



Public Service Commission

State of North Dakota

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February 6, 2018

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 completeness review of the application for Revision No. 38 to Surface Coal Mining Permit NAFK-8405 submitted on January 5, 2018. Revision No. 38 has been determined to be a significant revision and is therefore subject to the notice, hearing and procedural requirements. This revision will also require federal mine modification approval since federal coal will be mined under the plans included in the revision. The following items must be addressed prior to the revision being deemed complete:

Section 1.2.4 – Newspaper Publication Notice

1. The main purpose of the revision application is to add acreage to the permit and this should be plainly stated in the notice. Please replace the main heading of the public notice to state the following: NOTICE OF FILING A REVISION TO ADD AREA TO AN EXISTING SURFACE COAL MINING PERMIT. (BEB)
2. For the general public or other interested parties to adequately reference the intended application when requesting information, please make specific reference to Revision No. 38 in the first sentence of the public notice in Section 1.2.4. (BEB)
3. The second paragraph in the public notice describes the map and miscellaneous features outlined on the map, including the location of the *federal coal area*. The location of the federal coal area (SE1/4 of Section 3 and NE1/4 of Section 10) is not specifically identified on the map and does not need to be specifically identified. Reference to the *federal coal area* in the map narrative of the public notice is unnecessary and appears to be a carry-over from the Revision No. 37 application. Please delete that reference in the notice and change the “*Affected Area*” labeling on the publication map, Section 1.2.4n, to “*Addition Area*” or “*Additional Permit Area*”. (BEB/GAW/WTG)
4. Please specifically reference the stand-alone Underwood Ground Water Hydrology document in the first paragraph of the notice. (BEB)

5. The paragraph preceding the legal descriptions of section line closures in the notice makes reference to the 7th Addition. This description of the revision addition area does not appear anywhere else in the public notice, and to retain consistency in the notice this reference should be changed to state Revision No. 38. (BEB)
6. The public notice designates surface ownership of Tract 84 in the SE1/4 of Section 3 to Michael Berg; however, information provided in Sections 1.5.1 and 1.5.3 of the permit designate Falkirk as the surface owner. Please update applicable sections of the permit for consistency. (BEB/RLK/PJR/GAW/WTG)
7. The public notice designates James Ronald Johnson (in addition to Kjelstrup Land Holdings, LLLP) as a surface owner in the SE1/4 of Section 5 (Tract 89). However, Sections 1.5.1 and 1.5.3 of the permit designate David P. Kjelstrup as a surface owner, not James Ronald Johnson. Please update applicable sections of the permit for consistency. (BEB/RLK/GAW/WTG)
8. Please add Tract 65 surface and coal ownership for the NE1/4 of Section 10 to the notice as required by NDAC 69-05.2-10-01(b)(4). (WTG)
9. Items 7, 8, and 9 on the list of section lines to be temporarily closed could be described as the east-west section lines rather than the north and south sides of the section line for consistency with the other eventual road/ROW closures within the permit addition. (RLK)
10. Please review item numbers 7, 8, and 9 on the list of section lines for which the Falkirk Mining Company will obtain Board of McLean County Commissioners approval to temporarily close during the term of mining and reclamation in the notice and revise them as necessary as required by NDAC 69-05.2-10-01(1)(d). As presented, item numbers 7, 8, and 9 appear as petitions to conduct operations within 100 feet of the outside right of way of a public road but the notice does not indicate Falkirk's intention to obtain such approval, and Section 3.5.21 (Road Relocation and Closing Plan Map) indicates that closure of these section lines will be necessary for mining operations. Please revise item numbers 7, 8, and 9 to indicate petitions to obtain approval to temporarily close section lines between Sections 3 and 10, Sections 4 and 9, and Sections 5 and 8 if that is Falkirk's intention. Otherwise, create a separate subheading for petitions to conduct operations within 100 feet of the outside right of way of a public road. It should be noted that Section 3.5.21 (Road Relocation and Closing Plan Map) and Section 1.3.6 (Relationship to Areas Designated Unsuitable) indicate the east-west section line between Sections 3 and 10 was approved for closure on 12//05/2017. (WTG)
11. Please update the Newspaper Publication Reference Map in Section 1.2.4n by deleting acreage from the permit boundary associated with Final Bond Release No. 1 to Permit NAFK-8405 in Sections 26 and 35, T146N, R82W. (BEB)

Section 1.5 – Identification of Interests and Rights of Entry

12. Tract 88 shows that mining will be conducted on this tract in the S1/2 of Section 4 beginning in 2027, and the ND Department of Trust Lands has 50% mineral ownership on this tract. If available, please provide a valid mineral lease with the state for this tract. If Falkirk does not have at least 75% of coal leased for this particular tract, the tract should not be depicted as being planned for mining on the Pit Layout and Facilities Map. (PJR)

13. Tract 80 is located in the SW1/4 of Section 2, and lease information in Section 1.5.1 and the footnote on the map in Section 1.5.3 state the tract is permitted for surface disturbance only. However, the Surface Owner Notification Map in Section 1.4.2c and the Pit Layout and Facilities Map in Section 3.1.5 both show future mining of this tract. In addition, Coal Lease No. 03806 includes portions of Sections 2, 10, 15, and 22, T146N, R82W, (Tracts 48, 49, 65, 66 and 80) appears to have expired in 2013 or 2014 based only on the primary and secondary term lengths of the lease, but this lease includes delay provisions that can add years to the primary term. Sections 1.5.1 and 1.5.3 of the permit indicate tracts 48, 49, 65, and 66 are leased but tract 80 states the SW¹/₄ of Section 2 is unleased. Please review and add a written certification stating Lease No. 03806 remains valid and state the appropriate lease provision(s) that extend the lease. Please also clarify if the lease was terminated for tract 80. Any tracts that Falkirk does not have at least 75% of the coal leased should not be depicted as planned for mining on the Pit Layout and Facilities Map. (PJR/ZAB)

Section 2.4 – Fish and Wildlife Resources

14. Please update Attachment I of Section 2.4.1c and Table 1 of Section 2.4.3, entitled Federal Threatened, Endangered, and Candidate Species found in North Dakota, to include a discussion about the potential presence of the Rusty Patched Bumble Bee (*Bombus affinis*). This species was listed as endangered on January 11, 2017, effective February 10, 2017, and its historic range included a portion of North Dakota. (GAW)

Section 3.6 – Operations – Surface Water Management

15. Please consider adding narrative on page 2 of Section 3.6.1 in the paragraph that describes the two types of sediment ponds constructed at the Falkirk Mine. Please update the narrative to provide a brief description of the use of wetland basins for surface water management in non-contributing watersheds. (BAJ)

Section 4.1 – Post-Mining Land Use and Revegetation

16. As listed in the public notice, James Ronald Johnson is a surface owner in SE1/4 of Section 5. Please provide the required Landowner's Post-Mining Preference Statement for Mr. Johnson in Section 4.1.4 or provide an explanation of why he did not receive the land use preference form. Separately, Richard and Deann Brunelle, Troy and Stephanie Buller, Leslie and Wendy Forland, and Stacey Busch all received landowner preference statement forms but they are not listed as surface owners in the public notice. Please address the listed discrepancies or provide an explanation for these discrepancies. (BEB)

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos
Director
Reclamation Division