

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

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

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

DATE: March 29, 2016

SUBJECT: Variance request to the performance bond responsibility period for areas in Permit BNCR-8106 held by BNI Coal, Ltd. for the Center Mine, Case No. RC-16-60

On January 28, 2016, BNI Coal, Ltd. filed a request for a variance from the 10-year revegetation liability period for a 2.4 acre tract of reclaimed land in Permit BNCR-8106 at the Center Mine. This acreage is located in a portion of the SE1/4SE1/4 of Section 25, T142N, R84W, Oliver County. A variance from the 10-year liability period will allow an area where a subsoil stockpile was reclaimed in 2009 to be bond released with the adjacent lands that were reclaimed in 1981, 1982 and 1993. The Reclamation Division has completed its review of the request and respectfully recommends approval of a variance for the 2.4 acres as allowed by Policy Memorandum No. 20.

Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year responsibility period for support facilities such as soil stockpiles that could not be reclaimed at the time as the surrounding reclaimed tract and for reclamation repair work following the initial seeding of the reclaimed tract. Variance areas must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. The permittee must affirmatively demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety. Reclamation procedures used on the variance areas need to provide the same protections as those used on the surrounding reclaimed tracts.

The 2.4 acre variance request area is part of a larger reclaimed tract containing 16.9 acres in the SE1/4SE1/4 of Section 25 of Permit BNCR-8106. The 2.4 acre variance request area contained a subsoil stockpile until it was reclaimed in 2008 and then seeded to hayland in 2009. The minimum 10-year responsibility period for the land surrounding the variance request area ended in 2003. The variance area covers about 14 percent of the reclaimed land in the tract. A small area (about 0.01 acres) of erosion damage that occurred within the variance request area was

repaired in 2015. The variance area has been in hay production since 2009 and has been harvested for several years along with the other reclaimed hayland area in the tract. The variance request included productivity sampling data collected in 2011, 2012 and 2013 from the variance area. The sample data indicates that the productivity has been restored and would meet the applicable performance standards.

The variance would allow a final bond release application to be submitted for the entire the larger tract at this time. The potential 16.9 acre bond release tract is already isolated since the former permitted areas surrounding the tract have been bond released. Removing this small area from within the larger logical bond release tract would be impractical and would delay bond release for another three years.

A map showing the variance areas and the adjacent reclaimed lands still within the permit is attached. The proposed variance areas have been reviewed during several inspections. No issues were identified during the inspections that suggest the variance not be granted. Based on the field inspections and the information contained in the request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 2.4 acres of reclaimed land in Section 25 within Permit BNCR-8106.


A motion and an approval form are attached for your consideration.


Minedata/Center/Permits/BNCR-8106/Variations/Variance_memo_3-29-16.docx











 BNI COAL
 2360 36th Ave SW
 Center, ND 58630

Attachment 1
Proposed Variance Area



 Scale: 1 inch = 200 feet

 0 62.5 125 250 375 500 Feet

Legend

-  BNCR 8106 Permit Boundary
-  Repaired Area
-  Proposed Variance Area
-  Seeding Dates
-  Surveyed Section Lines
-  Data Sampling Transects
-  Transect Frame Locations