

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Kroshus, Fedorchak and Christmann
Steve Kahl, Interim Executive Secretary
Illona Jeffcoat-Sacco, John Schuh

FROM: Dean Moos, ^{ZAB} Zanna Brinkman and Randy Kowalski

DATE: May 8, 2019

SUBJECT: Application for Revision No. 6 to Permit No. BNCR-1101 held by BNI Coal, Ltd., Case No. RC-19-15

On December 14, 2018, BNI Coal, Ltd. (BNI) filed the application for Revision No. 6 to Surface Coal Mining Permit No. BNCR-1101 at the Center Mine. This revision identifies the next five year coal removal areas and addresses items that were identified as requiring updating or modification by the Reclamation Division during a pre-renewal review of the permit. BNI obtained Federal Coal Lease NDM 102083 in January 2019 for 160 acres of federal coal located within the coal removal area identified in this permit revision. This revision updates several section of the permit and updates the performance bond. The Reclamation Division has completed its review of this revision application and respectfully recommends it be approved.

BNI applied for this revision and the corresponding Renewal No. 1 to this permit since mining is scheduled to continue in the existing permit area until 2042 as shown on the extended mining plans in the permit. The surface and coal ownership information for the permit and adjacent area, and related lease information was updated. The Pit Layout and Facilities Map was revised to show coal removal subareas through the next permit term and the coal production schedule was updated accordingly. Minor updates were made to the surface water probable hydrologic consequences section of the permit. Updates were also made to several ground water hydrographs and potentiometric surface maps utilizing recently collected data. Operations plan updates describe the construction and reclamation schedule of mine areas, sedimentation ponds, coal haul roads and SPGM stockpiles. Post-mining land use plans were updated to describe soil respread and compaction testing being conducted by NDSU in the permit area.

The 160 acres of leased federal coal is located within the existing permit area in the NE1/4 of Section 18, T141N, R83W as depicted on Figure 1. Several federal coal tracts were included in the original permit application, but no mining of these tracts was proposed at that time. Mining and reclamation operations of the federal coal tract in the NE1/4 of Section 18 will be similar to those presently approved in the permit. The surface of the federal coal tract in the NE1/4 of Section 18 is privately owned and BNI has secured the surface lease for the portion of the tract

contained within the permit boundary. The permit area excludes approximately two acres of land occupied by the St. Lucas Cemetery on this federal coal tract. The premining land uses of the area that will be disturbed in the NE1/4 of Section 18 include native grassland, cropland, wetlands, developed water resources (stockpond), residential/farmstead, shelterbelt and road right-of-way. The postmining land uses will be native grassland, cropland, wetlands, developed water resources (stockpond), shelterbelt and road right-of-way. Mining of the NE1/4 of Section 18 is expected to occur between 2020 and 2026.

BNI is requesting a variance from the contemporaneous reclamation requirements for several areas within the permit. The variances primarily include areas for regrading initial box cut spoil material or areas along the interface of the staggered mining pit blocks where contemporaneous reclamation would require re-disturbance for future mining pits. BNI's request for variances from the 3 year revegetation requirement and the 180 day rough grading requirements have been adequately justified and the Reclamation Division recommends that the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2).

Leased federal coal cannot be mined until the Secretary of the Department of Interior approves the federal mine plan as required by 30 CFR 746.11. Special Condition No. 1 attached to the initial permit issuance will remain effective for this renewal and prohibits overburden and coal removal in the NE1/4 of Section 18 until the mining plan is approved by the U.S. Department of the Interior. Surface disturbance is allowed on these lands prior to Department of Interior approval only to the extent necessary for the mining of the adjacent private lands. We will be submitting the required Federal Lands Decision documents to the Office of Surface Mining providing them with the required information for the processing of the mine plan approval action. As noted earlier, BNI was awarded Federal Coal Lease NDM 102083 from BLM, and mine plan approval for removal of federal coal in the NE1/4 of Section 18 is expected in the near future.

This revision was considered a significant revision application and was subject to the public notice requirements. BNI has submitted affidavits of publication of the newspaper notices. We notified the appropriate agencies, affected landowners and the advisory committee members. We received no comments or objections to this revision application. We did receive responses from the SWC and DOH indicating that they had received the advisory review request and that they had no additional requirements on the revision application. The performance bond was increased to cover the projected worst case mining disturbance that will occur during this permit term. The BNCR-1101 permit area is covered by a surety bond totaling \$31,251,165.

Attached for your consideration are the proposed motion, revision approval form, and revision approval notice that we will publish in the appropriate newspapers.

Figure 1. BNCR-1101 Pit Layout and Facilities (from BNI Plate 4.1-1 on 2018 NAIP image)

