



Public Service Commission

State of North Dakota

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December 11, 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 conducted a completeness review of BNI's application for Revision No. 25 to Permit BNCR-9702. The following items must be addressed/corrected before the revision application can be deemed complete and approval is given for publication of the newspaper notice. Please address the following items:

Instruction Sheet

1. Please correct "Revision 22" to read "Revision 25" under Volume I of the Instruction Sheet. (WTG)

Newspaper Notification

2. Please update the public advertisement as follows:
 - a) Include the post-mine land use changes within Section 21 and the changes with reclamation schedule in the last sentence of the first paragraph that summarizes the items/sections being revised.
 - b) The last sentence of the first paragraph indicates "The permit revision will update the limit of mining in Sections 21 and 32." This should be revised to indicate that additional mining is being proposed in Sections 21, 28, and 32 and that the limit of mining is being adjusted accordingly to reflect these proposed changes.
 - c) List the township and range legal descriptions on the map.
 - d) Indicate what line is the permit boundary and label the permit.
 - e) Identify and label the county roads and any other local landmarks, i.e. rivers, streams, etc. on the map.

- f) The coal ownership listing for the SE $\frac{1}{4}$ of Section 31 lists the ND State Land Department which is different than that listed in the permit that was updated with Revision 22. Please correct as necessary.
- g) The description for one of the areas in Section 33 currently reads "E $\frac{1}{4}$ NE $\frac{1}{4}$ and...". It appears this should be the "SE $\frac{1}{4}$ NE $\frac{1}{4}$ and...". Please correct as necessary. (GAW & SAS & WTG)

Revision Application Summary

- 3. Please update the Revision Application and Summary sheet to mention the changes occurring to the post-mine land uses in Section 21 as proposed by this revision, and mention all other changes not presently listed that are being proposed with this revision including the additional mining being proposed in Section 28. (GAW)

General

- 4. The revision application, revision summary and public notice state that the revision will revise the limit of mining in Sections 21 and 32. The plates included with the Revision 25 application, however, with the exception of Plate 4.12-1 (Post-Mine Land Use), also show the limit of mining as being expanded about 300 feet to the west in the NW $\frac{1}{4}$ of Section 28, thereby adding about 14 acres of disturbance. Please correct the application documents or the plates included with the revision application to make them consistent with regard to the revised limits of mining. (WTG)
- 5. As required by NDAC 69-05.2-05-02(1), as plates are updated please note the permit revision number on all plates submitted with Revision 25, with the exception of Plate 4.12-1 where the permit revision number is noted. Without a permit revision number on a plate, it is unclear with what permit revision the plate was most recently updated. (WTG)
- 6. Since additional mining is being proposed, please update the ownership and control information if necessary. (DKM)

Plate 2 – 1

- 7. Please clearly define and label the mining disturbance boundary, and label the section numbers (21, 28, and 33 are partially obscured) on Plate 2-1, as required by NDAC 69-05.2-05-02(1). (WTG)

Section 4.9 – Reclamation Schedule

- 8. Please update the Reclamation Schedule to address the changes proposed with Revision 25. It appears that mining plan changes may have affected the need for some of the variances from the contemporaneous reclamation requirements. Please review and updated accordingly. (GAW)

Section 4.10 – Backfilling and Grading

9. The location of several wetlands and developed water resources has changed in Section 21; however, the annual yield calculations have not been addressed to reflect the change in watershed acreage. Please update the annual yield calculation for the wetlands and DWR that have been moved. (MDB\WTG)
10. The routing and associated wetlands of Diversion 6-1 appear to be different than what was approved in Revision 24. If these are being changed with Revision 25, please provide new calculations for the diversion. (MDB\ WTG)

Section 4.14 – Reclamation ... Purposes

11. With the additional mining and changes to the post-mining topography it appears that the worst case bond determination will need to be updated. Please update as appropriate. (MDB)

Other

12. Since BNI is proposing to extend mine pits further westward into the W¹/₂ of Section 28 with this revision, it appears an update to the approved Resource Recovery and Protection Plan (R2P2) will need to be submitted to the BLM with copies to the PSC. The updated R2P2 needs to be part of the application package for Revision 25. (DKM & JRD)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division