



# Public Service Commission

## State of North Dakota

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May 14, 2015

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

Dear Mr. Volk:

The Reclamation Division has reviewed BNI Coal, Ltd.'s April 6<sup>th</sup>, 2015, response to our initial review of the application for Bond Release 8 to Permit BNCR-8106. The first seven items listed below must be addressed prior to publishing the newspaper notice or notifying the surface owners, adjacent surface owners and governmental agencies.

We are planning to schedule the bond release inspection for late June, provided the public notice can be published and the notification letters can be sent at least a week prior to the inspection date.

### Public Notice

1. Follow-ups to items No. 6 and 11: Please revise the following sentences in the public notice for clarity: (ZAB)
  - a. *"No monetary release is requested for ~~Permit BNCR-8106~~ since the bond amount is based on the worst-case reclamation condition ~~that covers this permit at the Center Mine.~~ ~~The total bond amount~~ for the consolidated bond area that includes Permits BNCR-8106, BNCR-9702, BNCR-8202 and BNCR-8602. The current bond amount is \$34,139,439.00."*
  - b. *The post mine land uses for this tract consist of 53.05 acres of tame pasture and 5.18 acres right of way ~~which that includes 1.46 acres of undisturbed land, and a portion of the reclaimed county road (37th Ave. SW).~~ No mining disturbance occurred on 1.46 acres along the southern boundary of the tract. (Undisturbed is not a land use and the undisturbed 1.46 acres appears to have ROW and tame pasture as post mine land uses.)*
  - c. *"Copies of the bond release requests and supporting documents...."*

### Map

2. Please remove the gray line that was added beneath the solid black dot inside the bond release tract. The gray line appears similar to the line used for public roads on the map. (ZAB)

### Addresses for Notice Letters

3. Follow-up to item No. 13: Mike Dresser is listed as a surface owner to be notified of the bond release. BNI mentioned in a meeting last fall that Brian Dresser took over the family farm and Dresser's requested that Brian be included in any notifications. If this is the case, please add Brian to the surface owner list and provide an address. (ZAB)
4. Follow-up to item No. 13: Please add Michelle Ternes to the list of contiguous surface owners and provide her address. (ZAB)

### Notice Letters

5. Follow-up to item No. 14: Please revise the letters in Attachment IV to incorporate all of the appropriate changes that have been requested for the newspaper advertisement narrative. (ZAB)
6. Follow-up to item No. 15: Retain the reference line on the sample notification letter for government agencies as *Final Bond Release BNCR-8106* or revise to *Notification to of Final Bond Release BNCR-8106*. The reference line for surface/adjoining owners should be revised similar to: *Notification to Surface Owner to of Final Bond Release BNCR-8106* and *Notification to Adjoining Surface Owner to of Final Bond Release to Permit BNCR-8106*. (WTG/ZAB)
7. In addition to the government agency sample notification letter, please provide one sample notification letter for surface owners and one for adjoining surface owners in the bond release application. (ZAB)

The following technical review items were identified and must be addressed after the field inspection of the bond release tract. However, it may be beneficial to address some of the items regarding standards development, correction factors and sampling prior to the field inspection.

### Attachment V – Soils Map

8. Follow-up to Item No. 21: Please revise the Soils Map to clearly depict the right-of-way, stockponds and 18.11 acres of undisturbed lands that were not included in development of the standard so reviewers can determine why the tame pastureland standard is based on 470.4 acres of native grassland rather than the total pre-mine of native grassland, 484.39 acres. (GAW)

### Attachment VI – Tract History

9. Follow-up to Item No. 21: The Law Liability discussion on pages 1 and 3 states that the bond release area is subject to the 1973 and 1977 reclamation laws. However, the 1976 Annual Mine Map shows that 38.24 acres located partially in the SE1/4 of Section 35 were initially affected during the 4th quarter of 1975 and first quarter of 1976 which makes this area subject to the 1975 reclamation law. Please revise the narrative to clarify that a portion of this tract is subject to the 1975 reclamation law. Areas subject to the 1975 and 1977 reclamation laws can be combined if the boundary between these two law periods is unknown. (GAW)
10. Follow-up to Item No. 27: The added language on page 3 states that fertilization of the tract was according to NRCS recommendations. Please elaborate on the actual fertilization practices such

as soil testing frequency and typical fertilizer application rates or provide recent examples.  
NDAC 69-05.2-12-12(8) (RLK/GAW)

11. Follow-up to Item No. 30: Please revise the Postmine Land Use Acres table at the bottom of page 3 of Attachment VI to clarify that the trees in Section 35 are all conservation plantings and are not mitigated woodland or shelterbelt acres. The trees along the north side of the haulroad were planted by BNI through an easement with the landowner that clearly indicates that the trees will be removed when the haulroad is no longer needed. (GAW)
12. Follow-up to Item No. 30: Please either remove the cropland unadjusted standard from page 4 of Attachment VI, since there is no cropland in this bond release tract, or correct the values to account for the cropland acreage associated with the conservation tree plantings. In other words, either all or part of the 16.19 acres of land being attributed to tree planting needs to be included in the calculation of the cropland standard. (GAW)
13. Follow-up to Item No. 28: New language has been added to page 6 of Attachment VI that states that BNI conducted a study in 2013 that shows hand sampling results in a 5.4% increase in yield verses machine harvest. Thus, a column was added to Table 3 showing this 6% adjustment since NDASS yield data is being used to calculate the standard. Please include a copy of the study BNI conducted to develop the 6% harvesting efficiency factor in this bond release application and mention that NRCS recommends a 70% harvesting efficiency adjustment. (GAW/RLK)
14. Please mention in the Evaluation of Data on page 6 of Attachment VI that the yield standard was based on NDASS County alfalfa hayland yield data since the reclaimed tame pastureland is comprised of more than 25% alfalfa. (GAW/RLK)
15. A sentence in the last paragraph on page 6 of Attachment VI states that samples were taken along each transect for a total of 100 point samples and 10 clippings but the next sentence states clipping frames were located throughout the tract. Attachment VIII, Seeding and Sampling Map, does not show clipping samples along the three transects, and 15 sample sites are depicted rather than 10. Data from 15 samples are provided for each year in Attachment VI. Please review and revise as necessary to clarify and show where yield samples were taken for each year being used to demonstrate revegetation success. (GAW)
16. A sentence in the last paragraph on page 6 of Attachment VI states that sampling occurred along three transects and Attachment VII is referenced but Attachment VII is Grade Approval correspondence. Please revise to clarify that Attachment VIII is the Seeding and Sampling Map. The Bookmark indicates that Attachment VIII is simply the seeding map but it is labeled as the Seeding and Sampling Map. Please revise to correct these inconsistencies. (GAW)
17. Revise the first two paragraphs on page 9 to be consistent. The first sentence in the first paragraph states the pre-mine land use of the bond release tract was tame pasture while the first sentence of the second paragraph states the pre-mine land use was native grassland. (ZAB)
18. Follow-up to Item No. 21: The colored areas depicting the 1973 and 1977 law liability periods on Figure 1 of Attachment VI do not match the law lines. Perhaps the purple colored area located northeast of the "law line" boundary in the NE1/4SE1/4 is subject to the 1975 reclamation law period. In other words, the law line with a single red dot actually appears to be the 1975 law line with the interior area then being subject to the 1973 reclamation law and areas outside of this line

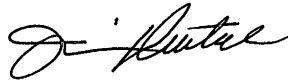
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being subject to the 1975 and later reclamation laws. Please review and revise as necessary to clarify the purpose of the law lines if not to identify the revegetation responsibility period.  
(GAW)

19. Please consider revising the title for Table 3 to better indicate that the table contains the reclaimed tame pasture production information. (RLK)
20. Follow-up to Item No. 29: BNI addresses the issue of Kentucky bluegrass and forbs being counted towards achieving the ground cover standard by changing the sampling data to show that Kentucky bluegrass was not present during in any of the years being used to demonstrate revegetation success. This is unacceptable since accurate and truthful data must be provided in the bond release application. Please revise to include the original ground cover data and address original deficiency item No. 29 appropriately without manipulating the data. If the forb species cannot be identified, then they cannot be counted towards meeting the ground cover standard.  
(GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division