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January 22, 2024

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Mr. Jonathan Emmer, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Mr. Emmer,

This submittal contains a response to your Completeness Review 1 letter to us dated December 29, 2023. In this letter you listed completeness deficiencies that must be addressed before the Renewal 2 and Revision 11 application to BNCR-1101 can be deemed complete. Below is a listing of the deficiency followed by our response:

Appendix 1-1 Revision Summary and List of Changes

1. Please add Plate 4.6-1 (Surface Water Management Plan) to the list of changes for Revision 11/Renewal 2 since changes were made to the map. (MLJ)

Plate 4.6-1 was added to the list of changes.

Section 1.5 – Public Notice

2. Please include the legal descriptions of the area being added to the permit with pending Revision No. 8 in the first paragraph of the public notice in Appendix 1.5-1. This would include all or portions of Sections 11, 14, 15, 16, 22 and 23 of T141N, R84W, and include a sentence clarifying that this acreage is being added to Permit BNCR-1101 with pending Revision No. 8. (GAW)

The legal descriptions for the Revision 8 addition have been added to Appendix 1.5-1.

3. Please revise the first paragraph of the public notice to state that Renewal No. 2 will extend the permit term another five years. (GAW, PJR)

The first paragraph has been modified to include the permit term will extend for another 5 years.

4. The word “regrading” is mistakenly written as “regarding” in a sentence near the end of the first paragraph of the public notice. Please correct this error. (GAW, PJR)

The misspelling of regrading has been corrected.

5. In the public notice, please clarify that Revision No. 11 identifies new coal removal subareas that are to be mined during the next term of the permit. (GAW)

The description for Revision 11 has been modified to include a statement for new coal removal subareas for the next permit term.

6. Please update the narrative in the 2nd paragraph of the Notice to add “renewal” to inform any person requesting a copy of the applications that a renewal application is also available. (JAR, PJR)

The term “renewal” has been added to the 2nd paragraph of the publication notice as requested.

7. Please revise the public notice to specifically state that a variance from the contemporaneous reclamation requirements is being proposed for areas mined in portions of Section 13 and the W½ of Section 18. (GAW)

The variance from contemporaneous reclamation requirements has been added to the publication notice.

8. Please delete the last sentence of the second paragraph of the public notice which states a USB flash drive copy of the revision application may be requested by contacting the PSC. (GAW)

The sentence stating that a copy of the permit can be requested on a USB drive has been removed for the publication notice.

9. With Renewal No. 2 and Revision No. 11, BNI is planning mining operations through public roads along the north and east sides of Section 19, which are depicted as alternative routes of travel on the map included with the public notice. NDAC 69-05.2-10-01(d) requires a concise statement describing the road, the particular part to be relocated, where the relocation is to take place and its duration. Please review the revision application and clarify if BNI Coal, Ltd. has obtained Oliver County Board of Commissioners approval to conduct operations within 100 feet of the outside rights-of-way of section lines and to temporarily close other section lines necessary to conduct surface coal mining and reclamation operations during the next permit term. Please refer to the original public notice for BNCR-1101 and the public notice for Renewal No. 1 and Revision No. 6 as examples of public notice filings. (GAW)

Language was added to the public notice to include sections of county road to be temporarily closed and relocated. This notice also includes where the relocation will be pending approval from the Oliver County Board of Commissioners. Plate 4.5-3 and the publication map were both updated to show the proposed closures and proposed reroutes.

10. A sentence in the third paragraph of the public notice states that any person adversely affected may file a petition to designate an area added to the permit with the revision application as unsuitable for surface coal mining operations. Revision No. 11 does not propose adding any land to the permit area. Please correct this error while complying with NDAC 38-14.1-18(1). (GAW)

The 3rd paragraph of the publication notice has been modified to remove language about designating an area added to the permit as unsuitable for mining.

11. Joanne Trinkle is listed on Plate 1.9-1 (Ownership Map) in the N½ of Section 15 but she is not identified in the Notice (Section 1.5-1 – Notice of Publication). Please review and update the Notice as necessary. Also, Anne F. Cerulli is listed in the Notice of Publication but not identified on Plate 1.9-1 (Ownership Map). Please review and update as necessary. (JAR)

Plate 1.9-1 has been updated to change Joanne Trinkle as a coal owner to Anne Cerulli LE. Documents of proof have been added to Appendix 1-2 for this change.

12. The final listing in the Notice of Publication identifies the location for a ~1.5 acre tract owned by BNI Coal, Ltd. in Section 32, T142N, R83W as WS½SW¼. Please correct this typographical error. (JAR)

The “W” from the description for Section 32 has been removed as requested.

13. The last paragraph in the public notice states, “The legal description and names of surface and coal owners follow for the existing permit area and the proposed permit addition:” Please revise to state that the proposed permit addition is pending with Revision No. 8 to BNCR-1101. (JAR, JWE)

The last paragraph of the publication notice has been modified to include a statement that the Revision 8 proposed permit addition is pending.

Section 4.1 – Operations Plan

14. Please add the proposed prime farmland polygons to the Revision 8 addition area on Plate 4.10-2 (Post-Mining Slope Map). (MLJ)

Prime farmland layer was thawed and formatted to match Area C prime farmland layer.

Section 4.6 – Surface Water Management Plan

15. The pits, sequence of mining and planned year of mineral removal on the Surface Water Management Plan map, Plate 4.6-1 are different than what is depicted in the Pit Layout and Facilities Map, Plate 4.1-1. Please update so the information is consistent. (GAW)

Plate 4.6-1 pit sequence was updated to be consistent with Plate 4.1-1.

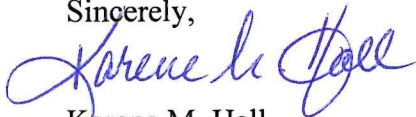
Section 4.14 – Reclamation Cost Estimate for Bonding Purposes

16. Please update Plate 4.14-1 (Worst Case Bond Map) to depict the worst-case scenario during the permit term from May 2024 to May 2029 or provide justification if 2024 is determined to remain the worst-case scenario. For instance, if multiple ponds are scheduled for construction in 2024 but are omitted from the current worst-case scenario, a rationale for this exclusion should be presented. It is imperative to conduct a comprehensive review of Section 4.14, Plate 4.14-2, and Appendix 4.14-1 to include the most pertinent information, including assumptions, for the new permit term. (BSM)

Section 4.14 was updated to reflect the current estimated worst case bond condition which is estimated to occur in late 2028. This accounts for the maximum number of open pit scenarios with addition of the 757 dragline into the pending permit addition area. Plate 4.14-1 Worst Case Bond Calculation was updated to reflect the estimated worst case condition. Final pit locations were updated. Estimated disturbance areas were depicted. Haul roads were updated to current and projected alignments. Surface water management structures were updated. County road reclamation conditions were updated and preliminary volume assumptions were added for the future overpass connecting the pending permit addition. Plate 4.14-2 Worst Case Bond – Pit Cross Sections was updated with cross sections that depict the open pit reclamation plans for the estimated worst case condition. Appendix 4.14-1 was updated to reflect the estimated worst case condition. Open pit reclamation data was updated. SPGM stockpile data was updated and projected out to the worst case condition. Pond/Diversion reclamation was updated to reflect the new condition along with existing haul road and county road reconstruction estimates. The narrative for Section 4.14 was also updated to outline the information that was developed in the plates and appendices.

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Karene M. Hall
Permit Coordinator