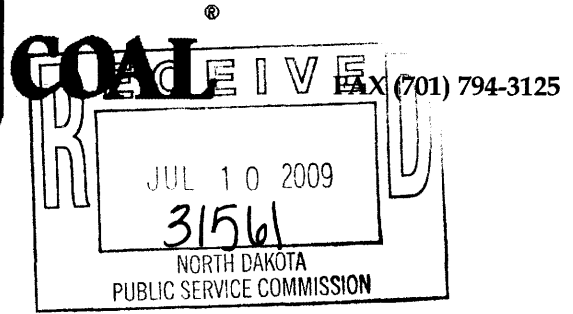


PHONE (701) 794-8734



July 8, 2009

FROM DIRECTOR - RECLAMATION DIV.

Date: \_\_\_\_\_

Action: \_\_\_\_\_

Info. Only: \_\_\_\_\_

Info & File: \_\_\_\_\_

Mr. Jim Deutsch, Director  
Reclamation Division  
Department 408  
600 East Boulevard Ave  
Bismarck, ND 58505-0480

Re: Bond Release No. 11 for Permit BNLS-8109

Dear Mr. Deutsch:

This submittal contains a response to your letter to us dated June 10, 2009. In this letter you listed technical deficiencies that must be addressed before the bond release can be approved. Enclosed, please find three copies of instructions and the updated items to address the deficiencies. A complete copy of all notification letters is also enclosed.

**Application Form**

1. The amount of the requested bond release is incorrect. See deficiency no. 25. Please correct as appropriate. (SAS)

*Revised application form as requested in technical No. 25. Changed Tract 16-JTH-crop to \$2,748 and the total requested bond to \$5,287.00.*

**Attachment III – Proposed Newspaper Advertisement**

2. The first paragraph should indicate that these tracts were initially permitted in Permits 24 and 48 and later re-permitted into Permit BNLS-8109. The approval dates for these permits should also be listed. Please revise accordingly. (SAS & GAW)

*Updated as requested.*

4 RC-09-63 Filed 07/10/2009 Pages: 7  
Response to Deficiency Letter Filed by BNI  
BNI Coal, Ltd.  
Jay Volk



3. The 1976 Larson Annual Mine Maps indicate coal was uncovered in Bond Tract 9b in 1973. Therefore, not all of Tract 9-LL was initially disturbed in 1978 as stated in the draft advertisement. The statement that "coal removal did not occur" is incorrect. Please review your records and update the newspaper advertisement accordingly. (GAW)

*Revised newspaper advertisement to illustrate a portion was disturbed and mined in 1973 while the majority of the tract was disturbed in 1978.*

4. The amount of proposed bond release is incorrect in the draft notice. See deficiency no. 25. Please correct as appropriate. (SAS)

*Revised the amount requested (\$5,287.00) for bond as dictated by technical No. 25.*

5. Road is misspelled in the fifth line in the description of the second tract. Please correct. (SAS & BEB)

*Revised.*

6. The phrase "...last 10 years and have since been seeded annually." in the description of the second tract is confusing. We recommend that this phrase be reworded to say "...last 10 years the area has been seeded annually." (SAS)

*Revised as requested.*

#### **Attachment IV – Notification...Addresses**

7. There seems to be some differences between the bond release application and the permit as to the surface and contiguous surface owners that should be notified. Please explain the following differences:
  - a) We are uncertain why Michael and Wanda Ely are included in the listing for the bond release notice. Their land is not contiguous to either bond release tract.

*They were removed from the mailing list.*

- b) A notification letter is proposed to be sent to Leo C. Logelin; however, the permit indicates that Tract 9-LL is owned by Shawn, Shannon, and Dustin Logelin. Please explain or make the necessary corrections.

*Added Shannon and Shawn Logelin to the mailing list. No address could be found for Dustin Logelin.*



- c) A notification letter is proposed to be sent to Dagne Holte; however, the permit indicates that the S½ of Section 16 is owned by Leonard Holte. Please explain or make the necessary corrections. (SAS)

*Leonard Holte passed away and his wife is Dagne Holte.*

8. Within the letters themselves, the following should be corrected:
- a) Road is misspelled in the fifth line in the description of the second tract.
  - b) The phrase "...last 10 years and have since been seeded annually." in the description of the second tract is confusing. We recommend that this phrase be reworded to say "...last 10 years the area has been seeded annually." (SAS)

*Landowner letters were revised with the requested changes.*

#### **Attachment V – Aerial Photo**

9. If possible, please change one of the colors for one of the years (2005 or 2006) for the Tract 9-LL-Crop sampling sites. The similarity makes it difficult to distinguish one year from the other. (SAS)

*Changed the 2006 color to green.*

#### **Attachment VI – Tract...Success**

10. Bond Release 10 to BNSL-8106 is labeled at the bottom of every page in Attachment VI. Please correct. (GAW & BEB)

*Changed footnote to Bond Release # 11 instead of 10. The remainder was not changed and deemed misprinted in the technical as BNSL-8106 instead of the currently listed BNLS-8109.*

11. Please refer to Attachment VII that shows the topsoil and subsoil respread thicknesses within each of the bond release tracts. (SAS & GAW)

*Although Attachment VII was referenced multiple times in both bond release tracts it was assumed you were referencing the addition under the history of tract paragraph following the discussion on topsoil/subsoil depths; an additional reference was added under both tracts in these locations.*

12. Please add a note in the Post-Mining Land Use Section of Attachment VI on page 1 of 16 to account for 0.15 acres of township road in the tract. Also, include a brief narrative in the History of Tract Section to mention that the mine haul road crossed the township road and it was reconstructed to the satisfaction of Keller Township. (GAW)



*Under the Post Mining Land use 0.15 acres was added as Township Road. A additional clarification that the haul road crossed the township road was added to history of tract, although it has already mentioned the "approval document for the rebuilt road on the south section line can be found in Attachment IX of on page 17 of the permits reclamation plan", which indicates it was rebuilt and approved by the Keller Township.*

13. A map included with the 1976 Larson Annual Mine Maps shows that coal was uncovered in Bond Tract 9b in 1973. Please review your records and update the Law Liability and History of Tract Section of Attachment VI on page 1 of 16 accordingly. (GAW)

*Revised Law Liability and History of Tract Sections as related to your request.*

14. Please update the History of Tract Section on page 1 of 16 to discuss if SPGM was salvaged from the area mined in 1973 (Tract 9b). The narrative should also note that the entire tract was reclaimed according to present law standards even though SPGM may not have been salvaged from the whole area. (GAW)

*Updated history of tract section as requested in first paragraph on page 2.*

15. In the History of Tract Section on page 1 of 16, please mention how many acres are actually being cropped in Tract 9-LL. If portions of the cropland are not being used to grow annually seeded crops, then indicate what the other acreage is being used for. Note: the 2005 aerial photograph shows that portions of the tract are not being tilled. Please explain. (GAW)

*Updated as requested on page 1, first paragraph in History of Tract.*

16. The third paragraph on page 2 states that the durum crop was seeded on May 20, 2006, but Table 1 indicates a May 28, 2006 seeding date. Please review and correct. (SAS)

*Table 1 was revised to match text.*

17. The first sentence of the second paragraph on page 2 of 16 of Attachment VI is confusing. Please review and revise for clarity. (GAW)

*First sentence of second paragraph was revised.*

18. In the History of Tract narrative on page 2 of 16 please discuss how much subsoil was respread on the disturbed areas. Also, indicate if there was any subsoil respread on the area mined under the 1973 reclamation law and whether or not the haul road was constructed using subsoil. (GAW)



*Revised the History of Tract narrative in accordance to the April 14<sup>th</sup>, 1980 memorandum to the commissioners, as supplied by Guy.*

19. The first paragraph on page 3 states that sampling dates are shown on Tables 2 and 3. The sampling data is provided on Table 2 and 3, but not the dates. Please correct. (SAS)

*Sample dates were added to tables 2 and 3.*

20. Please footnote Table 1 on page 4 of 16 to indicate that although the farmer did not harvest the field, hand samples were taken for the flax in 2005. (SAS)

*Footnote was added to Table 1 as requested.*

21. BNI needs to use the soil mapping units from the September 2007 soil survey conducted by C. J. Heidt for the Tract 9 control area expected yield calculations in Tables 2 and 3 on pages 5 and 7. Based on this soil survey, it appears about half the area is Noonan Loam (A slope with a PI of 45) and the other half is Livona Loam (B slope with a PI of 67). Please revise the calculations and adjusted standards in Table 2 and 3 accordingly. (JRD & GAW)

*Using the September 2007 soil survey from Prairie Soil Consulting the calculations in tables 2 and 3 were updated accordingly.*

22. In the first paragraph of the "History of Tract" on page 9, please indicate that Tract 16-JTH was initially permitted under Permit 48 and later re-permitted under Permit BNLS-8109. (SAS)

*Updated as requested.*

23. The first sentence of the first paragraph on page 10 of 16 of Attachment VI is confusing. Please revise for clarity. (GAW)

*Revised.*

24. Page 11 of 16 discusses a climatic correction factor for the 2004 data. No climatic correction factor was used but a productivity ratio between the unadjusted yield standards for the reclaimed and control area was used instead. Please revise this discussion to indicate that a version of the Productivity Ratio (Correction Method 4) was used since the mustard is a minor crop. (SAS)

*Revised paragraph to indicate a productivity ration and version of correction method 4 was used.*



25. The actual bond amount to be requested for Tract 16-JTH-Crop on page 9 of 16 and in Table 7 on page 16 of 16 should be \$2,748 and **not** \$2,750. Tract 16m release should be 6.96 acres X \$200/acre = \$1392, not \$1394. The following need to be corrected accordingly:
- Page 1 of the application form for the total amount requested.
  - The requested amount in the newspaper advertisement in Attachment II.
  - The bond requested on pages 1 and 9 of 16 in Attachment VI.
  - The bond amount for Tract 16m and total amount requested in Table 7 on page 16 of 16 in Attachment VI.

*Revised each section as requested.*

26. There are a couple of sentences in the Hydrologic Assessment narrative for Bond Release 11 that references SO3 when summarizing water quality data and analyses of the Post-Mine Hydrologic Assessment. We're assuming the narrative reference to SO3 is actually intended to describe Sulfate concentration (SO4). Please revise the narrative accordingly. (BEB)

*Revised.*

27. The Hydrologic Assessment for Bond Release 11 provides a general overview of water level and water quality trends for the bond release area based on information gleaned from ground water monitoring well 162-94-17 BDB1. The last sentence of the assessment narrative references surface water quality data and should be changed to correctly reference ground water quality data. Please revise. (BEB)

*Revised.*

#### **Attachment VII – Soils...Amounts**

28. Please identify the soil mapping units on the Soils Map, Attachment VII, rather than the Soil Series Name. The legend of the map needs to be updated to show the Soil Map Unit Boundary rather than the soil series. Also, the soil mapping units for Control Area 1 need to be based on the September 2007 soil survey conducted by C. J. Heidt. (GAW, WTG & JRD)

*Inserted Soil Map Unit Symbols on Attachment VII in place of the previously listed soil series names and updated legend accordingly for both tracts.*

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**Attachment VIII – Contour Map**

29. Please update the bond release tract delineation line to show that Tract 9-LL encompasses a portion of the township road. The tract legal description (Attachment I) shows the point of beginning as the south quarter corner of Section 9, which is the center of the township road. (GAW)

*Revised.*

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "Jay M. Volk".

Jay M. Volk, Ph.D  
Environmental Supervisor

**BNI COAL, LTD.**

**1637 BURNT BOAT DRIVE • P.O. BOX 897 • BISMARCK, ND 58502**