



Public Service Commission

State of North Dakota

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April 13, 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 completeness reviews of the applications for Revision No. 33 and Renewal No. 5 to Surface Mining Permit BNCR-8202. Some additional items are needed prior to beginning the publication of the newspaper notice. Please address the following items:

Newspaper Notice and Renewal No. 5

1. Please submit a copy of the renewal newspaper notification article for review. No copy was submitted with the renewal application. Also, the permit revision that accompanied the renewal application is considered a significant revision due to the amount of acreage involved in retaining several sedimentation ponds as permanent structures as proposed by the revision. The proposed land use changes will have to be discussed in the newspaper notice and the pond locations need to be depicted on the map that is part of notice. (SAS)
2. Please submit additional information, as required by the renewal application form, that contains the following:
 - a) The reason(s) for requesting the renewal,
 - b) A statement indicating that the reclamation bond is sufficient and will be in force for the term of the renewal, and
 - c) A statement indicating that liability insurance will be provided for the term of the renewal period. (SAS)

Revision 33

3. Plans and discussion added with Revision 33 now indicate that Sedimentation Ponds 22-1, 22-2, 22-4, 22-5, 22-7 and 22-10 will be retained as permanent impoundments. Before any of these ponds can be approved as permanent structures, additional information must be included in the revision application. This includes the following:

- a) Calculations showing that the spillways for each pond can, at a minimum, safely discharge the runoff from a 50-year, 6-hour precipitation event as required by NDAC 69-05.2-16-09(9). Also, please include any other design changes that may be needed to convert each pond from a temporary structure to a permanent impoundment.
- b) A demonstration that each pond will meet all of the permanent pond standards under subsection 7 of NDCC 38-14.1-24.
- c) The discussion, tables and map in the post-mining land use section need to be revised to show the ponds will be retained as developed water resources.
- d) An update to the surface water probable hydrologic consequences to address the impacts of retaining the ponds on surrounding area as required by NDAC 69-05.2-08-04(4) and (6). This includes any effect on water availability for downstream users. Also, if any downstream user will be adversely affected, provide a discussion on alternate water sources.

Also, we have concerns with BNI's plans to retain Pond 22-10 as a permanent structure due to the high costs associated with any future spillway and/or embankment maintenance that may be needed when BNI no longer owns the land where this pond is located. Detailed plans for this pond in Permit BNCR-8202 also state it is designed for only a 25-30 year life. Based on the size of this impoundment and type of principal spillway through the embankment, it seems very unlikely that any individual person could pay the cost of any repairs that may be needed in the future and we doubt whether an individual would be willing to assume the liabilities associated with this large structure. BNI will need to secure a firm commitment from another entity to maintain this pond well into the future before we will recommend that it be allowed to remain as a permanent structure.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division