



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Julie Fedorchak

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
ndpsc@nd.gov

sent via email only

October 16, 2024

Mr. Jason Frye
Environmental Specialist
Falkirk Mining Company
P.O. Box 1087
Underwood, ND 58576-1087
jason.frye@nacoal.com

Dear Mr. Frye:

The Reclamation Division has completed an initial review of the application for Bond Release No. 6 to Surface Coal Mining Permit NAFK-9601, submitted on September 25, 2024. Items No. 1 through No. 21 below must be addressed prior to publishing the public notice or notifying surface owners and government agencies. Items No 22. through No. 26 may be addressed at this time or following the Reclamation Division's more detailed technical review. Regarding Item No. 27, the Reclamation Division has several concerns with the methodology and data being used and would like Falkirk to review this item prior to publication.

General

1. Please depict and label the post-mining land uses on Attachment V (Aerial Photo Base Map) or a different map. Reclaimed seasonal or more permanent wetlands should be labeled, and temporary wetlands should be depicted and identified to distinguish them from areas of differential settling. (GAW)

Application Form

2. Subtract 6C on the Application Form provides confusion when the Record of Survey in Attachment I only labels Subtracts 6A and 6B and fails to list or depict Subtract 6C. Please rename Subtract 6B to Subtract 6B-1 and Subtract 6C to Subtract 6B-2 on the Application Form so that it remains consistent with how the tracts are presented throughout the application. Furthermore, please verify all other references to Subtract 6B and Subtract 6C throughout the bond release application to ensure they are updated accordingly to reflect this change. (BSM/AAC)
3. Please revise the narrative for Subtract 6C, which is to be renamed to Subtract 6B-2 as noted above in Item No. 2, on the Application Form to clearly state there was no mining disturbance on this tract. (PJR)

Attachment ii – General Information

4. Coal removal dates are not specified in the narrative of Attachment ii (General Information). Please include actual coal removal dates (start through completion) for all subtracts disturbed by mining in the narrative of Attachment ii. (JAR)

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5. The third sentence of the second paragraph of subsection “General Information” in Attachment ii (General Information) states “Final grading to post-mining contour on all subtracts was completed in 2006 with scrapers, dozers, and motor graders.” Please revise that sentence to discuss the grading timeframes to post-mining contours on each specific subtract disturbed by mining and/or associated disturbance, specifically since subtract 6C was not disturbed by mining and/or associated disturbance. (JAR)
6. The first and second sentences in the second paragraph on page two of Attachment ii (General Information) contain typos or incorrectly ordered wording. For clarity, please revise the first sentence to read: “flows north towards Coal Lake...” and the second sentence to read: “The majority of the surface water in the remaining subtracts will flow towards reclaimed seasonal wetland SE31-1 and east towards State Highway 200A.” (JAR/PJR)
7. Labeling for adjoining surface owners on the Surface Ownership Map in Attachment ii (General Information) is not complete, since the adjoining surface owners to the southeast and southwest of Section 31 were not identified. Please identify all surface owners and adjoining surface owners on the Surface Ownership Map in Attachment ii. (AAC)
8. According to Section 1.5.3 (Surface and Coal Ownership Map) of approved Revision No. 18 to Permit NAFK-9601, William G. Flemmer and Valorie Overton are adjoining surface owners in the N½ of Section 6, T145N, R81W, but the Surface Ownership Map in Attachment ii (General Information) depicts Brent and Theresa Petersen as the only adjoining surface owners in this area. Please verify and revise Attachment ii if necessary. (AAC/MLJ)

Attachment I – Metes and Bounds Maps

9. The Record of Survey in Attachment I (Metes and Bounds Map) depicts the “Point of Beginning” for Subtract 6A starting from the south ¼ corner of said Section 30, T146N, R81W, but it is recommended to tie the starting point to a physical marker or monument whenever possible to ensure accuracy and to avoid potential disputes. The quarter line itself can serve as a reference point, but it should be clearly described in the legal description with specific course and distance measurements from a known point to establish the "point of beginning" precisely. If possible, please update the Record of Survey utilizing a nearby “Found Monument”. (BSM)

Attachment II – Metes and Bounds Description

10. The word “Cropland” located at the top of Attachment II (Metes and Bounds Description) is unnecessary. Please update Attachment II by removing the word “Cropland” located at the top of the page. (BSM)

Attachment III - Public Notice

11. Attachment III (Public Notice) specifies mining and/or mining disturbance was initiated in 1993. This appears to be a typographical error. Please revise the initiation date to 1996 for mining and/or mining disturbance for the bond release area. (JAR)
12. In the ninth sentence of the second paragraph of Attachment III (Public Notice), please remove the statement “(or used for spoil placement)” to provide clarity. (WWS/PJR)

13. The public notice states the bond for Permit NAFK-9601 is covered by a surety bond, but Permit NAFK-9601 is covered by a collateral bond (letter of credit) in the amount of \$2,831,808.00 and not \$2,831,807.66. Please revise Attachment III accordingly. (JWE/JAR)

Attachment IV – Letters to Interested Parties

14. Attachment IV (Letters to Interested Parties) specifies mining and/or mining disturbance was initiated in 1993. This appears to be a typographical error. Please revise the initiation date to 1996 for mining and/or mining disturbance for the bond release area. (JAR)
15. In the ninth sentence of the second paragraph of Attachment IV (Letters to Interested Parties), please remove the statement “(or used for spoil placement)” to provide clarity. (WWS/PJR)
16. The salutation in the letter addressed to George Sheldon in Attachment IV (Letters to Interested Parties) reads “Dear Brent and Theresa Petersen”. Please correct the salutation in this letter to “George Sheldon”. (JAR/PJR/BSM)
17. To provide clarity for the notification of Final Bond Release No. 6 to property owners, please consider stating whether they are surface owners or adjoining owners in Attachment IV (Letters to Interested Parties). (JAR)
18. Attachment IV (Letters to Interested Parties) does not include William G. Flemmer and Valorie Overton (N $\frac{1}{2}$ of Section 6), and Laurie A. Sheldon (NW $\frac{1}{4}$ of Section 5) as adjoining surface owners as depicted in Section 1.5.3 (Surface and Coal Ownership Map) of approved Revision No. 18 to Permit NAFK-9601. Please verify copies of the letters will be sent to all current adjoining property owners as required in subdivision (b) of subsection (1) in NDCC 38-14.1-17. (JAR/WWS)
19. Attachment IV (Letters to Interested Parties) states the current bond coverage is \$2,831,807.66 and it is covered by a surety bond. However, the bonding instrument for Permit NAFK-9601 is a collateral bond (CB-9601-01) in the amount of \$2,831,808.00. Please revise Attachment IV accordingly. (JWE/JAR)

Attachment VIII – Bond Calculation

20. A column in the top table on page 3 of Attachment VIII incorrectly states “Post BR5 Reclamation Liability” instead of “Post BR6 Reclamation Liability”. Please correct this error. (JWE/BSM/JAR)
21. A column in the bottom table on page 3 in Attachment VIII incorrectly states “Post BR4 Reclamation Liability” instead of “Post BR5 Reclamation Liability”. Please correct this error. (JWE/BSM/JAR)

Technical Review Items that may be addressed at a later date:

Attachment V – Aerial Photo Base Map

22. The legend for Attachment V (Aerial Photo Base Map) depicts two colored legend keys for Subtract 6A-1 and fails to list Subtract 6A-2. Please update Attachment V to correct this error so that Subtract 6A-2 is listed in the legend. (BSM)

Attachment VII – Reclamation History

23. Please label all subtracts on the Mined Out and Associated Disturbance Map in Attachment VII (Reclamation History). (JAR)
24. The Mined Out and Associated Disturbance Map in Attachment VII (Reclamation History) depicts an area in the northeast portion of Subtract 6A-1 (Section 30) that appears to be associated disturbance but is not labelled. Please review and revise that portion of Subtract 6A-1 accordingly. (JAR)

Attachment VIII – Bond Calculation

25. The first paragraph on page 87 in Attachment VIII (Bond Calculation) states “Bond Release No. 5 to Permit NAFK-9601 request final bond release on 117.3 undisturbed acres, 1.5 disturbed acres that are 100% bonded and 275.4 acres that are 60% partially bond released and are currently bonded at 40%.” Please update this paragraph so the correct bond release (FBR #6) is referenced. (AAC/PJR)

Attachment IX – Cropland Data

26. Please update the Section 30 Pre-Mine Soils Map in Attachment IX (Cropland Data) to include the boundary of Final Bond Release No. 6. Also, only the associated disturbance boundary line is depicted on the Section 30 and Section 31 Pre-Mine Soils Maps in Attachment IX, which makes it appear the entire bond release tract is associated disturbance. For clarification, please revise these maps to depict the areas that were disturbed by mining. (JAR)
27. The Reclamation Division has several concerns regarding the methodology and data being used to demonstrate revegetation success of the cropland in Section 31. (GAW/WWS/AAC)
 - a. Only one version of our Revegetation Success Standards document should be used to demonstrate revegetation success. The 2003 version of our Revegetation Success Standards document is being used to compute the yield standards in 2013, 2014 and 2019, and the 2022 version is being used to compute the standard in 2023.
 - b. The Section 31 unadjusted cropland yield standard was developed excluding a portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 31 according to the Revegetation Success Standards Map in Section 4.1.6a of Permit NAFK-9601. The unadjusted standard will need to be updated to include this portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 31 since a portion of this area was affected by mining and is included in the crop field. Moreover, it is not clear why the 2023 unadjusted standard was developed using only 180.6 acres in Section 31 rather than the entire ownership tract.
 - c. Please provide information on why four years of data are necessary to demonstrate revegetation success, and why the weighted average yield of all the crops grown on the field each year is not being used to demonstrate revegetation success rather than just some crops grown on irregularly shaped fields within the bond release tract. It appears a combined weighted average yield of wheat and pinto beans should be used in 2014 and a combined weighted average yield of wheat and soybean should be used in 2019 rather than just those portions of the field planted to wheat in 2014 and soybeans in 2019. Moreover, the 2019 soybean field appears to consist largely of undisturbed land, which is problematic.

Mr. Jason Frye
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If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

cc via email only: Steve Burke (steve.burke@nacoal.com)
Tanner Jochim (tannert.jochim@nacoal.com)

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