



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

September 11, 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's July 13, 2009 response to our June 9, 2009 deficiency letter for Bond Release No. 12 to Permit BNLS-8109 and otherwise completed our review of this application following the August 11th bond release inspection. The following items need to be satisfactorily addressed prior to approval of the bond release application:

Attachment III - Proposed Newspaper Advertisement

1. Follow-up to original deficiency #1: Please submit a copy of the newspaper advertisement that was published. It was changed from the current version in the application to include the lands in Bond Release #11. (SAS)

Attachment VI - Tract...Success

2. Follow-up to original deficiencies # 10 & 11: In the third paragraph on page 2 of Attachment VI, please include a discussion why a variance from the 10-year revegetation period is not needed for the repair work that was completed after year 5 of the responsibility period. Please refer to PSC Policy Memorandum No. 20 to Mine Operators. (GAW)
3. Please show the formula, or add a reference to the formula in the PSC's revegetation success standards, that was used to calculate the 't' value in Tables 2, 3, and 4 on pages 7, 9 and 11, respectively. (JRD)

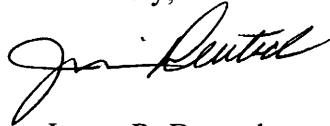
Attachment IX - Pond #9 Data

4. Follow-up to original deficiency #31: The Pond 9 design plans in Permit BNLS-8109 indicate the emergency spillway will be 25 feet wide with 3:1 side slopes, and an elevation of 1989. However, the design information submitted with the bond release application shows different design criteria than that listed above. Please discuss these differences in the bond release narrative and any effects on anticipated flow rates through the spillway. (MDB)

Also, prior to approving this bond release application, the emergency spillway of Pond 9 will need to be stabilized and fenced to minimize the possibility of future disturbance by farming operations.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division