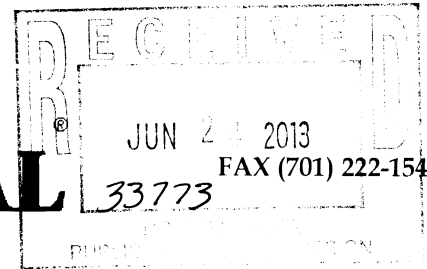


PHONE (701) 222-8828



June 21, 2013

Mr. James Deutsch  
Director, Reclamation Division  
North Dakota Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

RE: Notice of Violation 1301

Dear Mr. Deutsch,

This letter is in response to the Notice of Violation (NOV) 1301 that BNI received on 6-17-2013 and was dated 6-14-13. In this notice, the PSC request was twofold: 1) 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; this completed in 10 days of receipt, and 2) 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; this completed within 45 days of receipt.

On May 29<sup>th</sup>, 2013 Bill Gunnerson of the PSC conducted a field inspection that noted the silt fence had under-mined and some subsoil deposition had deposited behind it. BNI immediately installed a temporary silt fence, to the best of our ability in extremely wet conditions, around this sump minimizing any additional material to move through the area. A few days later, following weather somewhat prone to drying, the following action items were performed. 1) A permanent silt fence reinforced with hog panels was installed, 2) The sump in front of the sediment fence was excavated, and 3) The stripped edge leading upslope to ash cell three was excavated and multiple sumps were installed throughout this area. The performed work was inspected by Guy Welch and Francisco Echeverria on their June 13<sup>th</sup> inspection. Although not yet complete, BNI will be rough grading this area then seeding and mulching into the subsoil to further stabilize it. With the above mentioned modifications BNI believes we have met the remedial action steps required as noted in the NOV 1301 letter required within the 10 day period from the issuance date. It should again be further noted that measures were taken immediately following the 5-29-13 inspection as well as prior to the June 13<sup>th</sup> inspection; measures taken well in advance of receiving a NOV on this area on 6-17-2013.

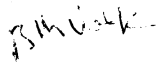
The NOV as written states, "BNI Coal, Ltd. Failed to construct and maintain a sump and silt fence used as sediment control measures as necessary to minimize sediment deposition on undisturbed areas. Failure to construct and maintain the sump and silt fence caused overburden and spoil sediment deposition on adjoining undisturbed land". The notice goes on to state that a violation occurred under **NDAC 69-05.2-16-08(1)(d)** which states "Appropriate sediment control measures must be designed, constructed, and maintained using the best technology currently

available to (d) Minimize the deposition of sediment on undisturbed areas". BNI Coal does not agree that the appropriate sediment control measures were not designed, constructed, and maintained as NOV 1301 indicates.

BNI prides itself on its commitment to environmental protections and sees itself going above and beyond the regulatory laws to protect our resources. Although a small amount of deposition was documented behind this sediment fence within a large window of constant precipitation, it will be easily removed once conditions allow ultimately resulting in no environmental impacts.

As noted above, BNI disagrees with the determination made in the issuance of NOV 1301 and thereby requests an informal hearing to discuss NOV 1301.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Volk".

Jay M. Volk, PhD  
Environmental Manager