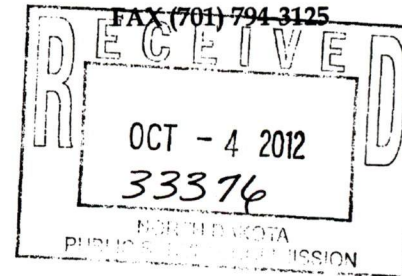


PHONE (701) 794-8734



AN ALLETE COMPANY

2360 35TH AVENUE SW CENTER, ND 58530-9499
MINING LIGNITE AT THE CENTER MINE SINCE 1970



October 04, 2012

Mr. Jim Deutsch, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE: Application for Permit BNCR-1101

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated May 9, 2012. In this letter you listed technical deficiencies that must be addressed before the permit application for BNCR-1101 can be deemed complete. Below is a listing of the deficiencies followed by our response:

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)

The signed original Metes and Bounds description is included with this submittal.

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)

The permit boundaries on these plates have been updated to show these exception areas.

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 NE¼ 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)

The label of “less 1 acre” has been changed to “less 2 acres” as requested.

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 NE¼ of Section 20, T141N, R83W. (WTG)

This ownership has a title defect in with the first ownership shows 100% ownership is traced back to shortly after the patent to a Joseph Marcy (address and next of kin unknown) and the second ownership shows 100% ownership between of Katherine Mosbrucker, Anton Landeis, and Doug Doll/Jim Pazdernik. The second ownership is flawed as well and the likely outcome is Doug Doll and Jim Pazdernik who are the surface owners will reclaim the minerals; we currently have the surface leased from them. They have been actively pursuing this process with their legal council and the final documentation will be available upcoming. It has been discussed that this tract since surface is leased and the reclamation of minerals is in process that this tract alone would not hinder the completeness review and that the tract would have to have the proper documentation prior to the permit being approved.

5. Please label North Dakota Highway 25 on the newspaper advertisement map. (WTG)

ND Hwy 25 has now been labeled on the newspaper advertisement map.

Appendix 1.5-2 Landowner Notification Letters

6. Please remove the letter to Great River Energy, owner of Lot A in the SE¼ of Section 8, T141N, R83W, because the parcel has been excluded from the permit as Exception 01. (WTG)

The letter to Great River Energy has been removed from Appendix 1.5-2.

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 NE¼ of Section 20, T141N, R83W on Plate 1.9-1. (WTG)

Plate 1.9-1 has not been updated as Doll/Pazdernik are still in the process of reclaiming the severed minerals. Ownership on the map still indicates multiple ownership. It has been discussed that this tract since surface is leased and the reclamation of minerals is in process that this tract alone would not hinder the completeness review and that the tract would have to have the proper documentation prior to the permit being approved.

8. Follow-up to item No. 33: Although surface and coal ownership for Lot A in the NW¼ of Section 19, T141N, R83W, and Lot A in the E½ 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)

The surface ownership in the E2 of Sec. 24 and the NW4 of Sec. 19 have been corrected to show 100% ownership.

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 S½SE¼ of Section 18, T 141N, R 83 W. (WTG)

BNI has been unable to locate an address for Margaret Pfleger.

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 E½ of Section 24, T141N, R84W. (DKM)

Kent Reuther's surface ownership percentage has been changed to 100%.

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 NE¼ of Section 20, T141N, R83W. (WTG)

Appendix 1.9-1 has not been updated as Doll/Pazdernik are still in the process of reclaiming the severed minerals. Ownership in the Appendix still indicates multiple ownerships. It has been discussed that this tract since surface is leased and the reclamation of minerals is in process that this tract alone would not hinder the completeness review and that the tract would have to have the proper documentation prior to the permit being approved.

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 S½S½ of Section 13, T141N, R84W. (WTG)

The addresses for Rhoda Erhardt and Anita Erhardt have been added to Appendix 1.9-1.

Appendix 1.9-2 Adjacent Ownership Information (within ¼ mile)

13. It appears that the acreage listed for the St. Lucas Cemetery in the NE¼ 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)

The acreage for the St. Lucas Cemetery has been changed to show 2 acres.

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 E½ of Section 6 and the E½ of Section 7, T141N, R83W. (WTG/DKM)

The lease for the E ½ of Section 7 has been added with this submittal. The E ½ of Section 6 has been removed from the permit application and all respective sections. It has been added to Appendix 1.9-2 Adjacent Ownership Information.

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)

This lease has been included with this submittal.

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 E½ of Section 16, T141N, R83W, and the coal lease with the State of North Dakota for the W½ of Section 16, T141N, R83W. (WTG/DKM)

The state coal leases for all tracts have been included; likewise the surface agreement for the NE4 of 16 has also been included.

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 SW¼ of Section 16, T141N, R83W. (WTG/DKM)

BNI has enclosed a mineral lease that includes 100% of the ownership for this tract but has not yet obtained a surface lease from the surface owner. At this time BNI acknowledges the fact that one of three options will occur prior to mineral development of this tract; 1) A lease will have to be obtained prior to mineral development, 2)

Development of the minerals would have to be sought through means provided by the surface owner protection act, or 3) BNI would remove this parcel from its permit. Having 100% of the minerals leased meets the requirements of permit completeness.

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)

The state coal leases for all tracts have been included.

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)

The state coal leases for all tracts have been included.

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)

This ownership has a title defect in with the first ownership shows 100% ownership is traced back to shortly after the patent to a Joseph Marcy (address and next of kin unknown) and the second ownership shows 100% ownership between of Catherine Mosbrucker, Anton Landeis, and Doug Doll/Jim Pazdernik. The second ownership is flawed as well and the likely outcome is Doug Doll and Jim Pazdernik who are the surface owners will reclaim the minerals; we currently have the surface leased from them. They have been actively pursuing this process with their legal council and the final documentation will be available upcoming. It has been discussed that this tract since surface is leased and the reclamation of minerals is in process that this tract alone would not hinder the completeness review and that the tract would have to have the proper documentation prior to the permit being approved.

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)

The coal leases for the above noted tract have been added with this submittal.

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)

Previously 100% of the surface and 50% of the coal has been leased on this tract which includes 25% coal ownership from the surface owner. An additional 16.66% coal ownership has been included from Rhoda Erhardt (lease attached) for a total of 66.66% leased coal. The remainder of the coal is owned by Rose Erhardt, 16.66% (deceased 40+ years ago) and her son Ron Erhardt, 16.66 % (deceased). Ron is survived by Anita Erhardt to whom is trying to claim the minerals of Ron but they were not documented in their estate; making decisive ownership unclear. Likewise, Rose Erhardt did not leave any real property to any heirs at the time of her death but had two kids (Ron and Dorothy). It is assumed that Rose's 16.66% interest would be split between Ron and Dorothy, but the documents are two generations removed in that Rose and Ron have passed and Dorothy is in a nursing home and is not able to make decisions per conversations with one of her two sons, one of which is her power of attorney. Correct ownership and proper documentation is still trying to be determined on the remaining 33% coal ownership. The coal lease with Anita Erhardt is included with this submittal.

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 S½ of Section 31, T142N, R83W. (WTG/DKM)

A Purchase Option Agreement has been added to the submittal for the above noted tract.

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 9th version but were omitted from the plate for the April 9th version. (WTG)

Plate 3.2-1 was updated with the labeling of T/S/R information requested.

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)

Sedimentation ponds have been removed from Plate 3.4-5. The title block on Plate 3.4-5 has also been updated to correctly read, Lentic Wetland, Lotic Wetlands, and DWR Locations.

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)

The last 2 pages of this section inadvertently did not get included in Section 3.5 these pages have been re-inserted into this section and the bookmarks have been appropriately linked.

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)

The links to Appendix 3.5-1 and 3.5-4 have been repaired. Please note that Appendix 3.5-4 Landowner Maps is a large file and takes longer to open. Appendix 3.5-4 has now been changed to Appendix 3.5-3 Landowner Maps.

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)

Sections of 3.6 have been expanded to include discussions about the variability of vegetation in the woodlands, native rangelands, wetlands, and haylands. The information for these discussions was derived from reconnaissance and qualitative evaluations. Each ecological site has been discussed in terms of ecological state and transition model and plant community.

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)

Tables have been added to Appendix 3.5-2 Premine Land Use Acreage. A summary table at the beginning of each bookmarked section (native rangelands, woodlands, and wetlands)

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)

This bookmark was disconnected when 2 pages were inadvertently left out of Section 3.5. These pages have been re-inserted and the book marks have been re-linked. This section discusses pre-mine land use capability to support alternative uses as required by NDCC 38.14.1-14(2).

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)

The miscellaneous habitats layer has been updated to include all habitats identified in field reconnaissance. These layers have been included as one layer (one color) as they are not officially independent land uses. They have, however, been labeled to identify what each particular feature is within the layer (i.e. RP = Rock Pile). These labels are described in the legend.

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)

The information on this map has been updated to address these issues:

1. *The shaded buffers have been removed and replaced with a 'buffer line' which is placed underneath all other layers (i.e. the permit boundary) and made thick enough to still be visible.*

2. *The disturbance boundary was the correct line, but was re-labeled mining disturbance boundary. This layer however, has since been removed from this plate, to make information more clear.*
 3. *The color of the “yellowish line” (miscellaneous habitats) has been changed, and has been correctly labeled in the legend. All Items in the legend have been re-labeled to make them clearer.*
 4. *The perennial and ephemeral streams have been added to this map as well as requested during our April 26th meeting.*
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)

The 2011 results have been added to Appendix 3.10-7.

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)

The links on Plate 4.2-1 have been revised to connect to the information intended.

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)

The Section 4.10 text was updated to include discussions regarding the mining disturbance boundary and the associated disturbance boundary and how wetlands within these areas will be replaced. The mining disturbance boundary, shown on Plate 4.10-1 Post-Mining Topography, consists of the proposed mineral removal boundary plus estimated buffers for SPGM removal. Therefore, this shouldn't be mistaken for the mineral removal boundary alone.

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)

Densities have been included in section 4.12 in the Perennial Seed Mixtures table under "Woodland Species Mix". You will see that the 3 narratives for Section 4.12 (4.12 Revegetation, Post Mining Land Use, and Reclamation Success Narrative) have now been combined into one section to be consistent with the formats found in all other sections of the permit. The content was kept intact for each section, and has been bookmarked and labeled appropriately. Clarifications about woodland reclamation and management of the woodlands during the liability have been added to the Woodland discussion in Section 4.12-1 Reclamation Plans.

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)

Discussions have been added to Section 4.12-1 Narrative about each proposed land use change as to comply with NDCC 38-14.1-14(2)(b). The 3 narratives that were previously in this section (4.12, 4.12-1, 4.12-2) have now been combined into one to be consistent with the formats found in all other sections of the permit. The content originally found in each of these sections has been left intact, and are labeled and bookmarked appropriately.

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)

Plate 4.12-1 has been modified to include both a mining disturbance boundary as well as an associated disturbance boundary. The symbology, labels, and legend have been modified to make the map clearer. Modifications to the post mine land use were changed according to our May phone discussion.

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)

BNI has not received any additional Landowner Preference Statements since the last submittal of the application. If any Preference Statements are received they will be added to the permit application.

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.

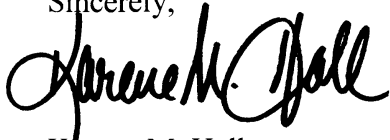
Paragraph 2 of page 4.14-1 has been modified to include this information.

- 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.

A Metes & Bounds description of the incremental bonding area has been added to the end of the text in section 4.14-1. We appreciate the reminder that no disturbance can take place outside of this boundary.

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Karene M. Hall
Permit Coordinator



APPLICATION FOR PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS
PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION
 SFN 10552 (1-2004)

Rev'd August 14, 2012

Rev'd April 3, 2012

Date	December 12, 2011
Permit Number	BNCR-1101
State	ND
Zip Code	58530

Name of Company, Corporation, Partnership, or Individual BNI Coal, Ltd.	
Address 2360 35th Avenue SW	City Center

The above named hereby makes application for the above listed permit number to engage in surface coal mining and reclamation operations in the State of North Dakota during the period from January 3, 2013 (date) to January 3, 2018 (date) on the following area (attach a copy of metes and bounds description):

NAME OF MINE	ACRES	LOCATION			
		SEC.	TWP.	RANGE	COUNTY
Center Mine					
ADDRESS					
2360 35th Avenue SW		See	Attached	Sheet	Oliver
Center, ND 58530-9499					
TOTAL ACRES	8,359.72				

A bond, or its equivalent, duly executed in accordance with Section 38-14.1-16 of the North Dakota Century Code and Chapter 69-05.2-12 of the North Dakota Administrative Code will be delivered to the Public Service Commission prior to issuance of the surface coal mining and reclamation operations permit herein requested. A check for filing fees, pursuant to Section 38-14.1-13 of the North Dakota Century Code, in the amount of \$ 89,522.40, is included with the permit application.

Name of Official Authorized to Represent the Applicant Karene M. Hall, Permit Coordinator
--

I, the above named, certify that:

1. All information and documents required by Sections 38-14.1-13, 38-14.1-14, and 38-14.1-15 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, are submitted as part of this permit application;
2. Information and documentation contained in the permit application affirmatively demonstrate that:
 - a. The permit application is accurate and complete and all the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code have been complied with;
 - b. Reclamation as required by Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code can be accomplished under the reclamation plan contained in this permit application;
 - c. An assessment of the probable cumulative impact of all anticipated mining in the general area on the hydrologic balance as specified in subdivision o of subsection 1 of Section 38-14.1-14 of the North Dakota Century Code has been made and the proposed operation has been designed to prevent material damage to the hydrologic balance both on and off the mine site;
 - d. The area proposed to be affected is not included within an area designated unsuitable for all or certain types of surface coal mining and is not within an area under study for such designation in an administrative proceeding;
 - e. The proposed surface coal mining operation will not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated and will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors; and
 - f. The permit applicant has the legal right to surface mine the land for which this permit application is made and all of the requirements of Chapter 38-18 of the North Dakota Century Code have been complied with.

METES & BOUNDS OF BNCR-1101

A Tract of Land Lying in Township 142 North, Range 83 West, Township 141 North, Range 84 West and Township 141 North, Range 83 West of The Fifth Principal Meridian, Oliver County, North Dakota; Described as Follows:

Beginning at the Northwest Corner of Section 12, Township 141 North, Range 84 West; (NAD 27-ND State Plane South Zone- US Foot- N: 506,657.5, E: 1,806,115.6);

Thence **South 89°34'01" East**, along the north line of said Section 12, **a distance of 2635.02 feet** to the north quarter corner of said Section 12;
Thence **South 89°11'07" East**, continuing along said north line, **a distance of 2631.06 feet** to the southwest corner of Section 6, T. 141 N., R. 83 W.;
Thence **North 89°34'01" East**, along the south line of said Section 6, **a distance of 2717.86 feet** to the south quarter corner of said Section 6;
Thence **North 89°34'01" East**, continuing along said south line, **a distance of 2642.54 feet** to the southeast corner of said Section 6;
Thence **North 00°03'36" East**, along the east line of said Section 6, **a distance of 2622.15 feet** to the east quarter corner of said Section 6;
Thence **North 00°03'35" East**, continuing along said east line, **a distance of 2627.39 feet** to the northeast corner of said Section 6;
Thence **South 89°55'32" West**, along the north line of said Section 6, **a distance of 494.51 feet**;
Thence **North 00°05'34" East**, along the north-south quarter line of said Section 6, **a distance of 5266.09 feet** to the north quarter corner of said Section 6;
Thence **North 89°55'32" East**, along the north line of said Section 6, **a distance of 2144.93 feet**;
Thence **North 00°37'39" East**, **a distance of 400.47 feet**;
Thence **North 19°01'04" West**, **a distance of 848.83 feet**;
Thence **North 00°37'39" East**, **a distance of 1092.95 feet** to the south line of BNI Permit 8106;
Thence **South 68°56'03" East**, along said south permit line, **a distance of 867.44 feet** to a point on the easterly 33.00 foot right-of-way line of the west line of Section 32, T. 142 N., R. 83 W.;
Thence **South 00°37'39" West**, continuing along said south permit line and said easterly right-of-way line, **a distance of 1861.98 feet**;
Thence **North 89°52'29" East**, continuing along said south permit line and its extension, **a distance of 1614.32 feet**;
Thence **South 00°00'00" West**, **a distance of 1440.21 feet** to a point on the westerly line of Permit 9401;
Thence **South 30°03'36" West**, along said westerly permit line, **a distance of 1300.00 feet**;
Thence **South 00°03'36" West**, continuing along said permit line, **a distance of 1500.00 feet**;
Thence **South 29°31'37" East**, continuing along said permit line, **a distance of 1518.94 feet** to a point on the south line of Section 5, T. 141 N., R. 83 W.;
Thence **South 89°35'36" East**, continuing along said permit line and said south section line, **a distance of 524.43 feet**;
Thence **South 00°24'24" West**, continuing along said permit line, **a distance of 330.00 feet**;
Thence **South 89°35'36" East**, continuing along said permit line and parallel with said south section line, **a distance of 364.40 feet** to the north-south quarter line of Section 8, T. 141 N., R. 83 W.;
Thence **South 00°06'48" West**, along said north-south quarter line, **a distance of 2300.91 feet** to the center of said Section 8;

Thence **South 89°47'19" East**, along the east-west quarter line of said Section 8, a distance of **2638.37 feet** to the east quarter corner of said Section 8;
Thence **North 00°05'21" East**, along the east line of said Section 8, a distance of **2622.15 feet** to the northwest corner of Section 9, T. 141 N., R. 83 W.;
Thence **North 89°54'58" East**, along the north line of said Section 9, a distance of **2618.64 feet** to the north quarter corner of said Section 9;
Thence **South 89°58'09" East**, continuing along said north line, a distance of **2623.20 feet** to the northeast corner of said Section 9;
Thence **South 00°02'00" East**, along the east line of said Section 9, a distance of **2634.04 feet** to the east quarter corner of said Section 9;
Thence **South 00°00'02" West**, continuing along said east line, a distance of **2628.31 feet** to the northeast corner of Section 16, T. 141 N., R. 83 W.;
Thence **South 00°28'44" West**, along the east line of said Section 16, a distance of **2629.06 feet** to the east quarter corner of said Section 16;
Thence **South 00°32'34" West**, continuing along said east line, a distance of **2642.74 feet** to the northeast corner of Section 21, T. 141 N., R. 83 W.;
Thence **South 00°28'59" West**, along the east line of said Section 21, a distance of **2633.76 feet** to the east quarter corner of said Section 21;
Thence **South 00°28'59" West**, continuing along said east line, a distance of **2633.76 feet** to the northeast corner of Section 28, T. 141 N., R. 83 W.;
Thence **South 00°26'47" West**, along the east line of said Section 28, a distance of **2636.16 feet** to the east quarter corner of said Section 28;
Thence **South 89°55'13" West**, along the east-west quarter line of said Section 28, a distance of **5257.86 feet** to the east quarter corner of Section 29, T. 141 N., R. 83 W.;
Thence **North 00°16'01" East**, along the east line of said Section 29, a distance of **2639.90 feet** to the northeast corner of said Section 29;
Thence **North 89°58'08" West**, along the north line of said Section 29, a distance of **2642.27 feet** to the north quarter corner of said Section 29;
Thence **North 89°58'08" West**, continuing along said north line, a distance of **2642.27 feet** to the northeast corner of Section 30, T. 141 N., R. 83 W.;
Thence **North 89°57'36" West**, along the north line of said Section 30, a distance of **2631.74 feet** to the north quarter corner of said Section 30;
Thence **North 89°57'36" West**, continuing along said north line, a distance of **2722.53 feet** to the northeast corner of Section 25, T. 141 N., R. 84 W.;
Thence **South 00°42'07" West**, along the east line of said Section 25, a distance of **2635.53 feet** to the east quarter corner of said Section 25;
Thence **North 89°20'36" West**, along the east-west quarter line of said Section 25, a distance of **5271.72 feet** to the west quarter corner of said Section 25;
Thence **North 00°24'57" East**, along the west line of said Section 25, a distance of **2631.20 feet** to the southwest corner of Section 24, T. 141 N., R. 84 W.;
Thence **North 00°28'09" East**, along the west line of said Section 24, a distance of **2632.36 feet** to the west quarter corner of said Section 24;
Thence **North 00°28'09" East**, continuing along said west line, a distance of **2632.36 feet** to the southwest corner of Section 13, T. 141 N., R. 84 W.;
Thence **North 00°31'36" East**, along the west line of said Section 13, a distance of **2632.36 feet** to the west quarter corner of said Section 13;
Thence **North 00°31'36" East**, continuing along said west line, a distance of **2632.36 feet** to the southwest corner of Section 12, T. 141 N., R. 84 W.;
Thence **North 00°29'53" East**, along the west line of said Section 12, a distance of **2632.36 feet** to the west quarter corner of said Section 12;
Thence **North 00°29'53" East**, continuing along said west line, a distance of **2632.36 feet** to the Point of Beginning.

The above described tract of land contains 8362.72 Acres, more or less.

Exception 01

Commencing at the Northwest corner of the Northeast quarter of the Southeast quarter of Section 8, Township 141 North, Range 83 West of The Fifth Principal Meridian, Oliver County, North Dakota; Described as Follows:

(NAD 27-ND State Plane South Zone- US Foot- N: 503,986.2, E: 1,820,692.6);
Thence South 00°12'41" West, a distance of 459.78 feet to the Point of Beginning;
Thence **South 72°34'54" East, a distance of 163.20 feet;**
Thence **South 17°25'06" West, a distance of 208.71 feet;**
Thence **North 72°34'54" West, a distance of 208.71 feet;**
Thence **North 17°25'06" East, a distance of 208.71;**
Thence **South 72°34'54" East, a distance of 45.51 feet** to the Point of Beginning.
The above described tract of land contains 1.00 acres, More Or Less.

Exception 02

Beginning at the East Quarter Corner of Section 18, Township 141 North, Range 83 West of The Fifth Principal Meridian, Oliver County, North Dakota; Described as Follows:

(NAD 27-ND State Plane South Zone- US Foot- N: 498,718.4, E: 1,816,683.6);
Thence **South 89°44'56" West**, along the east-west quarter line of said Section 18, **a distance of (20 Rods) 330.00 feet;**
Thence **North 00°58'32" East, a distance of (16 Rods) 264.00 feet;**
Thence **North 89°44'56" East, a distance of (20 Rods) 330.00 feet** to the east line of said Section 18;
Thence **South 00°58'32" West**, along said east line, **a distance of (16 Rods) 264.00 feet** to the Point of Beginning.
The above described tract of land contains 2.00 acres, More Or Less.

Total Of 8359.72 Acres, More Or Less.
A drawing is provided with this document.

Notes:

1. The basis of this survey is the 1927 North Dakota State Plane System, South Zone, US Survey Feet, 1993 MSI control. Details are available upon request @ 701-794-8735 ext. 260.
2. Survey control was established in 2010 by Todd Marschall, using a Topcon Hyper GA GPS receiver and Carlson software.
3. For electronic drawings, this drawing was originally issued and sealed by Todd Marschall, R.L.S. 4431, and is stored at BNI Coal Inc., 2360 35th Ave. SW, Center, ND 58530-9499.

Certification:

I, Todd Marschall, hereby certify that this document is a reasonable representation and that I am a Registered Land Surveyor in the State of North Dakota. I hereby certify that the data shown on this sheet was prepared by me or under my direct supervision. Any alterations to this document will void my Certification.



Todd Marschall, R.L.S. 4431

8-14-12
Date: _____

