



Public Service Commission

State of North Dakota

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July 2, 2008

Dr. Jay Volk
Environmental Services Supervisor
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has reviewed the request for variance from the 10-year responsibility period for 31.88 acres in Section 26 received on June 24, 2008. The following items were noted that must be addressed prior to the recommending approval by the Commission.

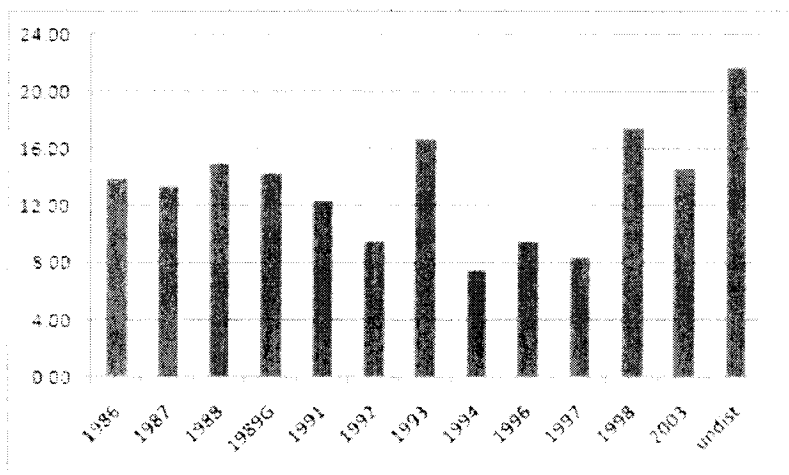
1. The map of the requested variance areas shows the 2003 reclamation area extending into Section 23. Since that area is not part of the variance request, please revise the map to show only the area being requested in Section 26. (SAS)
2. The variance request must contain a topographic map of the area which includes the watershed boundaries and locations of water management and where other support facilities were located. Please refer to the second page of Policy Memorandum No. 20 for guidance on the information to be included. (GAW)
3. The letter indicates that no penetrometer data was taken from the variance areas; however, several points were taken in the 2003 reclamation areas as shown in the table below. The average depth of the three points was 14.7 inches. The previous data reported to you by Dr. Steve Schroeder of the Reclamation Division did not include this data since he was only concerned with those areas 10 years or older, not the more recent reclamation areas. In addition, the sampling took place in the fall when differences in the vegetation of the growing crops would not have been visible if any were present. The data for the 2003 site was comparable to that with the other reclamation years but still significantly different than that of the undisturbed areas measured. Please revise the statements in the variance request accordingly. (SAS)

3 **RC-08-390** Filed: 7/2/2008 Pages: 2
Deficiency Letter Sent to BNI

Public Service Commission

Steve Schroeder

A	B	C	D	E	F	G	H	I	J
Year	Average	Inches to max depth							
Reclaimed	Depth	Rep 1	Rep 2	Rep 3	Rep 4	Rep 5	Rep 6	Rep 7	Rep 8
1986	14.00	14							
1987	13.38	10	14	14	11.5	17	13	13	14.5
1988	15.00	17	13						
1989G	14.33	17	14	12					
1991	12.36	14	24	11	11.5	6	12	8	
1992	9.50	4	6	13	15				
1993	16.67	24	16	16	24	10	10		
1994	7.50	8	7						
1996	9.50	8	11						
1997	8.40	10	11	2	11	8			
1998	17.50	12	23						
2003	14.67	17	16	11					
undist	21.75	24	24	21	18				



If you have any questions, please contact this office.

Sincerely,

James R. Deusch
 Director
 Reclamation Division