



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

		N.O.V. Number 2202	
Name of Permittee BNI Coal Ltd.		Permit Number BNCR-9702	
Address 2360 35th Avenue SW	City Center	State ND	Zip Code 58530-9499
Telephone Number 701 355-5588	Mine Center Mine	County Oliver	
Name of Operator (if other than permittee)			
Address	City	State	Zip Code
Date of Inspection May 18, 2022	Time of Inspection From: 9:15	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	To: 1:30 <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 Doug Scheetz	Print Title of Person Served Manager of Environmental, Health, and Safety		
Method of Service <input checked="" type="checkbox"/> Personal <input type="checkbox"/> Certified Mail	Date of Service May 25, 2022		
Signature of Person Served <i>D. Scheetz</i> 5/25/2022	Signature of Authorized Representative <i>Jonathan</i>		

Nature of Violation

BNI coal Ltd. removed approximately 275,000 cubic yards of overburden from the federal coal tract in the NE1/4 of Section 20, T142N, R84W. Overburden from about 8 acres was removed to an average depth of 20 feet. BNI violated the special condition added to Permit BNCR-9702 with Revision 42 that prohibits overburden and coal removal until mine plan approval is received from the US Dept. of Interior.

(if applicable, include the extent to which the violation cannot be corrected)

IMPORTANT - PLEASE READ THE REVERSE OF THIS PAGE

1 RC-22-227 Filed 05/25/2022 Pages: 3

Notice of Violation issued to BNI for violating a permit condition
 Public Service Commission

Distribution: White - Public Service Commission Canary - Permittee, Operator Pink - OSM Field Office

Notice of Violation Number 2202

Provision(s) of the Statute, Rules, or Permit Violated

NDCC 38-14.1-28(1)(b) BNI violated the special condition added to Permit BNCR-9702 that states: No overburden or coal removal may occur on federal coal tracts located within Section 20, T142N, R88W until the mine plan for the federal coal is approved by the US DOI. Until the mine plan is approved by the DOI, surface disturbances on the federal tracts are limited to activities that the Commission determines are necessary for mining adjoining tracts that BNI has the right to mine.
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Portion of the Operation to which this Notice Applies (Include legal description)
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NE1/4 of Section 20, T142N, R84W, in Permit BNCR-9702

Remedial Action Required (including interim steps, if any)

BNI must immediately cease removing overburden over the federal coal tract in the NE1/4 of Section 20, T142N, R84W, in Permit BNCR-9702. No additional overburden may be removed until BNI submits a request to remove overburden over the federal coal tract in the NE1/4 of Section 20, T142N, R84W and the Reclamation Division consults with BLM through OSMRE to ensure actions taken by the Commission do not result in substantial and adverse effects to the federal mineral estate.
In the interim: BNI must take all necessary steps to maintain the quality of the federal coal tract.

Time for Abatement (including interim steps, if any)

BNI must submit the request to remove overburden over the federal coal tract within 5 days following receipt of this notice of violation.
BNI must diligently and continuously maintain the quality of the federal mineral estate until the Reclamation Division receives concurrence from BLM through OSMRE that BNI's proposed overburden removal plan for mining adjacent private coal and construction of the dragline walkway will not adversely affect the federal mineral estate.

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.