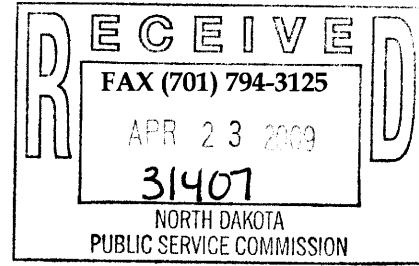


PHONE (701) 794-8734



April 23, 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 April 13, 2009. In this letter you listed technical deficiencies that must be addressed before the renewal and revision can be deemed complete. The following is a listing of the deficiencies followed by our response:

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)

The Publication Notice and accompanying map have been included with this submittal.

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)

Updated as requested.

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

BNI COAL, LTD.
2360 35th Ave SW, Center, ND 58530

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.

See response to b)

- b) A demonstration that each pond will meet all of the permanent pond standards under subsection 7 of NDCC 38-14.1-24.

The language previously submitted was not as clear as it should have been. The landowners have indicated that they would like these ponds to remain. We intend to honor these landowner requests, but only if the ponds meet or can be modified to meet the requirements listed above. At this time all of these ponds should be considered temporary. If possible, this status may change in the future. The text in Appendix N has been modified to more clearly state our current situation and our future intentions.

- 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.

Since ponds area remaining temporary no updates were required. The post mine landuse did not previously include DWR's in the text or tables which illustrates they are temporary.

- 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.

Water availability for downstream landowners should not be affected, there are only a couple landowners located on the tributary of Square Butte Creek. These developed water resources will help aid localized flood concerns and help with quality issues with sediment yields.

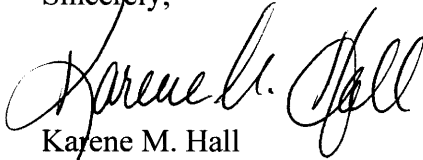
Also, we have concerns with BNI's plans to retain Pond 22-10 as a permanent structure due to the high costs associated with any future spillway and/or embankment maintenance that may be needed when BNI no longer owns the land where this pond is located. Detailed plans for this pond in Permit BNCR-8202 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.

Your concerns here are valid and will have to be addressed prior to Pond 22-10 being approved as a permanent structure. At this time Pond 22-10 should be considered to be a temporary pond.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Kayene M. Hall".

Kayene M. Hall
Permit Coordinator