



Public Service Commission

State of North Dakota

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November 20, 2013

Mr. Jay Volk
Environmental Manager
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Mr. Volk:

The Reclamation Division has conducted a technical review of BNI Coal, Ltd's application for Bond Release 9 to Permit 37 including BNI's August 26, 2013 responses to deficiencies identified during our initial review. The following items must be adequately addressed before the Reclamation Division can recommend Commission action on the bond release application.

Attachment III – Newspaper Advertisement

1. Please include a copy of the final approved version of the public notice and final version of the publication map. (RLK/ZAB)

Attachment IV – Notification Letters

2. Follow-up to Item No. 20: Please include copies of the notification letters for the proposed bond release which were sent to the surface owners, adjoining property owners, state agencies and local government bodies as noted in your August 26, 2013 response. (RLK/ZAB)

Attachment VI – Tract History

3. Although the NDCC 38-14.1-17(2) requirement to notify adjoining property owners of the permittee's intention to seek release of performance bond appears to be satisfied, the bond release application should include a surface ownership map to show the surface ownership of the bond release tract and adjoining property. We suggest that the surface ownership map be inserted as Figure 1 of Attachment VI and referenced in the first paragraph rather than adding

it as a separate attachment that would require rearranging the current attachment order.
(WTG)

4. Follow-up to original items No. 28 and 30: Please include a discussion regarding the amount of SPGM that was respread on the bond release tract and include a map that depicts the topsoil and subsoil respread depths on the tract. A discussion and map containing this information is required in bond release applications subject to 1975 law reclamation requirements. Please also include a discussion regarding obtaining grade approval on this tract. The public notice clearly states that coal was mined from this area and that the sediment pond was placed in graded spoil. Therefore, this area was subject to the grade approval and pond removal request requirements. In addition, please revise the new sentence at the end of the first paragraph under Tract History that incorrectly states that grade approval was not necessary since mining occurred on lands subject to the 1975 law regulations. PSC grade approval has been required since the late 1970's and this tract was reclaimed in 1981 and 2003. (GAW)
5. Revise the History of Tract narrative on page 1 of Attachment VI to be clear, concise and in chronological order. As currently written, there are numerous instances in the first three paragraphs where the discussion changes from the entire tract, to the south tract, to the north tract, to the pond, to the south tract, etc. Please use the tract history from the approved Public Notice as a guide and add required information in chronological order as appropriate. (ZAB)
6. The narrative discussion in the History of Tract states that the southern portion of this tract was graded, respread with SPGM and seeded in 1981, but the 2012 BNI Annual Mine map indicates that the 10-year revegetation period was initiated in 1984. Please review and update the reclamation activities on the tract so that the information is accurate and clarify when the 10-year revegetation period was initiated on all portions of this tract. (GAW/ZAB)
7. As previously requested, revise or remove the following statement from the tract history in Attachment VI, *"Being the size of the tract is so small and given its location, it was determined that it would be more feasible to seed it to hayland.* The statement is out of context since the post mine land use is cropland and the narrative clearly states the tract to the south was incorporated into the adjacent cropland. Remove this statement or provide a logical explanation of why this tract has not been cropped annually, such as the tract was seeded to hayland with the larger tract to the north or an attempt was made to straighten field boundaries. (ZAB)
8. Please remove the following statements from the tract history in Attachment VI, *"As per conversations between the PSC, BNI, and the landowner, in 2007 samples taken within the hayland tract (Attachment VII). These were used to evaluate the entire tract.* Revise the statements into a complete sentence and move the sentence to the Evaluation of Reclamation Success narrative, so it reads similar to, *"All areas were disturbed between July 1, 1976 and June 30, 1977; therefore reclamation success will be proven under requirement of the 1975 law. In 2007 the PSC, BNI and the landowner agreed to use vegetation samples from the hayland tract to evaluate reclamation success on the entire 1.78 acre tract. The success of*

hayland reclamation will be based in part on a comparison between the yields of the reclaimed area and climatically adjusted technical standard.” (ZAB)

9. Please revise the title for Table 2a to identify the information that is actually presented in the table. The information in the table appears to be related to crop production for a series of years in a crop rotation. The table should also note in the title or footnote where the data was collected. (ZAB/RLK)
10. As presented, Table 2a gives the impression that the crop yield information for the specific crops and years are from the reclaimed cropland within the bond release tract. However, the narrative must clarify whether the productivity data is from the bond release tract or from adjacent or nearby cropland. Actual crop production data from early in the liability period or from a similar nearby reclaimed tract is useful supporting information for this bond release since the reclamation success for cropland is being demonstrated with hay production rather than annual crop yields. Please clarify in the narrative where the information presented in Table 2a was obtained and its relevance to the bond release tract. (ZAB/RLK)
11. Please remove (2003 initial seeding) from the title of Table 2b and refer to this table as Table 2b within the narrative. Please add a column to Table 2b and provide the pounds per acre seeding rate for alfalfa and for intermediate wheatgrass. (ZAB)
12. Please revise the Management During Liability section in Attachment VI for better clarity by discussing the cropland management in one paragraph and the hayland management in a separate paragraph. (ZAB)
13. Please revise the last sentence of the Management During Liability period narrative that states the croplands have been fertilized according to NRCS recommendations for small grains by the land owner. Please reference the NRCS Conservation Practice used and provide specifics regarding the applications of fertilizers (type used, rates, soil test results, etc.) used during the liability period. (GAW/RLK)
14. A sentence in the first paragraph on page 3 of Attachment VI states that the unadjusted standard was developed from an intensive soil survey. The mapping unit information in Attachment V, Soils Map and Air Photo, indicates that the mapping units were derived from the Oliver County Soil Survey published in 1975. The detailed soil survey included in Final Bond Release No. 6 to Permit 37 for the SW1/4 of Section 25 (Robert Howey, Sept 2, 1976) shows mapping units different than what are depicted on Attachment V. Please review and revise to clarify. The Oliver County Soil Survey data was only used for those areas in the S1/2 of Section 25 that were disturbed prior to the completion of the detailed soil survey in the permit. The unadjusted standard that is discussed in the item below is based on a combination of the 2 soil surveys with the published soil survey data only used in those areas where the detailed soil survey data is lacking. (GAW)
15. The Evaluation of Reclamation Success narrative and Table 1 in Attachment VI describes and shows the unadjusted standard being computed for the tract based on the premine soils of

the tract. However, Final Bond Release No. 6 to Permit 37 used all of the disturbed soils in the SW1/4 of Section 25. Therefore, it appears that the standard developed with Final Bond Release 6 should also be used in this instance to demonstrate revegetation success, rather than developing a new standard based on the premine soils on just this 1.78 acre tract. Please review and revise as necessary to ensure the same unadjusted standard methodology is being used to demonstrate revegetation success. If the hayland standard developed in Bond Release No. 6 is used, then please review the "median" yields used to develop that standard to make sure that they are still valid. (GAW)

16. Follow-up to Items No. 32 and 35: This deficiency was addressed by revising the unadjusted technical standard in Table 1 to 1.25 and revising the values in Table 3; however, the narrative preceding Table 3 that explains the values in Table 3 must also be updated to reflect the new values listed in Table 3. Also, narrative should be added to explain the 2012 data that was added to Table 3. (ZAB/GAW)
17. Please revise the last paragraph under the Evaluation of Reclamation Success section of Attachment VI to document who collected the data being used to demonstrate revegetation success and provide this information with the cover and production data in Appendix A. (GAW)
18. Please revise the Evaluation of Reclamation Success section of Attachment VI to clarify that only data beginning after 2008 can be used to demonstrate revegetation success. It is fine to include data from 2007 and 2008 but clarify that only data beginning after year 6 of the revegetation period was used to demonstrate revegetation success. (GAW)
19. A sentence in the narrative below Table 3 in the Evaluation of Reclamation Success section of Attachment VI states that ground cover ranged from 90.0% to 99.9% but Table 4 shows the highest cover value to be 99.4%. Please correct this inconsistency. (GAW)
20. Please include a narrative in the Evaluation of Reclamation Success section of Attachment VI that discusses the methodology used to ensure that random samples were taken so that the data is statistically valid. Please also discuss if the sample design recognized variations in SPGM respread depths and seeding dates. (GAW)
21. Follow-up to Item No. 37: Please include a discussion in the first paragraph of the hydrology narrative regarding the cropland management and conservation practices. It would be appropriate to mention that normal agricultural management and conservation practices are employed on the tract if that is the case or to refer to another part of the application describing cropland management and conservation practices. (RLK)

Attachment VII- Seeding Map

22. Please depict the boundary between hayland and cropland areas on Attachments V and VII. (GAW)

23. Follow-up to Item No. 41: Please identify the location of each sample taken for each year being used to demonstrate revegetation success. Six years of data is re-presented by a single set of sample points that do not appear to have been randomly selected. If available, please include GPS point locations with the sampling data. (GAW/ZAB)
24. Please revise Attachment VII as follows: title the attachment as Attachment VII; label the BNCR-8106 and Permit 37 permit boundaries; remove the extraneous red lines, most of which appear to depict previous bond release boundaries; and update the legend to accurately represent the Permit 37 boundary and bond release tract and the BNCR-8106 permit boundary. (WTG/ZAB)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division