

15-May-2019

Brian Kroshus, Commissioner  
Julie Fedorchak, Commissioner  
Randy Christmann, Commissioner  
ND Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

I am submitting herein my formal citizen complaint dealing with surface coal mining operations conducted outside of the PSC approved permit area resulting in offsite impacts to our farmland. These complaint details are being filed pursuant to NDCC 38.14.1 and enabling regulations of Article 69-05.2-28-01 and 02. The enclosed complaint document references appendices which have been uploaded to "<https://Beulah.FoxPing.com/>". Pursuant to 69-05.2-28-01(2), I am requesting that any planned permit inspection or farmland site review provide me with the opportunity to schedule and accompany officials during such event(s). These offsite impacts are the result of surface mining activities conducted by North American Coal Corporation (NAC) at the Coteau Mine Permit NACT-9501.

**Executive Summary of NAC surface coal mining operations offsite impacts:**

1. Constructed a diversion ditch on farmland creating a new affected area outside the permit area without a PSC permit revision and without Landowner consent, no associated reclamation plan or performance bond, and resulted in loss of crop income.
2. Discharged more than 7 billion gallons of surface coal mine disturbed area pond water from within the permit area onto the adjacent farmland which resulted in gullies, loss of topsoil, and loss of crop income from the farmland (impact outside the permit area without a PSC permit revision and without Landowner consent).
3. This same 7 billion gallons of surface coal mine disturbed area pond water entered the farmland creek which resulted in flooding the southwest corner of the farmland which caused the loss of crop income (impact outside the permit area, without a PSC permit revision and without Landowner consent).

4. Modified a Mercer County road ditch making it deeper in order to convey the large volume of water discharge away from the coal mine that resulted in blockage of historical direct ramp access to the farmland (such construction was done outside the permit area without a PSC permit revision, without Landowner consent, and without a Mercer County permit).

This formal complaint submission comes to you because I do not believe that my informal email complaint and other verbal communications that have previously transpired between myself and the PSC Reclamation Division have been given, thorough, accurate and correct consideration of the matters contained therein. The Reclamation Division responded to me in a letter dated July 23, 2018 and an inspection report dated April 26, 2018. This formal complaint addresses the inaccurate conclusions and contradictions that are enclosed in these documents.

Article 69-05.2-01-02 (1) defines "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations. NDCC 38.14.1-35. "Surface coal mining operations" means: a. Activities affecting the surface of lands in connection with a surface coal... mine. b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities..." These statutory and regulatory provisions establish that a permittee is responsible for mining related impacts occurring in the adjacent area.

I am also filing this formal complaint concurrently with the Federal Office of Surface Mining Reclamation and Enforcement (OSM) pursuant to 30 CFR 842.12(a)-Inspections Based on Citizen Requests, and CFR 842.11(b)-Requests for Federal Inspections. Since OSM is responsible for assessing the performance of the North Dakota State Program, I believe that at this juncture it is important for them to review and advise the Reclamation Division of their views. OSM Policy Directive defines off-site impact(s) as:

*"anything resulting from a surface coal mining and reclamation activity or operation that causes a negative effect on resources (people, land, water, structures) where that impact is intended to be minimized or prevented by SMCRA or the applicable State program. The applicable state program must regulate or control the mining or reclamation activity or result of the activity causing an off-site impact. In addition, the impact on the resource must be substantiated as being related to a mining and reclamation activity and must be outside the area authorized by the permit for conducting mining and reclamation activities..."*

It is OSM's responsibility to evaluate and report on the effectiveness of state programs in protecting the environment and public from off-site impacts resulting from surface coal mining and reclamation operations. The goal is for each inspectable unit to have minimal or no off-site impacts; the oversight objective is that states and OSM direct efforts to continually reduce the occurrence of off-site impacts.

I formally request the Public Service Commissioners to administratively process the complaint evaluation dealing with these offsite impacts to our farmland, assert NDCC 38-14.1 jurisdiction to

such impacts, requiring farmland site reclamation, future protection from such damage, require permit revision activity as may be necessary, and adjudicate necessary notice of violation and civil penalty under the North Dakota State Program.

Best Regards,

A handwritten signature in blue ink, appearing to be 'C. H.', with a horizontal flourish underneath.