

**PUBLIC SERVICE COMMISSION**  
Reclamation Division  
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Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Fedorchak  
Steve Kahl, Executive Director  
John Schuh, General Counsel

FROM: <sup>ZAB</sup> Zanna Brinkman, <sup>JWE</sup> Jonathan Emmer, and <sup>DR</sup> Preston Ripplinger

DATE: February 22, 2023

SUBJECT: Variance request to the performance bond responsibility period for areas in Permit NAFK-8405 held by The Falkirk Mining Company, Case No. RC-23-48

On February 3, 2023, the Falkirk Mining Company (Falkirk) filed a request for a variance from the 10-year revegetation responsibility period for 4.5 acres of reclaimed cropland owned by Chad Berg in Permit NAFK-8405 at the Falkirk Mine. This acreage is in the SW¼ of Section 22, T146N, R82W, McLean County. A variance from the 10-year revegetation responsibility period will allow two areas where a topsoil stockpile and temporary haulroad were reclaimed in 2008 and 2011 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 4.5 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, and other features such as 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.

The 4.5-acre variance request area is part of a larger tract containing 144.1 acres located in the SW¼ of Section 22. The 4.5 acres contained a topsoil stockpile area (0.2 acres) and a temporary haulroad (4.3 acres). A variance of 11.3 acres in the SW¼ of Section 22 was previously approved on June 23, 2021; however, the proposed bond release boundary was adjusted after the variance was approved, reducing the variance to 10.4 acres. The approved variance areas (10.4 acres) and the new variance areas (4.5 acres) total 10.3 percent of the disturbance area in the SW¼ of Section 22. The 10.3% meets the definition of small in size, as defined in Policy Memorandum 20.

The variance areas are part of a bond release application for 286.9 acres located in the SW¼ of Section 22 and the NW¼ of Section 27, T146N, R82W, in Permit NAFK-8405 that Falkirk submitted in 2022. The approved variance areas (10.4 acres) and the new variance areas (4.5 acres) are 5.2 percent of the proposed bond release area.

A reclaimed county road between Sections 22 and 27 divides the fields and separate productivity yields were provided. Most of the bond release 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. 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 and bond release application 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 meets the applicable performance standards.

A map of the variance areas and the adjacent reclaimed cropland is attached. The proposed variance areas were inspected on multiple dates, including the bond release inspection on October 26, 2022. 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 4.5 acres of reclaimed land in Section 22 of Permit NAFK-8405.

A motion and an approval form are attached for your consideration at the February 22, 2023, Commission meeting.

Figure 1: Variance Areas in the SW¼ of Section 22 in Permit NAFK-8405

