

APPROVED

DATE: 6-19-08
[Signature]

MOTION

June 19, 2008

**BNI Coal, Ltd.
Bond Release No. 9, Permit BNLS-8109
Approval**

Case No. RC-06-406

I move the Commission approve Bond Release No. 9 for Surface Coal Mining Permit No. BNLS-8109, held by BNI Coal, Ltd. for the Larson Mine, to release all remaining reclamation liabilities on 197.46 acres located in Sections 16, 17, and 19, T162N, R94W, Burke County. The amount of the bond release is \$101,532.92 and it will become effective July 21, 2008, unless a formal hearing is requested.

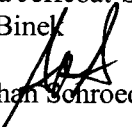


SAS & JRD

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PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Wefald, Cramer and Clark
Illona Jeffcoat-Sacco
Bill Binek

FROM:  Stephan Schroeder,  Dean Moos and  Jim Deutsch

DATE: June 11, 2008

SUBJECT: Bond Release No. 9 for Permit BNLS-8109 at BNI Coal's Larson Mine, Case No. RC-06-406

On September 5, 2006, BNI Coal, Ltd. filed the application for Bond Release No. 9 to Permit BNLS-8109 for final bond release on 197.46 acres of land at the Larson Mine. Following receipt of the application, BNI repaired some erosion rills, differential settling features, and removed some inactive groundwater monitoring wells that were found during the bond release inspection. They also provided additional information to address deficiencies that were noted in the application. The Reclamation Division recommends that the application now be approved.

The application for Bond Release No. 9 to Permit BNLS-8109 is for 197.46 acres located in five tracts in portions of Sections 16, 17, and 19, T162N, R94W, in Burke County. Approximately 147 acres of the 197.46 acres were disturbed by BNI's mining activities and the remaining 50 acres were not disturbed by mining. Disturbed areas in the bond release tracts are subject to the 1977 and 1979 reclamation laws where production standards must be met for final bond release. The 10-year revegetation liability period also applies to the area.

Following is a discussion of each tract:

Tract 16-ND-Pasture

This tract is located in the N½NE¼ of Section 16 and about 60 of the 80 acres were disturbed by mining activities. Most of the tract has a tame pastureland post-mining land use, but also included is a permanent pond and about 3 acres of public road right-of-way. Topsoil and subsoil removal began in 1978 and continued through 1979. Coal removal occurred in 1978 through 1980 with the area being reclaimed shortly after mining with an average of 6 inches of topsoil and 8 inches of subsoil.

Seeding mainly occurred from 1980 through 1984 with some localized seeding until 1990. The tract was seeded to a mixture of tall wheatgrass, slender wheatgrass, western wheatgrass, and sweet clover. The area was generally hayed except for a few years in the 1990s when it was grazed. A nest of monitoring wells in the tract discovered during the bond release inspection appeared to have been plugged, but the top portion of the well casing had not been cut down. The top parts of the well casings were removed in 2006 and the area around the wells was reshaped and reseeded.

Although most mining activity occurred in this area prior to the 1979 reclamation law, BNI has opted to meet the revegetation requirements that are in the 1979 law. The unadjusted forage yield for the area was calculated to be 1.23 tons/acre. Yield and cover samples were measured beginning in 2002. Standards for yield and ground cover were met in 2002 and 2006, satisfying the requirements of NDAC 69-05.2-22-07(4)(b) as shown in the table below:

Year of Data	Production Data (t/ac)		Cover Data (%)	
	Unadjusted Std	Yield	Standard*	Actual
2002	0.92	1.79	83	82.6**
2006	1.09	1.56	73	96.3

* First-hit was used in 2002 while basal was used in 2006 due to different personnel doing the work

** No statistical difference between the standard and reclaimed values

Also a majority of the species seeded are present on the tract.

The former sedimentation pond that is located in the area was modified to be retained as a permanent feature. Water measurements show that it meets NRCS standards as a livestock watering source for both water quality and quantity. BNI just recently received a pond maintenance agreement from the State Land Department that is required for bond release approval. This agreement was negotiated to the satisfaction of both BNI and the State Land Department and it includes a provision for the future placement of a gravel pad for cattle access to the pond for watering.

Tract 17-AS-N

This 19.35 acre tract in the NW¼ of Section 17 contains about 8 acres of cropland and 11 acres of pond/waterway. About 10 acres were disturbed by associated mining activities. The area was not mined but was used as a stockpile storage area and sedimentation pond beginning in 1978. The last of the stockpiles were removed at the end of mining in the mid to late 1980s.

The stockpile areas were reclaimed to cropland shortly after the completion of mining activities. Average respread depth of topsoil was about 9 inches over the former stockpile areas where necessary. No subsoil was removed from the stockpile areas. Most of the cropland has been in a small grain/fallow crop rotation since soil respread operations ceased. Crops grown on the tract have included durum, spring wheat, and flax.

Because of the minimal disturbance in this tract and since it is owned by the same people that own Tract 17-AS-S, the Reclamation Division allowed BNI to use the production data from Tract 17-AS-S to represent Tract 17-AS-N. As shown below, Tract 17-AS-S has met the required production standards for two years. However, BNI had measured the reclaimed yield on Tract-AS-N in 2005 and that yield of 41.6 bu/ac of spring wheat was not significantly different than the adjusted standard of 41.8 bu/ac. However, no further yields were measured after the decision was made to use the data from Tract 17-AS-S to represent this area.

The former sedimentation pond located in this tract is being retained as a permanent feature and has water quality that is suitable for livestock. This pond is primarily used by wildlife. A pond maintenance agreement signed by the landowner was included in the bond release application.

Tract 17-AS-S

This tract in the SW¼ of Section 17 contains 60.2 acres of cropland, all of which was disturbed by mining activities. It is owned by the same people that own Tract 17-AS-N. Initial disturbance of the

area began in 1981 and lasted until mining operations ceased in the area around 1986. The average topsoil respread depth was 9 inches over an average of 37 inches of subsoil. The area is subject to the 1979 reclamation law.

Some erosion and settling features were repaired in 2002 and 2006. This was done to facilitate drainage in the area and reduce the amount of surface ponding. More substantial repairs had been done on this tract in the early and mid 1990's. A diversion located along the eastern edge of the tract next to an undisturbed drainageway was removed in May 2007. The area was seeded to a small grain crop along with the rest of the field.

The initial seeding was a durum crop in 1987. A crop/fallow cropping sequence was then applied to the area. Difficulties in having the farm operator to use the same management practices on the reclaimed area as the designated control area for productivity comparisons resulted in yield data for several years that could not be used for bond release purposes. Another nearby control area of similar soils was later approved and used to climatically adjust the standard for the reclaimed tract. The unadjusted spring wheat yield standard for this was determined to be 35.9 bu/ac. Spring wheat yields in 2003 and 2005 were determined by hand sampling, along with hand sampling of the control area. The wheat yields in 2003 and 2005 were 27.1 and 25.4 bu/ac, respectively, while the adjusted yield standards for the two years were 27.7 and 25.2 bu/ac, respectively. There was no statistical difference between the yields for the reclaimed tract and control area in 2003. Therefore, this tract has met the bond release requirements for productivity.

Tract 17-TE

This 20-acre tract located in the NW¹/₄ of Section 17 was also used for soil stockpiling and a sedimentation pond for mining in Section 17. It contains approximately 12 acres of cropland and about 8 acres of pond/waterway. About 7 acres within the tract was disturbed beginning in 1978. BNI applied 1979 reclamation law standards to this area.

No subsoil was removed from the areas where stockpiles were placed and an average of nearly 9 inches of topsoil was respread when the stockpiles were removed. Initial seeding of the area after reclamation began in 1984 and continued until 1986. The area was initially in a crop/fallow rotation until 2000 when continuous cropping began.

The unadjusted spring wheat standard for the area is 36.3 bu/ac. A control area was set up on nearby undisturbed land for climatic correction purposes. Oats on the reclaimed tract yielded 51.1 bu/ac in 2003 while durum yielded 35.9 bu/ac in 2005 based on hand sampling. Adjusted yield standards, based on hand sampling of the control area, for the two years were 51.9 bu/ac for oats and 36.3 bu/ac for durum, respectively. There was no statistical difference between the reclaimed and adjusted standard yields for the two years. Therefore, the productivity standards for final bond release were met for both years.

The former sedimentation pond located in this tract is also being retained as a permanent feature and has water quality that is suitable for livestock. A pond maintenance agreement signed by the landowner was included in the bond release application.

Tract 19-AS

This tract consists of 17.89 acres of cropland in the NE¹/₄ of Section 19. Approximately 9.4 acres were disturbed by the placement of a stockpile and diversion on the area. The tract also includes

about 1.4 acres of public road right-of-way. Initial disturbance occurred in 1978 and the area was respread with 7 inches of topsoil after the diversion and stockpile were removed in the late 1980's.

A crop/fallow rotation was used in the late 1980s and continuous cropping began in 2000. Crops grown on the area included spring wheat, durum, and mustard. The disturbed areas were hand sampled, along with the undisturbed control area used for climatic adjustments, for yield determinations. The unadjusted spring wheat yield standard for this area was determined to be 34.9 bu/ac. The spring wheat yield for the reclaimed area in 2004 was 40.4 bu/ac while the adjusted standard was 34.3 bu/ac. In 2005, the durum yield for the reclaimed area was 44.5 bu/ac of durum while the adjusted standard was 42.3 bu/ac. Therefore, the productivity standards for final bond release were met for two years.

Other

A post-mining hydrologic assessment for the entire Larson Mine was prepared several years ago and it found that mining did not cause any material damage to the hydrologic balance outside the permit area. Hydrologic impacts were minimal in the area.

The formal bond release inspection was held on September 26, 2006. Participating in the inspection were Reclamation Division staff members Dr. Steve Schroeder, Guy Welch, and Dr. Melissa Toepke-Peterson (former staff member); Dr. Jay Volk from BNI; and Michael Haupt from NDSL (representing the landowner in Section 16). The landowners for Sections 17 and 19 were contacted, but did not attend the inspection. The township chairman was also invited but did not attend. However, the township had previously approved the condition of the county roads in a letter dated December 13, 2002 for an earlier Larson Mine bond release.

Notice of the final bond release application for the area was published by BNI for four consecutive weeks in the official county newspaper, the Burke County Tribune, on September 13, 20, and 27 and October 4, 2006. No objections to the bond release were received.

Collateral Bond Number CB8109-1 covers the bond release tract. The various tracts within Sections 16, 17, and 19 are bonded at bond amounts ranging from \$200 to \$2500 per acre for a total requested total bond release reduction of \$101,532.92. Partial bond releases for several tracts had been previously granted. First, second and third stage bond release was previously approved on 61.1 acres and another 51.2 acres had received first and second stage bond release. If Bond Release No. 9 to Permit BNLS-8109 is granted, BNI will be released from all remaining reclamation liabilities on the 197.46 acres.

Attached is a proposed motion and award form for consideration at the June 19, 2008 Commission meeting.

Attachments

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Bond Release No. 9, Permit BNLS-8109
Approval

Case No. RC-06-406

RELEASE OF BOND
FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

June 19, 2008

Based on the application for **Bond Release Number 9 for Surface Mining Permit Number BNLS-8109**, received September 6, 2006 and as later modified, and all information and documentation contained therein, the North Dakota Public Service Commission finds that:

1. Attached to the Application for Release of Bond were copies of all letters sent by the Permittee as required by NDCC §38.14.1-17(1)(b). Affidavits of publication for the advertisement required by NDCC §38.14.1-17(1)(a) have now been filed and have been made part of the Application for Release of Bond. The last date of publication was October 4, 2006.
2. On September 26, 2006, the Commission conducted an inspection and evaluation of the reclamation work involved, as required by NDCC §38.14.1-17(3). The surface owner, agent, or lessee was given notice of the bond release inspection and had the opportunity to participate with the Commission in conducting the inspection.

In accordance with NDCC §38.14.1-17, Bond Release No. 9 for Surface Mining Permit No. BNLS-8109 is hereby granted to the BNI Coal, Ltd. effective , July 21, 2008, unless a formal hearing is requested. Release in the amount of \$101,532.92 is approved. The area is described by the attached metes and bounds descriptions and as follows:

**Portions of Sections 16, 17, and 19, T162N, R94W, in Burke
County, releasing all reclamation liabilities on 197.46 acres.**

The decision to release all of the bond on this acreage is made for the following reasons:

The post-mining land uses of tame pastureland, cropland that includes grassed waterways, three permanent ponds, and a portion of a public road have been implemented as approved in the reclamation plan, the applicable revegetation success standards have been met, and all other requirements of the applicable laws and rules have been satisfied.

IMPORTANT – PLEASE READ

1. If bond release has been approved, actual release of bond shall not occur until the effective date of this decision. If a formal hearing is requested on this bond release decision by a person with a valid legal interest or by the head of any state or local government agency with appropriate jurisdiction, the actual release of bond may not occur until after a final decision is issued following the formal hearing. A request for formal hearing by any such person must be filed with the Public Service Commission within 30 days of this bond release decision.
2. If bond release has been disapproved or if you are unsatisfied with the amount of bond approved for release, you have the right to request a formal hearing regarding this decision by filing an application for a hearing with the Public Service Commission within 30 days of the date of this decision.

PUBLIC SERVICE COMMISSION

Absent

Tony Clark
Commissioner

Susan E. Wefald

Susan E. Wefald
President

Kevin Cramer

Kevin Cramer
Commissioner

Attachment II
Permit BNLS 8109
Proposed Bond Release 09
Metes & Bounds Descriptions Of Five Tracks Of Land

Tract-19-AS

Beginning At The Northeast Corner Of Section 19, Township 162 North, Range 94 West Of The Fifth Principal Meridian, Burke County, North Dakota;
Thence South A Distance Of 433.00 Ft.;
Thence West A Distance Of 1800.00 Ft.;
Thence North A Distance Of 433.00 Ft.;
Thence East A Distance Of 1800.00 Ft.; Which Is The Point Of Beginning.
Said Tract Having An Area Of 17.89 Acres, More Or Less.

Tract-17-AS-South

Beginning At The South Quarter Corner Of Section 17, Township 162 North, Range 94 West Of The Fifth Principal Meridian, Burke County, North Dakota;
Thence West A Distance Of 120.00 Ft.;
Thence North A Distance Of 170.00 Ft.;
Thence N 11°18'36" E A Distance Of 152.97 Ft.;
Thence West A Distance Of 2550.00 Ft.;
Thence North A Distance Of 980.00 Ft.;
Thence East A Distance Of 2640.00 Ft.;
Thence South A Distance Of 1300.00 Ft.; Which Is The Point Of Beginning.
Said Tract Having An Area Of 60.22 Acres, More Or Less.

Tract-17-AS-North

Beginning At The West Quarter Corner Of Section 17, Township 162 North, Range 94 West Of The Fifth Principal Meridian, Burke County, North Dakota;
Thence East A Distance Of 1320.00 Ft.;
Thence North A Distance Of 660.00 Ft.;
Thence West A Distance Of 600.00 Ft.;
Thence North A Distance Of 271.00 Ft.;
Thence West A Distance Of 240.00 Ft.;
Thence S 27°16'28" W A Distance Of 1047.45 Ft.; Which Is The Point Of Beginning.
Said Tract Having An Area Of 19.35 Acres, More Or Less.

Tract-17-TE

Beginning At The Center Of Section 17, Township 162 North, Range 94 West Of The Fifth Principal Meridian, Burke County, North Dakota;
Thence West A Distance Of 1320.00 Ft.;
Thence North A Distance Of 660.00 Ft.;
Thence East A Distance Of 1320.00 Ft.;
Thence South A Distance Of 660.00 Ft.; Which Is The True Point Of Beginning.
Said Tract Having An Area Of 20.00 Acres, More Or Less.

Tract-16-ND

Beginning At The Northeast Corner Of Section 16, Township 162 North, Range 94 West Of The Fifth Principal Meridian, Burke County, North Dakota;

Thence South A Distance Of 1320.00 Ft.;

Thence West A Distance Of 2640.00 Ft.;

Thence North A Distance Of 1320.00 Ft.;

Thence East A Distance Of 2640.00 Ft., Which Is The Point Of Beginning.

Said Tract Having An Area Of 80.00 Acres, More Or Less.

Total Area = 197.46 Acres, More or Less.

Notes:

1. The Basis Of This Document Is That All Section Corners Are 5280 Feet Apart And That All Section Line Bearings Are Due North, South, East Or West (Often Referred To As An 'Engineers Section'). A Paper Drawing Of The 1999 Annual Map Was Used To Determine The Boundary In SurvCADD Software.

2. For Electronic Drawings, This Drawing Was Originally Issued And Sealed By Thomas E. Schmidt, N.D.R.P.E. & L.S. 1882, And Is Stored At BNI Coal Inc., 2360 35th Ave. SW, Center, ND 58530-9499.

3. These Calculations Were Done With Carlson 2007 & AutoCAD Map 2007.

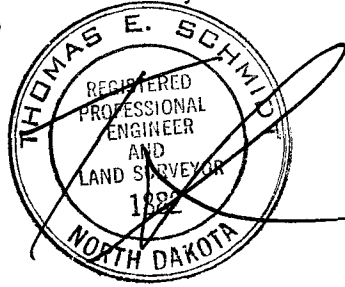
4. Please Realize That Measurements Are Never Exact And That Acreages Are Not A Count. Round Off Error Should Be Expected.

Certification:

I, Thomas E. Schmidt, Hereby Certify That This Drawing Is A Reasonable Representation And That I Am A Duly Registered Professional Engineer And Land Surveyor In The State Of North Dakota. Any Alterations To This Document Will Void My Certification.

Thomas E. Schmidt *8-28-2000*

Thomas E. Schmidt N.D.R.P.E. & L.S. 1882 Date
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530
701-794-8735 Ext 217



Paper Copy: NDPSC (3), Burke County, BNI Central File, Survey 06.25