

**Public Service Commission  
Reclamation Division**

**Memorandum**

To: Commissioners Christmann, Kroshus, and Fedorchak  
Illona Jeffcoat-Sacco and John Schuh  
Darrell Nitschke - Executive Secretary

From: *DKM* *ZAB* *BB*  
Dean Moos, Zanna Brinkman, and Bruce Beechie

Date: May 8, 2018

Subject: Approval of Revision No. 37 to Permit No. NAFK-8405 held by Falkirk Mining Company, Case No. RC-17-453

On November 9, 2017, Falkirk Mining Company (Falkirk) filed the application for Revision No. 37 to Permit No. NAFK-8405 to mine 160 acres of federal and private coal located in the SE1/4 of Section 10 at the Falkirk Mine. The SE1/4 of Section 10 was previously incorporated into the permit with Revision No. 23 that was approved by the PSC on September 4, 2007. Falkirk obtained Federal Coal Lease NDM 107039 for the E1/2 of Section 10 in Permit NAFK-8405 on January 1, 2018. The permit revision provides updated surface water management and other mining and reclamation plans for the tract to be mined. The Reclamation Division has completed its review of this revision application and respectfully recommends that it be conditionally approved.

The 160 acres to be mined is located in the northern portion of the existing permit area as depicted on Figure 1, and the acreage associated with the permit area will remain unchanged at 8776.6 acres. Several federal coal tracts were included in the original permit application and in the Revision No. 23 addition areas, but no mining of these tracts was proposed at that time. Fifty percent of coal interest in the SE1/4 of Section 10 is owned by the federal government. Mining and reclamation operations of the federal coal tract in the SE1/4 of Section 10 will be similar to those presently approved in the permit. The surface of the federal coal tract in the SE1/4 of Section 10 is privately owned and Falkirk has secured the surface lease for that tract of land. The premining land uses of the area that will be disturbed in the SE1/4 of Section 10 include cropland, wetlands, developed water resources (stockpond), residential/farmstead, shelterbelt and a small area of industrial/commercial. The postmining land uses will be cropland, native grassland and wetlands. Mining of the SE1/4 of Section 10 is expected to occur between 2018 and 2023.

Falkirk is requesting a variance from the contemporaneous reclamation requirements for two small areas within the SE1/4 of Section 10. The variances include areas of temporary cessation of mining and a final highwall area that will be located adjacent to a large coal washout in the NE1/4 of Section 10 that will not be mined. The variance areas total about 15-acres in size, and in part, would ensure that sufficient material is available to backfill the final pit near the coal washout. In addition, Falkirk has requested a general variance from the rule that requires rough grading be completed within 180 days of coal removal. These requests have been adequately justified and the Reclamation Division recommends that the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2).

Leased federal coal cannot be mined until the Secretary of the Department of Interior approves the federal mine plan as required by 30 CFR 746.11. Special Condition No. 1 attached to Revision No. 37 prohibits overburden and coal removal in the SE1/4 of Section 10 until the mining plan is approved by the U.S.

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Department of the Interior. Surface disturbance is allowed on these lands prior to Department of Interior approval only to the extent necessary for the mining of the adjacent private lands. We will be submitting the required Federal Lands Decision documents to the Office of Surface Mining providing them with the required information for the processing of the mine plan approval action. As noted earlier, Falkirk Mine was awarded Federal Coal Lease NDM 107039 from BLM, and mine plan approval for removal of federal coal in the SE1/4 of Section 10 is expected in the near future.

Revision No. 37 was deemed a significant revision to Permit No. NAFK-8405 and was subject to the public notice requirements. Falkirk submitted affidavits of publication of the required newspaper notices. We notified the appropriate agencies, the permit area landowners and U.S. Fish and Wildlife Service of the revision application. We received no objections or requests for informal conferences on this revision application.

No bond adjustment is required for approval of Revision No. 37. The Commission has determined, pursuant to NDAC 69-05.2-12-07, that the existing performance bond in the amount of \$88,700,000 that covers this and other permits at the Falkirk Mine is sufficient for the proposed operations in Permit NAFK-8405.

Attached for your consideration at the May 15<sup>th</sup> Commission meeting are the proposed motion, revision approval form, permit condition, and newspaper notice that we must publish following revision approval.

#### Attachments

Minedata/Falkirk/Permits/NAFK-8405/Revisions/No.37/Rev37\_apprvl\_memo\_5-8-18

**Figure 1.**  
**Revision No. 37 Affected Area**

