



Public Service Commission

State of North Dakota

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June 22, 2010

Dr. Jay Volk
Environmental Services Supervisor
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has completed a technical review of the applications for Revision No. 32 and Renewal No. 2 for Permit BNCR-9702 for BNI Coal's Center Mine. The following items were noted in our review of Revision 32 that must be corrected before approval of these applications:

Section 1.7.2 – Controlling...Allete

1. Within the listings in this section there are several instances where the effective date has been transposed to the end of the position title. Please move the date so that it aligns correctly under the effective date column. (SAS)

Section 1.8 – Description...Boundary

2. A statement on page 1-10 mentions that page 1-5A is a metes and bounds description for Revision 8 and consists of an AutoCAD map. This may have been intended for the electronic version of this revision but should be removed from the paper version. (SAS)

Section 1.9 – Surface and Coal Ownership

3. BNI Coal, Ltd. is not listed as a coal owner for the SE¼ of Section 20 on Page 1-13 but is listed as a coal owner on the Ownership Map, Plate 1-2. Please review and correct as necessary. (SAS)
4. Page 1-25 lists Walter Reinke as a coal owner for the balance of Section 10 but the Ownership Map lists Walter & Beatrice Reinke. Please correct as necessary. (SAS)

5. The addresses given for some of the surface owners do not seem to be up-to-date since the notification letters sent by the Commission were returned. Please update the mailing addresses for the following:
 - a) The Marion Reinke Life Estate on page 1-25 is no longer active thus the notification was returned by the post office. The remainderman should be listed instead.
 - b) The letter to Jeanette Lange at 3515 NE 156th St, Lake Park Forest, WA was returned with no forwarding address.
 - c) Arnold Torgerson's letter was forwarded to him at 11811 N Bancroft Drive in Phoenix from the current address at 4143 East Cochise St, Phoenix. (SAS)
6. According to the lease information for the SE¼ of Section 31, this area was originally leased for a term of 35 years in 1971 which would indicate that the lease has expired. However, the term of the lease also indicates that it would remain in effect if the premises are being developed for mining or a rental payment of \$1 per acre per year is made. Please provide evidence (such as a notarized affidavit) that the lease is still active such that BNI has right-of-entry to this area for the next permit term. (SAS)

Plate 1-2 – Ownership Map

7. Please explain the meaning of the “undetermined” coal ownership for the SE¼ of Section 30. This is not mentioned in Section 1.9. (SAS)

Section 1.15 – List of Consultants...Data

8. Please update the List of Consultants that have furnished technical information for the permit in Section 1.15 to include DSAtlantic Tribble & Richardson Consulting Company, the consulting firm that provided most of the ground water hydrology narrative for the Center Mine in Section 3.3 of the permit. (BEB)

Section 3.3 – Groundwater

9. The Resource Description of Section 3.3.1 provides the ground water hydrology narrative for the Center Mine Study Area. The second paragraph of this narrative describes a portion of the study area as being located within Sections 1-10, T141N, R83W, which is incorrect. Please revise the legal description of this narrative to correctly state that the study area is located within the above-described sections in T141N, **R84W**. (BEB)
10. The Monitoring Well Inventory in Appendix 3.3-1 represents BNI's approved ground water monitoring plan for Permit BNCR-9702. As required by NDAC 69-05.2-16-14(1), the monitoring program is required to be maintained and provide current information, and at a minimum should be updated at midterm, and/or at the time of permit renewal. It appears this monitoring schedule has not been updated for some time and the following items concerning the Monitoring Well Inventory of Appendix 3.3-1 need to be addressed at this time:

- a) Ground water monitoring wells BNI 333SS, BNI 333 HA, and BNI 333KC which are located in the SW $\frac{1}{4}$ of Section 20, T142N, R84W are listed as "Proposed" in the Monitoring Well Inventory of Appendix 3.3-1. Data for these wells has been collected and submitted for several years so please change the monitoring well status from proposed to active on the inventory.
- b) The location description of monitoring well BNI 159R in the Monitoring Well Inventory conflicts with the location description that is provided for this well in the 1st Quarter 2010 Ground Water Report. Please review and revise as needed. Additionally, please explain why the status for this reclamation monitoring well that is screened in reclaimed spoil is labeled as "plugged" in the status column of Monitoring Well Inventory.
- c) The status of ground water monitoring wells 78-2, BNI 119, BNI 327, BNI 328, BNI 328A, BNI 329, BNI 331, BNI 335SS, BNI 365, BNI 365A, BNI 365B, BNI 366R, BNI 367, BNI 367A, BNI 368, BNI 368A, BNI 384, and BNI 384R are listed in the Monitoring Inventory as active, although it is believed that most, if not all of these wells have been destroyed by mining or other off-site or farming activities, and data is no longer being submitted for the wells. Please review the status of these wells and update the Inventory to provide current information for the listed wells. If the wells have not been destroyed by mining related or other activities, you will need to provide an explanation for the lapse in data submittal.
- d) Please update the Commission on the status of "obstructed wells" BNI 81-67 and BNI 366AR. BNI has previously committed to replacement of BNI 81-67, and replacement or a permanent status change for BNI 366AR needs to be determined at this time and reflected in the Monitoring Well Inventory.
- e) Please eliminate all references to the word "PLUGGED" in the Monitoring Well Inventory. This word could be interpreted as meaning the monitoring well is obstructed or plugged with debris or formation sediment, or could also mean that the well was intentionally plugged or decommissioned by BNI. The confusing dual meaning of the word plugged in the context of well status in the inventory should be eliminated. The status column in the well inventory should only contain the words ACTIVE, INACTIVE, or DESTROYED.
- f) Although not required, it is recommended that the Active wells in the Monitoring Well Inventory be separated from the Inactive/Destroyed Wells on the inventory list. Generally, the Active wells are listed first and in descending order with the oldest of the Active wells being listed at the top of the list and the newer Active wells listed in descending order below them. The same format follows for the Inactive/Destroyed wells. As some of the active wells become destroyed by mining operations they can then be moved down the list to the bottom of the Inactive or Destroyed wells column.
- g) Any modifications to the Monitoring Well Inventory (change of status, location corrections, etc.) need to be reflected in Plate 3.3-1, which is your Location of Ground Water Monitoring Nests Map. And,
- h) Data has been collected and submitted for monitoring well BNI 331R for several years, although this well and information pertaining to this well has not been entered into the Monitoring Well Inventory. Please incorporate the required information into the inventory and all other applicable sections of the permit where monitoring well information is required. (BEB)

Section 4.1 – Coal Removal

11. Please address the following items on the Pit Layout and Facilities Map, Plate 4.1-1:
- a) The permit boundary for Permit 37 is shown in the legend but the areas are not identified on the map. Please show the Permit 37 areas.
 - b) The map indicates Pond P-2-1 is outside of the permit boundary. We feel this is in error. Please check and redraw the pond on the map accordingly.
 - c) Please indicate a 500-foot setback around the entire perimeter of all farm buildings/ residences located either within the permit area or within 500 feet of the permit boundary. It is suggested the symbols representing these structures be encircled by a 500-foot radius. (MDB)
12. Please show the location of all planned and existing overburden stockpiles on the Pit Layout and Facilities Map, Plate 4.1-1, as required by NDAC 69-05.2-09-02(4). (GAW)

Section 4.6 – Water Management Plan

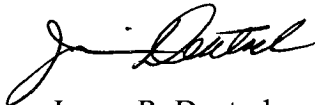
13. Please add a description of the culverts installed between Sections 6 and 7 as part of Diversion 6-1 on pages 4.6-4 and 4.6-5. Please indicate if these culverts are temporary or permanent. (MSK)

Section 4.9 – Reclamation Schedule

14. The narrative on page 4.9-5 indicates variance area #4 is now reclaimed; however, the map associated with the variance areas only shows a portion of variance area #4 as being reclaimed. Please make the necessary corrections so that both sections are consistent and accurate. (MDB)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor