



Public Service Commission

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September 25, 2025

Mr. Greg Petrick
Environmental Supervisor
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499
gpetrick@bnicoal.com

Dear Mr. Petrick:

The Reclamation Division has conducted an initial review of the application for Revision No. 13 to Permit BNCR-1101. According to NDAC 69-05.2-11-02(5)(a), Revision 13 has been deemed a significant revision and will require public notification as required by NDCC 38-14.1-18 and NDAC 69-05.2-05-01(1). Therefore, a completeness review has been conducted, and the following items must be adequately addressed before the application can be deemed complete and approval granted to begin publication of the newspaper notice for the permit revision.

Section 1.0 – Legal and Financial

1. Please revise the Revision No. 13 application form (SFN 10562) in Appendix 1-5 (Applications) to include a concise description of the surface coal mining and reclamation operations being updated. Providing a simple list of the updated permit sections does not adequately describe the proposed changes to the approved surface coal mining and reclamation operations. (GAW)
2. According to NDAC 69-05.2-11-02(5)(a), Revision 13 to Permit BNCR-1101 has been deemed a significant revision. Please update Appendix 1.5-1 (Notice of Publication) to include a public notice and map that satisfies NDAC 69-05.2-10-01 and requirements of NDAC 69-05.2-04-01.3. The public notice should mention if BNI has Oliver County approval to conduct operations within one hundred feet of the outside right of way of a public road, close a public road, or relocate a road where mining is prohibited according to NDCC 38-14.1-07. (JWE, GAW, BSM, PJR, JAR)
3. The public notice in Appendix 1.5-1 (Notice of Publication) must include a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration, as required by NDAC 69-05.2-10-01(1)(d). (JWE, BSM, GAW)
4. On May 2, 2025, Mr. Petrick sent an email to the Reclamation Division that included Oliver County approval documents regarding road closures that were executed at the end of 2024. Please include this road closure information in the public notice in Appendix 1.5-1 (Notice of Publication) for Revision No. 13 as required by NDAC 69-05.2-10-01(1)(d). (JWE, BSM)

5. BNI is requesting two new reclamation variance areas with Revision 13 that involve delayed reclamation on several hundred acres of private property in the W½ of Section 17 and portions of Section 21. Please ensure that Appendix 1.5-1 (Notice of Publication) includes public notice of these delayed reclamation requests and that the proposed variance areas are clearly depicted on the public notice map. (GAW, JWE, BSM)
6. Page 4 of Section 4.5-1 (Transportation Plan) states that Oliver County has approved BNI's plans for moving a dragline over County Road 37th Ave SW, with details to be submitted in a future permit revision. If this activity is not included in the Revision No. 13 public notice, this activity will need to be noticed to the public in a separate significant revision. (GAW, BSM)
7. Please update Section 1.12 (Other Licenses and Permits) to list the U.S. Army Corps of Engineers (USACE) permit for the intermittent stream crossing described in Section 4.5 (Transportation Plan), as required by NDAC 69-05.2-06-04. (JWE, BSM, AAC)
8. The Certificate of Liability Insurance in Appendix 1.14-1 (Proof of Liability Insurance) expired on November 15, 2024. Please update Appendix 1.14-1 to include the current certificate and its endorsement as required by NDCC 38-14.1-14(3) and NDAC 69-05.2-12-20. (BSM, PRJ, AAC, JAR)
9. The second sentence of the Revision 13 Summary in Appendix 1-1 (Revision Summary and List of Changes) incorrectly states that the overpass on 37th Ave SW and haul road design is between 27th and 28th St. SW. Please revise this to reference the location as between Sections 11 and 12 and Sections 13 and 14. (BSM)

Section 2.0 – Extended Mine Plan

10. Please revise the boundary to Permit BNCR-1101 in Plate 2.1 (Extended Mine Plan), to be a single contiguous boundary. The addition area has been approved for some time, and the permit boundary should be depicted in a single color to prevent confusion for interested parties. (PJR)

Section 4.2 – Existing Structures

11. A pink dashed line is used in the legend of Plate 4.2-1 (Existing Structures Map) to describe the “Proposed Permit Area (BNCR-1101).” Please update the legend of Plate 4.2-1 to read “Permit Area (BNCR-1101)”. (JAR)

Section 4.5 – Transportation Plan

12. The “Motion Approving Construction Plans, Development Agreement, and Road Use Agreement for the County Road 37 Overpass” in Appendix 4.5-1 (Section Line Closures, ROWs and Detour Corridors) is neither signed nor dated, and it does not include a written finding as to whether the interests of the public and affected landowners will be protected as required by NDAC. 69-05.2-04-01.3(3)(c). Please update Appendix 4.5-1 accordingly to address these items. (JWE, BSM, AAC)
13. In accordance with Special Condition No. 5 (added to Permit BNCR-1101 with Revision No. 8), BNI shall “provide haul road design plans to access the Revision No. 8 addition area and plans for any roads that may be necessary to transport mining equipment over 37th Ave SW.” Please update

Section 4.5 (Transportation Plan) to include these design plans. Additionally, please review and verify the design plans for the haul road under 37th Ave SW fulfill the requirements of NDAC 69-05.2-24-03. (BSM, JWE, GAW)

14. Please provide detailed design plans for the proposed Temporary County Road 37th Ave SW Bypass that is depicted on Plate 4.1-1 (Pit Layout and Facilities Map) in the NE¼ of Section 14. (GAW, BSM)
15. Page 4 of Section 4.5 (Transportation Plan) currently provides the only descriptive narrative in the permit detailing the construction of the Temporary County Road 37th Ave SW Bypass, the Proposed County Road Overpass Structure, and the Haul Road Section B extension beneath the overpass. However, this narrative is convoluted and does not present a clear, easy-to-follow general construction sequence or general timeline. To improve clarity, please revise the subsection “Haul Road Section B” in Section 4.5 to either: (a) include an additional subsection detailing the phased construction sequence for the Proposed County Road Overpass Structure, or (b) reference a new appendix that provides this information. Please ensure that the narrative also incorporates SPGM handling, surface water management features (including but not limited to sedimentation ponds P-13-8 and P-13-9), and details regarding the proposed Temporary County Road 37th Ave SW Bypass, as these activities coincide with the overpass project. If BNI seeks guidance on how to improve clarity in this narrative, the Reclamation Division can provide an example from similar construction projects at other North Dakota mines. (BSM)
16. Please update Appendix 4.5-1 (Section Line Closures, ROWs and Detour Corridors) to include the “Overpass Development Agreement” and “Road Use Agreement” as referenced on page 49 of Appendix 4.5-1. (JWE, BSM)
17. Plate 4.5-1 (Transportation Plan) has been updated to depict the construction locations of the Proposed County Road Overpass Structure and the Proposed Temporary County Road 37th Ave SW Bypass. Please review and verify that the Culvert Information Sheets (Appendix 4.5-2) for Culvert IDs 34 and 35 have been updated accordingly and correspond with the design plans for the overpass. (BSM)
18. Page 4 of Section 4.5 (Transportation Plan) states: “The permit from the USACE and correspondence from North Dakota Department of Water Resources has been provided to the PSC through email correspondence.” However, the Reclamation Division has not received the USACE permit. Please provide this information to the Reclamation Division in order to satisfy Special Condition No. 6 to the permit. (JWE, BSM, AAC)

Section 4.6 – Surface Water Management Plan

19. Please include a detailed surface water management plan for the haul road passing through the N½ of Section 13, under County Road 37th Ave SW, to the initial pit in the NE¼ of Section 14 to fulfill NDAC 69-05.2-16-04(1)(a). The plan should address water management measures for the haul road crossing of the Hagel Creek intermittent stream tributary and must demonstrate to the Commission that this activity will not cause or contribute to violations of applicable state or federal water quality standards, nor adversely affect the water quantity, quality, or other environmental resources of the stream. The plan will also be subject to review by North Dakota State Engineer (Water Resource Department) and Department of Environmental Quality. (GAW)

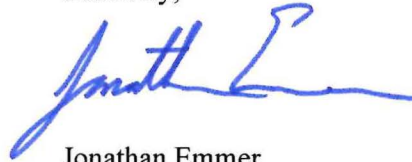
20. Please include a detailed surface water management plan for the County Road 37th Ave SW Overpass Structure and proposed Temporary County Road 37th Ave SW Bypass that is depicted on the Pit Layout and Facilities Map in the NE¼ of Section 14. (GAW, BSM, JAR)
21. Plate 4.1-1 (Pit Layout and Facilities Map) depicts the proposed footprint of the County Road 37th Ave SW Overpass Structure. Both proposed embankments for the overpass appear to encroach on sedimentation ponds P-13-8 and P-13-9. The design details for sedimentation pond P-13-9 (Appendix 4.6-43) appear to have been updated in Revision 13, but P-13-8 (Appendix 4.6-42) has not. Please review and update Appendix 4.6-42 to reflect the design plans associated with the overpass. (BSM)

Section 4.9 – Reclamation Schedule

22. Please add additional narrative to variance area 10 to describe the exact year the area will be reclaimed. Currently, the narrative only states what year this area would start to be reclaimed, NDAC 69-05.2-09-11. (PJR)

If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

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