

**Thompson, Pamela J.**

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## Filing Accepted

Envelope Number: 5616689

Case Number: 08-2024-CV-00694

Case Style: Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.



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Filing Details	
<b>Court</b>	Burleigh County
<b>Case Number</b>	08-2024-CV-00694
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	4/9/2024 6:28 PM CST
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**NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.  
Revision No. 12, Permit NACC-1302  
Application**

**Case No. RC-22-233**

**COMMENTS OF CASEY VOIGT AND JULIE VOIGT, OBJECTION TO MINE PLAN,  
AND REQUEST FOR INFORMAL HEARING**

**August 29, 2022**

Coyote Creek Mining Company, L.L.C. (“CCMC”) filed an application to revise Surface Coal Mining Permit NACC-1302. Casey and Julie Voigt (“Voigts”), by and through their counsel, hereby submit comments on CCMC’s application on “Revision 12.” For the reasons stated in these comments, the Voigts object to the mining plan and request an informal hearing before the Public Service Commission (“PSC”). The Voigts own the surface of much of the mine. The Voigts’ house, in Section 31 of T143N, R88W, is directly adjacent to the active mining area for the mine and is within the permit boundary, and near the now-requested Variance 7. The Voigts also continue to operate an active cow-calf ranching operation upon the surface of the mine permit area.

As the PSC is aware, the Voigts previously requested a formal hearing on CCMC’s original application for NACC-1302 in PSC case RC-13-850. The Voigts also requested an informal hearing regarding air quality concerns at CCMC before the mine became operational in PSC case RC-14-846. Additionally, in 2019, the Voigts requested an informal and formal conference on Revision 11 to NACC-1302 as well as its renewal in RC-19-190 (Revision 11) and RC-19-189 (Renewal).

The Voigts and CCMC continue to struggle to find common ground. The dust control at the mine still results in significant dust on the Voigt ranch, and having the entire yard coated in dust and having dust in pastures where livestock are grazing is an ongoing issue. The issues and concerns raised by the Voigts in prior hearings and conferences still exist.

While the Voigts are cognizant that there are limitations on the relief the PSC can afford, it is critical to understand that some of the revisions being requested by CCMC are directly related to issues the Voigts believed they had negotiated by private contract. These agreements the Voigts believed they had with CCMC are impacted by the actions (or inaction) of the PSC, and so the Voigts must necessarily raise some of these concerns with the PSC. For example, the Voigts have an ongoing dispute with CCMC regarding how to compensate for loss of production on disturbed acreage. Without involving the PSC in this dispute, it is important to understand that the dispute focuses in part on payments for land that has been disturbed and mined, but that is not reclaimed

and returned to production. The Voigts entered into their coal lease with the understanding that all federal, state, and local laws would be followed, including those related to reclamation. The variances being granted to CCMC can have a real economic impact on the Voigts and contradict the basis on which they entered into such a lease in the first place. The Voigts made the reasonable assumption that the PSC would strictly enforce the reclamation laws. The Voigts entered into the coal lease with the understanding that they would be able to continue ranching on their property, and that their land would be promptly returned to their possession and use following mining and prompt reclamation. They assumed that dust would be controlled by requiring immediate revegetation of disturbed soils.

Without limiting the generality of the foregoing, the Voigts also specifically object to the following proposed revisions.

1. Sections 2.5.4, 2.5.7

a. According to CCMC, “the projected respread thicknesses in the SE4NW4, NE4SW4, and the SW4SW4 Sec. 25 were corrected to 36” based on overburden sample analyses. They were inadvertently labeled as 48” respread areas.”

i. The Voigts have not been made aware of any “overburden sample analyses” that justify this revision, nor has CCMC explained the source of its figures for the available topsoil and available subsoil in Section 2.5.4.2 – Soil Respread Depth Table.

ii. It is clear that the depths of soil respreading were not “inadvertently labeled” as the entire table is being revised to reduce the amounts of topsoil and subsoil being respread based on what CCMC has represented it has available. The obvious concern and primary question is how CCMC determined what amount is “available” and why it is now proposing to respread subsoil and topsoil contrary to the table is previously utilized at N.D.A.C. § 69-05.2-15-04(4).

iii. CCMC proposed to conduct its respreading operation based on the provisions of N.D.A.C. § 69-05.2-15-04(4) and made calculations based on soil chemistry regarding what amount of subsoil and soil would need to be respread to successfully reclaim the land. CCMC has not explained how significantly reducing the amount of suitable plant growth material being respread is going to achieve the same success with reclamation as its prior plans. Without a compelling justification, CCMC should not be allowed to so significantly reduce the amount of suitable plant growth material being respread across the mine.

2. Variances 1-7

a. CCMC includes the following edits in its request for Variance 7. It also fails to mention explicitly that it is also actually asking for six additional variances, since it is asking to now extend its prior variances for post-disturbance seeding on native prairie *indefinitely*. CCMC’s changes are as follows:

CCMC also requests a variance ~~for a maximum of six years~~ following coal removal activities on areas to be seeded to native grasslands or woodlands within the aforementioned variance areas 1-6-7. These areas will be seeded to the approved post mine land uses at the same time as larger adjacent tracts as described in Section 3.1.3, and adjacent associated disturbance. ~~The flexibility to aforementioned procedures and rationale coupled with delayed seeding dates for the native grassland areas within these variance areas will also allow for the most successful opportunity for reclamation of these native grassland tracts.~~ Features such as ramps, haul roads,

- b. It is important to note that the six-year maximum to which CCMC previously committed has now been removed, and the timing of this reseeded and reclamation work is to occur “at the same time as larger adjacent tracts.” This practice of refusing to reclaim agricultural land because it is easier to await larger tracts that can be more economically managed by CCMC is not a reason to grant the variance.
- c. Variance 7 is located above the Voigt home. This is the area with giant spoil piles that appear to contribute to the large amounts of dust that settle in the Voigt’s yard and in their pastures. The Voigts object to any delay revegetating any part of this area and demand that it be immediately revegetated. Failure to revegetate causes ongoing issues with dust in the Voigt’s yard and this variance will only exacerbate the lack of vegetative cover around the mine that leads to some of the dust issues the Voigts face.

For the foregoing reasons, the Voigts object to CCMC’s application for Revision 12 to surface mining permit NACC-1302. The Voigts additionally request an informal conference before the Public Service Commission on these issues and any other issues that may arise during the course of these proceedings and which are under the jurisdiction of the PSC.

Submitted this 29<sup>th</sup> day of August, 2022.

**BRAATEN LAW FIRM**

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