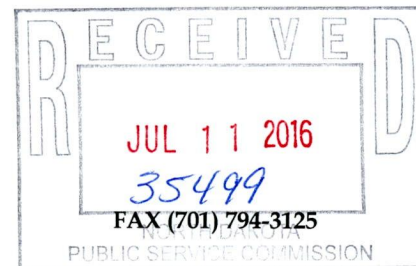


PHONE (701) 355-5588



July 11, 2016

Mr. Jim Deutsch, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE: Revision 39 to Permit BNCR-9702

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated June 28, 2016. In this letter you listed completeness deficiencies that must be addressed before the Revision 39 application and Public Notice for BNCR-9702 can be deemed complete. Below is a listing of the deficiencies followed by our response:

Revision No. 39 Application (SFN 10562)

1. Please revise the revision application narrative with an attachment if necessary to clearly describe the salient purpose of Revision No. 39 similar to the hierarchy and wording that follows as required by NDAC 69-05.2-05-02(1): (WTG/ZAB)
 - a. Revision No. 39 proposes to change the postmine topography in Section 3 by redistributing 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill to obtain spoil for use as backfill to close the landfill and to change the postmine land use for the landfill area from industrial to agricultural.
 - b. Revision No. 39 also proposes to change the postmine topography in the S $\frac{1}{2}$ of Section 29, the N $\frac{1}{2}$ of Section 32, and the NW $\frac{1}{4}$ of Section 33 in preparation of a final pit location in the S $\frac{1}{2}$ of Section 29.
 - c. Revision No. 39 also proposes updates to the following permit sections: (List updates to other permit sections that are made in response to the application completeness review and also those submitted on the application form that are not addressed by items a. and b. We suggest that separate subsection listings within the Legal and Financial Information section (bonding, licenses, violations, etc.) could be deleted at BNI's discretion because they are minor permit updates.)

3 RC-16-256 Filed 07/11/2016 Pages: 11
Response to the completeness deficiency letter filed by the applicant
BNI Coal, Ltd.
Karene Hall

BNI COAL, LTD.
2360 35TH AVENUE SW, CENTER, ND 58530-9499

The application narrative has been updated to address items a through c as suggested. A separate sheet has been attached to the application with the narrative requested.

Newspaper Notice

2. As required by NDAC 69-05.2-05-02(1) and 69-05.2-10-01(1), please revise the Revision No. 39 description in the first paragraph on page 1 of the newspaper notice to match that of the revised revision narrative requested for the revision application.
(WTG/ZAB/RLK)

The newspaper notice description has been revised to include the narrative that is revised for the application description.

3. As required by NDAC 69-05.2-05-02(1) and 69-05.2-10-01(1), please revise the second paragraph on page 1 of the newspaper notice as indicated by underscore or strikethrough as follows: (WTG/ZAB) *Written comments, objections, and requests for informal conferences ~~and petitions~~ should be filed with ~~sent to~~ the Reclamation Division, Public Service Commission, 600 East Boulevard, Dept. 408, Bismarck, ND 58505-0480 within 30 days after the last final date of publication of this notice. A copy of the revision permit application is available for inspection at the Office of the Auditor, Oliver County Courthouse, Center, ND 58530 and ~~the Office of the Director of the Reclamation Division, Public Service Commission, 600 East Boulevard Avenue, Dept. 408, Bismarck, ND 58505-0480.~~*

The second paragraph of page 1 of the newspaper notice has been updated as requested.

4. As indicated by NDCC 38-14.1-18(1), please limit the listing for the legal description and names to Section 3, T141N, R84W for the apparent surface and mineral (coal) owners of the land in the permit area that will be affected by the revision. The Revision No. 39 application was deemed significant according to NDAC 69-05.2-11-02(5)(a) because of the proposed revision to the permit's postmine topography in Section 3 by re-disturbing 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill to obtain spoil for use as backfill to close the landfill. The land use change for the bottom ash landfill from industrial to agricultural was also considered in this determination. (WTG/ZAB/RLK)

The listing of legal descriptions and names for all entities besides Section 3 have been removed from the notice as requested. Plate 4.12-1 was revised to depict the ash cell as cropland rather than industrial.

5. As required by NDCC 38-14.1-18(1), please revise the newspaper notice map as follows to identify the land boundaries proposed to be affected by the permit revision:
(WTG/ZAB/RLK)
 - a. Depict and label the three parcels totaling 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill that will be re-disturbed and where the postmine topography will be revised to obtain spoil for use as backfill to close the landfill.
 - b. Add the parenthetical descriptor of *Variance Area 8* to the buffer zone label.

- c. Revise the waste disposal facility label to specify *Minnkota Power Cooperative's* ownership and to add a label stating *released from bond* inside the waste disposal bond release area boundary.

All the items listed above have been revised or added to the publication map as suggested.

6. As required by NDAC 69-05.2-05-02(1) and 69-05.2-10-01(1)(b), please revise the newspaper notice map as follows: (WTG/ZAB)
 - a. Add route labels for Oliver County roads 38th AVE SW and 41st AVE SW.
 - b. Enlarge the township and range labels to ensure that they will be legible at the newspaper publication size.
 - c. Depict and label the route for Hagel Creek within and adjacent the south BNCR-9702 permit area.
 - d. Extend the east-west section line boundaries westward into the portions of Sections 6, 7, and 31 that are within the BNCR-9702 permit boundary.

All the items listed above have been revised or added to the publication map as suggested.

Appendix 1-7 Revision Summary with List of Changes & Approval Documents

7. As required by Permit BNCR-9702 Standard Condition No. 8, please revise the revision summary paragraph on page 1 of the Revision No. 39 Revision Summary and List of Changes in Appendix 1-7 to match that of the revised revision narrative requested for the revision application and the revised revision description requested for newspaper notice. (WTG/ZAB)

The revision summary has been updated to reflect the narrative revised for the revision application.

8. Please correct the second bullet item for the Section 1.0 List of Changes to list **Appendix** 1-2 instead of Section 1-2 for updates to certified leases. (ZAB/WTG)

The word "Section" was revised to read "Appendix" as suggested.

Section 3.4 Surface Water

9. As required by NDAC 69-05.2-05-02(1), please revise Table 3.4.3-1 in Section 3.4 to clearly indicate the Revision No. 39 pre-mine and post-mine watershed comparison modeling changes resulting from proposed revisions to the permit's postmine topography in the S $\frac{1}{2}$ of Section 29, the N $\frac{1}{2}$ of Section 32, and the NW $\frac{1}{4}$ of Section 33 in preparation of a final pit location in the S $\frac{1}{2}$ of Section 29. All Revision No. 39 changes to Table 3.4.3-1 should be indicated with red font strikethrough and underscore. (WTG/RLK)

The previously approved tables were placed back into the narrative to show the revised information. The revised data was marked by red text with strikethrough. The new data in the new tables was highlighted in yellow.

Section 4.1 Mining Operations and Waste Disposal

10. Please update the Section 4.1 narrative to include a discussion about BNI's plans for redisturbing reclaimed land to obtain spoil for use as backfill to close Minnkota's bond released bottom ash inert waste landfill. (GAW)

The narrative was updated to include a discussion of the closure plans for the ash cell. Also a reference to Section 4.10 was added for further information.

11. Please update the Minnkota Inert Waste Disposal Permit in Section 4.1 to include the June 2016 permit review, draft permit, and public notice documents from the Department of Health for Minnkota's bottom ash inert waste landfill permit renewal to document that the changes proposed with Revision No. 39 are consistent with the Department of Health's permit. (GAW/RLK)

The Inert Waste Disposal Permit was updated as requested.

Section 4.6 Surface Water Management Plan

12. The changes being made with Revision No. 39 do not include appropriate plans for surface water management for the proposed grading and reclamation of the ash cell area as required by NDAC 69-05.2-09-09(1). We have noted that a substantial portion of the regrading area will be within the watershed of sedimentation pond 2-1, but lands between the ash cell and the pond have been reclaimed that would require sediment controls within the project area to prevent damage to the replaced soils due to sediment deposition. Also, the drainage west would no longer be controlled by a sediment pond and thus alternative sediment controls must be provided as required in NDAC 69-5.2-16-04(1). Please submit a plan for the treatment of surface water drainage from the 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill that will be redisturbed to obtain spoil for use as backfill to close the landfill as required by NDAC 69-05.2-09-12(1)(c). The plan should include a detailed description in the Section 4.6 narrative of sediment control measures that will be used to control runoff from the redisturbance area. The plan should also include updates to an existing Section 4.6 plate, or a new design detail plate (presumably 4.6-40), that depicts and labels the type, locations, and extent of sediment control measures that will be used to control runoff from the redisturbance area. Please also update the Revision No. 39 Revision Summary and List of Changes in Appendix 1-7 to indicate and describe the changes to Section 4.6. (RLK/WTG/GAW)

Appendix 4.6-5 was added to address the surface water management plan for the Section 3 Ash Cell site and the redisturbed reclaimed land. The appendix also includes a map depicting the bmp's planned to be used.

Section 4.9 Reclamation Schedule

13. As required by NDAC 69-05.2-05-02(1), please update the narrative for Variance Area 8 in Section 4.9 to include reclamation plans proposed with Revision No. 39 and also include a reclamation timeline for this area. Please discuss if a variance will be needed for the reclaimed land that will be redisturbed for the bottom ash landfill closure plan.

Please also update the narrative to provide updated quantities of subsoil substitutes described in Section 4.11 and identify the source of subsoil to be used to reclaim the ash site or clearly indicate that the soil material quantities will be provided for review and approval by the Reclamation Division prior to implementation of the plan. (NDAC 69-05.2-09-11(5)) (GAW/RLK)

Section 4.9 narrative was updated to reflect the proposed reclamation plans and completed work.

Plate 4.9-1 was updated. Variance Area 8 boundary was updated to include the redisturbed reclaimed land and associated disturbance planned for spgm stockpiling.

Section 4.10 Backfilling and Regrading

14. As required by NDAC 69-05.2-05-02(1), please revise the narrative in item no. 3 in subsection 4.10.1 (Design Methods) of Section 4.10 as follows to more clearly describe the reclaimed land redisturbance to obtain spoil for use as backfill to close Minnkota's bond released bottom ash inert waste landfill. (ZAB/GAW/RLK/WTG/FSE)
- a. Reference Section 4.11 for details on suitable plant growth material (SPGM) removal, storage, and redistribution for areas where SPGM will be removed.
This reference was added within the narrative.
 - b. Describe the bottom ash landfill backfilling that has already occurred.
The narrative was updated to reference work that has already occurred.
 - c. Describe the approximate reclaimed land acreage that will be redisturbed.
The narrative was revised to address the requested acreage.
 - d. Describe the borrow material volume that will be removed from the redisturbed area.
The narrative was revised to address the borrow material volume.
 - e. Describe the fill material volume available from other sources.
The potential fill volume available from the subsoil substitute
 - f. Provide appropriate cross-sections and/or construction details of the area affected by this proposed revision.
 - g. Describe landowner concurrence with the plan.
Reference was made that the reclamation plan was requested by and developed for Minnkota Power.
 - h. Describe how the postmine topography in Section 3 will be affected.
The narrative was updated to include discussions of post-mine topography revision affects within the three borrow areas.
 - i. Provide a proposed timeline for reclaiming the redisturbed reclaimed land.
A timeline for the planned work was added to the narrative.
15. As required by NDAC 69-05.2-05-02(1), please revise the narrative in item no. 3 in subsection 4.10.1 (Design Methods) of Section 4.10 to state that the adjacent reclaimed area is depicted on Plate 4.10-1 and consistently refer to this area as the adjacent reclaimed area, not as the adjacent *reclamation* area that implies reclamation is in progress. (ZAB)

The narrative was revised as requested.

16. As required by NDAC 69-05.2-05-02(1), please revise the narrative in item no. 3 in subsection 4.10.1 (Design Methods) of Section 4.10 to replace Revision No. 39 *overburden* references with *spoil* where the narrative specifically refers to redistributing 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill to obtain spoil for use as backfill to close the landfill. (WTG/GAW)

The narrative was revised as requested.

17. As required by NDAC 69-05.2-05-02(1), please revise the narrative in item no. 3 in subsection 4.10.1 (Design Methods) of Section 4.10 to clearly indicate that when bottom ash landfill backfilling is eventually completed it will be graded to a postmine topography that conforms with the bond released area elevation contours depicted on Plate 4.10-1. (WTG)

The narrative under item no. 3 was revised to address that the ash cell regrading will conform with the post-mine topography as depicted on Plate 4.10-1.

18. As required by NDAC 69-05.2-30-01, please expand the narrative in item no. 3 in subsection 4.10.1 (Design Methods) of Section 4.10, or insert a new item in subsection 4.10.1, to state that approval for off-permit use of other minerals is being requested with Revision No. 39 to redistribute 87 acres of reclaimed land adjoining the 87 acre buffer area (Variance Area 8) of Minnkota's bond released bottom ash inert waste landfill to obtain spoil for use as backfill to close the landfill. The approval request should address each item of NDAC 69-05.2-30-01 with detailed information for items (3) and (4) where spoil volumes should be listed for each of the three redistribution areas where spoil will be removed from the permit, and Plate 4.10-1 (Post-Mining Topographic Contours) should be referenced for the spoil borrow areas and the resulting changes with the postmine topography. (WTG)

A request for off-permit use of other minerals was added within a new Appendix 4.10-1. Reference was made to the appendix within the Section 4.10 narrative.

19. As required by NDAC 69-05.2-05-02(1), please revise the narrative in item no. 4 in subsection 4.10.1 (Design Methods) of Section 4.10 to correct the apparent error stating that mining will cease in Section 32 because of high cover near the center of Section 29. The approved (Revision No. 38) and Revision No. 39 Pit Layout and Facilities Maps depict a 2019 final pit and highwall backslope area in the S $\frac{1}{2}$ of Section 29. It appears that the narrative in item no. 4 should be revised to indicate that mining will cease in the S $\frac{1}{2}$ of Section 29 because of high cover near the center of Section 29. (WTG/GAW)

The error was corrected within the narrative as suggested.

20. The changes to the post-mining topography shown on Plate 4.10-1 (Post-Mining Topographic Contours) appear to include topography changes outside of the area identified on the map as "Section 3 Ash Cell Reclamation Borrow Areas" near the south section line in the SW $\frac{1}{4}$ of Section 3. The drawing appears to show a hill top on the present reclaimed topography in the proposed borrow area being pushed to the south. Please review and revise Plate 4.10-1 and the application as appropriate to clearly

identify and describe the area to be affected by the proposed permit revision in accordance with NDAC 69-05.2-09-02. Please also revise the revision application, newspaper notice, and revision summary with BNI's completeness review response as necessary if revising the ash cell reclamation borrow area boundaries causes the cumulative acreage to change from the 87 acres that we calculated from the application. (RLK)

The proposed redisturbance areas as shown on Plate 4.10-1 are accurate and we do not plan any additional disturbance outside of these boundaries other than associated disturbance required for stockpiling spgm from within the proposed boundaries. We surveyed the area surrounding the ash cell and found that this area you are commenting on in the SW ¼ of Section 3 varies somewhat from what is shown on Plate 4.10-1 as approved in Revision 38. I modified the contours on Plate 4.10-1 to match what the survey showed in the field so that the information within and surrounding the redisturbed areas is accurate.

Section 4.11 Suitable Plant Growth Material (SPGM) Removal and Replacement

21. As required by NDAC 69-05.2-09-11(5), please submit a plan with appropriate tables and plates for the removal, storage, and redistribution of suitable plant growth material to meet the requirements of NDAC 69-05.2-15 specific to the redisturbance of 87 acres of reclaimed land. A new plate will be necessary for Section 4.11 to depict as-built topography and topsoil and subsoil depths that were respread in the grade approval areas that will be affected by the redisturbance. It will also be necessary to depict associated redisturbance boundaries and proposed stockpile locations where only topsoil or subsoil will be removed in areas needed for material stockpiling. Depending on the redisturbance duration it may also be necessary to depict the stockpile locations on Plate 4.1-1 (Pit Layout and Facilities Map). Please also update the Revision No. 39 Revision Summary and List of Changes in Appendix 1-7 to indicate and describe the changes to Section 4.11. (WTG/RLK/GAW)

Appendix 4.11-1 was added to address the soils handling plan for the section 3 ash disposal cell specifically the redisturbance of the reclaimed land. The appendix also includes a map of the planned disturbance and includes spgm respread depths from the original grade approvals. No updates to Plate 4.1-1 were made at this time in regards to the stockpile locations.

22. As required by NDAC 69-05.2-05-02(1), please revise Table 4.11-2 in Section 4.11 to insert the topsoil and subsoil respread depths for closure of Minnkota's bond released bottom ash inert waste landfill in Section 3. The entry should be footnoted to explain that the bond released acres are not included in the permit's total acreage. The footnote should also identify the potential topsoil and subsoil stockpile sources(s) from which the dedicated respective topsoil and subsoil volumes may be taken to close the landfill. Please also update the Revision No. 39 Revision Summary and List of Changes in Appendix 1-7 to indicate and describe the changes to Section 4.11. (WTG/RLK)

Table 4.11-2 was not revised as suggested. It was felt that addition of the requested information into this table may add confusion to data the table shows. Instead, the requested information was added to Appendix 4.11-1.

Section 4.12 Revegetation and Post Mining Land Use

23. The Revision No. 39 summary states that a trail is going to be established between Sections 5 and 32. Please update Section 4.12.2 (Premine and Postmine Land Use Discussions) to clarify the difference between roads, section line rights-of-way (ROW), and trails, and also clarify how trails are going to be constructed. (GAW)

A narrative was added to Page 1 of Section 4.12.2 was revised to clarify more about roads, right of ways, and trails.

In addition, the following technical deficiency items were noted. At your discretion, they can be addressed with your response to this completeness review letter or in the subsequent technical review letter.

Section 1.2 Bonding Information

1. The last sentence of the bonding narrative in Section 1.2 (Bonding Information) incorrectly states that the legal description for the bond area is the same as for the permit area and references Plate 1-1. This language described the bonding in the permit prior to the consolidation of Permits BNCR-9702, 8202, 8602, and 8106 into one bond area. Please update the bonding narrative to reflect the current bonding situation and correct the reference to Plate 1-1 because this plate depicts only Permit BNCR-9702, not the consolidated bond area. (ZAB)

Section 1.2 Bonding Information has been updated as requested.

Appendix 1.14-1 Proof of Liability Insurance

2. Please add the endorsement for the current certificate of liability insurance policy TB2-641-004355-**136** to Appendix 1.14-1. (ZAB)

The most recent endorsement for the current liability insurance policy has been added to Appendix 1.14-1.

Section 4.12 Revegetation and Post Mining Land Use

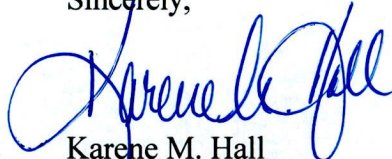
3. Please include actual as-planted tree planting design information for the two conservation shelterbelt plantings that were planted in Section 27 in 2016 as described on page 9 of Section 4.12.2 (Premine and Postmine Land Use Discussions). The information should include species planted in each row, row width, in-row tree spacing, shelterbelt acreage, and date planted as required by NDAC 69-05.2-09-11(6). The narrative in Section 4.12.2 should also mention site preparation activities and weed control. (GAW)

Section 27 narratives in Section 4.12.2 of the permit was revised to include a discussion about the conservational shelterbelts that were planted this year.

Additionally, Section 4.12.3 was revised to list postmine plans for three shelterbelts in Section 29. Plate 4.12 was revised to number these shelterbelts accordingly.

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Karene M. Hall
Permit Coordinator



**APPLICATION FOR REVISION OF PERMIT TO ENGAGE IN
SURFACE COAL MINING AND RECLAMATION OPERATIONS**
PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION
SFN 10562 (1-2004)

July 08, 2016

Name of Company, Corporation, Partnership, or Individual BNI Coal, Ltd.		Permit Number BNCR-9702	Date June 2, 2016	
Address 2360 35th Avenue SW		City Center	Revision Number 39	State ND
			Zip Code 58530	

The above named hereby makes application for the above Revision Number to: (include a brief description of the surface coal mining and reclamation operation being revised.)
See attached sheet.

Attached to this Permit Revision Application are a narrative describing the proposed permit revision, reasons for requesting the revision, and appropriate maps, cross-sections, graphs, construction details, revised reclamation plans and other data which demonstrate compliance with Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and the permit conditions of the approved permit. If an incidental boundary revision involving an acreage adjustment is being requested as part of the permit revision application, the following information shall be included (attach a copy of a metes and bounds description):

NAME OF MINE	ACRES	LOCATION			
		SEC.	TWP.	RANGE	COUNTY
ADDRESS					
TOTAL ACRES					

Based upon the proposed changes and any incidental boundary revisions to the permit as stated herein, a new or adjusted bond, or its equivalent, duly executed in accordance with Section 38-14.1-16 of the North Dakota Century Code and Chapter 69-05.2-12 of the North Dakota Administrative Code will be delivered to the Public Service Commission prior to issuance of the surface coal mining and reclamation operations permit herein requested. A check for filing fees, pursuant to Section 38-14.1-13 of the North Dakota Century Code, in the amount of \$ 0, is included with the revision application.

Name of Official Authorized to Represent the Applicant Karene M. Hall
--

I, the above named, certify that:

1. All information and documents required by Sections 38-14.1-13, 38-14.1-14, and 38-14.1-15 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, are submitted as part of this permit application;
2. Information and documentation contained in the permit application affirmatively demonstrate that:
 - a. The permit revision application is accurate and complete and all the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code have been complied with;
 - b. Reclamation as required by Chapter 38-14.1 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code can be accomplished under the reclamation plan contained in this permit revision application;

Revision 39 – BNCR-9702

Revision 39 to Permit BNCR 9702 proposes to change the post-mine topography within Section 3, T141N, R84W surrounding Minnkota Power's bond released inert waste disposal facility to aid in the final closure of the cell. This permit revision proposes changes within the 89 acre buffer area (Variance Area 8) surrounding the cell along with redisturbance of 87 acres of reclaimed land around the buffer area to obtain spoil for use as backfill to close the ash disposal cell.

Revision 39 to Permit BNCR 9702 also proposes to change the post-mine topography in the S $\frac{1}{2}$ of Section 29, the N $\frac{1}{2}$ of Section 32, and the NW $\frac{1}{4}$ of Section 33 in preparation of a final pit location in the S $\frac{1}{2}$ of Section 29.

Revision 39 to Permit BNCR 9702 also proposes updates to the Legal and Financial Section, will update the right-of-way closures in the transportation plan, will update the backfilling and regrading plan, will update the Post Mining topography and Slope Analysis information and will update the post mining land use section.