



Public Service Commission

State of North Dakota

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January 10, 2022

Karene Hall
Permit Coordinator
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499
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Dear Ms. Hall:

The Reclamation Division has conducted a technical 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. Revision 9 proposes to add a cemetery located on 2 acres in Section 18. Mining within 100 feet of the cemetery is prohibited until the cemetery is relocated as required by NDAC 69-05.2-04-01.1(5). The following items must be adequately addressed before the Reclamation Division will recommend Commission action on the Revision No. 9 application.

Section 1 – Legal and Financial

1. Please update the Revision 9 Summary and List of Changes, Appendix 1-1, of Section 1.0, Legal and Financial, to state that Appendix 1-1 was updated with Revision 9 and update to clarify that new Landowner Notification Letters, Appendix 1.5-2, were sent to inform landowners of the Revision 9 mining sequence changes. (GAW)
2. The Revision 9 Summary and List of Changes, Appendix 1-1, states that Plate 1.5-2, Landowner Notification Map, was updated to reflect a boundary change. Please revise to clarify that the map was also updated to notify landowners of the mining sequence changes proposed with Revision 9. (GAW)
3. Please revise Section 1.7.2 to recognize the recent changes with BNI Coal, Ltd., BNI Energy, Inc., and Allete officers and directors submitted with BNI's October 28, 2021 technical review response for Revision No. 8 to Permit BNCR-1101. (WTG)
4. Appendix 1.9-1 [Ownership Information (within Permit Boundary)] states that BNI owns 2.08% of the mineral rights in the NW1/4 of Section 8, T141N, R83W but no lease or deed is attached. Please update Appendix 1.9-1 to include the lease or deed and update Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) accordingly. (JWE)

5. Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) is missing pages 2-4 for Lease 3044. Please include the missing pages of the lease. (JWE)
6. Appendix 1.9-1 [Ownership Information (within Permit Boundary)] states that BNI owns 2.08% of the mineral rights in the NW1/4 of Section 17, T141N, R83W but no lease or deed is attached. Please update Appendix 1.9-1 to include the lease or deed and update Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) accordingly. (JWE)
7. Appendix 1.9-1 [Ownership Information (within Permit Boundary)] lists “Noyce McGarity” as owning 1.04% of the coal in the NW1/4 of Section 17, T141N, R83W. Please correct the typographical error of the owner’s name to “Mary McGarity”. (JWE)
8. Appendix 1.9-1 [Ownership Information (within Permit Boundary)] states that BNI owns 2.08% of the mineral rights in the N1/2 of the SE1/4 of Section 18, T141N, R83W but no right of entry document is listed. Please update Appendix 1.9-1 and Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) accordingly or clarify. (JWE)
9. Please update Appendix 1.14-1 (Proof of Liability Insurance) to include the most current Certificate of Liability Insurance. (JWE)
10. Update Appendix 1-1 (Revision Summary and List of Changes) to account for the changes made to Appendix 4.14-1 (Worst Case Bond Calculations) This section was updated to account for changes in the mining sequence and increased variable costs. (JWE)
11. Update Appendix 1.5-3 (Affidavits of Publication) with the Affidavit for Publication notices from the Bismarck Tribune and the Center Republican for Revision No. 9 to BNCR-1101. (JWE)
12. Update Section 1.12 (Other Licenses and Permits) to change the name of the ND State Water Commission to ND Department of Water Resources. (JWE)

Section 3.12 - Cultural and Historical Resources and Protection

13. Please revise the title box for Plate 3.12-1 (Cultural Resources Location Map) to document a plate change with Revision 9 in 2021. (WTG/GAW)
14. Please update Section 3.12, Cultural and Historic Resources, with information regarding BNI’s plans for relocating the cemetery in the SE1/4NE1/4 of Section 18. (GAW)

Section 4.0 - Operations

15. Update Plate 4.1-1 (Pit Layout and Facilities Map) to include Diversion 17-1, Diversion 20-3, Diversion 20-4, Catch Basin 20-1, and Catch Basin 21-1. (JWE/WTG)
16. Please update Plate 4.1-1 (Pit Layout and Facilities Map) to reflect any changes since Revision No. 7 such as new or depleted SPGM piles, constructed or reclaimed surface water management structures, and haul roads. (JWE)
17. Page 4.1-2 in Section 4.1 (Operations Plan) references the ND Department of Health and the State Water Commission in paragraphs 2 and 3. Please change the references to the ND Department of Environmental Quality and the ND Department of Water Resources. (JWE)

18. Please review the 500-foot setback around the buildings in the NE1/4 of Section 20 on the Pit Layout and Facilities Map and update to ensure that the information provided is current, accurate, and consistent with what is stated in the Existing Structures narrative in Section 4.3. The Pit Layout and Facilities map depicts a 500-foot setback around the buildings in the NE1/4 of Section 20, but mining disturbance has already occurred within 500 feet of these buildings. (GAW)
19. Please update the numbered references on Plate 4.2-1 (Existing Structures Map) to correctly reference the items in Section 4.2 (Existing Structures). (JWE)
20. Please update the Existing Structures narrative on page 4.2.2 to mention the cemetery being added to the permit with Revision No. 9. (GAW)
21. The last sentence of the Larry and Virginia Schmidt narrative that begins on page 4.2-2 in Section 4.2 (Existing Structures) states that a copy of a farmstead purchase agreement has been attached. For compliance with NDAC 69-05.2-04-01.1(4), please reference where a copy of the purchase agreement can be found in the permit. (GAW)
22. Please update the Doug Doll/Lillie M. Marcy narrative on page 4 of Section 4.2, Existing Structures, to clarify if BNI has purchased the unoccupied structures in the NE1/4 of Section 20. The last sentence in the Doll/Marcy narrative on page 4.2-4 states there is a 500 feet setback from the buildings, but mining activities have commenced within 500 feet of these buildings. (GAW)

Section 4.6 – Surface Water Management Plan

23. Table 4.6-1 in Section 4.6 (Surface Water Management Plant) states that Diversion 20-4 will be constructed in 2021 and mined through in 2022. However, Plate 4.6-1 (Surface Water Management Plant) and Appendix 4.6-56 (Design Details – Catch Basins and Diversions) state that Diversion 20-4 will be constructed in 2022. Please revise Table 4.6-1 to state the correct construction date for Diversion 20-4 and when it will be mined through. (JWE)
24. Please revise Table 4.6-1 on page 4.6-5 of the Section 4.6 narrative to revise the incorrect 2020 reclamation dates for existing ponds P-7-1 and P-7-2, and diversions D-7-1 and D-7-2. (WTG)
25. Please revise the pit layout and timing depicted on Plate 4.6-30A in Appendix 4.6-30 (Design Details - Sedimentation Pond P-21-3) to be consistent with the pit layout and timing depicted on Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 4.6-1 (Surface Water Management Plan). Please also revise the plate's title box to document a plate change with permit revision 9 in 2021. (WTG)
26. Please revise the pit layout and timing depicted on Plate 4.6-31A in Appendix 4.6-31 (Design Details - Sedimentation Pond P-21-4) to be consistent with the pit layout and timing depicted on Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 4.6-1 (Surface Water Management Plan). Please also revise the plate's title box to document a plate change with Revision 9 in 2021. (WTG)
27. Please revise the title box for Plate 4.6-33A in Appendix 4.6-33 (Design Details - Diversion D-21-1) to document a plate change with Revision 9 in 2021. (WTG)
28. In Appendix 4.6-33 (Design Details – Diversion D-21-1), please revise the calculations with the correct watershed slope in the HydroCAD model(s) because a slope of 1.68% is used in the calculations, but an average watershed slope of 10.1% is listed in the Diversion Information Sheet. (JWE)

29. Update Appendix 4.6-56 (Design Details – Catch Basins and Diversions) with the revised design plans and calculations for Diversion 20-4 which were revised on October 29, 2021. (JWE)
30. Please revise the title page for Appendix 4.6-56 (Design Details - Catch Basins and Diversions) to correctly describe the catch basin CB-21-1 location as the SE¼NE¼ of Section 20 as opposed to the SE¼NW¼ of Section 20. (WTG)
31. Please revise the plate title boxes for catch basin CB-21-1, diversion D-20-3, and diversion D-20-4 in Appendix 4.6-56 (Design Details - Catch Basins and Diversions) to describe the correct locations consistent with structure locations depicted on Plate 4.6-1 (Surface Water Management Plan). Please also revise all plate title boxes in Appendix 4.6-56 to document plate additions to the permit with Revision 9 in 2021. (WTG)
32. As indicated by Ms. Kolden's email on November 9, 2021, please remove Diversion D-21-4 from Section 4.6 (Surface Water Management Plan), Plate 4.6-1 (Surface Water Management Plan), Appendix 4.6-31 (Design Details – Sedimentation Pond P-21-4), Plate 4.1-1 (Pit Layout and Facilities Map), and any other sections where the diversion is shown. (JWE)
33. Please update the hatching for the stream buffer zone around MSHA sedimentation pond P-21-5 to the hatching used for "Intermittent Steam / Buffer Zone Disturbance Requests" as depicted in the legend since disturbance within the buffer zone is approved as required by NDAC 69-05.2-16-20 in Plate 4.6-1 (Surface Water Management Plan) and Plate 4.1-1 (Pit Layout and Facilities Map). (JWE)
34. As indicated in Ms. Kolden's email on November 9, 2021, diversion D-21-1 will only be constructed from station 22+00 to the end since the stripping limit has been adjusted in Section 21. Please update Plate 4.1-1 (Pit Layout and Facilities Map), Plate 4.6-1 (Surface Water Management Plan), and Appendix 4.6-33 (Design Details – Diversion D-21-1) to account for the revised design of diversion D-21-1.

Section 4.9 – Reclamation Schedule

35. Please review the size of Variance Area No. 6 on Plate 4.9-1, Reclamation Variance Areas, and adjust the size of the Variance Area to the Revision 9 mine plan changes or provide appropriate justification for retaining the size of previously approved Variance Area. It appears a variance from the contemporaneous reclamation requirements is no longer needed for the southern portion of Variance Area No. 6. (GAW)

Section 4.14 – Reclamation Cost Estimate

36. Please review and revise Section 4.14 (Reclamation Cost Estimate for Bonding Purposes) and all of the appropriate plates and appendices to ensure that the correct time period is analyzed for the worst-case bonding condition due to the change in mining, and that the information provided is consistent and accurate. (JWE)

Please contact us with any questions.

Sincerely,



Zanna A. Brinkman
Director, Reclamation Division

Karene Hall
January 10, 2022
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cc via email only: Jay Volk (jvolk@bnicoal.com)
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