



Public Service Commission

State of North Dakota

COMMISSIONERS

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sent via email only

March 5, 2024

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Karene M. Hall
Permit Coordinator
BNI Coal, Ltd.
2360 35th Avenue SW
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Dear Ms. Hall:

The Reclamation Division has conducted a technical review of BNI Coal, Ltd.'s application of Revision No. 11 for Renewal No. 2 to Surface Coal Mining Permit BNCR-1101 for the Center Mine. The following items must be adequately addressed prior to Commission approval of the revision and corresponding Renewal No. 2. Since the current permit term will expire May 28, 2024, please respond to this letter **no later than early April** to ensure Commission action at the meeting scheduled for May 23, 2024; however, we encourage early submittal to the extent possible. Please note that follow-up items reference the item as numbered in our August 11, 2023 pre-renewal letter.

Section 1 – Legal and Financial

1. The bookmark link for “Revision 11 Renewal 2 Summary” appears to be broken in Appendix 1-1 (Revision Summary and List of Changes). Please fix the bookmark link for “Revision 11 Renewal 2 Summary” in Appendix 1-1. (BSM, PJR)
2. Please remove Exception 1 on Plate 1.8-1 (Legal Description Map), since the cemetery has now been permitted and is currently being mined. (PJR, BSM)
3. Follow-up to Item No. 4: Please update Section 1.12 (Other Licenses and Permits), specifically the outdated reference to the ND State Water Commission should be changed to the ND Department of Water Resources with the address changed to 1200 Memorial Highway, Dept 770, Bismarck, ND 58504. (JAR)
4. Please update Appendix 1.14-1 (Proof of Liability Insurance) with the current certificate of liability insurance and endorsement. The current certificate of liability insurance expired on 2/1/2024. (JAR, BSM)

Section 2 – Extended Mine Plan

5. Follow-up to Item No. 7: Please replace Plate 2.1 (Extended Mine Plan) with the most recent version submitted to the Reclamation Division on January 25, 2024. (JAR, BSM)

Section 3 – Environmental Resources

6. Please revise Plate 3.3-2 (Hagel Seam Potentiometric Location Map) to account for the entirety of the permit boundary to BNCR-1101. Understandably, some of the data will be older since it has been mined through, but an all-encompassing map will assist in helping determine regional groundwater flow. (PJR)

Section 4.1 - Operations Plan

7. Please include the landowner waiver areas on Plate 4.1-1 (Pit Layout and Facilities Map) for occupied dwellings that BNI has not purchased but has acquired the landowner's consent to mine within the 500-foot boundary. These areas are depicted with yellow hatching on Plate 4.1-1 of Revision No. 8. (JAR)
8. Please add the correct shading/coloring in Plate 4.1-1 (Pit Layout and Facilities Map) for the intermittent stream disturbance request for sediment Pond P-13-6. It will require disturbance approval prior to building, and the map currently shows the location of the pond within the intermittent stream. (PJR)
9. The map legend within Plate 4.1-1 (Pit Layout and Facilities Map) does not depict a key for the "Associated Disturbance Boundary". Please depict the key for "Associated Disturbance Boundary" within the map legend. (BSM)
10. It appears that Plate 4.1-1 (Pit Layout and Facilities Map) does not have the shading for the "Mining Disturbance Boundary (Final Graded Spoil Line)" displayed on the map. Please include the shading for "Mining Disturbance Boundary (Final Graded Spoil Line)" within the map. (BSM)
11. Please depict the federal coal tracts within BNCR-1101 in Plate 4.1-1 (Pit Layout and Facilities Map). (PJR, BSM, JWE)

Section 4.2 – Existing Structures

12. If necessary, please update the narrative on Page 4.2-5 in Section 4.2 (Existing Structures), including any changes regarding the removal or rerouting of MDU or Rough Rider Electric Cooperative powerlines since the last revision with Revision No. 8. (BSM)
13. Section 4.2 (Existing Structures) has a typographical error in the second sentence of the first paragraph of the subsection "Existing Road Systems" on Page 4.2-6 referring to 35th St SW. Please correct this error by changing "35th St SW" to "35th Ave SW." (BSM)
14. Plate 4.2-1 (Existing Structures Map) does not appear to have the linework for powerlines turned on within the map or the map legend. Furthermore, there is a light blue line running along 37th Ave SW that is not labeled, nor does it appear to be included in the map legend. Please revise Plate 4.2-1 (Existing Structures Map) to delineate the most current alignments of powerlines and delineate the light blue line running along 37th Ave SW and include this line in the map legend. (BSM)
15. Please revise Plate 4.2-1 (Existing Structures Map) by removing all utilities that have been removed and not replaced or their new location. For example, a West River Telecom

Underground utility line is depicted in the SE¼ and NE¼ of Section 18, but a portion of this area has already been mined through as of 2023. (BSM)

16. Please update Plate 4.2-2 (Existing County Road Infrastructure Photos) with the most recent version dated 12/18/23 included with Revision No. 8. (BSM)

Section 4.4 - Blasting Plan

17. Please add yellow shading to Plate 4.4-1 (Blasting Map) for all occupied dwellings, per NDAC 69-05.2-04-01.1(4). Currently, the homes located in the NE¼ of Section 11 and the SW¼ of Section 12 do not show the mandatory 500-foot setback for each structure. (PJR)
18. Please remove the cemetery in the E½ of Section 18 from Plate 4.4-1 (Blasting Map) since the cemetery has now been permitted and is currently being mined. (MLJ)

Section 4.5 – Transportation Plan

19. Special Condition No. 6 issued with the pending approval of Revision No. 8 to Permit BNCR-1101 states that no disturbance shall occur within the one-hundred-foot stream buffer zone in the NW¼ of Section 13, T141N, R84W until BNI Coal, Ltd. obtains the appropriate approvals to work within the stream buffer zone and BNI submits, and the Commission approves the design plan for the haul-road crossing of the intermittent stream. Please clarify the narrative under the Haul Road Section B subsection in Section 4.5-1 (Transportation Narrative) that BNI will obtain all appropriate approvals and have Commission approval of the haul-road crossing design plan for the intermittent stream prior to any disturbance within the stream buffer zone of the intermittent stream in the NW¼ of Section 13. (JAR)

Section 4.6 – Surface Water Management Plan

20. Please adjust the font and/or color of the section number labels in Plate 4.6-1 (Surface Water Management Map) so that they are more easily distinguishable. (MLJ)
21. The construction dates for sediment ponds P-14-1 and P-12-3 on Plate 4.6-1 (Surface Water Management Plan) vary from what is depicted in Table 4.6-1 of Section 4.6 (Surface Water Management Plan). Please review and revise accordingly. (BSM)
22. Table 4.6-1 in Section 4.6 (Surface Water Management Plan) specifies pond P-7-1, diversion D-7-1, pond P-7-2, and diversion D-7-2 were reclaimed in 2023. However, BNI has not responded to the Reclamation Division's letter sent on February 18, 2022 regarding the reclamation request for these features. Therefore, it is necessary to update the expected reclamation dates for pond P-7-1, diversion D-7-1, pond P-7-2, and diversion D-7-2 in Table 4.6-1 of Section 4.6. (JAR, BSM)
23. Table 4.6-1 in Section 4.6 (Surface Water Management Plan) specifies pond P-16-2 and diversion D-16-1 are scheduled for reclamation in 2024, and ponds P-21-1 and P-21-2 are scheduled for reclamation in 2025. However, according to Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 4.6-1 (Surface Water Management Plan), mining within the watersheds controlled by these structures is not scheduled until 2027-2029. Please review and revise the projected reclamation dates in Table 4.6-1, since the mentioned ponds and diversions will be necessary during active mining operations. (JAR, BSM)

24. Table 4.6-1 in Section 4.6 (Surface Water Management Plan) depicts the removal of diversion D-13-1, yet Appendix 4.6-20 (Design Details – Diversion D-13-1) has not been removed. Please ensure that both Table 4.6-1 and Appendix 4.6-20 (Design Details – Diversion D-13-1) accurately reflect the status of diversion D-13-1 for surface water management. If D-13-1 is no longer utilized, please remove Appendix 4.6-20 and exclude diversion D-13-1 from Plate 4-1.1 (Pit Layout and Facilities Map) and Plate 4.6-1 (Surface Water Management Plan). Please ensure any changes made are also reflected in Appendix 1-1 (Revision Summary and List of Changes). (BSM)
25. Table 4.6-1 in Section 4.6 (Surface Water Management Plan) depicts the reclamation date for pond P-21-6 in 2031, but pond P-21-6 was mined through in 2022. Please update the reclamation date for pond P-21-6 in Table 4.6-1 of Section 4.6 (Surface Water Management Plan) from “2031” to “Mine Through in 2022.” (BSM)
26. The design for sediment pond P-11-1 in Plate 4.6-1 (Surface Water Management Plan) does not align with the design in Plate 4.6-41A within Appendix 4.6-41 (Design Details - Sediment Pond P-11-1), particularly concerning its offset from 37th Ave SW and the 500’ setback from the farmstead. Please update the design for sediment pond P-11-1 in Plate 4.6-1 (Surface Water Management Plan) to align with the footprint depicted in Plate 4.6-41A within Appendix 4.6-41. (BSM)
27. Plate 4.6-49A within Appendix 4.6-49 (Design Details - Diversion D-11-1) does not incorporate the latest design changes for sediment pond P-11-1. Please ensure that Plate 4.6-49A and all associated design details for diversion D-11-1, including its construction year on Page 1 of Appendix 4.6-49, are updated to reflect the most recent design for sediment pond P-11-1. (BSM)
28. Appendix 4.6-53 (Design Details - Diversion D-9-3) has not been replaced with an updated version, which should include a topsoil veneer, as approved by the Reclamation Division on December 20, 2023. Please ensure Appendix 4.6-53 accurately reflects these approved changes. (BSM)
29. The narrative on page 1 of Appendix 4.6-58 (Design Details - Diversion D-16-4) incorrectly states that the diversion is located in the “SE¼ of Section 9” instead of the “SW¼ of Section 9”. Please correct this error. (BSM)
30. Upon review of Plate 4.6-32A within Appendix 4.6-58 (Design of Diversion D-16-4), the following discrepancies were identified requiring correction or clarification: (BSM)
 - a. The horizontal scale for the diversion profile does not seem to align with the stationing. Please adjust accordingly.
 - b. Two scale bars and north arrows are present. Please display only one scale bar and north arrow.
 - c. The diversion profile depicts an “Existing Subsoil Floor” that is difficult to see. To improve visibility, please consider a darker color to identify the “Existing Subsoil Floor”.

- d. The diversion profile ends at Station 43+00, and the plan view indicates an outlet section labeled “Riprap & fabric outlet down to pool area.” Please include an additional typical section and profile for this outlet section labeled “Riprap & fabric outlet down to pool area.” It is advisable to extend the north boundary linework of the “Riprap & fabric outlet down to pool area” slightly to the north to ensure any directional change of flow of surface water runoff at the beginning of the outlet riprap section does not negatively impact the existing embankment during high-flow or spring runoff events.

Section 4.9 – Reclamation Schedule

31. Please review and revise Plate 4.9-1 (Reclamation Variance Areas) as necessary. It appears that larger than necessary variance areas are being requested that could be reduced in size. Certain variance areas have already been reclaimed to some extent, and a true and accurate portrayal of these areas should be shown. The map colors or shading could easily be adjusted to show original request areas and areas reclaimed to keep pertinent historical information. (PJR)

Section 4.10 – Regrading Plan

32. Plate 4.10-2 (Post Mining Area Slope Map) depicts several areas where slopes will exceed 9 percent on areas where cropland/hayland is to be reclaimed. This includes an area near the center of Section 20, the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 18, the SW $\frac{1}{4}$ of Section 8, and the E $\frac{1}{2}$ of Section 15. Small areas with slopes exceeding 9 percent are also present in the SE $\frac{1}{4}$ of Section 17 and the SW $\frac{1}{4}$ of Section 16, T141N, R83W. It appears that the slope intervals in some of these areas are inaccurately depicted based on the postmining contours. Please review post-mining contour surface to ensure that it was correctly made, and that the slope zones are an accurate representation of the surface. If required, please revise Plate 4.10-1 (Post Mining Topography) to eliminate slopes exceeding 9 percent on areas to be reclaimed to cropland/hayland and make the corresponding edits to Plate 4.10-2. (GAW, BSM)
33. Follow-up to item No. 32: A polygon was added to Plate 4.10-1 (Post-Mining Topography) showing areas of actual respread prime farmlands, as requested. However, it does not appear that the same polygon was added to Plate 4.10-2 (Post Mining Area Slope Map). Please add a polygon showing actual respread prime farmlands to Plate 4.10-2. (MLJ)
34. Plate 4.10-2 (Post Mining Area Slope Map) shows numerous proposed prime farmland polygons on slopes greater than 6 percent. Reclaimed prime farmland areas must have topography similar to the pre-mine farmlands, i.e., concave or swale positions with gentle slopes (0 – 6%). Please adjust the applicable proposed prime farmland polygons on Plate 4.10-2 and Plate 4.10-1 (Post-mining Topography) so that they are shown on concave slopes not exceeding 6 percent. (MLJ)

Section 4.12 – Revegetation, Post Mining Land Use and Reclamation Success

35. In the fifth paragraph on page 1 of Section 4.12 (Revegetation, Post Mining Land Use and Reclamation Success Narrative), please clarify where design plan information for reclaimed wetlands and developed water resources (DWR) can be found within Permit BNCR-1101. It is not clear where DWR design plan information can be found in the permit. If BNI is planning to submit DWR design plans to the Reclamation Division prior to construction but after grade approval and vegetation establishment, then that process should be stated in the permit. (GAW)

36. Please label each DWR depicted on Plate 4.12-1 (Post Mining Land Use) so that each DWR can be distinguished. (GAW)
37. It appears that the title on the top left corner of Appendix 4.12-6 (Post Mine Land Use Acreage Table) is obscured. Please revise Appendix 4.12-6 so that the full title is visible. (MLJ)
38. Please revise Appendix 4.12-6 (Post Mine Land Use Acreage Table) by adding township and range labels since there are now two distinct Section 16s in Permit BNCR-1101. (GAW)
39. In Appendix 4.12-6 (Post Mine Land Use Acreage Table), the Section 16, T141N, R84W, ownership should be changed to “ND State Land Department” rather than the “State of ND” to be consistent with Appendix 4.12-2 (Pre-Mine and Post Mine Land Use Discussions) and Plate 1.9-1 (Ownership Map). Please note that during the next permit revision, the ND State Land Department language throughout the entire permit should be changed to “ND Department of Trust Lands”, which is the agency’s official title. (GAW)

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

40. The Dakota Skipper narrative on page 4 of Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) states that BNI plans to continue monitoring for Dakota Skipper based on the USFWS 2018 Survey Protocol document. Later in the same narrative, BNI states that a 3rd party contractor will be reviewing previous Dakota Skipper habitat and occupancy survey protocols and BNI will use this data to make determinations for additional surveys for the 2024 season. All monitoring and surveys for the Dakota Skipper should follow the most up-to-date Dakota Skipper North Dakota Survey Protocol from the USFWS. Please review and update the Dakota Skipper narrative as needed. (AAC)

If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

cc via email only: Doug Scheetz (dscheetz@bnicoal.com)
 BNI Coal Efiling (BNIefiling@bnicoal.com)
 Jonathan Rudnick (jrudnick@bnicoal.com)