



# Public Service Commission

## State of North Dakota

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April 25, 2013

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

Dear Dr. Volk:

The Reclamation Division has completed an initial review of Final Bond Release Application No. 4 to Permit BNCR-9401. When providing updated information for this bond release application, please provide a separate DVD with the information for Bond Release No. 4 to BNCR-9401 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.

The items listed below must be addressed prior to publishing the newspaper notice or notifying the surface owners, adjacent surface owners and governmental agencies.

### **General**

1. Please include a bookmark or hyperlink to a copy of the Bond Release Application form (SFN 19813) in the electronic version of the bond release application. (GAW/RLK)

### **Attachment II – Metes and Bounds Description**

2. 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)
3. Page 6 of this Attachment contains the continuation of a metes and bounds description that does not appear to be related to the bond release tract. Please eliminate this entire page from the section. (BEB/FSE)

### **Attachment III – Newspaper Advertisement** (\* Items duplicated in letter for BR9 to Permit 37)

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

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)\*
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)\*
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)\*
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)\*
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) \*
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)\*
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 or pond 25-5. (RLK)\*
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)\*
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)\*

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)\*
15. Please review the Publication Map and revise as necessary so that it is legible at a 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 Bond Release No. 9 tract in Permit 37. (ZAT)\*

#### **Attachment IV, Addresses and Notice Letter**

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

#### **Attachment V – Aerial Photo and Soils Map**

20. Attachment V is entitled "Aerial Photo and Soils Map" in the bookmark table of contents but is labeled something different on the map (Bond Release #4 BNCR-9401 Soils Map) and the map is not identified as Attachment V in the Title Block. Please establish a name for the map and use it consistently in the Table of Contents and on the map. (GAW)
21. Please depict the currently approved permit boundary of Permit BNCR-9401 at the bottom portion of the map. The boundary as shown includes the Revision 12 area which is not yet approved. (GAW)

#### **Attachment VI – Tract History**

22. Much of the information in the second paragraph of the Law Liability section on page 1 of Attachment VI is not applicable to this bond release. Please revise to include only information that is applicable. For example, respreading SPGM and demonstrating productivity, ground cover, species seasonality, species diversity and permanence vegetation are not bond release parameters for this land use. In addition, the narrative in the second paragraph that describes the reclamation requirements under the 1979 Reclamation Law and this entire paragraph can be deleted from this section because

Permit BNCR-9401 was approved in 1995, effectively rendering the entire paragraph a moot point. (GAW/BEB)

23. A sentence in the "History of Tract" narrative states the topsoil and subsoil was removed in 2007 for a borrow area for Ash Cell No. 2. However, the 2007 Annual Map shows that only a portion of the bond release tract was disturbed in 2007. From some of the narrative it appears a distinction is being made between soil removed in 2004 and 2007 with the 2007 removal being referred to as borrow for cell 2. Please review and revise the statement to accurately provide a history of the disturbance activities. (GAW/RLK)
24. A paragraph in the "History of Tract" narrative describes that topsoil and subsoil were removed and will be used as a topsoil and subsoil borrow area for Ash Cell #2, but does not describe where SPGM respread materials for the bond release tract will come from for final reclamation of the disposal cell. It would be more appropriate to indicate that the topsoil and subsoil was stockpiled for use in final closure of the disposal site. Policy Memo 15 specifically describes that the Commission requires a showing that sufficient topsoil and subsoil have been set aside that will provide adequate soil cover to ensure long term site stability and good vegetative production on the disposal sites upon final closure. Please describe where adequate volumes of SPGM will come from for respread of the bond release tract upon final reclamation. (BEB/RLK)
25. The Bond Release Requirements section of Attachment VI should clearly show that sufficient topsoil and subsoil has been set aside to provide the respread thicknesses specified in Policy Memorandum No. 15. Please show the calculated SPGM respread thicknesses for the disposal area based on the volume of SPGM available for the facility and the current area at the disposal facility that will require SPGM respread. (RLK)
26. Similar to the deficiency regarding the inert waste in the Legal Notice, a sentence in the first paragraph on page 2 of Attachment VI incorrectly states that the intended use of the open pit is for disposal of inert waste. In North Dakota, FGD sludge may not be disposed of in an open mine pit and is not treated as an inert waste. The paragraph should also identify the facility as used for the disposal of Flue Gas Desulfurization (FGD) sludge as well as ash wastes. In addition, the sentence beginning with "*Following removal of lignite preparation...*" should be revised to clarify that following lignite removal Minnkota Power Cooperative prepared the mine pit for the construction of disposal cell #3. (RLK/BEB)
27. Please revise the second paragraph on page 2 of Attachment VI to clarify what is meant by the statement "This pond was not constructed, as water resources on the site did not demand the need for an additional pond." The permit will need to be revised to change the approved post mining land use prior to bond release approval if the actual land use has been changed from what is in the approved permit or the area will need to be deleted from the bond release. (GAW/RLK)
28. Please revise the seeding discussion in the third paragraph on page 2 of Attachment VI to include information pertaining to the species seeded and seeding rate of the mixture planted on the ash cell side slopes in 2008 and 2011. Please also clarify if the west slope has been seeded. Attachment VII shows that a berm has been created in this area to allow the cell to function but no seeding date is shown for this area on the map in Attachment VIII, Seeding Date. Please also discuss if adequate vegetation has established where seedings have occurred and if erosion is being controlled. (GAW/RLK)

29. The only hydrologic bond release information provided in the application is a sentence stating that there were no wells, ponds, wetlands, springs/seeps, etc. within the bond release tract. Please provide the required assessment detailing the pre and post-mining ground water hydrology of the bond release tract and adjacent areas. We realize there is minimal ground water monitoring wells within close proximity of the bond release tract to provide a meaningful assessment, but at a minimum the ground water monitoring network associated with the waste disposal site and regulated by the State Health Department should be referenced and summarized in addition to a description of the premine ground water resources. (BEB)
30. Please include a discussion in Attachment VI that describes any features that control sediment in runoff from the bond release tract and/or provide other documentation that the lands in the tract are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by forth by NDAC 69-05.2-16-04. NDAC 69-05.2-12-12 (7). (GAW/RLK)
31. Please include a discussion in Attachment VI that describes the pre-mine land uses or wildlife habitats and discuss how BNI has or is planning to offset the loss of desirable wildlife habitat. This should include a discussion of wildlife enhancement and management measures that has occurred in this permit or other permits at the mine. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division