

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**

**MEMORANDUM**

**TO:** Commissioners Wefald, Cramer, and Clark  
Illona A. Jeffcoat-Sacco  
Bill Binck

**FROM:** Stephan A. Schroeder and Jim Deutsch

**DATE:** March 19, 2008

**SUBJECT:** Application for Revision No. 22 to Permit BNCR-9702, Case No. RC-07-461

On July 12, 2007, BNI Coal, Ltd. submitted the application for Revision No. 22 to Surface Coal Mining Permit BNCR-9702 for its mine near Center. The revision extends the north-south pit sequence further westward into the W½ of Section 21 and W½ of Section 28, T142N, R84W; and updates legal and business entity information and mining and reclamation plans, including the worst-case reclamation cost estimate that is used for setting the bond amount. The additional mining includes the federal coal that BNI recently leased in the W½ of Section 28. The Reclamation Division has finished its review of this revision and respectfully recommends that it be approved with the condition discussed below.

This revision includes updates to the surface and subsurface ownership information, operations plans to include mining in the W½ of Section 21 and the federal coal in the W½ of Section 28, reclamation plans, and the worst-case reclamation cost estimate. The detailed mining plans now show that the long north-south pit sequence at the Center Mine will proceed westward to the leased federal coal in the W½ of Section 28 (BNI owns the surface of this tract). BNI received a federal coal lease for this tract on May 1, 2007. The condition that is being attached to the revision prohibits BNI from removing overburden and coal from this tract until the mine plan is approved by the Department of the Interior. However, BNI will be allowed to disturb the surface over the federal coal to the extent necessary to mine the adjoining tract where BNI has all the rights needed to mine the coal.

BNI has requested an additional variance from the three-year contemporaneous reclamation requirement under NDCC 38-14.1-24-14. This provision normally requires the initial planting to be accomplished within three years from the completion of surface coal mining operations. The areas affected by this variance are associated with reclaiming the final pit that is planned in portions of Sections 21 and 28 since a large quantity of spoil material will be needed to backfill the final pit. The additional variance request has been adequately justified and we recommend that the Commission approve it.

Self-Bond SB9702-1 and Surety Bond 400JR4173 currently cover the consolidated bond area that includes Permit BNCR-9702. As a part of Revision No. 22, BNI was required to prepare a new worst-case reclamation cost estimate that is used to set the minimum bond amount for the consolidated bond area. This estimate shows that the current bond amount must be increased from \$24,018,439 to \$24,954,142. BNI submitted a stipulation to increase the amount of the current surety bond by \$1,000,000, from \$6,661,439 to \$7,661,439. A self-bond in the amount of \$17,347,000 also covers the consolidated bond area. Therefore, the total amount of bond covering the entire consolidated bond area is now \$25,008,439.

BNI also has a Collateral Bond (CB-9702-01) in the amount of \$10,000 that covers a small portion of permit area. Since this area is now covered by the surety bond, as well as the self-bond, BNI plans to file a stipulation to reduce Collateral Bond CB-9702-01 to zero, effectively cancelling it. The attached motion also approves this stipulation.

Revision No. 22 was deemed a significant revision to Permit No. BNCR-9702 and was subject to the public notice requirements. BNI submitted affidavits of publication of the newspaper notice from the Bismarck Tribune and Center Republican indicating that the notice was published on September 19<sup>th</sup> and 26<sup>th</sup> and October 3<sup>rd</sup> and 10<sup>th</sup>, 2007. We also notified the appropriate agencies, affected landowners, and advisory committee members. No objections to this revision application were received.

Attached for your consideration is a motion for the March 26<sup>th</sup> meeting to approve the revision. Also attached are the revision approval form, permit condition, and the newspaper notice we must publish.

#### Attachments

caselib\070461\memo\_approval.doc & pdf