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August 7, 2015

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

RE: Notice of Violation 1503

Dear Mr. Deutsch,

This letter is in response to the Notice of Violation (NOV) 1503 that BNI received on 7-31-2015, was dated 7-29-15, and had an inspection date of 7-9-2015. In this notice, the PSC request was threefold: 1) To submit a written explanation of the timing and sequence of events leading to the topsoil removal through the section line, 2) Explain how BNI plans to improve communications to prevent a similar occurrence, and 3) Submit copies of the road authority's approval documents to close the section line within 15 days of the approval date.

Required Abatement

The newspaper publications petitioning the county to temporarily close the section line was previously published and the closure itself was on the August 6th county commission meeting agenda. No comments or concerns from the commissioners were raised nor were there any public comments received on the temporary closure; hence the commissioners approved the request. The minutes are not finalized at the time of the meeting; hence BNI will provide a copy to the PSC within 15 days of receiving the finalized copies from the county as detailed within the abatement requirements.

Sequence of Events

Following BNI's technical letter associated with the permit renewal illustrating a temporary closure was needed within Section 28, BNI started researching this technical through BNI's records, county records, and publication records. During this foundational search it was noted that multiple requests had been submitted over the past decade. Without good reason why BNI would submit the same type of approval request on a tract more than once begged the question there was an error in BNI's submittal, publication wording, county minutes, or in the terminology definitions themselves. Hence while we were determining what had been previously approved and what we needed to change, operational schedules had changed from the southern portion of the mine to the north westerly portion and a small sliver of the section line was pushed through prior to the correction being made. Operations have not continued in that area following the inspection report.

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Letter submitted by the mining company on the NOV abatement actions
BNI Coal, Ltd.
Jay Volk

BNI COAL, LTD.
1637 BURNT BOAT DRIVE • P.O. BOX 897 • BISMARCK, ND 58502

Plan to Prevent Future Occurrences

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

- 1) Throughout the last year we have continued to add global positioning software/hardware (gps) to almost all of our equipment fleets which now include foreman/supervisor pickups and most mobile equipment (scrapers, blades, loaders) as well as even mobile tablets. Although not every piece of equipment has this gps capability BNI has made tremendous capital additions to get the fleet to where it is today to help improve BNI's detail to its work environment to further eliminate circumstances such as these.
- 2) There has been confusion with regards to terminology in previous requests as well as confusion around duplication of similar requests over the last 20 years. BNI is continuing conversations with our counsel and the States Attorney with regards to the proper clarification of these issues. Potential wording revisions to existing approvals will likely becoming to further clarify these issues.
- 3) Additional training for the foreman and operators on areas that may be listed as unsuitable to mining so they can self-question areas in the field prior to disturbance. Likewise, increased reclamation meetings and conversations will be added to catch mine plan schedule changes through departments.

Although this event occurred the following points should be noted:

- 1) The section line that material was moved was within the permit boundary/mine plan.
- 2) There is not any general public access points; hence no general public interests were willfully removed or bypassed
- 3) There was clearly confusion in previous submittals, some likely driven at the request of the PSC, that spanned over a decade and in turn a paper documentation issue occurred.
- 4) No environmental damage occurred. Proper salvage, soil separation, and stabilization occurred and continue to occur.
- 5) BNI continues to disagree with the issuance of this NOV with respect to the previous four points. Again there was no environmental damage, no public interests were impacted or restricted due to the lack of access, and there were/are clear discrepancies within the descriptions, documentation and terminology, and requests used and approved over the past decade.

BNI prides itself on its commitment to environmental protections and sees itself going above and beyond the regulatory laws to protect our resources as evident in the pro-activeness of other environmental controls and modifications that have taken place this year and over the life span of BNI. Although there was a minor disturbance across a nonpublic used section line prior to a formal temporary closing, BNI is confident that the path it took to correct any previous inconsistencies was the correct path. With that being said, BNI continues to work on correcting misinterpretations related to this issue even past obtaining the closure as of August 7th and will likely revise other existing language in the future. More importantly, it should again be noted

that there was not any environmental damage nor willful public interests bypassed with this event as no general public access was available.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay M. Volk". The signature is written in a cursive style with a blue ink color.

Jay M. Volk, PhD
Environmental Manager