

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann, and Kroshus
Steve Kahl, Executive Director
John Schuh, General Counsel
DKM *ZAB*

FROM: Dean Moos, Zanna Brinkman, and Jeff Roerick

DATE: June 23, 2021

SUBJECT: Variance request to the performance bond responsibility period for areas in Permit NAFK-8405 held by The Falkirk Mining Company, Case No. RC-21-158

On April 27, 2021, the Falkirk Mining Company (Falkirk) filed a request for a variance from the 10-year revegetation responsibility period for 11.3 acres of reclaimed cropland owned by Michael Berg in Permit NAFK-8405 at the Falkirk Mine. This acreage is located in the SW $\frac{1}{4}$ of Section 22, of T146N, R82W, McLean County. A variance from the 10-year revegetation responsibility period will allow two areas where topsoil stockpiles were reclaimed in 2014 to be bond released with the adjacent lands that were reclaimed from 1992 through 2012. The Reclamation Division has completed its review of the request and respectfully recommends approval for the 11.3 acres as allowed by Policy Memorandum No. 20.

Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year revegetation responsibility period for water management features such as sediment ponds, access trails, and soil stockpile sites that could not be reclaimed at the same time as the surrounding reclamation tract and for reclamation repair work following the initial seeding of the reclamation tract. Variances must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. Small in size is generally defined in Policy Memorandum No. 20 as comprising not more than approximately 20% of a reclamation tract. The permittee must affirmatively demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety. Reclamation procedures used on variance areas need to provide the same protections as those used on surrounding reclaimed tracts.

Falkirk submitted the 11.3 acre variance request as part of a larger tract containing 299.1 acres located in the SW $\frac{1}{4}$ of Section 22 and the NW $\frac{1}{4}$ of Section 27, T146N, R82W, in Permit NAFK-8405. However, a reclaimed county road between Sections 22 and 27 divides the fields and separate productivity yields were provided. The variance area covers about 7.5% of the of the reclaimed tract in the SW $\frac{1}{4}$ of Section 22. Since the 7.5% meets the definition of small in size as defined in Policy Memorandum 20, only the acreage and productivity from Section 22 was used to evaluate the variance area request.

The 11.3-acre variance request area is part of a larger tract containing 150.2 acres located in the SW $\frac{1}{4}$ of Section 22. The 11.3 acres contained two topsoil stockpile areas (3.0 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 8.3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$) that were reclaimed in early 2014. The reclaimed stockpile sites have been farmed with the adjacent reclaimed cropland within the prospective future bond release tract since 2014. The minimum 10-year responsibility period for most of the land surrounding the variance request areas

ended in 2018. A small tract (less than 1 acre) of industrial/commercial land that contains an electric tower was reclaimed in 2012 and the minimum 10-year responsibility period will end in 2022. Falkirk anticipates submitting the bond release application in late 2021 or early 2022 so the small tract reclaimed in 2012 will meet the minimum 10-year responsibility period before the proposed bond release application is approved. Most of this reclamation tract, including the variance request areas, was mined. Approval of this variance request will allow Falkirk to pursue final bond release two years earlier than otherwise allowed for the stockpile areas reclaimed in 2014. The variance area has been used for annual crop production since being reclaimed and the cropping and conservation methods practiced on the tract have been typical for the region. The variance request included productivity information for the crop fields containing the variance area. The yield information for the entire SW1/4 of Section 22 (including the variance areas) indicates that the productivity has been restored and would meet the applicable performance standards.

A map of the variance areas and the adjacent reclaimed cropland is attached. The proposed variance areas were inspected May 18, 2021 and no issues were identified during the field inspection. Based on the field inspection and the information contained in the variance request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 11.3 acres of reclaimed land in Section 22 of Permit NAFK-8405.

A motion and an approval form are attached for your consideration at the June 23, 2021, Commission meeting.

Falkirk Mine\Permits\NAFK - 8405\Variances\2021\Variance_Sect_22_apprvl_memo_6-23-21

Figure 1: Variance Areas in the SW $\frac{1}{4}$ of Section 22 of Permit NAFK-8405

