



Public Service Commission

State of North Dakota

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March 9, 2011

Jay M. Volk, Ph. D
Environmental Supervisor
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has reviewed BNI's January 26, 2011, responses to our December 8, 2010, second technical deficiency letter on the application for Revision 30 to Surface Coal Mining Permit BNCR-9702 for the Center Mine. The following items must be satisfactorily addressed before we recommend Commission approval of this revision.

Section 1.7 - Business Entity Information

1. Follow-up to Item No. 2: Please correct the listing for Alan Hodnick as CEO for Allete on page 1-4 to Alan R. Hodnik to be consistent with previous submittals. (SAS)

Section 1.8 - Description of the Permit Boundary

2. The first line should indicate the metes and bounds description is located on pages 1-11 through 1-14, not 1-9 through 1-12 as currently shown. (SAS)

Section 3.6 – Pre-Mine Vegetation

3. The single similarity index sheet for Tract 3 included in Appendix 3.6-1a indicates the site sampled was a Shallow Loamy (SwLy) ecological site. The Ecological Site Types Map (Plate 3.6-1), however, does not show a SwLy mapping unit in Tract 3, but instead shows two sample locations on a Loamy (Ly) site. Please review and correct this discrepancy. (GAW)

Section 3.10 - Fish and Wildlife Resources

4. Follow-up to Item No. 15: There are two versions of Appendix 3.10-1a in the permit. Please remove the old version that is attached to the end of Appendix 3.10-1 on pages 161-171. (GAW)
5. Follow-up to Item No. 15: Please insert a copy of the map that was intended for submittal with the June 17, 2009 letter describing the Wildlife Monitoring Plan for the Revision 30 addition area in Appendix 3.10-1a. The first paragraph refers to an attached map, but it does not appear that the map was attached to the letter when received on June 18, 2009. (GAW)
6. Follow-up to Item No. 15: Please move Plate 4.13-2, Premine Wildlife Monitoring Map, for Revision 30 to Section 3.10 where all other premine wildlife inventory maps are located, and rename the plate accordingly. This plate is referenced in Appendix 3.10-1a so this reference will need to be changed if the plate name/number is changed. Likewise, the table of contents referencing this plate will also need to be updated if changes are made. (NDAC 69-05.2-05-02) (GAW)
7. Please update Section 3.10 to include information pertinent to the Revision 30 addition area as there are several inconsistencies in this section. For example, the third paragraph on page 1 states that residual cover is generally lacking on the native grassland due to heavy grazing, but Appendix 3.6-1a indicates that the native grassland included with Revision 30 is idle or is lightly grazed. Likewise, the third paragraph on page 1 of Section 3.10 states that cropland tends to be clean tilled and the straw is removed for forage or fall grazed which diminishes the wildlife value of these lands. The last paragraph on page 2 of Section 4.13 states, however, that cropland is more valuable to wildlife than poor condition native grassland. Please review and correct these inconsistencies as appropriate. (GAW)

Section 4.1 - Mining Operations and Waste Disposal

8. Follow-up to Item No. 18: Ponds 32-1 and 32-2 are both labeled as 32-1 in Section 32 of Permit BNCR-8106 on Plate 4.1-1, Pit Layout and Facilities Map. Please make the necessary corrections. (MSK)

Section 4.12 – Post-Mining Land Use and Revegetation

9. Follow-up to Item No. 22: BNI is proposing to convert all of the native grassland being added to the permit in Section 32 to cropland, which is inconsistent with the wishes of the majority of surface owners who submitted signed landowner preference statements for this area. Please revise all relevant plates, tables, and narratives in Volume XI to comply with the majority ownership of the surface owner's requests. Also, the Arlyce Muth, Arnold Torgerson and John Yantzer preference statements dated in the late 1990's appear to be limited to their property located in Section 32 that was being permitted at that time. These statements do not apply to that portion of Section 32 being permitted with Revision

30. Thus, the surface owners controlling 75 percent of the property in the N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 50 percent of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32 have requested no land use changes. Please update the permit to comply with the surface owner's wishes or otherwise explain and justify the reasons for the proposed land use change. (GAW)
10. Follow-up to Item No. 24: Please update the narrative of Section 4.12.2, Pre-Mine and Post-Mine Land Use Discussions, to describe shelterbelt replacement in the NW $\frac{1}{4}$ of Section 32, and update Section 4.12.3, Reclamation Information, to include tree species and planting rates that BNI intends to use **as required by NDAC 69-05.2-09-11 (6)**. We understand that some of these plans may later be revised based on landowner wishes just prior to planting, but the rules require more specific plans in the permit. In addition, BNI is proposing to change the location and dimensions of the shelterbelts in Sections 5 and 32 with this revision, but the Shelterbelt Table in Section 4.12.3 was not updated. In instances where there are multiple shelterbelts in a quarter section, it is difficult to determine what information in the table applies to which shelterbelt shown on the Land Use Map. A shelterbelt identification number needs to be listed in the table and the shelterbelts need to be labeled as such on the Post-Mining Land Use Map. (GAW)
11. Follow-up to Item No. 25: The last sentence in the narrative discussing the pre-mine and post-mine land uses of Section 32 in Section 4.12.2 states that two ponds will be retained as permanent structures, but Plate 4.12-1 Post-Mining Land Use Map, depicts only one pond. Please review and correct this discrepancy. (GAW)

Section 4.13 - Fish and Wildlife Resource Protection and Enhancement Plan & Fish and Wildlife Monitoring Plan

12. The last sentence in the first paragraph of Section 4.13 states that a current list of the T & E species for North Dakota is found at the end of that section, but the list is from February 11, 2003. Please update the list at the end of this section and include current candidate species in the list. (GAW)
13. Follow-up to Item No. 28: New language included in the sixth paragraph (page 2) of Section 4.13 states that the surface owners have requested that the native grassland be converted to cropland as follows: "... *at the landowners request approximately 153 acres of native grassland will be reclaimed to cropland*". This statement is not correct based on the landowner preference statements included with the revision application. Please revise this sentence to conform with the response to Deficiency Number 9 in Section 4.12, Post-Mining Land Use and Revegetation. (GAW)
14. Follow-up to Item No. 28: Please insert literature or research supporting the claim that cropland is an improved wildlife habitat type compared to native grassland dominated with introduced species, as stated in the sixth paragraph (pages 2 and 3) of Section 4.13, or edit this section accordingly. The U.S. Fish and Wildlife Service, ND Game and Fish Department, and the ND Parks and Recreation Department typically prefer that mining-impacted areas be revegetated with species native to the area. (GAW)

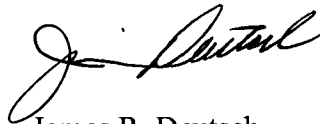
15. Follow-up to Item No. 28: A sentence in the sixth paragraph (page 3) of Section 4.13 states that conservation tree plantings will likely be planted in the fish and wildlife habitat area around the wetlands in Section 5. Please update the permit to show where these conservation plantings will be located if BNI is planning to plant trees in this area. (GAW)

Section 4.14 - Reclamation Cost Estimate for Bonding Purposes

16. Follow-up to Item No. 31: Please update the unit cost for the Cat Model D9T on page 10 of Appendix 4.14-1 - Worst Case Bond Estimate, to reflect the July 22, 2010 Variable Costs update in Policy Memorandum No. 16. The unit cost of \$186.98 listed on page 10 is incorrect and should be replaced with the correct unit cost of \$189.98. Please also update all calculations associated with the unit cost. (MSK)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor