



Public Service Commission

State of North Dakota

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June 26, 2015

Jay M. Volk, Ph. D
Environmental Manager
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499

Dear Mr. Volk:

The Reclamation Division has conducted a technical review of BNI Coal's application of Revision No. 38 for Renewal No. 3 to Permit BNCR-9702 at the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on the Revision No. 38 and Renewal No. 3 applications at the July 22nd Commission meeting. We would appreciate a response to this letter **by July 8th** in the event that additional follow-up to items is necessary. The current term for Permit BNCR-9702 expires August 2, 2015. Please note that most items are in follow-up to numbered items in our February 9, 2015 pre-renewal review letter, although there are some new items that will require only minor changes to the revision application.

Section 1.1 Calculation of Filing Fee

1. Follow-up to item No. 1: As previously requested, please revise the narrative in Section 1.1 to simply state the permit contains 7018.53 acres and all filing fees have been paid. (ZAB)

Section 1.7.2 Controlling Officers of BNI and Allele

2. We understand that Bradley W. Oachs is the BNI Coal, Ltd. CEO following Al Hodnik's departure from the position effective April 2014. Please revise Section 1.7.2 to list Bradley W. Oachs as BNI Coal CEO under the Controlling Officers of BNI Coal section rather than under the Board of Directors of BNI Coal section, and also list a date for Al Hodnik's departure from the BNI Coal CEO position. (WTG)

Section 1.9 and Plate 1-2 Surface and Coal Ownership

3. Follow-up to item No. 3: Please address the following surface and coal ownership items in Table 1.9-1 or on Plate 1-2 as appropriate. (ZAB)
 - a. Please provide an agency and address for coal owner USA on Table 1.9-1. The agency and address may be listed in each tract or as a footnote at the end of Table 1.9-1.
 - b. Coal ownership in Section 10 is listed as Walter Reinke in Table 1.9-1 and as Walter and Beatrice Reinke on the ownership map. Revise as appropriate.
 - c. Review all tracts in Table 1.9-1 that list owner Karen O. Van Amburg Revocable Trust and correct the address inconsistencies. Some tracts list the address as Sammanish, WA while other tracts list the address as Issaquah, WA.
 - d. Correct the spelling of Eleanor Boehm in the SW1/4SW1/4 of Section 2 on the ownership map.
 - e. Review the land description SW1/4NW1/4 & S1/2 in Section 22 on Table 1.9-1. It appears that SE1/4NE1/4 should be added to the description to be consistent with Plate 1-2.
 - f. Revise the coal ownership in the SE1/4 of Section 30, T142N, R84W, on Plate 1-2 to be consistent with the coal ownership listed in Table 1.9-1.

Section 1.10 Areas Unsuitable for Mining

4. Follow-up to item Nos. 45 and 47: BNI has responded to these items by stating that no mining is planned within 100 feet of the outside right-of-way of ND Highway 25 (N½ of Sections 20 and 21) and that there is no intention of relocating the power line for future mine expansion. However, the third paragraph of Section 1.10 states as follows: *“Disturbance is planned within 100 feet of Highway 25 along the north edge of Section 21.”* We understand that this statement refers to land permitted in Section 21 prior to the approval of Revision No. 30 for which BNI has North Dakota Department of Transportation approval to conduct surface coal mining operations within 100 feet of the outside right-of-way of ND Highway 25 along the eastern three-quarters of a mile of Section 21. Considering that BNI has no intention of conducting surface coal mining operations within 100 feet of the outside right-of-way on the south side of ND Highway 25 in Section 21, please revise the third paragraph of Section 1.10 as follows (or similar wording): *“Disturbance is **was** planned within 100 feet of Highway 25 along the north edge of Section 21 **at one time but has not occurred and will not occur because of a change in mining plans.**”* Please also revise the fifth paragraph of Section 1.10 that is specific to acres added with Revision No. 30 as follows (or similar wording) to clarify that BNI will not seek approval to conduct surface coal mining operations within 100 feet of the outside right-of-way on the south side of the east-west section line (ND Highway 25) between the NW¼NW¼ of Section 21 and the SW¼SW¼ of Section 16 in land added to Permit BNCR-9702 with Revision 30: *“~~Additionally, BNI Coal will obtain~~ **not seek** approval from the North Dakota Department of Transportation ~~Department prior to conducting~~ operations within the 100 feet of right-of-way along Highway 25.”* (BEB/WTG)

Appendix 1-2 Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation

5. Follow-up to item No. 9: As indicated in the April 2, 2015 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease for the 50 percent coal interest owned by the North Dakota Department of Trust Lands for the S $\frac{1}{2}$ of Section 29, T142N, R84W where mining is projected to occur in 2017 on Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 2-1 (Extended Mine Plan). A special condition will be attached to the Commission's approval of Revision No. 38 to Permit BNCR-9702 to prohibit mining on this tract if BNI does not submit documents showing that it has the legal right to mine the coal in time for Commission action at the July 22nd meeting. Until a copy of this coal lease is submitted, or other documents are filed showing that BNI has the necessary rights to mine the coal, surface disturbances on the S $\frac{1}{2}$ of Section 29 must be limited to those activities necessary for carrying out mining on the adjoining tracts. (WTG/ZAB)
6. Thank you for updating the right of entry and operation information in Appendix 1-2. Although NDCC 38-18-06(3) states that previously executed surface or coal leases run with the land and are binding on a subsequent surface or coal owners, we request that BNI add available information to Appendix 1-2 for the following ownership tracts to demonstrate or confirm right of entry where surface ownership has changed and a deed of distribution, quit claim deed, or other instrument is not provided to demonstrate right of entry: (WTG)
 - a. In the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 8, T141N, R84W (page 8-1) where Tim Doll is listed as the new surface owner.
 - b. In the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8, T141N, R84W (page 8-22) where Calvin Mosbrucker, Dean Mosbrucker, Brian Mosbrucker, and Lorie Makelke are listed as the new surface owners. Please also review the surface ownership percentages for this tract that total only 80 percent.
 - c. In Section 21 T142N, R84W (page 21-1) where Keith Arthur and Susan Arthur Geiger are listed as new surface owners.

Appendix 1-8 Revision/Renewal Applications

7. Please remove the Revision 38 Purpose Statement bookmark in Appendix 1-8 Revision/Renewal Applications because the document was removed during the revision completeness review. (ZAB)

Section 3.5 Premine Land Use

8. We apologize for missing a small error in footnote 1 of Table 3.5-2 during our pre-renewal review. It appears the Total Crop acres of 2,940 listed in the footnote is incorrect and should be corrected to **3053.0** to be consistent with Table 3.5-1. It appears the totals

from Table 3.5-2 and 3.5-2a within the parenthesis should be corrected to (2642.7 + 409.3). (ZAB)

Section 3.9 Alluvial Valley Floor Determination

9. Narrative that is provided under the Square Butte Creek subheading in Section 3.9 describes the 1979 Howey-Disrud AVF report and their recommendation and subsequent PSC Finding for Permit BNCR-8202, which states that the valley of Square Butte Creek in Sections 19 and 23, T142N, R83W had been determined to be an alluvial valley floor. Subsequently, a more detailed and thorough AVF report was conducted prior to submittal of Permit BNCR-1101 (Mine Area C) by Bickel Consulting, LLC for BNI Coal and, based on that report, the Reclamation Division overturned the previous 1979 finding that the valley of Square Butte Creek located between Nelson Lake and the city of Center, ND in Sections 19 and 30, T142N, R83W, and Sections 23 and 24, T142N, R84W was a probable AVF. Please add to the existing narrative in this section of the permit with this information to clarify AVF status at Center Mine. (BEB)

Appendix 3.9-1 Alluvial Valley Floor Determination

10. Please add the Reclamation Division's July 14, 2011 AVF determination letter for the Mine Area C (BNCR-1101) AVF investigation report to Appendix 3.9-1. As noted above, the Bickel Mine Area C AVF report provided a more thorough assessment and interpretation of the 1979 report data and information combined with information gleaned from the Otter Creek AVF report to allow the previous determination based on the Howey-Disrud recommendation to be overturned. To clarify and update the discussions regarding AVF in the permit and adjacent areas, the 2011 determination letter should be added to this section. (BEB)

Section 4.1 Mining Operations and Waste Disposal

11. Follow-up item No. 25: Please update the Coal Production and Affected Acres table. Coal production for year 2015 should not be zero. (FSE)
12. Follow-up to item No. 26: Thank you for the updates to the Waste Disposal subsection that clearly describe the current waste disposal area in Section 5 of T141N, R83W. However, the updates unfortunately delete the information and reference to the former disposal areas and their permits that we believe should be retained in the permit for historical purposes. We request that the following paragraph (or similar wording) composed of portions of paragraph B from Revision No. 37 and proposed paragraph B changes with Revision No. 38 replace paragraph B in the April 24, 2015 Revision No. 38 response: (GAW/WTG)

“The waste disposal areas are located in the east half of Section 5-141-83 and are communally referred to as the Minnkota ash cells which are permitted under Permit Number SP-159. Two former disposal areas are located in the

southwest portion of Section 34 and the northwest portion of Section 3. They were both owned by Minnkota Power Cooperative. Minnkota Permit IT-197 was approved on November 6, 2000 by the State Department of Health and approved on November 15, 2000 by Oliver County for Section 34. Minnkota Permit IT-205 was approved on November 22, 2002 by the State Department of Health and approved on July 2, 2002 by Oliver County for Section 3. The primary purpose of IT-205 was for disposal of bottom ash. These permit documents are accessible from the link under Section 4.1 on the Volume X Home Page.”

Plate 4.1-1 Pit Layout and Facilities Map

13. Follow-up to item No. 29: Plate 4.1-1 depicts topsoil stockpile B9T02 as a current stockpile location but the 2014 annual map indicates that the pile was removed in 2011. Please update as appropriate. (RLK)
14. Follow-up to item No. 30: Please rearrange labels as necessary on Plate 4.1-1 so that mineral removal year labels are not overlapping, or being overlapped by other labels for stockpiles, ponds, buildings, utilities, etc. Please also change the color of the mineral removal year labels to black to reduce label distortion from hatching. (ZAB)

Appendix 4.5-1 Road Closure Information

15. Follow-up to item No. 44: As indicated in the April 2, 2015 response letter, and as required by NDAC 69-05.2-04-01.3(2) and (4), please discuss plans to obtain approval from the Oliver County Commission to close the one-half mile segment of the north-south section line between the SW¼ of Section 28 and the SE¼ of Section 29, and then add the documentation to Appendix 4.5-1, because the pit layout and sequence on Plate 4.1-1 (Pit Layout and Facilities Map) depicts mining through that section line in 2017. Presently it appears that BNI only has approval to conduct surface coal mining operations within 100 feet of the outside right-of-way on the east side of the entire north-south section line between Sections 28 and 29 granted on December 5, 2000 (and repeated for the east side of the section line between the NW¼ of Section 28 and the NE¼ of Section 29 on March 8, 2012). A special condition will be attached to the Commission’s approval of Revision No. 38 to Permit BNCR-9702 to prohibit mining through the section line right-of-way if BNI does not submit documents demonstrating Oliver County Commission approval to close the one-half mile segment of the north-south section line in time for Commission action at the July 22nd meeting. BNI must provide the Commission with copies of the road authority’s approval documents within 30 days of the approval date and include the written findings made by the road authority. (WTG)

Section 4.6 Surface Water Management Plan

16. Follow-up to item No. 49: In Section 4.6 the narrative regarding Sediment Pond 28-4 and Diversions 28-4 and 28-5 were removed, but the features are depicted on Plate 4.6-1

(Surface Water Management Plan) as planned features. Please revise and provide an explanation in the narrative as appropriate. (RLK)

17. Follow-up to item No. 49: Please update Section 4.6 to include design plans and information related to the catch basins described in BNI's April 27, 2015 letter to the Reclamation Division. (RLK)

Section 4.9 Reclamation Schedule and Plate 4.9-1 Reclamation Variance Areas

18. Follow-up to item No. 54: Please remove the link to Plate 4.9-1 in the first paragraph on page 4.9-1 and retain the link to Plate 4.1-1 from the approved permit. Plate 4.1-1 depicts all the mineral removal areas discussed in the narrative, while Plate 4.9-1 only depicts mineral removal areas from 2015 through 2026. The link to Plate 4.9-1 is not necessary on page one because it is appropriately provided on page 4.9-3 where the variance discussion begins. (ZAB)
19. Follow-up to item No. 54: Please review the reclamation narratives for 2016 through 2020 on page 4.9-2 and 4.9-3. The narratives do not comply with NDCC 38-14.1-24(14) and there are no corresponding requests for variances depicted on Plate 4.9-1 in the SW1/4SW1/4 of Section 28, Section 32 or Section 33. This appears to be a copy/paste error since the narratives for 2015 and 2016 have the same SPGM respread and vegetation date of 2012 and the narratives for 2016 through 2019 all appear off by one year. If this is the case, please update the dates of SPGM and vegetation as appropriate. If this is not the case, please provide specific information to justify delayed reclamation in these areas and revise Plate 4.9-1 as appropriate. (ZAB)
20. Follow-up to item No. 54: The 2020 narrative on page 4.9-3 does not adequately describe the reclamation activities that will occur in Section 21 and the N1/2 of Section 28 or in the SW1/4SW1/4 of Section 28, Section 32 and Section 33. Please revise as appropriate. (ZAB)
21. Follow-up to item No. 54: Please revise the first sentence of the 5th paragraph on page 4.9-3 to clarify that NDCC 38-14.1-24(14) requires all reclamation *through the initial planting* to be completed no later than three years from completion of surface coal mining operations. (ZAB)
22. Follow-up to item Nos. 57 and 58d: Variance area No. 12 includes areas that have been reclaimed according to the 2014 Annual Mine Map. Areas that have been reclaimed for which a variance should not be included in this variance request area. Please review and revise to update as necessary. The narrative for Variance Area No. 12 states that the variance area is 400 acres in size but this value will need to be updated to remove the reclaimed acreage. (GAW/ZAB)
23. Follow-up to item No. 58(k): As previously requested, please remove the narratives for variance areas 1-5, 7, 10, 11, 13, and 14. A single statement in the introduction that

directs the reader to the Historic Archives is sufficient. Also, the new language that states the variance areas currently meet all regulations pertaining to reclamation timing and the variance is no longer necessary is incorrect. Variances are requested because the reclamation timing requirement cannot be met. (ZAB)

24. Follow-up to item No. 58(l): Please revise the 6th paragraph on page 4.9-3 that states, *“The following paragraphs list the requested variance areas. The location of active variances can be found on [Plate 4.9-1]. Variances which were once approved but are no longer necessary can be found in [Section 4.9 - Historic Archives].”* As previously requested, please begin this paragraph with a statement that indicates Section 4.9 and [Plate 4.9-1] were updated with Revision 38/Renewal 3 in 2015 to include only areas where reclamation variances are still required and the information on areas no longer requiring variances, including Variances 1-5, 7, 10, 11, 13, and 14, was retained for historical purposes in [Section 4.9 - Historic Archives]. (ZAB)
25. Follow-up to item No. 58(f): Please revise the following sentence from the Variance Area 6 narrative: *Variance Area 6 will be regraded, respread and seeded in ~~or~~ 2015.* (ZAB)
26. Follow-up to item No. 58(g): Please revise the narrative for Variance Area 8. Include a projected time line; indicate where BNI plans to get the 1,000,000 cubic yards of material needed to fill the ash pit; clarify where BNI is at in the regulatory process by stating if/when a request was submitted; and reference portions of the permit, such as Section 4.11, that contain additional information. (ZAB)
27. Follow-up to item No. 58: The Historic Archives information pertaining to the Reclamation Schedule that is being added to the permit with this revision must be incorporated appropriately into the permit. This information should have a permit section number label and be included in the Table of Contents. (GAW)

Section 4.10 Backfilling and Regrading Plan

28. Follow-up to item No. 52: The last sentence in the item #6 discussion describes water management of the Section 21/28 cessation pit and the last sentence states that *“...to establish positive drainage either into approved sediment control structures of the open pit”* and it appears the intent was to state *“approved sediment control structures or the open pit.”* Please correct the typographical error. (BEB)
29. Follow-up to item No. 60: Please provide the preliminary information for the proposed post mining stockponds (or developed water resources) in Section 4.10 or another permit section. As a suggestion, a table could be used to list the preliminary post mine developed water resources information such as the location, watershed area, expected feature area and depth, along with the estimated 80% and 50% chance runoff yield. (NDAC 69-5.2-09-09(b)) (RLK)

Section 4.12 Revegetation and Post Mining Land Use

30. Follow-up to item No. 69: Please revise the new narrative regarding roads, trails and right-of-ways to specifically state that road surfacing material will be placed on section line roads, trails and right-of-ways, as necessary, to prevent erosion from occurring along these corridors when they are functioning as support features for the postmining land use. NDAC 69-05.2-09-13 (GAW)
31. Follow-up to item Nos. 70 and 78: Please review the following post-mine land use acreages for Section 5 in Table 4.12-1 and revise as appropriate to be consistent with Plate 4.12-1. (ZAB)
 - a. Add 35.4 acres of FWH (grasslands) to the appropriate column of **Table 4.12-1** and reduce the cropland acreage by the same amount.
 - b. Add a FWH (grasslands) column to the Section 5 table on page **4.12.2-4**, add 35.4 acres to the post mine FWH column, and adjust the post mine cropland acreage.
 - c. The legend for Plate 4.12-1 depicts FWH (grasslands) as gold diagonal lines but the legend does not include a symbol for the light yellow diagonal lines depicted on the plate. Please identify the light yellow lines in the legend or change the color to gold if these areas are also FWH (grasslands).
32. Follow-up to item No. 70: Please revise footnote 1 on Table 4.12-1 and footnote 2 on Table 3.5-1 for clarity as follows: “*Total acres includes 67.95 acres **that were bond released** in Section 3 that are not within the BNCR-9702 permit (Minnkota Ash Cell).*” (ZAB)

Plate 4.12-1 Post Mining Land Use

33. Please label the public land survey section numbers on Plate 4.12-1 as required by NDAC 69-05.2-09-02. (GAW/ZAB)

Section 4.13 Fish and Wildlife Resource Protections & Enhancement Plan & Fish and Wildlife Monitoring Plan

34. Follow-up to item No. 88: Please update the Federal Threatened, Endangered, and Candidate Species list found on page 4.13-7 to include the Northern Long-Eared Bat and revise to clarify if the Poweshiek Skipperling is listed as Endangered or Threatened. It is incorrectly listed as both Threatened and Endangered. (GAW)
35. Follow-up to item No. 89: Please revise the new sentence in the first paragraph on page 4.13-1 that incorrectly states that the Dakota Skipper is a Candidate species to the Threatened and Endangered Species Act. Also, as originally requested, please revise to clearly state if the permit area contains suitable habitat for each listed Threatened, Endangered or Candidate Species, and revise the monitoring plan to include a plan for conducting surveys if applicable. For example, discuss if the permit area contains any

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stop-over habitat for the whooping crane or if there are any woodlands in the permit area that could be suitable habitat for the Northern Long-Eared Bat. (GAW)

Plate 4.13-1 Wildlife Monitoring Map (Minewide)

36. Follow-up to item No. 90: Please revise Plate 4.13-1 to depict the wildlife monitoring area. The wildlife monitoring area must include a buffer zone around the existing permit areas. Please also revise the legend of this map to correct the error that states that Permit BNCR-1101 is pending. (GAW)

Section 4.14 Reclamation Cost Estimate for Bonding Purposes

37. As indicated in your April 2, 2015 letter, please address items 91 through 94 in the February 9th pre-renewal letter. (FSE)

Please contact this office if you have any questions.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor