



Public Service Commission

State of North Dakota

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February 16, 2022

Karene 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 of BNI Coal, Ltd.'s February 1, 2022 response to our January 10, 2022 technical review of the application for Revision No. 9 and our January 10, 2022 midterm review letter to Permit BNCR-1101 at the Center Mine. Please note that the follow-up items reference the item number in either our January 10, 2022 technical review letter or our January 10, 2022 midterm review letter. The items related to the midterm review letter are addressed in the second half of this letter. The following items must be adequately addressed before the Reclamation Division will recommend Commission action on the Revision No. 9 application.

Revision No. 9 Items

Section 1 – Legal and Financial

1. Follow-up to Items No. 4, 6, and 8: Please include a bookmark for document #84332 in Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Articles of Amendment to Articles of Incorporation). (JWE/MJF)
2. Update Appendix 1-1 (Revision Summary and List of Changes) to account for the intermittent stream buffer zone narrative for MSHA Pond P-21-5, which was added to page 4.1-4 in Section 4.1 (Operations Plan). (JWE)

Section 4.0 – Operations

3. Follow-up to Item No. 15: Diversion 20-3 is labeled as Diversion 20-4 in Plate 4.1-1 (Pit Layout and Facilities Map). Please change the label to Diversion 20-3. (JWE/MJF)
4. Follow-up to Item No. 33: Please revise the second paragraph on page 4.1-4 in Section 4.1 (Operations Plan) to make it past tense. The current version sounds like disturbance within the intermittent stream buffer zone is being requested, but it has already been approved and completed. (JWE)

Section 4.6 – Surface Water Management Plan

5. Please depict Diversion D-21-1 as a “Proposed Diversion” instead of an “Existing Diversion” in Plate 4.6-1 (Surface Water Management Plan) and Plate 4-1.1 (Pit Layout and Facilities Map) since it has not been approved yet. (JWE)
6. Please change the “Completion Date” for Diversion D-21-1 from 2021 to 2022 in Table 4.6-1 on page 4.6-6 in Section 4.6 (Surface Water Management Plan) and remove Diversion D-21-4 from Table 4.6-1. (JWE)

Section 4.14 – Reclamation Cost Estimate for Bonding Purposes

7. The review of Section 4.14 is being conducted separately from this correspondence. Once that review is finalized, Section 4.14 will be updated for Revision No. 9

Midterm Review Items

Section 1 – Legal and Financial

8. Update Appendix 1-1 (Revision Summary and List of Changes) to account for the narrative changes in Section 4.5 (Transportation Plan) and describe the changes that were made. (JWE)
9. Follow-up to Item No. 5: Please update the NDDEQ address to: 4201 Normandy Street, Bismarck, ND 58503-1324. Also, please update the Region 8 EPA address to: 1595 Wynkoop Street, Denver, CO 80202-1129. (JAR)

Section 4.0 – Operations

10. Follow-up to Item No. 14: Please include SPGM stockpiles NE20T01-PF and SE17T01-PF in the SE1/4 of Section 17 in Permit BNCR-1101 in Plate 4.1-1 (Pit Layout and Facilities Map) if those stockpiles have been constructed. (JWE/MJF)
11. Follow-up to Item No. 14: Please update Plate 4.1-1 (Pit Layout and Facilities Map) to depict the Schmidt farmstead debris disposal location in the NW1/4NW1/4 of Section 17. (JWE)

Section 4.5 – Transportation Plan

12. Review Section 4.5 to ensure compliance with the rules outlined in NDAC 69-05.2-24 and Policy Memorandum No. 23. Specifically, review the rules related to the definition and certification of primary roads. (JWE)
13. Haul Road Section B is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. Please depict the appropriate sections of the road as being an existing haul road, undisturbed proposed haul road, or a proposed haul road/temporary ramp as depicted in the legend. (JWE)
14. Haul Road Section A is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. Please depict the haul road as an existing haul road because it was certified in 2014. (JWE)
15. The designation for Haul Road Section E, as shown in Plate 4.5-1, is not depicted in the legend. Please revise the layer/linetype of the haul road to appropriately describe the road. I am assuming

that this road should be designated as a proposed haul road/temporary ramp since it has not been certified. (JWE)

16. Haul Road Section F is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. However, portions of the haul road will be constructed in disturbed areas once mining begins in Section 9. Please revise the layer/linetype for portions of this haul road to appropriately describe the road. (JWE)
17. Update the narrative on page 4.5-4 in Section 4.5 (Transportation Plan) to describe when Haul Road Section F will become a certified haul road since portions of it will be constructed on undisturbed lands and it will be used to haul coal. (JWE)
18. The designation for Haul Road Section D as shown in Plate 4.5-1 is not depicted in the legend. Please revise the layer/linetype of the haul road to appropriately describe the road. I am assuming that this road should be designated as a proposed haul road / temporary ramp since it has not been certified. (JWE)
19. Table 4.5-1 on page 4.5-5 in Section 4.5 (Transportation Plan) states that Haul Road Section D will be constructed in 2019, but the narrative on page 4.5-4 states that the haul road will be constructed in 2027. Please update the table with the correct construction date. (JWE)
20. The narrative for Haul Road Section E on page 4.5-4 in Section 4.5 (Transportation Plan) does not state when the haul road will be constructed, and it does not state when the road will become certified (if it will be a certified haul road). Additionally, the overall narrative is incomplete and has incomplete sentences. Please revise the narrative as necessary. (JWE)

Section 4.6 – Surface Water Management Plan

21. Follow-up to Item No. 18: Please remove the design details for sediment ponds P-9-1, P-9-2, P-9-3, P-9-4, and diversion D-9-3 (Appendix 4.6-51, 52, 53, 54, and 55). Additionally, update Plate 4.6-1 (Surface Water Management Plan) and Plate 4-1.1 (Pit Layout and Facilities Map) to depict these ponds as “Future Sediment Ponds” instead of “Proposed Sediment Ponds”. If these ponds are retained in the permit, the appropriate advisory committee members must review the revision and they will have 45 days to respond. (JWE)
22. Follow-up to Item No. 18: Remove sediment ponds P-9-1, P-9-2, P-9-3, P-9-4, and diversion D-9-3 from Table 4.6-1 on page 4.6-6 in Section 4.6 (Surface Water Management Plan) and include narrative that the design details for the mentioned surface water management features will be addressed in a future revision. (JWE)

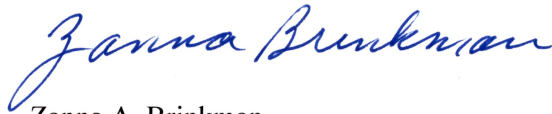
Section 4.13 – Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan

23. Follow-up to Item No. 21: The Federal Threatened, Endangered and Candidate Species listed in the table on the last page of Section 4.13 includes three species that are not listed as threatened, endangered or candidate in ND according to the USFWS IPaC web site. This would include the Black-footed ferret, Gray Wolf and Rusty Patched Bumble Bee. In addition, IPaC lists the Monarch Butterfly as a Candidate species but this species is not included in the table on the last page of Section 4.13. Please review the Table to ensure the information provided is accurate and clarify the source used to develop the table. (GAW)
24. Follow-up to Item No. 21: The second sentence at the top of the last page of Section 4.13 indicates the website used to develop the table was updated September 25, 2012. This sentence should be updated with a current date and the source used to obtain the updated information

should be cited. The last page of Section 4.13 is labeled page 17 but the Section 4.13 pdf contains 18 pages. (GAW)

Please contact us with any questions.

Sincerely,



Zanna A. Brinkman
Director
Reclamation Division

cc via email only: Jodey Houn (jhoun@bnicoal.com)
Gregory Petrick (gpetrick@bnicoal.com)
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