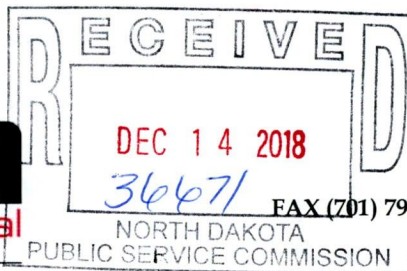


PHONE (701) 355-5588



A BNI ENERGY COMPANY

December 14, 2018

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

RE: Revision 6 to Permit BNCR-1101

Dear Mr. Moos,

This submittal contains a response to your pre-renewal review letter to us dated October 3, 2018. In this letter you listed technical deficiencies that must be addressed before the Revision 6 and Renewal 1 application to BNCR-1101 can be approved. Below is a listing of the deficiencies followed by our response:

Section 1.7 – Business Entity Information

1. Please update the corporate officers and board members for BNI Coal, Ltd., BNI Energy, Inc. and Allete in Section 1.7 (Business Entity Information) consistent with updates most recently made with Revision No. 57 to Permit BNCR-8106, and any subsequent changes to corporate officers and board members. (WTG/RLK)

Section 1.7 Business Entity Information has been updated to match Revision 57 to BNCR-8106. No other changes are necessary.

Section 1.9 – Surface and Coal Ownership

2. Please update the permit area surface and coal interests in Appendix 1.9-1 (Ownership Information) as required by NDCC 38-14.1-14(1)(c)(2) and make the corresponding updates to Plate 1.9-1 (Surface and Coal Ownership) if any changes have occurred since the most recent updates with Revision No. 4. (WTG/BEB/GAW)

Appendix 1.9-1 Ownership Information has been updated to include a new surface lease in the NE4 of Section 20, T141N, R83W for Beverly Buttram. Also added LE lease documents for Doll and Pazdernik surface owners in the NE4 of Section 20, T141N, R83W. Plate 1.9-1 has also been updated to incorporate the changes.

3. Please update the adjacent surface and coal interests in Appendix 1.9-2 (Adjacent Ownership Information) as required by NDAC 69-05.2-06-01(1)(a) and make the corresponding updates to Plate 1.9-1 (Surface and Coal Ownership) if any changes have occurred since the most recent updates with Revision No. 4. (WTG/BEB/GAW)

Appendix 1.9-2 has been updated to include changes in Section 31, T142N R83W, Section 2, T141N R84W and Section 11, T141N R84W. Plate 1.9-1 has also been updated with these changes.

Section 1.12 – Other Licenses and Permits

4. Please update the other licenses and permits in Section 1.12 as required by NDAC 69-05.2-06-04 if any changes have occurred since the most recent updates with Revision No. 4. Please note that the USACE Section 404 permit (item 6) and the NDGS Coal Exploration permit (item 7) list effective dates that are now expired. (WTG/JSP/BEB)

The NDGS Coal Exploration permit effective date has been updated. The Section 404 permit renewal application has been submitted as an Individual Permit application to the USACE and is currently under their review. In an email correspondence from USACE, we were assured that we are still covered under the prior permit while the review is in process.

Section 1.13 – Past Violations

5. Please update the schedule in Section 1.13 listing notices of violation issued to BNI Coal, Ltd. within the past three years. Notices of Violation 1402 and 1503 may be deleted from the schedule because the three-year reporting period has elapsed. Please also update the closing statement of Section 1.13 to add BNI Energy, Inc. to the corporate organization. (WTG/BEB/RLK)

Section 1.13 Past Violations has been updated to remove all violations that are older than 3 years; added BNI Energy, Inc. to the list of organizations.

Section 1.14 – Proof of Liability Insurance

6. The Certificate of Liability Insurance provided in the permit in Appendix 1.14-1 expired on February 1, 2018. If your intention is to retain the current liability insurance certificate in the permit, please update the appendix accordingly. (BEB/PJR/JSP)

Updated Insurance Certificates are included with this submittal.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

7. As required by NDAC 69-05.2-06-03(1), please provide certified copies of coal ownership leases for at least 75 percent of the ownership in the NE¼ of Section 20, T141N, R83W as required by NDCC 38-18-05(3). Special Condition No. 3 to Permit BNCR-1101 that prohibits overburden or coal removal from this tract remains in effect until BNI submits certified copies of leases with additional coal owners, or other

documents demonstrating it has the necessary rights to mine the coal in the tract.
(WTG)

Added Coal Leases for Beverly Buttram, Douglas Doll et al LE and James Pazdernik et al LE to make the total coal leased for the NE4 of Section 20 80%.

Section 2.1 – Extended Mine Plan

8. Please update the Extended Mining Plan Map (Plate 2.1) to provide current, updated information in the permit regarding your proposed/future mining plans as required by NDAC 69-05.2-07-01. (BEB/PJR/WTG)

The Extended Mine Plan has been updated with the latest mining plans.

Section 3.4 – Surface Water

9. Please review the hydrologic reclamation plan to ensure that it specifically addresses any potential adverse impacts identified in the probable hydrologic consequences determination for mining activities that are to occur during the next term of the permit, and that it contains preventive and remedial measures for those impacts as required by NDAC 69-05.2-09-12. (GAW)

The PHC is current and up to date in relation to the next permit term and/or associated with the Revision 6 federal coal addition. Likewise, no changes in watershed acres resulted from Revision 5 and as proposed in Revision 6.

Section 3.3 - Groundwater

10. If necessary, please update the Ground Water Monitoring Map (well location map) of Plate 3.3-1 to show any changes such as new, destroyed or mined-through wells. In addition, we ask that the dated background aerial photo (appears to be 2010 NAIP) be updated to show recent mining progression in the permit relative to monitoring well locations. (BEB)

The map was updated to include the 2nd Qtr 2017 photo.

11. If necessary, please update Appendix 3.3-1, Ground Water Monitoring Well Information summary table, for any changes or new information regarding monitoring well installations or monitoring well status such as Active/Destroyed. (BEB)

Well 11-9-2A/B were added to the annual sampling.

12. Please update Appendix 3.3-2, Water Well Certifications, if there have been any additional domestic, stock, or other well certifications or re-certifications conducted since the permit was approved. Any updates should also be reflected in the Certified Well Location Map, Plate 3.3-4. (BEB)

The well certifications that were completed for Area C1, will be added at a later date.

Section 3.12 – Cultural and Historical Resources and Protection

13. Please review the Cultural and Historic Resources narrative, Table 1 and site location map in the permit and provide any necessary updates. Additionally, updated or new Cultural Resources Studies or SHPO correspondence should be incorporated in the permit at this time. (BEB)

No new cultural resource studies or correspondence has been conducted within the current permit boundary since the latest revision.

Section 4.1 – Operations Plan

14. Please update the Perennial and Intermittent Streams subsection of Section 4.1, Operations Plan, to discuss if BNI intends to conduct surface coal mining and reclamation operations within 100 feet of any perennial or intermittent streams or measures that will be taken to avoid impacts within 100 feet of perennial or intermittent streams, during the next term of the permit. The second paragraph on page 4.1-4 indicates that diversion D-16-4 might disturb areas within 100 feet of an intermittent stream. NDAC 69-05.2-16-20 (GAW)

The narrative was updated to reflect current disturbance plans. BNI is currently in the design phase for Pond P-21-5 and upon completion we would plan to submit the design in a permit revision. We would plan at that time to request for disturbance within the intermittent stream. Diversion D-16-4 will also potentially disturb an intermittent stream, but detailed design for that structure has not been completed. The current construction date for that structure was updated to be 2026 on Plate 4.1-1 and 4.1-6 to match the current mine plan.

15. The first paragraph on page 4.1-3 discusses BNI's plans to construct retaining walls and widening the County Road over Hagel Creek in the NW1/4 of Section 5. Please review this narrative and revise to clarify what actually occurred for the dragline move and the reclamation plan for restoring the road to its original condition. Appendix 4.5-6 depicts retaining walls on both sides of the road adjacent to Hagel Creek. (GAW)

This paragraph was updated to reflect a past tense and reflects what was actually constructed. Additional details were provided for the reclamation of the access road.

16. A sentence near the bottom of the 4th paragraph on page 4.1-3 states that the haulroad above sediment pond P-12-1 will be reclaimed in 2021. The Pit Layout and Facilities Map, Plate 4.1-1 shows mining continuing south of P-12-01 through 2023. Please review and revise the sentence in the 4th paragraph on page 4.1-3 accordingly. (GAW)

This paragraph was updated to reflect current plans for the haul road.

17. Please review the Boxcut Operations subsection of Section 4.1, Operation Plan, to ensure the information presented is accurate for what has occurred to date and for what is planned during the next term of the permit. The last sentence on page 4.1-5 mentions a boxcut in 2020 in Section 9 but the Pit Layout and Facilities Map, Plate 4-1.1, does not show mining in Section 9 until 2024. (GAW)

The boxcut operations subsection was updated with current information and timing.

18. If necessary, please update the narrative beginning on page 4.1-6 for subsections Federal Coal and Great Northern Properties coal Ownership (Section 7, T141N, R83W). (JSP)

Page 4.1-6 was revised to update the federal parcel ownerships within BNCR-1101. Likewise, the Great Northern Properties coal ownership paragraph was removed as BNI had previously secured the coal ownership within that tract, had the special condition removed by the PSC allowing mining, and has since completed mining of that ownership.

19. Please update the Coal Production and Affected Acres table in Section 4.1 through the next permit term as required by NDAC 69-05.2-09-01(1) and NDAC 69-05.2-09-01(2). (WTG/RLK)

Coal Production Table was updated.

20. If necessary, please update the Equipment List beginning on page 4.1-7. NDCC 38-14.1-14(2)(g) and NDAC 69-05.2-09-01(1) (BEB/PJR/JSP)

Equipment List was updated.

21. Please update Plate 4.1-1 (Pit Layout and Facilities Map) to indicate any pit sequence changes and to identify the five-year coal removal subarea for the next permit term as required by NDAC 69-05.2-09-02(3). In addition, please do not depict mining in the NE1/4 of Section 20 or hatch and identify in the legend that no mining will occur until BNI Coal Ltd has leased 75% of the coal. Mining is currently scheduled for this tract in the next permit term. (WTG/PJR/JSP)

Plate 4.1-1 has been updated to reflect the current pit sequence. BNI has acquired coal leases in excess of 75% in the NE1/4 of Section 20 and are included in this submittal.

22. Please review and update the mining disturbance boundary on the Pit Layout and Facilities Map, Plate 4-1.1 to ensure it is accurate for the next permit term and that it properly depicts disturbance on areas where mining has been completed. NDAC 69-05.2-11-01(2) and NDAC 69-05.2-09-02 (GAW)

Plate 4.1-1 was updated with the current mining disturbance boundary. The total disturbance boundary was also updated to reflect current disturbance.

23. Please include overburden stockpile identification numbers for the overburden stockpiles depicted on the Pit Layout and Facilities Map, Plate 4-1.1. NDAC 69-05.2-11-01(2) and NDAC 69-05.2-09-02 (GAW)

Plate 4.1-1 was updated with identification numbers for the overburden stockpiles.

24. Please revise the Pit Layout and Facilities Map, Plate 4.1-1, to depict each habitat area to be used to protect and enhance fish and wildlife habitat as required by NDAC 69-05.2-09-02(11). As BNI is aware, NDAC 69-05.2-09-17(1) requires a plan that must include protective measures that will be used during active mining and must include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. (GAW)

Section 4.13 updated to reflect enhancements BNI is continuing to make. Enhancement features (i.e. pollinator plots, food plots, conservational plantings) in the permit area will be added to Plate 4.12 Post Mine Land Use as they are completed.

25. Please update Plate 4.1-1 (Pit Layout and Facilities Map) to indicate any changes with the status or presence of SPGM stockpiles; overburden stockpiles; water management structures; haul roads; and buildings, facilities, utilities, and structures that may have occurred since the map was last updated with Revision No. 5 as required by NDAC 69-05.2-09-02. (WTG/PJR/JSP)

Plate 4.1-1 was updated as requested to include any updates since Revision 5 was approved.

Section 4.2 – Existing Structures

26. Please update the Existing Structures narrative and map, Section 4.2 and Plate 4.2-1 if any features or facilities (i.e. pipelines, power lines, telephone lines, wind farms, occupied and unoccupied dwellings) have been located in the permit since the area was permitted. (GAW/JSP)

The map has been changed to reflect the purchase of the GRE tower by BNI Coal and the removal of power lines from to the tower. No changes are required to Section 4.2.

Section 4.4 – Blasting Plan

27. Please update Section 4.4 - Blasting Plan narrative to reflect any changes to the blasting schedule. Also update Plate 4.4-1 Blasting Map to reflect any change to the status or location of occupied residences since the Blasting Plan was last updated and include any other changes expected during the next five-year term of the permit. (JSP)

The blasting plan map has been updated to remove the GRE Tower. Currently the Schmidt farmstead is unoccupied but blasting agent is being stored on-site by a contractor. A farm building is currently being used by a local landowner. Therefore the site has not been removed from the map.

Section 4.5 – Transportation Plan

28. Please review the Road Closures subsection of Section 4.5, Transportation Plan, and update as necessary. Plate 4.5-3 and Appendix 4.5-1 should also be updated if necessary. NDAC 69-05.2-04-01.3(2)(c) (GAW)

The road closure plan in the Transportation Plan has been updated.

Section 4.6 – Surface Water Management Plan

29. Please update Table 4.6-1 for surface water control structures as required by NDAC 69-05.2-09-09(1)(d) if there are any changes to the table since the most recent updates with Revision No. 5. (WTG/BEB/RLK)

Table 4.6-1 was updated. Ponds P-17-1 and 17-2 along with Diversions D-17-2 and 16-5 were removed from the permit. These structures were planned clean water structures and will not be built. Four additional planned structures were added.

30. Please include design plans for any diversions or ponds that will be constructed within one year of permit renewal. (GAW)

Two pond designs are being added within this revision, P-13-7 and P-20-1 along with Diversions D-20-2 and D-20-3. Their locations are depicted on Plate 4.6-1 and Plate 4.1-1. Appendix 4.6-37 was added for the design of Pond P-13-7. The final design documents for Pond P-20-1 and Diversions D-20-2 and D-20-3 will be included to the revision during the next round of comments, completeness or technical.

31. Please revise Plate 4.6-1, Surface Water Management Plan map, to not show mining on lands where coal leases have not yet been secured. This would include the federal coal tract in the NE1/4 of Section 18 where federal mine plan approval is needed prior to coal and overburden removal and the tract in the NE1/4 of Section 20 for which BNI does not have 75% of coal leased. (GAW)

As of October 10, 2018, BNI was the successful bidder for the federal coal tract in the NE1/4 of Section 18. Paperwork will be included in revision 6 when available. BNI has also obtained the required coal leases necessary for the NE1/4 of Section 20. The lease documents have been added to Appendix 1-2 with this submittal.

32. Please update Plate 4.6-1 (Surface Water Management Plan) to indicate any pit sequence changes and also any changes with the status or presence of water management structures that may have occurred since the map was last updated with Revision No. 5 as required in part by NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09. Please note that the 2018 pit outline for Ash Cell 4 in Permit BNCR-9401 should correspond with the pit outline depicted on Plate 4.1-1 (Pit Layout and Facilities Map). Also, please make corresponding updates to the Surface Water Management Plan narrative in Section 4.1 and the Perennial and Intermittent Streams narrative in Section 4.1 to reflect any changes as appropriate. (WTG/JSP)

Plate 4.6-1 was updated to reflect the current mine plan, new impoundments and Diversions, P-13-7, P-20-1, D-20-2, and D-20-3. Section 4.1 was updated and discussed earlier.

Section 4.9 – Reclamation Schedule

33. Please update the narrative and Reclamation Schedule Table in Section 4.9 for the next permit term and update the reclamation variance requests as necessary. (PJR)

Section 4.9 was updated. The Reclamation Schedule Table was updated to address the next permit term. The discussion of the overburden stockpiles created from the initial boxcut spoils was updated. The variance area requests were updated to reflect the current conditions. Plate 4.9-1 was also updated to reflect the requested variance areas.

Section 4.12 – Revegetation, Post Mining Land Use and Reclamation Success Narrative

34. Please review the native grassland reference area narrative on page 16 of Section 4.12 and revise the permit as necessary to demonstrate that the proposed reference areas adequately characterize the mapping units they represent as required by NDAC 69-05.2-08-08(2). (GAW)

BNI acknowledges we need to add some diversity to our current approved reference sites as they are currently skewed towards silty sites. A couple proposed sites are located in Section 8 and 9 however this area is currently planned to be mined through, therefore BNI is evaluating new reference sites to cover the more diverse Eco sites which are present in Permit 1101.

35. Please delineate and label the NDSU Reclamation Research Plots located in the N1/2 of Section 7 on the Post-Mining Topography and Land Use Map, Section 4.1.2 and provide information about the project and how reclamation within the permit area may be affected by the outcome of the project. NDAC 69-05.2-05-02 and NDAC 69-05.2-09-13 (GAW/JSP)

Added paragraph about research study pertaining to compaction in 4.12-2. Added NDSU Plots to Plate and legend.

36. Please label reclaimed wetland 16-2 on the Post-Mining Topography and Land Use Map, Section 4.1.2. (GAW)

Changed font color so wetland 16-2 is visible.

Section 4.13 – Fish and Wildlife Resource Protection, Enhancement and Monitoring Plan

37. Please update Section 4.13, Fish and Wildlife Resource Protection, Enhancement and Monitoring Plan, to discuss potential adverse impacts to all currently listed threatened and endangered species and species proposed for listing on lands to be affected during the next term of the permit. Please also revise the permit to include updated information about any planned disturbance to lands designated or proposed as critical habitat for threatened, endangered and proposed species or the proposed proximity of the permit area to designated or proposed critical habitat. NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08 (GAW)

BNI will continue to work with USFWS and NDGF to address species of concern as they arise. Currently BNI has not observed any T&E species within the permitted area however continues to monitor specifically for Dakota Skipper's ahead of mining

activity in native grassland stands. BNI has added language in permit (Section 4.13) about more intense monitoring for Piping Plovers.

38. Please update Section 4.13, Fish and Wildlife Resource Protection, Enhancement and Monitoring Plan, to discuss whether the permit area includes habitat for the monarch butterfly and regal fritillary. The USFWS has received petitions to list these species and has made a “substantial finding” which means the petition provides enough information to substantiate that listing these species may be warranted. The Reclamation Division recommends that the surveys be completed for these species if the permit or adjacent area contains suitable habitat. NDAC 69-05.2-11-01(2) and NDAC 69-05.2-13-08 (GAW)

BNI has added surveys for the Regal Fritillary and will continue to monitor progress of both of these species through the T&E process from USFWS.

39. Please update the Fish and Wildlife Protection and Enhancement Plan in Section 4.13 to ensure compliance with NDAC 69-05.2-09-17(1) during the next term of the permit. NDAC 69-05.2-09-17(1) requires a plan that will be used during active mining that must include protective measures for fish and wildlife resources, and a plan that must include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. (GAW)

BNI continues to replace wetlands and shelterbelts in a one to one basis. BNI mine wide is currently in the process of installing some additional conservation planting for habitat creation. Additionally BNI has been planting cover crops for winter browsing for wildlife. BNI is also proposing a revised seed mixture for Pollinator plots to be planted in small tracts (<5 acres) in different land uses minewide.

40. Please revise the Fish and Wildlife Resource Protection, Enhancement and Monitoring Plan, Section 4.13, as necessary to address the comments we received from USFWS on September 19, 2018 (copy attached). The comments regarding BNI’s Wildlife Monitoring Plan included 1) delineating Dakota Skipper Critical Habitat, 2) completing surveys for Dakota Skipper by a qualified surveyor, 3) add piping plover surveys where critical habitat exists, 4) broaden raptor surveys and monitor new and existing locations, and 5) increase number of forbs in native prairie reclamation to attract and enhance pollinator habitat. (GAW)

BNI’s current surveyor is in process of becoming a qualified surveyor through USFWS and with this will formally classify any critical habitat if observed. Further monitoring for Piping Plovers is proposed in Section 4.13. BNI is evaluating a potential spring and fall raptor migration survey partnered with NDGF, as this formalized, the details will be added to Section 4.13. Pollinator plots seeding rates have been defined and are planned to be installed starting in 2019.

Section 4.14 – Reclamation Cost Estimates for Bonding Purposes

41. Please review the worst-case bond maps (Plate 4.14-1 and 4.14-2) and update for the next five-year permit term. (RLK/JSP)

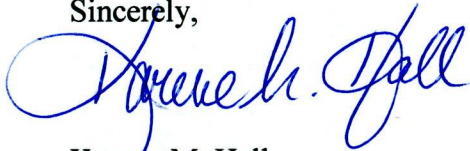
Plates 4.14-1 and 4.14-2 have been updated.

42. Please update the worst-case bond estimate calculations (Appendix 4.14-1) using the most recent variable costs. (RLK/JSP)

Appendix 4.14-1 bond calculations have been updated.

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