



Public Service Commission

State of North Dakota

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April 22, 2009

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

Dear Dr. Volk:

The Reclamation Division has conducted a review of the technical deficiency responses for Revision No. 25 to Permit BNCR-9702 that were received March 30, 2009. The following items were noted during that review that must be addressed prior to approval of the revision:

Section 3.4 – Surface Water

1. Follow up to Original #13: The watershed calculations for the pre-mining and post-mining watersheds were addressed properly; however, please provide narrative for each watershed which has a runoff volume change of greater than 5%, describing the downstream effects it may have on any landowners and steps which will be taken to mitigate any issues, examples are flooding of fields, lack of water in dugouts, sloughs, erosion of drainageways, etc. (MDB)

Section 4.12 – Postmine Land Use and Revegetation

2. Original Item No. 8: Please move the wetland that is to be created in Section 21 further up the drainage so that the developed water resource which is located immediately below the wetland will receive some runoff from lighter precipitation events. Although the watershed shows a surplus of runoff (1.3 ac. ft out of a total of 3.66 available), we believe water quality in the developed water resource will be diminished without recharge from less significant events. (GAW)
3. Follow-up to Original Item No. 10: Although the March 27, 2009 response stated that Plate 4.12-1 was updated, it does not appear that the new plate was submitted with the response. (WTG)

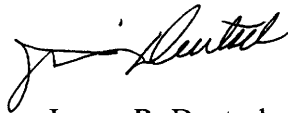
Section 4.1.4 – Reclamation Cost Estimate

4. Please update the narrative to correctly identify the bonding instruments which are being used. A self-bond is no longer in place and the majority of the bond is covered by a Surety Bond. (MDB)
5. Please update the Haul Road Reclamation portion of the narrative to state that one foot will be removed as shown in the cost estimate and discussed several times. (MDB)
6. Please update the Inactive Coal Stockpile narrative to state that it will be respread with subsoil and topsoil. (MDB)

As noted in a previous e-mail, a bond amount determination has been made based on the revised worst-case reclamation cost estimate is part of Revision No. 25. The minimum bond amount is now \$26,655,750 for the consolidated bond area that includes Permit BNCR-9702.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division