



# Public Service Commission

## State of North Dakota

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May 9, 2012

Jay M. Volk, Ph. D  
Environmental Manager  
BNI Coal, Ltd.  
2360 35<sup>th</sup> Avenue SW  
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has reviewed BNI Coal Ltd.'s April 9, 2012 responses to our March 2, 2012 completeness review letter for BNI's application for Surface Coal Mining Permit No. BNCR-1101 for the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete. Please note that follow-up deficiencies refer to the March 2, 2012 completeness review letter unless otherwise noted as an original deficiency from the January 11, 2012 completeness review letter.

### **General**

1. BNI Coal, Ltd. updated Appendix 1-5 Applications, with revised page 1 of the BNCR-1101 permit application and a facsimile of the permit boundary Metes & Bounds description to exclude three acres from the permit, including the parcel owned by Great River Energy in the SE $\frac{1}{4}$  of Section 8 Lot A, T141N, R83W as Exception 01, and the parcel owned by St. Lucas Cemetery in the NE $\frac{1}{4}$  of Section 18, T141N, R83W as Exception 02. Please submit a revised page 1 of the permit application accompanied by a signed original of the Metes and Bounds description of the BNCR-1101 permit boundary for the permit application file as required by NDAC 69-05.2-05-04. (WTG)
2. BNI Coal, Ltd. revised the BNCR-1101 permit boundary to exclude three acres from the permit, including the parcel owned by Great River Energy in the SE $\frac{1}{4}$  of Section 8 Lot A, T141N, R83W as Exception 01, and the parcel owned by St. Lucas Cemetery in the NE $\frac{1}{4}$  of Section 18, T141N, R83W as Exception 02. The majority of plates in the permit were updated to reflect the permit boundary exceptions, but the following plates must also be

revised to depict the permit boundary exceptions: 3.1-1; 3.1-2; 3.2-3; 3.2-4; 3.3-1; 3.3-2; 3.3-3; 3.3-4; 3.4-1; 3.4-2; 3.4-3; 3.4-4; 4.4-1; 4.5-1; 4.10-1; 4.10-2; 4.11-1; and 4.14-1. (WTG/MSK)

## **LEGAL AND FINANCIAL INFORMATION**

### **Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)**

3. It appears that the surface and coal ownership listed for the NE $\frac{1}{4}$  of Section 18, T141N, R83W, should read "less 2 acres" rather than "less 1 acre" because the St. Lucas Cemetery described as Exception 02 in the Metes & Bounds description measures 2.00 acres. (WTG)
4. Follow-up to item No. 5: As indicated in the April 9, 2012 response letter, as required by NDCC 38-14.1-14-1(c)(2), and as noted in similar deficiencies for Plate 1.9-1, Surface and Coal Ownership and Appendix 1.9-1 Ownership Information (within permit boundary), please provide the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W. (WTG)
5. Please label North Dakota Highway 25 on the newspaper advertisement map. (WTG)

### **Appendix 1.5-2 Landowner Notification Letters**

6. Please remove the letter to Great River Energy, owner of Lot A in the SE $\frac{1}{4}$  of Section 8, T141N, R83W, because the parcel has been excluded from the permit as Exception 01. (WTG)

### **Plate 1.9-1 Surface and Coal Ownership**

7. Follow-up to item No. 15: As indicated in the April 9, 2012 response letter, as required by NDAC 69.05.2-08-02(1)(a), and as noted in similar deficiencies for the Newspaper Advertisement, and Appendix 1.9-1 Ownership Information (within permit boundary), please provide the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W on Plate 1.9-1. (WTG)
8. Follow-up to item No. 33: Although surface and coal ownership for Lot A in the NW $\frac{1}{4}$  of Section 19, T141N, R83W, and Lot A in the E $\frac{1}{2}$  of Section 24, T141N, R84W, is listed on Plate 1.9-1, it appears that the sole surface owner for each tract should be listed as possessing 100 percent surface ownership rather than 20 percent surface ownership. (DKM)

**Appendix 1.9-1 Ownership Information (within Permit Boundary)**

9. Follow-up to item No. 20: As indicated in the April 9, 2012 response letter and as required by NDCC 38-14.1-14-1(c)(2), please provide addresses for all of the coal owners of record in the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 18, T 141N, R 83W. (WTG)
10. Follow-up to item No. 33: It appears that Kent Reuther should be listed as possessing 100 percent surface ownership rather than 20 percent surface ownership of Lot A in the E $\frac{1}{2}$  of Section 24, T141N, R84W. (DKM)
11. Follow-up to item No. 21: As indicated in the April 9, 2012 response letter, as required by NDCC 38-14.1-14-1(c)(2), and as noted in similar deficiencies for the Newspaper Advertisement and Plate 1.9-1, Surface and Coal Ownership, please list the coal ownership and provide addresses for all of the coal owners of record in the NE $\frac{1}{4}$  of Section 20, T141N, R83W. (WTG)
12. Follow-up to item No. 23: As required by NDCC 38-14.1-14-1(c)(2), please provide addresses for all of the coal owners of record in the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 13, T141N, R84W. (WTG)

**Appendix 1.9-2 Adjacent Ownership Information (within  $\frac{1}{4}$  mile)**

13. It appears that the acreage listed for the St. Lucas Cemetery in the NE $\frac{1}{4}$  of Section 18, T141N, R83W, should be 2 acres rather than 1 acre because the St. Lucas Cemetery described as Exception 02 in the Metes & Bounds description measures 2.00 acres. (WTG)

**Appendix 1-2 Certified Copies of Leases and Assignment Documents**

14. Follow-up to item No. 25: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Gary Leinius for the E $\frac{1}{2}$  of Section 6 and the E $\frac{1}{2}$  of Section 7, T141N, R83W. (WTG/DKM)
15. Follow-up to item No. 26: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease with Great Northern Properties for Section 7, T141N, R83W. (WTG/DKM)
16. Follow-up to item No. 28: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the lease (surface and coal) with the State of North Dakota for the E $\frac{1}{2}$  of Section 16, T141N, R83W, and the coal lease with the State of North Dakota for the W $\frac{1}{2}$  of Section 16, T141N, R83W. (WTG/DKM)

17. Follow-up to item No. 29: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Kasper and Donna Kraft for the SW $\frac{1}{4}$  of Section 16, T141N, R83W. (WTG/DKM)
18. Follow-up to item No. 30: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease for the 50 percent coal interest owned by the State of North Dakota in the SW $\frac{1}{4}$  of Section 17, T141N, R83W. (WTG)
19. Follow-up to item No. 31: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease for the 50 percent coal interest owned by the State of North Dakota for the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and Lots 1 and 2 of Section 18, T141N, R83W. (WTG/DKM)
20. Follow-up to item No. 34: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W and provide certified copies of coal leases for at least 75 percent of the ownership as required by NDCC 38-18-05-3. It is clear from the red font and the sum of coal ownership equaling 200 percent listed on page 46 of Appendix 1.9-1 Ownership Information (within Permit Boundary) that ownership of this tract is in the process of being determined. (WTG/DKM)
21. Follow-up to item No. 35: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide certified copies of coal leases covering at least 75 percent of the ownership as required by NDCC 38-18-05(3) for the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13, T141N, R84W. (WTG/DKM)
22. Follow-up to item No. 36: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide certified copies of coal leases covering at least 75 percent of the ownership as required by NDCC 38-18-05(3) for the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 13, T141N, R84W. (WTG/DKM)
23. Follow-up to item No. 37: As indicated in the April 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Robert Reinke for the S $\frac{1}{2}$  of Section 31, T142N, R83W. (WTG/DKM)

**Plate 3.2-1 Drill Hole Location Map**

24. Follow-up to original item No. 82 (January 11, 2012): As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.2-1, and label the township boundary between T141N and T142N. It appears that the requested changes were made to the plate for the February 9<sup>th</sup> version but were omitted from the plate for the April 9<sup>th</sup> version. (WTG)

### **Section 3.4 - Surface Water**

25. Please remove the planned sediment ponds from the Lentic Wetlands, Lotic Wetlands and DWR Locations map, Section 3.4-5. This map serves as the pre-mine wetlands map. Planned mining related facilities and features need to be removed so that the pre-mine information can be fully ascertained. Also, this map is listed as the Lentic Wetlands, Lotic Wetlands and DWR Locations Map in the Table of Contents but it is titled as Linear Surface Wetland and DWR Locations Map in the legend. Please correct this discrepancy. (GAW)

### **Section 3.5 - Pre-Mine Land Use**

26. Many of the land use bookmarks in Section 3.5 do not take the reader to the correct land use section, and bookmarks are listed for sections that have been removed from Section 3.5. Please correct these errors. (GAW)
27. Please repair the links to Appendices 3.5-1, Landuse Acres per Landowner Table, and Section 3.5-4, Landowner Maps. These sections do not open when selected in the Section 3 home page. (GAW)

### **Section 3.6 - Pre-mine Vegetation**

28. Follow-up to items No. 59 and 63: As previously requested, please include a detailed discussion about the nature and variability of the vegetation of each woodland, native grassland and wetland mapping unit within the permit as required by NDAC 69-05.2-08-08(1)(d), and document the vegetation growing on each tract of hayland and CRP land. The vegetation established on each mapping unit must be analyzed and discussed along with the vegetation information obtained from the thorough reconnaissance and qualitative evaluation observed on the mapping units not sampled. Including a summary of the condition of the vegetation within each land use only partially fulfills the requirements of NDAC 69-05.2-08-08(1)(d), and the ecological site description only provides a description about possible ecological state and transition models or plant communities as required by NDAC 69-05.2-08-08(1)(c). (GAW)
29. Please include a table that lists the total native grassland, woodland and wetland mapping unit acreages. This information is provided for each surface owner but the cumulative values should be provided to properly characterize the entire proposed permit area. (GAW)
30. A bookmark in Section 3.5 is labeled "Pre-Mine Land Capability Review" but this section is blank. We assume the missing information is intended to be a discussion on the pre-mine land uses capability to support alternative uses giving consideration to the soil, topography and vegetative cover as required by NDCC 38.14.1-14(2). (GAW)

### **Section 3.10 - Fish and Wildlife**

31. Follow-up to item No. 70: Please update the Wildlife Study Area Map, Plate 3.10-1 to clearly depict and identify all of the miscellaneous habitats located within various lands uses in the approved study area. The update should include the following features: natural and constructed grass waterways, rock piles and field borders, other areas consisting of perennial vegetation included in the cropland land use category, rock quarries, old farmsteads sites not depicted as abandoned farmsteads on the land use map, former cropland fields and reclaimed areas seeded to native vegetation, constructed access roads not on statutory right of ways, and all other miscellaneous features not depicted or identified as a separate land use such as intermittent and perennial streams. We do not believe that BNI's response to this item adequately addresses the original deficiency. (GAW)
32. Follow-up to item No. 126: Please revise Plate 3.10-1, Wildlife Study Map to clearly present the information by either including the map in a format that allows a reader to turn on and off layers, or by converting all of the thick colored lines to fine black lines and removing the colored polygons. NDAC 69-05.2-08-15(2) requires that habitats be delineated on aerial photography but the thick colored lines, colored polygons and green shading on the buffer zone area hide the required photography. The thick lines are overlapping and in many instances only the top layer can be viewed. The thick white "disturbance boundary" line and an un-named yellowish line also hide habitat delineations. It is not clear what the yellow line represents and the "disturbance boundary" line actually appears to be the mineral removal boundary rather than the total disturbance boundary. Perhaps a separate map should be included to depict the planned disturbance boundary if it is included to depict efforts to minimize disturbance to important habitats. Please revise Plate 3.10-1, Wildlife Study Map, to clearly present the information that will allow completion of a technical review as required by NDAC 69-05.2-05.2. (GAW)
33. The approved fish and wildlife inventory plan and the discussion on page 4 of Section 3.10-3 indicate that grouse lek and pheasant surveys would be completed in 2010 and 2011. Assuming the 2011 survey was completed, please include the results of that survey in the permit so the information can be reviewed. Table 3.10-7 includes only information from 2010. (GAW)

### **Section 4.2.1 - Existing Structures**

34. Follow-up to item No. 77: Please revise the Existing Structures Map, Plate 4.2-1, to show the location and current use of all buildings on and within one-half mile of the proposed permit boundary as required by NDAC 69-05.2-08-(e). The required information cannot be found in the link provided to the Cultural Resource Studies, Section 3.12-5. (GAW)

#### **Section 4.10 - Backfilling & Grading**

35. Follow-up to item No. 91: Please include preliminary wetland design plans for every wetland that is going to be created. This must include pre-mine wetlands that will be affected by associated disturbance. Although BNI states in their response to this item that design plans have been included for all affected pre-mine wetlands, including those affected by associated disturbance, it appears that all preliminary design plans were not provided. Please include preliminary design plans for all wetlands that are going to be affected, including those located outside of what is labeled the “disturbance boundary” which is actually the coal removal boundary. (GAW)

#### **Section 4.12 - Revegetation and Post Mining Land Use**

36. Follow-up to item No. 94: As originally requested, please include a planned species density rate for the woodland mixtures in the perennial seed mixtures table in Section 4.12-1 and clarify if disturbed woodlands will be reclaimed to similar pre-mine communities (low shrubs, tall shrub and deciduous communities), or if all affected woodlands will be replaced with a single diverse mixture of low and tall shrubs and deciduous trees. Please include details regarding woodland management during the revegetation responsibility period. (NDAC 69-05.2-09-11(6)) (GAW)
37. Follow-up to item No. 95: Please add a discussion to Section 4.12-1 to demonstrate compliance with NDAC 69-05.2-23-03 for each proposed land use change for each surface owner, and compliance with NDCC 38-14.1-14(2)(b) that requires a discussion of the utility and capability of the reclaimed land to support a variety of alternative uses. (GAW)
38. Follow-up to item No. 97: Please revise to depict the planned postmine land uses on all areas to be disturbed by mining activities. Presently only areas within a “disturbance boundary” are depicted but the disturbance boundary appears to actually be the coal removal boundary. Please revise to depict reclaimed woodlands, wetlands and other land uses on areas that will be disturbed by associated mining disturbances. In addition, as originally requested, please change the color symbols so that all land uses are clearly identified. For example, the reclaimed deciduous, tall shrub, DWR and native rangeland are all shades of green or blue that makes them difficult to distinguish on the map, and it is not clear what the difference is between reclaimed deciduous and tall shrub tree plantings and reclaimed woodlands. (GAW)
39. Follow-up to item No. 99: Please include landowner preference statements received since the application was last submitted, and update the postmine land use section of the permit if changes are necessary. (GAW)

**Section 4.14-1 Reclamation Cost Estimate**

40. Follow-up to original item No. 183 (January 11, 2012 letter): If BNI intends to use an incremental bond for the initial development of the mining area the following additional information will be needed: (MSK)
- a. A description of activities should be included in the narrative along with the total number of acres to be disturbed within the first bond increment and an estimate of the overburden associated with the box cut development.
  - b. A legal description of the area to be covered by the first bond increment which will encompass areas to be affected through 2014. This description should be a metes and bounds survey. Please be reminded that no disturbance can take place outside of the bonded area.

The Commission's 120 day review period remains suspended because BNI Coal, Ltd.'s April 9, 2012 response did not address all of the completeness deficiencies. Please submit three copies of the permit application DVD with your response to this letter. The additional DVD's are requested for desktop computer access to the permit application in the event of computer network access problems.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division