



Public Service Commission

State of North Dakota

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July 27, 2015

Jay M. Volk, Ph. D
Environmental Manager
BNI Coal, Ltd.
2360 35th Ave. SW
Center, ND 58530-9499

Dear Mr. Volk:

The application for Bond Release No. 8 to Permit BNCR-8106 for final release on 58.23 acres of tame pasture and right-of-way in the SE1/4 of Section 35, T142N, R84W, was field inspected on June 24, 2015. The approved post mine land use of tame pasture could not be evaluated during this inspection because the operator, with approval from BNI, had chemically burned down the tame pasture grass stand and seeded the field to canola, effectively changing the land use to cropland. Since an annual crop such as canola does not meet the definition of tame pasture in NDAC 69-05.2-01-02, the bond release tract no longer complies with NDAC 69-05.2-22-02(1) that requires all revegetation to be carried out in accordance with the approved reclamation plan. Also, NDAC 69-05.2-22-02(2) states when the approved post mining land use is tame pastureland, the permittee shall seed or plant species of introduced grasses and legumes adapted to the local site conditions and capable of supporting grazing and occasional haying under proper management.

If the land use change was at the request of the surface owner, BNI may submit a new land owner preference statement along with a permit revision to change the post mine land use to cropland/hayland. The bond release application could then be revised and the tract could be bond released as hayland using the vegetation data collected for tame pasture. The landowner must also agree in writing to using hayland data to represent areas that are being annually cropped. The more detailed technical review of the bond release application will be delayed pending your response to this letter.

If you have any questions, please contact this office.

Sincerely,

James R. Deutsch
Director
Reclamation Division