

**Public Service Commission
Reclamation Division**

Memorandum

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

From: Dean Moos, Zanna Brinkman and Bruce Beechie

Date: October 17, 2018

Subject: Approval of Revision No. 38 to Permit No. NAFK-8405 held by Falkirk Mining Company, Case No. RC-18-20

On January 5, 2018, Falkirk Mining Company (Falkirk) filed the application for Revision No. 38 to Permit NAFK-8405 to add 1680.1 acres to the permit in portions of Sections 3, 4, 5, 8, 9 and 10, T146N, R82W in McLean County. Revision No. 38 also includes mining plans for a federal coal tract located in the NE1/4 of Section 10 that is being added to the permit with this revision. Falkirk obtained Federal Coal Lease NDM 107039 for the E1/2 of Section 10 in Permit NAFK-8405 on January 1, 2018. OSM provided federal mine plan approval for the SE1/4 of Section 10 after Commission approval of Revision No. 37 to Permit NAFK-8405 and now Falkirk is also seeking federal mine plan approval for the federal coal located in the NE1/4 of Section 10. All introductory, legal, financial, compliance information, environmental, operations and reclamation sections of the permit have been revised. The stand-alone Ground Water Hydrology and Reclamation Bond/Cost sections of the permit have also been updated with this revision. The Reclamation Division has completed its review of this revision application and respectfully recommends that it be conditionally approved.

The 1680.1-acre addition to the permit represents a northward extension of Falkirk's mining and reclamation operations north of State Highway No. 200 as depicted in Figure 1. The acreage associated with the permit area will increase from 8576.5 acres to 10,256.6 acres. An additional federal coal tract is included within the revision addition area in the SE1/4 of Section 3; however, that tract is not planned for mining by Falkirk at this time. Several federal coal tracts were included in the original NAFK-8405 permit application and in the Revision No. 23 addition area north of Highway 200, but no mining of those tracts was proposed at that time. Fifty percent of the coal interest in the NE1/4 of Section 10 is owned by the federal government and the remaining 50% is owned by private interests. Mining and reclamation operations associated with the addition area including the federal coal tract in the NE1/4 of Section 10 will be similar to those presently approved in the permit. The surface of the federal coal tract in the NE1/4 of Section 10 is owned by Falkirk and they have secured the private and federal coal leases for that tract. The premining land uses of the area that will be added to the permit include cropland, native grassland, wetlands, residential/farmstead, shelterbelts, county roads and trails. The postmining land uses will be similar to the premining land uses. Mining of the Revision No. 38 addition area is expected to add approximately eight years of mining to the permit area and mining of the addition area will occur between the years 2022 and 2030.

As allowed by NDAC 69-05.2-21-01(2), Falkirk is requesting a variance from the 180-day contemporaneous reclamation and four spoil peak requirements for a significant portion of the addition area for use as a prebench (advanced bench) fill area. Falkirk will use a truck/shovel fleet to remove

22 RC-18-20 Filed: 10/17/2018 Pages: 3
Memorandum

Public Service Commission Staff

Dean Moos, Zanna Brinkman, Bruce Beechie

overburden material in advance of the 102 dragline in most of the addition area because of the deep cover to be removed in this area of the mine that would otherwise be unreachable by the dragline. The variance request has been adequately justified and the Reclamation Division recommends that the variances be approved as allowed by NDAC 69-05.2-21-01(2).

The leased federal coal in the NE1/4 of Section 10 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. 38 prohibits overburden and coal removal from the federal coal tract in the NE1/4 of Section 10 until the mining plan is approved by the U.S. 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 and the adjacent federal for which they have mine plan approval. We will be submitting the required Federal Lands Decision documents to the Office of Surface Mining 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 the federal coal in the NE1/4 of Section 10 is expected from OSM in the near future.

Revision No. 38 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.

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 Permits NAFK-8705 and NAFK-9503 at the Falkirk Mine is sufficient for the proposed operations in Permit NAFK-8405 and for continuing operations within the other permit areas. Falkirk submitted riders to increase the acreage on Self Bond No. SB-9503-1, Collateral Bond No. CB-9503-4, and Surety Bond No. 105624532 that covers Permits NAFK-8405, NAFK-8705, and NAFK-9503 at the Falkirk Mine. The riders were properly executed and accepted by the Reclamation Division.

Attached for your consideration at the October 24th 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.38/Rev38_apprval_memo_10-17-18

Figure 1.
 Revision No. 38 Addition Area

