



Public Service Commission

State of North Dakota

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June 10, 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 an initial review of BNI Coal's application for Bond Release No. 11 to Permit BNLS-8109 at the Larson Mine. The first eight items listed below must be addressed before starting the publication of the newspaper notice and sending letters to landowners and agencies with notice of the bond release application. Please address these eight items as soon as possible as we plan to schedule the bond release inspection for mid July.

The remaining items in this letter are technical deficiencies that will need to be satisfactorily addressed prior to approval of the application. Please note that other deficiencies or concerns may be sent to you following the bond release inspection.

Application Form

1. The amount of the requested bond release is incorrect. See deficiency no. 25. Please correct as appropriate. (SAS)

Attachment III – Proposed Newspaper Advertisement

2. The first paragraph should indicate that these tracts were initially permitted in Permits 24 and 48 and later re-permitted into Permit BNLS-8109. The approval dates for these permits should also be listed. Please revise accordingly. (SAS & GAW)
3. The 1976 Larson Annual Mine Maps indicate coal was uncovered in Bond Tract 9b in 1973. Therefore, not all of Tract 9-LL was initially disturbed in 1978 as stated in the draft advertisement. The statement that "coal removal did not occur" is incorrect. Please review your records and update the newspaper advertisement accordingly. (GAW)

4. The amount of proposed bond release is incorrect in the draft notice. See deficiency no. 25. Please correct as appropriate. (SAS)
5. Road is misspelled in the fifth line in the description of the second tract. Please correct. (SAS & BEB)
6. The phrase "...last 10 years and have since been seeded annually." in the description of the second tract is confusing. We recommend that this phrase be reworded to say "...last 10 years the area has been seeded annually." (SAS)

Attachment IV – Notification...Addresses

7. There seems to be some differences between the bond release application and the permit as to the surface and contiguous surface owners that should be notified. Please explain the following differences:
 - a) We are uncertain why Michael and Wanda Ely are included in the listing for the bond release notice. Their land is not contiguous to either bond release tract.
 - b) A notification letter is proposed to be sent to Leo C. Logelin; however, the permit indicates that Tract 9-LL is owned by Shawn, Shannon, and Dustin Logelin. Please explain or make the necessary corrections.
 - c) A notification letter is proposed to be sent to Dagne Holte; however, the permit indicates that the S½ of Section 16 is owned by Leonard Holte. Please explain or make the necessary corrections. (SAS)
8. Within the letters themselves, the following should be corrected:
 - a) Road is misspelled in the fifth line in the description of the second tract.
 - b) The phrase "...last 10 years and have since been seeded annually." in the description of the second tract is confusing. We recommend that this phrase be reworded to say "...last 10 years the area has been seeded annually." (SAS)

Attachment V – Aerial Photo

9. If possible, please change one of the colors for one of the years (2005 or 2006) for the Tract 9-LL-Crop sampling sites. The similarity makes it difficult to distinguish one year from the other. (SAS)

Attachment VI – Tract...Success

10. Bond Release 10 to BNSL-8106 is labeled at the bottom of every page in Attachment VI. Please correct. (GAW & BEB)
11. Please refer to Attachment VII that shows the topsoil and subsoil respread thicknesses within each of the bond release tracts. (SAS & GAW)

12. Please add a note in the Post-Mining Land Use Section of Attachment VI on page 1 of 16 to account for 0.15 acres of township road in the tract. Also, include a brief narrative in the History of Tract Section to mention that the mine haul road crossed the township road and it was reconstructed to the satisfaction of Keller Township. (GAW)
13. A map included with the 1976 Larson Annual Mine Maps shows that coal was uncovered in Bond Tract 9b in 1973. Please review your records and update the Law Liability and History of Tract Section of Attachment VI on page 1 of 16 accordingly. (GAW)
14. Please update the History of Tract Section on page 1 of 16 to discuss if SPGM was salvaged from the area mined in 1973 (Tract 9b). The narrative should also note that the entire tract was reclaimed according to present law standards even though SPGM may not have been salvaged from the whole area. (GAW)
15. In the History of Tract Section on page 1 of 16, please mention how many acres are actually being cropped in Tract 9-LL. If portions of the cropland are not being used to grow annually seeded crops, then indicate what the other acreage is being used for. Note: the 2005 aerial photograph shows that portions of the tract are not being tilled. Please explain. (GAW)
16. The third paragraph on page 2 states that the durum crop was seeded on May 20, 2006, but Table 1 indicates a May 28, 2006 seeding date. Please review and correct. (SAS)
17. The first sentence of the second paragraph on page 2 of 16 of Attachment VI is confusing. Please review and revise for clarity. (GAW)
18. In the History of Tract narrative on page 2 of 16 please discuss how much subsoil was respread on the disturbed areas. Also, indicate if there was any subsoil respread on the area mined under the 1973 reclamation law and whether or not the haul road was constructed using subsoil. (GAW)
19. The first paragraph on page 3 states that sampling dates are shown on Tables 2 and 3. The sampling data is provided on Table 2 and 3, but not the dates. Please correct. (SAS)
20. Please footnote Table 1 on page 4 of 16 to indicate that although the farmer did not harvest the field, hand samples were taken for the flax in 2005. (SAS)
21. BNI needs to use the soil mapping units from the September 2007 soil survey conducted by C. J. Heidt for the Tract 9 control area expected yield calculations in Tables 2 and 3 on pages 5 and 7. Based on this soil survey, it appears about half the area is Noonan Loam (A slope with a PI of 45) and the other half is Livona Loam (B slope with a PI of 67). Please revise the calculations and adjusted standards in Table 2 and 3 accordingly. (JRD & GAW)

22. In the first paragraph of the “History of Tract” on page 9, please indicate that Tract 16-JTH was initially permitted under Permit 48 and later re-permitted under Permit BNLS-8109. (SAS)
23. The first sentence of the first paragraph on page 10 of 16 of Attachment VI is confusing. Please revise for clarity. (GAW)
24. Page 11 of 16 discusses a climatic correction factor for the 2004 data. No climatic correction factor was used but a productivity ratio between the unadjusted yield standards for the reclaimed and control area was used instead. Please revise this discussion to indicate that a version of the Productivity Ratio (Correction Method 4) was used since the mustard is a minor crop. (SAS)
25. The actual bond amount to be requested for Tract 16-JTH-Crop on page 9 of 16 and in Table 7 on page 16 of 16 should be \$2,748 and **not** \$2,750. Tract 16m release should be 6.96 acres X \$200/acre = \$1392, not \$1394. The following need to be corrected accordingly:
 - a) Page 1 of the application form for the total amount requested.
 - b) The requested amount in the newspaper advertisement in Attachment II.
 - c) The bond requested on pages 1 and 9 of 16 in Attachment VI.
 - d) The bond amount for Tract 16m and total amount requested in Table 7 on page 16 of 16 in Attachment VI.
26. There are a couple of sentences in the Hydrologic Assessment narrative for Bond Release 11 that references SO3 when summarizing water quality data and analyses of the Post-Mine Hydrologic Assessment. We’re assuming the narrative reference to SO3 is actually intended to describe Sulfate concentration (SO4). Please revise the narrative accordingly. (BEB)
27. The Hydrologic Assessment for Bond Release 11 provides a general overview of water level and water quality trends for the bond release area based on information gleaned from ground water monitoring well 162-94-17 BDB1. The last sentence of the assessment narrative references surface water quality data and should be changed to correctly reference ground water quality data. Please revise. (BEB)

Attachment VII – Soils...Amounts

28. Please identify the soil mapping units on the Soils Map, Attachment VII, rather than the Soil Series Name. The legend of the map needs to be updated to show the Soil Map Unit Boundary rather than the soil series. Also, the soil mapping units for Control Area 1 need to be based on the September 2007 soil survey conducted by C. J. Heidt. (GAW, WTG & JRD)

Attachment VIII – Contour Map

29. Please update the bond release tract delineation line to show that Tract 9-LL encompasses a portion of the township road. The tract legal description (Attachment I) shows the point of beginning as the south quarter corner of Section 9, which is the center of the township road. (GAW)

Once the corrections are made to the application form, newspaper advertisement and notification letters, we will schedule a date for the bond release inspection.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division