



Public Service Commission

State of North Dakota

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March 12, 2021

Mr. Gregory Petrick
Reclamation Specialist
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499
gpetrick@bnicoal.com

Dear Mr. Petrick:

The Reclamation Division has reviewed BNI Coal, Ltd.'s January 19, 2021 responses to our technical review letter for the application of Bond Release No. 5 to Permit BNCR-9401 at the Center Mine. The following items must be adequately addressed prior to this office recommending Commission action. The follow-up items reference the item as numbered in our June 17, 2020 technical review letter.

General

1. Several references direct the reader to view Minnkota Power Cooperative's Ash Cells 1 and 2 within the bond release narratives, but the ash cells are not labeled on the submitted maps. Please label Ash Cells 1 and 2 on the soils map in Attachment V, post mine topography map in Attachment VII, and the seeding date map in Attachment VIII. (JAR)

Attachment V - Soils Map

2. The footer on the cover page for Attachment V (page 16 of the pdf) states BR #6 to BNCR-9401. Please change BR 6 to BR 5. (JAR)
3. Follow-up to item No. 5: Please move the Section 8 label on the aerial photograph and soils map in Attachment V so it is visible. The label was inadvertently cut off when updates were made to the map. (ZAB)
4. Follow-up to item No. 5: The section lines are very similar to the surface ownership lines and hard to decipher. Please revise accordingly. (PJR)
5. Follow-up to item No. 6: Please revise the legend of the soils map in Attachment V by changing the description of the symbols in the map legend from Bond Release 6 to Bond Release 5. Also, change the soil mapping unit symbol by placing an example soil mapping unit inside the red square. (JAR/PJR/ZAB)

6. Please review the pre-mine land uses on Attachment V and remove or clarify what land use the label BR represents, remove the pre-mine NG label located inside the stock dam, and remove the post mine IND labels from the map. The land use abbreviations on the map need to be identified in the legend or the map can be revised to list the land uses by name. (ZAB)

Attachment VI - Tract History and Pond Maintenance Agreement

7. Follow-up to item No. 7: Please consider identifying the two subareas of the bond release tract at the top of page one in Attachment VI. Since all of the information provided at the top of page one applies to the entire bond release tract, we suggest adding the subareas after the Law Liability information, if BNI chooses to include the subarea information for clarity. The Subarea information should be similar to: Subareas: Ash Cell 4 (23.4 acres) in the E ½ of Section 5 and NE ¼ of Section 8; and a 20.20 acre area of undisturbed land (8.75 acres) and associated disturbance (11.45 acres) located east of Ash Cells 1, 2, 3, and 4. The two areas are shown on Attachment VIII. Note, some of the acreages listed above were calculated from the acreages that BNI provided in the bond release application. (ZAB)
8. Follow-up to item No. 7: Please revise the acreages listed in the first paragraph of the narrative on page 1 of Attachment VI. The acreages should be revised to 16.41 for the NE1/4 of Section 8 and 27.19 for the E1/2 of Section 5 to be consistent with the bond release application and the metes and bounds description of the bond release tract. (ZAB)
9. Follow-up to item No. 7: The narrative on page 1 of the Tract History is confusing and inaccurate. Please remove all of the narrative in paragraph one, except for the first and second sentences, and replace the narrative with something general so readers besides the PSC and BNI can visualize the two areas. The primary tract needs to be the ash cell area because the adjacent area is being bond released *in support of* the ash cells. We suggest using general narrative from the public notice as an introduction and clearly identifying the locations of the two subareas similar to: *BNI is requesting final bond release for 43.60 acres (Attachment I) in the NE¼ of Section 8-141-83 (16.41 acres) and E ½ of Section 5-141-83 (27.19 acres) within Permit BNCR-9401. The bond release area is composed of two subareas. The first subarea of the bond release tract is 23.4 acres and is located in the SE1/4 of Section 5 and NE1/4 of Section 8 and contains Cell Number 4 of Minnkota Power Cooperative's FGD Sludge Disposal Facility. The disposal facility has been constructed in accordance with Minnkota's Permit SP-159 issued by the North Dakota Department of Environmental Quality. The other subarea of the bond release tract is an area of undisturbed land (8.75 acres) and associated disturbance (11.45 acres) located in the E1/2 of Section 5 adjacent to Minnkota Power Cooperatives Ash Cells 1, 2, 3, and 4; this area is functioning as surface water management for the ash cells. The two areas can be viewed on Attachment VIII. The entire proposed bond release area has been zoned industrial by Oliver County and will be bond released as industrial land. Please note that we are suggesting BNI reference Attachment VIII because the two subareas are clearly depicted on Attachment VIII, but they are not clear on the currently referenced Attachment V. (JAR/ZAB)*
10. Follow-up to item No. 10: Please remove the statement *The first area adjacent to Ash Cells 1, 2, and 3 is held to these requirements* that was added to the second paragraph on page 1 of Attachment VI because the statement is not accurate. The area adjacent to Ash Cells 1, 2, 3, and 4 is secondary and it is being bond released *in support of* the ash cells. We suggest that BNI remove the entire second paragraph on page 1 of Attachment VI because it is not relevant; the entire bond release area has been zoned industrial and all areas that are vegetated will be bond released using the industrial/commercial vegetation cover standard. (ZAB)

11. Follow-up to item No. 11: Please revise the third paragraph on page 1 in Attachment VI to include all portions of Policy Memo 15 that are relevant to this bond release, similar to the following. (ZAB) *The The Ash Cell 4 area will be bond released in accordance with Policy Memorandum No. 15, the Commission's policy to totally release the performance bond amount of mined acreage utilized for the disposal of large quantities of ash from coal conversion facilities, sanitary landfills operated by a city, or other long-term solid waste disposal sites. Prior to Commission approval of such a bond release, a long-term industrial land use must be implemented in order to allow an exemption from the 10-year revegetation responsibility period pursuant to NDAC Section 69-05.2-12-09(2). This includes the issuance of the appropriate permits by the Department of Environmental Quality and county zoning authorities and the construction of the facility to a degree that it is ready for use. Final closure, revegetation and monitoring of these sites will have to be carried out in accordance with applicable Department of Environmental Quality and or county requirements. Minnkota Power will follow the requirements outlined in the North Dakota Department of Environmental Quality, NDAC 33-20-07.1-02, for closure of Ash Cell #4. This rule requires a minimum total re-spread thickness of 36 inches, consisting of a minimum of 6 inches of topsoil, 12 inches of subsoil, and 18 inches of compacted soil material.*
12. Follow-up to item 12: Remove the narrative that was added to the first paragraph in the History of Tract on page 2 of Attachment VIII because the acreages provided are for the entire bond release tract and the narrative does not describe the two different subareas. The first paragraph also indicates that all of Ash Cell 4 was mined and Attachment VIII depicts all of Ash Cell 4 as mined. Revise the introductory paragraph by adding a description of the two subareas (Ash Cell 4 and the associated disturbance/undisturbed land on the east side of Ash Cells 1, 2, 3, and 4. The remainder of this paragraph needs to be moved because the ash cell area is the primary area and must be discussed first. (PJR/JAR/ZAB)
13. Follow-up to item 12: Review the entire tract history narrative on pages 2-5 of Attachment VI. Combine all of the Ash Cell 4 narrative into one narrative and insert it after the introductory paragraph on page 2. The Ash Cell 4 narrative needs to include information from SPGM removal to ash cell use and clarification is necessary for the following items.
 - a. All narrative about coal removal in Attachment VI must clearly state that privately owned coal was removed from a portion of Ash Cell 4. The entire tract was not mined and it should be clear in all portions of the bond release application that no federal coal was mined. Additional narrative is needed to clarify that SPGM and overburden were removed from the Ash Cell 4 area. Also note that BNI requested approval to remove overburden over the unleased federal coal within the permit area and approval was granted after the Reclamation Division consulted with BLM through OSM. In addition, please clarify that a portion of Ash Cell 4 was constructed over federal coal outside the permit boundary and the coal was left in-situ. (PJR/ZAB)
 - b. The private coal removal area should be depicted on Attachment VIII. See deficiencies for Attachment VIII. (ZAB)
 - c. Review the coal removal dates of October 16, 2017 through April 5, 2018 that are listed on page two. BNI's 2017 annual map depicts coal removal in the Ash Cell 4 area, but no coal removal is depicted on BNI's 2018 annual map. (ZAB)

- d. Move and revise narrative if necessary to explain that the Ash Cell 4 area is being bond released in accordance with Policy Memo 15 as a long-term industrial land use and is exempt from the 10-year revegetation responsibility period pursuant to NDAC Section 69-05.2-12-09(2). The appropriate permits from the Department of Environmental Quality and county zoning authorities have been obtained, the ash cell was constructed and is in use. Final closure, revegetation and monitoring of the sites will be carried out in accordance with applicable Department of Environmental Quality and or county requirements by Minnkota. (ZAB)
 - e. Move the narrative about the final topography of the ash cell, capping of Ash Cell 4, SPGM respread and available SPGM to the Ash Cell 4 narrative. (ZAB)
 - f. Include the following sentence about permits for Ash Cell 4 (currently located under the heading Bond Release Requirements) in the Ash Cell 4 narrative. *State and local authorities have granted permits required for operation of the solid waste disposal facility. Oliver County Commissioners approved a Conditional Use Permit for Minnkota for this area, and North Dakota Department of Environmental Quality approved Solid Waste Disposal Permit SP-159. A copy of this permit is included as Attachment IX.* This information could be incorporated into item d above to avoid repetition. (ZAB)
 - g. Revise the sentence about the final topography of Ash Cell 4 that is currently located under the heading Bond Release Requirements as indicated by the following strike through/underlining. The final topography of the bond release area ~~is~~ are represented depicted on Attachment VII. The contours ~~represented on the attachment~~ of the ash cell are based on photogrammetric data and the original design of Ash Cell #4 ~~performed~~ by BARR Engineering. for the owner, ~~Minnkota Power~~. (ZAB)
 - h. Delete the following sentence from the third paragraph under the heading Bond Release Requirements. *BNI Coal plans to follow Minnkota Power's intended closure plan required by the North Dakota Department of Environmental Quality, NDAC 33-20-07.1-02.* Minnkota is responsible for final closure, revegetation, and monitoring of the sites in accordance with applicable Department of Environmental Quality and or county requirements and this information is already stated in items d and f above. (ZAB)
 - i. Include the portion of the third paragraph about SPGM respread for Ash Cell 4 and the 2019 Available SPGM Quantities (currently located under the heading Bond Release Requirements) in the Ash Cell 4 narrative. (ZAB)
 - j. Delete the heading Bond Release Requirements because the information provided in this section does not include all of the bond release requirements. (ZAB)
14. Follow-up to item 12: Similar to the previous deficiency, review the entire tract history narrative on pages 2-5 of Attachment VI and combine all of the narrative for the area adjacent to the ash cells into one narrative and insert it after the Ash Cell 4 narrative. The narrative needs to be organized into chronological order and revised to clearly describe the following. (WTG/ZAB)
- a. Describe the current status of the area adjacent to the ash cells (acres of undisturbed land, acres of associated mining related disturbance, when mining related disturbance first occurred and for what purpose).

- b. Identify the features (pond and stockpiles) that have not been reclaimed and how they are currently functioning as water management for the ash cells. Discuss the final topography, and direction of surface water runoff.
 - c. Describe when SPGM respread and seeding occurred on the mining related disturbances, the seed mix used, vegetation sampling, percent cover, and the narrative about cover being adequate to control erosion and and the bond release tract is not contributing solids to stream flow or runoff outside the permit area.
 - d. The narrative should then address Minnkota's request to retain the area as secondary containment area. The current narrative includes technical information about releases valves and piping from the waste disposal area, but there is no general introductory information about what was released and it is unclear why Minnkota needs a secondary containment system. Introductory information about Minnkota's FGD process water system is necessary so readers understand what is being released and the potential for future releases. The narrative needs to clearly identify how the diversion and pond have functioned as secondary containment features. We would prefer that BNI place the detailed information for the 2017 release first in the narrative so readers can understand the limited information provided for the 1996, 2010, and 2011 releases.
15. Please expand the narrative about surface water runoff in the third paragraph on page 3 to include the construction and functions of Pond 5-1 and Diversion 5-1, conversion of Pond 5-1 from a temporary structure to a permanent structure, the extension of Diversion 5-1, the removal of the western extension of Diversion 5-1, Diversion 8-1, a description of the pre-mine watershed break that splits the north-south trending sequential ash cells, surface water runoff in the two watersheds within the bond release tract, why it was necessary to retain Pond 5-1 and Diversion 5-1 when Ash Cells 1, 2, and 3 were bond released and why the pond and diversion can be included with Bond Release 5 for Ash Cell 4. The May 6, 2020 inspection report contains the information required to document that Pond 5-1 no longer controls existing or planned mining disturbance runoff in Permit BNCR-9401. (WTG/ZAB)
16. Follow-up to item 12: Review the last sentence in the first paragraph on page 2 that states *the topsoil and subsoil piles will likely be used to reclaim the pond area*. This statement is speculative and should be replaced with factual information about BNI's request and approval to remove the Pond 5-1 discharge point from BNI's permit and Minnkota's inclusion of Pond 5-1 in its SWPPP plan for the Milton R. Young Station, and that Pond 5-1 will be under DEQ jurisdiction after it is bond released. (ZAB)
17. Follow-up to item No. 14: Please review the narrative on page 3 of Attachment VI about the pre-mine surface water features that were located within the bond release tract. Review the following items and revise as appropriate. (ZAB)
 - a. The second sentence states that Pond 5-1 will remain to replace the former stock pond resource, but other portions of the tract history state the pond will be reclaimed by Minnkota.
 - b. It is our understanding that the pre-mine spring was not developed because flow from the spring was too low to provide a reliable water source for cattle; if that is the case, the narrative needs to be revised to state the spring was not developed. The narrative should also clarify if the spring was destroyed during construction of the ash cells and that the spring will not be replaced because the area was converted to an industrial land use.

18. Please label the area affected by the 2017 release and the area where subsoil was removed in 2017 on the Minnkota Power Cooperative FGD Pond Return Line Spill Proposed Excavation Limits map that was added to the end of Attachment VI. Please also revise the title of the map by removing the word proposed. (WTG/ZAB)

Attachment VII – Post Mine Topography

19. It is unclear why the pre-mine land uses are depicted on the post mine topography map. Please remove all pre-mine land use labels and lines on Attachment VII. Depict the post mine land use of the entire area (industrial) and update the map legend as necessary. (ZAB)
20. Follow-up to item No. 23: Change the symbol descriptions in the map legend from Bond Release 6 to Bond Release 5. (JAR/PJR)

Attachment VIII – Seeding Date Map

21. The legend on the Seeding Dates and Sample Locations for Bond Release #5 identifies “CCWDF Monitoring Wells”. It is not clear what the acronym CCWDF represents. Please define CCWDF in the map legend or provide the information in the tract history narrative. (JAR)
22. Please review Attachment VIII and revise the map and legend for clarity as follows:
 - a. The map inaccurately depicts coal mining in all portions of Ash Cell 4 within the permit boundary. Since Ash Cell 4 is already labeled on the map, please remove the hatching on Ash Cell 4 so it is visible and remove the symbol and description for Ash Cell 4 from the map legend. (PJR/ZAB)
 - b. Increase the line weight and/or change the color of the line between the ash cell area and the associated disturbance/undisturbed area on the east. (ZAB)
 - c. Remove the L-shaped line in Ash Cell 4 that is not labeled. The line is a land use line, but it could be misinterpreted as the coal removal boundary. Add the actual coal removal area on the map with a line and identify that line in the legend as private ownership coal removal. (ZAB/PJR)
 - d. Remove all pre-mine land use and soils lines and labels from the map because they make the seeding areas difficult to distinguish. Attachment V depicts the soils and pre-mine land uses so they are not necessary on Attachment VIII. (ZAB)
 - e. One of the two Vegetation Survey Transects in the legend should be removed. (ZAB)
 - f. Please add the word stockpile to the map labels for MI5S01 and MI5T01. (ZAB)
 - g. Optional: It is not necessary to identify each type of associated disturbance on the seeding map and BNI has the option to use one hatch symbol for all associated disturbance areas. If BNI chooses this option, the map legend needs to be updated accordingly. (ZAB)

Mr. Gregory Petrick
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Attachment IX – Minnkota Power Solid Waste Permit

23. Follow-up to item 19: Bond Release 5 references the solid waste permit number as SP-0159. However, the permit issued by the NDDOH identifies the permit number as 0159. Please review and revise or explain. (JAR)

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Dean K. Moos". The signature is fluid and cursive, with the first name "Dean" being the most prominent.

Dean K. Moos
Director
Reclamation Division

cc via email only: Jay Volk (jvolk@bnicoal.com)
Karene Hall (khall@bnicoal.com)

Mine Data\Center Mine\Permits\BNCR - 9401\Bond Release\Bond Release 5\BR5_Tech2_Review_Ltr_3-12-21