



# Public Service Commission

## State of North Dakota

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November 19, 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 4 to Permit BNCR-9401 including BNI's August 26, 2013 responses to the deficiencies identified in 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 publication map. (RLK)

### **Attachment IV – Notification Letters**

2. Follow-up to Item No. 19: 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)

### **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 has apparently been satisfied, the bond release application should include a surface ownership map to document 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 Item No. 23: No revisions to the narrative were found as indicted in the deficiency response. A sentence in the first paragraph of 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)
5. Follow-up to Item No. 26: No revisions to the narrative were found as indicated in the deficiency response. Please remove the word "inert" from the last sentence of the first paragraph of page 2 and clarify that a lined landfill cell was constructed in the mine pit. (RLK/BEB)
6. Follow-up to Item No. 27: No revisions to the narrative were found as indicated in the deficiency response. 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)
7. Follow-up to Item No. 28: No revisions to the narrative were found as indicted in the deficiency response. 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, 2011 and 2012. Please also discuss if adequate vegetation has established where seedings have occurred and if erosion is being controlled. (GAW/RLK)
8. Follow-up to Item No. 29: Please incorporate a description of Minnkota's ground water monitoring program into this attachment as originally requested. BNI's draft response to the deficiency that was emailed to the Reclamation Division on October 24<sup>th</sup> (from Ms. Hall) adequately addresses the previously requested information. (BEB)
9. Follow-up to Item No. 30: No revisions to the narrative were found as indicted in the deficiency response. 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)

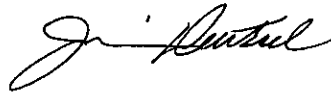
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**Attachment VIII – Seeding Map**

10. Please revise Attachment VIII to clarify by making the following changes: title the attachment as Attachment VIII; depict the approved BNCR-9401 permit boundary rather than the boundary proposed with Revision No. 12; remove the proposed BNCR-1101 permit boundary and its designation in the legend; and, remove or clarify the extraneous lines that form an unidentified triangular area in the south end of the ash cell west embankment that was seeded in 2012. (WTG)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division