

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

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

FROM: *JJD DKM RLK*
Jim Deutsch, Dean Moos and Randy Kowalski

DATE: February 19, 2014

SUBJECT: Bond Release No. 4 to Permit No. BNCR-9401 held by BNI Coal, Ltd. for the
Center Mine, Case No. RC-13-133

Summary

On March 22, 2013, BNI Coal, Ltd. filed the application for Bond Release No. 4 to Permit BNCR-9401 for final bond release on 52.09 acres of land that was mined and subsequently developed as a solid waste disposal facility. The bond release acreage has an industrial post-mining land use. BNI is not requesting any monetary reduction in the bond amount as a result of this bond release.

The Reclamation Division has completed its review of this application and BNI Coal, Ltd. satisfactorily addressed the concerns that were noted. We recommend that the application be approved.

Discussion

The application for Bond Release No. 4 to Permit BNCR-9401 is for 52.09 acres located in Section 5, T141N, R83W, in Oliver County that are owned by Minnkota Power Cooperative. The bond release tract is subject to the requirements of the current reclamation law. This tract has a post-mining land use of industrial/commercial and is currently part of a solid waste disposal facility for Flue Gas Desulfurization (FGD) sludge from Minnkota Power Cooperative's Milton R. Young Station. Oliver County approved industrial zoning for the area on October 6, 1992, and the North Dakota Department of Health issued Solid Waste Disposal Permit SP-159 to Minnkota Power effective June 14, 1995 and renewed on August 2, 2005.

Coal removal was completed from this tract in 2012 and it was subsequently developed as Disposal Cell 3 of Minnkota's solid waste disposal facility. Minnkota began operating the disposal cell in early 2013. Sufficient amounts of topsoil and subsoil have been placed in

stockpiles in order to respread 7 inches of topsoil and 11 inches of subsoil when the disposal cell is closed and reclaimed pursuant to Health Department requirements outlined in NDAC 33-20-07.1-02. Cells 1 and 2 of the disposal facility were previously bond released.

Although areas mined under the 1979 reclamation law are normally subject to the 10-year liability period, Policy Memorandum No. 15 to Mine Operators allows for the performance bond release sooner for industrial areas that are used for waste disposal if certain conditions are met. These include the issuance of the proper permits and the implementation of the industrial land use. As outlined above, the appropriate permits have been issued, the industrial post mine land use has been approved, and Minnkota Power Cooperative has been disposing of FGD wastes in the facility for several months. Therefore, the requirements set forth in Policy Memorandum No. 15 have been satisfied.

General Information

The formal bond release inspection was conducted on October 8, 2013. The surface owner, Oliver County Commissioners, and several state and federal agencies were invited to participate in the inspection. Only, the surface owner represented by Mr. Scott Hopfauf from Minnkota Power Cooperative participated in the inspection and he did not express any concerns with the bond release tract.

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.

The bond amount for Permit BNCR-9401 is based on the worst-case reclamation condition in the permit area and BNI is not requesting any monetary reduction in the bond amount as a result of this bond release. Once the bond release becomes effective, BNI will be released from all remaining reclamation liabilities on the 52.09 acres contained in the bond release tract. The bond release will become effective on March 28, 2014 (30 days after approval) unless a formal hearing is requested.

Attached is a proposed motion and award form for consideration at the February 26, 2014, Commission meeting.

Attachments

Minedata/Center/Permits/BNCR-9401/BondRelease/No.4/BR4_memo_2-19-14.docx

