



Public Service Commission

State of North Dakota

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August 14, 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 July 20, 2012 responses to our June 6, 2012 completeness review letter for BNI's application for Revision No. 12 to Permit No. BNCR-9401 for the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete. Please note that most items are prefaced as follow-up to a numbered item in the first completeness review. However, a few new items were noted while reviewing the changes to Revision No. 12.

LEGAL AND FINANCIAL INFORMATION

1. BNI is proposing to add 180.13 acres to the existing permit area with Revision No. 12, but for some reason is permitting only the south half of the haul road leading from BNI's shop office complex to the Minnkota Power Plant. It is not clear why the permit boundary would be placed down the center of this haulroad. For future compliance with NDAC 69-05.2-13-04 it would make sense to either include the entire haulroad at this location or none of it. Please review and revise as necessary so that the permit boundary is not down the center of the haulroad. (GAW)
2. Follow-up to item No. 2: We have made the changes to Adobe Reader that you have suggested and all but the following links appear to be functional: On Page 1-1, the links to Appendix 1.1-1, Appendix 1.5-1, and Plate 4.14-1 do not work. On Page 1-9, the link to Plate 1.8-1 does not work either. Please attempt to repair these links. (BEB/ZAT)

Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)

3. Follow-up to item No. 8: As required by NDAC 69-05.2-10-01(1)(b)(1), please revise the map that is to be included with the public advertisement to show all public roads in the area and the name or street number of the road. (GAW)

Section 1.9 Surface and Coal Ownership

4. Follow-up to item No. 12: Please remove the reference to “*less 74.4 acres*” for Minnkota Power Cooperative surface and coal ownership in the S½ of Section 32, T142N, R83W for surface and coal ownership within the permit boundary on page 1-13, and also remove the listing for 74.4 acres of BNI Coal, Ltd. surface ownership and Minnkota Power Cooperative coal ownership that immediately follows for the S½ of Section 32, T142N, R83W because Minnkota Power Cooperative is the sole surface and coal owner of the S½ of Section 32 parcel proposed for addition to BNCR-9401. (WTG/ZAT)

Appendix 1-2 Certified Copies of Leases and Assignment Documents

5. Follow-up to item No. 18: As required by NDAC 69-05.2-06-03(1), and as indicated in the July 20, 2012 response letter, please provide a certified copy of the surface ownership lease with Minnkota Power Cooperative for the SE¼ of Section 32, T142N, R83W. (WTG/ZAT)

3. ENVIRONMENTAL RESOURCES

Section 3.5 Pre-Mine Land Use

6. Follow-up to item No. 27: The second paragraph on Page 3.5-1 states that some of the previously disturbed land was classified as reclaimed grassland and goes on to state that these areas were seeded with a mix of native species. This acreage is obviously included in Table 3.5-1a, Premine Landuse Additional Acres Rev 12, but reclaimed grassland is not listed as a premine land use. It appears that most of this area is being classified as tame pastureland. Please revise this paragraph to clarify how this previously disturbed and seeded acreage is being classified. This is considered a completeness item because the land use dictates what is required for baseline vegetation information. (GAW)
7. Follow-up items No. 29 and No. 30: The Revision 12 addition area is being added to Section 3.5 as if it was a stand-alone area and all of the original narrative information in Section 3.5 is being removed. The original narrative information must be retained while adding new narrative information for the addition area. Please also consolidate the information in the tables rather than adding new tables for the addition area. For example, do not include a separate Pre-mining Land Use Table, Table 3.5-1A, Cropland Mapping Unit and Landowner Table, Table 3.5-3A, and Woodland Table, Table 3.5-6a, for the acreage being added and do not remove information from the narratives, maps or

tables for areas that have been bond released. Please revise to consolidate the information to the extent possible while retaining the original information. (GAW/ZAT)

8. Follow-up to item No. 31: Please revise Plate 3.5-2 as follows to fulfill the requirements of NDAC 69-05.2-08-08(3)(a): (ZAT/GAW)
 - a. Remove the cross hatching within the approved permit boundary;
 - b. Clearly depict the approved permit boundary and proposed Revision 12 acres;
 - c. Outline and label the land uses in the approved permit in the same manner as Revision 12 area;
 - d. Include a statement under the Notes section at the bottom of the map that this plate depicts the approved permit boundary with Revision 9 in 2010 after Bond Release 3 and the proposed Revision 12 area;
 - e. Update the Notes section to include Section 8 proposed additional acres included with Revision 12; and,
 - f. Optional: Bond Release Nos. 1, 2, and 3 may be included at your discretion. If you choose to include them, each should be identified clearly and labeled with the year of bond release and acres released. This suggestion is made because Plate 3.5-1 (Historical) depicts the original Permit Boundary with no bond releases. Plate 3.5-1a is the 2004 permit boundary and includes acreage later released with Bond Releases 2 and 3.

9. Please review the acreage for Section 5 in the approved permit area. Plates 3.5-1 and 3.5-1A depict a parcel of industrial land that is not accounted for in Table 3.5-1b. Please make the appropriate acreage adjustments. (ZAT)

Section 3.6 Pre-Mine Vegetation

10. Follow-up to item No. 32: The new Native Rangeland narrative on page 3.5.5 discusses how fragmented the Revision 12 native grassland is and mentions that this native grassland is left idle. BNI then suggests that the ecology of areas outside of the proposed permit area that are being managed with livestock grazing are representing these idle areas in the Revision 12 addition area. The Reclamation Division finds it unlikely that areas left idle can be properly represented by areas that are being grazed. Please revise Section 3.6 and include information that properly represents the native grassland in the proposed permit area. There is no discussion in Section 3.6 for two of the four dominant ecological sites in the revision area. Please include a detailed discussion about the nature and variability of the vegetation on all of the ecological sites included in this area. It is not necessary to include sampling data from this native grassland if the vegetation of ecological sites is properly characterized and there is an assessment of ecological condition of the mapping units. (GAW)

11. Follow-up to item No. 34: Please identify the woodland mapping units on the woodland map, Plate 3.6-2. BNI responded to this item stating that this is shown on Plate 3.6-3 but this plate does not exist. (GAW)

12. Follow-up to item No. 38: Please include a narrative which describes the vegetation of each tame pastureland area, including dominant species and their relative proportions as required by NDAC 69-05.2-08-08(1)(d). (GAW)

Section 3.10 Fish and Wildlife Resources

13. Follow-up to items No. 44 and No. 45: Please include a summary of the results of the 2010 Wildlife Inventory that is specific to the proposed Revision 12 addition area and buffer zone. Please also indicate if there are any sharp-tailed grouse leks, raptor nests, USFWS designated critical habitat, wetland habitat suitable for whooping crane, or any habitat suitable for species considered Candidates to the Endangered Species Act. (GAW)
14. Follow-up to item No. 49: Please revise Plate 3.10-1 to depict the pre-mine wildlife habitats of all of the area within one-half mile of the existing and proposed new permit boundary as required by NDAC 69-05.2-08-15. The area that has been bond released should show the habitats as they existed at the time they were permitted. (GAW)

4. OPERATIONS

15. Follow-up to item No. 50: We have made the changes to Adobe Reader that you have suggested and the links to Appendix 4.1-1 and Plate 4.1-1 that are provided in Section 4.1 still do not work. The link to Plate 4.1-1 in Section 4.2 now works. Please repair the links in Section 4.1. (BEB)

Section 4.12 Revegetation and Post-Mine Land Use

16. Follow-up to item No. 74: Table 4.12-1 - Postmine Landuse Acres, indicates that 0.03 acres of wetlands in Section 5 are planned in the post-mine setting while the pre-mine wetland acreage listed in Tables 3.5-1 and 3.5-7 indicate 0.3 acres of pre-mine wetlands in Section 5. Please correct or provide a narrative in the permit on the replacement for the pre-mine wetland acres in Section 5. (RLK)
17. Follow-up to item No. 77: Please include a copy of the letters mailed to the surface owners of the property being added with Revision 12 to show compliance with NDAC 69-05.2-09-13 which states that the applicant shall submit a copy of the surface owner's preference statement. NDAC 69-05.2-09-13 goes on to state that the applicant shall submit comments from state or local authorities who would have to initiate, implement, approve or authorize the land use following reclamation. Please provide information from Oliver County showing that the land in Section 32 has been zoned industrial land. (GAW)
18. Appendix 4.12-3, titled Pre and Post Mine Land Use Discussions (Revision 12), contains very little information about the pre- and postmine land uses of the Revision 12 addition

Jay M. Volk, Ph. D

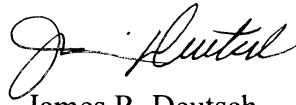
August 14, 2012

Page 5 of 5

area. Instead, this appendix contains more information about the premine vegetation established on the various land uses than that which is provided in Section 3.6, Pre-mining Vegetation. Please re-organize the permit so that information pertaining to the various sections of the permit is located where the titles would suggest that information exists. (GAW)

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Deutsch". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

James R. Deutsch
Director
Reclamation Division