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A BNI ENERGY COMPANY

November 15, 2023

RECEIVED

Mr. Jonathan Emmer, Director
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Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Mr. Emmer,

This submittal contains a response to your Technical Review 7 letter to us dated October 20, 2023. In this letter you listed technical deficiencies that must be addressed before the Revision 8 application to BNCR-1101 can be approved. Below is a listing of the deficiency followed by our response:

Section 1 – Legal and Financial

1. Please review and update Appendix 1-1, Revision Summary and List of Changes, to ensure all proposed changes are included in the List of Changes and the Revision Description should mention BNI's plans for mining federal coal. NDAC 69-05.2-05-02(6) requires that all changes to the original and approved narratives be displayed in an underline-strikethrough format until the application is approved by the Commission. (GAW)

Appendix 1-1 has been updated to add the mining of Federal Coal in Section 14 to the revision summary. The Technical Review 7 changes have been highlighted in yellow.

Section 3.4 – Surface Water

2. Several watershed acreages depicted on Plate 3.4-3 (Post-Mining Watersheds) do not correspond with the Pre-Mine/Post-Mine Watershed Comparison Table on pages 12 and 13 in Section 3.4 (Surface Water). Please review and revise accordingly. (JAR)

Watershed labels on Plate 3.4-2 and 3.4-3 have been changed to match Section 3.4's watershed comparison table.

While reviewing the watershed areas in Plate 3.4-3, 10 acreages were found in the narrative that didn't match the plate; these are highlighted in yellow in the watershed comparison tables. The red text within the yellow cells are values that were recalculated due to the change in area.

Five of those 10 watersheds also had changes to the premine watershed calculations. These calculation discrepancies were found while comparing the post mine runoff/volumes and corrected. None of these quantities were radically different but a combination of rounding convention and differences between software calculations warrants further review. BNI will continue to update calculations within the watershed comparison tables in Revision 11.

Section 3.5 – Pre-mining Land Use

3. The narrative on page 4 of Section 3.5 (Pre-mining Land Use) erroneously states that “Haylands found within the permit boundary consists of 4974.47 acres.” According to Table 3.5-1A (Pre-mine Land Use Acres BNCR 1101 Permit Rev. 8 04/12/22), the hayland acreage should be 494.47. Please review and revise accordingly. (MLJ)

Removed the “7” from narrative to correct value

4. Table 3.5-2 (Premine Shelterbelt Conditions) found within the narrative on page 7 of Section 3.5 (Pre-mining Land Use) does not fit the page as some of the table footnotes are illegible. Adjust the table so that all information can be viewed. (MLJ)

Resized table so it is fully viewable on pdf

Section 3.7 – Prime Farmlands

5. Page 4 of Section 3.7 (Prime Farmlands) lists a duplicate of Table 2a, which is found on page 3, with incorrect acreage totals at the bottom of the table. Page 4 also includes Table 2b which appears to not include the entire table. Please address these issues. (MLJ)

Resized Table 2b so it is fully viewable

Section 3.8 – Soil Resources

6. Please update the third paragraph on page 3 of Section 3.8 (Soil Resources) to address how SPGM stockpiles will be shaped to facilitate seeding equipment and how the subsoil stockpile south of the Berger farmstead in the NE¼ of Section 11, T141N, R84W will be stabilized to effectively control erosion and attendant air and water pollution. Please clarify the timeline this pile is expected to be an active stockpile, provide measures that will be taken annually to protect the pile from wind and water erosion during its active status, and provide an estimated date when this subsoil stockpile site will be reclaimed. NDAC 69-05.2-15-03(2), NDAC 69-05.2-09-11(4), and NDCC 38-14.1-24(4). (GAW)

Added narrative on page 3 pertaining to construction and stabilization of SPGM stockpiles within Section 11.

7. Please add section numbers to the Soils Map, Plate 3.8-1. (JAR)

Added section numbers to Plate 3.8-1.

Section 4.1 – Operations Plan

8. Plate 4.1-1 (Pit Layout and Facilities Map) depicts features and facilities within 500 feet of occupied dwellings in Sections 13, 14, and 24, T141N, R84W and Sections 18 and 19, T141N, R83W. This would include sediment ponds and overburden stockpiles within 500 feet of the Jesse Lackman residence in W½ of Section 14 and pits affecting the David and Karen Porsborg, Kent Reuther, and Charles and Doris Kuether farmsteads in the N½ of Section 24 and S½ of Section 19, respectively. Please update the map by removing all mining activities within 500 feet of these dwellings or provide landowner agreements that authorize BNI to conduct mining activities within 500 feet of any occupied dwelling. NDCC 38-14.1-07(5) prohibits disturbance within 500 feet of any occupied dwelling unless approved by the dwelling owner. Section 4.2 (Existing Structures) indicates that BNI is planning to acquire appropriate landowner agreements to allow mining within 500 feet of these dwellings. These agreements need to be secured prior to depicting disturbance within 500 feet of an occupied dwelling on Plate 4.1-1. Please revise the maps and narrative in the permit accordingly. (GAW/JAR/JWE/BSM)

Landowner agreements have been obtained from residents to allow mining disturbance within the 500' buffer zone, with the exception of the Lackman residence. In their case a modified buffer zone of approximately 300' was agreed upon and will be used and depicted on the necessary plates. Any mining disturbance was removed from the modified buffer. All agreements will be included in Appendix 4.2-1. No landowner agreement was obtained for the Dresser farmstead in Section 12. BNI has moved mining features/facilities outside of the 500' buffer zone, which consisted of Pond P-11-1 and SPGM stockpile SE11T03. BNI did review the boundaries used to depict farmstead structures on the Dresser farmstead and made corrections to accurately depict the structure perimeters and ultimately a more accurate depiction of the 500' buffer zone. It was noticed there was an inaccurate angle on the western boundary of the buffer zone and this was corrected. BNI can provide further information as needed to support the correction.

9. Please revise the location of SPGM stockpile SE11T03 on Plate 4.1-1 (Pit Layout and Facilities Map), which is depicted in the SE¼ of Section 11, so it is not within the 500-foot setback from an occupied dwelling. (JWE)

The spgm stockpile was moved outside of the 500 foot setback. SPGM stockpile NE14T01 was also relocated to move outside the modified setback approved for the residence in the NE ¼, Section 14-141-84.

10. Please update Section 4.1 (Operations Plan) to clarify how BNI is planning to shape and stabilize box cut spoil that is planned to be placed along the east side of the 2027-757 pit in E½ of Sections 11 and 14, T141N, R84W to effectively control erosion and attendant air and water pollution NDCC 38-14.1-24(4). (GAW)

The narrative on pages 6 and 7 in Section 4.1 was updated to clarify how BNI would attempt to manage box cut spoil erosion in the E ½ of Sections 11 & 14, T141N, R84W.

Section 4.2 – Existing Structures

11. According to Plate 4.2-2 (Existing County Road Infrastructure Photos) and the associated photo directory, no photos have been taken of the existing county road infrastructure

along 37th Ave SW, the county roads, or trails located within the C1 addition area. Please provide photos and data information of the existing county road infrastructure within the C1 addition area that may be impacted by mine-related activities so they can be properly characterized. BNI needs to document pre-mine road and trail conditions, so it is clear what needs to be replaced post-mine.

Furthermore, please update Plate 4.2-2 (Existing County Road Infrastructure Photos) to depict where the latest photos were taken. (BSM)

Added a paragraph to Section 4.2 detailing what roads are present in the Rev. 8 addition. In paragraph referenced photos will be collected of those roads in the summer of 2024. Additionally updated Plate 4.2-2 Page 2 to reflect what roads will have photos taken of them.

12. Review and update the narrative for occupied dwellings and unoccupied buildings that are not within the permit boundary in Section 4.2. Stating “the farmstead is located outside the permit boundary and no setback limit is required” is misleading and an insufficient explanation of why no setback limit is required. (ZAB)

The narrative for occupied dwellings and unoccupied buildings that are not within the permit boundary were updated to more accurately describe that the farmsteads and buffer zones are completely outside the permit boundary and expanded that the no setback limits were meant for mining related disturbances.

13. Review the narrative for Mark Dagley and Kenneth Reinke farmsteads in the occupied dwellings and unoccupied buildings that are not within the permit boundary in Section 4.2. It appears the last sentence of the Reinke narrative was intended for the Dagley farmstead. Update the narrative so it is accurate and explains why a dwelling outside the permit boundary requires a 500 foot setback. (ZAB)

The narratives were updated to more accurately describe these two separate farmsteads similar to deficiency 12.

14. Review the occupied dwellings, unoccupied buildings, and cemeteries within the permit boundary narrative in Section 4.2. The current narrative is inaccurate, misleading, and implies BNI does not need landowner consent to purchase or remove buildings. Revise the narrative to be consistent with the Surface Owner Protection Act (NDCC 38-18-03, 38-18-06, and 38-18-07) and the terms of BNI’s leases with landowners. In addition, North Dakota’s regulatory program has primacy; therefore, the vague references to SMCRA and “illustrating SMCRA laws were met” in this section are misleading and should be removed. The revision application should cite North Dakota Century Code and North Dakota Administrative Code. NDCC 38-14.1-07(5) prohibits disturbance within 500 feet of any occupied dwelling unless approved by the dwelling owner. BNI must provide appropriate landowner agreements prior to including plans for disturbance within 500 feet of an occupied dwelling in the permit. Update the narrative in Section 4.2 accordingly. (ZAB)

Note: We recently sent a pre-renewal letter for Permit BNCR-1101 and BNI should submit all landowner agreements necessary for the next 5 year permit term with the upcoming renewal/revision.

The narrative for occupied dwellings, unoccupied buildings, and cemeteries within the permit boundary was updated to be clearer and less misleading. The narrative was updated to call out the landowners that we have received waivers to show disturbance within the 500' buffer zone. These agreements will be included in Appendix 4.2-1.

Section 4.4 – Blast Plan

15. The Blasting Survey Notification Letter included on page 7 of Section 4.4, Blasting Plan, references blasting that is to occur in the W½ of Section 21 within permit BNCR-9702 rather than blasting that is to occur within Permit BNCR-1101. For compliance with NDAC 69-05.2-17-02 (1), please revise to include a copy of all the notification letters that were sent for Permit BNCR-1101 and include a copy of the letters sent to landowners within 1 mile of the Revision 8 Addition Area. (GAW)

The pre-blast survey notification letter was replaced in Section 4.4 with the same letter sent to residents within a mile of BNCR 1101 permit boundary. Pre-blast survey letters have not yet been sent to residents within a mile of the Revision 8 Addition Area. This will occur following permit approval and closer to when blasting activity would occur in the permit addition.

16. Changes were noted in Section 4.4 (Blasting Plan) of BNI's "clean version" dated May 11, 2023, compared to BNI's technical review 6 response (February 10, 2023). A paragraph was added that related to the maximum weight of explosives to be detonated, and a table was added that related to the distance from blasting sites, maximum allowable peak particle velocity, and modified scaled-distance factors. Changing the permit without an explicit explanation of the changes being made is not in accordance with NDAC 69-05.2-05-02(6). Please replace Section 4.4 (Blasting Plan) with the February 10, 2023 version which includes the original approved language with underline and strikethrough formatting changes. (JWE/BSM/SMN)

This incorrect copy was removed and replaced with the original reviewed and approved language.

17. Please update Section 4.4 (Blasting Plan) to include narrative that corresponds with Order No. 2, Case No. RC-20-438 from the informal conference dated September 14, 2023. Order No. 2, states "BNI Coal, Ltd. must conduct seismic and air blast monitoring at or near all occupied dwellings within one mile from the nearest charged drill hole with advanced notice to landowners, so they may be present when the monitoring takes place." (BSM)

The blasting plan language was updated to include language relating to Order No. 2 from the informal conference. This was added to the fifth paragraph.

Section 4.5 – Transportation Plan

18. Page 6 in Appendix 4.5-2 (Culvert Information Sheets) contains design information for Culvert ID 6 in the "clean version" dated May 11, 2023, but this information was not included in the February 10, 2023 response to technical review 6. Please explain why this culvert was added or remove it from Appendix 4.5-2. (JWE)

Culvert ID 6 was added to Appendix 4.5-2 in the response to technical review 5. We are unaware of why it was missing following the response to technical review 6. It is necessary to convey water from the intersection of haul road section F and haul road section A/A1 to the west.

19. Please review and revise Appendix 4.5-2 (Culvert Information Sheets) verifying that location information and Design Information for all culverts are accurate and correspond with their delineation on Plate 4.5-1 (Transportation Plan) and the Appendices for Haul Road Sections A, B, C, D, E, and F. (BSM)

Appendix 4.5-2 and Plate 4.5-1 were reviewed for accuracy. Appendix 4.5-2 had numerous culvert information sheets updated to accurately depict culvert locations (i.e. coordinates, Section, Township, Range and Station.). Some culvert material types were updated. Plate 4.5-1, numbering of culverts 12, 13, 14 were updated on the plate to reflect appendix 4.5-2. Culvert size for Culvert ID 3 was updated to reflect appendix 4.5-2. Appendix 4.5-3 Haul Road Section A was updated with a correction to the culvert material for Culvert ID 3. Appendix 4.5-4 Haul Road Section B was updated with a correction to Culvert ID numbering. Culverts 12, 13, 14 were updated to reflect Appendix 4.5-2.

20. Please revise Plate 4.5-2 (Typical Road Section) to reflect any updates to future haul road width requirements as was provided in the pending Revision No. 18 to permit BNCR-9401. Furthermore, please revise the narrative within the subsection "General Construction Practices" within Section 4.5 (Transportation Plan) to correspond with any changes to Plate 4.5-2. (BSM)

Plate 4.5-2 was updated to reflect the future haul road width requirements similar to what was provided in Revision 18 to BNCR 9401. The "General Construction Practices" was updated to correspond with the changes depicted on Plate 4.5-2 along with a discussion of road widths that may be updated over time.

Section 4.6 – Surface Water Management Plan

Plate 4.6-1 was updated with a revised location for P-11-1 further to the west to avoid the 500 foot setback from the residence in the SW ¼ of Section 12-141-84.

Appendix 4.6-21 Pond P-11-1 design was modified to relocate the pond to the west to stay outside of the farmstead setback in the SW ¼ of Section 12-141-84.

Section 4.9 – Reclamation Schedule

21. Please revise the Variance Area No. 7 discussion on page 4 of Section 4.9 (Reclamation Schedule) to clarify how BNI is planning to shape and stabilize Variance Area No. 7 to effectively control erosion and attendant air and water pollution. NDCC 38-14.1-24(4). (GAW)

Variance Area #7 narrative was updated to discuss measures BNI would take to attempt to control air and water erosion for the initial pit area in the E ½ of Section 11 & 14, T141N, R84W.

Section 4.10 – Regrading Plan

22. The pre-mining area and post-mining area in the Slope Analysis Comparison table within Plate 4.10-2 (Post-Mining Slope Analysis) do not match. Please update the table so the acreages are consistent and accurate. (JAR)

The slope analysis comparison table was corrected so acreages are consistent and accurate.

23. It appears that Table 4.10-1 (Post Mining Topography Mass Balance) in Section 4.10 has been replaced. Please provide a summary of the changes made to this table. (SMN)

Table 4.10-1 was updated in the first completeness review to revision 8. The mass balance volumes were updated to reflect the post-mine topography changes that occurred with the initial submittal and the additional changes that occurred in the first completeness response.

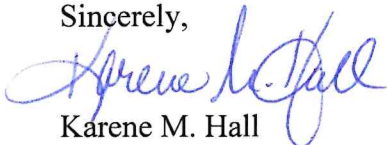
Section 4.11 – SPGM Removal and Replacement

24. Values in Table 4.11-1 (SPGM Respread Depths by Ownership within the Mining Disturbance Boundary) have changed between the sixth technical response and the clean copy dated May 11, 2023 (e.g. SPGM Surplus/Deficit total volume increased from 3,056,473 cubic yards to 3,266,826 cubic yards). Please explain why this table has been edited. (SMN)

It appears that an old version of Section 4.11 including Table 4.11-1 was incorporated into the clean copy. There were no intended changes to table 4.11-1 following the sixth technical revision. The version from the sixth technical response was reincorporated into the Section 4.11 narrative and is the intended version. The table was updated to reflect acreage changes resulting from the mining disturbance boundary change around a modified setback boundary for the residence in the NE ¼, of Section 14-141-84.

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

Sincerely,



Karene M. Hall
Permit Coordinator