



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

May 9, 2014

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 April 28, 2014 response to our March 27, 2014 technical 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 will recommend Commission approval of the permit application. Please note that some items are in follow-up to items as numbered in our March 27, 2014 letter, while some new items are the result of changes made with the April 28, 2014 response.

Section 1.7 Business Entity Information

1. Please update Subsection 1.7.2 (Controlling Officers and Board of Directors of BNI Coal, Ltd.) to reflect changes to BNI Coal, Ltd. Controlling Officers and Board of Directors as described on Attachment (3) to the May 1, 2014 Surface Coal Mining and Reclamation Operations Surety Bond application. (WTG)

Section 1.10 Areas Unsuitable for Mining

2. Please revise the April 28, 2014 changes to the Section 1.10 narrative (Areas Unsuitable for Mining) and related permit sections as follows. (WTG)
 - a. Revise the approval date to read April 3, 2014 rather than March 6, 2014 as presented for the December 9, 2013 petition to the Oliver County Commission for approval to temporarily close several section lines, permanently close a section line, and conduct mining operations within 100 feet of the outside right-of-way.
 - b. Remove references to the "Agreement" because the referenced agreement is not the petition approval to close section lines or conduct mining operations within 100 feet of the outside right-of-way within Permit BNCR-1101, but rather was required by the county to grant the petition. As referenced in the agreement, BNI

- will need to build a county road on or near the section line common to Sections 25 and 36 (in or near Permit BNCR-8106) to connect 36th Avenue SW and 37th Avenue SW as the county deems necessary.
- c. Remove the reference to Appendix 1-7, and remove the agreement from Appendix 1-7, because it is not the petition approval to close section lines or conduct mining operations within 100 feet of the outside right-of-way within Permit BNCR-1101. Approval of the petition to close section lines or conduct mining operations within 100 feet of the outside right-of-way within Permit BNCR-1101, and the agreement required by the county to grant the petition (reduced-sized copy), is currently documented in the unofficial minutes of the April 3, 2014 Oliver County Commission meeting in Appendix 4.5-1, but please add the full page copy of the agreement to Appendix 4.5-1 for reference. Page 4.5-7 of Section 4.5 (Transportation Narrative) states as follows: “*Appendix 4.5-1 contains a record of all of the formal County actions/approvals regarding road closings. This appendix will continue to be updated through the course of normal permit revisions as additional Commission actions are taken.*”
 - d. Revise the narrative to reference that the petition approval is located in Appendix 4.5-1.

Section 1.11 Current Surface Mining Permits

3. Please correct the approval date for Revision No. 12 to Permit BNCR-9401 to read April 9, 2014 rather than April 8, 2014. (WTG)

Appendix 1-2 Certified Copies of Leases and Assignment Documents

4. Follow-up to item No. 4: BNI’s April 28, 2014 response to item No. 4 requiring inclusion of a certified copy of a surface lease executed by Kasper and Donna Kraft for the SW¼ of Section 16, T141N, R83W indicates that BNI will provide the Commission with a copy of the lease prior to Commission application approval, and include a certified copy of the lease in the approved permit. Please be reminded that NDAC 69-05.2-06-03(1) requires a “certified copy” of the lease and that must be provided to the Commission prior to application approval; however, we prefer that be included in the permit application with BNI’s response to this letter. (WTG/DKM/JRD)

Section 3.5 Pre-mining Land Use

5. Related follow-up to item No. 15: In Section 3.5 the relevant narratives should be updated to discuss the prior land use for the current industrial tract that was a temporary concrete batch plant in the NW¼ of Section 5, T141N, R83W. The lease for the property in the NW¼ of Section 5 appears to have been obtained in 1992 thus the land use prior to the disturbance for the batch plant in 2007 should be relevant. The aerial imagery available for the area appears to indicate that the tract was used for hay production in the years prior to disturbance. The proposed post mining land use of industrial presented in Section 4.12 would be acceptable for the area but there should be a contingency for restoring the vegetation on the area if the land is not used for an industrial purpose at the

time of bond release. The land cannot be bond released as industrial if the tract is not serving an industrial use. NDAC 69-05.2-01-02(43), NDAC 69-05.2-23-01&3, NDAC 69-05.2-22-07(j) (RLK)

Section 3.7 Prime Farmlands

6. Please revise Section 3.7 Prime Farmlands narrative and tables as indicated in a May 8, 2014 BNI electronic mail message. (WTG)
7. Please revise Plate 3.7-1 (Prime Farmland Soils) to depict the Straw loam (SwA) prime farmland soil map unit in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, T141N, R84W as indicated in a May 8, 2014 BNI electronic mail message. (WTG)

Section 3.8 Soil Resources

8. Please revise Plate 3.8-1 (Soils Map) to depict the Straw loam (SwA) prime farmland soil map unit in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, T141N, R84W as indicated in a May 8, 2014 BNI electronic mail message. (WTG)

Section 4.1 Operations Plan

9. Follow-up to item No. 3: BNI's April 28, 2014 response to item No. 3 requiring inclusion of a certified copy of the coal lease with Great Northern Properties for Section 7, T141N, R83W indicates that mining will not occur in Section 7 until an alternative instrument conveying the right to mine is approved. Although the Section 7 pit sequences may be retained on Plate 4.1-1 (Pit Layout and Facilities Map), the permit narrative must be revised to clearly indicate that mining will not occur in Section 7 until an instrument showing the right to mine is included in the approved permit. Please insert a subsection titled Great Northern Properties Coal Ownership (Section 7, T141N, R83W), or something similarly descriptive, in the Operations Plan narrative following the Federal Coal subsection on page 4.1-6 to clearly indicate that mining will not occur in Section 7 until an instrument demonstrating the right to mine is included in the approved permit. (WTG/DKM)

Section 4.4 Blasting Plan

10. Please review Plate 4.4-1 (Blasting Map). The table that shows the maximum permissible weight of explosives to be detonated at intervals not to exceed 400 feet should show a maximum distance of 8400 feet to comply with NDAC 69-05.2-09-04(8) and the occupied farmstead located in the NW $\frac{1}{4}$ of Section 1, T141N, R84W. Also, the range rings that originate where blasting is prohibited begin with the origin or zero-value in the center of the occupied farmstead/buildings, etc. The zero-value should start at the farthest structure from the center of the farmstead or group of buildings. Please revise the Blasting Map to comply with NDAC 69-05.2-09-04. (BAJ)

Section 4.5 Transportation Plan

11. Please revise the April 28, 2014 changes to the Section 4.5 Road Closures narrative as follows. (WTG)
 - a. Revise the last paragraph of page 4.5-7 to reference the December 9, 2013 petition to the Oliver County Commission for approval to temporarily close several section lines, permanently close a section line, and conduct mining operations within 100 feet of the outside right-of-way because the entire petition was approved that included closure of 35th Avenue SW. Please also revise the petition approval date to read April 3, 2014 rather than March 6, 2014 as presented.
 - b. Revise the first paragraph of page 4.5-8 to reference an April 3, 2014 appearance before the county commission rather than April 13, 2014 as presented, and begin the paragraph with a reference to the petition approval as follows: “*Prior to the April 3, 2014 approval of the December 9, 2013 petition, BNI appeared before the Oliver County Board of Commissioners to enter into an agreement ...*”.

Plate 4.5-3 Section Line Closures, Rights of Ways, and Detour Corridors

12. Please revise the April 28, 2014 changes to Plate 4.5-3 (and two other minor items) as follows. (WTG)
 - a. Revise the text added to the bottom of Plate 4.5-3 to remove the reference to an agreement found in Appendix 1-7 as noted in related deficiency in Section 1.10.
 - b. Shorten the temporary section line closure depicted along one mile common to Section 31 (T142N, R83W) and Section 6 (T141N, R83W) to depict temporary section line closure along one-half mile common to the SE¹/₄ of Section 31 and the NE¹/₄ of Section 6 (refer to the petition in Appendix 4.5-1).
 - c. With the exception of text added to the bottom of Plate 4.5-3 with the April 28, 2014 changes, there are no descriptions or representations of Phase I road closures on the plate or in the plate’s legend, but there two representations of Phase2 or Phase II road closures. It appears that the line representations under the heading of “*BNCR1101 Section Line Closures, ROW Variances, and Detour Corridors*” constitute Phase I closures and should be labeled as such in the “*BNCR1101 Section Line Closures, ROW Variances, and Detour Corridors*” heading. It also appears that the duplicative and incorrectly named representation of “... *Phase2 ...*” closures should be removed from the legend.
 - d. Reposition the label for 36th Avenue SW so that it is completely visible on the top portion of the plate.
 - e. Remove the extraneous labels for Center Mine permits that are not relevant to the plate and whose boundaries are not represented in the plate’s legend (BNCR-8106, BNCR-8202, BNCR-8602, Permit 37).

Appendix 4.5-1 Section Line Closures, Rights of Ways, and Detour Corridors

13. Please complete the following updates to Appendix 4.5-1 as follows: (WTG)

- a. As noted in a related deficiency in Section 1.10, add the full page copy of the April 3, 2014 agreement in consideration for granting the December 9, 2013 petition to Appendix 4.5-1.
- b. Add a copy of the April 3, 2014 Oliver County Commission proceedings published in the Center Republican to Appendix 4.5-1.

Section 4.6 Surface Water Management Plan

14. Follow-up to item No. 23: Please provide specific plans and/or specify the best management practices that will be used to control runoff for the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 5 (Access Road Section C - dragline walkway), the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 32 because proposed ponds P-5-8, P-5-9, and diversion D-32-1 have been deleted from the Surface Water Management Plan. NDAC 69-05.2-16-08 (FSE).

Section 4.9 Reclamation Schedule

15. Please add the 2019 Annual Mine Block to the Reclamation Schedule Table on page 4.9-1 to complete the 5 year time period of the first permit term. The 2019 Annual Mine Block must also coincide with the areas depicted on Plate 4.14-1 (Worst Case Bond Map) for areas of spoil grading, SPGM respread, and revegetation. (BAJ)

Section 4.12 Revegetation, Post Mining Land Use and Reclamation Success Narrative

16. Follow up to item No. 30: A sentence in the second paragraph on page 2 of Section 4.12 states that the conversion of 185 acres of native grassland to cropland comprises less than 53.5% of the total reduction in native grassland pre-mine compared to post-mine. The narrative continues to state that cropland acres have increased by approximately 217 176 acres for a similar percentage increase. The native grassland to cropland conversion percentage is actually 4.5% of the total pre-mine native grassland (185.3/4108.3) and the cropland acreage increases by approximately 5.5 %. Please correct these errors or edit the sentences to provide clarity. (GAW)
17. Follow-up to item No. 30: The second to last sentence of the second paragraph on page 2 of Section 4.12 incorrectly states that land use changes will occur on 20 tracts of land and these tracts are then discussed individually and listed in Table 1 of Section 4.12; however, the NW $\frac{1}{4}$ of Section 8 and the NW $\frac{1}{4}$ of Section 16 are included in Table 1 but the proposed changes for these tracts are not discussed in Section 4.12. The NE $\frac{1}{4}$ of Section 21 and NW $\frac{1}{4}$ of Section 12 are included in Table 1 but no land use changes are being proposed on these tracts. Please review and revise to correct as necessary. (GAW)
18. Follow-up to item No. 30: The pre- and post-mine land use discussions in Appendix 4.12-2 state that the pre-mine developed water resources will be reclaimed in the S $\frac{1}{2}$ of Section 8 and the pre- and post-mine acreages in Table 1 of Section 4.12 and in Appendix 4.12-6 (Postmine Landuse Acreage Table) are the same; however, two pre-mine stockponds in the SW $\frac{1}{4}$ of Section 8 are not being replaced according to Plate 4.12-1 (Post Mine Land Use). Please review and explain the replacement plans for these two

pre-mine developed water resources and/or revise Section 4.12 of the permit accordingly.
(GAW)


19. Follow-up to item No. 30: BNI is proposing to convert 5.26 acres of farmsteads to long narrow strips of native grassland along the south end of the SW¼ of Section 19 and along the north end of the NE¼ of Section 20. No native grassland existed in either of these tracts prior to mining and the landowners did not request any land use changes on either of these tracts. Although we commend BNI for attempting to create permanent vegetation habitat, these two land use changes are neither manageable nor practical. Consideration should be given to converting these farmstead sites to the adjacent pre-mine land uses (cropland) in these instances. (GAW)
20. Follow-up to item No. 30: Please depict the developed water resource that is to be reclaimed in the southeast corner of the NE¼ of Section 18 on Plate 4.12-1 (Post Mine Land Use). A label is shown but the pond is not depicted. (GAW)

Appendix 4.12-2 Pre-mine and Post Mine Land Use Discussions

21. Follow-up to item No. 35: We asked BNI to describe the species composition of the previously disturbed land located in the SE¼ of Section 31, T142N, R83W. BNI has updated Appendix 4.12-2 to state that the site is comprised of 95% smooth brome grass and then goes on to state that this is similar to the adjacent undisturbed native grassland. The similarity index report in Section 3.6.3 documents that the undisturbed native grassland in this area is dominated by native grasses and forb species and that smooth brome only comprises about 8% of the relative composition by weight. Obviously the composition of these two tracts is not similar and the narrative needs to be revised to reflect the actual conditions. Please also review the language discussing all other tracts with previously tilled areas to ensure the permit accurately characterizes the sites as required by NDAC 69-05.2-08-08(1)(d). (GAW)

Please contact this office if you have any questions.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor