



Public Service Commission

State of North Dakota

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March 3, 2016

Ms. Stephanie Paavola
Environmental/GIS Specialist
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Ms. Paavola:

The Reclamation Division has reviewed BNI Coal Ltd.'s request for a variance to the ten-year performance bond responsibility period for approximately 2.38 acres in the SE1/4 of Section 25, T142N, R84W, within Surface Coal Mining Permit BNCR-8106. A variance for the former stockpile area described in the request appears to be reasonable to allow final bond release as part of a larger tract as outlined in Policy Memorandum No. 20. However, the following items must be addressed before we can recommend approval of a variance for this tract:

1. The variance request indicates that the post mine land use of the variance area and adjacent land that would be in the prospective bond release tract is tame pasture land but the approved post mine land use in Permit BNCR-8106 is hayland. If BNI Coal is proposing to change the post mine land use for the tract, an appropriate revision to Permit BNCR-8106 must be submitted and approved prior to proceeding with the variance request. Please revise the variance or proceed with a permit revision as appropriate.
2. The permit currently does not contain a productivity technical standard for tame pastureland or hayland for the Schmidt ownership in the NW Section 25-142-84. The unadjusted productivity standard that will be used for bond release should be provided or be available in the permit for comparison to the data that may be presented to demonstrate revegetation success on the variance area and the remaining bond release tract. Please briefly address this matter in the variance request and discuss plans for a future revision to Permit BNCR-8106.
3. Please identify the reclamation law periods for the proposed variance area as it appears, part of this tract was disturbed prior to 1975. Also depict the watershed boundary for pond 25-9 as required by Policy Memorandum No. 20.
4. As a reminder, please include a copy of the land owner statement accepting maintenance responsibilities for pond 25-9 as a permanent water feature with the bond release application for the area that will contain the pond. Our current version of Permit BNCR-8106 does not include a copy of the agreement included with BR No. 6 to BNCR-8106 that references pond 25-9. Also

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we have noted that page 4.12.5-3 of the permit states that no ponds have been approved as permanent structures but the design plans to retain several ponds including pond 25-9 were approved with Revision 52 to BNCR-8106. Please remove or revise the statement regarding permanent ponds found in Section 4.12.5, Potential for Reclamation Success, in a future revision to Permit BNCR-8106.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Jay Volk, BNI (email)