



Public Service Commission

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February 17, 2009

Dr. Jay Volk
Environmental Services Supervisor
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has conducted a technical review of the application for Revision No. 25 to Permit BNCR-9702. The following items were noted during that review that must be addressed prior to approval of the revision:

General

1. As required by NDAC 69-05.2-09-02(1), please depict the section boundaries for Sections 31, 6, and 7, or portions thereof depending on the map's extent, and label the sections for the southwestern portion of the permit area for the following plates: 2-1, 3.1-1, 3.1-2, 4.1-1, 4.10-1, and 4.10-2. (WTG)
2. Please update Plates 2-1 and 4.1-1 to depict the areas where mining was completed in 2008. (MDB)

Section 1.7.2 – Controlling...Allete

3. Completeness deficiency #6: BNI's December 19, 2008, response letter indicated that ownership and control had been updated. However, it appears that only the organizational chart for BNI was updated. Does this mean the officer/director information is still correct for Allete? (SAS)

Section 4.9 – Reclamation Schedule

4. Please update the Reclamation Schedule, Section 4.9-1 and Plate 4.9-1 to reflect what is needed for variances as of this date. The narratives in the Reclamation Schedule contain a lot of old outdated information and references areas no longer shown on Plate 4.1-1. In addition, please update Plate 4.9-1, Reclamation Variance Areas, to show the following:

- a) The boundary of Permit BNCR-9702 needs to be correctly shown in Section 3. Minnkota's ash pit has been bond released and it is no longer part of Permit BNCR-9702. Also, Variance Area No. 8 should not include the areas that have already been final bond released.
 - b) Depict the accurate boundary for Permit BNCR-9702. The permit boundary shown on Plate 4.9-1 does not extend into portions of Sections 31, 6, and 7 in the southwest portion of the permit area.
 - c) Depict portions of the section boundaries for Sections 31, 6, and 7, on the plate and label the sections for the southwestern portion of Permit BNCR-9702.
 - d) We recommend that BNI use a distinctive line type rather than color for the BNCR-9702 and BNCR-8202 permit boundaries, similar to that used on most other plates, and label the permit numbers within the permit boundaries. (GAW & WTG)
5. Please review, and correct if necessary, the legal description for Section 4 in the request for Variance Area 6 on page 4.9-3. The NE $\frac{1}{4}$ of Section 4 is described in the request, but it appears that it should actually be described as the NW $\frac{1}{4}$ of Section 4 because the NE $\frac{1}{4}$ is included in the Variance Area 2 request. (WTG)

Section 4.10 – Backfilling and Grading

6. Please revise the contours of the proposed primary drainage that runs in a north-south direction in Section 21 to increase channel sinuosity and reshape the slope on the west hillside planned near the center of the NE $\frac{1}{4}$ of Section 21 to eliminate the long straight contours. (GAW & MDB)
7. At location 1,785,000 E and 509,000 N on Plate 4.10-1 (Post-Mining Topographic Contours), the post-mining topography was changed for this area which is located outside of the mining disturbance boundary. Changes to the topography were also noted in Section 6 which is outside the mining disturbance boundary. Please explain or make the necessary corrections. (MDB)

Section 4.12 – Postmine Land Use and Revegetation

8. Please move the wetland that is to be created in Section 21 further up the drainage so that the developed water resource which is located immediately below the wetland will receive some runoff from lighter precipitation events. Although the watershed shows a surplus of runoff (1.3 ac. ft. out of a total of 3.66 available), we believe water quality in the developed water resource will be diminished without recharge from less significant runoff events. (GAW)
9. Please clarify the following items on pages 4.10-1 and 4.10-2 of Section 4.10:
 - a) Please insert the missing word(s) in the last sentence of the opening paragraph; (2) Item 1 states in part "For the portion of the permit area that is presently included in permit BNCR-8202..." This sentence apparently refers to Section 21 that was removed from Permit BNCR-8202 for inclusion in Permit BNCR-9702. Perhaps the phrase should be updated to read in part "For the portion of the

permit area that was formerly included in Permit BNCR-8202..." Please review, and update if necessary.

- b) The first sentence of Item 4 states: "The extended mine plan calls for the continuation of mining beyond the current mining disturbance boundary in Sections 32, 33, 21, and the southern portion of 28." It appears, however, that this statement only holds true for Sections 32 and 21, according to a comparison with the extended mine plan shown on Plate 2-1. Please correct the inconsistency. (WTG)
10. Please update Plate 4.12-1 to clarify the pre-mine and post-mine land uses in the undisturbed portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 5. As presented on the Revision 25 version of Plate 4.12-1, there is no boundary between the small area (less than 2 acres) of undisturbed native grassland in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the undisturbed cropland (about 5 acres) in the remaining portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$. The labeling also creates some confusion with the post-mine land use of the undisturbed area. As presented, it is unclear whether the post-mine land use in the undisturbed portion is cropland or native grassland. (WTG)
11. Although the issue is primarily one of wording, please edit the references to a "grassed waterway" in the SW $\frac{1}{4}$ of Section 5 on page 4.12.2-3, and the last sentence of paragraph two on referenced page 3.4-7. The term "grassed waterway" conveys the impression of a narrow ephemeral drainageway in cropland. The use of either "reclaimed wetland and drainage" or "reclaimed drainage" as used on page 3.4-7 is preferred because it more accurately describes the broad drainage that will be reclaimed in the SW $\frac{1}{4}$ of Section 5. (WTG).
12. Please update the Haul Road Reclamation narrative on page 4.14-2 to state that haulroads constructed of subsoil will be ripped, plowed, and scarified during restoration, as required by NDAC 69-05.2-24-07(1)(d). (WTG)
13. With the changes in the post-mining topography, please update the surface PHC with the revised watershed information and calculations, demonstrating that downstream land owners will not be affected by this change. (MDB & WTG)

Section 4.1.4 – Reclamation Cost Estimate

14. Please revise the second paragraph in Section 4.14 (Reclamation Cost Estimate for Bonding Purposes) as it states that Sections 31, 7, and 6 are covered by a collateral bond; however, they are not currently covered by a collateral bond. (MDB)
15. Plate 4.14-1 and the bonding calculations indicate that the ash disposal pit in Section 3 is still under bond; however, it has been released from bond. We agree that the stockpiles need to be dedicated and moved to this pit area for final reclamation. A separate item should be listed in the reclamation cost for moving the topsoil and subsoil that will be needed for final closure of the ash pit. Only the buffer area surrounding the pit (the area still under permit) should be included in the soil respreading and other reclamation costs. Please update the calculations as well as Plate 4.14-1 to indicate that the bottom ash disposal pit has been released from bond. (MDB)

16. Several concerns were noted regarding the status of a number of the ponds. At this time it is unclear which ponds will be temporary and which will remain as permanent impoundments, as the water management, post-mine land use, and bonding sections do not always agree. Please clarify which ponds will remain as permanent ponds. Topsoil and subsoil respread calculations are needed for Ponds 35-3, 22-1, 22-2, and 33-2 as they appear to be temporary and information needs to be included as well as for any ponds in Section 22 of Permit BNCR-8202 that are temporary impoundments. If the status of a pond is unknown at this time, the ponds should be treated as temporary and their reclamation costs will need to be included in the bond amount. In addition, please address the following items:
- a) Ponds 21-1 and 28-2 are shown as requiring subsoil respread, but not topsoil respread. Please include the topsoil respreading costs.
 - b) With regard to Pond 25-9, no topsoil or subsoil respread for the area around the pond is shown in the Worst Case Estimate, yet the approved reclamation plans show this area being respread. Although the topsoil will be pushed back in order to respread the subsoil, these costs need to be accounted for in the reclamation costs. It is not clear if this work will be completed by the time of the worst case scenario (2010). If not, these costs need to be included in the worst case estimate. If the area will be reclaimed by the time of the worst case scenario, then please remove it from the topsoil respread calculations.
 - c) Ponds 35-1, 35-7 and 36-2 are shown as needing soil respread in the bond calculations, but are shown as permanent impoundments elsewhere in the permit.
 - d) Please depict Diversion 8-1 on Plate 4.14 as requiring soil respread. The diversions in Sections 5, 9, 10 and 22 also need to be included in the reclamation schedule. (MDB)
17. Appendix 4.14-1 indicates regrading of the haulroads will be accomplished by removing the top one-half foot of material and placing it in the pit. The remaining roadbed will be leveled by pushing it into the ditches and respreading the area with topsoil. However only a portion of the haulroads are shown as being constructed out of subsoil and it is assumed the remaining haulroads are built out of spoil materials. Therefore, these portions of the haulroad will also require subsoil respread as well as topsoil. Please identify what will be done with excess spoil to maintain the topography as well as where the subsoil material will come from to reclaim the roads. (MDB)
18. Please identify on a separate map the areas which require topsoil only respread and areas which require both topsoil and subsoil respread to help document the information contained in Appendix 4.14-1. For instance, Section 4 indicates 51 acres of disturbance with 48,000 CY of subsoil to be respread and 183,000 CY of topsoil to respread creating a subsoil depth of 0.6 ft and a topsoil depth of 2.2 feet, neither of which seem appropriate. The acreage for subsoil and topsoil should be broken out separately in Appendix 4.14-1. (MDB)
19. Appendix 4.14-1 indicates that county roads will be replaced in the final reclamation. Please identify the location of the public roads that will be replaced, including placement of the Reinke Access Road in its original location. (MDB)

20. Appendix 4.14-1 indicates a combined acreage of 1771 acres (1339 cropland and 432 native); however, under the administrative cost section it indicates an acreage of 2312 acres. Please explain the 541 acre difference or update the costs accordingly. (MDB)
21. Appendix 4.14-1 indicates the total bond acreage of 9,558 acres; however, our records indicate that only 9,307.48 acres remain under this bond. Please update accordingly. (MDB)
22. Plate 4.14-02 depicts more than four spoil peaks for certain cross sections which are only allowable in contemporaneous reclamation variance areas. Please update the plate to show a maximum of four spoil peaks. (MDB)
23. The worst case bonding narrative indicates the inactive coal stockpile will remain in place under the worst case bond scenario. We believe that due to its location and accessibility, there is a strong possibility that the stockpile would be utilized prior to bond forfeiture. Therefore, please include costs for reclaiming this area as part of the worst case bond scenario, including the location of the fill that will be used to backfill the void. (MDB & JRD)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division