



Public Service Commission

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August 7, 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 conducted a technical review of BNI Coal's application for Revision No. 27 to Surface Coal Mining Permit BNCR-9702. The following items must be satisfactorily addressed prior to approval of this revision:

Section 1 – Legal & Financial

1. A certified copy of the federal coal lease for the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32 must be provided before this revision can be approved. If a lease has not yet been issued, please indicate (in the response letter) the status of the lease and the expected date of issuance. (DKM)

Plate 2-1 – Extended Mining Plan

2. The extended mine plan must be modified to show the sequence and timing of individual permits over the estimated life of the extended plan area and include the estimated coal crop and removal lines as required by NDAC 69-05.2-07-02(2)&(3). (JRD)

Section 4.1 – Coal Removal

3. Please update the discussion of federal coal tracts on page 4.1-2 to include the mining of the additional federal coal in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32. This discussion should indicate that a final pit is not planned in this area since mining is planned to continue further north of this tract. (DKM)

Section 4.6 – Water Management Plan

4. It appears that Clean Water Pond 32-2 will be mined through with the additional mining proposed by this revision. If this pond will be replaced by another pond further upstream, please include the necessary design plans for it. (DKM)

Plate 4.10-1 – Post-Mining Topographic Contours

5. It is apparent that the current Post-Mining Topographic Plan, Plate 4.10-1, was developed assuming mining would progress westward into the E $\frac{1}{2}$ of Section 6 and SE $\frac{1}{4}$ of Section 31. However, the current extended mine plan no longer shows any mining in these areas. Therefore, the post-mining topography map needs to be modified in the western portions of Section 5 and the SW $\frac{1}{4}$ of Section 32 to tie into the undisturbed areas along the north-south section lines between Sections 5 and 6 and Sections 31 and 32. Also, we noted there are significant differences in the contour lines between the Pre-Mine Topographic Map (Plate 3.1-1) and the Post-Mining Topographic Map in undisturbed areas along the southern edge of the permit. The contour lines in undisturbed areas need to be the same on both maps. Please review and correct. The Pre- and Post-Mining Area Slope Maps will need to be updated as well. (JRD)
6. The Post-Mining Topographic Map has gaps in the contour lines in the W $\frac{1}{2}$ of Section 5 and Section 21. Please connect the lines to complete the map. Please depict the 25, 50, 75 and 100 foot lines with a different color or line type to make the map easier to interpret. In addition, the contour lines should extend about 1,000 feet beyond the permit area to clearly show how the reclaimed areas will tie into the adjoining undisturbed lands. We also recommend showing the contour lines in the undisturbed area in a different color from that used for the disturbed areas. (MSK &JRD)

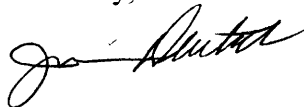
Plate 4.10-2 – Post-Mining Slope Analysis

7. In the northeast corner of both Sections 21 & 27, there is an area of the map that is not completed or is left white. Please fill out map entirely. (MSK)

Please be reminded that a federal mine plan modification will have to be approved by the Department of the Interior before any coal removal, or the removal of overburden for mining the federal coal, begins in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor