



Public Service Commission

State of North Dakota

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March 31, 2009

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 BNI Coal's February 17th technical deficiency responses and changes to the applications for Bond Release No. 1 to Permit BNCR-8006, Bond Release No. 7 to Permit BNCR-8106, Bond Release No. 1 to Permit BNCR-8202, and Bond Release No. 8 to Permit 37. These applications request final bond release for tracts in Sections 23 and 26, T141N, R84W, at the Center Mine. The following items must be satisfactorily addressed prior to further action on the applications:

Section 26:

1. The second paragraph on page 2 of 14 of Attachment VI includes a general statement about the amounts of fertilizer used but Mr. Meckle's letter in Attachment XI states that he doesn't know how much fertilizer was used. Please explain. Mr. Meckle also mentions that he doesn't think BNI's scale is properly calibrated. Please discuss when the scale was calibrated. (GAW)
2. The last paragraph on page 5 of 14 of Attachment VI states that Rod Meckle weighed the bales annually, but if that was the case why is a value of 1300 lbs/bale used for every year? The 1300 lb value is certainly reasonable, but we would expect some variance from year-to-year or between cuttings. Please explain. (GAW)
3. The unadjusted yield standards for oats and sunflowers stated in the second paragraph on page 6 of 14 of Attachment VI are incorrect. The oats value of 47.7 should be 56.1 and the sunflower value of 1417.1 should be 1320 lbs/acre as shown in Table 3 on page 7. (GAW & SAS)
4. The acreage values listed in the second paragraph on page 6 of 14 of Attachment VI do not match the acreage values listed in Table 3. Please correct. (GAW)

5. With the difficulty in reading some of the information on the field sheets, please include summary tables of the scale data (such as those e-mailed to Guy Welch of the Reclamation Division staff on March 12, 2009) in Attachment VI to facilitate review of the data and calculations by those not familiar with the data for the two years of data being used to prove productivity. (GAW & SAS)
6. The production ratios listed on page 6 of 14 (second and third paragraphs) of Attachment VI do not match the values listed in Table 3. Please correct as needed. (GAW & SAS)
7. The conversion value being used to convert corn yields to wheat yields in Table 3 of Attachment VI is not currently included in our guidelines. Please indicate that the value was approved by personal communication with Reclamation Division staff. (GAW & SAS)
8. The left column on the 2003 Scale Weights sheet (Attachment XI) is not legible. In addition, it is not clear if the four values above the "oats for seed" row or the bottom are wheat weights. Please provide a legible copy that provides complete, clear and accurate information. (GAW)
9. A sheet labeled "BNI Scale Weights" showing estimated truck weights of crops (dated 7/30 – 8/26) is included in Attachment XI, but the sheet is neither signed nor dated. It is not even clear which year the values were obtained. Please clarify. (GAW)
10. The Excel spreadsheet that was e-mailed on March 12th to the Reclamation Division staff indicated that the wheat dockage was 2.8% in 2005; however, elevator receipts indicating the wheat dockage were not included in Attachment XI. The third paragraph on page 5 of Attachment VI states that a 2.0% dockage value was used in instances where an elevator slip was not provided. Please provide elevator slips showing the 2005 wheat dockage value or otherwise revise the dockage value as necessary. (GAW & SAS)
11. The yield values listed on Rodney Meckle's letter dated January 30, 2009 (Attachment XI) do not match the values being used to demonstrate revegetation success (Attachment IV). Please provide an explanation for the apparent differences in the bond release application. (GAW)
12. BNI is assuming the tare weight of the truck is 28,640 lbs as the weight of 58,640 lbs (2003 scale weights Attachment XI) is an obvious mistake. However, it would appear that a tare weight of 29,050 lbs should be used as this value is used in all other instances (one wheat load and all oat loads). (GAW)
13. In Attachment XI, please provide an estimate of the moisture content of the sunflowers that were harvested in 2003. Using high moisture content truck harvest weights can provide misleading yield data. (DKM)

Section 23:

14. Narrative in the first and second paragraphs on page 2 of 30 and the second paragraph on page 4 of 30 of Attachment VI state or indicate that a pond was removed sometime prior to 2003. Please identify which sediment pond was removed. It is this reviewer's understanding that Pond 23-7 was reshaped in 2003 in conjunction with reclamation of a haulroad, but that a pond was not removed. Please review the reclamation history of the tract and clarify as necessary so that the information is accurate. (GAW)
15. Please identify the unit of measurement of the values in the tame pastureland seed mixture in the table on page 2 of 30 of Attachment VI. (GAW)
16. Please edit the sentence in the first paragraph on page 6 of 30 of Attachment VI, which incorrectly states that there are no specific cover standards for tame pastureland. The specific ground cover standard for tame pastureland is 73% ground cover which is based on ARS research. However, there are no specific diversity and seasonality standards for tame pastureland. (GAW)
17. In the cover narrative on page 6 of 30 of Attachment VI, please address if the perennial species included in the approved seed mixtures are present and if any non-seeded species are present which may be considered detrimental to the post-mine land use as required by our Revegetation Success Standards Guidelines Document, page II-E-7. In addition, please provide an explanation why the cover sampling data in 2004 does not show any western wheatgrass being present while the 2005 data indicates that this species comprises 29.4% of the composition. Similarly, intermediate wheatgrass comprised 14.3% of the relative composition in 2004, but was apparently not detected in 2005. Considering that both are perennial species it would make sense that both species should have been present both years that measurements were taken. (GAW)
18. In the Hydrology Narrative that begins on page 6 of 30 of Attachment VI, please reference the attachment that shows the location of the ponds that are being retained as permanent features. Currently the ponds are not shown on any of the maps, but they should be identified on the map that shows the post-mine land uses, presumably Attachment V. (GAW)
19. Follow-up to Original Items No. 57/Item No. 19 of our Jan. 27th letter: Please revise the second paragraph on page 7 of 30 of Attachment VI to clarify the location of the attachment that includes the water quality sample for Pond 23-6 taken in September of 2008. The referenced attachment cannot be found. In addition, in the bond release application, please mention that Revision 48 to Permit BNCR-8106 addresses the post-mine rehabilitation of sediment Ponds 23-6 and 23-7 (NDAC 69-05.2-16-19) and the fifty-year six-hour precipitation event spillway requirement for permanent ponds as required by NDAC 69-05.2-16-09 (9) if that is the case. (GAW)
20. Follow-up to Original Item No. 57/Item No. 19 of our Jan. 27th letter: The last sentence of the second paragraph on page 7 of 30 of Attachment VI states that "Pond 23-7 is not used for livestock" and apparently no water sample was taken to meet the requirements of NDCC 38-14.1-24.7. If this pond is not used for livestock, discuss what kind of a developed water resource the pond is serving as, and if it is functioning for its intended purpose. (GAW)

21. Attachment VII, Grade Approvals/Soil Depths Map, mistakenly identifies the drainageway where the permanent ponds are located as "Undisturbed Land". Please show the associated disturbance areas for the ponds and their access corridors. (GAW)
22. Please provide the SPGM respread depths of the associated disturbance areas located in the SW¹/₄ of the NE¹/₄ of Section 23 on Attachment VII, Grade Approvals/Soil Depth Map. (GAW)

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James R. Deutsch
Director
Reclamation Division