



Public Service Commission

State of North Dakota

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November 7, 2012

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

Dear Dr. Volk:

The Reclamation Division has reviewed BNI Coal Ltd.'s October 4, 2012 responses to our May 9, 2012 completeness review letter for the 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 those numbered in the May 9, 2012 completeness review letter.

Table of Contents

1. Please remove Plate 3.8-2 from the Table of Contents. (WTG)

1. LEGAL AND FINANCIAL INFORMATION

Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)

2. The second to the last sentence in the first paragraph of the public notice states that "*Any interested person may file petitions with the Public Service commission to designate any of these lands as unsuitable for mining.*" Please revise this sentence to state that "Any person with an interest which is or may be adversely affected may file a petition to designate...." rather than any "interested person". (GAW)
3. Follow-up to item No. 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)

4. Please list the complete names of Douglas D. Doll/James D. Pazdernik rather than the abbreviated names of Doll & Pazdernik for coal ownership in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, T141N, R83W. (WTG)
5. Please reduce the ownership parcel in Section 31, T142N, R83W, from the S $\frac{1}{2}$ to the SE $\frac{1}{4}$ or the E $\frac{1}{2}$ SE $\frac{1}{4}$ to reflect the reduced permitted acreage in Section 31 made with the October 4, 2012 third completeness review response. (WTG)
6. Please delete the listing for ownership in the NE $\frac{1}{4}$ of Section 31, T142N, R83W, because there is no longer any permitted acreage in the NE $\frac{1}{4}$ of Section 31 based on changes made with the October 4, 2012 third completeness review response. (WTG)
7. Please review and revise as necessary the 0.05 acres listed for Minnkota Power Cooperative surface and coal ownership in the SW $\frac{1}{4}$ of Section 32, T142N, R83W, because page 87 of Appendix 1.9-1 Ownership Information (within permit boundary) lists the acreage as about 4.5 acres. (WTG)
8. Please correct the range numbers that are transposed as written for “*36th Avenue SW, the north-south section line between Section 25 T141N R83W and Section 30 T141N R84W*” relating to mining activity in 2027 and beyond. (WTG)
9. Please increase the font size of the street and township-range labels on the map included with the notice so that they are legible when published. (GAW/WTG)

Plate 1.9-1 Surface and Coal Ownership

10. Please update the coal ownership in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 13, T141N, R84W, to reflect the recent update to Appendix 1.5-1 Notice of Publication (Newspaper Advertisement). Ronald P. Erhardt was replaced by Anita Erhardt. (WTG)

3. ENVIRONMENTAL RESOURCES

Plate 3.1-1 Pre-Mining Topography

11. On Plate 3.1-1, Pre-mining Topography, the contour lines are not depicted on the map for the area added in the NW $\frac{1}{4}$ of Section 5 and SW $\frac{1}{4}$ of Section 32. Please provide the topography for the entire permit area as required by NDAC 69-05.2-08-02(3). (RLK)

Plate 3.1-2 Pre-Mining Area Slope Map

12. On Plate 3.1-2, Pre-mining Area Slope Map, the area slope is not depicted on the map for the area added in the NW $\frac{1}{4}$ of Section 5 and SW $\frac{1}{4}$ of Section 32. Please provide the area slope for the entire permit area as required by NDAC 69-05.2-08-02(3). (RLK)

Plate 3.2-1 Drill Hole Location Map

13. Please correct the permit boundary depicted on Plate 3.2-1 Drill Hole Location Map. The map still depicts the E½ of Section 6 as being in the permit area. (RLK)

Plate 3.2-2 Geologic Cross Section Map

14. Please correct the permit boundary depicted on Plate 3.2-2 Geologic Cross Section Map. The map still depicts the E½ of Section 6 as being in the permit area. (RLK)

Section 3.6 - Pre-mine Vegetation

15. Follow-up to item No. 28: BNI has revised Plate 3.6-1, Ecological Site Location Map, but the ecological site mapping units are not labeled on the map so it is not possible to evaluate the data. The ecological sites must be identified on the ecological site map. Please also improve the legibility of the land use labels. [NDAC 69-05.2-08-08(1)(3)] (GAW/RLK)
16. Follow-up to item No. 28: Please revise the wetland information in Section 3.6 (narrative), and Appendix 3.6-5, Wetland Drawing/Methodology, and Plate 3.4-5, Lentic Wetlands, Lotic Wetlands and DWR Locations Map so that the wetland identification naming convention is consistent. All of the wetlands must be labeled on the map, Plate 3.4-5, and the wetland sampling locations must be shown. Presently, it is not possible to determine where the wetlands listed in Appendix 3.6-5 are located on the map, Plate 3.4-5. (GAW)
17. Follow-up to item No. 29: Please include a table that lists the total native grassland and woodland mapping unit acreages for the permit area. BNI included tables in Appendix 3.5-2 showing the soil mapping unit acreages for these land uses but what is being requested is the land use mapping unit information; i.e., ecological sites for native grassland and trees, tall and low shrub communities for woodlands. Please include a table title on each of the tables so it is clear what is being represented in the table. (GAW)

Plate 3.8-1 Soil Map Units (Aerial Photography)

18. On Plate 3.8-1, Soils Map (Air Photo), the white cross hatch used to denote the associated disturbance areas (added with the latest submittal) obscures the soil map unit labels. Please consider using only an outline in an alternate color to denote the associated disturbance and/or an alternate color for the soil map unit labels as the white labels are very difficult to read on the gray background. (RLK)

Section 3.10 - Fish and Wildlife

19. Follow-up to item No. 31: Please update the Wildlife Study Area Map, Plate 3.10-1 to clearly depict and identify all habitats located within various land uses in the approved study area. BNI was asked to add this information for the miscellaneous habitats, which was done, but the habitat labeling information was removed for all of the major land uses within the proposed permit area. Please revise to include all necessary information on this map. (GAW)

4. OPERATIONS

Section 4.2 - Existing Structures

20. Follow-up to Item No. 34: Please revise the Existing Structures Map, Plate 4.2-1, to depict the location and current use of all buildings on and within one-half mile of the proposed permit boundary as required by NDAC 69-05.2-08-02 (e). If this Existing Structures Map is not providing this information, please clarify where this information can be found in the permit. (GAW)

Section 4.6 - Surface Water Management Plan

21. Appendix 4.6-11, Design Details - Sedimentation Pond P-5-8, does not include design details and drawing for Pond P-5-8. This pond is scheduled to be constructed in 2013; therefore, the design plans must be provided at this time. Please add the pond design information to this appendix. (RLK/MSK)

Plate 4.10-1 Post-Mining Topography

22. On Plate 4.10-1, Post-Mining Topography, the contour lines are not depicted on the map for the area added in the NW $\frac{1}{4}$ of Section 5 and SW $\frac{1}{4}$ of Section 32. Please provide the topography for the entire permit area as required by NDAC 69-05.2-09-11(3). (RLK)

General

We recommend that BNI review all plates to ensure the label font is legible at the print scale. For example, the land use labels are not legible on the Pre-mine Land Use map, Plate 3.5-1. Likewise, some figures or tables (Figures 1 and 3) in Section 4.12 of the permit are hardly legible because of the font size. Some plates, such as 3.5-1, 3.6-1, 3.6-2, 3.7-1, 3.8-1, and 4.12-1 contain an overview map and six other maps that are simply subsections of the overview map. These subsections serve no purpose in the application since one has to also zoom into the maps.

The Commission's 120 day review period remains suspended because BNI Coal, Ltd.'s October 4, 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.

Also, the following **technical review items** were noted during our review of the latest version of Permit Application BNCR-1101. These can be addressed with your response to the above items or you can wait and address them following our technical review of the application.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

1. As required by NDAC 69-05.2-06-03(1), a certified copy of the coal lease with Great Northern Properties for Section 7, T141N, R83W will need to be included in the application prior to permit approval. The October 4, 2012 response only includes a memorandum giving notice of a coal mining lease for this tract. (WTG/DKM)
2. In follow-up to BNI's response to items 16, 18, and 19 regarding coal leases and the surface easement with the State of North Dakota, NDCC 38-18-06(3) and NDAC 69-05.2-06-03(1) require certified copies of coal leases and surface easements be included in the permit. While the coal leases include a signed statement from the Land Commissioner that the lease documents are true and correct duplications of the original documents, permit applications typically contain copies of lease and easement documents that have been recorded at the county Register of Deeds (Recorders) office. By providing copies of the recorded documents, we have greater certainty that the permit applicant actually has the legal right to mine the tracts in the permit area. Until lease and easement documents obtained by BNI Coal, Ltd. are recorded, it is possible that another entity could also obtain a mining lease for the same tract and have it recorded with the Register of Deeds. In that case, the other entity would have mining rights ahead of BNI Coal, Ltd. Therefore, we recommend that certified copies of lease and easement documents recorded at the Oliver County Register of Deeds, including the Register of Deeds certification of recording, be included in the application prior to permit approval. (WTG/DKM)
3. While we are accepting BNI's response for item no. 17 in our May 9th letter for deeming the permit application complete, additional documentation or changes will be needed prior to permit approval. As required by NDAC 69-05.2-06-03(1), either provide a certified copy of a surface lease executed by Kasper and Donna Kraft for the SW $\frac{1}{4}$ of Section 16, T141N, R83W, or court order issued pursuant to the Surface Owners Protection Act authorizing the Commission to issue a mining permit. If neither are obtained, this parcel will need to be removed from the permit application prior to Commission action. (WTG/DKM/JRD)
4. As required by NDAC 69-05.2-06-03(1), a certified copy of the surface lease with Robert Reinke for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31, T142N, R83W, will need to be included in the application prior to permit approval. Although we agreed to accept the purchase option agreement executed by Mr. Reinke for completeness purposes, Commission approval of

the permit application cannot occur until a certified copy of a consent statement executed by Mr. Reinke is provided in the application. (WTG/DKM/JRD)

Section 3.6 - Pre-mine Vegetation

5. The woodland sampling locations are shown on the Ecological Site Location Map. The woodland sampling locations should be depicted on the woodland map, Plate 3.6-2, rather than the native grassland ecological site map. (GAW)

Plate 4.1-1 Pit Layout and Facilities Map

6. Please depict the proposed location for Pond P-5-9 on the Pit Layout and Facilities Map, Plate 4.1-1. (RLK)

Section 4.9 Reclamation Schedule

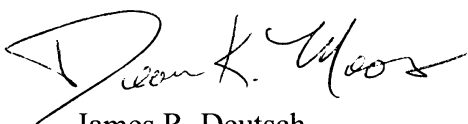
7. In Section 4.9 - Reclamation Schedule, please include Ponds P-5-8 and P-5-9 in the table titled Anticipated Pond & Diversion Reclamation Schedule. (RLK)

Section 4.12 Revegetation, Post Mining Land Use and Reclamation Success

8. We also noticed that BNI is proposing cropland in many areas of pre-mine native grassland where the post-mine slopes appear too steep for cropland (greater than 9 percent). The Reclamation Division will not recommend Commission approval of the proposed land use conversions on areas too steep for the proposed post-mining land use.

If you have any questions, please contact this office.

Sincerely,


for James R. Deutsch
Director
Reclamation Division