line represents on the map. It appears the line generally follows outside of the coal crop line and likely represents the terrain modification boundary, but is limited to only Permit NAFK-9503. (BEB)

Section 3.5 – Operations – Transportation Facilities

11. Please update the Cable Belt Conveyor Narrative in Section 3.5.40 to provide current information regarding the conveyor. Do not delete any of the historical data that is provided in the narrative, but rather update the narrative to describe the conveyor has not been operational for many years. Please discuss the feasibility and practicality of ever using the conveyor in the future considering the deterioration and rust that has occurred over the years it has not been used. If it is not feasible to use in the future, please add plans and a schedule to remove the conveyor within the next two years. (BEB/GAW/JRD)

Section 3.6 – Operations – Surface Water Management

12. Please update the Total Water Management Plan Map in Section 3.6.1a to show (using gray-shading) that sediment pond P-E34-03 has been reclaimed. (BEB)

Section 4.1.1 – Post-Mining Land Use Narrative

13. Follow-up to Item No. 16: The last paragraph on page 2 of Section 4.1.1 states that there are presently 500 foot set-backs around the business and farmsteads owned by the Portra and Weisz families, which are considered occupied dwellings. Page 3 of Section 4.1.1 states that operations can come within 300 feet of the Weisz farmstead. Please review and correct these inconsistencies. (GAW)
14. Follow-up to Item No. 20: Please consider changing “2013” to “2015” in the woodland narrative on page 11 of Section 4.1.5, Revegetation Procedures and Establishment, if the disturbed woodland acreage listed is valid through the year 2015 as indicated in the response. (GAW)
15. The Post-Mining Land Use Narrative in Section 4.1.1 discusses the replacement of Developed Water Resources in the post mine setting in the third and fourth paragraphs of page 9. However the narrative does not mention the replacement of stock pond SP-NE12-1 that was located in the current pool area of sedimentation pond P-E12-05. Please update the narrative regarding the developed water resources to include the replacement for SP-NE12-1. (RLK)
16. Please repair the hyperlink to Section 1.5.3 that appears in the fourth paragraph of page 2 in the Post-Mining Land Use Narrative in Section 4.1.1. All other links in this section appear to be functional with the exception of this one. (BEB)

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Section 4.2.3 – Grading Sequence Map

17. Please update the permit revision number in the title block on the Grading Sequence Map provided in Section 4.2.3. (RLK)

Section 4.2.7b – Post-Mining Area Slope Map

18. The list of changes for Revision 35 provided in Section 1.1 indicates that Section 4.2.7b – Post-Mining Area Slope Map was revised but the map version is still identified as Revision 34 and no other indication is provided for what was changed. Please describe the nature of the change to the map and update as appropriate. (RLK)

Section 5.2.2 – Wetland Design Details

19. New Item: Page 286 of Section 1.1.3, List of Revision Changes, indicates that Section 5.2.2, Wetland Design Details, was updated. Please let us know what changes occurred in this section of the permit and update the Revision Summary Page, Section 1.1.2, to describe the changes. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: McLean County Auditor