

Public Service Commission Formal Complaint Addendum #2

3-Sep-2022

Complaint to: North Dakota Public Service Commission

Farmland: T146N R88W S34 NW1/4 in Mercer County, north of Beulah, North Dakota

Complainants: Clyde Eisenbeis, Allen Eisenbeis, JoAnn Crabtree

Respondent: North American Coal

- 1) A comment by Sarah Flath was that installing an approach would cause backup onto the farmland. NAC should be required to use Bill Kirk's design which uses two large culverts placed in parallel with each other.
- 2) If I recall correctly, Sarah Flath stated that her 19 Jun 2018 letter was accurate (I don't recall the exact words). It is surprising Sarah Flath made this statement, because that letter contains:
 - a) *The diversion was in poor condition. It was **silted in areas and blown out** in others.*
 - The 2008 photos show no silting.
 - The 2008 photos show no blow out.
 - b) *There were also **small trees or shrubs** growing in the diversion channel.*
 - The 2008 and 2011 photos show that there were no trees or shrubs in the diversion channel.
 - The shrubs were at the end of the diversion channel near the road.
 - c) *There was little to no elevation difference between the field and diversion bottom and between the field, **ditch bottom, and the road top**. The ditch had filled in with sediment over the years and when water did flow in this area, it mostly flattened out over a broad area and flooded into the adjoining field.*
 - The road ditch has always been at that elevation. The 2008 photo of the road ditch shows that it was the same as when I was a kid.
 - The road ditch did not fill with sediment over the years.
 - When water flows over soil, the land does not fill with sediment. It erodes, as is shown in the most recent photos.
 - In the past, the water, from NAC land, flowed over the farmland, not in the road ditch. The arial photos prove this.
 - d) *Clyde Eisenbeis, Esther Eisenbeis's son, became **involved in the design and location** of the proposed improved diversion.*
 - Where is the documentation that shows my involvement with the design and location?

- e) Clyde Eisenbeis **agreed the diversion** should be reconstructed in its current location, as did Esther Eisenbeis.
- Where is the documentation that shows that I agreed.
 - Jerry Becker, NAC, knew Esther Eisenbeis had Alzheimer's. I believe that Jerry Becker would not have contacted her after he contacted me.
- f) Over the years, washing from the existing diversion had **filled the road ditch with sediment**. The sediment needed to be removed in order for the diversion to function properly and not flood the north edge of the field.
- See section c).
- g) In the interest of being **a good neighbor**, Coteau engaged contractors to improve the pre-existing diversion with the **hope** it would alleviate the erosion issues that had plagued this tract for several decades.
- A good neighbor does not modify their neighbor's property without permission.
 - The word "hope" indicates that NAC was guessing. NAC guessed wrong. Everything is worse.
 - The 2011 photo (page 13, bottom left) shows erosion of the crop land soil, not the road ditch.
 - Destroying the prairie grass in the road ditch has resulted in erosion of the road ditch as is shown in the newer photos.
- h) As demonstrated, **mining operations were never the source or cause of erosion** in Eisenbeis fields.
- Sarah Flath stated that the ponds did overflow.
 - Sarah Flath stated that farmland gullies were repaired.
 - These statements, along with 2011 and 2014 photos, prove there was erosion because of pond water overflow.

Sarah Flath claimed that her 19 Jun 2018 letter was accurate. This claim is not true.