

Sent Via Email Only (zbrinkman@nd.gov)

June 16, 2022

Ms. Zanna Brinkman
Director, Reclamation Division
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Re: Response to Notice of Violation No. 2202; Permit No. BNCR-9702

Dear Ms. Brinkman,

This letter is in response to the Notice of Violation (NOV) Number 2202 that BNI Coal, Ltd. (BNI) received on May 25, 2022. The NOV issued in connection with BNI's removal of overburden from the federal coal tract in the NE1/4 of Section 20, T142N, R84W in Permit BNCR-9702 (Section 20). The purpose of this communication is to outline the actions BNI has taken in response to this matter.

Remedial Actions

Action Required BNI must immediately cease removing overburden from federal coal tract in Section 20.

Actions Taken During the Public Service Commission (Commission) inspection on May 16, 2022, BNI was informed that overburden material removal operations could not be conducted in Section 20 above Federal coal. BNI immediately ceased overburden removal operations in Section 20 on May 16, 2022, has not resumed any such activity, and will not resume overburden removal operations in Section 20 until the Commission determines that the proposed surface disturbances on the federal tract are necessary for mining the adjoining tract that BNI has the right to mine, in accordance with the special condition added to Permit BNCR-9702 with Revision 42.

Time for Abatement

Requirement BNI must submit a request to remove overburden over the federal coal tract within 5 days following receipt of this notice of violation.

Action Taken BNI submitted an Overburden Removal Request NE ¼ of Section 20, T142N, R84W to the PSC on May 25, 2022.

Quality Maintenance of Federal Coal

Requirement BNI must diligently and continuously maintain the quality of the federal mineral estate until the Reclamation Division receives concurrence from the 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.

Actions Taken BNI implanted the following actions on and since May 25, 2022:

1. BNI resurveyed the NE ¼ of Section 20 to ensure that there was sufficient overburden above the federal mineral estate. Survey results indicated there was 100' of overburden above the coal and that the current mining operations that had exposed coal were 450' east of the federal coal tract.
2. A warning was added to the BNI excavators GPS system to alert the excavator operator if they were to be above federal coal in section 20.
3. The BNI Reclamation Foreman began a daily field inspection of Section 20 to check for changing conditions (e.g., erosions, bank sloughing, evidence of equipment in the area, etc.) to ensure that environmental conditions are the same and that no work is being performed in Section 20.

BNI prides itself on our environmental compliance record. We have proactively identified and implemented administrative changes in our mining operations that will help protect federal coal when future mining activities are adjacent to federal coal.

Please contact me at 701-355-5550 or dscheetz@bnicoal.com, if you have any questions or concerns regarding this matter.



Doug Scheetz
Environmental, Safety and Health Manager

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