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September 19, 2014

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

RE: Notice of Violation 1402

Dear Mr. Deutsch,

This letter is in response to the Notice of Violation (NOV) 1402 that BNI received on 9-11-2014, was dated 9-9-14, and had an inspection date of 9-3-2014. In this notice, the PSC request was threefold: 1) To have installed the permit boundaries around Section 6 and other active areas by September 15<sup>th</sup>, 2) The affected acres tilled, seeded and stabilized by September 19<sup>th</sup>, and 3) A plan outlining the steps that BNI will take to prevent a similar occurrence in the future submitted by September 30<sup>th</sup>.

This letters intent is three fold as well, 1) To illustrate all criteria required in the remedial action plan has been completed; 2) Act as the submission for the plan outlining the steps that BNI will take to prevent a similar occurrence; and 3) Request that the NOV be terminated.

**Required Abatement**

With regards to the first item and the required abatement, the permit boundary signs have been installed around section 6 and other active areas within Permit BNCR-1101, including on the closed county road; while the remainder of the permit boundary signs on the non-active portions of BNCR-1101 is underway.



3 RC-14-712 Filed 09/19/2014 Pages: 4

Letter addressing the required remedial measures filed by the mine operator  
BNI Coal, Ltd.  
Jay Volk

**BNI COAL, LTD.**

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Secondly, the area that was disturbed north of the topsoil pile has been tilled, seeded to BNI's native mix, and mulched/crimped. Likewise, the topsoil pile itself has been moved to the south allowing a larger buffer area for drainage control; this buffer area has also been seeded and mulched as well. A timeframe of the abatement events is as follows:

- 9-3-2014 – The morning of the inspection BNI had a contractor pulling back the topsoil that was 2-4' over the permit boundary.
- 9-5-2014 – Signs were installed around section 6 and other active work areas.
- 9-16-2014 – Finished moving the existing pile south from permit boundary
- 9-17-2014 – Finished grading area between stockpile and permit boundary for drainage control
- 9-18-2014 – Area was tilled, prepped, seeded to native mix, and mulched/crimped.





### **Plan to Prevent Future Occurrences**

As requested, BNI is submitting the following mechanisms that will prevent a similar occurrence in the future.

- 1) Install permanent permit boundary signage across entire permit area. BNI will have all permit boundary signs in place no later than October 31<sup>st</sup>; work is currently underway.
- 2) Implement a BNI requirement of a 30' permit setback for any site work unless permission is obtained by supervision to work within the 30' offset buffer. Some operations will have to be within this 30' buffer but again will require approval prior to entering; this will be tied into number 3.
- 3) Have boundary alarms programmed into GPS on equipment which would be in foreman/supervisor pickups and most mobile equipment (scrapers, blades, loaders). These alarms would send a warning message once a piece of equipment enters the 30' buffer from the permit. Likewise, these alarms will be used around the stream buffer zone areas as well as other areas that are designed as unsuitable for mining within our permit.
- 4) Implement further training with our operators and foreman on the GPS units, boundaries, and warning messages.

Following your review of the remedial actions taken and plan addressing future preventative steps, BNI Coal would request the NOV be terminated. BNI prides itself on its commitment to environmental protections and sees itself going above and beyond the regulatory laws to protect our resources. Although there was a minor disturbance just outside the permit boundary, which can largely be measured in terms of a few feet, BNI is confident the area in question will be reclaimed in such a manner ultimately resulting in no environmental impacts.

Sincerely,

A handwritten signature in black ink, appearing to read "J M Volk". The signature is written in a cursive, slightly slanted style.

Jay M. Volk, PhD  
Environmental Manager