



Public Service Commission

State of North Dakota

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Sent Via Electronic Mail Only

August 6, 2021

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

Dear Mr. Volk:

The Reclamation Division has conducted a completeness review of BNI Coal, Ltd.'s (BNI) application for Revision No. 9 to Permit BNCR-1101 at the Center Mine. Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032. Revision 9 also changes the timing for construction of two ponds and two diversions in Section 21, T141N, R83W, adds two acres to the permit in Section 18, T141N, R83W, updates the worst case bond estimate, adds a copy of Federal Coal Lease NDM 105513, and updates other sections of the permit.

The following items must be adequately addressed before the application can be deemed complete and approval is granted to begin publication of the newspaper notice. Some items may appear to be more technical than completeness in nature; however, they will provide additional clarity in the permit before the revision application is sent to the Advisory Committee members and other interested parties.

Revision No. 9 Application (SFN 10562)

1. Please revise page 1 of the Revision No. 9 application form to insert the two acre parcel being added to the permit in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 with the revision. Please also add a revised application date header to page 1. (WTG/PJR)
2. Please revise the Revision No. 9 application attachment to begin the narrative with the proposed mining sequence change that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: "Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision." (WTG)

Appendix 1.5-1 – Notice of Publication

3. Please revise the first paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9 to begin the permit revision narrative with the proposed mining sequence change that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: "Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision." (WTG)

4. The Commission deems the addition of two acres to the permit an incidental boundary change that, by itself, would not have made the revision application a significant alteration of the approved permit. The additional acreage is therefore not subject to a designation of land unsuitable for mining. Please remove the reference to the designation from the third paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9. (WTG)
5. Please revise the fourth paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9 with the following, or similar, wording: "The legal description and names of surface and coal owners in Sections 20 and 21 affected by the proposed mining sequence change follow:" Please also limit the legal description, surface owner(s), and coal owner(s) list in the notice to the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, and the NW $\frac{1}{4}$, NE $\frac{1}{4}$, SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ of Section 21. (WTG/JWE/JAR)
6. Please define the boundary of the mining sequence change proposed in Sections 20 and 21 on the Notice of Publication map of Appendix 1.5-1 (Notice of Publication) for Revision No. 9. Please also remove the arrows that are remnants of a previous revision's federal coal labels. Please also increase the font size for the two vertical township and range labels to ensure newspaper print legibility. (WTG/JAR/PJR)

Section 1.7 – Business Entity Information

7. Please revise Section 1.7.2 (Controlling Officers of BNI Coal, Ltd., BNI Energy, Inc., and ALLETE) to recognize the recent change with BNI Coal, Ltd. and BNI Energy, Inc.'s officers and directors. (WTG/JAR)

Section 1.8 – Metes and Bounds Description of Permit Area

8. Please vacate Plate 1.8-1 (Permit Boundary BNCR-1101) in the Revision No. 9 permit application because it depicts the proposed Revision No. 8 application permit boundary. (WTG/JWE)
9. Please consider removing the metes and bounds on pages 1-11 to 1-13. It is not necessary to retain both sets of metes and bounds when the only change is the removal of the exception area. (PJR)

Plate 1.9-1 – Ownership Map

10. Plate 1.9-1 (Surface and Coal Ownership) submitted with the Revision No. 9 application appears to be unchanged from Plate 1.9-1 contained in the complete application of Revision No. 8. Please make the following necessary corrections to Plate 1.9-1 for the Revision No. 9 application. Please also make the necessary corrections in the plate's legend and title box.
 - a. Remove all depictions and labels for the Revision No. 8 additional acreage. (WTG/JWE)
 - b. Remove the permit boundary in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18 and label BNI's ownership of the two acre parcel proposed for addition to the permit to be consistent with surface ownership listed in Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JWE/PJR/JAR)
 - c. Revise the surface ownership for the SE $\frac{1}{4}$ of Section 20 and the SW $\frac{1}{4}$ of Section 21 to be consistent with surface ownership listed in Appendix 1.5-1 (Notice of Publication) and Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JWE)

Section 1.10 – Areas Unsuitable for Mining

11. Please review the last paragraph of Section 1.10, Areas Unsuitable for Mining, and update the cemetery narrative if appropriate. This revision may need to be conditionally approved to prohibit mining within 100 feet of the cemetery prior to cemetery relocation. (GAW)

Section 1.12 – Other Licenses and Permits

12. Please review and update the address listed for the Environmental Protection Agency in item 2 in Section 1.12. The EPA website lists the address as: EPA – Region VIII, 1595 Wynkoop St., Denver CO 80202-1129. (JAR)
13. Item 6 in Section 1.12 states the Section 404 Clean Water Act Permit NOW-1997-61932-BIS expired on 08-31-2017, and the Individual Permit application was submitted and is under review by the USACE. The timeframe for the USACE review seems excessive; please review and update the permit status as necessary. (JAR)

Section 1.15 – List of Consultants Furnishing Technical Data

14. Please revise “Soils Study” to state “Soil Survey for the Permit Area” for the Prairie Soil Consulting, LLC listing in Section 1.15 (List of Consultants). Please also remove the “owner” description and add M. G. Ulmer as a Professional Soil Classifier. (WTG)

Appendix 1-1 - Revision Summary and List of Changes

15. Please revise the Revision 09 Summary to BNCR-1101 in Appendix 1-1 (Revision Summary and List of Changes) to begin the narrative with the proposed mining sequence change that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: “Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision.” (WTG)

Appendix 1-2 - Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation

16. Lease information for the C1 addition area (submitted with Revision No. 8) is included in Appendix 1-2. Please remove the lease information for the C1 addition area. (JWE)
17. It does not appear that the Revision No. 9 application contains right of entry documentation for the two acre parcel proposed for addition to the permit in SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18. Please add the documentation or explain where it is located in the revision application. (WTG/JWE)

Section 3.12 – Cultural and Historical Resources and Protection

18. Revise Plate 3.12-1 (Cultural Resources Location Map) to exclude the C1 addition area and show the correct permit boundary for BNCR-1101. (JWE)
19. BNI updated the Pit Layout and Facilities Map, Plate 4.1-1, to show mining through St. Lucas cemetery in the southeast corner of the NE $\frac{1}{4}$ of Section 18. Please update the Cultural and Historic Resources and Protection section of the permit to discuss the planned relocation of the cemetery, approvals needed, etc. NDCC 38-14.1-07 prohibits mining within 100 feet of a

cemetery; however, the prohibition of mining near a cemetery does not apply if the cemetery is relocated in accordance with all applicable laws and rules [NDAC 69-05.2-04-01.1(5)]. (GAW)

Section 4.2 – Existing Structures

20. Please update the narrative about the St. Lucas Cemetery in Section 4.2 that states the cemetery is not within the permit boundary and will not be disturbed. Move the updated narrative into the *Occupied dwellings, unoccupied buildings, and cemeteries within the permit boundary* narrative. (JWE)

Section 4.6 – Surface Water Management Plan

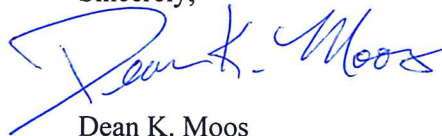
21. Table 4.6-1 lists Diversion D-21-1 as “Diversion D-21-3”. Revise the table to list the correct diversion. (JWE)
22. Diversion D-21-1 is labeled twice on Plate 4.6-1 (Surface Water Management Plan) and diversion D-21-4 is labeled as D-21-1. Please revise Plate 4.6-1 by correcting the labels. (JWE)

Plate 4.12-1 – Post Mining Land Use Map

23. Remove the last page (page 8) of Plate 4.12-1, Post Mining Land Use Map, because it depicts the C1 addition area that is not included in Revision No. 9. (JWE)

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)