North Dakota Department of Environmental Quality Public Notice
Reissue of an NDPDES Permit

Public Notice Date: November 20, 2025 Public Notice Number: ND-2025-026

Purpose of Public Notice

The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information

Application Date: October 22, 2025
Permit Number: ND0024601
Applicant Name: BNI Coal Ltd Center
Mailing Address: 2360 35th Ave SW Center, ND 58530
Telephone Number: (701) 355-5500
Proposed Permit Expiration Date: December 31, 2030

Facility Description

The reapplication is for a surface coal mining operation near Center, ND. Discharges consist of groundwater and/or surface runoff, and wash water from the washdown facility. Discharges are to Hagel Creek, Square Butte Creek, or Nelson Lake. Hagel Creek is an unclassified stream. Square Butte Creek, below Nelson Lake, is a Class IA stream; elsewhere, it is unclassified. Nelson Lake is a Class 3 lake.

Discharges covered by this permit are subject to surface water management conditions and designated locations described in surface mining permits approved following public review. Discharge structures are located within the boundaries of BNI Coal's approved surface mining permits which encompass all or part of the following: T142N, R84W; T141N, R84W; T142N, R83W; and T141N, R83W.

Tentative Determinations

Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

Information Requests and Public Comments

Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: https://deq.nd.gov/PublicCommentTips.aspx. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by December 20, 2025, will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or deqEJ@nd.gov. TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

Permit No: ND0024601
Effective Date: January 1, 2026
Expiration Date: December 31, 2030

AUTHORIZATION TO DISCHARGE UNDER THE

NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with Chapter 33.1-16-01 of the North Dakota Department of Environmental Quality rules as promulgated under Chapter 61-28 (North Dakota Water Pollution Control Act) of the North Dakota Century Code,

BNI Coal Ltd.
Center, North Dakota

is authorized to discharge from its coal mining operation located near Center, ND

from the specified locations and to specified receiving streams per page 6

provided all the conditions of this permit are met.

This permit and the authorization to discharge shall expire at midnight,

December 31, 2030.

Signed this _____ day of _____, _____.

_____
Marty Haroldson
Director
Division of Water Quality

BP 2025.02.05

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DEFINITIONS Standard Permit BP 2025.03.13

1. "**Act**" means the Clean Water Act.

2. "**Best management practices**" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

3. "**Bypass**" means the intentional diversion of waste streams from any portion of a treatment facility.

4. "**Composite**" sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

5. "**Continuous Discharge**" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

6. "**Daily discharge**" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

7. "**Daily maximum discharge limitation**" means "maximum daily discharge limitation" which is the highest allowable "daily discharge."

8. "**Department**" means the North Dakota Department of Environmental Quality, Division of Water Quality.

9. "**DMR**" means discharge monitoring report.

10. "**EPA**" means the United States Environmental Protection Agency.

11. "**Geometric mean**" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. "**Grab**" for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

13. "**Instantaneous**" for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.

14. "**Monthly average discharge limitation**" means "average monthly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

15. "***Oncorhynchus***" means of, belonging to, or characteristic of the genus *Oncorhynchus* in the family *Salmonidae*, which includes salmon and trout.

16. "**Sanitary Sewer Overflows (SSO)**" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

17. "**Severe property damage**" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

18. "**Total drain**" means the total volume of effluent discharged.

19. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

20. "**Weekly average discharge limitation**" means "average weekly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

DEFINITIONS
Permit Specific

1. "**Active Mining Area**" means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

2. "**Daily maximum concentration**" means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.

3. **"Monthly Average Concentration"** means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.

4. "**NDPDES**" means North Dakota Pollutant Discharge Elimination System.

5. "**Reclamation Area**" means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

FACILITY DESCRIPTION

The discharges regulated by this permit consist of drainage from active mining and reclamation areas subject to effluent limits under 40 CFR 434. The discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic considerations area identified in the surface mining permit(s) issued by the North Dakota Public Service Commission, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The current and proposed discharge structures are located within the boundaries of approved surface mining permits which encompass all or part of the following:

1. Township 141 North, Range 84 West
2. Township 142 North, Range 83 West
3. Township 142 North, Range 84 West
4. Township 141 North, Range 83 West

and discharge to:

1. Hagel Creek, a Class III stream
2. Square Butte Creek, a Class IA stream below Nelson Lake, elsewhere a Class III stream
3. Nelson Lake, a Class 3 lake

OUTFALL DESCRIPTION

The permittee must request and obtain an NDPDES discharge point number from the department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards. Upon the assignment of the NDPDES discharge point number, discharges may be made in accordance with the limitations, record keeping, and reporting requirements outlined in this permit. Once a discharge point is activated it will be subject to reporting under NDPDES until such time it is authorized for removal.

Unless otherwise described in this permit, a discharge point is subject to active mining area requirements until the permittee submits a change of status to the department stating the contributing area has changed from an active mining area to a reclamation area or sedimentation pond removal site. Discharge points assigned to clean water ponds or diversions are not subject to NDPDES requirements.

The permittee and department will maintain an up-to-date list of all discharge points. The list will include the discharge serial number, a description of the contributing area (i.e., active mining, reclamation) or wastewater source, a description of the treatment structure, any company designation, the date the discharge point was first regulated by the permit program, the location, and the receiving stream. Discharge points receiving runoff from reclamation areas must include the date the contributing area was designated as a reclamation area. Inactive discharge points will list the date the point was no longer active.

Outfall 068. Active. Final.			
Latitude: 47.07	Longitude: -101.229722	County: Oliver	
Township: 142N	Range: 83W	Section: 32	QQ: SWSW
Receiving Stream: Hagel Creek		Classification: Class III	
Outfall Description: The permittee is authorized to discharge from its wash bay facility per conditions included in this permit. Discharges are to Hagel Creek.			

PERMIT SUBMITTALS SUMMARY

Coverage Point	Submittal	Monitoring Period	Submittal Frequency	First Submittal Date
Active Mining Areas	Discharge Monitoring Report	Monthly	Quarterly	April 28, 2026
Reclamation Areas	Discharge Monitoring Report	Quarterly	Quarterly	April 28, 2026
068A	Discharge Monitoring Report	Monthly	Quarterly	April 28, 2026
Watershed Monitoring Sites	Discharge Monitoring Report	Annually	Annual	January 28, 2027
Application Renewal	EPA Forms 1, 2C & 2F	None	1/permit cycle	June 30, 2030
*	"A" refers to conventional and non-conventional pollutants, flow, and volume information			

SPECIAL CONDITIONS

No special conditions have been determined at this time.

I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfall as specified to the following: **Hagel Creek, Square Butte Creek, and Nelson Lake**.

This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

B. Effluent Limitations and Monitoring

ACTIVE MINING AREAS:

Table 1: Effluent Limitations and Monitoring Requirements **Active Mining Areas**

Parameter	Effluent Limitations		Monitoring Requirements	
	Avg. Monthly	Daily Max.	Sample Frequency	Sample Type
Iron Total [a]	3.5 mg/L	7.0 mg/L	Annual	Grab
Total Suspended Solids (TSS) [a]	35.0 mg/L	70.0 mg/L	Monthly	Grab
Settleable Solids [a, b]	N/A	0.5 mL/L	Monthly	Grab
Oil & Grease – Visual [c]	N/A	N/A	Daily	Visual
Oil & Grease [c]	*	10 mg/L	Conditional	Grab
pH	**		Monthly	Instantaneous
Flow Effluent (gpm) [d]	N/A	N/A	Monthly	Calculated
Drain Total (MG)	N/A	N/A	Monthly	Calculated
Total Days Discharging	N/A	N/A	Monthly	Calculated

Notes:

a. Alternate Limitations: The department may waive the limitation for Total Iron and Total Suspended Solids for overflows caused by a single or series of precipitation or snowmelt events after reviewing all information submitted in response to the Noncompliance Notification conditions - Part III(F). During overflow discharges Total Suspended Solids sampling shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring of Settleable Solids is not required for routine discharges.

The Settleable Solids limit may be waived if there is a precipitation event greater than 2.98 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event.

To qualify for these limitations the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.98 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10

Table 1: Effluent Limitations and Monitoring Requirements **Active Mining Areas**
days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met. Precipitation shall be measured by gauge and recorded daily by the permittee.
b. The Settleable Solids test procedure shall conform with 40 CFR 434.64.
c. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
d. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.
N/A Not Applicable
* This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.
** Discharges to lakes and reservoirs, and Class I and IA streams shall have an instantaneous pH limitation between 6.5 (s.u.) and 9.0 (s.u.). Discharges to all other classifications of stream shall be between 6.0 (s.u) and 9.0 (s.u.).
Stipulations:
Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.
The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.
When alternate limitations are granted, the test results for parameters not subject to limitations shall be included as an attachment to the report for the applicable monitoring period.
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.

RECLAMATION AREAS:

Table 2: Effluent Limitations and Monitoring Requirements **Reclamation Areas**			
Parameter	Effluent Limitations	Monitoring Requirements	
	Daily Max.	Sample Frequency	Sample Type
Total Suspended Solids (TSS) [a]	70.0 mg/L	Quarterly	Grab
Settleable Solids [b, c]	0.5 mL/L	Quarterly	Grab
pH	*	Quarterly	Instantaneous
Flow Effluent (gpm) [d]	N/A	Monthly	Calculated
Drain Total (MG)	N/A	Monthly	Calculated
Total Days Discharging	N/A	Monthly	Calculated

Notes:

a. The Total Suspended Solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow discharge, sampling for Total Suspended Solids shall be done in conjunction with Settleable Solids sampling for comparison purposes. Monitoring for Settleable Solids is not required for routine discharges.

b. The Settleable Solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.98 inches in 24 hours. The limitation may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event. The permittee has the burden of proof that these conditions are met.

Precipitation shall be measured by gauge and recorded daily by the permittee.

c. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

d. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.

N/A Not Applicable

* Discharges to lakes and reservoirs, and Class I and IA streams shall have an instantaneous pH limitation between 6.5 (s.u.) and 9.0 (s.u.). Discharges to all other classifications of stream shall be between 6.0 (s.u) and 9.0 (s.u.).

Stipulations:

The permittee must not discharge any floating solids, visible foam in other than trace amounts, or oily wastes that produce sheen on the surface of the receiving water.

Table 2: Effluent Limitations and Monitoring Requirements **Reclamation Areas**
All components of the treatment systems and discharge structures shall be maintained to achieve a high-quality discharge and preserve the integrity of structures. If necessary BMPs shall be used upstream and downstream of a discharge structure to ensure that effluent quality is maximized. As a general practices, sediment ponds should be dewatered by late fall.
Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.
The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.
The results for Total Suspended Solids obtained during overflow conditions shall be included as an attachment to the report for the applicable monitoring period.
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.

SEDIMENTATION POND REMOVAL SITES:

Table 3: Effluent Limitations and Monitoring Requirements **Sediment Pond Removal Sites**
Stipulations:
The discharges from sedimentation pond removal and pond site reclamation operations must be controlled to provide the best quality attainable through the implementation of BMPs.
The permittee must follow the guidelines for sedimentation pond removal and pond site reclamation outlined in Policy Memorandum No. 19 to Mine Operators, issued by the North Dakota Public Service Commission (PSC) and the North Dakota Department of Health, Division of Water Quality – now referred to as the North Dakota Department of Environmental Quality (NDDEQ), Division of Water Quality. The conditions and procedures outlined in the policy accommodate the rules and requirements of both the NDDEQ and the PSC. In summary, the policy contains the following: The prerequisite discharge water quality history and land reclamation conditions that must be present in the watershed of a structure before removal may be considered. The content and considerations for a site specific reclamation plan that must be submitted for review and approval. A description of the BMP for erosion and sediment control that must be used and maintained. The timing for designating a discharge point as a sedimentation pond removal site regulated by the use of BMPs and the procedures outlined in the site specific reclamation plan. The notifications to the NDDEQ and PSC required during the course of the pond removal activity.
The BMPs and all procedures identified in the approved site specific reclamation plan must be followed throughout the course of the pond removal activities.
The assignment of a discharge point to pond removal status does not become effective until any final dewatering of the pond is completed and pond removal activities begin.
The status, stage or estimated percentage of completion for pond removal activities must be provided in the report for the applicable monitoring period. Once the pond removal activity is completed and the discharge point is released from the NDPDES permit, the reporting for the discharge point in monitoring reports is not required.
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards.

OUTFALL 068, WASH BAY FACILITY:

Table 4: Effluent Limitations and Monitoring Requirements **Outfall 068**

Parameter	Effluent Limitations		Monitoring Requirements	
	Avg. Monthly	Daily Max.	Sample Frequency	Sample Type
Total Iron	3.0 mg/L	6.0 mg/L	Monthly	Grab
Total Suspended Solids (TSS)	35.0 mg/L	70 mg/L	Weekly	Grab
Oil & Grease – Visual [a]	N/A	N/A	Daily	Visual
Oil & Grease [a]	*	10 mg/L	Conditional	Grab
pH	6.0 – 9.0 S.U.		Weekly	Instantaneous
Flow Effluent (gpm) [b]	N/A	N/A	Monthly	Calculated
Drain Total (MG)	N/A	N/A	Monthly	Calculated
Total Days Discharging	N/A	N/A	Monthly	Calculated

Notes:

a. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.

b. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.

N/A Not applicable

* This parameter is not limited. However, the department may impose limitations based on sample history and to protect receiving waters.

Stipulations:

Samples taken in compliance with the monitoring requirements specified in this permit shall be taken prior to leaving company property or mixing with receiving streams.

The dates of discharge, frequency of analysis, and number of exceedances shall be included on the DMR.

The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the received stream.

C. Nutrient Monitoring

Nutrient monitoring shall occur at the following watershed monitoring sites. The department shall be given advance notice of any changes to watershed monitoring sites that result in a new location for a monitoring site, removal of a monitoring site, or addition of a monitoring site. Watershed monitoring sites shall remain active until all NDPDES discharge points are inactivated in the watershed.

Table 5: Nutrient Monitoring Location **Watershed Monitoring Sites**

Monitoring Site	Location	Stream
M01 [a]	47.1031, -101.2993	Tributary to Square Butte Creek
M03	47.0439, -101.3180	Hagel Creek
M04	47.0673, -101.2353	Hagel Creek
M05	47.0679, -101.2257	Hagel Creek
M07	47.0525, -101.2631	Tributary to Hagel Creek
M08 [a]	47.0344, -101.1929	Tributary to Square Butte Creek
M09 [a]	47.0111, -101.1951	Tributary to Square Butte Creek

Notes:

a. Monitoring at these sites is suspended due to an impoundment. The sites shall be monitored if the impoundment is removed during the effective period of this permit.

Table 6: Nutrient Monitoring Requirements **Watershed Monitoring Sites**

Parameter	Monitoring Requirements	
	Sample Frequency	Sample Type
Nitrogen, Total, mg/L [a]	2 runoff events annually	Grab
Nitrogen, Total, lb/day [a]	2 runoff events annually	Calculated
Phosphorus, Total (as P), mg/L	2 runoff events annually	Grab
Phosphorus, Total (as P), lb/day	2 runoff events annually	Calculated
Flow, cfs	2 runoff events annually	Calculated

Notes:

a. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).

II. MONITORING, RECORDING, AND REPORTING REQUIREMENTS BP 2021.09.09

A. Representative Sampling (Routine and Non-Routine Discharges)

All samples and measurements taken shall be representative of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited under **Part I Effluent Limitations and Monitoring** requirements of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with B. Test Procedures. The permittee must report all additional monitoring in accordance with D. Additional Monitoring.

B. Test Procedures

The collection and transportation of all samples shall conform with EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

C. Recording of Results

Records of monitoring information shall include:

1. the date, exact place and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the name of the laboratory;
4. the date(s) and time(s) analyses were performed;
5. the name(s) of the individual(s) who performed the analyses;
6. the analytical techniques or methods used; and
7. the results of such analyses.

D. Additional Monitoring

If the discharge is monitored more frequently than this permit requires, all additional results, if in compliance with B. Test Procedures, shall be included in the summary on the Discharge Monitoring Report.

E. Reporting of Monitoring Results

1. Monitoring results shall be summarized and reported to the department using Discharge Monitoring Reports (DMRs). If no discharge occurs during a reporting period, "No Discharge" shall be reported. The permittee must submit DMRs electronically using the electronic information reporting system unless requirements in subsection 3 are met.

2. Prior to December 21, 2025, the permittee may elect to electronically submit the following compliance monitoring data and reports instead of mailing paper forms. Beginning December 21, 2025, the permittee must report the following using the electronic reporting system:

   i. General permit reports [e.g., notices of intent (NOI); notices of termination (NOT); no exposure certifications (NOE)];

   ii. Municipal separate storm sewer system program reports;

   iii. Pretreatment program reports;

   iv. Sewer overflow/bypass event reports; and

   v. Clean Water Act 316(b) annual reports

3. The permittee may seek a waiver from electronic reporting. To obtain a waiver, the permittee must complete and submit an Application for Temporary Electronic Reporting Waiver form (SFN 60992) to the department. The department will have 120 days to approve or deny the waiver request. Once the waiver is approved, the permittee may submit paper versions of monitoring data and reports to the department.

   i. One of the following criteria must be met in order to obtain a waiver. The department reserves the right to deny any waiver request, even if they meet one of the criteria below.

      1. No internet access,

      2. No computer access,

      3. Annual DMRs (upon approval of the department),

      4. Employee turnover (3-month periods only), or

      5. Short duration permits (upon approval of the department)

   All reports must be postmarked by the last day of the month following the end of each reporting period. All original documents and reports required herein shall be signed and submitted to the department at the following address:

   ND Department of Environmental Quality
   Division of Water Quality
   4201 Normandy Street
   Bismarck ND 58503-1324

F. Records Retention

All records and information (including calibration and maintenance) required by this permit shall be kept for at least three years or longer if requested by the department or EPA.

III. COMPLIANCE RESPONSIBILITIES

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Proper Operation and Maintenance

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. If necessary to achieve compliance with the conditions of this permit, this shall include the operation and maintenance of backup or auxiliary systems.

C. Planned Changes

The department shall be given advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance. Any anticipated facility expansions, production increase, or process modifications which might result in new, different, or increased discharges of pollutants shall be reported to the department as soon as possible. Changes which may result in a facility being designated a "new source" as determined in 40 CFR 122.29(b) shall also be reported.

D. Duty to Provide Information

The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit. When a permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or any report, it shall promptly submit such facts or information.

E. Signatory Requirements

All applications, reports, or information submitted to the department shall be signed and certified.

All permit applications shall be signed by a responsible corporate officer, a general partner, or a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

The authorization is made in writing by a person described above and submitted to the department; and

The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.

If an authorization under E. Signatory Requirements is no longer accurate for any reason, a new authorization satisfying the above requirements must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The following occurrences of noncompliance shall be included in the oral report to the department at 701.328.5210:

    a. Any lagoon cell overflow or any unanticipated bypass which exceeds any effluent limitation in the permit under G. Bypass of Treatment Facilities;

    b. Any upset which exceeds any effluent limitation in the permit under H. Upset Conditions; or

    c. Violation of any daily maximum effluent or instantaneous discharge limitation for any of the pollutants listed in the permit.

2. A written submission shall also be provided within five days of the time that the permittee became aware of the circumstances. The written submission shall contain:

    a. A description of the noncompliance and its cause;

    b. The period of noncompliance, including exact dates and times;

    c. The estimated time noncompliance is expected to continue if it has not been corrected; and

    d. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

Reports shall be submitted to the address in **Part II.E. Reporting of Monitoring Results**. The department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the department at 701.328.5210 as identified above.

All other instances of noncompliance shall be reported no later than at the time of the next Discharge Monitoring Report submittal. The report shall include the four items listed in this subsection.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to any of the following provisions in this section.

2. Bypass exceeding limitations-notification requirements.

    a. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of bypass.

    b. Unanticipated Bypass. The permittee shall submit notice of an unanticipated bypass as required under F. Twenty-four Hour Notice of Noncompliance Reporting.

3. Prohibition of Bypass. Bypass is prohibited, and the department may take enforcement action against a permittee for bypass, unless:

    a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required under the 1. Anticipated Bypass subsection of this section.

The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three (3) conditions listed above.

H. Upset Conditions

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of the following paragraph are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the permittee can identify its cause(s);

2. The permitted facility was, at the time being, properly operated;

3. The permittee submitted notice of the upset as required under F. Twenty-four Hour Notice of Noncompliance Reporting and

4. The permittee complied with any remedial measures required under I. Duty to Mitigate.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. The permittee, at the department's request, shall provide accelerated or additional monitoring as necessary to determine the nature and impact of any discharge.

J. Removed Materials

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the state. The permit issuing authority shall be contacted prior to the disposal of any sewage sludges. At that time, concentration limitations and/or self-monitoring requirements may be established.

K. Duty to Reapply

Any request to have this permit renewed should be made six months prior to its expiration date.

IV. GENERAL PROVISIONS

A. Inspection and Entry

The permittee shall allow department and EPA representatives, at reasonable times and upon the presentation of credentials if requested, to enter the permittee's premises to inspect the wastewater treatment facilities and monitoring equipment, to sample any discharges, and to have access to and copy any records required to be kept by this permit.

B. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the department and EPA. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

C. Transfers

This permit is not transferable except upon the filing of a Statement of Acceptance by the new party and subsequent department approval. The current permit holder should inform the new controller, operator, or owner of the existence of this permit and also notify the department of the possible change.

D. New Limitations or Prohibitions

The permittee shall comply with any effluent standards or prohibitions established under Section 306(a), Section 307(a), or Section 405 of the Act for any pollutant (toxic or conventional) present in the discharge or removed substances within the time identified in the regulations even if the permit has not yet been modified to incorporate the requirements.

E. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. State Laws

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation preserved under Section 510 of the Act.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

FACT SHEET FOR NDPDES PERMIT
ND0024601

PERMIT REISSUANCE

BNI COAL LTD
CENTER, ND

DATE OF THIS FACT SHEET – NOVEMBER 2025

INTRODUCTION

The Federal Clean Water Act (CWA, 1972, and later amendments in 1977, 1981, and 1987, etc.) established water quality goals for the navigable (surface) waters of the United States. One mechanism for achieving the goals of the CWA is the National Pollutant Discharge Elimination System (NPDES), which the US Environmental Protection Agency (EPA) oversees. In 1975, the State of North Dakota was delegated primacy of the NPDES program by EPA. The North Dakota Department of Environmental Quality, hereafter referred to as "department", has been designated the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251, et seq.], and is authorized to take all action necessary or appropriate to secure to this state the benefits of the act and similar federal acts. The department's authority and obligations for the wastewater discharge permit program is in the North Dakota Administrative Code (NDAC) 33.1-16 which was adopted under North Dakota Century Code (NDCC) chapter 61-28. In North Dakota, these permits are referred to as North Dakota Pollutant Discharge Elimination System (NDPDES) permits.

The following rules or regulations apply to NDPDES permits:

- Procedures the department follows for issuing NDPDES permits (NDAC chapter 33.1-16-01),
- Standards of Quality for Waters of the State (NDAC chapter 33.1-16-02.1).

These rules require any treatment facility operator to obtain an NDPDES permit before discharging wastewater to state waters. They also define the basis for limits on each discharge and for other requirements imposed by the permit.

According to NDAC section 33.1-16-01-08, the department must prepare a draft permit and accompanying fact sheet and make it available for public review. The department must also publish an announcement (public notice) during a period of thirty days, informing the public where a draft permit may be obtained and where comments regarding the draft permit may be sent (NDAC section 33.1-16-01-07). For more information regarding preparing and submitting comments about the fact sheet and permit, please see **Appendix A – Public Involvement**. Following the public comment period, the department may make changes to the draft NDPDES permit. The department will summarize the responses to comments and changes to the permit in **Appendix D – Response to Comments.**

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BACKGROUND INFORMATION

Table 1 – General Facility Information

Applicant:	BNI Coal Ltd.
Facility Name and Address:	BNI Coal Ltd Center 2360 35th Ave SW, Center, ND 58530
Permit Number:	ND0024601
Permit Type:	Minor Industrial, Permit Reissuance
Type of Treatment:	Sedimentation Ponds, Evaporation Ponds, Facultative Lagoon
SIC Code:	1221 (Bituminous Coal and Lignite Surface Mining)
NAICS Code:	212114 (Bituminous Coal and Lignite Surface Mining)
Discharge Location:	Various locations within the permitted mining area – (1) T141N, R84W; (2) T142N, R83W; (3) T142N, R84W; (4) T141, R83W
Hydrologic Code:	10130101 (Painted Woods – Square Butte Creek)

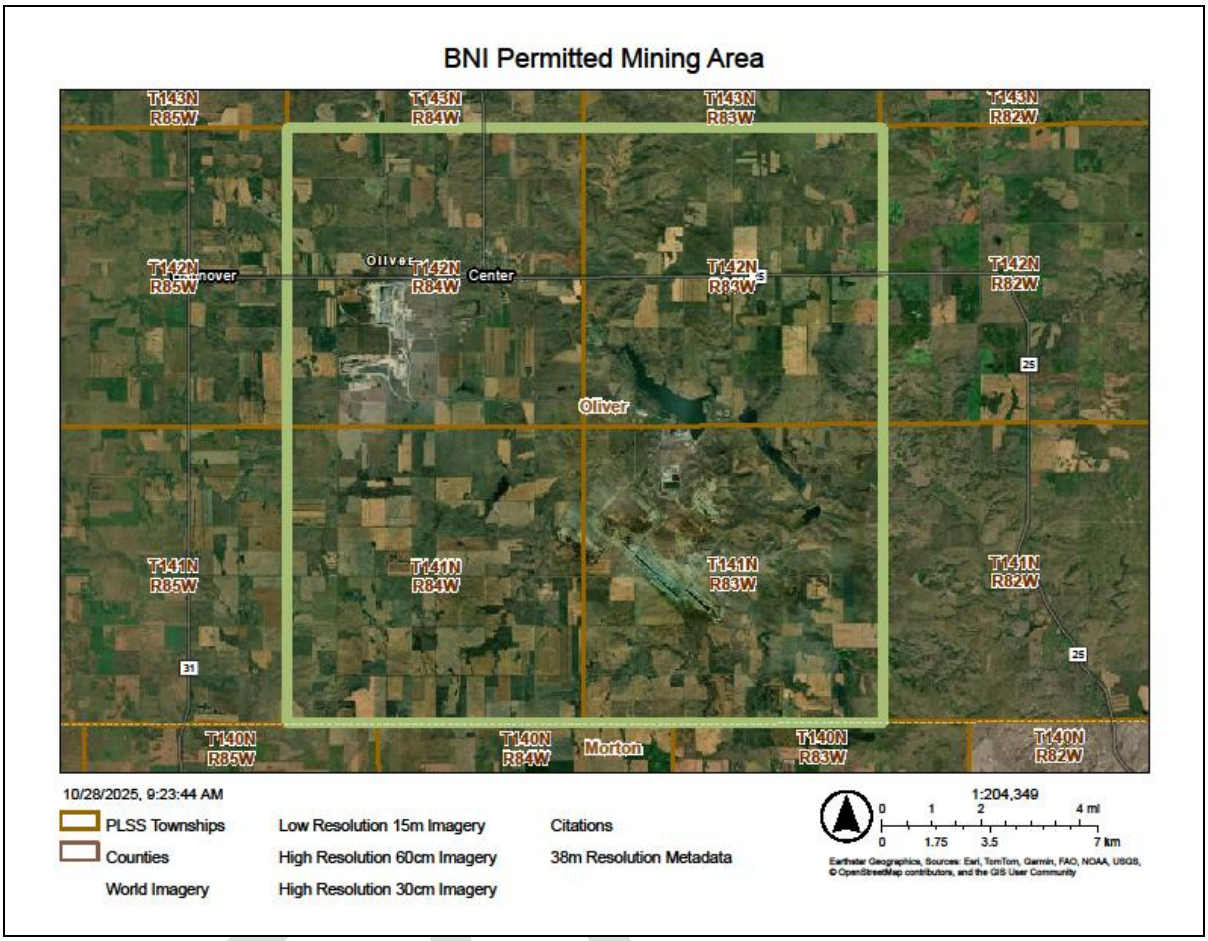

Figure 1 – Aerial Photograph of BNI Coal Ltd. Permitted Mining Area, Center, ND (North Dakota GIS Hub Explorer, Map Generated – October 2025)

Figure 2 – Aerial Photograph of BNI Coal - Center Office and Shop (Google Earth Pro, Map Generated – October 2025)

FACILITY DESCRIPTION

BNI Coal Ltd. Center is a lignite coal mining operation located near Center, North Dakota. The operation supplies approximately 4 million tons of coal per year to a nearby power plant and coal distribution company. All discharges are operated within the boundaries of approved surface mining permits (BNCR-1101, BNCR-8006, BNCR-8106, BNCR-8202, BNCR-8602, BNCR-9401, and BNCR-9702) issued by the North Dakota Public Service Commission (PSC), the state's Surface Mining Control and Reclamation Act (SMCRA) authority. These permits are required in the state under NDCC Chapter 38-14.1. The mine permits and regulated discharge points are located in: (1) T141N, R84W; (2) T142N, R83W; (3) T142N, R84W; and (4) T141N, R83W.

Surface mining permits are required in the state under NDCC Chapter 38-14.1. Mining permit applications show where surface coal mining operations are expected to occur over the life of the mining permit, and the size, sequence, and timing of mining operations. The applications also show the location of proposed water ponds, impoundments, and diversions used for surface water management. All surface drainage from disturbed areas must pass through a sedimentation pond or other sediment control measure. Sedimentation ponds are used, and required under NDAC 69-05.2-16-04, to control runoff from areas directly involved in the recovery of coal and to provide treatment prior to discharge off-site. These structures must be constructed prior to the start of mining operations. Once a pond or measure is constructed the

discharge point is added to the list of discharge points. These structures must be maintained until removal is approved by the PSC. Removal must follow Policy Memorandum No. 19 to Mine Operators, July 12, 2006 (Revised), issued by the PSC.

Discharges from this mining operation, like others in the state, must meet federal standards established for the coal-mining point source category (40 CFR Part 434). The requirements specified in this proposed permit are based on the provisions outlined in the federal requirements applicable to alkaline mine drainage and western alkaline coal mining. The requirements consist of separate limitations and monitoring requirements for two phases of mining activity: (1) active mining areas, and (2) reclamation areas. Alternate limitations and monitoring requirements for discharges attributable to certain precipitation events are provided.

Shop Bay 6 has a floor drain that goes to an oil/water separator unit. The unit is designed as a standalone system. The system has a contained storage tank that collects the filtered liquids from the floor drain. A contractor provides oil/water separator waste disposal when needed. The Wash Bay Containment System has no oil/water separator inline. The system is designed for sediment transport to an evaporation pond. Previous permits stated no discharges took place from this pond and pond clean out procedures were in place to prevent discharges caused by sediment accumulation in the pond. The proposed permit includes the addition of a discharge point to the wash bay pond. Discharges from the wash bay pond to Hagel Creek will be covered with the finalization of the 2026 permit reissuance. After the permit is finalized, the point list (Appendix E) will be updated to reflect the addition of the discharge point.

Sanitary waste from office and facility buildings is managed with a two-cell, waste stabilization system. The system has an operating capacity of 2.0 acre-feet of storage. The two-cell system is a no discharge design with the available cells storage capacity. Portable facilities are used to manage sanitary waste in the field. The waste is collected by a septic hauler and transferred off-site.

Discharge Outfall

Permitted Mining areas discharge to: (1) Nelson Lake; (2) Square Butte Creek; and (3) Hagel Creek. Nelson Lake is listed as a class 3 lake in the Standards of Quality for Waters of the State (NDAC 33.1-16-02.1). Square Butte Creek below Nelson Lake is listed as a class IA stream in the standards. All other receiving waters for the facility are not specifically classified in the standards and are considered class III streams.

Discharges are from structures or other control features used to manage the quality of the effluent and the hydrologic conditions from mine areas. The discharge location, structure description and hydrologic considerations are identified in the surface mining permit(s) issued by the PSC, following interagency review and public comment, in accordance with NDCC Chapter 38-14.1. The permittee must request and obtain an NDPDES discharge point number from the department before a structure within a surface mining permit can be used to discharge waters subject to effluent standards. Upon the assignment of the NDPDES discharge point number, discharges may be made in accordance with the limitations, record keeping, and reporting requirements outlined in this permit. Once a discharge point is activated it will be subject to reporting under the NDPDES until such time it is authorized for removal.

The department and the permittee maintain an up-to-date list of all discharge points covered by the NDPDES permit and the status of each point. The list of discharge points at the time of this document is provided in Appendix E. The description of the discharge points include:

- The serial number
- The contributing area (i.e., active mining, reclamation)
- Treatment structure
- Company designation
- Date the point was first regulated under the NDPDES permit
- Location
- Receiving stream
- Date designated as a reclamation area or sedimentation pond removal site
- Date point was no longer active

The source of runoff to each discharge point depends on the status of the area draining to the point. These areas may be an “Active Mining Area” or “Reclamation Area” (refer to definitions in Appendix B). The types of wastes, fluids and pollutants that could be generated include runoff from suitable plant growth material piles, overburden piles, haul roads, exposed coal seams, and underlying strata. The quantity generated varies based on the amount of precipitation received. However, sedimentation ponds must provide treatment for a ten-year, twenty-four-hour precipitation event (NDAC 69-05.2-16-09.3). The discharge points are regulated under the coal mining effluent limits.

PERMIT STATUS

The department issued the current permit for this facility on April 1, 2022. The permit will expire March 31, 2027. The current permit includes monitoring requirements for total iron (TFe), total suspended solids (TSS), settleable solids (SS), oil and grease (O&G), pH, and nutrients (total nitrogen and total phosphorus).

The current permit is being modified and reissued prior to the March 31, 2027, expiration due to the department receiving a request from the facility to add a discharge point to the pond associated with their wash bay. The department informed the facility that the request would be a major modification to their current permit. Due to the modification occurring over halfway through the permit cycle, the department decided to reissue the permit early. The department has been in contact with the facility to obtain information to modify and reissue the permit. The department requested to receive EPA Application Forms 1, 2D, and 2F. Initial application forms were received on May 15, 2025. All application forms and additional information were received and accepted by the department on October 22, 2025.

The western alkaline coal mining subcategory was added to the federal regulation in 2002. The provisions of the subcategory were the subject of discussions between the department, the PSC (the state's SMCRA authority) and an industry trade group since it was first proposed. The consensus being that the western mine provisions have only limited applicability in the state. North Dakota's coal mining activity is on the extreme eastern margin of the area defined as western coal mining operations which is limited to operations west of the 100th meridian west longitude. The landscape and mining practices would best be described as transitional, sharing aspects of mid-western and western mining practices rather than the typical western mine conditions considered in the rule development. The mining operations in the state occur on

rolling landscapes with deep soils that are primarily used for continuous crop production and to a lesser extent grazing.

The only reasonable application of the western alkaline subcategory in the state would be in reclamation areas where pond removal occurs prior to vegetation reestablishment. In addition to reclamation areas the subcategory applies to brushing and grubbing areas, topsoil stockpiling areas, and re-graded areas. Brushing and grubbing is not practiced or necessary for soil removal in the state. Topsoil as well as subsoil is stockpiled for use in reclamation and the storage areas must be designed to drain to a sediment pond or have erosion and sediment controls that conform to the state's surface mining standards and the storm water permit for mining activity. Due to the depth of soil that must be replaced on mined land in the state, the definition for a re-graded area cannot be met until the subsoil and topsoil has been replaced which is essentially the definition for a reclamation area. The western mining subcategory does not apply to active mine areas.

During the 2007 renewal of this permit, BNI requested and was granted a reduction in the sampling frequency for TSS and TFe from active mine areas. The change in frequency was from weekly to monthly for TSS and from monthly to annual for TFe. The reduction in monitoring was based on a review of discharge data from BNI and considered under the EPA Guidance entitled, "Interim Guidance for Performance Based Reductions of NPDES Permit Monitoring Frequencies (April 1996)." There have been no changes in operating procedures that would affect discharge quality since the April 1, 2002, reissuance of the permit.

The following summary from the 2007 renewal fact sheet provides the basis for the reduction in monitoring:

> "The discharge performance for BNI's Center mine was summarized by determining the long-term mean (LTM) and mean to limit ratio (LTM / permit limit) for Iron Total and TSS. The [LTM] calculated for Iron Total was 0.43 mg/L (data from 1990 to 2000). The corresponding Iron Total mean to limit ratio was 12.3%. The Department also reviewed surface water sample information available from the USGS for stream monitoring stations located near the mine. The average Iron Total for surface water monitoring stations ranged from 0.78 mg/L for Square Butte Creek above Center, to 1.68 mg/L for Square Butte Creek below Center.
>
> The [LTM] determined for TSS was 12.2 mg/L (data from 1990 to 2000), which represents a mean to limit ratio of 35%. For comparison, the surface water sample information from the USGS for stream monitoring stations located on Square Butte Creek near the mine indicated an average TSS of 40 mg/L upstream of Center, and 91 mg/L downstream of Center.
>
> Based on the facility's discharge performance ([LTM] and mean to limit ratio), the EPA Guidance suggested a monitoring reduction from weekly to twice per month for TSS and from monthly to quarterly for Iron Total. However, the recommended frequencies are based on continuous discharges. The discharges from this facility are intermittent, and generally occur over a few days, oftentimes resulting in only one or two samples during a given month. In regard to discontinuous data, as is the case here, the EPA Guidance states that reduction would need to be considered on a case-by-case basis (Page 6, Special Considerations). Considering the length of sample history reviewed, and compliance history, the Department granted a monthly monitoring frequency for TSS and annual monitoring for Iron Total."

During the 2017 renewal, the precipitation amount used to determine the 10-year, 24-hour precipitation alternate limitation and subsequent sedimentation pond design was reduced

from 3.2 inches to 2.98 inches. The change was based on the release of the *National Oceanographic and Atmospheric Administration Atlas 14 (NOAA Atlas 14)*. Prior to the adoption of *NOAA Atlas 14*, the precipitation-based alternate limitation and sediment pond design was based on the technical paper *Rainfall Frequency Atlas of the United States* (1961). The change did not result in less stringent effluent limitations for ponds designed using *Rainfall Frequency Atlas of the United States* as these ponds were designed using *NOAA Atlas 14*.

SUMMARY OF COMPLIANCE WITH PREVIOUS PERMIT ISSUED

Department staff conducted one routine, non-sampling compliance inspection since the effective date of the current permit (April 1, 2022). No deficiencies were noted during the inspection. The department's assessment of compliance is based on review of the facility's Discharge Monitoring Reports (DMRs) and inspections conducted by department staff.

Past Discharge Data

A review of the DMR information from April 2022 to June 2025 was conducted. Table 2 illustrates the total amount drained per year and number and type of exceedance(s). Table 3 provides a summary of the reported DMR information.

Table 2 – Discharge Summary

Year	Total Drain (Mgal)	Number of Exceedances		
		TSS	Iron Total	pH
2022	258.63	1	0	0
2023	277.39	0	0	0
2024	125.29	0	0	0
2025	112.71	0	0	0

Table 3 – DMR Data Summary

Parameter	Units	2022	2023	2024	2025
pH min	S.U.	6.95	7.04	6.77	6.61
pH max	S.U.	8.95	8.91	9.00	8.39
Iron Total avg	mg/L	1.12	0.99	0.29	0.27
Iron Total max	mg/L	2.64	2.31	0.89	0.57
TSS avg	mg/L	15.69	10.17	8.38	7.72
TSS max	mg/L	130.00	35.00	40.00	18.00
SS avg	mL/L	*	**	**	**
SS max	mL/L	*	**	**	**
O&G avg	mg/L	**	**	**	**
O&G max	mg/L	**	**	**	**
Phosphorus Total avg	mg/L	N/A	0.40	0.11	0.21
Phosphorus Total max	mg/L	N/A	1.62	0.15	0.23
Phosphorus Total avg	lb/d	N/A	1.50	0.09	0.08

Table 3 – DMR Data Summary

Phosphorus Total max	lb/d	N/A	9.94	0.35	0.30
Nitrogen Total avg	mg/L	N/A	5.44	5.00	5.00
Nitrogen Total max	mg/L	N/A	6.62	5.00	5.00
Nitrogen Total avg	lb/d	N/A	10.48	0.09	1.95
Nitrogen Total max	lb/d	N/A	40.62	0.42	7.51
Notes:					
*	Settleable Solids for 05/01/2022-05/31/2022 was reported as below detection limit/no detection.				
**	Parameter was reported as conditional/not required.				
N/A	Not Applicable				

PROPOSED EFFLUENT LIMITATIONS

Discharges from mining operations are regulated by national effluent guidelines which establish technology-based effluent limitations. The technology-based effluent limitations may be found in Title 40 of the Code of Federal Regulations, Part 434 – or 40 CFR 434.

The proposed permit includes the addition of a discharge point for discharges from the facility's wash bay facility. Discharges from the wash bay facility (Outfall 068) are subject to technology-based effluent limitations for active mining areas.

In the absence of a federal standard, limitations may be generated using Best Professional Judgment (BPJ) to ensure reasonable control technologies are used to prevent potential harmful effects of the discharge. In addition, the department must consider and include limitations necessary to protect water quality standards applicable to the receiving waters.

Discharges from active mining and reclamation areas caused by a volume of precipitation equal to greater than a 10-year, 24-hour precipitation event (or equivalent volume of snowmelt) may be eligible for alternate effluent limitations in accordance with 40 CFR 434.63(a). In these instances, the department may waive the limitations for total iron, TSS, or settleable solids for pond overflows (40 CFR 434.63(a)(2)).

To be eligible, ponds must be designed, constructed, operated, and maintained to treat runoff from a 10-year, 24-hour precipitation event. The 10-year, 24-hour precipitation event volume is incorporated into pond designs. The volume lies between the permanent pool elevation (PPE) and the overflow elevation of the pond. It should be noted that the PPE is always lower than the overflow elevation.

When the water level in a pond is above the PPE, the pond must be managed to regain the capacity for the 10-year, 24-hour precipitation event or equivalent snowmelt. Pond dewatering must be done within 10 days of the last precipitation event when practicable. Instances where it may not be practicable to discharge include times when the quality of the water in the pond

exceeds effluent limitations. Additional time is allowed when the permittee can demonstrate that dewatering was delayed due to activities or conditions downstream that can be affected by the discharge (e.g., agricultural activities, landowner accessibility, drainage channel stability/capacity).

In the 2017 permit reissuance, the lower pH water quality-based effluent limitation applicable to discharges from active mining and reclamation area to lakes, reservoirs, and Class I and IA streams was set at 7.0 standard units (S.U.), which was reflective of the water quality-based limitation based on the Standards of Quality for Waters of the State in place at that time the permit took effect. However, in July 2021, the lower pH water quality standard for lakes, reservoirs, and Class I and IA streams changed from 7.0 S.U. to 6.5 S.U. (NADC chapter 33.1-16-02.1). Based on a change to the water quality standards, the department changed the lower pH water quality-based effluent limitation for discharges from active mining and reclamation areas to lakes, reservoirs, and Class I and IA streams from 7.0 S.U. to 6.5 S.U. in the 2022 permit reissuance.

Limitations based on numeric nutrient criteria are not being included in the proposed permit. Numeric nutrient criteria have yet to be developed for the state of North Dakota. Currently, the WQS contain a narrative standard stating that the surface waters must be free from nutrients in concentrations or loadings that cause objectionable growth of vegetation, algae, or other impairments.

The proposed effluent limitations shall take effect once the permit becomes active. The effluent limitations and the basis for the limitations are provided in the Tables 4 through 7.

Table 4: Active Mining Areas

Effluent Parameter	Units	Monthly Average	Daily Maximum	Basis [c]
Iron Total [a]	mg/L	3.5	7.0	40 CFR 434.42; 40 CFR 434.63(a) & (e)
Total Suspended Solids [a] (TSS)	mg/L	35.0	70.0	40 CFR 434.42; 40 CFR 436.63(a) & (e)
Settleable Solids [a]	mL/L	N/A	0.5	40CFR 434.63(a)
Oil & Grease [b]	mg/L	*	10	WQS, BPJ
pH	S.U.	**		40 CFR 434.42; WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.				Previous Permit
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.				BPJ
Notes:				
a. Alternate Limitations: The department may waive the limitations for total iron and total suspended solids for overflows caused by a single or series of precipitation or snowmelt events after				

Table 4: Active Mining Areas

	reviewing all information submitted in response to the Noncompliance Notification conditions of the permit. During overflow discharges total suspended solids sampling shall be done in conjunction with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges. The settleable solids limit may be waived if there is a precipitation event greater than 2.98 inches in 24 hours. The limit may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event. To qualify for these limitations, the facility must be designed, constructed, operated, and maintained to treat the runoff from a 10-year, 24-hour precipitation event (2.98 inches). For sedimentation ponds, any required pond dewatering must have been accomplished within 10 days of the last precipitation event when practicable. Additional time is allowable when dewatering is delayed due to activities or conditions downstream of the facility such as agricultural activities, landowner accessibility, drainage channel stability or capacity. The permittee has the burden of proof that these conditions are met. Precipitation shall be measured by gauge and recorded daily by the permittee.
b.	There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
c.	The basis of the effluent limitations is given below: "Previous Permit" refers to limitations in the previous permit. The NPDES regulations **40 CFR Part 122.44(1)(1) Reissued permits** require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under **40 CFR Part 122.62**. "BPJ" refers to best professional judgment. "WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.
N/A	Not applicable
*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect the receiving waters.
**	Discharges to reservoirs and Class IA streams shall have an instantaneous pH limitation between 6.5 (s.u.) and 9.0 (s.u.). Discharges to all other classifications of stream shall be between 6.0 (s.u) and 9.0 (s.u.).

Table 5: Reclamation Areas

Effluent Parameter	Units	Daily Maximum	Basis [c]
Settleable Solids [a]	mL/L	0.5	40 CFR 434.52(a); 40 CFR 434.63(a) & (e)
Total Suspended Solids [b] (TSS)	mg/L	70	BPJ; Previous Permit
pH	S.U.	*	40 CFR 434.52(a); 40 CFR 434.63(a) & (d); WQS
The permittee shall maintain the capability to measure the instantaneous flow rate, daily.		Previous Permit	
All components of the treatment systems and discharge structures shall be maintained to achieve a high-quality discharge and preserve the integrity of structures. If necessary, best management practices shall be used upstream and downstream of a discharge structure to ensure that effluent quality is maximized. As a general practice, sediment ponds should be dewatered by late fall.		Previous Permit	
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards. This may include rate of discharge restrictions or notifying downstream landowners along the receiving stream.		BPJ	

Notes:

a. The settleable solids requirements apply to overflows or increases in flow caused by a single or series of precipitation or snowmelt events. The limitation may be waived if the amount of precipitation is greater than 2.98 inches in 24 hours. The limitation may also be waived for snowmelt events on a case-by-case basis for facilities designed and maintained to contain runoff from a 10-year, 24-hour precipitation event. The permittee has the burden of proof that these conditions are met.

Precipitation shall be measured by gauge and recorded daily by the permittee.

b. The total suspended solids limitation shall apply only to controlled discharges made by mechanical or gravity dewatering devices. During an overflow, discharge sampling for total suspended solids shall be done in conjunctions with settleable solids sampling for comparison purposes. Monitoring for settleable solids is not required for routine discharges.

c. The basis of the effluent limitations is given below:
"Previous Permit" refers to limitations in the previous permit. The NPDES regulations **40 CFR Part 122.44(1)(1) Reissued permits** require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was

Table 5: Reclamation Areas

	issued and would constitute cause for permit modification or revocation and reissuance under **40 CFR Part 122.62**. "BPJ" refers to best professional judgment. "WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.
N/A	Not applicable
*	Discharges to reservoirs and Class IA streams shall have an instantaneous pH limitation between 6.5 (s.u.) and 9.0 (s.u.). Discharges to all other classifications of stream shall be between 6.0 (s.u) and 9.0 (s.u.).

Table 6: Pond Removal Sites

Discharges from sediment pond removal and pond site reclamation operations must be controlled to provide the best quality attainable through the implementation of best management practices (BMPs).	BPJ
The permittee must follow the guidelines for sedimentation pond removal and pond site reclamation outlined in Policy Memorandum No. 19 to Mine Operators, issued by the North Dakota Public Service Commission (PSC) and North Dakota Department of Health, Division of Water Quality – now referred to as the North Dakota Department of Environmental Quality (NDDEQ), Division of Water Quality. The conditions and procedures outlined in the policy accommodate the rules and requirements of both the NDDEQ and the PSC. In summary, the policy contains the following: The prerequisite discharge water quality history and land reclamation conditions that must be present in the watershed of a structure before removal may be considered; The content and considerations for a site specific reclamation plan that must be submitted for review and approval; A description of the BMPs for erosion and sediment control that must be used and maintained; The timing for designating a discharge point as a sedimentation pond removal site regulated by the use of BMPs and the procedures outlined in the site specific reclamation plan; The notifications to the NDDEQ and PSC required during the course of the pond removal activity.	BPJ

Table 6: Pond Removal Sites

The BMPs and all procedures identified in the approved site specific reclamation plan must be followed throughout the course of the pond removal activities.	BPJ
The assignment of a discharge point to pond removal status does not become effective until any final dewatering of the pond is completed and pond removal activities begin.	BPJ
The department may specify additional discharge conditions or restrictions at any time to maintain water quality standards.	BPJ

Table 7: Outfall 068, Wash Bay Facility

Effluent Parameter	Units	Monthly Average	Daily Maximum	Basis [b]
Total Iron	mg/L	3.0	6.0	40 CFR 434.45; BPJ
Total Suspended Solids (TSS)	mg/L	35.0	70	40 CFR 434.45; BPJ
Oil & Grease – Visual [a]	N/A	N/A	N/A	WQS
Oil & Grease [a]	mg/L	*	10	BPJ
pH	S.U.	6.0 – 9.0		40 CFR 434.45; WQS

Notes:

a. There shall be no floating oil or visible sheen present in the discharge. If floating oil or a visible sheen is detected in the discharge, the department shall be contacted and a grab sample analyzed to ensure compliance with the concentration limitation. Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.

b. The basis of the effluent limitations is given below:

"Previous Permit" refers to limitations in the previous permit. The NPDES regulations **40 CFR Part 122.44(1)(1) Reissued permits** require that when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was issued have materially and substantially changed since the previous permit was issued and would constitute cause for permit modification or revocation and reissuance under **40 CFR Part 122.62**.

"BPJ" refers to best professional judgment.

"WQS" refers to effluent limitations based on the State of North Dakota's "Standards of Quality for Waters of the State," NDAC Chapter 33.1-16-02.1.

N/A Not applicable

Table 7: Outfall 068, Wash Bay Facility

*	This parameter is not limited. However, the department may impose limitations based on sample history and to protect receiving waters.

SELF-MONITORING REQUIREMENTS

Samples obtained from active mining and reclamation areas must be taken prior to the discharge water leaving company property or entering any receiving stream.

Nutrient monitoring was added during the 2022 permit reissuance to coincide with the state's finalized "North Dakota Nutrient Reduction Strategy for Surface Waters". Sources of nutrients from coal mining activity are from typical non-point sources of pollution (crop and livestock production, failing septic systems), nitrogen-based explosives, nutrients bound in overburden and coal, and reclamation practices.

Mining progresses in a planned, defined direction from year to year which can result in mining activity (soil removal, coal removal, reclamation) crossing multiple watersheds. Because mining progresses in a defined direction, sources of nutrients can be present upstream or downstream of mining activity.

Surface water is monitored at watershed sites (Table 9) located within the boundaries of the PSC surface mining permit. These sites are located downstream of NDPDES discharge points which can be at different stages of mining activity within the watershed. The proposed NDPDES permit will include semiannual nutrient monitoring at these watershed sites. A watershed monitoring site will be removed from the NDPDES permit after all NDPDES discharge points upstream of the site have been inactivated.

Table 8: Self-Monitoring Requirements

Effluent Parameter	Frequency	Sample Type [a]
Active Mining Areas:		
Iron Total	Annual	Grab
TSS	Monthly	Grab
Settleable Solids	Monthly	Grab
Oil & Grease – Visual	Daily	Visual
Oil & Grease	Conditional	Grab
pH	Monthly	Instantaneous
Flow, Total [b]	Monthly	Calculated
Drain, Total [b]	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Reclamation Areas:		
TSS	Quarterly	Grab
Settleable Solids	Quarterly	Grab
pH	Quarterly	Instantaneous

Table 8: Self-Monitoring Requirements

Effluent Parameter	Frequency	Sample Type [a]
Flow, Total [b]	Monthly	Calculated
Drain, Total [b]	Monthly	Calculated
Total Days Discharging	Monthly	Calculated
Notes:		
a. Refer to Appendix B for definitions.		
b. The permittee shall maintain the capability to measure the instantaneous flow rate, daily.		

Table 9: Watershed Monitoring Sites

Monitoring Site	Location	Stream	Status [a]	Period of Record
M01	47.1031, -101.2993	Tributary to Square Butte Creek	Suspended	2022-Present
M03	47.0439, -101.3180	Hagel Creek	Active	2022-Present
M04	47.0673, -101.2353	Hagel Creek	Active	2022-Present
M05	47.0679, -101.2257	Hagel Creek	Active	2022-Present
M07	47.0525, -101.2631	Tributary to Hagel Creek	Active	2022-Present
M08	47.0344, -101.1929	Tributary to Square Butte Creek	Suspended	2022-Present
M09	47.0111, -101.1951	Tributary to Square Butte Creek	Suspended	2022-Present
Notes:				
a. Suspended status refers to monitoring sites that are suspended due to an impoundment. Monitoring at these sites is suspended. The sites shall be monitored if the impoundment is removed during the effective period of this permit.				

Table 10: Nutrient Monitoring Requirements

Parameter	Frequency	Sample Type [a]
Nitrogen, Total [b]	2 runoff events annually	Grab
Phosphorus, Total	2 runoff events annually	Grab
Flow, cfs	2 runoff events annually	Calculated
Notes:		
a. Refer to Appendix B for definitions.		
b. Total nitrogen is a combination of nitrate, nitrite, and Total Kjeldahl Nitrogen (TKN).		

SURFACE WATER QUALITY-BASED EFFLUENT LIMITS

The North Dakota Standards of Quality for Waters of the State (NDAC Chapter 33.1-16-02.1), or Water Quality Standards (WQS), are designed to protect existing water quality and preserve the beneficial uses of North Dakota's surface waters. Wastewater discharge permits must include

conditions that ensure the discharge will meet the surface water quality standards. Water quality-based effluent limits may be based on an individual waste load allocation or on a waste load allocation developed during a basin wide total maximum daily load (TMDL) study. TMDLs result from a scientific study of the water body and are developed in order to reduce pollution from all sources.

Nelson Lake is listed as a class 3 reservoir in the WQS (NDAC 33.1-16-02.1). The quality of water in class 3 reservoirs must be suitable for resident fish and other aquatic life, as well as recreational use. The quality of water in class 3 reservoirs must also be suitable for irrigation, stock watering, and wildlife. The quality must be able to meet the bacteriological, physical, and chemical requirements for municipal or domestic use.

Square Butte Creek below Nelson Lake is listed as a class IA stream in the WQS (NDAC 33.1-16-02.1). Class IA streams must be suitable for resident fish and other aquatic life, as well as recreation use. The quality of water in class IA streams also must be suitable for irrigation, stock watering and wildlife. The quality must also be able to meet the bacteriological, physical, and chemical requirements for municipal or domestic use.

Square Butte Creek, other than below Nelson Lake, and Hagel Creek are not classified in the WQS (NDAC 33.1-16-02.1). Receiving waters that are not specifically classified in the standards are considered class III streams (NDAC 33.1-16-02.1, Appendix I). Class III streams must be suitable for agricultural and industrial uses. These streams generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of water in class III streams must be suitable for secondary contact recreation uses (e.g., wading) as well as fish and aquation biota and wildlife uses.

Runoff from the permitted surfacing mining area drains to Hagel Creek, Nelson Lake and Square Butte Creek. Square Butte Creek from Nelson Lake downstream to its confluence with Otter Creek is listed as impaired in the department's North Dakota 2020-2022 Integrated Section 305(b) Water Quality Assessment Report and Section 303(d) List of Waters Needing Total Maximum Daily Loads. The impairment is for sedimentation/siltation and fecal coliform.

Sources of fecal coliform from mining activity that could contribute to fecal coliform counts include the waste stabilization system, portable sanitary facilities, manure application, and grazing activity. These sources are managed as follows:

1. The waste stabilization system is located in the Hagel Creek watershed. The system is large enough to manage sanitary waste and does not discharge. The system does not contribute fecal coliform to the watershed.

2. Sanitary waste from portable facilities is collected by a septic pumper and transported offsite. Proper management of sanitary waste from portable facilities is not expected to contribute fecal coliform to the Hagel Creek – Square Butte Creek watersheds.

3. Manure is not spread in the mine and is not expected to be a point source of pollution for fecal coliform.

4. Reclamation activities will take place during the effective period of the proposed permit. The facility manages active areas with haying until a tract is large enough to be fenced and grazed. Farmland is also managed by the facility until the tract is large enough to be managed by producers. Once reclamation activities upstream of a pond are complete, the pond and associated discharge point are removed, and no longer subject to permitting requirements.

   Grazing is managed with prescribed grazing plans. Grazing plans are compiled each year for each tract of reclaimed land that is grazed. The grazing plan indicates the number of animals and specific days of grazing. A diversity of plants is required to achieve final bond release, so the facility uses cattle as a management tool to help achieve this diversity. Lands may be grazed at different times of year depending on what species of plants is dominate and field conditions from the previous year's grazing. Land in advance of mining activity that has not been disturbed is managed by the tenant or landowner. These areas are generally not within one-quarter mile of coal removal due to stripping and prebench operations in advance of mining.

   With the exception of a clean water pond that is not subject to permitting requirements, cattle are not allowed to enter ponds. Cattle are fenced out of active area ponds with at least a 50-foot buffer from the disturbance of the pond. An additional 100 to 200 feet of vegetation may be in place depending on the design of the pond and water elevation. In some situations the pond may be one-quarter mile away from cattle.

   The management of grazing operations with appropriate best management practices would satisfy a potential TMDL for Square Butte Creek.

These sources are managed appropriately and reduce the contribution of fecal coliform to discharges from the surface mining area. The department has determined it is not necessary to add requirements for fecal coliform to the proposed permit since the proper BMPs are in place and contributions would be from a typical non-point source of pollution.

Numerical Criteria for the Protection of Aquatic Life and Recreation

Numerical water quality criteria are listed in the water quality standards for surface waters (NDAC Chapter 33.1-16-02.1). They specify the maximum levels of pollutants allowed in receiving water to protect aquatic life and recreation in and on the water. The department uses numerical criteria along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in the discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limits, the discharge must meet the water quality-based limits.

Numerical Criteria for the Protection of Human Health

The U.S. EPA has published numeric water quality criteria for the protection of human health that are applicable to dischargers. These criteria are designed to protect humans from exposure to pollutants linked to cancer and other diseases, based on consuming fish and shellfish and drinking contaminated surface waters. The Water Quality Standards also include radionuclide criteria to protect humans from the effects of radioactive substances.

Narrative Criteria

Narrative water quality criteria (NDAC Chapter 33.1-16-02.1-08) limit concentrations of pollutants from exceeding applicable standards of the receiving waters. The department adopted a narrative biological goal solely to provide an additional assessment method that can be used to identify impaired surface waters.

Antidegradation

The purpose of North Dakota's Antidegradation Policy (NDAC Chapter 33.1-16-02(Appendix IV)) is to:

- Provide all waters of the state one of three levels of antidegradation protection.
- Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.

The department's fact sheet demonstrates that the existing and designated uses of the receiving water will be protected under the conditions of the proposed permit.

Mixing Zones

The department's WQS contain a Mixing Zone and Dilution Policy and Implementation Procedure, NDAC Chapter 33.1-16-02.1 (Appendix III). This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

EVALUATION OF SURFACE WATER QUALITY-BASED EFFLUENT LIMITS FOR NUMERIC CRITERIA

Oil & Grease

The WQS state that waters of the state must be free from oil or grease attributable to wastewater which causes a visible sheen or film upon the water. Using BPJ, the department has determined that a daily maximum limitation of 10 mg/L is appropriate for active mining areas if a visible sheen is detected. Other treatment systems in the state have similar limitations.

pH

The WQS state that discharges to reservoirs and Class IA streams shall have an instantaneous pH limitation between 6.5 (S.U.) and 9.0 (S.U.). Discharges to all other classifications of stream (Class III) shall be between 6.0 (S.U.) and 9.0 (S.U.).

The limitations apply to discharges that have the potential to reduce the quality of a surface water below the appropriate standard despite the location of the outfall. The pH limitation of 6.0 S.U. applies to discharge points that drain to class III streams. The pH limitation of 6.5 S.U.

applies to discharge points that drain to tributaries of Nelson Lake and Square Butte Creek below Nelson Lake that are not considered class III streams. Stream classifications may be found in NDAC 33.1-16-02.1, Appendix I. If a stream is not specifically mentioned in Appendix I, then it is considered a class III stream.

A tributary of Nelson Lake or Square Butte Creek below Nelson Lake would be considered a class III stream if pools of water are normally present in the tributary, then the limitation of 6.0 would apply. If pools of water are not normally present in the tributary, then the limitation of 6.5 would apply.

HUMAN HEALTH

North Dakota's water quality standards include numeric human health-based criteria that the department must consider when writing NDPDES permits. These criteria were established in 1992 by the U.S. EPA in its National Toxics Rule (40 CFR 131.36). The National Toxics Rule allows states to use mixing zones to evaluate whether discharges comply with human health criteria. The department determined the applicant's discharge is unlikely to contain chemicals regulated to protect human health. The department will re-evaluate this discharge for impacts to human health at the next permit reissuance.

MONITORING REQUIREMENTS

The department requires monitoring, recording, and reporting (NDAC Chapter 33.1-16-01-(21 through 23) and 40 CFR 122.41) to verify that the treatment process is functioning correctly and that the discharge complies with the permit's limits.

DISCHARGE MONITORING REPORT (DMR) REQUIREMENTS

The proposed permit requires the permittee to monitor discharges and submit discharge monitoring reports (DMRs) to the department. DMRs summarize monitoring results obtained during specified monitoring periods. If no discharge occurs during a monitoring period, then "no discharge" must be reported. The monitoring periods for active mining and reclamation areas are monthly and quarterly, respectively. The monitoring period for nutrient monitoring is annually.

The proposed permit includes specified intervals for submitting DMRs (Table 11). DMRs must be submitted electronically to the department in accordance with 40 CFR 127, unless otherwise waived and in compliance with 40 CFR 3. The requirement to submit DMRs quarterly for active mining and reclamation areas is similar to other mining facilities.

Table 11: DMR Submittal Requirements

Coverage Point	Report Designator	Report Type	Report Interval
Active Mining Area	A	Conventional and Non-Conventional Pollutants, Flow, and Volume Information	1/quarter
Reclamation Area	R	Conventional and Non-Conventional Pollutants, Flow and Volume Information	1/quarter
Nutrient Monitoring	N	Nutrients, Receiving Stream Flow	1/year

TEST PROCEDURES

The collection and transportation of all samples shall conform to EPA preservation techniques and holding times found in 40 CFR 136. All laboratory tests shall be performed by a North Dakota certified laboratory in conformance with test procedures pursuant to 40 CFR 136, unless other test procedures have been specified or approved by EPA as an alternate test procedure under 40 CFR 136.5. The method of determining the total amount of water discharged shall provide results within 10 percent of the actual amount. The Settleable Solids test procedure shall conform with 40 CFR 434.64.

OTHER PERMIT CONDITIONS

The proposed permit contains no additional conditions

PERMIT ISSUANCE PROCEDURES

PERMIT ACTIONS

This permit may be modified, revoked and reissued, or terminated for cause. This includes the establishment of limitations or prohibitions based on changes to Water Quality Standards, the development and approval of waste load allocation plans, the development or revision to water quality management plans, changes in sewage sludge practices, or the establishment of prohibitions or more stringent limitations for toxic or conventional pollutants and/or sewage sludges. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

PROPOSED PERMIT ISSUANCE

This proposed permit meets all statutory requirements for the department to authorize a wastewater discharge. The permit includes limits and conditions to protect human health and aquatic life, and the beneficial uses of waters of the State of North Dakota. The department proposes to issue this permit for a term of five (5) years.

APPENDIX A – PUBLIC INVOVLEMENT INFORMATION

The department proposes to reissue a permit to BNI Coal Ltd. for its coal mining operation. The permit includes wastewater discharge limits and other conditions. This fact sheet describes the facility and the department's reasons for requiring permit conditions.

The department will place a Public Notice of Draft on **November 20, 2025,** in the **Bismarck Tribune** and the **Center Republican** to inform the public and to invite comment on the proposed draft North Dakota Pollutant Discharge Elimination System permit and fact sheet.

The Notice –

- Indicates where copies of the draft Permit and Fact Sheet are available for public evaluation.
- Offers to provide assistance to accommodate special needs.
- Urges individuals to submit their comments before the end of the comment period.
- Informs the public that if there is significant interest, a public hearing will be scheduled.

You may obtain further information from the department by telephone, 701.328.5210, or by writing to the address listed below.

North Dakota Department of Environmental Quality
Division of Water Quality
4201 Normandy Street
Bismarck, ND 58503

The primary author of this permit and fact sheet is Kylee Dettling.

North Dakota Department of Environmental Quality Public Notice
Reissue of an NDPDES Permit

Public Notice Date: November 20, 2025 Public Notice Number: ND-2025-026

Purpose of Public Notice
The Department intends to reissue the following North Dakota Pollutant Discharge Elimination System (NDPDES) Discharge Permit under the authority of Section 61-28-04 of the North Dakota Century Code.

Permit Information
Application Date: October 22, 2025
Permit Number: ND0024601
Applicant Name: BNI Coal Ltd Center
Mailing Address: 2360 35th Ave SW Center, ND 58530
Telephone Number: (701) 355-5500
Proposed Permit Expiration Date: December 31, 2030

Facility Description
The reapplication is for a surface coal mining operation near Center, ND. Discharges consist of groundwater and/or surface runoff, and wash water from the washdown facility. Discharges are to Hagel Creek, Square Butte Creek, or Nelson Lake. Hagel Creek is an unclassified stream. Square Butte Creek, below Nelson Lake, is a Class IA stream; elsewhere, it is unclassified. Nelson Lake is a Class 3 lake.

Discharges covered by this permit are subject to surface water management conditions and designated locations described in surface mining permits approved following public review. Discharge structures are located within the boundaries of BNI Coal's approved surface mining permits which encompass all or part of the following: T142N, R84W; T141N, R84W; T142N, R83W; and T141N, R83W.

Tentative Determinations
Proposed effluent limitations and other permit conditions have been made by the Department. They assure that State Water Quality Standards and applicable provisions of the FWPCA will be protected.

Information Requests and Public Comments
Copies of the application, draft permit, and related documents are available for review. For further information on making public comments/public comment tips please visit: https://deq.nd.gov/PublicCommentTips.aspx. Comments or requests should be directed to the ND Dept of Env Quality, Div of Water Quality, 4201 Normandy Street, Bismarck ND 58503-1324 or by calling 701.328.5210.

All comments received by December 20, 2025, will be considered prior to finalizing the permit. If there is significant interest, a public hearing will be scheduled. Otherwise, the Department will issue the final permit within sixty (60) days of this notice. If you require special facilities or assistance relating to a disability, call TDD at 1.800.366.6868.

The NDDEQ will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. To request accommodations, contact the NDDEQ Non-discrimination Coordinator at 701-328-5210 or deqEJ@nd.gov. TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

APPENDIX B – DEFINITIONS

DEFINITIONS Standard Permit BP 2025.03.13

1. "**Act**" means the Clean Water Act.

2. "**Best management practices**" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

3. "**Bypass**" means the intentional diversion of waste streams from any portion of a treatment facility.

4. "**Composite**" sample means a combination of at least 4 discrete sample aliquots, collected over periodic intervals from the same location, during the operating hours of a facility not to exceed a 24 hour period. The sample aliquots must be collected and stored in accordance with procedures prescribed in the most recent edition of Standard Methods for the Examination of Water and Wastewater.

5. "**Continuous Discharge**" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

6. "**Daily discharge**" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

7. "**Daily maximum discharge limitation**" means "maximum daily discharge limitation" which is the highest allowable "daily discharge."

8. "**Department**" means the North Dakota Department of Environmental Quality, Division of Water Quality.

9. "**DMR**" means discharge monitoring report.

10. "**EPA**" means the United States Environmental Protection Agency.

11. "**Geometric mean**" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

12. "**Grab**" for monitoring requirements, means a single "dip and take" sample collected at a representative point in the discharge stream.

13. "**Instantaneous**" for monitoring requirements, means a single reading, observation, or measurement. If more than one sample is taken during any calendar day, each result obtained shall be considered.

14. "**Monthly average discharge limitation**" means "average monthly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

15. "***Oncorhynchus***" means of, belonging to, or characteristic of the genus *Oncorhynchus* in the family *Salmonidae*, which includes salmon and trout.

16. "**Sanitary Sewer Overflows (SSO)**" means untreated or partially treated sewage overflows from a sanitary sewer collection system.

17. "**Severe property damage**" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

18. "**Total drain**" means the total volume of effluent discharged.

19. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

20. "**Weekly average discharge limitation**" means "average weekly discharge limitation" which is the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

DEFINITIONS Permit Specific

1. **"Active Mining Area"** means the area on and beneath land, used or disturbed in activity related to extraction, removal, or recovery of coal from its natural deposits. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

2. **"Daily maximum concentration"** means the greatest discharge concentration during any calendar day. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration for that day.

3. **"Monthly Average Concentration"** means the average discharge concentration during a 30-consecutive day period (for reporting purposes a calendar month). It shall be determined by the summation of all daily concentrations for 30 days (calendar month) divided by the total number of days on which the values were obtained. If more than one sample is taken on a calendar day, the average of all such samples shall be the daily concentration of the day.

4. **"NDPDES"** means North Dakota Pollutant Discharge Elimination System.

5. **"Reclamation Area"** means an area which has been isolated from active mining area drainage and on which the final reclamation contour has been reached and seeding is completed. The definition may include access roads, suitable plant growth material (SPGM), stockpiles, sedimentation ponds, and other related structures.

APPENDIX C – DATA AND TECHNICAL CALCULATIONS

The development of the permit did not require technical calculations by the North Dakota Department of Environmental Quality. The department reviewed DMR information and applicable water quality standards for a class 3 lake or reservoir, and class IA and III streams to determine the appropriate requirements to be placed in the permit. In addition, the department reviewed the 2020-2022 North Dakota Integrated Section 305(b) Water Quality Assessment Report and Section 303(d) List of Waters Needing Total Maximum Daily Loads (303(d) List).

APPENDIX D – RESPONSE TO COMMENTS

Comments received during the public comment period will be placed here.

APPENDIX E – DISCHARGE OUTFALLS

Discharge points as of December 20, 2024, for BNI Coal, Ltd., Center Mine, ND-0024601. The discharge serial number is followed by a description of the structure, any company designation, the date the point was first regulated by the permit program, its location, and to where it drains. The points are active mining areas unless otherwise noted.

Discharge 001 - Settling pond 32-1 (9-79) located in the SW 1/4, SW 1/4 Section 32, Township 142 North, Range 83 West to Hagel Creek

Discharge 002 - Settling pond 32-2 (10-79) located in the SE 1/4, SW 1/4 Section 32, Township 142 North, Range 83 West to Hagel Creek

Discharge 003 - No discharge point (effective 11/04/92)

Discharge 004 - No longer a discharge point (effective 6-1-89)

Discharge 005 - No discharge point (effective 10/22/93)

Discharge 006 - No discharge point (effective 9/14/10)

Discharge 007 - No discharge point (effective 11/02/92)

Discharge 008 - No discharge point (effective 11/02/92)

Discharge 009 - No discharge point (effective 9/14/10)

Discharge 010 - No discharge point (effective 09/04/92)

Discharge 011 - No discharge point (effective 09/04/92)

Discharge 012 - No discharge point (effective 10/09/92)

Discharge 013 - Settling pond 23-2 (12-79) located in the NW 1/4, SW 1/4 Section 23, Township 142 North, Range 84 West to Square Butte Creek
*Reclamation area; effective 10-1-90
*No Discharge Point (04/09/14)

Discharge 014 - No discharge point (effective 11/21/06)

Discharge 015 - Settling pond 35-1 (11-78) located in the SE 1/4, SW 1/4 Section 35, Township 142 North, Range 84 West to Hagel Creek
*Reclamation area; effective 9-12-97

Discharge 016 - Settling pond 36-2 (1-4-83) located in the SE 1/4, NE 1/4 Section 36, Township 142 North, Range 84 West to Square Butte Creek

*Reclamation area; effective 10-1-90

Discharge 017 - No discharge point (effective 08/28/92)

Discharge 018 - Settling pond 35-7 (1-4-83) located in the SE 1/4, SE 1/4 Section 35, Township 142 North, Range 84 West to Hagel Creek
*Reclamation area; effective 10-1-90

Discharge 019 - No longer a discharge point (effective 11-01-91)

Discharge 020 - No discharge point

Discharge 021 - Settling pond 25-9 (7-1-84) located in the SE 1/4, SE 1/4 Section 25, Township 142 North, Range 84 West to Square Butte Creek
*Reclamation area; effective 10-1-90
*No Discharge Point (04/09/14)

Discharge 022 - No longer a discharge point (effective 7-24-87)

Discharge 023 - No longer a discharge point (effective 11-1-90)

Discharge 024 - No longer a discharge point (effective 11-18-96)

Discharge 025 - No longer a discharge point (effective 11-18-96)

Discharge 026 - No longer a discharge point (effective 11-18-96)

Discharge 027 - No longer a discharge point (effective 7-1-90)

Discharge 028 - Settling pond 35-8 (12-1-84) located in the NW 1/4, SE 1/4 Section 35, Township 142 North, Range 84 West to Square Butte Creek
*Reclamation area; effective 9-12-97

Discharge 029 - Settling pond 22-1 (4-1-87) located in the NW 1/4, NE 1/4 Section 22, Township 142 North, Range 84 West to Square Butte Creek
*Reclamation area; effective 9-12-97
*No Discharge Point (effective 03-14-2022)

Discharge 030 - Settling pond 22-2 (4-1-87) located in the NW 1/4, NW 1/4 Section 22, Township 142 North, Range 84 West to Square Butte Creek

Discharge 031 - Settling pond 2-1 (4-1-87) located in the SE 1/4, SE 1/4 Section 2, Township 141 North, Range 84 West to Hagel Creek

Discharge 032 - Settling pond 9-1 (10-2-89) located in the NW 1/4, NW 1/4 Section 9, Township 141 North, Range 84 West to Hagel Creek

Discharge 033 - Settling pond 9-2 (10-2-89) located in the NE 1/4, NE 1/4 Section 9, Township 141 North, Range 84 West to Hagel Creek
* No Discharge Point (effective 06-18-14)

Discharge 034 - No discharge point (effective 4-1-97)

Discharge 035 - No discharge point (effective 4-1-97)

Discharge 036 - Settling pond 5-1 (11-10-95) located in the SE 1/4, NE 1/4 Section 5, Township 141 North, Range 83 West to Nelson Lake via unnamed surface drainage
*No Discharge Point (effective 03-14-2022)

Discharge 037 - Settling pond 5-3 (11-10-95) located in the SE 1/4, NW 1/4, Section 5, Township 141 North, Range 83 West to Hagel Creek via unnamed surface drainage

Discharge 038 - Settling pond 5-4 (11-10-95) located in the SE 1/4, NW 1/4, Section 5, Township 141 North, Range 83 West to Hagel Creek via unnamed surface drainage

Discharge 039 - Settling pond 22-10 (11-18-96) located in the SE 1/4, NE 1/4 Section 22, Township 142 North, Range 84 West to Square Butte Creek via an unnamed tributary

Discharge 040 - Settling pond 8-1 (10-14-02) located in the NW 1/4, NE 1/4 Section 8, Township 141 North, Range 84 West to Hagel Creek

Discharge 041 - Settling pond 21-1 (12-31-03) located in the NE 1/4, NE 1/4 Section 21, Township 142 North, Range 84 West to Square Butte Creek

Discharge 042 - Settling pond 5-5 (12-31-03) located in the NW 1/4, SW 1/4, Section 5, Township 141 North, Range 83 West to Hagel Creek via unnamed surface drainage

Discharge 043 - Settling pond 21-4 (13-05-02) located in the NW 1/4, SW 1/4, Section 21, Township 142 North, Range 84 West to Square Butte Creek

Discharge 044 - Settling pond P-5-6 (2-17-15) located in the S 1/2, SW 1/4, Section 5, Township 141 North, Range 83 West to Hagel Creek via an unnamed surface drainage

Discharge 045 - Settling pond P-7-2 (2-17-15) located in the NE 1/4, NW 1/4, Section 7, Township 141 North, Range 83 West to Hagel Creek via an unnamed surface drainage

Discharge 046 - Settling pond P-7-1 (7-31-15) located in the NW 1/4, NW 1/4, Section 7,

Township 141 North, Range 83 West to Hagel Creek via an unnamed surface drainage

Discharge 047 - Settling pond P-12-1 (12-15-15) located in the SE 1/4, NE 1/4, Section 12, Township 141 North, Range 84 West to Hagel Creek via an unnamed surface drainage

Discharge 048 – Settling pond P-16-1 (01-30-17) located in the SE 1/4 of the NE1/4 of Section 16, Township 141 North, Range 83 West to Square Butte Creek via an unnamed surface drainage

Discharge 049 - Settling pond P-12-2 (1-24-2018) located in the SW 1/4 of the SE 1/4 of Section 12, Township 141 North, Range 84 West to Hagel Creek via unnamed surface drainages

Discharge 050 - Settling pond P-16-2 (01-24-18) located in the E 1\2 of the SE 1/4 of Section 16, Township 141 North, Range 83 West to Square Butte Creek via unnamed surface drainages

Discharge 051 - Settling pond P- 21-1 (1-24-18) located in the SE1/4 of the NE 1/4 of Section 21, Township 141 North, Range 83 West to Square Butte Creek via unnamed surface drainages

Discharge 052 - Settling pond P-13-3 (1-3-2019) located in the N 1/2 of the SE 1/4 of Section 13, Township 141 North, Range 84 West to Hagel Creek via unnamed surface drainages

Discharge 053 - Settling pond P-21-6 (1-3-2019) located in the SE 1/4 of the NW 1/4 of Section 21, Township 141 North, Range 83 West to Square Butte Creek via unnamed surface drainages
* No Discharge Point (effective 02-04-2022)

Discharge 054 - Sedimentation pond P-13-1 (4-1-2020) located in the NW 1/4 of Section 13, Township 141 North, Range 84 West to an unnamed tributary of Hagel Creek

Discharge 055 - Sedimentation pond P-20-1 (4-1-2020) located in the NE 1/4 of Section 20, Township 141 North, Range 83 West to Square Butte Creek via unnamed surface drainages
* No Discharge Point (effective 11-28-2022)

Discharge 056 - Sedimentation pond P-29-1 (4-1-2020) located in the NW 1/4 of the SW 1/4 of Section 29, Township 142 North, Range 84 West to an unnamed tributary of Square Butte Creek

Discharge 057 - Sedimentation pond P-20-3 (4-1-2020) located in the SE 1/4 of Section 20, Township 142 North, Range 84 West to Square Butte Creek via unnamed

surface drainages

Discharge 058 - Sedimentation Pond P-20-2 (9-14-2020) located in the NE¼ of the of Section 20, Township 142 North, Range 84 West, and will discharge to Square Butte Creek via unnamed surface drainages.

Discharge 059 - Sedimentation Pond P-13-7 (6-2-2021) is located in the SE¼ of Section 13, Township 141 North, Range 84 West, and will discharge into an unnamed tributary of Hagel Creek. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 060 - Sedimentation Pond P-20-1 (6-2-2021) is located in the NE¼ of Section 20, Township 142 North, Range 84 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-9702.

Discharge 061 - Sedimentation Pond P-21-3 (10-7-2021) is located in the NE¼ of Section 21, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.
* No Discharge Point (effective 02-04-2022)

Discharge 062 - Sedimentation Pond P-21-4 (10-7-2021) is located in the SE¼ of Section 21, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 063 - Sedimentation MSHA Pond P-21-5 (10-7-2021) is located in the SE¼ of Section 21, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 064 - Sedimentation Pond P-9-2 (11-28-2022) is located in the NW¼ of Section 9, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 065 - Sedimentation Pond P-9-3 (11-22-2023) is located in the SE¼ of Section 9, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 066 - Sedimentation Pond P-9-4 (11-22-2023) is located in the SE¼ of Section 9, Township 141 North, Range 83 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This pond is part of BNI Coal's mining permit, BNCR-1101.

Discharge 067 - Catch Basin CB-20-4 (12-20-2024) is located in the NW¼ of Section 20, Township 142 North, Range 84 West, and will discharge into an unnamed tributary of Square Butte Creek via surface drainages. This catch basin is part of BNI Coal's mining permit, BNCR 9702.