

15-May-2019

Jeffery Fleischman, Casper Field Office Director
Office of Surface Mining Reclamation and Enforcement
150 B St, Room 1018
Casper, WY 82602

I am submitting herein a formal citizen complaint pursuant to 30 CFR 842.12(a), requesting a Federal inspection under 30 CFR 842.11(b) based upon reasons that I believe exist pertaining to conditions, and practices that are in violation at the North American Coal Corporation (NAC) Coteau Mine Permit NACT-9501. The conditions and practices violate the OSM approved North Dakota State Program requirements found at NDCC 38-14.1, Surface Mining and Reclamation Operations, and implementing regulations of Article 69-05.2 The violations deal with surface coal mining operations conducted outside of the approved permit area resulting in offsite impacts to our farmland. The enclosed complaint document references appendices which have been uploaded to "<https://Beulah.FoxPing.com/>". Pursuant to 30 CFR 842.12 (c), 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.

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 is being submitted 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 that letter that are not in compliance with the State Program. I am also filing this formal complaint concurrently with the Public Service Commissioners pursuant to Article 69-05.2-28-01 and 02-Requests for Inspections.

North Dakota regulations at Article 69-05.2-01-02 (1) define "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. The offsite impacts that have or are currently occurring on the farmland are outside of the North Dakota Public Service Commission (PSC) approved permit area.

Since OSM is responsible for assessing the performance of the North Dakota State Program, I believe that at this juncture it is important for your office to review and advise the Reclamation Division of the compliance issues and as necessary, exercise the full reach of Federal Regulations with respect to State Program Oversight and associated Directive Reg-8. OSM Policy Directive Reg-8 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 OSM to administratively process this complaint evaluation dealing with the offsite impacts to our farmland, including unauthorized permittee surface mining activities causing construction outside the permit area, consistent with OSM policy Directives INE-5, Mining Without A Permit and/or Mining Off A Valid Permit, and INE-35, Ten Day Notice requirements. Further require North Dakota State Program jurisdiction with respect to offsite impacts to be applied consistent with or no less effective than

controlling provisions and standards of the Surface Mining Control and Reclamation Act (SMCRA) and associated implementing regulations.

This OSM complaint evaluation and associated Federal inspection should result in offsite impacts created by NAC to farmland receive site remediation and final reclamation, future protection from such damage, regulatory permit revision activity as may be necessary, and adjudicate necessary notice of violation and civil penalty under the North Dakota State Program or the Federal Program as may be necessary for compliance with SMCRA.

Best Regards,

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

cc David Berry, Western Regional Director
OSMRE
1999 Broadway, Suite 3320
Denver, CO 80202