

PUBLIC SERVICE COMMISSION
Reclamation Division

MEMORANDUM

TO: Commissioners Christmann, Haugen-Hoffart, and Fedorchak
Steven Kahl, Executive Director
John Schuh, General Counsel

FROM: ^{JE} Jonathan Emmer, ^{MT} Monty Johnson, and ^{JR} Jeff Roerick

DATE: February 23, 2024

SUBJECT: Approval of Revision No. 8 to Permit No. BNCR-1101 held by BNI Coal, Ltd. for the Center Mine, Case No. RC-20-438

On October 28, 2020, BNI filed the application for Revision No. 8 to Permit BNCR-1101 with the North Dakota Public Service Commission. Revision No. 8 adds 2,661.04 acres of land located in Sections 11, 14, 15, 16, 22, and 23, T141N, R84W and includes plans to mine federal coal tracts located in the E $\frac{1}{2}$ NE $\frac{1}{4}$, the S $\frac{1}{2}$ SW $\frac{1}{4}$, and the SE $\frac{1}{4}$ of Section 14, T141N, R84W. The addition of 2,661.04 acres with Revision 8 increases the total acreage in the permit to 11,023.76 acres and expands the current permit's western boundary west of 37th Street SW. Revision No. 8 updated nearly all sections of the permit for mining in the addition area. The revision also proposes to modify the postmining topography for 1,211 acres of the existing permit area. The Reclamation Division has completed its revision review and respectfully recommends that it be conditionally approved.

Revision No. 8 adds 320 acres of federal coal in the E $\frac{1}{2}$ NE $\frac{1}{4}$, the S $\frac{1}{2}$ SW $\frac{1}{4}$, and the SE $\frac{1}{4}$ of Section 14, T141N, R84W. These tracts are included in Federal Coal Lease No. NDM 105513 that the Bureau of Land Management (BLM) issued to BNI Coal, Ltd., effective January 1, 2021. The surface over the federal coal is privately owned. Prior to overburden and coal removal on the federal coal tracts, the Department of the Interior must approve the mine plan for the federal coal tracts as required by 30 CFR 746.11. This section of federal regulations states that no person shall conduct surface coal mining and reclamation operations on lands containing leased federal coal until the Secretary has approved the mining plans. Special Condition No. 1, attached to the initial permit issuance and remains in full force, prohibits any overburden or coal removal from the federal coal tracts until BNI receives the coal lease and the Secretary of the Interior approves the federal mine plan. BNI has obtained the federal coal lease; however, until the federal mine plan is approved by the Department of the Interior, surface disturbances on the federal coal tracts are limited to those activities that the Commission determines are necessary for carrying out mining on the adjoining tracts where BNI Coal, Ltd. has all of the rights necessary to mine the privately owned coal.

Revision No. 8 was deemed a significant revision to Permit No. BNCR-1101 and was subject to the public notice requirements. BNI submitted affidavits of publication of the required newspaper notices. We notified the appropriate agencies, the permit area landowners, and advisory committee members of the revision application.

Requests for informal conferences on this revision application were received by the Commission on July 18th and 19th, 2023, and an informal conference was held on August 17, 2023. The Hearing Officer issued the Informal Conference Findings and Ruling and Recommended Order on September 12, 2023

recommending that BNI Coal, Ltd. must: 1) provide haul road design plans to access the Revision No. 8 addition area and plans for any other roads that may be necessary to transport mining equipment over 37th Ave SW; 2) conduct seismic and air blast monitoring at or near all occupied dwellings within one mile from the nearest charged drill hole with advanced notice given to landowners so they may be present when the monitoring takes place; and 3) must revise Revision No. 8 to remove all mining disturbances within the five-hundred-foot setback from occupied dwellings, unless approved by the owners thereof in writing which will be incorporated into the permit, before approval is recommended. The Commission adopted the Hearing Officer's recommended order on September 14, 2023.

BNI Coal, Ltd. revised Revision No. 8 to remove all mining disturbances within the five-hundred-foot setback from occupied dwellings, unless approved by the owners. BNI Coal, Ltd. revised Revision No. 8 to conduct seismic and air blast monitoring at or near all occupied dwellings within one mile from the nearest charged drill hole with advanced notice given to landowners so they may be present when the monitoring takes place.

Special Condition No. 5 is being added to Permit BNCR-1101 to require BNI Coal, Ltd. to provide haul road design plans to access the Revision No. 8 addition area and plans for any other roads that may be necessary to transport mining equipment over 37th Ave SW. Special Condition No. 5 also requires BNI to document the condition of the existing county road infrastructure in the addition area during the summer of 2024. BNI Coal, Ltd. must submit a revision to update the Existing County Road Infrastructure sections of the permit and add the haul road designs to the permit.

Special Condition No. 6 is being added to Permit BNCR-1101, which states that no disturbance shall occur within the one-hundred-foot stream buffer zone in the NW1/4 of Section 13, T141N, R84W until BNI Coal, Ltd. obtains the appropriate approvals to work within the stream buffer zone and BNI Coal, Ltd. submits, and the Commission approves the design plan for the haul road crossing of the intermittent stream.

The existing surety bond for Permit BNCR-1101 totals \$42,449,183.00 and is sufficient to cover the worst-case reclamation cost estimate for the permit at this time. BNI submitted, and the Commission accepted, a rider that added the Revision 8 acreage to the surety bond on April 27, 2023.

Attached for your consideration at the March 5th Commission meeting are the proposed motion, revision approval form, special conditions, and newspaper notice that we must publish following revision approval.

Attachments

Figure 1: General Location Map of Permit BNCR-1101 Area labeled as "Affected Area" and outlined in red on the map is the 320-area Federal coal tract proposed for mining with Revision 8 to Permit BNCR-1101

