

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Falkirk Mining Company**  
**Revision 45, Permit NAFK-8405**  
**Application**

**Case No. RC-25-241**

**REVISION OF PERMIT TO ENGAGE IN**  
**SURFACE COAL MINING AND RECLAMATION OPERATIONS**

**March 5, 2026**

Based on the application for **Revision No. 45 to Surface Coal Mining Permit NAFK-8405**, submitted by Falkirk Mining Company for the Falkirk Mine on August 28, 2025, and as revised through December 8, 2025, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application, or from that otherwise available and known by the applicant, the Commission finds that:

**Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].**

Revision No. 45 was submitted in conjunction with Renewal No. 8. The revision updates various sections of the permit for the next 5-year permit term including the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, reclamation plan, and reclamation schedule in the permit. Revision No. 45 and corresponding Renewal No. 8 will allow surface coal mining and reclamation operations to continue on 13,150 acres of land in Permit NAFK-8405 at the Falkirk Mine in McLean County, North Dakota.

The applicant verified that all information included in the revision application is true and correct to the best of their knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided, and mining and reclamation plans met all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on September 17, 2025, and November 14, 2025. Responses to each letter were reviewed and changes to the revision application were made to address the concerns that were noted. The applicant provided leases and other documents showing that they have the right to mine the lands where coal removal is proposed and to disturb the surface of other lands in the permit area. The Commission concludes that this significant revision application is now accurate and complete.

From October 23, 2025, through November 13, 2025, the applicant published the required notices of the permit revision application in the Bismarck Tribune and the McLean County Independent newspapers. The Commission sent the notice of revision application to the surface owners affected by the proposed revision, and the notice was sent to numerous

local, state, and federal agencies. Applicable advisory committee members received the revision application and comments were received from the United States Fish and Wildlife Service, North Dakota Parks and Recreation, North Dakota Department of Environmental Quality, and North Dakota Department of Water Resources. No objections or requests for an informal conference were received on this application during the public comment period.

Falkirk obtained federal coal lease NDM 111489 on October 10, 2025, for the NW¼ of Section 2 and the E½ of Section 3, T146N, R82W in Permit NAFK-8405; however, the lease has not been added to the permit as part of the Revision No. 45 permit application. The Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that the Revision No. 45 application does not constitute a mining plan modification requiring approval by the Assistant Secretary of Land and Minerals Management in correspondence received by the Commission on January 6, 2026.

**Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the revised permit application [NDCC 38-14.1-21(3)(b)].**

Revision No. 45 provides detailed mining and reclamation plans for the next term of the permit, April 15, 2026, to April 15, 2031, and it updates other relevant sections of the permit accordingly. Other areas of the permit will be used for support activities including soil and overburden stockpiles, water management structures, and other associated disturbances. Reclamation of disturbed areas will be carried out using reclamation procedures that have been successful in the past and satisfy the requirements of the North Dakota laws and rules. The proposed post-mining topography meets the grading requirements and the applicant has demonstrated sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22.

The reclaimed lands will be capable of supporting the pre-mine uses, or higher or better uses, than existed prior to mining. The predominant pre-mining land use in the permit area is agricultural (including cropland and hayland), native grassland, industrial/commercial, residential, woodlands, developed water resources, wetlands, roads, and fish and wildlife habitat. The permit area was previously zoned for agricultural use by McLean County. Falkirk has obtained a conditional use permit from the McLean County Commission for coal mining and associated disturbances. The post-mining land uses will be similar to the pre-mine conditions.

Of the approximately 13,150 total acres in Permit NAFK-8405, the applicant intends to remove coal from approximately 7,000 acres over the life of the permit and much of the remaining acreage will be disturbed by haulroads, overburden and soil stockpiles, sedimentation ponds, and other associated disturbances. The coal removal area presently approved is limited to what will be mined in this permit term that ends April 15, 2031. The federal coal tracts located in the E½ of Section 3 and the NW¼ of Section 2, 146N, R82W are currently not proposed to be mined. Reclamation of the disturbed acreage will follow normal reclamation procedures and the practices that the applicant utilizes to reclaim disturbed acreage satisfies the requirements of the North Dakota Program. The applicant's reclamation practices have proven effective in the past.

With regard to the reclamation schedule, Falkirk has demonstrated the need for variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal and the four spoil peak requirements

specified in NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14).

The Revision No. 45 application did not request additional variances; however, Variance Area U was requested and approved with Revision No. 44 to Permit NAFK-8405 on December 30, 2024. Variance Area U represents areas of temporary cessation of mining and later resumption of mining due to the federal coal tract in the E½ of Section 3, T146N, R82W, where obtaining the lease was delayed. Original disturbance in Area U will occur as mining of the W½ of Section 3 progresses to the north starting in 2026 and adjacent regrading is not possible. During this mining period, Area U will be rough graded and left without SPGM. The area without SPGM will be used for the placement of future out-of-pit spoils from the easterly mining leg. Post-mining contours for Area U will be achieved as adjacent mining activities are completed in the easterly mining leg. Fifteen variance areas remain active within Permit NAFK-8405. These variance requests had been appropriately justified, and the Commission approved the variances as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

Six (6) standard conditions and sixteen (16) special conditions were attached to the original permit approval and subsequent revisions. All six of the standard conditions and three special conditions remain in effect.

**Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].**

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent to the permit area. The original cumulative hydrologic impact assessment (CHIA) for Permit NAFK-8405 was completed in February 1986 and significant updates to the CHIA were incorporated into the document in August 2007 with approval of Revision No. 23 to the permit and October 2018 with the approval of Revision No. 38. Additional updates to the CHIA were provided for small addition areas to the permit and other significant revisions. The CHIA was again updated in April 2023 to reflect the addition of 3,359.7 acres added to the permit with Revision No. 42 and is on file with the Reclamation Division.

**Finding No. 4. Lands within the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].**

None of the lands within the permit area have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

**Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated or**

**materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].**

Based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams occurring within or adjacent to the permit area, it has been determined that there are no alluvial valley floors within or adjacent to the permit area. Detailed alluvial valley floor investigation reports and determinations are on file with the Commission.

**Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC Chapter 38-18 [NDCC 38-14.1-21(3)(f)].**

The applicant included leases and other documents in the permit application demonstrating compliance with the North Dakota Surface Owners Protection Act, NDCC 38-18. This documentation included the initial notice that was given to all surface owners within the permit area prior to issuance of the permit and subsequent notices to affected surface owners for changes proposed with permit revisions.

**Finding No. 7. Lands within the permit area are not subject to the prohibitions or limitations of NDCC 38-14.1-07 except for areas that receive specific approvals after complying with the applicable review procedures of NDAC 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].**

Lands within the Revision No. 45 application area are:

- a. Not within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. Permit-wide, several cultural resource surveys and inventories of the NAFK-8405 permit area were completed between the mid-1970s and 2022. A Class III cultural resource survey of all the lands added with the Revision No. 42 addition area was surveyed by Ethnoscience in 2020 and investigated further in 2021. There were 10 historical sites and 13 isolated finds identified in the addition area. State Historical Preservation Officer (SHPO) correspondence dated July 10, 2020, regarding the prehistoric archeologic site requested additional investigation and further documentation. After further investigation, SHPO correspondence finds the report acceptable and concurred on all but two sites. Further testing on the two sites was requested as they were determined unevaluated. Also, four sites were determined to be avoided or evaluated. All of these sites that need to be avoided or evaluated are outside mining disturbance and will not be affected with this permit revision.

The proposed surface coal mining operations will not adversely affect any significant historic, archaeological, or paleontological sites. Correspondence received to date from the North Dakota SHPO regarding cultural resource sites in Permit NAFK-8405 are located in the permit. Falkirk has committed to testing and mitigating, if necessary,

any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

- d. Not within one hundred feet of the outside right-of-way line of any public road. Several public roads, section line roads, and trails are located within the permit area. However, McLean County has approved several requests made by Falkirk to close a number of public roads and/or granted approval to operate within one hundred feet of the outside right-of-way of county and section line roads within the vicinity of active mining operations. Falkirk has included a list of the county approvals and a schedule of section line closings and a map showing the road closings in Permit NAFK-8405. McLean County's approval processes include public notices with the opportunity for public hearing and written findings that the interests of the public and affected landowners will be protected. The county approval processes meet the requirements of NDAC 69-05.2-04-01.3. NDAC 69-05.2-04-01.3 requires that copies of the road authority's approval documents, including the written findings, be provided to the Commission. Special Condition No. 1 to Revision No. 22 of Permit NAFK-8405 requires Falkirk to provide these documents to the Commission within thirty days from the road authority's approval date. Permit NAFK-8405 includes plans that show the section line rights-of-way that will be closed in the future to accommodate the mining activities that are planned within the permit.
- e. Not within three hundred feet of any public building, school, church, community, or institutional building. Permit NAFK-8405 contains or is within five hundred feet of several occupied dwellings; however, the applicant has committed not to conduct any mining activities within five hundred feet of these dwellings unless approved by the owner of the dwelling. Coal removal within other areas of the permit revision area will come within five hundred feet of occupied farm buildings; however, Falkirk Mine has purchased the property and surface rights and plans to remove the farm buildings prior to mining.
- f. Not within one hundred feet of any cemeteries as none exist within or adjacent to the permit area. Therefore, the applicant will not conduct any mining activities within one hundred feet of any cemeteries in accordance with NDCC 38-14.1-07.

**Finding No. 8. With respect to prime farmland, the post-mining land use will be predominantly cropland, the reclamation plan was reviewed by the Natural Resource Conservation Service and any of their suggestions were considered. Operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].**

The applicant has included a prime farmland reclamation plan that satisfies the requirements of NDAC Article 69-05.2-09-15 and the performance standards of NDAC Article 69-05.2-26. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices. Each landowner in the permit will receive the same acreage of reclaimed prime farmland as was present prior to mining and the post-mine land use of the reclaimed prime farmland will be cropland.

Nominal acreages of prime farmland were identified in the permit area based on the McLean County Soil Survey. Prime farmland performance standards include only those

areas that have been historically used for cropland and does not include areas of native grassland, shelterbelts, and farmsteads. Topsoil from prime farmland areas will be removed, stockpiled, and respread separately from the non-prime topsoil. Prime farmland subsoil will be mixed with non-prime subsoil. All reclaimed prime farmlands will be subject to the appropriate revegetation success standards. The Natural Resources Conservation Service has reviewed the prime farmland reclamation plan and determined that no deficiencies were evident.

**Finding No. 9. The operations will not affect the continued existence of any threatened, endangered, or proposed species or result in the destruction or adverse modification of proposed or designated critical habitats [NDAC 69-05.2-10-03(6)(d)].**

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NAFK-8405. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Whooping Crane, Piping Plover, Rufa Red Knot, and Dakota Skipper. The proposed species are the Monarch Butterfly, Western Regal Fritillary, and Suckley's Cuckoo Bumble Bee.

#### **Whooping Crane – Endangered**

McLean County and the permit area are within the principal migration route of the Whooping Crane. The Audubon National Wildlife Refuge, located approximately 2.5 miles northwest of the northernmost boundary of Permit NAFK-8405, is occasionally used by migrating Whooping Cranes, with the most recent sighting occurring in the spring of 1992. The permit area does contain temporary, seasonal, and semi-permanent wetlands which may provide stopover habitat for the Whooping Crane; however, no Whooping Cranes have been observed within the direct vicinity of the Falkirk Mine since wildlife monitoring was initiated. The Commission concludes that mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 **“may affect but is not likely to adversely affect”** the continued existence of Whooping Cranes.

#### **Piping Plover – Threatened**

The Piping Plover is a migratory bird that can occur in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains Population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In McLean County, North Dakota, this species can be found along the Missouri River. Piping Plovers have been observed periodically within Falkirk's active permitted areas; however, the possibility for them to be present is believed to be limited due to their restricted habitat preferences, nesting requirements, and the lack of suitable habitats within the area. However, suitable habitat may be created by mining activities as Piping Plovers have been found to nest on inactive areas of graded spoil in other permitted areas at the mine. Inactive barren spoil areas are not expected to exist during the current term of the permit. The Commission and USFWS are to be notified when Piping Plovers are sighted at the mine.

The Commission concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 **“may affect but is not likely to adversely affect”** the continued existence of the Piping Plover.

### **Rufa Red Knot – Threatened**

The Rufa Red Knot is a medium-sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and the Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 will have **“no effect”** on the continued existence of the Rufa Red Knot.

### **Dakota Skipper – Threatened**

The USFWS listed the Dakota Skipper as threatened on October 26, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high-quality mixed or tallgrass prairie. According to the 2024 Dakota Skipper North Dakota Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat. Type A Habitat consists of moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of a relatively dry upland prairie habitat type found on ridges and hillsides dominated by bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Coteau region of North Dakota, on the western edge of the known ranges of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that is often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species.

Permit NAFK-8405 contains 13,150 acres of land which includes 1,817.9 acres of native grassland (13.8 percent). The only native grassland to be disturbed by mining during the next term of the permit is in the southwestern portion of Section 36, T147N, R82W. Mining is limited to the southwest corner of Section 36, but sediment ponds are to be constructed in other portions of the tract. In 2019 the Falkirk Mine hired KDK Consulting to assess the native grassland in all permits at the Falkirk Mine, to determine if any areas contained habitat capable of supporting the Dakota Skipper. The results of the assessment were provided in the 2018-2019 Wildlife Monitoring Report for the Falkirk Mine. The report concluded that native grassland in permitted lands at the Falkirk Mine did not contain any potentially suitable habitat for the Dakota Skipper. Moreover, the report concluded that the S½ of Section 36, T147N, R82W did not contain plant communities suitable for the Dakota Skipper.

In May of 2021, SWCA Environmental Consultants prepared a biological assessment for federal coal lease NDM 111489 which included 800 acres of federal coal at the Falkirk Mine. The project included federal coal in the NW¼ of Section 2 and E½ of Section 3, T146N, R82W. These tracts are in the northern portion of Permit NAFK-8405 where mining is planned during the next term of the permit. The biological assessment action area included the SW¼ of Section 36, T147N, R82W. The Bureau of Land Management (BLM) and Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that the project will have no effect on the Dakota Skipper. Likewise, the Commission finds the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 will have **“no effect”** on the continued existence of the Dakota Skipper.

### **Monarch Butterfly – Proposed Threatened**

The Monarch Butterfly is a proposed threatened species. The Monarch Butterfly requires habitat with milkweed as a larval host plant and floral nectar sources for adults. Monarch Butterflies found in North Dakota are comprised of the eastern range Monarch Butterflies, found east of the Rocky Mountains. These Monarch Butterflies overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range Monarch Butterflies. The Monarch Butterfly could potentially be in and around Falkirk's mining permits during the migration. Falkirk has planted a number of pollinator plots near reclaimed wetland buffer areas and may include milkweed in future pollinator plots.

The Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 **“may affect but is not likely to jeopardize”** the continued existence of the Monarch Butterfly, provided Falkirk follows guidance from the USFWS.

### **Western Regal Fritillary – Proposed Threatened**

The Western Regal Fritillary is a proposed threatened species. The Western Regal Fritillary prefers tallgrass prairie and other sunny, open locations such as damp meadows, marshes, wet fields, and mountain pastures. Regal Fritillary butterflies depend on three main habitat components: violet hostplants for larvae, nectar plants for adults, and native warm-season bunch grasses that provide protective sites for all life stages. No designated critical habitat is currently proposed for the Western Regal Fritillary. Based on the habitat requirements of the Western Regal Fritillary, it appears unlikely that the species will be present in the permit area.

The Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 **“may affect but is not likely to jeopardize”** the continued existence of the Western Regal Fritillary, provided Falkirk follows guidance from the USFWS.

### **Suckley's Cuckoo Bumble Bee – Proposed Endangered**

The Suckley's Cuckoo Bumble Bee is a proposed endangered species. The Suckley's Cuckoo Bumble Bee is an obligate social parasite and is entirely dependent on social bumble bee hosts to collect pollen and rear their young. Since they are entirely dependent on host bumble bee colonies, host colony availability is critical for the species' survival and overall viability. The species has a broad historical range and have been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands. The last confirmed sighting in the United States of the Suckley's Cuckoo Bumble Bee was in 2016 in Oregon and is considered functionally extirpated from North Dakota by the North Dakota Outdoor Heritage Data Base Partnership (OHDB).

The Commission finds the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 **“may affect but is not likely to jeopardize”** the continued existence of the Suckley's Cuckoo Bumble Bee.

**Finding No. 10. The applicant has paid all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].**

Falkirk has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System show that all fees have been paid.

**Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].**

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area, a tame grass/legume pre-cropland mixture or a cocktail mixture of species designed to improve soil health. The post-mining topography and soils are suitable for cropland in the areas that will be cropped.

**Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the application requirements of NDCC 38-14.1-24 and NDAC Article 69-05.2 [NDAC 69-05.2-10-04].**

No existing structures within the revision area will be used to support mining activities. However, some haul roads, sedimentation ponds, and other facilities that are presently located within Permit NAFK-8405 will support mining in the permit revision area. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC 38-14.1-24 and NDAC 69-05.2.

**Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].**

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

**Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].**

The chemical characteristics of the overburden materials in the permit area are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

**Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream [NDAC 69-05.2-16-20].**

There are no intermittent or perennial stream channels within the permit area. Much of the drainage within the permit area is essentially an internal/closed basin system composed of several dozen temporary and seasonal wetlands.

**Finding No. 16. The applicant does not propose to use any experimental practices in the permit area [NDAC 69-05.2-27-02].**

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

**Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System (AVS), do not show that the applicant controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

**Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Environmental Quality also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

**Finding No. 19. Performance bonds in the amount of \$114,823,633 are sufficient for the proposed surface coal mining operations in the consolidated area that includes this permit [NDAC 69-05.2-12-07].**

The Consolidated Worst-Case reclamation bond for the Falkirk Mining Company is under review with pending Revision No. 42 to Permit NAFK-8705. The Commission has determined, pursuant to NDAC 69-05.2-12-07, that the existing Consolidated Worst-Case reclamation bond is sufficient to cover the required reclamation, restoration, and abatement work in the consolidated bond area for the Falkirk Mine that includes Permit NAFK-8405.

It should be noted, if the annual update of variable costs in the Commission's policy for calculating reclamation cost estimates for setting bond amounts results in more than an insignificant increase on the existing cost estimate, permittees are required to update their reclamation cost estimates and increase bond amounts accordingly.

**Revision Number 45 to Permit No. NAFK-8405 is hereby granted to the Falkirk Mining Company to identify the next five-year coal removal subarea and to update the introductory, legal, compliance, surface and coal interest and ownership, geology, fish and wildlife resources, operations plans, extended mining plans, transportation facilities, surface water management, and reclamation plans and schedule as described in the permit revision application received on August 28, 2025.**

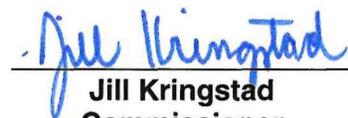
The approved revision is subject to the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, the conditions of the approved permit, and any additional or revised permit conditions listed on attached PSC Reclamation Form - 3. Pursuant to Section 38-14.1-23 of the North Dakota Century Code and

Article 69-05.2 of the North Dakota Administrative Code, this revision was found to be a significant alteration to the previously approved permit.

**PUBLIC SERVICE COMMISSION**

  
**Sheri Haugen-Hoffart**  
Commissioner

  
**Randy Christmann**  
Chair

  
**Jill Kringstad**  
Commissioner

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