
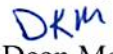



PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Kalk, Christmann and Fedorchak
Darrell Nitschke, Executive Secretary
Illona Jeffcoat-Sacco, General Counsel

FROM:   
Jim Deutsch, Dean Moos and Randy Kowalski

DATE: August 14, 2014

SUBJECT: Bond Release No. 9 to Permit No. 37 held by BNI Coal, Ltd. for the Center Mine,
Case No. RC-13-132

Summary

On March 22, 2013, BNI Coal, Ltd. filed the application for Bond Release No. 9 to Permit No. 37 requesting the release of all reclamation liabilities for 1.78 acres of land at the Center Mine. The bond release acreage has a post-mining land use of cropland that is currently divided between grain production and hayland. This is the last remaining acreage in Permit No. 37 for the Center Mine.

The Reclamation Division has completed its review of this application and BNI Coal, Ltd. (BNI) satisfactorily addressed the concerns that were noted. We now recommend that the application be approved based on the findings discussed below.

Discussion

Bond Release No. 9 to Permit 37 requests final bond release on 1.78 acres located in Section 25, T142N, R84W, in Oliver County. The property is owned by Joseph Schmidt and is farmed by Mikael Schmidt. The bond release tract is subject to the requirements of the 1975 reclamation law because initial disturbance on this tract occurred in 1976 with coal removal beginning in 1976 and concluding in 1977. The northern part of the bond release area was used for a sediment pond that continued to support mining activity until its reclamation in 2003. The remaining area was reclaimed in 1981 and was actively farmed with a larger adjacent tract of reclaimed cropland that was bond released in 1988. The former pond site is in hay production along with adjacent areas still under Permit BNCR-8106.

The bond release area was respread with approximately 12 inches of topsoil. The subsoil respread thickness varied slightly between the pond reclamation area and the earlier reclamation

work that was completed south of the pond site. The subsoil respread thickness was 18 inches on the southern portion and 29 inches on the pond site (northern) portion of the bond release tract.

BNI was required to demonstrate that the productivity of the reclaimed cropland/hayland has been restored to the pre-mine level. Reclamation success was demonstrated on this tract using samples from the hayland portion of the tract due to the small size of the bond release tract. In 2006 the landowner gave BNI permission to use hayland standards to demonstrate reclamation success for the 1.78 acre tract. The unadjusted productivity standards were calculated using Natural Resource Conservation Service (NRCS) productivity indices for the soil types that were present prior to mining. The productivity standard applicable to this tract is part of the area-wide cropland standard developed for Section 25, T142N, R84W, with Bond Release 6 to Permit 37. The cropland standard was then converted to the hayland productivity standard used for this bond release.

The unadjusted hayland standard was calculated to be 1.04 t/ac. Annual county yield data reported by the North Dakota Agricultural Statistics Service was used to adjust the yield standard to account for climatic variability. The hayland standard must be met for any two years beginning no sooner than the sixth year that follows seeding. Table 1 shows that the hayland yield data collected over a six-year period exceeds the reclamation yield standard each year even though only two years of data was necessary.

Year	County Average Yield	Unadjusted Standard	Adjusted Standard	Reclaimed Hand Sampling Yield	Reduction (30%) for Hand Sampling
tons/acre					
2007	2.00	1.04	1.00	2.45	1.72
2008	1.25	1.04	0.66	1.58	1.11
2009	2.15	1.04	1.13	2.27	1.59
2010	2.85	1.04	1.49	2.58	1.81
2011	2.90	1.04	1.49	2.38	1.67
2012	1.60	1.04	0.81	3.13	2.19

The yield was determined using hand sampling techniques while the county yield information is based on yield data for the area as reported by the Agricultural Statistics Service. An adjustment needs to be considered when comparing hand sampling to machine harvest hayland yields. Hand sample values should be reduced by 30% for these comparisons according to the NRCS. When the adjustment is applied, the tract still exceeds the standard for each year sampled.

General Information

The formal bond release inspection was conducted on October 8, 2013. The surface owners, Oliver County Commissioners and several state and federal agencies were invited to participate in the inspection. The surface owner was represented by Kenneth Schmidt and Mikael Schmidt

and they did not express any concerns with the bond release tract. However, they noted that in their experience the reclaimed cropland is generally more adversely impacted by overly dry conditions during the growing season.

Notice of the final bond release application was published by BNI in the official county newspaper, the Center Republican, during September and October of 2013. The last publication date was October 17, 2013. No objections to the bond release were received.

BNI is requesting the monetary reduction in the amount of \$3,560 for completion of reclamation requirements on this final remaining tract in Permit 37. The bond release tract is covered by Surety Bond No. 105312229. Our jurisdiction over the 1.78 acre tract will end once the release becomes effective. The bond release will become effective September 22, 2014, unless a formal hearing is requested.

Attached is a proposed motion and award form for consideration at the August 20, 2014 Commission meeting.

Attachments

Minedata/Center/Permits/No.37/BondRelease/No.9/BR9_Memo_8-14-14.docx

Bond Release Tract and Surrounding Area

