

**Complaint to:** State of North Dakota

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

**Complainants:** Clyde Eisenbeis (**Eisenbeis**), Allen Eisenbeis, JoAnn Crabtree (**Farmland** owners)

**Respondent:** North Dakota Public Service Commission (**PSC**) Commissioners

This Complaint and appendices can be found at **Beulah.FoxPing.com**. Contact **Eisenbeis** if there are mistakes in this **Complaint** so they can be fixed.

Appendix A - PSC Formal Complaint Decision Letter - 13 Jun 2019

Appendix B - North American Coal Response Letter - 19 Jun 2018

Appendix C - North American Coal Proposed Approach Agreement - 22 Sep 2017

Appendix D - North American Coal Threatening Letter - 5 Jul 2018

Appendix E - Eisenbeis Farmland History Log



**4122 County Road 15**

**Latitude and Longitude:**  
**47.426, -101.88**

**Definitions:**

- **Farmland:** T146N R88W S34 NW1/4, north of Beulah, North Dakota (in Mercer County)
- **Landowner:**
  - 6 Sep 2011 to 18 Jun 2016: Esther Eisenbeis (Clyde Eisenbeis was the POA)
  - 18 Jun 2016 to present: Clyde Eisenbeis, Allen Eisenbeis, and JoAnn Crabtree
    - Esther Eisenbeis had Alzheimer's for many years. She died in 2016.
    - Clyde Eisenbeis lived in Iowa in 2011. Clyde Eisenbeis moved back to ND in Oct 2015.
- **Eisenbeis:** Clyde Eisenbeis
- **NAC:** North American Coal / Coteau
- **PSC:** ND PSC Commissioners
- **Complaint:** State of North Dakota Complaint document

**Executive Summary Complaint:**North American Coal (**NAC**):

- **NAC** ponds overflowed which damaged farmland crops in 2011 and 2014. Pond water netting was found in multiple places on the farmland.
- **NAC** dug a deep drainage ditch on the farmland without authorization.
- **NAC** dug the road ditch deeper so that grain trucks can no longer cross the ditch. The combine needs to travel across the ditch to unload the grain onto a truck.
- **NAC** discharged large amounts of pond water into the farmland creek, which resulted in flooding the SW corner of the farmland (for many years). It also flooded a neighbor's farmhouse basement.

The **PSC** is not enforcing:

- 1) **NDCC** (North Dakota Century Code) 38-14.1 Surface Mining and Reclamation Operations
  - NDCC (North Dakota Century Code) 38-14.1-02 (35 b) "Surface coal mining operations means: ... 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"
- 2) **NDAC** (North Dakota Administrative Code) 69-05.2 Surface Coal Mining and Reclamation Operations
  - NDAC 69-05.2-01-02 (1) "**Adjacent area** means land located **outside the affected area or permit area**"
- 3) **PSC Memorandum**
  - PSC Memorandum 6 to Mine Operators, March 8, 1995 "**activities and disturbances** must be conducted **within the boundaries of a surface coal mining permit**"

## Important details:

- 1) The **PSC** did not contact **Eisenbeis** when **NAC** pond water overflowed onto the **Farmland** in 2011 and 2014.
- 2) The **PSC** did not provide **Eisenbeis** with 2008, 2011, and 2014 photos and reports.
- 3) The **PSC** did not provide **Eisenbeis** with information about relevant ND laws.
- 4) The **PSC** did not provide **Eisenbeis** with photos of the NAC land from 2008, 2011, and 2014.
- 5) It is unknown if there are **PSC** photos of the **Farmland** creek or the southwest corner of the **Farmland** that was flooded.
- 6) The **PSC** did not tell **Eisenbeis** about a **NAC** response letter dated 19 Jun 2018. There are many errors in that letter (see Appendix B).
- 7) In 2019, **Eisenbeis** filed a Formal Complaint to the **PSC**.
  - The **PSC** changed the Formal Complaint to an Informal Complaint.
  - The **PSC** did not assist **Eisenbeis** in preparing the Formal Complaint.
  - The **PSC** did not contact **Eisenbeis** to correct Formal Complaint errors.
  - The **PSC** Commissioners did *not* investigate the **contractions Eisenbeis** described in the Formal Complaint and other relevant documents.

The **PSC** Commissioners approved the Reclamation Division Complaint Decision Letter *without allowing any comments* from **Eisenbeis**. This *violates Due Process* - US Constitution Fifth Amendment and Fourteenth Amendment.

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- 8) The **PSC** will not provide **Eisenbeis** with **land erosion photos** of **NAC land** adjacent to the **Farmland**.

The **PSC** states that these are not due to coal mining, even though:

- a) **NAC pond water overflows resulted in farmland crop loss and damage,**
- b) **NAC pond water discharges flooded farmland,**
- c) **NAC dug the ditches.**

### **Executive Summary Requested Relief:**

Require the PSC to enforce ND laws (NDCC, NDAC, and PSC Memorandum). This includes:

**NDCC 38-14.1-02 (35 b)** specifically defines land outside a permit area:

*"Surface coal mining operations" means: ... 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, ....*

**NDAC 69-05.2-01-02 (1)** specifically defines land outside a permit area:

*"Adjacent area means land located **outside the affected area or permit area**"*

**PSC Memorandum 6 to Mine Operators, March 8, 1995** specifically defines land outside a permit area:

*Listed below are specific **activities** and types of **disturbances** which are included under the scope of "Surface Coal Mining Operations," as defined in NDCC Section 38-14.1-02(33). **These activities and disturbances must be conducted within the boundaries of a surface coal mining permit.***

### **Executive Summary Background:**

**Eisenbeis** (Clyde Eisenbeis) received a phone call from **NAC** (in the fall of 2011) about erosion on Esther Eisenbeis **Farmland**. There were two **NAC** requests: 1) repair the erosion damage, and 2) to install a deep diversion ditch on the **Farmland**.

Repairing the erosion seemed ok to **Eisenbeis**. Installing a deep diversion ditch on the **Farmland** was not ok. **Eisenbeis**, stated the diversion ditch should be installed east of the **Farmland** on **NAC** property.

**Eisenbeis** did not know that per ND law, **NAC** was required to obtain a permit before proceeding.

Over the next few weeks, **Eisenbeis** was told that electric powerline poles are too close for a diversion ditch on **NAC** property. He was told there are five electric powerline poles (no longer in use), the closest pole being 24 feet. **Eisenbeis** stated 24 feet is plenty of space for a diversion ditch.

**NAC** proceeded to install a deep diversion ditch on the **Farmland** without **Eisenbeis** approval.

A 19 Jun 2018 **NAC** response letter [Appendix B] claims:

*"Clyde Eisenbeis, Esther Eisenbeis's son, became involved in the design and location of the proposed improved diversion."*

This is incorrect. **Eisenbeis** was not involved with the design and location. He lived in Iowa.

*"Clyde Eisenbeis agreed the diversion should be reconstructed in its current location, as did Esther Eisenbeis."*

This is incorrect. **Eisenbeis** never agreed. Esther Eisenbeis had Alzheimer's.

**Eisenbeis** was **not** told the erosion was due to **NAC** pond water overflow.

**Eisenbeis** was **not** told that the road ditch was also deepened.

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**Eisenbeis** received another phone call from **NAC** (on 21 Nov 2014) about new erosion on Esther Eisenbeis **Farmland**. **NAC** planned to repair the erosion damage.

**NAC** proceeded to deepen the diversion ditch on the **Farmland** and proceeded to deepen the road ditch. **Eisenbeis** was not told the erosion was due to **NAC** pond water overflow.

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**Eisenbeis** moved back to ND in Oct 2015. He was shocked at the damage to the **Farmland**. The diversion ditch was huge, and consumed some of the **Farmland**. There was water on the southwest corner of the **Farmland**. There was water in the **Farmland** creek (he had never seen any water in that creek).

While attempting to find a farmer willing to rent the **Farmland**, **Eisenbeis** was told by a potential farmland renter that road ditch was too deep for farm equipment and farm trucks.

**Eisenbeis** eventually found a farmland renter. That renter cannot drive a grain truck across the deep road ditch onto the field. That renter needs to drive the combine across the deep ditch to unload the grain into the grain truck.

**NAC** told **Eisenbeis** that **NAC** would install an approach on the road ditch. **NAC** (Jerry Becker and Bill Kirk, a Civil Engineer) met with **Eisenbeis** and the **Farmland** renters (Jerome and Jayme Boeshans) at the **Farmland** on 13 Apr 2016. The meeting was to discuss the approach location.

**NAC** stated the approach would be installed in a few weeks. Jerome and Jayme Boeshans proceeded to rent the **Farmland** and plant a crop.

The approach was never installed.

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**Eisenbeis** contacted the **PSC** on 27 Oct 2016 (his first contact with the **PSC**). A 13 Apr 2017 **PSC** email stated that the **PSC** visited the site, and stated there were no changes from the previous fall. The **PSC** did not address the problem.

**Eisenbeis** received an email from the **PSC** 28 Apr 2017. That email included this statement, "... Coteau had been willing to provide you with an approach but that you would not sign an agreement to allow them to construct the approach." This was not true. This was the first mention of a written agreement. The **PSC** was unwilling to comment on who made that statement.

On 1 May 2017, **Eisenbeis** sent an email to the **PSC** and to **NAC** with a written authorization attachment.

On 19 May 2017 and 22 Sep 2017, **NAC** mailed a different written authorization to **Eisenbeis**. The **NAC** version [Appendix C] contained this statement: "*Eisenbeis agrees to fully indemnify and hold harmless Coteau against any and all claims, losses, expenses, actions, causes of action and liability of whatsoever kind or nature arising from the use or existence of said approach and diversion.*" **Eisenbeis** did not sign this document.

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**Eisenbeis** met with the **PSC** on 18 Jan 2018 to discuss **NAC** pond water overflow, **NAC** pond water discharge, **NAC** construction of a deep diversion ditch, and **NAC** deepening the road ditch which blocks access to the **Farmland**.

**Eisenbeis** asked if this was legal. The **PSC** response was they don't give legal advice. **Eisenbeis** interpreted this as: 1) the **PSC** does not know the law, or 2) the **PSC** is unwilling to help the public.

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On 26 Apr 2018, **Eisenbeis** met at the **Farmland** with Guy Welch, **PSC**, Bruce Beechie, **PSC**, Jerome and Jamie Boeshans (**Farmland** renters).

Guy Welch picked up some pond water netting (from **NAC** ponds) in new erosion gullies. The new gullies start on the east side, at the location where **NAC** lowered the berm by the fence (see photo later in this document).

The **Farmland** renters had found lots of pond netting the previous years. It kept plugging their farm equipment.

This is further proof that the **Farmland** damage is coal mining related.

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The water table elevation at the MP03-P018 measurement station (see map on page 1) started increasing in elevation circa 2007. This water table elevation, in 2017, was higher than the southwest corner **Farmland** elevation. This resulted in flooding some of the **Farmland**.

A **PSC** letter (dated 23 Jul 2018) states, "*The elevation of shallow ground water tables have raised ... in recent years due to a trend of increased precipitation.*"

The **PSC** letter contradicts the water table elevation measurements. Of the six water table elevations received from the Brian Beechie, **PSC**, only the MP03-P01B water table shows significant increases in water table elevation. The other water tables did not increase significantly.

This **PSC** letter states, "*The Reclamation Division concludes that the wet areas in your field are not the result of Coteau mining and reclamation activities.*"

Lucille Sailer lives in a farmhouse (see map on page 1) about a quarter west of the creek. **NAC** pond water discharge into the creek has caused her farmland and farmhouse basement to flood. This flooding occurs every time **NAC** pond water is discharged.

The **Farmland** creek is filled with water. Clyde Eisenbeis, Lucille Sailer, and Lyle Eisenbeis (who owns adjacent farmland) have never seen "any" water in the **Farmland** creek over a span of more than 60 years.

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In July 2018, **Eisenbeis** received a threatening letter from **NAC** [Appendix D].

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**Eisenbeis** filed a **Complaint** (Formal Citizen Complaint) with the **PSC** on 15 May 2019. The **Complaint** included the fact that **NAC** pond water discharge and pond water overflow damaged the **Farmland**. In addition, **NAC** attempts to fix the problems created more damage (see map on page 1). The damage includes:

- 1) **NAC** pond water overflow onto the **Farmland** resulted in erosion, loss of topsoil, and loss of crop income. Pond water netting was found in multiple places on the farmland.
- 2) **NAC** pond water was discharged into the **Farmland** creek which resulted in raising the water table and flooding the southwest corner of the **Farmland** which resulted in loss of crop income. Those discharges also flooded a neighbor's farmhouse basement.
- 3) **NAC** constructed a deep diversion ditch (twice) on **Farmland** which resulted in loss of topsoil and loss of crop income.
- 4) **NAC** deepened the road ditch (twice) which blocks access to the **Farmland** which makes it difficult for farmers to plant and harvest crop.

These occurred without a **PSC** permit and without **Landowner** consent.

Deepening the road ditch occurred without a Mercer County permit, and without a **PSC** permit

Contents of the **Complaint** contained **PSC** reports and **PSC** photos dating back to 2011. The **Complaint** described **PSC** contradictions between **PSC** photos, **PSC** reports, and **PSC** email statements.

After the Complaint was filed, the **PSC** did not inform **Eisenbeis** about mistakes in **Complaint** so **Eisenbeis** could correct them. Those mistakes did not change the four **Complaint** issues.

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On 10 Jun 2019, **PSC** Reclamation Division sent to **Eisenbeis** a draft of the **PSC** Reclamation Division Complaint Decision Letter [Appendix A] that was to be presented at the **PSC** Commissioners meeting on 12 Jun 2019.

This draft included a response letter from **NAC** dated [Appendix B].

**Eisenbeis** identified the errors in **PSC** Complaint Decision Letter, and sent corrections to the **PSC** Reclamation Division and to the **PSC** Commissioners on 11 Jun 2019.

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The **PSC** Commissioners met on 12 Jun 2019. The agenda included discussing the original (not updated) **Eisenbeis Complaint**. The **PSC** changed the **Eisenbeis** Formal Complaint to an Informal Complaint.

The **PSC** Commissioners comments implied that they had not read the **Complaint** (even though they had received the **Complaint** long before the meeting). They relied on comments from the **PSC** Reclamation Division (even though **Eisenbeis** had emailed to the **PSC** Commissioners the errors in the **PSC** Reclamation Division Complaint Decision Letter).

**Eisenbeis** was not allowed to make any comments at the **PSC** meeting. The **PSC** Commissioners making a decision, without allowing comments, violates Due Process - US Constitution Fifth Amendment and Fourteenth Amendment.

One blatant example, during the meeting, was when the **PSC** Commissioners asked what the diversion ditch looked like before **NAC** modified it. **Eisenbeis** was not allowed to tell them to look at page 5 of the **Complaint**. The **PSC** Reclamation Division did not tell them to look at page 5. Brian Kroshus (**PSC** Commissioner) had seen those photos many months earlier.

The **PSC** Commissioners approved the **PSC** Reclamation Division Complaint Decision Letter dated 13 Jun 2019.

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The **PSC** Reclamation Division Complaint Decision Letter dated 13 Jun 2019 sent to **Eisenbeis** contains:

*"We do not view reconstruction of the diversion as a mining related matter and therefore, it is not subject to our jurisdiction nor was it an activity that required to be permitted."*

**Eisenbeis** comments,

- 1) Why are there **PSC** photos of the farmland and reports about the farmland dating back to 2011?
- 2) The **NAC** written authorization [Appendix C] for the installation of an approach contains "*fully indemnify and hold harmless Coteau against any and all claims, photos, reports ....*" This contradicts the **PSC** statements that the Farmland disturbances are not mining related.
- 3) All **Farmland** damage and disturbances are mining related.
- 4) The **PSC** is not enforcing North Dakota laws.

**It's important to note that NAC is not allowed to move dirt on their own land without a permit. Likewise, NAC is not allowed to move dirt on someone else's land without a permit.**

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Appendix E is a detailed history log dating back to 2011.

***Executive Summary Controlling Provisions:***

## North Dakota Century Code (NDCC)

38 Mining and Gas and Oil Production

38-14.1 Surface Mining and Reclamation Operations

38-14.1-01 Declaration of findings and intent

38-14.1-01 (1) --- disturbances of surface areas ... by damaging the property of citizens

38-14.1-02 Definitions

38-14.1-02 (17) --- Permit area means land approved for surface coal mining operations

38-14.1-02 (19) --- Permit revision mean modification of permit and includes changes in the mining plans  
boundary extensions

38-14.1-02 (34) --- Surface coal mining operations means surface coal mining

38-14.1-02 (35 a) --- activities affecting the surface of lands in connection with surface coal mine

38-14.1-02 (35 b) --- areas where activities disturb natural land surface ... includes adjacent land

38-14.1-14 Permit applications - Mining and reclamation plans

38-14.1-14 (1) Permit applications ... must contain

(r 13) Permit applications ... must contain the location of any discharges to any surface body of  
water on the area of land to be affected or adjacent thereto

38-14.1-21 (3 c) Prevent damage to the hydrologic balance outside the permit area

38-14.1-24 Environmental protection performance standards

38-14.1-24 (8) Minimize the disturbances to the prevailing hydrologic balance in associated offsite areas

(f) --- Avoiding natural channel deepening

## North Dakota Administrative Code (NDAC) [Administrative Rules]

69 Public Service Commission

69-05.2 Surface Coal Mining and Reclamation Operations

69-05.2-01 General Provisions

69-05.2-01-02 Definitions

69-05.2-01-02 (1) ... Adjacent area means land located outside the affected area or permit area ....

**NAC Complaint #1: Pond water overflow resulted in 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.**

**PSC Photos 31 Aug 2011**



**PSC Photos 16 Sep 2014**



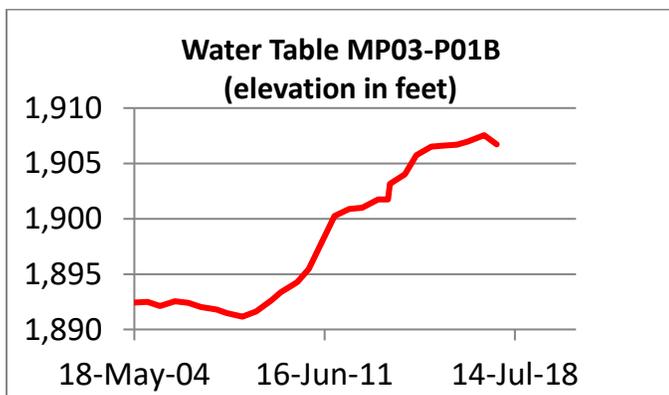
Pond water netting was scattered over the farmland. It plugged the farm equipment numerous times.

**NAC Complaint #2: Pond water was discharge coal mine disturbed area pond from within the permit area 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 and without Landowner consent).**

There are no known photos of the **Farmland** creek or the **Farmland** flooding.

Brian Beechie, **PSC**, provided elevations for multiple water tables north and south of the **Farmland**. Water table MP03-P01B is located about a half mile south of the **Farmland**.

The MP03-P01B water table elevation increased significantly after pond water started being discharged into the creek.



The water table elevation (higher than 1,900 feet) flooded the southwest corner of the **Farmland**. The southwest corner of the **Farmland** is 1,900 feet.

Lucille Sailer lives in a farmhouse (see map on page 1) about a quarter west of the creek. **NAC** pond water discharge into the creek has caused her farmhouse basement to flood. This flooding occurs every time NAC pond water is discharged.

The **Farmland** creek is filled with water. Clyde Eisenbeis, Lucille Sailer, and Lyle Eisenbeis (who owns adjacent farmland) have never seen "any" water in the **Farmland** creek over a span of 60 years.

**NAC Complaint #3: Constructed a deep 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.**

PSC Photos 6 Mar 2008 ... original diversion ditch



PSC Photos 16 Sep 2014 ... NAC modified diversion ditch



**PSC Photo 26 Apr 2018 ... provides a water path from **NAC** land onto **Farmland****



**PSC Photo 26 Apr 2018 ... new erosion, not repaired by **NAC**.**



**PSC Photo 26 Apr 2018 ... pond water netting proves new erosion is related to **NAC** ponds**



**NAC Complaint #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, without Landowner consent, and without a Mercer County permit).**

**PSC** Photo 31 Aug 2011 ... prior to deepening road ditch



**Eisenbeis** Photo 10 Sep 2017 ... deep road ditch



**NAC** dug the road ditch deeper so that grain trucks can no longer cross the ditch. The combine needs to travel across the ditch to unload the grain onto a truck.