

APPROVED

DATE: 12-17-08

MOTION

December 17, 2008

**BNI Coal, Ltd.
Bond Release No. 3, Permit No. BNCR-9401
Approval**

Case No. RC-08-788

I move the Commission approve Bond Release No. 3 for Surface Coal Mining Permit No. BNCR-9401, held by BNI Coal, Ltd. for the Center Mine, to release all reclamation liabilities on 11.62 acres of industrial land located in a portion of Section 5, T141N, R83W, Oliver County. No monetary bond reduction was requested as part of this release and the liability release will become effective January 20, 2009, unless a formal hearing is requested.

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**PUBLIC SERVICE COMMISSION
Reclamation Division**

Memorandum

TO: Commissioners Wefald, Cramer and Clark
Darrell Nitschke
Illona Jeffcoat, Sacco

FROM: Stephan A. Schroeder, Dean Moos and Jim Deutsch

DATE: December 10, 2008

SUBJECT: Bond Release No. 3 to Permit BNCR-9401 from BNI Coal, Ltd., Case No. RC-08-788

On September 23, 2008, BNI Coal, Ltd. filed the application for Bond Release No. 3 to Permit BNCR-9401 for final bond release on 11.62 acres of land that was used in support of mining at the Center Mine. The bond release acreage has an industrial post-mining land use. The Reclamation Division has completed its review of this application and BNI Coal, Ltd. satisfactorily addressed the minor deficiencies that were noted. We now recommend that the application be approved.

The application for Bond Release No. 3 to Permit BNCR-9401 is for 11.62 acres located in Section 5, T141N, R83W, in Oliver County that are owned by Minnkota Power Cooperative. The bond release tract is subject to the requirements of the current reclamation law since BNI added this area to the permit in 2004 for use as a rock crushing site in support of mining operations at the Center Mine. BNI's rock crushing use has been discontinued and they no longer plan to use this area in support of mining activities.

This tract in Section 5 has a post-mining land use of industrial/commercial and, starting in the early 1980's, Minnkota Power has used the area for a settling pond for ash from the nearby the power plant. The North Dakota Department of Health issued Solid Waste Disposal Permit SP-030 for the site on September 23, 1980. After that use ended in the mid to late 1990's, Minnkota has used the area for the temporary storage of bottom ash and other materials. As mentioned above, BNI also used the area for rock crushing for a few years but that has now ended. Minnkota will continue to use the area for the temporary storage of bottom ash and aggregate materials and it will remain covered by Solid Waste Disposal Permit SP-030. The area is also zoned industrial by Oliver County.

The area covered by Bond Release No. 3 has not been reclaimed and seeded due to the ongoing use by Minnkota. Also, the 10-year revegetation liability period does not apply to industrial lands.

Minnkota will be responsible for final reclamation of the area once they stop using it. This final bond release is consistent with the provisions of Policy Memo No. 15 to Mine Operators for bond release on mined lands used for waste disposal.

The formal bond release inspection was held on October 7, 2008. Participating in the inspection were Dr. Stephan Schroeder and Mr. Bill Gunnerson from the PSC, Dr. Jay Volk from BNI, and Mr. Scott Haupfof representing Minnkota. Representatives from the ND Health Department and the Oliver County Commission were invited but did not attend the inspection.

Notice of the final bond release application was published by BNI in the official county newspaper, the Center Republican, during October and November of 2008. The last publication date was November 8, 2008. No objections to the bond release were received.

The bond release tract is included in Surety Bond #400JR3522 that covers Permit BNCR-9401 at the Center Mine. BNI is not requesting any monetary reduction in the bond amount as a result of this bond release. Once the bond release becomes effective, BNI will be released from all remaining reclamation liabilities on the 11.62 acres.

Attached is a proposed motion and award form for consideration at the December 17, 2008 Commission meeting.

Attachments

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