



Public Service Commission

State of North Dakota

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August 27, 2014

Ms. Karene Hall
Permit Coordinator
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Ms. Hall:

The Reclamation Division has completed an initial review of Final Bond Release Application No. 8 to Permit BNCR-8106 for the Center Mine. The items listed below that pertain to the Legal Notice and Notifications (Attachments III & IV) must be addressed prior to publishing the newspaper notice or notifying the surface owners, adjacent surface owners and governmental agencies. We request that the remaining items be addressed before the bond release inspection that is planned for September 10, 2014.

Application for Bond Release 8

1. Please update the Bond Release Application (SFN 19813) to specifically state that all phases (I-IV) of bond release are being requested. (ZAB)
2. Please revise the language in the first sentence at the bottom of the application to clarify that Permit BNCR-8106 is included under the worst-case bond for the consolidated bond area, which includes Permits BNCR-8106, 8202, 8602, and 9702. (ZAB)
3. Please revise the end of the first sentence at the bottom of the application by removing "*thus no monetary reduction is involved for the acres represented by this mining permit*", since this bond release request does not represent the entire mining permit. Simply state no bond reduction is being requested. (ZAB)
4. Please review the Addendum to Final Bond Release Application and revise as appropriate. (ZAB)
 - a. The complete history of all management on the tract is required. Please check the appropriate boxes and provide the required information in the attachments.
 - b. Check the third item from the bottom [*If bond release for vegetation establishment (Stage 3) has not been previously obtained, documentation that suspended solids are not being contributed to stream flow or runoff outside the permit area in excess of that allowed by NDAC 69-05.2-16-04*]. This item is also required and information is currently included in Attachment VI.

- c. Review the recreational, residential, and institutional and commercial land uses (5th item from the bottom) and include if appropriate after completing the land use deficiencies included for Attachment VI below.

Attachment II Legal Description (Metes and Bounds)

5. Please correct the heading of the metes and bounds description to list Bond Release No. 8 rather than Revision 8. (WTG)

Attachment III Legal Notice

6. Please revise the total bond amount value in the Legal Notice to the actual total amounts of surety bond 1069618, surety bond 400JR4173 and collateral bond CB-9702-3. The value listed in the Notice appears to be the worst-case bond amount rather than the actual amount filed by the bond instruments. Please also edit the sentence that includes the bond amount to clarify that the amount listed is for a consolidated bond area that includes other permit areas in addition to Permit BNCR-8106. (GAW/WTG/RLK/ZAB)
7. The second paragraph is not clear and it appears to be attempting to provide more detail than necessary for the public notice. Perhaps narrative could be simplified by providing the range (beginning and ending) years that mining took place rather than describing as middle area, northern area, etc. Also the reclamation and seeding could be described in the same manner. For the notice a brief description may be more helpful to the reader, perhaps something similar to reclamation consisting of grading, SPGM respread and seeding occurred on the tract from 1984 to 1989. (RLK)
8. The second sentence of the second paragraph states that the mining of lignite began in 1978 but the 1975 Annual Mine Map shows mineral removal having occurred by the 3rd quarter of 1975. Please review and correct as necessary to provide an accurate description of the mining and reclamation activities that occurred in this area. (GAW)
9. A sentence in the second paragraph states that the southern portion of the tract was mined beginning and ending in 1983 but the 1978 Annual Mine Map shows that the area had been affected by that date. Please revise to clarify when initial disturbance occurred on the area. (GAW)
10. The notice includes a discussion regarding Pond 35-8; however, it is not clear why this pond information is relevant in the Legal Notice. Attachment VI clarifies that the east end of the embankment of this pond was located on the tract. Unless a waiver is being requested for delayed reclamation or repairs as provided in Policy Memorandum No. 20, it is not necessary to discuss the pond embankment separately in the notice. (GAW/RLK/ZAB)
11. The last sentence of the second paragraph of the Legal Notice states that the postmine land use is hayland but the postmine land use map, Plate 15c, shows this area as tame pasture, county road and right-of-way, and an area of undisturbed. Revise the notice to include the acreage of each reclaimed land use, the acreage of undisturbed land, and mention that the tract includes a portion of the reclaimed county road (37th Ave SW). (GAW/RLK/ZAB)

Map

12. Please make the following revisions or additions to the newspaper advertisement map:
(WTG/RLK/ZAB)
 - a. Add a title and scale bar to the map.
 - b. Remove the extraneous label of "25" positioned in the SW $\frac{1}{4}$ of Section 36.
 - c. Add a label for the public road in Section 2 of T141N, R84W.
 - d. Revise the label for "23th" St. SW.
 - e. Ensure that the size of the street labels, particularly 37th Ave SW, is large enough to be legible in the printed notice.

Attachment IV – Notifications

13. Please expand the list of adjoining owners that must be notified of BNI's intention to seek release from bond to include Larry & Mary Dresser LE and Michelle Ternes for the N $\frac{1}{2}$ of Section 35 of T142N, R84W; the North Dakota Department of Trust Lands for the SW $\frac{1}{4}$ of Section 36 of T142N, R84W; Jolene Berger for the NW $\frac{1}{4}$ of Section 1 of T141N, R84W; and Nick Berger for the NE $\frac{1}{4}$ of Section 2 of T141N, R84W. Please list the adjoining property owners as required by NDCC 38-14.1-17 (1) (b) and Policy Memorandum No. 9. (GAW/WTG/ZAB)
14. Please revise the letters in Attachment IV to incorporate all of the appropriate changes that have been requested for the newspaper advertisement narrative. (WTG/RLK/GAW)
15. Please add a parenthetical description to the reference line for letters to property owners indicating whether the addressee is a surface owner or an adjoining owner of the bond release tract. (WTG)
16. Please revise the map attachment to letters in Attachment IV to incorporate all of the changes that have been requested for the newspaper advertisement map. (WTG)

Attachment VI – Tract History

17. The bond release and particularly the tract history incorrectly identify the post mine land use as hayland. The post mine land use approved in the reclamation plan in Permit BNCR-8106 is tame pasture and road right-of-way along 37th Ave SW. The bond release application must be revised to demonstrate revegetation success as tame pasture land or an appropriate permit revision must be completed to change the land use to hayland before proceeding with the bond release application. In addition, please provide the acreage for each land use type contained in the bond release tract, using the currently approved land uses depicted in Permit BNCR-8106.
(RLK/GAW)
18. The "Disturbance" narrative at the top of Page 1 of Attachment VI indicates that all 58.23 acres in this tract were disturbed but Attachment VII, Seeding and Sampling Map, and the 2012 Annual Mine Map shows that the south end of this tract is undisturbed land. Please review and revise as necessary. (GAW)
19. Please revise the Bond Release Request information on page 1 of Attachment VI to clarify that all four stages of bond release are being requested at this time rather than just final bond release.
(GAW)

20. Please review the acreages of 1973 (35.81 ac) & 1975 (26.42) listed after "Law Liability" on page 1 of Attachment VI which total 62.23 acres. This acreage is not consistent with the narrative that follows or the application for bond release. Revise or explain the 4 acre discrepancy. (ZAB)
21. Please review the Law Liability periods for the tract. Page 1 of Attachment VI, Tract History, states that 35.81 acres is subject to the 1973 Reclamation Law and that 26.42 acres is subject to the 1975 regulations but an aerial photograph dated June 24, 1977 (received August 25, 1977) that was included with the 1977 annual mine map shows that the northeast and southeastern portions of the tract were in Permit 37 (the balance Permit 24) and that no disturbance had yet occurred in these areas. Correspondence from June of 1978 shows "coal in place" as of May 1, 1978 at these locations and a map from 1979 shows disturbance on the northeast area and part of the southeast area. Therefore, it would appear that a portion of this area that was in Permit 37 is subject to the 1977 Reclamation Law, the 1978 Interim Rules or perhaps even our present regulations if the sentence in the History of Tract is correct that states that the southern portion was mined, beginning and ending in 1983. Please review and revise so that the information is clear, correct and consistent. (GAW)
22. The introduction to the tract history on the first page of the attachment states that reclamation success for the area disturbed prior to 1975 will be proved under the 1973 law and the remaining portion will be under 1975 law. However, the information provided indicates that the two law periods were not sampled separately and the yield data is presented for the bond release tract as a whole rather than for the separate law periods. Please revise as appropriate. (RLK)
23. The History of Tract narrative mentions the removal the 35-8 pond embankment in 1987 but it is not clear if the area was respread with SPGM and seeded. The annual mine map for the Center mine does not indicate that the area apparently associated with a portion of the embankment for pond 35-8 has ever been respread or seeded to the intended post mine cover vegetation. The status of this area must be clarified and documented before proceeding with the bond release application. (RLK)
24. Please expand the narrative for pond 35-8 or revise the language that suggests the embankment of pond 35-8 was removed since this impoundment is still functioning as a sediment pond. (GAW/ZAB)
25. Please include a narrative and the required performance standard information in Attachment VI for the reclaimed land that is not tame pastureland. This would include the reclaimed roads and ditches along the east side of the tract which is considered Industrial Land. (GAW)
26. Please correct the apparent typographical error in the reference made to the east boundary of bond release #9 on page 2 of the tract history. (RLK)
27. Please correct the land use type and provide some indication in the narrative as to why the parenthetical reference to Attachment VII, grade approval, is pertinent to the management during liability (page 3). Also the management information appears to be inaccurate and inadequate for at least the 1975 law areas. The bond release request for 1975 law areas is required to be accompanied by appropriate soil tests, a complete history of initial and subsequent seeding and fertilization and supplemental irrigation or any other management practices employed. (RLK)

28. The evaluation of data should include a brief narrative discussing the difference in comparing hand sampling to machine harvest hayland yields. Hand sample values should be reduced by 30% for these comparisons according to the NRCS. (RLK)
29. We noticed that Kentucky bluegrass and forbs are being counted towards achieving the ground cover standard. NDAC 69-05.2-22-07(3)(a) requires that all species used to determine ground cover success be perennial species not detrimental to the land use. Please identify the forb species being used to demonstrate ground cover success and discuss if Kentucky bluegrass is detrimental to the approved postmine land use. This issue should be reviewed at this time to ensure the required reclamation success standards are met. (GAW)
30. Section 4.12.4, Determining Reclamation Success, of the permit states that separate standards will be developed for each landowner and land use based on pre-mine map (soil) units. Thus, it would seem most appropriate to develop a single tame pastureland productivity standard for all of the disturbed land located in the S1/2 of Section 35 that is subject to 1975 or later law reclamation requirements rather than using only those pre-mine soils that were present on the bond release tract. Section II-B-1 of our Revegetation Success Standards Document states that tract specific standards should only be used if the postmining topography closely resembles the premining topography or if all bond release tracts are large and reflects the various landforms that occurred prior to mining. Please either develop a single standard for all of Dresser's tame pastureland land located in the S1/2 of Section 35 or provide justification to do otherwise. (GAW)

Attachment VIII – Seeding and Sampling Locations Map

31. The Seeding and Sampling Locations Map, Attachment V, shows that revegetation has not yet been initiated on a small area located in the northwest corner of the tract that appears to be associated with the embankment to Pond 35-8. This is confirmed by the most recently approved Annual Mine Map (2012). Attachment VI states that the embankment for pond 35-8 was removed in 1987; however, this pond is still functioning as a sediment Pond. Please revise Attachment V to show when the liability period was initiated on this area or remove the embankment area from the proposed bond release area if it is not yet reclaimed. (GAW/ZAB)
32. The map legend for the Bond Release #8 BNCR-8106 Seeding and Sampling Locations, Attachment VIII, identifies a pink line as "Law Lines Full". Please make the label more specific and clarify on the map the law period applicability for the different areas of the bond release tract. (RLK)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division