

United States Department of the Interior



OFFICE OF SURFACE MINING
Reclamation and Enforcement
Casper Area Office
150 East B St. Room 1018
Casper, WY 82601



December 21, 2022

CERTIFIED MAIL 7020 0640 0001 2814 4698

Mr. Clyde Eisenbeis
2819 Hogan Drive
Bismarck, ND 58503

RE: Citizen Complaint and Request for Investigation Regarding North Dakota Coal Mine Permit NACT-9501 – Freedom Mine.

Dear Mr. Eisenbeis:

On May 15th, 2019, the Office of Surface Mining Reclamation and Enforcement (OSMRE) received documentation from you expressing a desire to file a formal Citizen Complaint concurrently with the North Dakota Public Service Commission (NDPSC) and OSMRE. You also requested a federal inspection and the opportunity to accompany officials during the inspection. Mr. Jeff Fleischman, Chief of the OSMRE Denver Field Division, responded on May 21st, 2019, to acknowledge receipt of the associated documentation and to inform you that the NDPSC is the active Regulatory Authority (RA) for surface coal mining in North Dakota. According to OSMRE Directive INE-35, Part 4.c., OSMRE must allow the RA an opportunity to investigate and consider the RA's actions prior to determining if there is reason to believe a violation of federal law has occurred.

You allege negative impacts to your farmland located outside, but adjacent to NDPSC permit NACT-9501 at the Freedom Mine. The Freedom Mine is operated by Coteau Properties Company (COTEAU) and owned by North American Coal Corporation (NAC) in Mercer County, North Dakota. Complainants are identified as Clyde Eisenbeis, Allen Eisenbeis and JoAnn Crabtree. You have acted as the sole contact for communications with both the NDPSC and OSMRE. The NDPSC has processed this complaint under both Case No. RC-19-191 and Case No. RC-22-339.

43 RC-19-191 Filed: 12/21/2022 Pages: 3
Response to Complaint

US Department of Interior Office of Surface Mining (OSM)
Jeffrey Fleischman, Chief

34 RC-22-339 Filed: 12/21/2022 Pages: 3
Response to Complaint

US Department of Interior Office of Surface Mining (OSM)
Jeffrey Fleischman, Chief

You allege that the Freedom Mine permit holder, North American Coal Corporation (NAC) is in violation of state and federal rules, citing North Dakota Administrative Code (NDAC) 69-05.2-28-01, and 69-05.2-28-02, as well as North Dakota Century Code (NDCC) 38-14.1. NDAC 69-05.2-28-01 (Inspection and enforcement – Requests for inspections) allows a person to request an inspection of a surface coal mining and reclamation operation if the Commission has reason to believe that any requirement of NDCC chapter 38-14.1, NDAC chapter 69-05.2-28, or any permit condition has not been complied with. NDAC 69-05.2-28-01 (Inspection and enforcement – Review of decision not to inspect or enforce – Review of adequacy and completeness of inspections) allows any person who may be adversely affected by a surface coal mining and reclamation operation the opportunity to ask the Commission to informally review a decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person filing under section 69-05.2-01. NDCC chapter 38-14.1 addresses the entirety of Surface Mining and Reclamation Operations in the state of North Dakota.

The Reclamation Division of the NDPSC reviewed the documentation supplied with the May 15th, 2019, filing and processed the complaint as an informal review, citing a lack of clarity and confusion in citation. An Informal Hearing was held on June 12th, 2019, where the Commission reviewed the Reclamation Division's response to the May 15th, 2019, filing. The Commission provided a response to you on June 13th, 2019, which included provisions to request a formal review under NDCC 38-14.1-30 and a citizens suit under NDCC 38-14.1-40. No further action was taken regarding this complaint until, on August 3rd, 2022, the NDPSC received additional documentation revising the complaint. The complaint was again revised on August 4th, 2022. The revised complaint includes the same issues as the May 15th, 2019, filing, plus additional allegations. Both August 2022 revisions were filed solely with the NDPSC. A request for a Formal Hearing was received by the Commission on August 5th, 2022. A Formal Hearing was held on September 1st, 2022, where the Commission ordered the August 4th, 2022, Revised Formal Complaint be dismissed with prejudice. The Commission's Findings of Fact, Conclusions of Law, and Order were sent to all parties on October 3rd, 2022, by certified mail. Upon issuance of the Commission's findings, OSMRE considers the state review process to be complete, allowing OSMRE review of the complaint to proceed.

The Commission concluded that Coteau conducted mining and reclamation activities in relation to your property in accordance with North Dakota's surface mining laws and regulations. Specifics referencing this action can be found in the Commissions' Findings of Fact, Conclusions of Law, and Order, filed September 27th, 2022, under Case No. RC-22-339.

After carefully reviewing the complaint, supporting documentation, and the responses from the NDPSC to both the Informal Hearing and the Formal Hearing, OSMRE has no reason to believe there is a violation of the approved North Dakota program, the Surface Mine Control and Reclamation Act (SMCRA), or the implementing regulations. OSMRE finds that North Dakota

has good cause for not taking enforcement action, because no violation exists. Because OSMRE has no reason to believe a violation exists, there is no need for OSMRE to conduct a federal inspection.

You may request informal review of this decision under 30 C.F.R. § 842.15(a). Any request for review must be in writing and include a statement of how you are or may be adversely affected and why the decision merits review. You should address such a request to:

Office of Surface Mining Reclamation and Enforcement
David Berry, Regional Director
P.O. Box 25065
Lakewood, CO 80225-5065

Sincerely,



Jeffrey W. Fleischman, Chief
Denver Field Division

cc: Zanna Brinkman, Director, NDPSC
David Berry, Regional Director, OSMRE Western Region