

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann and Kroshus
Steven Kahl, Executive Secretary
John Schuh, General Counsel

FROM: Dean Moos, Zanna Brinkman, and Preston Ripplinger

DATE: August 18, 2021

SUBJECT: Bond Release No. 5 to Permit No. BNCR-9401 held by BNI Coal, Ltd. for the
Center Mine, Case No. RC-20-78

On February 11, 2020, BNI Coal, Ltd. filed the application for Bond Release No. 5 to Permit BNCR-9401 for final bond release on 43.60 acres of land that was mined and subsequently developed as a solid waste disposal facility. The bond release acreage has an industrial post-mining land use. BNI is not requesting any monetary reduction in the bond amount as a result of this bond release.

The Reclamation Division has completed its review of this application and BNI Coal, Ltd. satisfactorily addressed the concerns that were noted. We recommend that the application be approved.

The application for Bond Release No. 5 to Permit BNCR-9401 is for 43.60 acres located in portions of Sections 5 and 8, T141N, R83W, in Oliver County that are owned by Minnkota Power Cooperative. The bond release tract is subject to the requirements of the current reclamation law. This tract has a post-mining land use of industrial/commercial and is currently part of a solid waste disposal facility for Flue Gas Desulfurization (FGD) sludge from Minnkota Power Cooperative's Milton R. Young Station. Oliver County approved industrial zoning for the area on October 6, 1992, and the North Dakota Department of Environmental Quality (previously North Dakota Department of Health, Environmental Section) issued Solid Waste Disposal Permit SP-0159 to Minnkota Power effective June 14, 1995 and renewed on October 13, 2015.

Privately owned coal was removed from this tract in 2017 and the tract was subsequently developed as Disposal Cell 4 of Minnkota's solid waste disposal facility. The federal coal within this tract was not mined. Minnkota began operating the disposal cell in 2018. Sufficient amounts of topsoil and subsoil have been placed in stockpiles in order to respread 6 inches of topsoil and 12 inches of subsoil when the disposal cell is closed and reclaimed pursuant to the

North Dakota Department of Environmental Quality requirements. Cells 1, 2, and 3 of the disposal facility were previously bond released.

Bond Release No. 5 includes a long, narrow tract on the east side of the bond release tract. This tract is used for water management for both mining and waste disposal activities. A diversion and pond are located on this tract. These water management features are no longer needed to support mining activities and are now used exclusively for waste disposal activities.

Although areas mined under the 1979 reclamation law are normally subject to the 10-year liability period, Policy Memorandum No. 15 to Mine Operators allows for the performance bond release sooner for industrial areas that are used for waste disposal if certain conditions are met. These include the issuance of the proper permits and the implementation of the industrial land use. As outlined above, the appropriate permits have been issued, the industrial post mine land use has been approved, and Minnkota Power Cooperative has been disposing of FGD wastes in the facility. Therefore, the requirements set forth in Policy Memorandum No. 15 have been satisfied.

The formal bond release inspection was conducted on May 12, 2020. The surface owner, Oliver County Commissioners, and several state and federal agencies were invited to participate in the inspection. The surface owner represented by Mr. Scott Hopfauf from Minnkota Power Cooperative and Mr. Dallas Grossman from the North Dakota Department of Environmental Quality participated in the inspection. Mr. Hopfauf and Mr. Grossman did not express any concerns with the bond release tract.

Notice of the final bond release application was published by BNI in the official county newspaper, the Center Republican, during March and April of 2020. The last publication date was April 15, 2020. No objections to the bond release were received.

The bond amount for Permit BNCR-9401 is based on the worst-case reclamation condition in the permit area, and BNI is not requesting any monetary reduction in the bond amount as a result of this bond release. Once the bond release becomes effective, BNI will be released from all remaining reclamation liabilities on the 43.60 acres contained in the bond release tract. The bond release will become effective on September 17, 2021 (30 days after approval) unless a formal hearing is requested.

Attached for your consideration at the August 18, 2021 Commission meeting are the motion and award form.

Attachments

BNI Coal – Final Bond Release No. 5 to Permit BNCR-9401 in Portions of Sections 5 and 8, T141N, R83W

