



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

		N.O.V. Number 1503	
Name of Permittee BNI Coal, Ltd.		Permit Number BNCR-9702	
Address 2360 35th Avenue SW	City Center	State ND	Zip Code 58530
Telephone Number 701-794-8734	Mine Center Mine	County Oliver	
Name of Operator (if other than permittee) Same			
Address	City	State	Zip Code
Date of Inspection July 9, 2015	Time of Inspection From: 8:35	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	To: 4:10 <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 Jay M. Volk	Print Title of Person Served Environmental Manager		
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail	Date of Service July 29, 2015		
Signature of Person Served	Signature of Authorized Representative <i>Bill Carson</i>		

Nature of Violation

BNI Coal, Ltd. conducted topsoil removal and stockpiling operations in the north-south section line right of way between the SW¼ of Section 28 and the SE¼ of Section 29 in Permit BNCR-9702 prior to obtaining Oliver County Commission approval to close the section line.

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

IMPORTANT - PLEASE READ THE REVERSE OF THIS PAGE

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

NDAC 69-05.2-04-01.3(2)(b) requires that the applicant must obtain any necessary approvals from the authority with jurisdiction over the road before closing a public road which includes section line right of ways. NDAC 69-05.2-01-02(82) defines a public road in part as all land located within two rods (10.06 meters) on each side of all section lines.

Portion of the Operation to which this Notice Applies (Include legal description)

A portion of the one-half mile segment of the north-south section line between the SW¼ of Section 28 and the SE¼ of Section 29, Township 142N, Range 84W in Permit BNCR-9702.

Remedial Action Required (including interim steps, if any)

Submit a written explanation of the timing and sequence of events leading to the topsoil removal and stockpiling operations through the section line considering that the February 9, 2015 Permit BNCR-9702 pre-renewal review letter asked BNI Coal, Ltd. to obtain or document approval from the Oliver County Commission to close the section line. Also explain how BNI Coal, Ltd. plans to improve communication to prevent similar occurrences in the future. As required by NDAC 69-05.2-04-01.3(4), also submit copies of the road authority's approval documents to close the section line within 15 days of the approval date and include the written findings made by the road authority.

Time for Abatement (including interim steps, if any)

The response specified in the Remedial Action Required section above must be completed within fifteen (15) days of the receipt of this notice with the exception of the road authority's approval documents that must be submitted within 15 days of the approval date.

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.