



NOTICE OF VIOLATION
NORTH DAKOTA PUBLIC SERVICE COMMISSION
 SFN 18099 (10-91)

		N.O.V. Number 1001	
Name of Permittee BNI Coal, Ltd.		Permit Number BNCR-9702	
Address 2360 35th Ave SW	City Center	State ND	Zip Code 58530-9499
Telephone Number 701-794-8734	Mine Center	County Oliver	
Name of Operator (if other than permittee)			
Address		City	State Zip Code
Date of Inspection April 20, 2010	Time of Inspection From: 09:45	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	To: 12:30 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
<p>Under the authority of North Dakota Century Code Chapter 38-14.1, the undersigned authorized representative of the Commission has conducted an inspection of the above mine on the above date and has found a violation of the statute, rules, permit condition(s), or section(s) of the approved operations and reclamation plan listed on page 2 of this Notice of Violation.</p> <p>You must abate this violation within the designated abatement time.</p> <p>The undersigned authorized representative finds that cessation of surface mining activities <input type="checkbox"/> is <input checked="" type="checkbox"/> is not expressly or implicitly required by this Notice of Violation.</p> <p>This Notice of Violation shall remain in effect until it expires as provided on the reverse side of this page, or is terminated or vacated by written notice by an authorized representative of the Commission.</p>			
Print Name of Person Served Jay Volk		Print Title of Person Served Environmental Services Supervisor	
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail		Date of Service May 4, 2010	
Signature of Person Served		Signature of Authorized Representative 	

Nature of Violation
<p>Earthen material eroded from the sides and bottom of a 60-inch culvert through the section line road between Sections 6 and 7, T141N, R84W. This and another 60-inch culvert are part of Diversion 6-1 constructed by BNI to divert water from a drainageway that previously flowed through an area that has been mined in Section 5, T141N, R84W. The piping hole in the road embankment was approximately 12 inches in diameter on the upstream side of the culvert and up to 10 feet wide and 6 feet deep on the downstream side of the culvert and included a small portion on the section line road surface. It was apparent that the eroded material contributed suspended solids to flows in the drainageway downstream of the culvert and a small amount of the material was deposited on undisturbed areas in Section 7.</p> <p style="text-align: center;">(if applicable, include the extent to which the violation cannot be corrected)</p>

Distribution: Public Service Commission; Permittee/Operator; and, OSM Field Office

Provision(s) of the Statute, Rules, or Permit Violated

NDCC 38-14.1-24(4). Failure to stabilize and protect surface areas to effectively control erosion and attendant water pollution.

NDAC 69-05.2-16-06(3). The culvert that is part of Diversion 6-1 was either not constructed or maintained to prevent additional contributions of suspended solids to stream flow to the extent possible using the best technology currently available.

NDAC 69-05.2-16-08(1)(c) & (d). Sediment control measures were not effective in minimizing erosion or deposition of sediment on undisturbed areas.

Portion of the Operation to which this Notice Applies (Include legal description)

Part of Diversion 6-1 within Permit BNCR-9702 where two 60-inch culverts pass through the section line road between Sections 6 and 7, T141N, R84W, and downstream undisturbed areas in Section 7, T141N, R84W; Oliver County.

Remedial Action Required (including interim steps, if any)

The surface of the section line road must be stabilized as soon as possible.

The affected culvert must be removed, the base for the culvert reconstructed, and the culvert re-installed with sufficient compaction of suitable fill material to prevent future erosion of the fill material/roadbed on the sides and between the culverts and to prevent any future erosion of earthen material on the sides and bottom of the culvert. If it is determined that inappropriate earthen materials were placed around both culverts on the section line road between Sections 6 and 7, the material around the second culvert must also be replaced and properly compacted.

Time for Abatement (including interim steps, if any)

Steps to stabilize the road surface must be completed within 5 days of receipt of this Notice of Violation. The re-installation of the culvert must be completed within 20 days of receipt of this Notice of Violation.

IMPORTANT - PLEASE READ CAREFULLY

1. **MINESITE HEARING.** A Notice of Violation which requires cessation of surface mining activities, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public minesite hearing has been held at or near the minesite within that time or the hearing has been waived. On the reverse of this page, an authorized representative has made a finding as to whether this Notice requires cessation of surface mining activities. If cessation of mining is required, an informal public minesite hearing will be automatically scheduled by the North Dakota Public Service Commission and will be held within thirty (30) days of the service of this Notice, unless you or your agent waive that hearing in writing.
2. **INFORMAL CONFERENCE.** Notwithstanding the informal minesite hearing provided for in paragraph 1, you must apply for an informal conference with the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice in order to preserve your appeal rights. You may apply for an informal conference by submitting a written request for an informal conference to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. The informal conference will be held in the locality of the mine if requested. A stenographic record will be made of the informal conference unless waived by all parties.
3. **FORMAL PUBLIC HEARING.** If you do not desire an informal conference, you may apply for a formal hearing regarding this Notice by submitting a written request for a hearing to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. If you do not request an informal conference or a formal public hearing within thirty (30) days, your right to appeal will be forfeited. Please note that you will also have the opportunity to request a formal hearing within thirty (30) days of the decision on the informal conference held under paragraph 2.
4. **TEMPORARY RELIEF.** You have the right to request temporary relief from this Notice pending completion of any investigation and hearing procedures being conducted. A request for temporary relief must be in writing as set forth in subsection 4 of North Dakota Century Code Section 38-14.1-30 and filed with the North Dakota Public Service Commission. The request for temporary relief must include a detailed statement giving reasons why such temporary relief should be granted. The request for an informal conference or a formal public hearing will not stay enforcement of this Notice unless temporary relief is requested and granted.