



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

		N.O.V. Number 1301	
Name of Permittee BNI Coal, Ltd.		Permit Number BNCR-9401	
Address 2360 35th Avenue SW	City Center	State ND	Zip Code 58530
Telephone Number 701-794-8734	Mine Center Mine	County Oliver	
Name of Operator (if other than permittee) Same			
Address	City	State	Zip Code
Date of Inspection May 29, 2013	Time of Inspection From: 9:05	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	To: 2:55 <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 M. Volk	Print Title of Person Served Environmental Manager		
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail	Date of Service June 14, 2013		
Signature of Person Served	Signature of Authorized Representative <i>Bill Cummings</i>		

Nature of Violation
BNI Coal, Ltd. failed to construct and maintain a sump and silt fence used as sediment control measures as necessary to minimize sediment deposition on undisturbed areas. Failure to construct and maintain the sump and silt fence caused overburden and spoil sediment deposition on adjoining undisturbed land.
(if applicable, include the extent to which the violation cannot be corrected)

IMPORTANT - PLEASE READ THE REVERSE OF THIS PAGE

Provision(s) of the Statute, Rules, or Permit Violated
NDAC 69-05.2-16-08(1)(d) requires that appropriate sediment control measures must be designed, constructed, and maintained using the best technology currently available to minimize the deposition of sediment on undisturbed areas.

Portion of the Operation to which this Notice Applies (Include legal description)
Undisturbed land adjoining the southwest portion of subsoil stockpile MI5-S07 in the NE 1/4 of the SW 1/4 of Section 5, T 141N, R 83W, Oliver County.

Remedial Action Required (including interim steps, if any)
Reconfigure and improve the sump and silt fence as necessary to prevent additional sediment deposition on undisturbed land by enlarging/deepening the sump and strengthening the silt fence with steel fence posts, feedlot panels, geotextile-wrapped straw bales, rock check dam, or other appropriate measures. As conditions allow, overburden and spoil and topsoil sediment should be removed from the deposition area to the extent possible but the native vegetation should remain intact.

Time for Abatement (including interim steps, if any)
The immediate steps specified in the Remedial Action Required section above must be completed within ten (10) days of the receipt of this notice. Recoverable sediment must be removed within 45 days.

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.