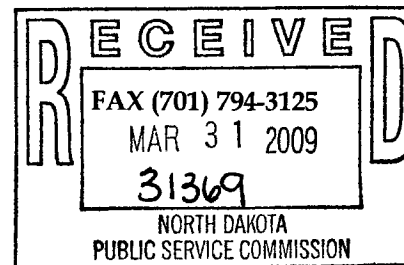


PHONE (701) 794-8734



March 31, 2009

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: Renewal No. 5 and Revision 33 to Permit BNCR-8202

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated February 05, 2009. In this letter you listed technical deficiencies that must be addressed before the renewal and revision can be approved. The following is a listing of the deficiencies followed by our response:

Section 1.7.2 - Controlling Officers of BNI and Allete

- 1. Please update, if necessary, the listing of the officers of BNI and Allete on pages 1-2 through 1-4, as required by NDCC 38-14.1-14(1)(e). (SAS)

No changes necessary.

- 2. Please update the organizational chart for BNI on page 1-5. (SAS)

Updated as requested.

Section 1.9 - Surface and Coal Ownership

- 3. If any changes have occurred, please update the listing of the surface ownership within and adjacent to the mining permit. Any changes made within this section should also be reflected on Plate 9, Ownership Map, as required by NDCC 38-14.1-14(1)(c) and NDAC 69-05.2-06-01(1). (SAS)

No changes necessary.

Section 1.12 - Other Licenses and Permits

- 4. Please update this section to include the two additional surface water appropriation permits granted by the State Water Commission (4064 and 4065), and also update the coal exploration permit if necessary. (WTG)

Updated as requested.

BNI COAL, LTI
2360 35th Ave SW, Center,

Section 1.13 - Past Violations

5. Please update the past violation/compliance section, including the discussion on NOV-0701, as required by NDCC 38-14.1-14(1)(g). (SAS)

Updated as requested.

Section 3.3.1 - Section 21 Mining Area

6. The narrative on page 3.3-23 of the Probable Hydrologic Consequences (PHC) section states that there are no springs in the mining area or adjacent areas. Information on the Spring/Seep Map, as well as the narrative in Section 3.4 Surface Water Study Area, however, describes the many pre-mine springs and seeps in the permit and adjacent area. Please update the ground water PHC with information to reflect the presence of the pre-mine seeps and springs and the effects of mining on these resources. (BEB)

Updated.

Section 3.4 - Surface Water Study Area

7. Information in the permit describes a combined flow rate of over 55 gallons per minute from about a dozen seeps, springs and one flowing well that all provided recharge to pre-mine dugouts in Section 22 and the water-filled abandoned strip mine pit, as well as providing downstream surface flow to an ephemeral tributary drainage to Square Butte Creek in the W½ of Section 23. NDAC-69-05.2-16-17 describes water rights and replacement where the water supply has been affected by contamination, diminution, or interruption proximately resulting from surface mining activities. The loss of ground water resources by mining activities is required to be replaced as outlined in the Law and Rules. Please provide your plan for replacement of lost ground water resources that were available and required in maintaining water levels of pre-mine dugouts in Section 22, while concurrently providing the resource of surface water flow to other downstream users to the north in Section 23. (BEB)

Revised document with proposed permanent structures.

Section 4.1 - Mining Operations and Waste Disposal

8. Please update the Dragline Erection Site narrative on page 4.1-2 to include more details of the onsite sewage treatment system and the Center public water system water supply line that were installed at the dragline erection site in the spring of 2003. Also, include plans for removal or abandonment of the facilities during site reclamation, as required by NDAC 69-05.2-13-11(2). (WTG)

Updated document to include waterline and septic field information.

9. Please update the Dragline Erection Site narrative on page 4.1-2 to include a description of scarifying the subsoil prior to replacing the topsoil at the site during reclamation, as required by NDAC 69-05.2-15-04(1). Subsoil compaction that will restrict root penetration has likely occurred at the site while the dragline was being erected. (WTG)

Revised in accordance to NDAC 69-05.2-15-04(1).

10. Please update the List of Equipment on Page 4.1-3. (MDB)

Updated equipment list.

Section 4.2 - Existing Structures

11. Please update the General Mine Plan Map (Plate 12) to show changes in haulroads, utility corridors, and support facilities, as required by NDAC 69-05.2-09-02(7). Specifically, please define the dragline erection site and the approximate locations of the water supply line and septic system that were installed at the site. (WTG)

Inserted and revised information requested.

Section 4.5 - Transportation Plan

12. Page 4.5-1 states that topsoil will be respread in haulroad ditches to facilitate a vegetative cover, unless otherwise noted. It is recommended that this practice not be implemented because runoff from haulroads must, at a minimum, pass through a best management practice prior to passing over topsoil (NDAC 69-05.2-24-01(2)(a)). It is understood that no future development of haulroads is currently proposed for this permit area; however, if this practice has been done in the past it is suggested that the ditches be stripped of topsoil, or that BMPs be installed at the interface of the road and ditch. Please address the wording, as well, in the permit. (MDB)

No topsoil has been respread in the ditches. The text has been revised.

13. Please update the location of the current haulroads on Plate 4.5-4 (Permit Boundary Overall Plan), and any other plates on which the haulroads are depicted. (MDB)

The Permit Boundary Overall Plan has been updated.

14. Please update the General Construction Practices narrative on page 4.5-1 to state that haulroads constructed of subsoil will be ripped, plowed, and scarified during restoration, as required by NDAC 69-05.2-24-07(1)(d). (WTG)

Updated in accordance with NDAC 69-05.2-24-07(1)(d).

Section 4.6 - Surface Water Management Plan

15. Please clarify the issue of post-mine developed water resources for Section 22. The narrative on page 1 of Appendix N states that Ponds 22-4, 22-5, and 22-7 are intended to be permanent ponds and will remain as stock dams following reclamation, and that Ponds 22-1, and 22-2 are to be reclaimed following mining. The narratives on page 3.4-4 of the Surface Water section, and on page 4.6-1 of the Surface Water Management Plan section, state that BNI intends to request approval to leave Sedimentation Ponds 22-1, 22-2, 22-4, 22-5, 22-7, and 22-10 as permanent structures. In contrast, BNI's July 31, 2007 response to Item No. 7 of Revision 32 (Midterm Permit Review of BNCR-8202) concerning developed water resources, and the narrative on page 4.12-1, state that all ponds in Section 22 should be considered temporary and that final pond status will be determined on a case by case basis as reclamation progresses. Additionally, in a 1986 landowner preference statement letter to BNI from Oliver Light, he requested that all sedimentation ponds on his land (Section 22) be left in place after mining so that he will have some stock ponds. Please provide the necessary

updates to the various permit sections to clarify BNI's intentions of providing replacement developed water resources in Section 22 and provide the necessary consistency between the various sections. (BEB/MDB/SAS)

BNI intends that all ponds in Section 22 be left as permanent structures following mining. Appendix N and Section 4.12 have been modified to reflect this. No changes to sections 3.4 or 4.6 are required. Because of a change in surface ownership the only pond that remains effected by the Oliver Light landowner preference statement is Pond 22-1. A footnote has been added to the preference statement to clarify this.

16. As a follow-up to the above item, if any ponds are to remain as permanent structures, calculations will need to be submitted showing that spillways have the capacity to safely discharge a 50-year, 6-hour precipitation event. Additionally, annual yield calculations for the contributing watersheds, and the State Water Commission's approval of the impoundments that have a capacity greater than 12.5 acre-feet, are also required. If the ponds are temporary, please submit a time line for removing the structures and reclaiming the affected areas. (MDB)

This information will be submitted prior to any application for bond release.

17. The embankments of Ponds 22-4, 22-5, and 22-7 are shown as subsoil stockpiles on the annual map and in the soils handling plan. If these ponds will remain permanent structures, the quantity of material (approximately 16,000 cubic yards) needs to be removed from the total available materials for SPGM respread. Also, address how this quantity of subsoil will be made up for in the inventory. (MDB)

Ponds 22-4, 22-5, and 22-7 are proposed to remain as permanent structures. The subsoil stockpile quantities will be removed from the annual SPGM stockpile inventory sheet and will be resubmitted. The soils handling plan is in the process of being updated and the date of submittal will be upcoming. The quantities for these subsoil stockpiles will be removed from the total available materials for SPGM respread. The plan for making up the lost inventory will be determined once the actual amount of subsoil surplus is calculated.

Section 4.7 - Water Monitoring and Drill Hole Reclamation Plans

18. The Monthly Surface Water Sampling narrative on page 4.7-1 states that surface water sampling sites are shown on Plate 3.4-1, but it does not appear that the plate is in the permit. The Surface Water Sampling Site Location Map for the Center Mine was most recently updated January 28, 2008 as Plate 9B with Revision 47 to Permit BNCR-8106. Please make the changes necessary to match the narrative to the January 28, 2008 map, and add the map to the permit. (WTG)

Inserted Plate 4.7-1a.

Section 4.9 - Mining and Reclamation Schedule

19. Please update Section 4.9 to reflect current reclamation timelines and conditions. (SAS)

Section 4.9 was last updated in 2007. The summary provided at that time is still accurate and no further revisions are necessary.

Section 4.10 - Backfilling and Regrading

20. Please update the Post-Mining Topographic Contours Map, Plate 15A, to reflect the actual as-built post-mining topography since significant topographic changes were allowed during the grade approval process, and submit a post-mining area slope map as required by NDAC 69-05.2-09-11 (3) and NDAC 69-05.2-08-02 (3). (GAW)

Plate 15A was updated to reflect the as-built post-mining topography and Plate 15B was added showing post-mining slope analysis, both in accordance with NDAC 69-05.2-09-11 (3) and 69-05.2-08-02 (3).

Section 4.11 - Suitable Plant Material (SPGM) Removal and Replacement

21. Please correct the narrative in the first paragraph on page 4.11-1. As written, the narrative incorrectly states that soil mixing agreements have been secured across all mine permits; however, there are no mixing agreements with the landowners in Section 21 of Permit BNCR-9702. (WTG)

No update made. BNI does in fact have mixing agreements, including with the landowners in Section 21.

Section 4.12 - Revegetation and Postmining Land Use

22. In the Revegetation Methods narrative, please mention the conservation field windbreaks located in the cropland in the SW¼ of Section 26, and include information regarding species planted, number of rows, and planting arrangement as required by NDAC 69-05.2-09-11 (6). (GAW)

Updated as requested.

23. It appears that the unadjusted cropland yield standard for the BNI owned land in Section 22 was developed using the pre-mine soils that occupied areas where the cropland is being reclaimed (mine spoil soils included). This method is incorrect. The post-mine cropland standard should be compared to the pre-mine cropland that existed in this tract prior to mining. Therefore, the soils on the pre-mine cropland should be used to develop the standard. The balance of the disturbed soils in Section 22 should be used to develop the hayland standard. Undisturbed pre-mine cropland areas can be included in development of the cropland standard if the area is going to be managed as a single field that includes the reclaimed land, and whole field harvesting techniques are going to be used. Otherwise, undisturbed areas should not be included in the standards. Please review and recalculate the unadjusted cropland and hayland productivity standards for BNI's land in Section 22. (GAW)

Following a discussion with Jim regarding the active use of this section and the timeframe until final bond release could be applied for, BNI removed the existing standard from the permit. A standard will be made following final reclamation of the area and prior to collecting data for final bond release.

24. Please develop unadjusted cropland and hayland standards for Dorothy Light's property in Section 22. Because only a few acres of this property were disturbed, it is not appropriate to develop the standards including soils from all adjacent undisturbed lands. (GAW)

Following number 23's response, this standard will be developed following final reclamation of the area and prior to collecting data for final bond release.

25. Page 4.12-3 indicates that technical standard #1 will be used, namely a cropland reference area, along with climatic correction method #2 for Section 22. This is not a correct procedure because when using technical standard #1 the adjusted standard is calculated by measuring the yield from one of the reference area soils and following the steps outlined in the revegetation guidelines on pages II-C-5 and II-C-6. Climatic correction method #2 is only used when a control area (as defined on page II-C-11) has been identified and approved. Please revise this language as necessary. In addition, if a reference area or control area is to be used, it must be identified and approved by the Reclamation Division at least two years before the collection of bond release data (see page II-C-5) and identified in the permit. (SAS)

Updated Section 22 as requested. Previously it was stated technical standard #1 will be used, in which this changed to technical standard #2, along with climatic correction method #2. It will be BNI's intent to use a control area for hayland and cropland for section 22, which will be proposed at least two years before the collection of bond release data.

26. The last paragraph on page 4.12-6 states that a hayland control area will be used to climatically adjust the hayland unadjusted standards. Please establish the control area at this time to ensure management is equivalent in effect during the responsibility period. See Section II-C-11 of our Guidelines and NDAC 69-05.2-08-08 (2) for reference/control area requirements. (GAW)

Again, as No. 23 and 24's response indicates, the standards as well as the control areas will be developed when the active use of this section decreases. BNI is also aware, as Section II-C-12 of your Guidelines indicates, "Establishment of the control area must occur at least two years prior to the first year that the reclaimed tract is harvested for comparison with the standard. An exemption from this two-year requirement may be granted if documentation is submitted to the Reclamation Division that demonstrates that the management of the control area for the previous two years has been equivalent in effect to that of the reclaimed area."

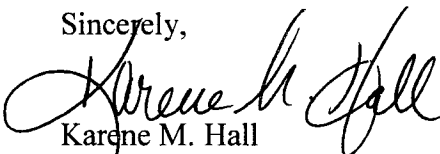
Section 4.14 - Reclamation Cost Estimate for Bonding Purposes

27. Please update the Worst Case Reclamation Cost Estimate for Bonding, including the narrative, that indicates the worst case scenario is in 2003, and the necessary calculations. (MDB)

The worst case bond is currently being revised in Permit BNCR-9702. Once that revision has been approved it will be incorporated into BNCR-8202.

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

Sincerely,


Karene M. Hall
Permit Coordinator



APPLICATION FOR RENEWAL OF PERMIT TO ENGAGE IN SURFACE COAL MINING AND RECLAMATION OPERATIONS
 PUBLIC SERVICE COMMISSION
 RECLAMATION DIVISION
 SFN 10566 (1-2004)

SCANNED
 Date 4-1-09
 File Renew application (31369)

| | |
|---------------|----------------|
| Date | March 31, 2009 |
| Permit Number | BNCR-8202 |
| State | ND |
| Zip Code | 58530 |

| | | | |
|-------------------------------------|----------------|----------------------------|-------------------|
| Name of Permittee BNI Coal, Ltd. | | Permit Number BNCR-8202 | |
| Address 2360 35th Avenue SW | City Center | State ND | Zip Code 58530 |

The above named hereby makes application for Renewal Number 5 of the above Permit Number in order to continue to engage in surface coal mining and reclamation operations within the area described below in the permit during the period from July 31, 2009 to July 31, 2014.

The reasons for requesting the renewal is attached and any changes to the matters set forth in the approved Permit are particularly described in the accompanying revision application.

The applicable public notice provisions of Section 38-14.1-18 of the North Dakota Century Code have been complied with. A copy of the advertisement is attached and affidavits of publications will be furnished to the Commission prior to issuance of the Permit Renewal.

Bond for surface coal mining and reclamation operations and liability insurance will be provided for the proposed period of renewal. Attached is a statement evidencing that the bond is sufficient and will continue in full force for the renewal period and that liability insurance will be provided for the renewal period.

| LOCATION | | | | ACRES |
|--------------------|----------|-------|--------|---------------|
| SECTION | TOWNSHIP | RANGE | COUNTY | |
| 22 | 142 | 84 | Oliver | 569.20 |
| 26 | 142 | 84 | Oliver | 317.28 |
| | | | | |
| TOTAL ACRES | | | | 886.48 |

| | |
|--|-----------------------------|
| Signature of Official <i>Karene M. Hall</i> | Title Permit Coordinator |
|--|-----------------------------|

VERIFICATION

| |
|------------------------------------|
| Name of Official Karene M. Hall |
|------------------------------------|

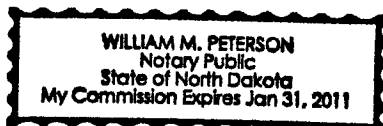
I, the above named, being first and duly sworn, verify that the information contained in the Permit Renewal Application is true and correct to the best of my knowledge and belief.

| | |
|--|-----------------------------|
| Signature of Official <i>Karene M. Hall</i> | Title Permit Coordinator |
|--|-----------------------------|

STATE OF North Dakota)
)ss.
 COUNTY OF Oliver)

Subscribed and Sworn before me, this 31st day of March, 2009

(SEAL)



William M. Peterson
 Notary Public

My Commission Expires: _____