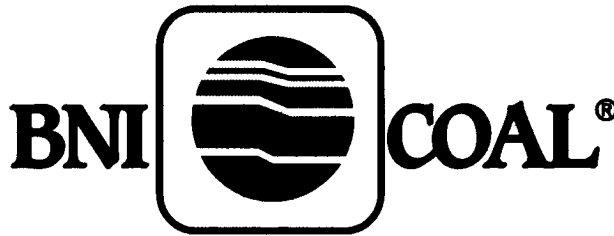
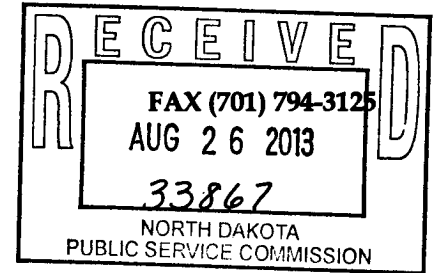


PHONE (701) 794-8734



AN ALLETE COMPANY

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



August 26, 2013

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

RE: Bond Release 9 to Permit 37

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated April 24, 2013. In this letter you listed technical deficiencies that must be addressed before the bond release application for Permit 37 can be approved. Below is a listing of the deficiencies followed by our response:

Application for Bond Release 9 to Permit 37

1. Please update the Bond Release Application (SFN 19813) to specifically state that all phases (I-IV) of bond release being requested. (GAW)

The first page of the Application has been updated to state that all phases of bond release are being requested.

Attachment II – Metes and Bounds Description

2. The heading at the top of Attachment II, Metes and Bounds Description, indicates the permit as being BNCR-37 and this should be corrected to accurately state Permit 37. (BEB)

The heading for the Metes and Bounds Description has been revised as requested.

3. The Metes and Bounds description page has been left unsigned. A signature block below the certification statement is provided for Todd Marschall, but has not been executed. (BEB)

A signed Metes and Bounds description is included with this submittal.

Attachment III - Newspaper Advertisement (* Items duplicated in letter for BR4 to BNCR-9401)

4. The heading of this attachment should state “Advertisement”, and not “Proposed Advertisement”. Please revise the heading. (BEB)*

The word Proposed has been deleted.

5. Please revise the first sentence in the advertisement. The sentence states that “*BNI Coal...has submitted applications to release the following two tracts of land to the NDPSC...*” Basically, the sentence structure could imply that the PSC will be taking over ownership of the land. A more concise statement would be “*BNI Coal...has submitted applications to the NDPSC to release bond for the following two tracts of land...*” Please consider changing the composition of the sentence for clarity. (BEB, ZAT)*

The first sentence has been updated as requested for clarity.

6. Please revise the newspaper advertisement to mention all of the phases (I-IV) of bond release being requested with Bond Release No. 9 to Permit 37 and Bond Release No. 4 to Permit BNCR-9401. (GAW)*

The newspaper advertisement has been updated to state that all phases of bond release are being requested.

7. Please revise the newspaper advertisement to state the amount of bond remaining for Permit 37 as required by NDCC 38.14.1-17(1)(a)(3). We suggest wording similar to: *The current bond amount for Permit 37 is \$3,560. BNI is requesting a bond reduction in the amount of \$3,560 for final bond release of all remaining acreage in Permit 37.* (GAW/ZAT)*

The statement above has been added to the advertisement.

8. Please revise the first sentence of the second paragraph which incorrectly states that Policy Memorandum No. 15 establishes bond release requirements for agricultural land uses. The policy memo establishes bond release requirements for waste disposal operations on mined lands only. Also, it appears the specific intent of the paragraph is to identify the bond release requirements pertaining to the tract in BNCR-9401. If that is the case, the paragraph should be reworded to specify the policy applies to the tract in BNCR-9401 or move the reference to the memorandum to the paragraph discussing the BNCR-9401 bond release tract. (BEB/GAW/RLK/ZAT)*

The second paragraph has been reworded as suggested.

9. The paragraph describing the bond release tract in Permit BNCR-9401 states that “In 2007 the remaining topsoil and all of the subsoil was removed to be used as a topsoil and subsoil borrow area for Ash Cell No 2”. Please revise this sentence to clarify how the topsoil and subsoil was used as a borrow area for Ash Cell No 2. It may be more appropriate to indicate

that the topsoil and subsoil was stockpiled for use in final closure of the disposal site.
(BEB/RLK/GAW) *

The paragraph referred to above has been updated as suggested.

10. The paragraph describing the bond release tract in Permit BNCR-9401 incorrectly states that the intended use of the open pit will be for disposal of inert wastes. In North Dakota, FGD sludge may not be disposed of in an open mine pit and is not treated as an inert waste. Please remove the inference that the disposal is occurring in an open mine pit and the word **inert** from the sentence. (BEB/RLK)*

The paragraph referred to above has been updated as suggested.

11. In the paragraph describing the tract in Permit 37, the third and fourth sentences both refer to the construction of pond 25-5. Please consider revising to retain only one of the statements pertaining to the construction of pond 25-5. (RLK)*

One of the sentences referring to the construction of pond 25-5 has been deleted.

12. Please revise the map included with the newspaper advertisement to show the permit boundary of Permit BNCR-9401 as currently approved. The acreage being added by Revision 12 is not yet approved. (GAW)*

The boundary has been revised, and now only depicts the approved permit boundary for BNCR 9401

13. Please revise the map included with the newspaper advertisement to not show the section line trails on the west side of Section 25 and south side of Section 31 as county roads. The haul road corridor in Section 32 should also not be shown as a county road and a road is shown in Section 9 where one does not exist. Square Butte Creek and Hagel Creek should also be shown and labeled on the map as required by NDAC 69-05.2-10-1. (GAW)*

The row/ road corridor corrections as listed have been corrected. Square Butte Creek and Hagel Creek have been depicted and labeled.

14. Please remove the unidentified black dashed line from the newspaper advertisement map. This line is obviously the Permit BNCR-8106 boundary but it is not labeled and has no bearing on the proposed bond release applications. (GAW)*

All permit boundaries have been removed from the permit with the exception of BNCR 9401 and the Permit 37 tract. Originally all permits being shown to give a reference to the location of other BNI Permits.

15. Please review the Publication Map and revise it as necessary so that it is legible at normal publication size. It may be necessary to remove the BNCR-8106 permit boundary and duplicate labels and to increase the font size, particularly on the bond release labels. Please consider depicting the bond release areas as completely shaded areas as they would be more visible than the hatching, especially on the Bond Release #9 tract in Permit 37. (ZAT)*

The size of the map has been increased (zoomed in closer to the proposed bond released areas). Text has been reviewed and revised as necessary. We believe this map will be visible at publication size. The hatching on the tracts has been retained on the bond released tracts because when the publication is published, it will be in black and white, and we believe this will be more visible than shading.

Attachment IV - Notification Letters

16. Please revise the mailing address for the State Historical Society of ND to include the physical address of 612 E. Boulevard Ave. (RLK)

This address has been corrected as requested.

17. Please update the mailing address for the ND Department of Health, Environmental Health Section to the agency's current address of 918 E. Divide Ave. (RLK)

This address has been corrected as requested

18. Please revise the Mayor's address for the City of Center. It is our understanding that mail directed to the mayor should be sent to the Center City Office, PO Box 76 or 312 N Lincoln Ave. (RLK)

This has been corrected.

19. The salutation for the notification letter to Joe Schmidt is addressed to Dear Sirs. We presume the intent was to write Dear Sir. Please make the correction. (BEB)

This has been corrected.

20. As required by NDCC 38-14.1-17(1)(b), the bond release application must include copies of the letters sent to surface owners, state agencies, etc. notifying them of the permittee's intention to seek bond release. Our interpretation of this provision is that a copy of all letters to be sent to each individual and agency listed in Attachment IV be provided in the application. Please provide a copy of each letter that is sent. These can be added to the bond release application at a later date once they have been mailed. Also please consider relabeling the bookmark for *Letter to Landowners* to something that would indicate notification letters or add bookmarks for the other notification letter types. (BEB/RLK)

Letters will be sent to each individual or agency and we will include them in the bond release application when they have been sent. The bookmark in this section has been revised as requested. It is now called Attachment IV- Landowner and Government Agents Address List and Notification Letters.

Attachment V – Soils Map and Air Photo

21. Please include the public section number and section and quarter lines on Attachment V to allow one to determine the location of this tract within this section. (GAW)

The section numbers and quarter section lines have been included on Attachment V as requested.

22. Please include the Attachment Number and Title in the title block of Attachment V to reflect how the attachment is identified. (GAW)

The title block has been revised to include the attachment number.

23. The 1975 Law line is incomplete on Attachment V, Soils Map and Air Photo. Please extend the line or clarify in some way that the 1.78 acre tract is within the 1975 law line. (ZAT)

The 1975 law line has been extended to clarify that this tract is within it.

Attachment VI – Tract History

24. On page 1 of Attachment VI, the third line under the heading “Disturbance” states that there are 0.64 acres of disturbed and 1.14 acres of undisturbed land in this tract. However, the last paragraph on Page 1 states that the southern portion of this tract was respread in 1984 and the 2011 annual map shows that nearly all of the entire tract was disturbed by mining activities. The narrative provided on page 2 indicates that all areas were disturbed prior to 1977. Please review and revise as necessary to provide clarity and consistency. This should include identifying the disturbance boundary on a map. (GAW/RLK/ZAT)

This has been corrected. The entire tract has been disturbed prior to 1977. They were seeded/reclaimed at different times. The heading under Disturbance has been revised to state that the entire 1.78 acres were disturbed.

25. Please revise the “Previous Bond Release” section on page 1 of Attachment VI to include information (date, stage, amount released, etc.) for any previous stages of bond release on this tract. (GAW/RLK)

This section has been corrected to list “None”, as there have been no previous bond releases of any stage on this tract.

26. Please include the seed mixtures, species and seeding rates, planted on this tract in 1984 and 2003. A sentence at the end of page 1 of this Attachment states that this information is listed below but only one seed mix is provided in the table at the top of page 2. Please revise to provide the required information. The seed mixture used on the adjacent area in 1984 is listed in Bond Release No. 6 to Permit 37. (GAW)

The seeding mixtures and rates have been included in this section as requested. The seeding date for the cropland area has been corrected to 1981 instead of 1984. Titles have been added to the two seeding tables to make it clear which seeding mix was used on each portion of the tract.

27. Please revise the “Previous Management” narrative at the top of page 2 of Attachment VII to clarify what is meant by “Previous Management” and state how the tract has been managed. (GAW)

The title of this section has been revised to Management During Liability

28. Please include a discussion on the amount of SPGM that was salvaged and how much topsoil and subsoil was respread on the tract. Include a map that shows the topsoil and subsoil respread depths if appropriate. The respread depths on the hayland should be compared to the cropland to ensure the hayland properly represents all of the reclaimed land included in the bond release application. (GAW)

Being that this tract was initially disturbed in 1976, to the best of our knowledge, there was no documentation of the amount of material salvaged or re-spread. We also do not believe that there was a grade approval for this tract. We have included a map with post-mine topography of the area.

29. In Attachment VI, the Tract History and Previous Management sections are incomplete. A request for final bond release must be accompanied by appropriate soil tests, a complete history of initial and subsequent seeding and fertilization (including mixtures and rates), and any other management practices employed. Please provide the required information in a clear, concise, and chronological manner. (ZAT)
- Provide complete information on the reclamation activities for both the northern (hayland) and southern (cropland) portions of the tract.
 - Please clarify if reclamation on the northern portion of the tract was completed before construction of Pond 25-5 or if pond construction resulted in a redistribution that would be subject to current reclamation law. The information on reclamation activities conducted after the pond was removed must also be provided.
 - Remove or clarify the statement, "Being the size of the tract is so small and its location, it was determined that it would be more feasible to seed it to hayland." As it is currently written, it is out of context with the rest of the discussion.
 - Revise the narrative on seeded species. The current narrative makes it appear BNI intentionally planted a seed mix that was not in the approved reclamation plan.
 - Note that changes to the Tract History narrative will also require appropriate changes to the tract summary in the Public Notice. NDCC 38-14.1-17(1)(a)(4)

The tract history has been revised to more clearly describe activities on both the northern and southern portions of this tract. In the cropland area (southern portion) the spoil was regarded, SPGM was re-spread, and it was seeded in 1981. The northern part of the tract was not re-spread at that time. Pond 25-5 was built on spoil, and there was no re-disturbance of the area. The statement (c) has been removed. The paragraph on seeded species has been revised. The species that were part of Permit 37 had not been revised since 1976. With advances in practices and changes in management philosophies some of these species were no longer considered acceptable, and were considered to be invasive. BNI makes an effort to use the best technology and practices available, and therefore did not use these species in this area when it was seeded in 2003. The mix that was used was used was the approved hayland mix for our active mining area. Appropriate changes were made in the public notice.

30. Please discuss obtaining grade approval on the tract and include a map that shows the as-built post-mining topography (scale 1:400, contour intervals of five feet) which is required in a request for final bond release. (GAW/ZAT)

A topography map has been included of the area post-mine. To the best of our knowledge, there was no grade approval for this area.

31. In the Evaluation of Reclamation Success narrative, please remove the statement in the first paragraph referring to the correction factor for tame pastureland (“...and for the tame pastureland less than 25% alfalfa or “other hay” category was used.”) since there are no tame pastureland use acres within the bond release tract. (RLK/ZAT)

This statement was removed as requested.

32. The Rhoades complex was given a B2 hayland suitability group in Table 1, Unadjusted Technical Standard, but the Revegetation Success Standards document indicates that Rhoades should be considered Hayland Suitability Group G2 with a median yield of 0.55 tons of forage per acre (t/ac) rather than 0.65 t/ac. Please review and revise or explain why this soil is being classified as B2 rather than G2. (GAW)

This has been corrected. Table 1 has been revised using a median yield of 0.55, which revised the unadjusted standard to 1.25 tons/ac.

33. The reclaimed yields listed in the table at the bottom of page 3 of Attachment VI are different than the values calculated using the sampling data included in Appendix A of Attachment VI. It appears that the values listed are all off by 9 to 10 percent. In Appendix A, the calculation provided under “Production Conversion” is incomplete for each of the sampled years. Please review and revise the “Production Conversion” for each year to show the complete conversion from sample weight to yield in tons/acre and show the result. Please review and revise the appendix and table as appropriate (GAW/RLK/ZAT)

Appendix A has been revised to include an average production value total (lbs/acre) and a conversion to (tons/acre), which now match the revised values found in the table on top of pg. 4 in Attachment VI.

34. Please add the measurement units (tons/acre) to the appropriate column headings of the table near the bottom of page 3. Also please add a table number and title. (ZAT/RLK)

The measurement units have been added to this table as requested.

35. Yield data is provided for 2012 but this information is not included in the reclaimed yield table at the bottom of page 3 of Attachment VI. Please include the 2012 yield information in the table. (GAW)

The data for 2012 has been added to the yields table.

36. Table 4, Hayland Cover, incorrectly lists the 2011 value as 99.9 rather than 97.4. Please correct as necessary. (GAW)

This value has been corrected as requested.

37. The first paragraph of the hydrology narrative states “Through NRCS documentations all previously listed practices limits the erosion potential...” There are no NRCS documents or

documentation provided in the bond release application. It appears that the percent ground cover as provided in Table 4, documents that the ground cover would be effective to limit the potential for erosion and excessive sediment contribution to stream flow outside the permit area. Please revise as appropriate. (RLK)

The statement regarding NRCS documentation has been removed, and the statement about the results of the cover samples in Table 4 has been revised.

38. Under the Hydrology section of this attachment, the fourth paragraph describes Permit BNCR-37 and should be renamed to Permit 37. (BEB)

This has been corrected as noted above.

39. The last sentence in the Hydrology section of Attachment VI states that “...*there have been no effects of mining operations on the essential hydrologic functions of the identified AVF within portions of Square Butte Creek*” and this sentence needs to be revised. The Reclamation Division’s July 14, 2011 Alluvial Valley Floor determination for evaluation areas associated with Permit Application BNCR-1101 and areas adjacent to Permit BNCR-9401 overturned the PSC’s previous 1979 finding that portions of Square Butte Creek were a probable/potential AVF. Please restate the sentence to eliminate the reference to the probable Square Butte Creek AVF. (BEB)

This statement has been revised, and reference to Square Butte Creek AVF has been removed.

Attachment VII – Seeding Map

40. Please revise Attachment VII, Seeding Dates, to clarify when the 10-year revegetation period was initiated on the tract and identify the area not disturbed by mining activities. (GAW)

The Seeding Map has been revised to clearly state that the years that were listed for each area were when the 10year re-vegetation periods were initiated. The date for the southern portion was revised to 1981. As per the 1981 annual map, in this area the spoil was regarded, SPGM was re-spread, and it was seeded in 1981.

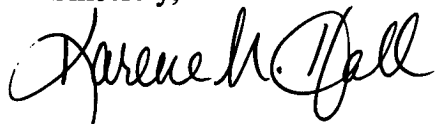
41. Please identify the location of each sample taken for each year being used to demonstrate revegetation success. A portion of the sample transect shown on Attachment VII is located on the cropland which was not sampled. Specific points should be identified for yield data rather than a line transect. Also, correct the spelling of Joseph Schmidt’s name on this map. (GAW/ZAT)

The location of each sample along the transect has been shown. The location of the transect has been corrected. The spelling error has been corrected.

When providing updated information for this bond release application, please provide a separate DVD with the information for Bond Release No. 9 to Permit 37 rather than on the same DVD containing information for other bond release applications. The information for each application is filed separately with each permit and the reviews for applications may not proceed on the same time schedule.

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

Sincerely,

A handwritten signature in black ink, reading "Karene M. Hall". The signature is written in a cursive style with a large, looped initial "K".

Karene M. Hall
Permit Coordinator