



Public Service Commission

State of North Dakota

COMMISSIONERS

Randy Christmann
Sheri Haugen-Hoffart
Julie Fedorchak

sent via email only

December 15, 2023

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

Karene M. Hall
Permit Coordinator
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499
khall@bnicoal.com

Dear Ms. Hall:

The Reclamation Division has reviewed BNI Coal, Ltd.'s (BNI) November 15, 2023 responses to our October 20, 2023 technical review letter (seventh technical review) for the Revision No. 8 application 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 portions of the existing permit area. The following items must be adequately addressed before the Reclamation Division will recommend Commission action on the Revision No. 8 application. Please note that follow-up items reference the item as numbered in our October 20, 2023 technical review letter.

Section 4.1 – Operations Plan

1. Follow-up to Item No. 8: A mining setback waiver has been obtained for the Keith Ruether farmstead in the NW $\frac{1}{4}$ of Section 19, T141N, R83W, but Plates 4.1-1 (Pit Layout and Facilities Map) and 4.2-1 (Existing Structures Map) still depict the 500-foot buffer around the farmstead as unsuitable for mining. Please depict the 500-foot buffer zones around all farmsteads differently if the landowner has waived the 500-foot setback. Currently, as described in the legend in Plate 4.1-1, the buffer zone around the Keith Ruether farmstead is *Unsuitable for Mining*. (JWE/JAR)
2. Follow-up to Item No. 8: Please remove the 500-foot setback around Kent Ruether's previous farmstead in the NE $\frac{1}{4}$ of Section 24, T141N, R84W on Plates 4.1-1 (Pit Layout and Facilities Map) and 4.2-1 (Existing Structures Map) since it has been purchased by BNI. (JWE/JAR)
3. Follow-up to Item No. 8: A mining setback waiver has been obtained for the David Porsborg farmstead in the NW $\frac{1}{4}$ of Section 24, T141N, R84W, but Plates 4.1-1 (Pit Layout and Facilities Map) and 4.2-1 (Existing Structures Map) still depict the 500-foot buffer around the farmstead as unsuitable for mining. Please depict the 500-foot buffer zones around all farmsteads differently if the landowner has waived the 500-foot setback. Currently, as described in the legend in Plate 4.1-1, the buffer zone around the David Porsborg farmstead is *Unsuitable for Mining*. (JWE/JAR)
4. Follow-up to Item No. 8: A mining setback waiver has been obtained for the Charles Kuether Farmstead in the SW $\frac{1}{4}$ of Section 19, T141N, R83W, but Plates 4.1-1 (Pit Layout and Facilities Map) and 4.2-1 (Existing Structures Map) still depict the 500-foot buffer around the farmstead as

unsuitable for mining. Please depict the 500-foot buffer zones around all farmsteads differently if the landowner has waived the 500-foot setback. Currently, as described in the legend in Plate 4.1-1, the buffer zone around the Charles Kuether farmstead is *Unsuitable for Mining*. (JWE/JAR)

Section 4.2 – Existing Structures

5. Follow-up to Item No. 11: The county road numbers (i.e. 37th Avenue SW) are not correctly aligned with the corresponding roads on Plate 4.2-2 (Existing County Road Infrastructure Photos). Furthermore, it was noticed that 35th Ave SW and 37th Ave SW are incorrectly depicted as streets instead of avenues. Please revise Plate 4.2-2 (Existing County Road Infrastructure Photos) to correct these errors. (BSM)
6. Follow-up to Item No 14: St. Lucas Cemetery is depicted on Plate 4.2-1 (Existing Structures Map). Please either remove the cemetery from Plate 4.2-1 or provide information on Plate 4.2-1 clarifying that St. Lucas Cemetery is the historical location but has been relocated. Also, the St. Lucas cemetery narrative on page 4.2-5 in Section 4.2 (Existing Structures) states that its location is in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T141, R83W and currently has a 100- foot setback. Please update the St. Lucas Cemetery narrative to state its current status. (JAR)

Section 4.11 – SPGM Removal and Replacement

7. Follow-up to Item 24: It appears that Table 4.11-1 (SPGM Respread Depths by Ownership within the Mining Disturbance Boundary) was not replaced with the correct version as stated in the technical review No. 7 response by BNI submitted on November 15, 2023. Please replace Table 4.11-1 (SPGM Respread Depths by Ownership within the Mining Disturbance Boundary) with the correct version if no changes were intended. (JAR/SMN)

Please contact us with any questions.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

cc via email only: Doug Scheetz (dscheetz@bnicoal.com)
BNI Coal Efiling (BNIefiling@bnicoal.com)
Gregory Petrick (gpetrick@bnicoal.com)