



A BNI ENERGY COMPANY

January 19, 2021

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

RE: Bond Release 5 to Permit BNCR-9401

Dear Mr. Moos,

This submittal contains a response to your Technical Review 1 letter to us dated June 17, 2020. In this letter you listed technical deficiencies that must be addressed before the Bond Release 5 application to BNCR-9401 can be approved. Below is a listing of the deficiencies followed by our response:

Attachment I - Legal Description Map

1. Please remove the acreage calculations for the entire permit area that are located at the bottom right of the map in Attachment I. The Reclamation Division understands that BNI likely intended to summarize the total permit acreage post bond release, but this information is not relevant to the bond release application; however, the calculations for acres remaining in the permit will likely be needed later to update the permit after the bond release becomes effective. (ZAB)
[Removed calculations](#)

Attachment II - Legal Metes and Bounds

2. Please remove the metes and bounds descriptions on pages 7 - 10 that are labeled as *1.8 Description of the Permit Boundary (Metes and Bounds of Permit BNCR 9401 (Bond Release 5 and Revision 15))*. Only the metes and bounds description of the bond release tract (pages 11-12) that is depicted on Attachment I is relevant to the bond release application; however, the metes and bounds description of the entire permit area will be needed later to update the permit after the bond release becomes effective. (ZAB)
[Removed pages](#)

Attachment IV - Notification of Bond Release

3. Please change the North Dakota State Engineer for the North Dakota Water Commission from Mr. Garland Erbele, State Engineer, to John Paczkowski, P.E., Interim State Engineer. (JAR)
[Updated names](#)

4. Please revise all title abbreviations with a period. (JAR)

Updated formatting

Attachment V - Soils Map

5. Please depict section lines and the township and range in the aerial photograph and soils map in Attachment V. (JAR/JSP/PJR)

Added Section lines and TR

6. Attachment V is identified as an aerial photo and soils map illustrating Final Bond Release #5 to BNCR-9401. However, the map is identified in the title block as *9401 Bond Release #5*. Please identify the Attachment V map consistently with the Attachment V title. (JAR/JSP)

Updated title block

Attachment VI - Tract History and Pond Maintenance Agreement

7. Please review all of Attachment VI. This portion of the bond release application is somewhat confusing because there is no introductory paragraph that explains there are two distinct areas included in the bond release tract (the ash cell and the partially reclaimed and vegetated area adjacent to bond released Ash Cells 1, 2 and 3). The narrative in this section is general and does not identify which of the bond release areas is being discussed, nor does it identify that the bond release requirements are slightly different for the adjacent area. BNI indicates on page 1 of Attachment VI that Policy Memorandum No. 15 establishes the requirements for bond release of long-term solid waste disposal sites; however, the area adjacent Ash Cells 1, 2, and 3 is not a disposal site. Please revise the Attachment VI narrative by adding an introduction that describes the two distinct areas within the proposed bond release tract, discuss the two areas separately or consistently identify the tract being discussed throughout the narrative, and add narrative that explains how the area adjacent to the ash cells will be used post bond release to justify how this area is eligible to be bond released with Policy Memorandum No. 15 criteria. (ZAB)

Added and revised narrative

8. Please revise narrative that follows the title *Surface Owner* at the top of page 1 of Attachment VI by adding a reference to the attachment that depicts surface ownership of the bond release tract and adjacent lands. We suggest adding the surface ownership to Attachment V or VII to retain the current attachment order. (PJR)

Ownership added to Attachment V

9. Please revise the narrative that follows the title *Bond Request* at the top of page 1 in Attachment VI from *Final bond release is requested for this tract* to *All four stages of bond release are being requested for this tract*. (ZAB)

Revised narrative

10. Please revise the second paragraph one page 1 of Attachment VI by removing the statement *Reclamation by a demonstration of the restoration of the level of inherent productivity equal to or greater than that which existed before mining, ground cover, seasonal variety, diversity and permanence of the land*. This statement was carried over from previous bond release applications and the end of this statement is incomplete for the pre-mine land uses included in this bond release application. Since the tract is being bond released as a solid waste disposal (post-mine industrial land use) site, the statement is not relevant to this bond release application. (ZAB)

Revised narrative

11. Please revise the first sentence in the third paragraph on page 1 of Attachment VI by removing the first word *However* because it connects the narrative to paragraph one and implies the reclamation plan has not been followed. This language was carried over from previous bond

release narratives, but it has lost the original intent due to narrative changes to the first and second paragraphs. (ZAB)

Revised narrative

12. Please revise the first paragraph of the *History of Tract* narrative that begins at the bottom of page 1 in Attachment VI by incorporating the narrative changes in deficiency item No. 7 above. The following specific items need to be addressed:

a. Add a sentence stating 8.75 acres of the bond release tract were not disturbed by mining and reference Attachment VIII for the location of the undisturbed areas. (ZAB)

Added statement

b. Revise the narrative to state 34.85 acres of the proposed bond release tract were disturbed by mining (portions of Ash Cell 4) or associated disturbance (Pond 5-1, subsoil stockpile MI5S01, and topsoil stockpile MI5T06 that has been functioning as Diversion 5-1). Reference an attachment/map that depicts the structures or describe the locations. (ZAB)

Revised narrative and referenced Attachment VIII

c. Add narrative that clarifies how topsoil stockpile MI5T06 and subsoil stockpile MI5S01 will be used after bond release to justify why the stockpiles are being released to the landowner instead of being reclaimed. (PJR/ZAB)

Added statement

d. The pond 5-1 narrative *The pond will be utilized by Minnkota Power as a secondary containment associated with the adjacent industrial landfill. The pond maintenance agreement is included at the end of this attachment* that is currently on page 2 should be incorporated into the narrative that describes how the pond, diversion and stockpiles will be used in support of the ash cells post bond release and the pond maintenance agreement needs to be added to the application. (ZAB/WTG)

Revised narrative, pond maintenance added to end of Attachment VI

e. Review the narrative in the first paragraph that begins with the sentence *The 6.75 acres of disturbance occurred in 1996* through the narrative at the top of page 2 about a valve leak release. This narrative discusses disturbance areas, but does not provide a location and no maps in the bond release application depict disturbance area. Readers other than BNI and the Reclamation Division will have difficulty determining where disturbances occurred or if the disturbance is mining or associated disturbance. Revise for clarity. (ZAB)

Revised narrative

f. Please add a description to Attachment VI of the January 18, 2017 rupture of the Ash Cell 3 flue gas desulfurization sludge process water return line, the process water containment by Pond 5-1, and the subsequent contaminant remediation. (WTG)

Added narrative about release

g. Revise the narrative in the first paragraph on page 2 that begins with *SPGM and coal was removed from the Ash Cell 4...* This narrative should be moved to a separate paragraph and the sentence should be revised to state only SPGM was removed from the Ash Cell 4 area in 2017 because coal was not removed from the entire ash cell area. Add narrative on lignite removal that specifically states the location where private coal was removed and the date(s) of removal. A short narrative needs to be added to clarify that no coal removal occurred in the portion of the ash cell that was constructed over federal coal. (ZAB)

Added narrative about federal coal

13. Please add a description to Attachment VI of mining and associated disturbance surface water runoff formerly controlled in part by Pond 5-1, or by other sediment control measures. The

description should include mining disturbance surface water runoff now controlled by MSHA pond P-5-6 by way of diversion D-8-1, and associated disturbance surface water runoff from the temporary topsoil stockpile NE8T01 site that was seeded in 2018. (WTG)

Added narrative

14. It appears there were several pre-mine water resources within the proposed bond release tract (stockpond, class II wetland, and spring SPG-1-141-83). Please provide additional details regarding these pre-mine water resources including the mitigation plan for the class II wetland (reference the appropriate permits and sections that contain the mitigation plans). Also specify if certain pre-mine water resources will not be replaced. For those pre-mine water resources that will not be replaced, NDAC 69-05.2-01-02(90)(b) requires written concurrence from the landowner indicating that water supply replacement is not necessary. Please provide a signed written statement from the surface owner (Minnkota Power) indicating that replacement of the applicable pre-mine water resources (spring and stockpond) is not necessary. (ZAB)
Added narrative describing post mine water sources and justification
15. Please add narrative to Attachment VI on the woodlands that were disturbed within the bond release tract. A portion of these woodlands were mitigated and appropriate sections of the permit should be referenced. (ZAB)
Added narrative of where postmine woodlands are replaced
16. There are multiple monitoring wells located inside the bond release tract and the wells need to be discussed in the bond release application. Please add narrative to Attachment VI that specifically identifies and describes including who is utilizing the wells (specifically indicate if any of the wells are part of BNI's groundwater monitoring network) and ultimately responsible for decommissioning the groundwater wells located within the bond release tract and consider adding a map depicting the well locations within the bond release tract. (PJR)
Added monitoring wells to Attachment VIII
17. Please revise the first sentence of the seeding narrative on page 2 to identify the portions of the *proposed* bond release tract that were seeded and clarify what portions of the bond release tract will be reclaimed by Minnkota Power. (ZAB)
Revised narrative of final reclamation
18. Please review the last sentence on page 2 that discusses features used throughout the surrounding area that slow the movement of water and control suspended solids in stream flow. This sentence needs to be revised or additional information must be added to specifically address how the bond release tract is not contributing suspended solids to stream flow or runoff outside the permit area in excess of that allowed by NDAC 69-05.2-16-04. (ZAB)
Added narrative pertaining to surface run off
19. The first paragraph of the *Bond Release Requirements* on page 3 states that the ND Department of Health approved Permit SP-159. Please update the narrative to reference the ND Department of Environmental Quality, and include a copy of the current Solid Waste Permit as Attachment IX in the bond release application. If the solid waste permit is due to expire in the next 12 months, a letter should also be included stating Minnkota's intention to continue operation of the landfill. (PJR)
Included copy of SWP at Attachment IX
20. Revise the narrative on page 3 under the heading Bond Release Requirements to include information on the requirements for the tract adjacent to Ash Cells 1, 2, and 3. The current narrative only provides details for the ash cell. The entire tract must meet the criteria in Policy Memorandum No. 15 and all information checked on page 3 of the application form must be provided for the ash cell and the area adjacent. (ZAB)
Revised narrative to address area outside of ash cell 4 footprint

21. Please revise the NW8S02 subsoil stockpile volume, and subsequent total available quantities, because the stockpile was reduced from 168,186 cubic yards reported on the 2018 Center Mine Annual Map to 154,280 cubic yards reported on the 2019 Center Mine Annual Map. (WTG)
Updated volumes
22. Please revise the worst case bond narrative and correct the bond amount listed in the *Bond Reduction* narrative on page 3 of Attachment VI to be consistent with the narrative and bond amount in the newspaper publication notice. (PJR/ZAB)
Updated narrative to match publication notice

Attachment - VII Post Mine Topography

23. The map is identified in the title block as *9401 Bond Release #5*. Please identify the Attachment VII map as the Post Mining Topography for Bond Release #5 to BNCR-9401. (JAR)
Updated title block
24. Please depict section lines and the township and range on the Attachment VII map. (JAR/JSP/PJR)
Added TRS lines
25. Please correct the Attachment VII cover page footer that incorrectly states *BR #6 to BNCR 9401*. (PJR/JSP)
Updated to #5

Attachment VIII - Seeding Date Map

26. The map is identified in the title block as *9401 Bond Release #5*. Please identify the Attachment VIII map as the Seeding Dates and Sample Locations for Bond Release #5 to BNCR-9401. (JAR)
Updated title block
27. Please depict section lines and the township and range on the Attachment VIII map. (JAR/JSP/PJR)
Added TRS lines

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

Sincerely,

Gregory Petrick
Reclamation Specialist