



Public Service Commission

State of North Dakota

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June 6, 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 conducted a completeness review in accordance with NDAC 69-05.2-05-01(2) of BNI Coal, Ltd.'s application submitted May 4, 2012 for Revision No. 12 to Surface Coal Mining Permit No. BNCR-9401 for the Center Mine. The revision proposes to add 180.13 acres to the permit by expanding the permit area in Sections 5 and 8 of T141N R83W, and extending the permit boundary northward into Section 32 of T142N R83W. Revision No. 12 also converts the permit document into an electronic format. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete.

General

1. For every map included in this permit application, please provide the scale at which the map should be printed so that the information on the map and legend is clearly legible. In addition, the legends of many of the maps contain unnecessary information, such as other permit boundary areas. BNI may choose to revise the legends accordingly when the print scale is listed on the maps. (GAW)

1. LEGAL AND FINANCIAL INFORMATION

2. It does not appear that the hyperlinks in the Legal and Financial Information section are functional. Please repair the links so they are operable as intended. (GAW/BEB)

Permit Application (SFN 10562) and Appendix 1-5

3. As required by NDCC 38-14.1-14(1)(a), please submit a revised page 1 of SFN 10562 to accurately describe the land proposed for addition to BNCR-9401 with Revision 12. Please revise the revision summary to add Section 5, T141N, R83W to the land description. Please also revise the tabular entries to accurately describe the added acreage as follows:
(WTG/GAW)
 - a. 27.17 acres in Section 5, T141N, R83W;
 - b. 139.09 acres in Section 8, T141N, R83W; and,
 - c. 13.87 acres in Section 32, T142N, R83W.

Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)

4. Please rephrase the first sentence of the public notice because the first sentence could give the reader the impression that Revision No. 12 was approved by the PSC on August 16, 1995 (date of the original permit approval). Also, the second sentence should be rephrased because it could give the reader the impression that the revision area is 434.83 acres in size (this is the acreage of the entire permit area). The amount of acres proposed to be added to the permit with this revision as well as the total acres of the permit should be clearly stated in the notice narrative. (BEB)
5. In the last sentence of the first paragraph, please indicate that the baseline environmental resource information sections of the permit are being updated to reflect the area being added to the permit with this revision as well as the other sections of the permit. (GAW)
6. As required by NDCC 38-14.1-18(1), please add a statement to the notice that any person with an interest which is or may be adversely affected may file a petition to designate an area as unsuitable for surface coal mining operations for the area being added to the permit area within thirty days of the last publication of the notice. (GAW/WTG)
7. As required by NDCC 38-14.1-18(1), please add Section 5 to the legal description of 180.13 acres proposed for addition to the permit in the last sentence in the first paragraph of page 1. (GAW/WTG)
8. As required by NDAC 69-05.2-10-01(1)(d), please add a statement describing any section line right of way or public road where surface coal mine operations will be conducted within 100 feet of the outside right of way, or if it will be closed. (GAW/WTG)
9. Please remove legal descriptions and surface and coal ownership listings for the S $\frac{1}{2}$ of Section 8, T141N, R83W (Five D's and Great River Energy), and the less 74.4 acres in the S $\frac{1}{2}$ of Section 32, T142N, R83W (BNI Coal, Ltd.), because these parcels are not within the permit boundary. NDAC 69-05.2-10-01(1)(b)(4) requires that the surface and coal ownership be provided in the public notice for only the permit area and not the adjacent area. (WTG/GAW)

10. As required by NDAC 69-05.2-10-01(1)(b)(1), please add the locations and labels for the Milton R. Young Station and Square Butte Creek to the Notice of Publication map to allow local residents to readily identify the permit area. (WTG/GAW)

Section 1.7 Business Entity Information

11. As required by NDAC 69-05.2-06-01(1)(e) and 69-05.2-05-02(1), please update subsections 1.7.3, 1.7.4, and insert 1.7.5 to reflect the most recent additions or changes to these subsections as submitted with the permit application for BNCR-1101. (WTG)

Section 1.9 Surface and Coal Ownership

12. As required by NDAC 69.05.2-05-02(1), please revise the first paragraph of Section 1.9 as necessary to clearly explain that the names and addresses of surface and coal ownership within the permit boundary (required by NDCC 38-14.1-14(1)(2)) and contiguous to the permit area extending one-fourth mile from the permit boundary (required by NDAC 69-05.2-06-01(1)(a)) are listed in Table 1.9-1 and shown on Plate 1.9-1. As currently presented, the narrative incorrectly combines the reference to surface and coal ownership contiguous to the permit area extending one-fourth mile from the permit boundary (required by NDAC 69-05.2-06-01(1)(a)) with a statement of interest, options, or pending bids by the applicant on those lands as required by NDAC 69-05.2-06-01(1)(c). Also, clearly separate Table 1.9-1 with subheadings to list surface and coal ownership within the permit boundary first, followed by the list of surface and coal ownership contiguous to the permit area extending one-fourth mile from the permit boundary. As currently presented in Table 1.9, surface and coal ownership within the permit boundary is mixed with that contiguous to the permit area extending one-fourth mile from the permit boundary (Minnkota Power Cooperative ownership in Section 32 within the permit boundary follows two pages of ownership listings lying outside of the permit boundary). Please note that some surface and coal ownerships, such as those in Section 5 and the NW $\frac{1}{4}$ of Section 8 T141N, R83W, will need to be listed as both within the permit boundary and contiguous to the permit area extending one-fourth mile from the permit boundary. (WTG)
13. As required by NDAC 69-05.2-06-01(1)(a), please correct the legal description in Table 1.9-1 for Five D's ownership in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ less Lot A of Section 8, T141N, R83W, that is currently described as the NE $\frac{1}{4}$ NE $\frac{1}{4}$ less Lot A. (WTG)

Section 1.10 Areas Unsuitable for Mining

14. As required by NDAC 69-05.2-06-05(1) and 69.05.2-05-02(1), please expand the narrative on areas designated unsuitable for mining to address all areas where surface coal mining operations are prohibited or limited. We recommend that you insert the narrative similar to that in Section 1.10 of the BNCR-1101 permit application. Please also describe BNI Coal, Ltd.'s intentions to comply with NDAC 69-05.2-04-01.3(2), or approvals received, for closure of section lines common to Sections 8 and 9, T141N, R83W, and Section 5, T141N,

R83W and Section 32, T142N, R83W. A reference to the BNCR-1101 permit application under review for closure of the section line common to Sections 8 and 9, T141N, R83W is acceptable, but documentation for approval to close the section line common to Section 5, T141N, R83W and Section 32, T142N, R83W should be added to the permit. Please also reference and hyperlink Appendix 1-7 Approval Documents as the location for section line closure approval documentation. (WTG)

Appendix 1-2 Certified Copies of Leases and Assignment Documents

15. Please revise the Appendix 1-2 Table of Contents to delete the listing for item XII Plate 1-2 Ownership Map because it has been removed and is replaced by Plate 1.9-1. (WTG)
16. As required by NDAC 69.05.2-05-02(1), please provide a certified copy of the surface ownership lease with Larry and Virginia Schmidt for the NW¼ of Section 8, T141N, R83W (No. 4049). It was noted that an updated lease (to replace the original lease signed with Frank and Isabella Schmidt in 1971) for the portion of this tract located in Permit BNCR-1101 was included in the permit application for BNCR-1101. (WTG)
17. As required by NDAC 69.05.2-06-03(1), please provide a certified copy of the surface and coal ownership lease with Minnkota Power Cooperative for the NE¼ of Section 8, T141N, R83W. It appears that the original lease (1971) with Peter and Rose Erhardt has expired and is no longer valid. If BNI is basing its right to enter on the 1971 lease, then please provide proof that the lease has been extended. (WTG)
18. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Minnkota Power Cooperative for the SE¼ of Section 32, T142N, R83W. (WTG)

2. EXTENDED MINE PLAN

Plate 2-1 Extended Mine Plan

19. As required by NDAC 69.05.2-05-02(1), please rotate Plate 2-1 so that it opens in the landscape orientation and is properly oriented. (MSK)

3. ENVIRONMENTAL RESOURCES

Plate 3.1-2 Pre-Mining Area Slope Map

20. Please revise Plate 3.1-2 to depict the area slope for all areas within the permit area. NDAC 69-05.2-08-02(3)(b) (GAW/MSK)

Section 3.2 Geology

21. NDAC 69-05.2-08-05(e) requires sufficient cross-sections to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining, in particular to assess pit suitability for disposal of refuse, ash and other residue from coal utilization processes. Presently, the cross-section that is provided in the permit depicts the elevations of surface topography and the Hagel seam. Considering that a major component contributing to this revision application is the addition or expansion of coal processing disposal facilities, please supplement the data provided on the cross-section map by depicting and labeling the strata overlying and underlying the Hagel bed to include the full thickness of the stratigraphic column including the overburden, underburden and lower aquifer(s). Considering that there is currently over 200 feet of vertical relief represented on this map, a separate, larger map more appropriately scaled to accurately display the requested information should be considered. The geologic cross-sections provided in Permit BNCR-9702 are an excellent example of the type of information we are requesting to be included with this application. (BEB)

Section 3.3 Groundwater

22. Section 3.3 provides narrative from the original permit that describes that no springs or seeps exist in or immediately adjacent to the permit area; however, this portion of the narrative needs to be expanded now to account for the addition of land north and south of the existing permit area. If springs are identified in the Revision 12 addition area, they will need to be described in the narrative, assessed as required in the rules and depicted on Plate 3.3-1. It appears the wooded draws leading to Hagel Creek in the NE¹/₄ of Section 5 may likely contain seeps and/or springs. Please address. (BEB)
23. It appears that the last paragraph in the Ground Water narrative, Section 3.3, describes a nominal amount of information regarding the probable hydrologic consequences associated with mining and reclamation of the permit area. It is recommended that the PHC portion of this narrative be specifically labeled as such, with expanded narrative regarding the addition of new land with this revision and a follow-up hydrologic reclamation plan (HRP) included in the narrative. The HRP is required to provide, at a minimum, a description of alternate water sources available to the permit area after mining and reclamation is complete, should the postmine land use require it. Please address. (BEB)

Plate 3.3-1 Current Well Monitoring Location Map/Active Piezometer Nests

24. Please depict and label the locations of the BNI, Minnkota Power Cooperative, and Minnie Reinke production wells on Plate 3.3-1 as required by NDAC 69-05.2-08-02(1)(f) and 69-05.2-08-06(1)(b). Please use a unique symbol to depict the production wells differently from the monitoring wells, and consider changing the plate name to *Monitoring Well and Production Well Location Map*. (BEB)

Section 3.4 Surface Water

25. In Section 3.4.2, Permit Area Surface Water Resources, please revise the link to Plate 3.5-2 in the first paragraph to take the reader to Plate 3.5-1, the pre-mining land use map that includes the area being added with this revision, rather than the original permit area. NDAC 69-05.2-08-07(1) (RLK)
26. The first paragraph of Section 3.4.2, Permit Area Surface Water Resources, states that “several small wetlands are found mainly in Section 5” but only two wetlands are depicted in the entire permit area on the Pre-Mining Land Use map, Plate 3.5-1 and described in wetland information provided in Appendix 3.6-1. Please revise the narrative to refer to wetlands delineated in the permit area if those are the only wetlands in the permit area or expand the narrative and wetland information to describe the additional wetlands if additional wetlands are present. (RLK)

Section 3.5 Pre-Mine Land Use

27. Please include a discussion in Section 3.5 that explains what the pre-mine land use “Reclaimed Grassland” and “DL/Industrial Land” are actually representing. It is not clear if reclaimed grassland is land that was permitted and reclaimed under our surface coal mining regulations, or if this acreage is former cropland that was seeded to grassland species, or if this area was subject to disturbance and reclamation under some other agency’s permitting and reclamation standards. Likewise, it is not clear what the DL/Industrial land actually represents. Please thoroughly discuss what these land uses are representing and how they are being used. NDAC 69-05.2-08-08 (GAW)
28. Please retain original Plate 3.5-1, Premining Land Use and Range Sites, which shows the land uses and range sites of the original permit area. This map also clearly shows the woodlands. This map may need to be also placed in Section 3.6, Pre-mining Vegetation, since that is where the range site and woodland sampling data is located in the permit. It is not acceptable to change the range sites on this area to ecological sites since the sampling data refers to range sites not ecological sites. Ecological sites should only be shown on the native grassland areas being added to the permit with this revision. NDAC 69-05.2-08-08 (GAW)
29. The Premine Land Use (Historical) map, Plate 3.5-2, is labeled as Plate 3.5-1A in the permit and it only shows the permit area as it existed in 2004. Obviously this plate was to be used as a supplement to Plate 3.5-1 and is not the Historical premine land use map as it is labeled. This map shows a portion of the permit area as being bond released. Please revise to retain the original baseline pre-mine land use map of the area and clarify what this map represents in the permit. NDAC 69-05.2-08-08 (GAW)
30. Please review and update Table 3.5-1, Premine Land Use Acres, to be consistent with Plate 3.5-1 for the area in Section 32. Plate 3.5-1 depicts industrial, reclaimed grassland,

woodlands and native grasslands in Section 32; however, Table 3.5-1 only lists native range and industrial land uses. Please review and make the appropriate corrections. Depending on the changes made to the land use acreages for Section 5, changes may be necessary to the land use acreages in Section 32. (ZAT)

Plate 3.5-1 Pre-Mine Land Use

31. Please revise Plate 3.5-1 so that the information is presented clearly, and identify the map print scale so that all information is legible when printed. The permit boundary is not legible, due in part because other permit boundaries are shown, the legend in the map is not legible when printed on an 11 x 17 scale and the land uses cannot be distinguished because colored polygons are being used on the air photo background. The woodland numbers are not legible when printed on an 11 x 17 inch scale and it appears the Id. numbers are on top of the polygon identifying the woodland area. Areas outside of the permit boundary are shaded as if the area is part of the permit which is confusing. (GAW/ZAT)

Section 3.6 Pre-Mine Vegetation

32. Please include a detailed discussion about the nature and variability of the native grassland and woodlands being added to the permit as required by NDAC 69-05.2-08-08(1)(d). In addition there should be some discussion about what is growing on the "Reclaimed Grassland" and "DL/Industrial" land if these areas are vegetated. (GAW)
33. Please include a comprehensive species list for each land use being added to the permit as required by NDAC 69-05.2-08-08(1)(b). (GAW)
34. Please include a map that depicts the woodland mapping units (trees, tall shrubs and low shrubs) as required by NDAC 69-05.2-08-08(1)(c). (GAW/ZAT)
35. Please retain the Range Site Descriptions that were used for the original permit area. It is not appropriate to change range sites in the original permit area to ecological sites without correlating the range site sampling data to ecological sites. This original permit information must be retained in its present format. (GAW)
36. Plate 3.6-1, Ecological (Range) Sites Map, shows two ecological site sampling locations in the NE¼ of Section 5 but no data or information is included for these sites and no information is provided for the native grassland being added in Section 8. Please include sampling data or other information sufficient to meet the requirements of NDAC 69-05.2-08-08 (1)(c)(3) for the native grassland. (GAW)
37. Please include a map that shows where the woodlands were sampled. Section 3.5 of the permit identifies the woodland communities as No. 1 through 17 but the sampling data identifies them as something totally different (5-Haulroad East & West, and 5-Haulroad).

Please revise the woodland data in Appendix 3.6-3, Woodland Density and Cover Data, to be consistent with what is shown on Plate 3.5-1. (GAW/ZAT)

38. The link to Appendix 3.6-4, Range Similarity Index Sheets, does not work but the information is present. The original land use and range sites map, Plate 3.5-1, shows the area represented by similarity Index Section 5 - Haul road was cropland in 1992 but this area is now considered native grassland. There is no discussion indicating that this is go-back land or cropland seeded to grassland so the information as presently presented is unclear. Please provide a detailed discussion about this Loamy site and that it obviously only represents the loamy site on the former cropland field and does not represent other loamy ecological sites on undisturbed native grassland. Please provide complete, current, clear and concise detailed information as required by NDAC 69-05.2-05-02(1). (GAW)
39. Appendix 3.6-3 Woodland Density and Cover Data is a summary of woodland sample data. As required by NDAC 69-05.2-05-02(2) and (3), please provide documentation of data collection techniques, identify who collected the data, and provide copies of the original field data sheets. Please also provide a detailed description/narrative of the number and arrangement of trees and shrubs, probable age of trees, height of trees and characteristics of the understory vegetation as required by NDAC 69-05.2-08-08(1)(c)(4) and NDAC 69-05.2-08-08(1)(c)(7). (ZAT)

Section 3.7 Prime Farmlands

40. As required in part by NDAC 69-05.2-09-15(1), please provide representative soil profile descriptions, soil horizon depths, pH, and applicable physical properties for all prime farmland soil map units. (WTG/ZAT)
41. The narrative in the first three paragraphs on page 3.7-1 is copied from the original permit and the additional area is discussed separately in the fourth paragraph. We suggest combining all of the prime farmland narrative into a single discussion and map to avoid confusion. We also recommend eliminating Plate 3.5-2 (Prime Farmland – Historical). The exempt tracts in the original permit area should be depicted on Plate 3.7-1 similar to the exempt tracts in the revision area. The prime farmland tract numbering should be consistent between the narrative and map. The exempt tracts do not need be numbered but should be depicted in some fashion on the map. In addition, the prime farmland map unit ArA should be extended to the north section line of Section 8 as that portion of Section 8 in the original permit area is cropland and therefore subject to the prime farmland standards. It appears that the prime farmland in Section 8 will eventually be disturbed by mining activities (see extended mine plan map). Prior to the disturbance of the prime farmland in Section 8, BNI will need to submit a reclamation plan for the prime farmland in Section 8. If the Section 8 area is eventually zoned industrial, any prime farmland disturbed by mining activities will need to be accounted for in some manner (i.e., changing the land use of the prime farmland tracts to industrial will not relieve BNI of its obligation to reclaim the prime farmland even if involves reclaiming the prime farmland in another permit area). Lastly, we noted that the

west permit boundary and pending Permit BNCR-1101 permit boundary in Section 5 do not properly align on Plate 3.7-1. (ZAT)

42. As required by NDAC 69-05.2-09-15(4), please provide a reference and hyperlink to Plate 4.10-1 Post-Mining Topography in the narrative for depiction of prime farmland respread areas. (WTG)

Section 3.10 Fish and Wildlife Resources

43. The new paragraph on page 2 of Section 3.10 indicates that wildlife studies were performed by KDK Consulting in 2009 through 2011. Please include a copy of the approved fish and wildlife study plan for acquiring fish and wildlife information for the revision addition area as required by NDAC 69-05.2-08-15, and include correspondence showing that the plan was approved. (GAW)
44. As required by NDAC 69-05.2-08-15, please include site specific wildlife resource information for the proposed addition area and adjacent areas that properly characterizes the value of the existing wildlife habitat. Specifically state whether there is any high value wildlife habitat or habitat suitable for listed or proposed endangered or threatened plant or animal species or designated critical habitat listed by the USFWS in the proposed addition and adjacent areas as required by NDAC 69-05.2-13-08. (GAW)
45. Please include a narrative that analyzes and discusses of the results of the studies completed for acquiring baseline fish and wildlife information of the permit and adjacent area. NDAC 69-05.2-08-15 and NDAC 69-05.2-09-17 (GAW)
46. Please include the names of all persons or organizations that collected and analyzed the fish and wildlife information, the qualifications of those persons , the dates when information was collected and a description of the methodology used as required by NDAC 69-05.2-05-02(2). (GAW)
47. Please provide the name, address and position of officials of each private or academic research organization or governmental agency consulted in preparing information on fish and wildlife resources as required by NDAC 69-05.2-05-02(3). Correspondence from the ND Parks and Recreation Department, USFWS and NDGFD should be included. (GAW)
48. Please include a copy of original wildlife study that was completed in the area by Jerome Mastel, Western Technology and Engineering, Inc. of Helena, MT. Language in the permit references permits BNCR-8901 and BNCR-8704 which are no longer valid permits and it is not clear if any of the land being added to this permit was included in the original study area. (GAW)

Plate 3.10-1 Wildlife Study Area Map

49. Please revise Plate 3.10-1 to include only baseline wildlife habitat information. Presently the legend incorrectly indicates that all of the surface coal mining permits at the Center Mine are depicted and only three woodland mapping units are listed under “Landuse” in the legend. The legend indicates that Breeding Bird study/reference area information for deciduous, native rangeland and tall shrub sites is shown but this information cannot be found on the map. Please revise the map by removing the irrelevant information from this map and include the baseline wildlife habitats in the proposed permit area and adjacent area as required by NDAC 69-05.2-08-15. (GAW)

4. OPERATIONS

50. Most of the hyperlinks (to appendices and plates) in the text of Sections 4.1 and 4.2 do not open. Please repair the links as necessary. (BEB)

Section 4.1 Operation Plan

51. As required by NDAC-69-05.2-09-01, please provide additional detail in the Operation Plan narrative regarding the current mine and operations plan for BNCR-9401. While a general construction schedule is provided, the narrative does not indicate that successive pits will be mined and developed as ash disposal cells. There is no discussion (other than the construction schedule) of the third cell and what we assume will eventually be the fourth cell. The Pit Layout and Facilities Map (Plate 4.1-1) and the Extended Mine Plan Map (Plate 2.1) do not depict the third cell. Please include a general discussion that a portion of the permit area will be used to construct a main haulroad into Permit BNCR-1101. (MSK)

Plate 4.1-1 Pit Layout and Facilities Map

52. Please use a color/line weight that is easily distinguishable for the BNCR-9401 permit boundary on Plate 4.1-1. (MSK)
53. As noted in a similar deficiency in Section 4.9, the Section 4.9 Reclamation Schedule narrative mentions ash disposal sites being constructed and reclaimed in 2012/2013, 2019/2020 and 2026/2027 but the Pit Layout and Facilities Map does not depict any of these pits. The Pit Layout and Facilities Map and Section 4.9 should depict and discuss the complete history of the permit area, including the area that has been released from bond and is now outside of the permit boundary. Please revise to provide complete and accurate information throughout the permitted period. (GAW)

Plate 4.2-1 General Mine Plan Map

54. Plate 4.2-1 was updated to depict the new permit boundary for BNCR-9401, but no additional information is shown. If the Pit Layout and Facilities Map (Plate 4.1-1) is

intended to replace this map, please denote as necessary, or make all necessary changes to this map to reflect BNI Coal Ltd.'s current plans in BNCR-9401 (e.g., depict the haulroad into the BNCR-1101 area, the third cell mining and ash pit development, etc.). (MSK)

Section 4.4 Blasting Plan

55. The Blasting Plan schedule and notice does not include the area in Permit BNCR-9401, only areas in Permit BNCR-9702. If BNI intends to conduct blasting operations in Permit BNCR-9401, the necessary updates will need to be made. If blasting operations are not planned for this permit area, then the narrative should be revised accordingly. (MSK)

Section 4.6 Surface Water Management Plan

56. The hyperlink to Appendix 4.6-1 on page 4.6-2 opens to Plate 4.6-1. Please correct. (MSK)
57. Please correct the hyperlink to Appendix 4.6-1 provided in the narrative for MSHA Pond 5-6 on page 3 of Section 4.6 that takes the reader to Appendix 4.6-2, Design of Sedimentation Pond 5-7. (RLK)
58. As required by NDAC 69.05.2-05-02(1), please correct the Section 4.6 narrative contained in the Revision 12 submittal. It appears that portions of the Section 4.6 narrative do not reflect the most recent changes to this section of the permit approved with Revision 10 on April 28, 2011. This revision modified the design plans for Diversion 5-1 and added design plans for Diversion 5-2 for the expansion of ash cell 3. It appears that Section 4.6 narrative changes proposed with Revision 12 may have been erroneously added to the narrative approved with Revision 6 in 2008 instead of adding them to the Revision 10 permit narrative approved in 2011. (WTG/MSK)
59. As required by NDAC 69.05.2-05-02(1), please delete Plate 4.6-7 (Diversions 5-1 and 5-2) from the permit and replace it with the Plate 4.6-7, Diversion 5-1, dated 4-15-11 that modified Diversion 5-1 design plans approved with Revision 10 for expansion of ash cell 3. Please also update the permit Table of Contents and the permit's Section 4.0 Home Page to reflect the change. (WTG/MSK)
60. As required by NDAC 69.05.2-05-02(1), please add Plate 4.6-8 (Diversion 5-2, dated 3-4-11) to the permit that added Diversion 5-2 design plans approved with Revision 10 for expansion of ash cell 3. Please also update the permit Table of Contents and the permit's Section 4.0 Home Page to reflect the addition. (WTG/MSK)
61. As required by NDAC 69-05.2-09-09 and 69-05.2-9-12, please provide a map that depicts the pre-mine watersheds and one that depicts the post-mine watersheds. (MSK)

Plate 4.6-1 Surface Water Management Plan

62. Currently the southern portion of the area in the NE¹/₄ of Section 8 that is being added to the permit is not included on the map. As required in part by NDAC 69.05.2-08-02(1)(b), please depict all of the area being added to the permit on this map, label Section 8, T141N, R83W, and depict the eastern section line for Section 32, T142N, R83W on Plate 4.6-1. Please also label the township boundary between T141N and T142N and label R83W. Please depict the entire BNCR-9401 permit boundary and depict the existing and proposed addition to the permit area as one polygon, rather than depicting the existing and proposed addition separately. Please also edit the plate title or the Table of Contents to describe the plate consistently. (WTG)
63. Please add the watershed boundary for Pond 5-1 to Plate 4.6-1. NDAC 69-05.2-09-09(1) (RLK)

Section 4.9 Reclamation Schedule

64. As noted in a similar deficiency for Plate 4.1-1, the Section 4.9 Reclamation Schedule narrative mentions ash disposal sites being constructed and reclaimed in 2012/2013, 2019/2020 and 2026/2027 but the Pit Layout and Facilities Map, Plate 4.1-1, does not depict any of these pits. The Pit Layout and Facilities Map and Section 4.9 should depict and discuss the complete history of the permit area, including the area that has been released from bond and is now outside of the permit boundary. Please revise to provide complete and accurate information throughout the permitted period. (GAW)
65. Please update Section 4.9 to include the reclamation schedule for haulroads and any other associated disturbance areas. (MSK)

Plate 4.10-1 Post-Mining Topography

66. As noted in a related deficiency in Section 3.7 Prime Farmlands, and as required by NDAC 69-05.2-09-15-4, please depict the potential prime farmland respread areas on Plate 4.10-1. (WTG)

Section 4.11 SPGM Removal and Replacement

67. Please update the information provided in Table 4.11-1 to reflect the volume of topsoil and subsoil available by ownership in the areas to be disturbed in the area being added to the permit. NDAC 69-05.2-09-11(5) (RLK/MSK/WTG)

Section 4.12 Revegetation and Post-Mine Land Use

68. In Section 4.12-1, Revegetation Methods, please include a narrative on the revegetation methods for woodlands that will be disturbed and reclaimed in the area being added with this permit revision. NDAC 69-05.2-09-11(6) (RLK)
69. In Section 4.12-2, Determining Reclamation Success, please include a narrative on the methods for determining reclamation success for woodlands that will be disturbed and reclaimed in the area being added with this permit revision. NDAC 69-05.2-09-11(6) (RLK)
70. BNI has moved the general land use information that is currently in Section 4.12, Revegetation and Postmining Land Use, of the approved permit to Section 4.12-3. This information needs to be retained at the beginning of Section 4.12 since it forms the basis for the remainder of the reclamation and revegetation plans. Please retain the original format so that the information meets the requirements of NDAC 69-05.2-05-02(1). (GAW/ZAT)
71. It appears that BNI is proposing to change the currently approved postmine land use of industrial land back to agricultural land uses in the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 5 but there is no mention of these proposed land use changes in the Revision 12 application description or in the postmine narrative discussion of Section 5 in Section 4.12-3. To the contrary, the narrative under Section 5, paragraph two states the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$ will be reclaimed as industrial land use. However, this is not what is shown on the Post Mining Land Use Map, Plate 4.12-1, or on Table 4.12-1, Post Mine Land Use Acres. Please clarify post mine land use and correct the narrative, Table 4.12-1 and Plate 4.12-1 as necessary. Also we assume that BNI is not proposing a land use change to industrial for the area in the NE $\frac{1}{4}$ of Section 8 at this time. If such a proposal were being made at this time, the public notice would need to address this and the appropriate justification would need to be provided in the revision application. (GAW/ZAT/MSK)
72. As required by NDAC 69-05.2-05-02(1) and 69-05.2-09-13(1), please provide a discussion of the postmine land use for the portion of the area in Section 32 that is being added to the permit in Section 4.12-3. (ZAT)
73. Table 4.12-1 of Section 4.12-3 shows a net loss of 2.72 acres of woodlands. Please revise to show replacement of this important habitat and include a detailed revegetation plan for replacing the woodland acreage that has been or will be destroyed by mining activities as required by NDAC 69-05.2-09-11. Pre-mine woodlands No. 4, 5 and 6 and a pre-mine wetland have been destroyed by construction of the third cell for the ash pit. (GAW)
74. It appears that the wetland located in the southeast corner of Section 5 has been disturbed by Diversion D-5-1. Please include replacement plans for this wetland, if necessary. It is labeled as a seasonal wetland on the new pre-mine land use map, Plate 3.5-1, but was identified as a class II wetland on the original pre-mine land use map. Table 4.12-1 also

shows 0.03 acres of wetland in Section 8, but there were no pre-mine wetlands in Section 8 and there are no replacement design plans for this wetland nor is it shown on the Postmine Land Use Map, Plate 4.12-1. Please update this section as necessary. (GAW)

75. Please retain the native grassland reference area Tables in Appendix 4.12-2, Tables SO1 South Silty Reference area and B13 North Silty Reference Area, and the NRCS Silty Range Table. These tables should be updated with more recent information and there should be a discussion about which ecological site type these reference areas represent since land is being added using ecological sites rather than range sites. (GAW)
76. Please revise Appendix 4.12-2 to demonstrate that the existing native grassland reference areas properly represent the native grassland being added to the permit as required by NDAC 69-05.2-08-08 (2). (GAW)
77. Appendix 4.12-2 contains unsigned undated landowner preference statements with no cover letter or explanation what these forms represent. It is not clear if these are forms that BNI Coal, Ltd. plans to send to the surface owners or if the forms have been mailed. As required by NDAC 69-05.2-09-13(3), please include copies of the landowner preference statements received by BNI Coal, Ltd. from the surface owners of the land being added to the permit with Revision 12. Appendix 4.12-1 contains an old surface owner preference statement. It is not clear why the preference statements would not be organized in one location in the permit. Please revise to present this information clearly and concisely as required by NDAC 69-05.2-05-02(1). (GAW/WTG/ZAT)

Section 4.13 Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan

78. Please update Section 4.13 to specifically state how BNI Coal, Ltd. will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, and the best technology techniques that will be used as required by NDAC 69-05.2-09-17(1). In addition, please discuss how enhancement of these resources will be achieved as required by regulation. Please discuss if disturbance will be limited to high value habitats and include a map showing these areas as required by NDAC 69-05.2-09-02 (11). The plan must include enhancement measures to develop aquatic and terrestrial habitat as required by NDAC 69-05.2-09-17(1)(d). (GAW)
79. Please revise the Fish & Wildlife Resources Protection and Enhancement Plan to include current and relevant information while retaining historic information. For example, the discussion incorrectly mentions that the western burrowing owl is a candidate species for the Threatened and Endangered species list and that Golden and Bald Eagles are threatened and endangered species. Another sentence indicates that critical habitat may suddenly be found on the permit area. The plan incorrectly states that the reclaimed lands will be left idle to benefit wildlife and that a buffer zone will be created that includes some wetlands but these wetlands are not depicted on the postmine land use map. Another sentence states that there is no high value wildlife habitat in the area where structures, such as haulroads or

sediment ponds, will be located but a haulroad and Sediment Pond 5-7 is now planned in a hardwood draw. Please revise to meet the requirements of NDAC 69-05.2-09-17(1)(d) and NDAC 69-05.2-13-08. NDAC 69-05.2-13-08 (6) (a) specifically states that the permittee shall, to the extent possible, using the best technology currently available, locate haulroads to avoid or minimize impacts to important fish and wildlife habitats. Please explain and justify the proposed disturbance of the hardwood draw located in the NW¹/₄ of the NE¹/₄ of Section 5 and provide a discussion of other alternatives considered. (GAW)

Preliminary Technical Review Items

The following preliminary technical review items were noted during our completeness review and are provided below. They are provided for your information and they can be addressed in your completeness response if you so desire or can be addressed during the technical review.

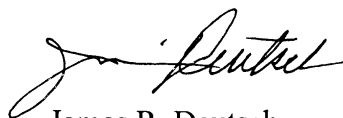
1. Please label Section 32, T142N, R83W on the following maps: Plates 3.1-1, 3.1-2, 3.2-1, 3.2-2, 3.2-3, 3.3-1, 3.4-1, 4.4-1A, 3.5-1, 3.6-1, 3.7-1, 3.8-1, 3.10-1, 4.2-1, 4.10-1, 4.10-2, 4.12-1, and 4.14-1. (WTG)
2. Please consider rephrasing the last statement in the Business Entity Information narrative of Section 1.7 because those persons that own and/or control BNI Coal, Ltd. and Allete obviously do have an interest in a surface coal mine, namely the Center Mine. (BEB)
3. As required by NDAC 69-05.2-05-02(3), please add Prairie Soil Consulting, LLC to Section 1.15, as well as others not currently listed who were consulted in characterizing land proposed for addition to BNCR-9401 with Revision 12. (WTG)
4. The surface and coal ownerships for Minnkota Power Cooperative are used interchangeably with Minnkota Power in Table 1.9-1 (see Section 32). As required by NDAC 69.05.2-05-02(1), please use Minnkota Power Cooperative consistently for these ownerships throughout this table because there are no space limitations. (WTG)
5. The surface and coal ownerships for Minnkota Power Cooperative are used interchangeably with Minnkota Power on Plate 1.9-1 (see Section 5). As required by NDAC 69.05.2-05-02(1), please use one of the names consistently for these ownerships. Minnkota Power is acceptable because of space limitations. (WTG)
6. As required in part by NDAC 69.05.2-08-02(1)(b), please label Section 6 and show the complete label for Section 31 on Plate 1.9-1. (WTG)
7. Please add the BNCR-1101 permit application to Table 1.11-1. Also it appears that the word "ever" should be changed to "never" to meet the requirement of NDAC 69-05.2-06-02(1) in the third sentence of Section 1.11. (WTG)

8. In the first paragraph of Section 3.4.2, Permit Area Surface Water Resources, please provide the complete legal location (section number, township and range) for the seep noted in the last sentence. (RLK)
9. On page 3.4-4, the narrative on discharge limitations indicates a copy of the NDPDES permit is included in Section 1.12, but a copy of the permit was not found in the section only a listing with the permit number. Please revise the narrative to indicate that the NDPDES permit number and effective dates are included in Section 1.12 or identify the permit in the narrative. (RLK)
10. Please provide the appropriate narrative and depict all Class I-VII wetlands in the area being added to the permit with Revision 12 on a map or aerial photograph (scale 1:4800). Page one, paragraph one, sentence two of Section 3.5 reads: "Several small wetlands are located in the west ½ of Section 5, and a small group of wetlands in the northeast ¼ of Section 8" but these features are not depicted on any map nor are they addressed in the narrative. NDAC 69-05.2-08-08(1)(a)(5)(b) (ZAT)
11. Please note in the narrative if the CLASS III wetland will remain undisturbed in the current permit revision. If the CLASS III wetland will be disturbed, please add narrative about the replacement plan in Section 4.12. (ZAT)
12. As required by NDAC 69.05.2-05-02(1), please review and revise the third paragraph on page 1 of Section 3.8 as necessary to accurately describe the locations and acreage proposed for addition with Revision 12: it appears that 139.09 acres are added in the NE¼ of Section 8; it appears that 27.17 acres are added in the N½N½ of Section 5 (primarily the NW¼NE¼); and it appears that 13.87 acres added in the S½S½ of Section 32 (primarily the S½SE¼). Please also describe the location of the soil survey report dated February 2011 as the NE¼ of Section 8. (WTG)
13. As required in part by NDAC 69.05.2-08-02(1)(b), please depict the northern and eastern section lines for Section 32, T142N, R83W on Plate 2-1. (WTG)
14. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Section 8, T141N, R83W that may require moving the map title box. Please also depict the boundary for Section 32, T142N, R83W, and that of adjoining Section 31 as well while updating Plate 4.1-1. (WTG)
15. Please update the narrative for Section 4.2 to convey an accurate description of the area for BNCR-9401. (MSK)
16. Per NDAC 69-05.2-16-08, please indicate in the Transportation Plan narrative that BNI Coal, Ltd. will implement the best technology currently available to reduce the velocity of runoff exiting the culverts or will stabilize the outfalls accordingly. (MSK)

17. As required in part by NDAC 69.05.2-08-02(1)(b), please depict the eastern section line for Section 32, T142N, R83W, and label R83W on Plate 4.5-1. Please also depict the existing and proposed addition to the permit area as one polygon, rather than depicting the existing and proposed addition separately. (WTG)
18. The map legend for Plate 4.6-1 provides a green dashed line symbol for "Drainage Ways"; however, this symbol appears to be used for watershed boundaries on the map. Please review and update as appropriate. (RLK/MSK)
19. On page 1 of Section 4.12-2, Determining Reclamation Success, the notation "Error! Not a valid link" appears to be in place of a topic heading. (RLK)
20. The narrative of Section 4.12-3, page 4.12-1 under Section 5, sentence seven states: "The facility is not inconsistent with applicable land use..." Please change to: "The facility is consistent with applicable land use policies or plans as developed and approved by the Oliver County Zoning Commission." (ZAT)
21. Please add "Section 5" to the description of "S $\frac{1}{2}$ NW $\frac{1}{4}$ " on page 4.12-1, paragraph six of Section 4.12-4, Potential for Reclamation Success. Please also add narrative for Section 32 which is zoned industrial. Section 8 has no documentation of industrial zoning, so please add narrative on zoning, pre and post mine land use and reclamation for the proposed added acreage. (ZAT)
22. Please include Diversion 5-2 on Plate 4.14-1 and include the diversion in the calculations. (MSK)
23. Plate 4.14-1 depicts a pond identified as Pond 5-8 with a subsoil embankment; however, this is the only place that this pond is mentioned in the permit. Please make the appropriate changes. (MSK)

As of today, June 6, 2012, 87 days of the Commission's 120 day review period remain. The 120-day review period is suspended until all of the items listed above have been satisfactorily addressed. If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division