



United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Western Region Office
Denver Federal Center, Building 41
Lakewood, CO 80225-0065



ND-0009

October 7, 2022

Zanna Brinkman
Director, Reclamation and AML Divisions
North Dakota Public Service Commission
600 E. Boulevard, Dept 408
Bismark, ND 58505-0480

Re: Falkirk Mining Company's Revision 42 to Surface Coal Mining Permit No. NAFK-8405,
Proposed Addition of 3,359.7 acres at the Falkirk Mine

Dear Ms. Brinkman,

On June 8, 2022, the North Dakota Public Service Commission (PSC) notified the Office of Surface Mining Reclamation and Enforcement (OSMRE) of Falkirk Mine's (Falkirk) Revision 42 to Permit Number NAFK-8405, which proposes to add 3,359.7 acres of private surface in portions of Sections 1, 2, 3, and 5, T146N, R82W; and Sections 33, 34, 35, 36, T147N, R82W, in McLean County.

This letter documents OSMRE's determination of whether Revision 42 for Falkirk Mining Company's Federal Coal Lease NDM107039 at the Falkirk Mine constitutes a mining plan modification. Mining plans and mining plan modifications require approval by the Assistant Secretary of Land and Minerals Management (ASLM) under the Mineral Leasing Act of 1920, 30 U.S.C. § 181, et seq. before coal mining can occur on Federal lands. See also 30 CFR Part 746.

As described in the permit revision submitted to PSC, Falkirk proposes to add 320 acres of Federal coal that is in the NW1/4 of Section 2 and NE1/4 of Section 3, T146N, R82W. Currently these tracts are being permitted for surface disturbance only. The surface of the Federal coal being added with Revision No. 42 is privately owned and no mining of Federal coal is proposed at this time, because Falkirk has not obtained a lease from the Bureau of Land Management (BLM) for this area yet. If Falkirk obtains the Federal coal lease, they will submit another revision for a mine plan modification. Falkirk does have the Federal coal lease for Section 10 and mining of Federal coal is currently occurring on that tract. Lease NDM107039 for mining in T146N, R82W Section 10 SE1/4 was approved by ASLM August 18, 2018.

The OSMRE has considered the criteria described in the Federal regulations at 30 CFR 746.18(d)(1) through (d)(6) defining when a permit revision constitutes a mining plan modification:

1. *Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than the SMCRA.*

Revision 42 has been reviewed with respect to applicable Federal laws, regulations, and executive orders, and the proposed changes would not affect the condition of the mining plan approval pursuant to Federal law or regulation other than SMCRA.

2. *Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining.*

The proposed Revision 42 does not include any land, facility or place designated unsuitable for mining.

3. *Any change in the location or amount of coal to be mined, except where such change is the result of: (i) A minor change in the amount of coal available for mining from the amount estimated; or (ii) An incidental boundary change.*

Revision 42 does not propose any change in the location or amount of Federal coal to be mined.

4. *Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time*

Revision 42 would not extend mining and reclamation activities onto leased Federal coal for the first time. The mine has not received BLM lease for Federal coal in the proposed permit expansion.

5. *Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, 42 U.S.C. 4321 et seq.*

Revision 42 is not a major action normally requiring the preparation of an Environmental Impact Statement¹.

6. *Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is federally owned.*

There will be no change in the postmining land use.

In summary, a mining plan modification approval from the ASLM *is not* required for Revision 42. The OSMRE's decision is based upon consideration of Falkirk Mining Company's permit revision submitted to PSC and the requirements at 30 CFR Parts 740 and 746.

On October 4, 2022, OSMRE consulted with the BLM about this determination. The BLM concurred with OSMRE's finding that Revision 42 does not constitute a mining plan modification requiring approval by the ASLM by emailed dated October 6, 2022.

¹ Major actions requiring the preparation of an EIS are described in the DOI Department Manual, Managing the NEPA Process – Office of Surface Mining (516 DM 13).

The OSMRE's decision does not relieve PSC from coordinating its review and approval of this action and securing approval from other Federal agencies for compliance.

Sincerely,

Elizabeth Shaeffer, Manager
Field Operations Branch

cc: Nate Arave, BLM Montana/Dakotas State Office
John Zeise, BLM Montana/Dakotas State Office
Jeffrey Fleischman, OSMRE Denver Field Division
Jason Frye, Falkirk Mining Company