



Public Service Commission

State of North Dakota

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July 6, 2011

Mr. David J. Nilson
Reclamation Administrator
Basin Cooperative Services
Leland Olds Station
3901 Hwy 200A
Stanton, ND 58571

Dear Mr. Nilson:

The Reclamation Division has completed an initial review of Bond Release Application No. 7 to Permit BCGH-8204. Items 1 through 26 must be addressed prior to publishing the public notice and mailing the notification letters. The remaining items may be addressed at this time or may be delayed until our technical review of this application is completed following the required field inspection.

Application

1. The bond calculations table included with the Bond Release Application incorrectly indicates that Bond Release 8 does not contain any undisturbed acreage. Therefore, the total amount being applied to Bond Release 7 is incorrect. Please see related item no. 24. (GAW)

Attachment I – Metes and Bounds Map with Surface and Mineral Ownership

2. Adjacent surface owners for the following sections are listed in Attachment IV but they do not appear to be listed on Attachment I: 18 (Kuntz) and 27 of T144N, R84W. Please review and add the names to the attachment as necessary. (WTG)

Attachment II – Metes and Bounds Description

3. Please remove Tract 4C from Attachment II as it contains the Metes and Bounds description for the LOS Landfill Expansion which is addressed in pending Bond Release 8 to BCGH-8204. (MDB)

4. The closing coordinates for Tract 4B are different than the point of beginning coordinates. Please correct as necessary. (SAS)

Attachment III- Advertisement & Public Notice Map

5. Please update the bond amount listed on page 3 of the Public Notice Advertisement after adjusting the amount being requested for Bond Release No. 8 as explained in Deficiency No. 24. NDCC 38-14.1-17(1)(a)(3) (GAW/MDB)
6. Please include Section 30 (Tract 4B) in the listing of bond release tracts in the first paragraph of the Public Notice. It lists the tracts in Sections 31 and 32 but not the tract in Section 30. In addition, please list Section 30 in the Tract 4 heading on page 2 of the notice. NDCC 38-14.1-17-1(a). (MDB/WTG)
7. As required by NDCC 38-14.1-17-1(a), please provide a narrative description of that portion of Subtract 1C located in Section 18 in the Public Notice. The discussion of this subtract indicates that BCS is the landowner; however, V. Olsen is also a land owner of a portion of this tract in Section 18. Please correct these discrepancies. (WTG/MDB/GAW)
8. Please indicate the postmine land uses of Tract 5 as was done for the other tracts per the requirements of NDCC 38-14.1-17(1)(a)(4). (GAW)
9. Please indicate the pre-SMCRA permits that were incorporated into Permit BCGH-8204 into the second paragraph of this attachment. (BEB)
10. The last paragraph describing Subtract 1C on page 2 states that "Mining and began in September...". Please correct this typographical error. (BEB)
11. It is recommended that the maps (currently depicted on 2 different maps) that accompany the public notice be combined into a single map for publication. Please provide shading or hatching or some other type of symbology to accurately identify and separate the various bond release tracts to prevent confusion between the various tract boundaries and section lines. Tract and section numbers should be clearly legible in the newspaper notice. Please use an arrow to show the location of Tract 5-Part 2 which is difficult to locate on the map since it is such a narrow tract. Also please label the Township and Range lines, as was done with the Mercer-Oliver County line rather than listing the townships and ranges on the bottom left hand corner of the map. (BEB/MDB/SAS)

Attachment IV – Surface Owner and Agency Notifications

12. The surface ownership listing in Attachment IV indicates that H. John and Janet A. Dschaak as being surface owners for Tract 1C in Section 18; however, Attachment I indicates their property is located outside of the existing permit boundary. Please review and update as necessary. (SAS/GAW/MDB)

13. Please revise the Local, State, or Governmental Agencies list in Attachment IV to include the Mercer County Commissioners and the Mercer County Zoning Board as required by Policy Memorandum No. 9. (SAS/GAW)
14. V. Olsen is listed as the surface owner of tract 1C (NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18) on the land ownership map (Attachment I) but is not listed as a surface owner on Attachment IV. Please review the list and correct as necessary. (WTG/GAW)
15. Attachment IV lists the surface owner of Tract 4C as BCS; however, Tract 4C is not included in Bond Release No. 7 but rather is included in pending Bond Release No. 8. Please remove the information for Tract 4C from Attachment IV. (MDB/WTG)
16. Attachment I indicates that GRE may be a surface owner of a portion of Tract 5 in Section 33; however, they are not identified as a surface or adjacent surface owner in Attachment IV. Please review and update if necessary. (GAW)
17. Attachment I indicates that C. Sagehorn is an adjacent surface owner (N $\frac{1}{2}$ of Section 19); however, he is not listed as such in Attachment IV. Please review and update if necessary. (GAW)
18. Lee Stephens, Joe Maichel, Edwin Berg, K. (Tammy) Pearson and Robert Berger are listed in Attachment IV as adjacent surface owners; however, they are not considered adjoining property owners since their property does not directly adjoin the bond release tracts (i.e., there are other tracts that actually adjoin the bond release tracts). Basin Cooperative Services can send notification letters to these individuals if they wish, but it is not necessary. (GAW/WTG)
19. The Berg Family LLP is listed as an adjacent surface owner in Section 6 of T143N-R84W; however, it appears this should be Section 8. Please review and correct as necessary. (WTG)
20. It is unclear why five names (starting with Wolf) are listed at the end of the second page of adjacent surface ownership because there is no section or location associated with them. Please review and correct as necessary. (WTG)
21. Please update the subheading to identify the correct permit and bond release number for the notification of local and state agencies or governmental entities (currently listed as Permit CCGH-8003, Bond Release No. 3). (WTG)
22. Under Notification: Local, State Agencies or Governmental Entities in Attachment IV please replace Dale Frink (State Engineer with the North Dakota Water Commission) with Todd Sando. (MDB/WTG)

23. As required by NDCC 38-14.1-17-1(b), please provide a copy of the draft letter intended for distribution to those specified in the subsections of Attachment IV. (WTG/MDB)

Attachment VI – Tract History, Bonding and Vegetation Data

24. In Attachment VI, the bond amount to be released is listed as \$4,455,299.12. This amounts to \$2964.46 per disturbed acre which is similar to the amount requested in pending Bond Release No.8. However, when reviewing Bond Release No. 8, not all 325 acres covered by that application were disturbed. Attachment IX indicates only 256.08 acres were disturbed by mining activities with 68.92 acres being undisturbed. Please recalculate the bond amount which will be released for both Bond Releases No. 7 and 8 to reflect the undisturbed acres in the Bond Release No. 8 area. With this adjustment we have calculated the rate for disturbed acres to be \$3076.897 per acre with a rate of \$200 being applied to undisturbed acres. Previously approved Bond Release No. 3 established the per acre dollar amount for disturbed and undisturbed areas to be \$3,019.67 and \$200.00, respectively. Please make the necessary updates to the bond release application including the application form and public notice advertisement. (MDB/GAW)
25. In Attachment VI, the Tract 4 Description refers to Sections 31 and 32 being in Tract 4 but does not include Section 30 in the opening paragraph until the end of the paragraph where it is broke into subtracts. Please include Section 30 in the opening sentence as portions of Section 30 are included in Tract4. (MDB)
26. In Attachment VI Tract 4 Description page 21 states “Approximately 11 inches of SPGM was replaced on reclaimed areas of Subtract 1A”. Later in the same paragraph, a reference is made to “Subtract 1B”. In addition, the same reference was noted on Page 24 under the Summary of Reclamation Success. Please make the necessary corrections as Tract 4 does not include Subtracts 1A and 1B. (MDB)
27. Page 23 of Attachment VI (Tract 4 Description) discusses the developed water resources but these water resources are actually located in area covered by pending Bond Release No. 8 for industrial land. This should be explained in the Tract 4 description if the ponds will provide a livestock watering source for that tract. Otherwise, this discussion should be removed from this application. (MDB)
28. In Attachment VI, please provide information indicating that the size of the impoundments are adequate for their intended purposes and that the water levels will be reasonably stable as required by NDCC 38-14.1-24(7)(a)&(d). If this information has been incorporated into Permit BCGH-8204, please provide a reference in the narrative where this information can be found in the permit. (MDB)
29. In narratives for Tracts 1 and 5, please discuss the field windbreaks that were planted in Sections 4, 13, and 14. This discussion should include species and planting arrangements, whether these are replacement plantings or conservation plantings, and the achievement of the applicable revegetation success standards. (GAW)

30. Please review Attachment IXA to ensure that all of the woodland sampling locations are depicted on the map. Woodland sampling data on the CD indicates that Woodlands WD 13-2-92, WD 13-3-93, and WD 13-7-97 were sampled but they are not shown as being sampled on Attachment IXA. We also noted that the woodland data on the CD includes woodland WD 14-3-92 which is located outside of the current permit boundary as it has already been bond released. In addition, please change the color of the woodland identification number on the maps so that it is legible. (GAW)
31. Please provide a brief description of the management used on the hayland and cropland areas within the appropriate tracts as required by NDAC 69-05.2-12-12(8)(b), including any soil testing that was done to determine fertilizer rates. (SAS)

Tract 1

32. Please recalculate the adjusted yield standard in Table T1C-7 using the 2009 silty reference yield value of 2,902.3. The yield value from 2008 was used in this table. The summary data in Table 1 will need to be updated. (GAW)
33. The 2008 and 2009 cover values for Tract 1C, Tables T1C-8 and T1C-9, are listed as being slightly higher than the values provided in the associated excel files. These values are also different in Table 1. Please review and update as necessary. (GAW)
34. Please clarify how a direct comparison can be made between the reclaimed warm season hayland in Section 13 and the reference areas as shown in Tables 10A and 10B. It appears that the premine cropland soils (Table 8) should be used to determine the unadjusted standard and the hayland reference or control area yield values should be used to climatically adjust this value. (GAW)
35. Please show the Warm Season Hayland reference area that is being used to demonstrate success on the warm season hayland in Section 13, T1C, on Attachments IXA and X. The soils and sampling locations of this reference area must also be depicted on the appropriate map. (GAW)
36. Table 2 indicates that Tract 1C, BCS Section 13, consists of 44.2% native grasses in 2008 using relative cover data but the sampling data on the CD indicates that native grasses comprised 49.2% of the relative composition. The 2009 cover data values are also different on Table 2 compared to the sampling data (48.3% natives vs. 49.3 and natives with poa 78.5% vs. 79.6%). Please review and update as necessary. (GAW)
37. The summary data in Table 2 for Tract 1C, BCS Section 18 - haulroad), does not demonstrate that the diversity standard was met because 5 native species were not present (2008 cover data) and 4 species did not contribute at least 3% each of the relative cover. We realize that a portion of this area is subject to 1975 law reclamation requirements but the law period boundary is not clearly depicted on Attachment VIIC and according to

Table 2 a portion of this area is subject to our present reclamation law. Please include a discussion on how the required diversity standards have been achieved or explain that it does not need to be achieved (based on law period requirements). Otherwise justify why the Commission should suitably modify the diversity standards with an appropriate demonstration as allowed in the Revegetation Success Standards document. We realize that 7 native species were present in the 2009 cover data and that these native species were likely present in 2008. In addition, the 2008 yield data indicates that 6 native species were present. (GAW)

Tract 3

38. There seems to be something missing from the end of first sentence on page 17 dealing with Tract 3. Please complete the sentence. (SAS)
39. The yield standard yield was not met for 2010 for Tract 3 when the recently-released Mercer County yield value for 2010 of 1.75 tons/acre and the long-term yield value of 1.50 t/ac were used in Table 13. In addition, the difference between the yields was significant when statistics were applied. Please provide a different year of forage yield data to prove that the required productivity standard has been met. (SAS)

Tract 4

40. The 2009 native grassland adjusted yield standards were calculated for Tract 4A in Tables T4A-5 and T4A-7 using Shallow and Thin Claypan reference area yield values from 2008 rather than 2009. Please correct these errors in these tables and in Table 1, yield summary. (GAW)
41. Tables T4A-4, 5, 8, 9, 12, and 13 are listed as being specific to the 1996 seeding in Section 31; however, a portion of Tract 4A, Part 1, was seeded in 1984. The 1996 and 1984 seedings appear to be combined in Tables 1 & 2 and listed as Section 31 - 1979 law but the values listed appear to be derived from the 1996 seeding only. Please clarify if Tables T4A-4, 5, 8, 9, 12, and 13 also represent 1984 seeded area. (GAW)
42. Tables 1 and 2 includes Section 31 orphan spoil and redisturbed orphan spoil information for Tract 4A, Part 1, but these areas cannot be located on Attachment VIIC or IXC. Also, it appears that these areas are named inconsistently between Tables 1 and 2. In addition, it appears that one of these areas should be labeled Part 3 and the other area is included in the Ash Pit Expansion Area, which is pending Bond Release No. 8. Please review and revise as necessary. (GAW)
43. An NRCS value of 2600 lbs/acre was used in Table T4B-3 in the development of the adjusted yield standards for Tract 4B rather than 2500 lbs/acre. Therefore, the adjusted 2008 and 2009 yield standards are actually higher than actually required. This error may be corrected if so desired. (GAW)

44. Table 2 indicates that native species comprised 74.5% of the composition in 2008 and 83.4% in 2009 on the pond and diversion portion of Tract 4A, Part 1. However, it appears that intermediate wheatgrass was incorrectly considered a native species in the relative species composition percentage values and was included in the native species count column in Table 2. In addition, the percent native composition values listed in the Vegetation section of the CD are not consistent with Table 2. Please review and revise as necessary. Please also provide an explanation why Kentucky bluegrass comprises 18.2% of the live basal cover in 2008 and comprises 0% in 2009 while being detected in every production frame and yielding 132 lbs per acre in 2009. (GAW)
45. In the first paragraph on page 21, Subtracts 1A and 1B are referenced in the first paragraph on page 21. It appears this should actually be Subtracts 4A and 4B. Please correct as necessary. (SAS)

Tract 5

46. A thin claypan yield value of 1,375 lbs/acre was used to calculate the adjusted 2002 yield standard in Table T5-4 rather than the actual yield value (913) and a 1,267 lbs/acre value was used for the Shallow reference area in Table T5-5 rather than the actual yield value of 1,419 lbs/acre. Please review and update these tables and Table 1 as necessary. (GAW)
47. The summary data in Table 2 for the native grassland in Tract 5, (BCS Section 4), does not demonstrate that the seasonality standard has been achieved. Table 2 indicates that warm season species only comprised 10.5% of the relative composition in 2009 and the total warm season cover data on the CD is listed as 13.86% even though big bluestem and switchgrass are listed as comprising 30.7 and 5.9% of the relative composition, respectively. In addition, the total percent native species composition values are different on the CD and Table 2. Please review and update the CD and Table 2 accordingly. (GAW)
48. Table 2 indicates that the native grassland in Section 5, Tract 5 - BCS, had 5 native grass species that each comprised at least 3% of the relative cover composition in 2006. The cover data on the CD shows that only 4 species achieved this standard. Please review and correct as necessary. (GAW)

Attachment IX – Seeding Dates, Vegetation Sampling Transects and Respread

49. Please revise Attachment IXA to depict the locations where reclaimed native grassland was sampled in Section 18, Tract 1A, Part 3. (GAW)

Attachment XI – Pond Information & Designs and Water Quality Information

50. Attachment XI provides three pages of surface water discharge point information and all references to NPDES discharge points should be changed to denote NDPDES which will

identify the State Health Department has the regulatory authority of surface water discharges during the times of operation. The same changes to discharge point information provided on the CD need to be made as well. (BEB)

51. The listing of Ponds in Bond Release 7, Attachment XI, differs from what is presented in the hard copy and the CD. The List of Ponds provided in the CD includes Pond G144-85-24-5A (Stephens) which is not provided in the hard copy. Please address. (BEB)
52. Table 2 provides a spreadsheet summary of 1997-1998 water quality analyses for the eleven ponds and wetlands to be retained as permanent impoundments within the bond release area. We request that copies of the original water quality analyses documents be provided in the application, along with water quality analyses of the Old East and Old West Pits, which have not been provided. (BEB)
53. The application hard copy contains updated (July 2010) water quality analyses for only 6 of the permanent impoundments to be retained and the CD provides water quality analyses for 13 of the permanent impoundments. The same information should be provided in both sets of materials. (BEB/SAS)
54. Water quality analyses that are provided in the CD provides water quality data for a total of 13 ponds/wetlands but approximately ½ of the ponds/wetlands listed have a different name/identifier than the ponds and wetlands names/locations that are provided in other parts of the application. Water quality analyses are provided for Ponds 31-3H, 143-84-9-3H, WD2 Pond, Rec-SP68, Wetlands 31-A and 31-B and none of these match the listed names of ponds provided in other areas of the application, either in the CD or hard copy. In order for us and other reviewers to correlate updated water quality analyses with the correct pond/wetland, the names of the developed water resources (ponds and wetlands) needs to remain consistent throughout the application. Please address. (BEB)

CD – Permanent Pond Designs

55. Two of the permanent pond designs submitted on the CD are incorrect. PDF's 9GR-7009 18-7b and 9GR-7008 13-8e are drawings of diversions. Please address. (MDB)

CD – Vegetation Sampling Data

56. The 2006 yield value in the summary data for the shallow reference area is listed as being 1419.6 pounds per acre but the sampling data shows that it yielded 1266.8 lbs/acre. Please correct this error if other changes are being made. The correct value was used to demonstrate revegetation success for the reclaimed native grassland. (GAW)
57. The native grassland in Sections 4 and 5 are listed separately in Tables 1 and 2 but the excel worksheets included on the CD for the native grassland in Tract 5 are labeled as if they are for lands located in Sections 4 and 5. Please edit the worksheet names to clarify the data applies to only Section 5. (GAW)

Mr. David Nilson
Bond Release No. 7, Permit BCGH-8204
July 6, 2011
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The Reclamation Division would like to conduct the field inspection for Bond Release Application 7 and 8 in late July or early August. We anticipate that the field inspections will need to be conducted over a period of two days given the acreage involved with these final bond releases.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Mike Murray

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