

RECEIVED

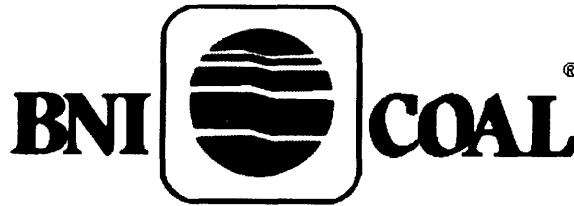
MAR 25 2008

#30763

PUBLIC SERVICE COMMISSION

FAX (701) 794-3125

PHONE (701) 794-8734



FROM DIRECTOR - RECLAMATION DIV.

3-19-2008

Date: _____

Mr. James R. Deutsch, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Action: _____

Info. Only: _____

Info & File: _____

RE: Bond Release No. 6 to Permit BNCR-8106

Dear Mr. Deutsch:

This submittal contains responses (in italics) to the technical deficiencies given in your letter dated 10-December-2007. It also contains a revised edition of Attachment V, VI, and VIII which can be replaced in their entirety, along with the addition of Attachment XII. Three copies of the revised materials are enclosed.

Attachment V – Aerial Photo/Soils Map

1. The various law liability lines for the proposed bond release tracts need to be provided or clarified. With regard to the Section 25 tract, please clearly delineate the law liability lines for the 1969, 1971, 1973 and 1975 reclamation laws according to the legend provided on the map. Several of the lines are missing based on the markings on the map. Also, if any of the Section 25 tract was mined under the 1978 interim rules, that area should be shown on the map. With regard to the Section 36 tract, only the 1973 law liability line is currently depicted on the map. However, portions of this tract are also subject to the 1971 and 1975 laws and possibly the 1978 interim rules. Please update the map as appropriate. (JRD)

Updated Attachment V.

Attachment VI

2. The history narrative for the Section 25 tract seems to indicate that no mining in this area occurred until Permit 24 was issued in late 1973. However, Attachment V shows that small portions of the area were mined under the 1969 and 1971 reclamation laws, presumably under Permit 4. Please review this inconsistency and make the appropriate updates to either the history narrative or the law liability lines on Attachment V. (JRD)

Added Permit 4 information to text in first paragraph of History or Tract.

BNI COAL, LTD.
2360 35th Ave SW, Center, ND 58530

3. The history of the Section 36 tract needs to be revised to reflect the various law liability periods that portions of the tract were subject to and the earlier mining permits under which the actual mining occurred. It appears the southern part of the area was mined under Permit 4 while the rest of the area was mined under Permit 24. Please review the history of the tract and update the narrative on page 13 as appropriate. (JRD)

Revised law periods on page 13 and history of tract to illustrate Permits mined under as requested.

4. The Headings on Tables 9, 10, 11 and 12 are very misleading as they give the impression that the standards and production figures are for the "South Reference Area" rather than the reclaimed tract. Please clarify the headings. (JRD)

Revised headings on tables as requested.

5. Please add the appropriate explanations for the footnotes that are intended for Tables 8, 9, 11 and 12. It is important that footnote 2 on Tables 8 and 9 explain how production data from the silty reference area is used to adjust the NRCS production values for the other pre-mining range sites that were present in the reclaimed area. (JRD)

Added table footnotes as requested.

6. Table 11 and the narrative in the second paragraph on page 16 both indicate that the reclaimed cover for 2005 was 96.8% but Table 15 indicates the cover was 95.6%. Please correct as needed. (SAS)

Revised table 11 to 95.6% and associated text that was on page 16.

7. Please include a map in the bond release application that shows the different SPGM respread thicknesses for the bond release tracts. (GAW)

Added SPGM respread thicknesses for bond release tracts to Attachment V.

8. Follow-up to Original Item No. 28. In the last sentence of the second paragraph on page 9 of Attachment VI, please clarify that the premine stockpond was located southwest of existing Pond 25-3 in the SW¼ of Section 25 and outside of this bond release tract. (GAW)

Revised accordingly.

9. Follow-up to Original Item No. 31. It appears that a portion of the bond release tract in Section 36 may be subject to the 1977 reclamation law, according to a Post-Mine Land Use Map in Permit 37 that shows the 1975 law and 1978 interim rule period lines. Please review and, if appropriate, please include "1977" in the Law Liability section on page 13 of Attachment VI. The 1975 and 1977 acreage could be combined since the reclamation requirements are very similar if the boundary between the law periods is not known. (GAW)

As discussed with Guy, it looks that soil removal occurred on this area prior to 1977, thus falling under 1975 law. Added 1973 law line as requested.

10. Follow-up to Original Item No. 38 and 39. The Diversity and Seasonality discussion that begins on page 16 is written as if the present (1979) law standards apply. In this section, please specifically state that no specific seasonality and diversity standards apply to lands subject to the 1975/1977 reclamation laws but that data on species composition, cover and density need to be included with final bond release applications. The language about meeting the 65% native requirement in 2004 should be deleted as reference area data has not been provided showing that Kentucky bluegrass can be included and not enough frames were taken on the reference area in 2005 (40 required, Page III-C-2) to allow Kentucky bluegrass to be counted towards the percent native requirement. In addition, we recommend deleting the sentences at the end of the last paragraph on page 16 and at the end of first paragraph on page 17 that states that smooth bromegrass and Kentucky bluegrass are not present in quantities detrimental to the land use since this standard does not apply. Either delete the sentences or explain in detail why these introduced species should not be considered detrimental to the post-mine land use. (GAW)

Revised accordingly.

11. Follow-up to Original Item No. 40. Please include the actual 2004 and 2005 production and cover data from the silty reference area (S01) with calculations showing that the reference area is in reasonable range condition. This information must be included in the bond release application along with a map showing the reference area sampling locations each year. Since this data is being used to calculate the performance standards (Tables 8, 9, 10 and 11), the raw data must be included in the bond release application.

Added reference area, sample sites, and soils to Attachment VIII. Added tables 8a and 9a with 2004 and 2005 raw data to attachment V.

12. We noted that data in the permit shows that silty reference area SO1 produced 2,468 lbs/acre in 2005. However, a value of 1,542 lbs/ac was used in Table 9 to calculate the 2005 adjusted standard. Please revise Table 9 accordingly. (GAW)

Permit is misprinted at 2,468. 2005 data indicates yield is 1542.9.

13. In the reference area discussion on page 14 for Section 36, please clarify why only reference area S01 is being used to demonstrate revegetation success. This reference area was in reduced range condition in the late 1990's, which is why silty reference area B13 was established. (GAW)

Revised previous page 14, added reference area was used because of proximity to bond release tract.

14. Please include copies of the raw data used to develop Tables 12 and 13, the 2004 and 2005 yields of the reclaimed native grassland in Section 36. Also, the data in Table 12 is not separated by growth form as required in our guidelines, Page III-D-4. Please update accordingly. (GAW)

Tables 12 and 13 are raw data as they currently are; samples taken, dry weights recorded, and calculated tonnage. Also as commented on, the data in Table 12 does not pertain to the guidelines listed in Page III-D-4. Table 12 is a Native Grassland Yield table. Guidelines in Page III-D-4 refer to production data being used to assess seasonality, diversity, and composition.

15. Original Deficiency #46: The first sentence of the last paragraph of the Hydrology Section on page 10 states that "No degradation of surface water or ground water quality for these bond release areas has been demonstrated." However, continuing narrative states that it is commonly known that ground water quality in mine spoil has elevated levels of total dissolved solids as compared to the pre-mine situation, etc. Additional narrative discusses the low migration of degraded water because of reduced hydraulic conductivity of mined spoils. In consideration of perceived contradictory statements concerning the above, we recommend the portion of the first sentence referencing "no degradation of ground water quality:" be eliminated from the text. (BEB)

Eliminated from text.

16. Original Deficiency #50: For the record, please provide a short narrative in the bond release application (1 or 2 sentences) indicating whether or not mining operations have had any effect on the essential hydrologic functions of the identified alluvial valley floor within portions of Square Butte Creek. (BEB)

Added sentence to last paragraph in hydrology section, previously page 10.

17. Please qualify the statement in the last paragraph of the Hydrology Section on page 10, in which the statement is made that "...it is well established that the hydraulic conductivity (permeability) of the mine spoil and the undisturbed sediments of the Sentinel Butte Formation is very low and thus migration of degraded water is extremely slow." This statement appears to be a direct contradiction to statements in the Post Mining Hydrologic Assessment, Section 3.3.2.4 which discusses recharge capacity of the mined spoils, and states that the spoils should have an increased capacity for infiltration because the pre-mining strata have been broken up into an unconsolidated con-

glomerate of pebbles, cobbles, and boulders. Continuing narrative in the Post Mining Hydrologic Assessment to further support increased recharge capacity states, "These sized particles have a **higher** permeability than the slightly indurated sandy clays of the pre-mining bedrock overburden". Please review and modify as appropriate. (BEB)

Removed sentence.

18. Follow-up to Original Item No. 26: Pond 25-3 will be retained as a permanent water impoundment at the landowner's request. For a water impoundment to be retained as a permanent structure the size of the impoundment has to be adequate for its intended purpose, the level of water has to be reasonably stable, and the quality of the impounded water must be suitable on a permanent basis for its intended use. Please provide documentation showing all of the conditions are met. Water quality data from Pond 25-3 is needed to show that the pond holds water suitable for livestock. A statement on page 9 of Attachment VI indicates that the pond was dry in 2006. However, water quality data from another year must then be used to fulfill the requirements of NDCC 38-14.1-24(7). In addition, NDCC 38-14.1-24(7) also requires that the level of the water in the pond be reasonably stable. Please include summary data from quarterly pond inspection reports to demonstrate that the pond typically holds water and that it will function as intended. Please indicate if this pond is typically dry or if it was dry in 2006 because of drought conditions. Water balance/budget calculations should be provided showing the amount of water which will be retained in the impoundment in a typical year and the number of animal unit days which it will provide along with a water quality sample showing the water is suitable for livestock. An appropriate discussion and analysis of the data must be included in the bond release application. (MDB & GAW)

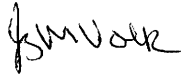
Added a 10 year depth history table (7A) along with discharge TSS levels, and other pond analysis to illustrate pond stability and quality. Since the actual 10 year depth data was added to the bond release document a water balance/budget was not done. Actual data illustrates actual depths better than modeled numbers. No guidelines could be found on water quality testing parameters for ponds during final bond release, unless designated a wetland. The only quality standard found was to illustrate the pond will meet its intended use. This can be shown by well vegetated surroundings, low TSS data, stable water levels, and actual cattle use in 2007. No problems have been noted. Although no quality data was specified in the guidelines, BNI will collect a surface water sample this spring.

19. Please include a discussion about the access trail across the drainageway immediately above the pool area of Pond 25-3. Discuss that there is a culvert under this access trail and why the access trail is being retained. (Presumably the surface owner wants it to accommodate access across the drainage – maintenance agreement not needed). If not provided in the permit and referenced in the bond release narrative, please provide calculations showing that the culvert is sized appropriately for the watershed. (GAW)

Added Attachment XII (Culvert Calculations) and respective text in Attachment VI.

If you have any questions, please contact the Center Office.

Sincerely,

A handwritten signature in black ink that reads "J M Volk". The signature is written in a cursive style with a large initial "J" and "M".

Jay M. Volk, Ph.D
Environmental Services Supervisor
BNI Coal