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December 19, 2008

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PUBLIC SERVICE COMMISSION

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

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

RE: Revision 25 to BNCR-9702

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated December 11, 2008. In this letter you listed technical deficiencies that must be addressed before the revision can be deemed complete. The following is a listing of the deficiencies followed by our response:

Instruction Sheet

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

Updated as requested.

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.

Updated as requested.

- 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.

Updated as requested.

- c) List the township and range legal descriptions on the map.

Updated as requested.

3 RC-08-889 Filed 12/19/2008 Pages: 4
Response to Completeness Deficiency Letter Filed
BNI Coal, Ltd.
Karene Hall

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

- d) Indicate what line is the permit boundary and label the permit.

Updated as requested.

- e) Identify and label the county roads and any other local landmarks, i.e. rivers, streams, etc. on the map.

Highway 25 was labeled on the map. The county roads in Oliver County do not have numbers on them that would identify them.

- 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.

The State of ND was listed as a coal owner because there is a cloud of judgment on coal ownership between them and Alvin Gaines.

- 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)

Updated as requested.

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)

Updated as requested.

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)

The first pages of the application, the public notice and the revision summary have all been updated.

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)

We agree that adding revision numbers in the title block area of the plate is helpful when sorting through the various permit revisions. We will make this a standard practice in all future plate revisions.

6. Since additional mining is being proposed, please update the ownership and control information if necessary. (DKM)

The ownership and control has been updated.

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)

Plate 2-1 was updated as requested.

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 4.9 and Plate 4.9-1 “Reclamation Variance Areas” have been modified accordingly to address this request.

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)

The annual yield calculations for the Section 21 wetland have been modified and can be found on Plate 4.10-11 “Wetland Area Section 21”. Because there is the potential to supply the developed water resource area with a well or rural water, the yield calculations for the DWR have not been calculated.

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)

There have been no changes to the routing of Diversion 6-1 in Revision 25. The confusion comes from an error on the Plate 4.12-1 “Post Mining Land Use”. This error has been corrected.

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)

The proposed mineplan change will require at least a minor revision to the worst case bond. A revised worst case bond determination will be submitted in the future. BNI understands that revision 25 cannot be approved without an acceptable worst case bond determination and that any delays on our part in submitting it may delay the approval of Revision 25.

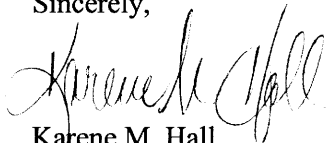
Other

12. Since BNI is proposing to extend mine pits further westward into the W½ 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)

In light of discussions with Steve Van Matre a map illustrating the proposed 14 acre addition to the currently approved R2P2 should suffice. This information was sent on 12-15-08 and a written response when received will be incorporated into the review.

If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,



Karene M. Hall
Permit Coordinator