



Public Service Commission

State of North Dakota

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November 30, 2020

Jay M. Volk, PhD, Manager
Health, Safety, and Environmental Services
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499
jvolk@bnicoal.com

Dear Mr. Volk:

The Reclamation Division has conducted a completeness review of BNI Coal, Ltd.'s (BNI) application for Revision No. 8 to Permit BNCR-1101 at the Center Mine. Revision No. 8 proposes to add 2,661.04 acres to the permit in Sections 11, 14, 15, 16, 22, and 23 of Township 141N, Range 84W. The revision also proposes to revise the postmining topography for 1,146 acres of the existing permit area, and to re-disturb reclaimed land for a revised haul road route. The following items must be adequately addressed before the application can be deemed complete and approval is granted to begin publication of the permit revision newspaper notice. Some items may appear to be more technical than completeness in nature; however, they will provide additional clarity before the revision application is sent to the Advisory Committee and other interested parties.

Revision No. 8 Application (SFN 10562)

1. Please revise the Revision No. 8 Application Attachment to expand the narrative describing the proposed revision as required by NDAC 69-05.2-11-02(4)(a). We recommend an expanded narrative description corresponding with portions of the first paragraph of Appendix 1.5-1 (Notice of Publication). (WTG)

Section 1.1 Calculation of Filing Fee

2. Please remove the last sentence of Section 1.1 ("*The permit application contains 11,021.76 acres.*"). The approved Revision No. 8 permit boundary acreage is identified in Section 1.8 (Metes and Bounds Description of the Permit Boundary) and on Plate 1.8-2 (Permit Boundary Revision 8 Addition). (WTG)

Appendix 1.1-1 Proof of Filing Fee

3. Please include proof of the filing fee in Appendix 1.1-1 for Revision 8. The appendix only has the original filing fee for the permit area. (PJR)

Appendix 1.5-1 - Notice of Publication

4. Please revise the Notice of Publication title to remove the reference to a permit renewal. (WTG/BEB/ PJR/JAR)
5. The first sentence in the public notice makes it sound as if Revision No. 8 to Permit BNCR-1101 was approved on May 28, 2014. Please re-word the sentence for clarity. (BEB/PJR)
6. The second and third sentences in the public notice regarding the existing, approved permit area and its location relative to the BNI Coal offices and Minnkota power plant can be removed from the public notice as these details are not relevant to the acreage being added to the permit with Revision No. 8. (BEB)
7. Please revise the revision description in the first paragraph of the Notice of Publication to summarize the salient permit changes actually made with the revision; e.g., areas unsuitable for mining, and licenses and other permit expiration dates, are listed as being updated for the Legal and Financial section, but no updates were made in these sections. By contrast, the metes and bounds description, and right of entry document updates are not listed as being updated for the Legal and Financial section. Furthermore, updates for the entire Environmental Resources section were omitted. (WTG/BEB)
8. Please add the following sentences to conclude the revision description in the first paragraph of the Notice of Publication to inform interested persons of proposed changes in the existing permit area *“The revision also proposes to revise the postmining topography for 1,146 acres of the existing permit area, and to re-disturb reclaimed land for a revised haul road route.”* (WTG)
9. Public review of the permit revision application in Commission or county auditor offices does not appear feasible because of the COVID-19 pandemic. Please replace the last sentence of the second paragraph of the Notice of Publication with the following paragraph informing the public how to obtain a copy of the permit revision application. (WTG)
“Due to the COVID-19 pandemic, a copy of the permit revision application will not be available for inspection at the Public Service Commission, State Capitol, Bismarck, ND, or the Oliver County Auditor’s office. Those wishing to review the revision application may request a copy by contacting the Public Service Commission at 701-328-2400 (877-245-6685 toll free) or ndpsc@nd.gov, or by sending a written request to: Public Service Commission, 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505-0480, within 30 days after the last publication of this notice.”
10. Please revise the third paragraph of the Notice of Publication to state that names of surface and coal owners follow for the existing permit area and the proposed permit addition. Please list the surface and coal owners for the entire existing permit because the revised postmining topography proposed for 1,146 acres with Revision No. 8 affects portions of nine sections of land in the existing permit area. (WTG/PJR/JAR)
11. Please review the following discrepancies, and correct them as necessary, for the surface and coal ownership submitted to date in the Notice of Publication:
 - a. Burlington Resources Oil & Gas Co. is listed as the coal owner for the N½ of Section 11 on Plate 1.9-1 (Surface and Coal Ownership), but Great Northern Properties is listed as the coal

- owner in the Notice of Publication and in Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JAR)
- b. JoAnne Snow is listed as a Remaindermen for the S $\frac{1}{2}$ of Section 11 in the Notice of Publication, but Joanne Stromme is listed as a Remaindermen for the S $\frac{1}{2}$ of Section 11 in Appendix 1.9-1 (Ownership Information (within Permit Boundary)). The same situation exists in the S $\frac{1}{2}$ of Section 12, as well as the NW $\frac{1}{4}$ NE $\frac{1}{4}$, the N $\frac{1}{2}$ NW $\frac{1}{4}$, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14. (WTG/ZAB)
 - c. BNI Coal and Mark Erhardt are listed as surface owners for the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 13 on Plate 1.9-1 (Surface and Coal Ownership), but only BNI Coal is listed as a surface owner in the Notice of Publication and in Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JAR)
 - d. The notice states Cody Schuldt under coal ownership in the SE $\frac{1}{4}$ of Section 15. However, the ownership map identifies Cory Schuldt under coal ownership in the SE $\frac{1}{4}$ of Section 15. Please revise accordingly. (JAR)
 - e. The Central Dakota Humane Society is listed as a coal owner for the NW $\frac{1}{4}$ of Section 23 on Plate 1.9-1 (Surface and Coal Ownership) and in Appendix 1.9-1 (Ownership Information (within Permit Boundary)), but is not listed as a coal owner in the Notice of Publication. (WTG/JAR)
12. It appears that operations within 100 feet of the outside rights-of-way for the west, and east, sides of the section line between Section 11 and Section 12, T141N, R84W will be necessary to construct pond P-12-3. Please revise the Notice of Publication as appropriate. (WTG)
13. Please explain why operations within 100 feet of the outside right-of-way for the south side of the NE $\frac{1}{4}$ of Section 11, on the section line between Section 11 and Section 2, T141N, R84W are necessary. Plate 4.1-1 (Pit Layout and Facilities Map) depicts a 500 foot setback from farm buildings and residences through the permit boundary at this location. Please revise the Notice of Publication as appropriate. (WTG)
14. Please delete the following duplicate sentences from the last paragraph of the Notice of Publication: *“Before the rights-of-way and associated setback corridors are disturbed, approval from the Oliver County Board of Commissioners will be obtained. Notice and opportunity for a hearing will be provided as required by the ND Century Code.”* (WTG)
15. Please revise the Notice of Publication map as required by NDAC 69-05.2-10-01(1)(b) as follows: (WTG/ZAB/BEB)
- a. Differentiate the existing permit area from the proposed permit addition area by different fill patterns or boundary line types.
 - b. Use the larger of two font size labels for all township, range, street, and avenue labels. The smaller font size labels should be deleted because they are likely not legible at the newspaper publication scale.
 - c. Identify the proposed mine haul road crossing location on the section line common to the NW $\frac{1}{4}$ of Section 13 and the NE $\frac{1}{4}$ of Section 14 (37th Avenue SW).
 - d. Reposition section number labels so that they are not obscured by existing or proposed permit boundaries. Also add a label for Section 16 in the proposed permit addition area.
 - e. Remove the extraneous label for Permit BNCR-9702.

Plate 1.5-2 – Landowner Notification Map

16. The list of recipients for Landowner Notification Letters (Appendix 1.5-2), and the landowners depicted on the Landowner Notification Map (Plate 1.5-2), do not match. The map shows Nick Berger and Mary Dresser as landowners within the Revision No. 8 addition area, but they did not receive a notification letter. It appears that Brian Dresser, Lee Dresser, Michelle Ternes, and David Berger received the Landowner Notification letters for the tracts listed as being owned by Nick Berger and Mary Dresser. It is our understanding that both Nick Berger and Mary Dresser have passed away and that their tracts within the Revision 8 addition area were likely in probate at the time the Revision 8 Landowner Notification letters were sent to surface owners. Thus it appears that the heirs to the estates of Mr. Berger and Ms. Dresser received the notification letters. Please provide an explanation and/or documentation that the appropriate individuals received the Landowner Notification letters for the tracts that were owned by Nick Berger and Mary Dresser. (BEB)

Section 1.9 - Surface and Coal Ownership

17. Please resolve the coal ownership discrepancy for the N $\frac{1}{2}$ of Section 11 between Burlington Resources Oil & Gas Co. listed on Plate 1.9-1 (Surface and Coal Ownership), and Great Northern Properties listed in Appendix 1.9-1 (Ownership Information (within Permit Boundary)) Please also update Appendix 1.9-2 (Adjacent Ownership Information (within $\frac{1}{4}$ mile)) if the coal ownership has changed. (WTG/PJR/JAR)
18. Please resolve the discrepancy for the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 13 between two surface owners listed on Plate 1.9-1 (Surface and Coal Ownership) (BNI Coal and Mark Erhardt), and one surface owner listed in Appendix 1.9-1 (Ownership Information (within Permit Boundary)) (BNI Coal). (WTG/JAR)
19. Coal ownership listed for the N $\frac{1}{2}$ of Section 15 in the addition area appears to total about 85 percent. If known, please add coal ownership details for the remaining ownership to Plate 1.9-1 (Surface and Coal Ownership) and Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (PJR)
20. Please resolve the discrepancy for the SW $\frac{1}{4}$ of Section 16 (T141N, R84W) between one coal owner listed on Plate 1.9-1 (Surface and Coal Ownership) (Beatrice Mosbrucker LE), and two coal owners listed in Appendix 1.9-2 (Adjacent Ownership Information (within $\frac{1}{4}$ mile)) (Beatrice Mosbrucker LE and State of ND). (WTG)
21. Please resolve the coal ownership discrepancies for both ownership parcels in the NW $\frac{1}{4}$ of Section 28 between that listed on Plate 1.9-1 (Surface and Coal Ownership) (Matt Pfliger retained), and the updated ownership listed in Appendix 1.9-1 (Ownership Information (within Permit Boundary)) (Matt Pfliger deleted). (WTG/PJR)
22. Please resolve the discrepancy between the statement in Appendix 1.9-1 (Ownership Information (within Permit Boundary)) that the N $\frac{1}{2}$ of Section 11 will be permitted for associated disturbance only, and coal removal depiction in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11 on Plate 4.1-1 (Pit Layout and Facilities Map). It does not appear that BNI possesses a coal lease for the N $\frac{1}{2}$ of Section 11. (WTG)

Section 1.12 - Other Licenses and Permits

23. Please update the ND Department of Health - Environmental Health Section agency name to the ND Department of Environmental Quality in Section 1.12 (Other Licenses and Permits), and strive to make the update throughout the permit. Please also revise the blasting agent storage location description within the permit. Plate 4.1-1 (Pit Layout and Facilities Map) indicates that the storage location has been relocated to the N½SW¼ of Section 13. (WTG/PJR/JAR)

Appendix 1-1 - Revision Summary and List of Changes

24. Please revise the Revision 08 Summary to BNCR-1101 in Appendix 1-1 (Revision Summary and List of Changes) to expand the summary as follows: *“The revision also proposes to revise the postmining topography for 1,146 acres of the existing permit area, and to re-disturb reclaimed land for a revised haul road route.”* (WTG)

Section 3.3 - Ground Water

25. Please update the Probable Hydrologic Consequences (PHC) narrative provided in Section 3.3 of the permit for the acreage addition to the permit with Revision No. 8 as required by NDAC 69-05.2-08-04. If necessary, please supplement your Hydrologic Reclamation Plan (HRP) narrative for Revision No. 8 to describe actions to be taken to prevent or minimize any adverse effects to the hydrologic balance identified in the PHC. In addition to PHC and HRP narrative, references can be made in Section 3.3 to water resource replacement plans provided in the permit, historical information gained from existing BNCR-1101 ground water monitoring data and other information. (BEB)

Appendix 3.3-9 - Monitoring Well Geophysical Logs

26. Geophysical logs for the nine C1 Addition groundwater monitoring wells in Appendix 3.3-9 are incomplete. The log sheets for the C1-series of monitoring wells provide the measurements for Gamma Ray (Natural Gamma) but they do not provide the measurements for density (Gamma Gamma) as required by NDAC 69-05.2-08-06(1)(d). Based on the monitoring well lithologic logs, nearby overburden geophysical logs, monitoring well construction details, aquifer testing results, and water level and water quality information provided in the permit for those wells, sufficient data is provided to waive this particular permit application requirement; however, at a minimum please provide a valid explanation of why the log sheets are incomplete. (BEB)

Section 3.4 - Surface Water

27. Please revise the Impacts of Mining on Surface Water subsection of Section 3.4 (Surface Water) to address the permit addition acreage and the postmine topographic changes proposed with the revision for 1,146 acres within the existing permit area. All proposed additions and changes to the Impacts of Mining on Surface Water subsection narrative and tables must be clearly identified as required by NDAC 69-05.2-05-02(6) that states in part as follows: *“Changes to original and approved narratives must be displayed in an underline-strikethrough format until the application is approved by the commission. Similarly, tables that are revised must be highlighted or otherwise clearly marked to identify all changes.”* (WTG)

Section 4.1 - Operations Plan

28. Please revise the Perennial and Intermittent Stream subsection of Section 4.1 (Operations Plan), as required by NDAC 69-05.2-09-06(1)(d), to address planned construction of Haul Road Section B in the NW¼ of Section 13 in circa 2024. (GAW)
29. Please revise the Waste Disposal subsection of Section 4.1 (Operations Plan) and Plate 4.1-1 (Pit Layout and Facilities Map) to address BNI's proposed disposal of abandoned farmstead waste as required by NDAC 69-05.2-19-04(2) and Policy Memorandum No. 21 to Mine Operators. (WTG)

Plate 4.1-1 Pit Layout and Facilities Map

30. Please review the green simple hatch fill pattern depicted in the E½ of Section 16 (T141N, R84W) on Plate 4.1-1 (Pit Layout and Facilities Map). Please update plate's legend to explain what the fill pattern represents if it is retained on the plate following the review. (WTG)

Section 4.5 - Transportation Plan

31. Please revise the Haul Road Section B subsection of Section 4.5 (Transportation Plan) to address the 2026 reclamation of an existing segment of the Haul Road Section B route in Sections 7 and 8, and construction of a revised segment of the Haul Road Section B route in Sections 7 and 8 that will require re-disturbance of reclaimed land in Section 7. (WTG)

Section 4.10 - Regrading Plan

32. Please revise the Design Method subsection of Section 4.10 (Regrading Plan) to address the postmine topographic changes proposed with the revision for 1,146 acres within the existing permit area. (WTG)
33. Please retain the magenta shading used to identify the 1,146 acres of postmine topographic changes proposed with the forthcoming Revision No. 8 application on Plate 4.10-1 (Post-Mining Topography) dated March 20, 2020. The plate was submitted with BNI's April 20, 2020 request to use the proposed postmine topographic changes for grade approval requests where direct respreading of suitable plant growth material is planned for 2020. The shading must be retained on Plate 4.10-1 throughout the revision review. Please also update plate's legend to explain what the shading represents. (WTG/SMN)

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

34. Please reposition the postmine topography notes that obscure the Plate 4.12-1 (Post Mine Land Use) legend on layouts 1 and 8. Please also revise the page layout from portrait to landscape, and add the proposed permit addition area to layers as necessary, to depict the existing permit area and the proposed permit addition in every layout inset. (GAW/WTG)

In the future, we recommend that BNI submit a draft of the Landowner Notification Letter and Map to the Reclamation Division for review prior to sending it to the surface owners.

Jay M. Volk, PhD
November 30, 2020
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Please contact us with any questions.

Sincerely,



Dean K. Moos
Director
Reclamation Division

cc via email only: Karene Hall (khal@bnicoal.com)
Jodey Houn (jhoun@bnicoal.com)
Oliver County Auditor Judith Hintz (jhintz@nd.gov)