



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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*sent via email only*

December 6, 2022

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Mr. Doug Scheetz  
Environmental Manager  
BNI Coal, Ltd.  
2360 35th Ave. SW  
Center, ND 58530-9499  
[dscheetz@bnicoal.com](mailto:dscheetz@bnicoal.com)

Dear Mr. Scheetz:

The Reclamation Division has completed an initial review of final Bond Release Application No. 2 to BNCR-9702. The bond release application was very difficult to review because the 182-page pdf does not have a table of contents or bookmarks, so our initial review may be missing required elements. Portions of the application contain information copied directly from Permit BNCR-9702 with minimal effort to provide information in a complete, clear, and concise manner. Although the addendum to the application indicates that all required information was included, there was obviously no cross-referencing to ensure the information was provided. The following issues will need to be addressed prior to publishing the newspaper notice and notifying landowners and governmental agencies.

The bond release inspection required by NDCC 38-14.1-17(3) will be delayed until after the public notice has been published and the weather allows for an effective evaluation of the reclamation work completed.

### General

1. Final Bond Release Application No. 2 currently consists of a 182-page pdf in an unacceptable format. Please provide a table of contents that is divided and organized into bookmarked sections and subsections so that the information provided is presented in a clear and concise manner as required by NDAC 69-05.2-05-02(6). (GAW/PJR/BSM/MLJ/MJF/ZAB)
2. Please review/revise all footers throughout the document so they accurately reflect the correct attachment. Some of the footer errors are listed in the following deficiency items. (MLJ)

### Application for Final Bond Release (SFN 19813)

3. The application references the bond release area as "Exception 03". This is not an appropriate description for the bond release tract. The bond release tract should be a stand-alone area considered solely by itself. Please change the "Exception 03" area to an appropriate tract number and revise the Application and all references in the Attachments accordingly. (BSM/ZAB)
4. Worst-case bonding language on page 1 of the Application should be revised to clarify that Permit BNCR-9702 is part of a consolidated bond area that includes BNCR-9702, BNCR-8106, BNCR-8202, and BNCR-8602. The bond amount for the consolidated bond area is based on the worst-case reclamation cost estimate; therefore, no monetary reduction is requested with this bond release application. (ZAB/MJF)

5. Please include a narrative within *SFN 19813* regarding the stage(s) of bond release being requested with Bond Release No. 2 and provide the acreage associated with each stage. (BSM/GAW/PJR/ZAB)

#### **Attachments I – Legal Description**

6. Attachment II is the map of Permit BNCR-9702 which is not required, and depicting the bond release tract as an exclusion area. Please provide a map that depicts only Bond Release No. 2. The footer on Attachment I is incorrectly labeled Attachment III. (BSM/ZAB)

#### **Attachment II – Metes and Bounds**

7. Attachment II is the metes and bounds description of Permit BNCR-9702 and this information is not required in the Application for Bond Release No. 2. Revise Attachment II to include only the metes and bounds description of Bond Release No. 2. The footer on Attachment II is incorrectly labeled Attachment III. (BSM/ZAB)

#### **Attachment III – Advertisement (Legal Notice)**

8. The legal notice states that the bond release tract is 196.64 acres while the application form states that the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ/BSM/ZAB)
9. Please revise the legal notice to include the total amount of the worst-case bond covering the consolidated bond area as required by NDCC 38-14.1-17(1)(a)(3). (PJR)
10. A sentence in the first paragraph of the legal notice should be revised to clarify that the bond amount is based on the worst-case reclamation condition that covers Permit BNCR-9702 **“and other permits”** at the Center Mine. (ZAB/GAW)
11. The last sentence of the first paragraph of the legal notice indicates that there is more than one bond release tract. Please revise the sentence to indicate that the bond release application is for a single tract. (MLJ/BSM/ZAB)
12. Please revise the first paragraph to clarify that the N½ of Section 34 is in Township 142 North and Range 84 West in Oliver County. The township and range listing may be abbreviated as customarily accepted. (GAW)
13. Please revise the second paragraph of the legal notice to include the appropriate information to satisfy NDCC 38-14.1-17(1)(a)(4). This would include the type and approximate dates reclamation work performed and a description of the results achieved. Also, list the acreage of each post-mine land use and provide a timeline for coal removal, backfilling and grading, and revegetation seeding dates. Also note, the second paragraph states that the tract was mined between 1992 and 2022. Based on the Annual Mine Maps, the Bond Release No. 2 tract was mined between 1992 and 2002. (MLJ/PJR/MJF/BSM)
14. The “request and supporting documents” wording in the first sentence of the third paragraph should be replaced with the word “application”. The sentence should state that copies of the bond release application are on file at the Oliver County Auditor’s Office in Center... and the Reclamation Division... (ZAB)

15. Please revise the Bond Release label in Section 34 on the public notice map to include the bond release number. (MLJ/ZAB/MJF)
16. Please revise the public notice map to include the township and range. (PJR)
17. Please list the total acres of Final Bond Release No. 2 on the public notice map. (PJR)
18. Revise the font size of the bond release tract and street labels so they are legible at newsprint scale. (ZAB)

**Attachment IV – List of Government Agencies and Landowners, and Sample Notification Letter**

19. John Paczkowski of the North Dakota Department of Water Resources is the State Engineer. Please remove “Interim” from his title. Please update the North Dakota Water Commission to Department of Water Resources and its address to 1200 Memorial Highway, Dept 770 Bismarck, ND 58504. Also, please update the NDDEQ address to 4201 Normandy Street, Bismarck, ND 58503-1324. (BSM/MJF)
20. The issues identified with the public notice also apply to the agency and landowner notification letter. Please update the agency/landowner notification letter to address the items listed for the public notice in Attachment III above. (GAW)

**Attachment V – Aerial Photo Map (Pre-mine Soils Map)**

21. The footer on Attachment V is incorrectly labeled Attachment III. Please correct. (BSM)
22. Please revise the map to the appropriate aerial photo-based map as described at the top of page 2 of the application form. This should include a general outline with the total acres. The soils map should be included later as described in the addendum to the application and it should include labels within all soil mapping unit boundaries. (PJR/MLJ)

**Attachment VI – Tract History, Vegetation Data, Bond Release Standards**

23. The footer on Attachment VI is incorrectly labeled Attachment III. Please correct. (BSM)
24. Several locations on page 1 of Attachment VI, state that the bond release tract is 196.64 acres while the application form states the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ/BSM)
25. Page 1 of Attachment VI states that only final bond release is being requested and implies that first, second, and third stage bond release has already been achieved. Please correct this error. (GAW)
26. Please include a sentence in Attachment VI that indicates if coal ownership within the bond release tract is private, state, or federal. Identify any portions of the tract where coal was federally owned. We would like you to include this information in all future bond release applications, so it is clear to OSMRE if the bond release application requires their concurrence. (ZAB, MJF)
27. Please include the types, rates, and dates of herbicide application. (MJF)

28. Please consider changing the heading **Previous Management** to **Management** as it describes BNI's post-mining management of the land. (MJF)
29. The narrative in the letters to interested parties states that a rural water cattle irrigation system was installed. However, under the management section of the tract, it states that supplemental irrigation was not used on this tract. Please clarify. (MJF)
30. The seed mix table at the top of page 2 of Attachment VI does not include a unit of measurement so it is not clear if the values represent pounds per acre, a relative percentage, or something else. Please modify to provide clarity. (GAW)
31. The third paragraph on page 2 of Attachment VI states that the unadjusted standard was incorporated into the permit and is listed in Table 1, and the fourth paragraph states that the standard was developed with the PSC in 2019. The unadjusted standard cannot be found in Permit BNCR-9702. Please provide justification for developing the native grassland revegetation success standard using soils that existed on the cropland portion of the bond release tract rather than from soils that existed on pre-mine native grassland in Section 34 and provide information in the bond release application why it is acceptable to demonstrate revegetation success using the pre-mine soils of the bond release tract. This would include an evaluation of the productivity of the entire area owned by BNI Coal within Section 34, an evaluation of the productivity of the non-cropland agricultural lands in Section 34, and an evaluation of the productivity of the pre-mine soils within the bond release tract. The methodology used to determine productivity with this bond release application will need to be applied to future bond releases in Section 34 so this evaluation will need to be included in Permit BNCR-9702. (GAW)
32. Please clarify in Attachment VI which version of the Revegetation Success Standard document is being used to demonstrate native grassland revegetation success. (GAW)
33. The third paragraph on page 2 of Attachment VI states that data from the south silty reference area was used to calculate a climatic correction factor. Please provide clarification why the north silty reference area was not also used to calculate the climatic correction factor, discuss whether the silty reference area properly represents the pre- and post-mining range or ecological sites, and provide ecological condition information of the silty reference areas. Please also clarify if the reference area(s) and reclaimed land have been managed similarly during the responsibility period. (GAW)
34. Table 1 on page 3 of Attachment VI indicates that the unadjusted standard is 1.228334 tons/acre which is equivalent to 2,456.7 lbs/acre but the unadjusted standard in Table 2 on page 4 is listed at 2,165.63 lbs/acre. In addition, narrative on page 2 indicates that the correction factor was derived by dividing the production on the reference area by 2000 lbs/acre but the expected yield of the soils on the reference area is 2,330 according to Table 1. Please review and correct as necessary. (GAW)
35. Narrative on page 3 of Attachment VI indicates the reclaimed native grassland was hand sampled. Please provide the name(s) and information about the qualifications of the individuals who collected the data. (GAW)
36. Please include the reclaimed native grassland ground cover and productivity sampling date in the bond release application that demonstrates revegetation success. Narrative on page 4 indicates that this information is included in Appendix A, but Appendix A was not provided. (GAW)

37. Please include the reference area ground cover and productivity sampling date in the bond release application that demonstrates revegetation success. (GAW)
38. Table 3 appears to show that the diversity standard has not been met since 2015 and Attachment VI does not address whether at least one native cool season species and two native warm season species were present in sufficient quantities during the years being used to demonstrate revegetation success. (GAW)
39. Please include the reclaimed wetland information required for the third and fourth stage bond release as set forth in subsection II-H of our Revegetation Success Standards document. This would include aerial photography delineating wetland basins and contiguous land uses, a narrative describing plugging, seeding and practices used to establish vegetation, evidence of wetland zone development, a description of the wetland's designed classification, surface water quality of the wetland, a postmining topography map that delineates the entire watershed of the wetland basin, and documentation that the reclaimed wetland exhibits appropriate vegetation characteristics for which it was designed. The wetland narrative on page 29 of the pdf indicates some of this information can be found in Appendix B, but Appendix B was not provided. (GAW)
40. Please revise the Wildlife Assessment narrative to provide information specific to the bond release tract. This should include information about the pre-and post-mining habitats or land uses of the ownership tract (Section 34) and enhancement features or facilities installed on the tract as required by NDAC 69-05.2-09-17. The information currently provided appears to be information taken directly from the biennial wildlife report. (GAW)
41. Attachment VIII appears to show four sample locations outside of the bond release tract. Attachment VI should explain why it is appropriate to include sampling data from areas outside of the bond release tract or perhaps data from these sites might need to be omitted when determining revegetation success. Moreover, please provide information about how the sample sites were selected and why some of the seeding years are not represented in the sampling data. (GAW)
42. The Section 34 Post Mine Land Use Map found within Attachment VI lists the areas of each land use. The acres add up to 196.64 acres while the application form states that the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ)
43. The Section 34 Post Mine Land Use Map found within Attachment VI lists the areas of each land use, however, no units of measurement are provided. Please specify that the numbers listed below the land use text are acres. (MLJ)
44. Please remove the unnecessary cropland, hayland, and shelterbelt layers from the legend on the Section 34 Post Mine Land Use Map found within Attachment VI. (MLJ/MJF)
45. Please revise the species list on page 33 of the pdf to include the name of the individual(s) who collected the data and provide the date(s) the information was collected. (GAW)

#### **Attachment VII – Grade Approvals**

46. Please provide an aerial photo-based map showing all individual grade approval boundaries within Bond Release No. 2. The map should be labeled with each grade approval identification as well as the differing topsoil and subsoil thicknesses throughout. (MLJ/MJF)

47. Attachment VII contains 145 pages of correspondence between BNI Coal and Reclamation Division staff regarding grade approvals on the bond release tract. This correspondence provides information regarding planned topsoil and subsoil respread depths, and it will be useful when probing to confirm SPGM respread depths. Please revise to provide the information as an addendum to the application and clarify how the information provided can be connected to a map in the bond release application. (GAW/MLJ)

**Attachment VIII – Seeding Dates and Sampling Locations**

48. Please label the Seeding Dates and Sampling Locations Map as Attachment VIII. (GAW)
49. The footer on Attachment VIII is incorrectly labeled Attachment III. Please correct this error. (GAW)

**Attachment IX – Postmine Contours Map**

50. As required by NDAC 69-05.2-12-12(4), please delineate the boundary of Bond Release No. 2 on Attachment IX, Plate 4.10-1 Post-Mining Topographic Contours. (BSM/MJF)
51. The Post-mine Contours Map is labeled Post-Mining Topographic Contours in the legend, and it appears to be a map copied directly from Permit BNCR-9702. Please provide consistent language regarding this map and revise to provide an actual as-built contour map of the bond release tract. Please also note that Item No. 39 requires a post-mining topographic map of the entire watershed of the reclaimed wetland so BNI might choose to provide the watershed information in Attachment IX. (GAW/BSM)

If you have any questions, please contact this office.

Sincerely,



Zanna A. Brinkman  
Director  
Reclamation Division

cc via email only: Karene Hall (khall@bnicoal.com)  
Gregory Petrick (gpetrick@bnicoal.com)  
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