

PHONE (701) 794-8734



March 29, 2011

FROM DIRECTOR - RECLAMATION DIV.

Date: _____

Action: _____

Info. Only: _____

Info & File: _____

Mr. James R. Deutsch, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE: Revision 30 to BNCR-9702

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated March 9, 2011. In this letter you listed technical deficiencies that must be addressed before the revision can be approved.

The following is a listing of the deficiencies followed by our response:

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)

Updated as requested.

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)

Because of the use of Track Changes, everything is shifted down pages and until the changes are accepted, the page numbers will appear to be off. When viewed in "Final" view, they are correct as written.

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)

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

Appendix 3.6-1a is correct in that the site sampled was a Shallow Loamy site. This SwLy site is an inclusion area embedded within the larger Ly ecological site type designated on Plate 3.6-1 (ecological site types map). Plate 3.6-1 was revised in that an extra sample point was listed on the map which has now been removed. An additional label was also added to Plate 3.6-1 illustrating that the SwLy site is an inclusion area within a larger Ly site. This Tract 3 site was picked to reference an idle SwLy site (Tract 3) to a Tract 4 SwLy grazed site.

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)

The old version of Appendix 3.10-1a has been removed from the end of Appendix 3.10-1.

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)

The map that was included for the Wildlife Monitoring Plat was added to the end of appendix 3.10-1a as requested.

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)

Plate 4.13-2 was changed to Plate 3-10-5 and moved to Section 3.10 as requested. References in appendix 3.10-1a were changed accordingly as was the table of contents referencing this plate.

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)

This section was revised to eliminate the inconsistencies per or 3-22-11 meeting.

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)

Updated as requested.

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)

New preference statements were added, additionally section 4.12.2 (section 32 pre-post mine section) was revised illustrating the preference statement differences and reason for reclaiming to cropland.

New preference statements were acquired for the John Yantzer Estate in which surface ownership is being requested to cropland. With the new preference statements included and specific to the revision 30 additional acres the lands within the NW4 of Section 32-142-84 have been requested by 50% (John Yantzer Estate 25% and B. Schwalbe 25%) of the owners to be reclaimed as cropland and 50% (P. Vandenberg 25%, J. Moss 5%, C. Pickett 5%, H. Skager 5%, N. Skager 5%, K. Walter 5%) of the owners as was pre-mine. Since it is a split ownership BNI has listed it as cropland due to the producer of this land is requesting cropland and that 2 out of the 3 majority landowners requested cropland. The soils in this area and with soil mixing agreements are adequate for this land use.

Likewise, for the W2NE4 acres permitted with Revision 30 the new John Yantzer Estate preference statements were added to the permit. With this addition 50% (John Yantzer Estate 8.33%, Eugene Yantzer 33.33%, and B. Schwalbe 8.33%) of the owners who responded requested cropland be returned compared to 8.3% (Arlyce Muth 8.33%) who requested it to be returned to the approximate pre-mine state.

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)

Sections 4.12.2 and 4.12.3 were revised. The shelterbelt table on page 4.12.3 was updated and a planting column was added to illustrate a shelterbelt number that correlates to the Post mine land use map (also updated).

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)

The last sentence in the narrative discussing the pre-mine and post mine land uses of section 32 in section 4.12.2 was revised as follows: One DWR will be constructed to replace the two pre-mine DWR's, in which one pre-mine DWR consisted of less than 0.1 acre.

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)

The list was updated from the US Fish and Wildlife Service and candidate species were added. Referenced site <http://www.fws.gov/mountain-prairie/endspp/>

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)

Land use change as addressed in Tech. No. 9. Additionally, this section was revised according to our 3-22-11 meeting.

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)

This was updated as revised in our 3-22-11 meeting. As discussed, it is not BNI's intention to say cropland is a higher value than native grassland to wildlife, however in situations as this with specific areas of degraded/fragmented native grasslands cropland which can consist of annual crops, cover crops, pre-crop mixtures can be more valuable than native grassland in specific transitional states. With this being said Section 4.13 was revised as requested.

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)

This was revised as discussed in our 3-22-11 meeting.

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)

Updated as requested.


Additional changes made per our 3-22-11 meeting;

Plate 3.5-1D was revised correcting the legal descriptions of the tracts located in the NW4 of Section 32.

Section 4.12-5 Reclamation potential was revised adding the soils available in section 32 are adequate to support a land use change; this section was then referenced in section 4.12-2 post mine land use discussion of section 32.

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

Sincerely,



Karene M. Hall
Permit Coordinator