

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, L.L.C.  
Revision 13, Permit NACC-1302  
Renewal 2, Permit NACC-1302  
Applications

Case No. RC-24-244  
Case No. RC-24-245

COMMENTS OF CASEY VOIGT AND JULIE VOIGT

August 26, 2024

Coyote Creek Mining Company, L.L.C. (“CCMC”) filed applications to revise Surface Coal Mining Permit NACC-1302. Casey and Julie Voigt (“Voigts”), by and through their counsel, hereby submit comments on CCMC’s applications on “Revision 13 and Renewal 2”. For the reasons stated in these comments, the Voigts object to the permit for the reasons stated below.

**I. The Commission’s commentary has significantly dampened public participation.**

The Voigts continue to operate an active cow-calf ranching operation upon the surface of the mine permit area. Operating a cow-calf ranching operation in the midst of an active coal mine is unusual – most of the mines in North Dakota have convinced landowners to relocate by any number of means. The tenacity with which the Voigts continue to fight for their land is admirable, and it is unfortunate that the vitriolic cries of harassment from CCMC seem to have taken hold in (some of) the Commission’s perspective too. The Voigts have now been forced into a position where no matter what they do, CCMC will cry foul, frivolous, and harassment.

At a special meeting on July 8, 2024, the Commission met to discuss the motion for attorney fees in the SPGM matter. Although there was a caution that words like “harassment” and “frivolous” are weighty words, numerous admonitions and warnings were nonetheless issued premised on acceptance of those very weighty words as valid allegations leveled at the Voigts. That acceptance marks a new stage in the relationship that will be met head on by the Voigts and their counsel.

To illustrate the impossible position the Voigts are put in, this Commission has indicated that the AVF issue should not be relitigated, but it is not *relitigation* when *new* evidence is offered (which included the expenditure of thousands of dollars by the Voigts to hire a drilling rig and soil classifier). The Voigts offered significant and expensive new evidence by hiring a drill rig to pull soil bores and a soil classifier to inspect and produce a report on them. Telling the Voigts that the evidence was not sufficient to change the Commission’s mind would have been a disappointing result but part of the process and precisely the Commission’s authority. But the Voigts are told that if they raise the issue again, even with new evidence that is pertinent, it is harassment and

relitigation. The Voigts have pursued litigation and numerous other avenues to address the dust issues from the Mine, and despite Commission staff acknowledging on record that it is an *ongoing problem*, the Commission draws a line at one complaint and if there is no remedy after the first complaint the Voigts are barred from complaining again, ongoing problem or not. But then again, with a renewal application rather than merely a revision, all issues should be open to discussion because it is by law as if it is a new permit application. Yet the Commission even includes the recent dispute over respread depths of SPGM among issues that have been raised before by the Voigts. With all due respect, the Voigts disagree. Simply because SPGM itself was discussed does not mean that post-disturbance testing had been done and final depths determined and a specific dispute arising over the respread depths on specific parcels. These issues were emphatically not discussed ever before because they literally could not have been except as a hypothetical. This detail is important when casting aspersions of frivolity and meritless litigation at the Voigts and their counsel. But then details are often lost when they are deemed unimportant to one's view.

The Commission appears to have determined that there is credibility to CCMC's assertions that the Voigts and their counsel have brought forth meritless issues and that perhaps they *should be penalized* for engaging in the public process literally created for landowners like them to express their concerns about the mine on their property. The Mine's tactic designed to squelch participation by the Voigts in the public participation processes was successful. The Voigts are now put in the impossible position of participating in the public participation processes of SMCRA at risk at all times of having fees imposed given the overt threats.

## **II. The Voigts were supposed to choose the reference areas but the Commission is allowing the Mine to shirk its responsibility again.**

Following the first hearing on the CCMC permit years ago, it was agreed that the Voigts would be consulted and that they would be able to guide the choice of reference areas to be used as a measure for reclamation success. In Section 4.3.1 CCMC proposed the following revision:

was determined they would be disturbed by mining, so new sites were proposed after the 2013 field season was over. However, ~~at this time they haven't~~ were not yet been approved by the PSC. Additionally, as part of the 2015 orders issued in response to the formal hearing on NACC-1302, Casey Voigt will be consulted on the selection and management of reference areas to be used to demonstrate reclamation success of reclaimed native grasslands that he owns. In 2023, Coyote Creek with the assistance of Kelly Krabbenhoft (KDK Consulting) established proposed reference sites on the the Voigt lands. Coyote Creek is proposing 6 ecological sites on the Voigt properties to represent the dominant ecosites the will be mined and reclaimed on the Voigt property. An initial field inspection of the sites was conducted with the NDPSC in late 2023 during a routine NDPSC inspection. Coyote Creek will consult with Casey Voigt in the summer of 2024 to review and discuss the proposed reference sites. After Casey Voigt and the PSC review the reference area sites and they have been approved, they will be added to the permit as "approved reference areas". The proposed reference areas are shown on the Ecological Site Map in Section 2.4.7.1.

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The order from the PSC and the intent following the 2015 hearing was that the Voigts would be part of the process of *selection* and management of the reference areas to be used to demonstrate reclamation success. Rather than consult with the Voigts on the selection of the reference areas,

the Mine has unilaterally chosen them and now asks to revise its application to indicate it “will consult with Casey Voigt in the summer of 2024 to *review*” the reference sites already chosen. The Voigts had never even seen the reference areas and the Mine had never consulted and the Voigts were advised by Commission staff at a meeting on August 22, 2024. The autumnal equinox fast approaches, and the Mine has yet to follow through on its claim it will consult “in the summer of 2024.”

The Mine should not be allowed to ignore an order of the Commission and then rewrite its permit to paper over its noncompliance. This revision to 4.3.1 should be rejected and the Voigts should be consulted on the reference areas as the Mine agreed. The proposed reference areas should not be made part of this application given that the Mine has not consulted the Voigts. Fixing these locations as “proposed” locations at this point is prejudicial and contradicts the letter and spirit of the Commission’s prior order and the parties’ prior commitments.

The requirement for the Voigts to choose reference areas goes back to the first hearing at which the Voigts expressed concerns about reclamation success. The Voigts recently obtained some numbers on reclamation and bond release from the Commission. The Voigts have been trying to get information on reclamation for years and do not claim to fully understand the spreadsheets from the Commission staff, but based on their analysis the following numbers appear to be a representation of acres released from bond in North Dakota. If the Voigts’ analysis is correct, it is concerning. Even if not, the numbers on hand with the Commission are cause for concern, and the Voigts are concerned.

		<b>2</b>	<b>3</b>		<b>4</b>	<b>5</b>
<b>Mine</b>	<b>Cropland Pre</b>	<b>Cropland Acres Released</b>	<b>Cropland Acres Added</b>	<b>Cropland Post</b>	<b>Cropland Released Acres Total</b>	<b>Cropland Released % Total</b>
<b>Am. Colloid</b>	430	0	41	471	0	0%
<b>Beulah</b>	5,123	251	922	5,794	0	0%
<b>Center</b>	10,279	793	3,587	13,073	0	0%
<b>Coyote Creek</b>	1,015	0	384	1,399	0	0%
<b>Falkirk</b>	42,787	788	97	42,096	691	2%
<b>Coteau Freedom</b>	26,394	2,237	2,621	26,778	0	0%
<b>Gascoyne</b>	2,970	938	510	2,542	428	14%
<b>Stony Creek</b>	123	0	0	123	0	0%
<b>Glenharold</b>	902	530	318	690	212	24%
<b>Indian Head</b>	1,528	1,077	753	1,204	324	21%
<b>Larson</b>	732	544	610	798	0	0%
<b>New Leipzig</b>	25	25	0	0	25	100%
<b>Royal Oak</b>	164	80	0	80	80	49%
<b>JK Ranch</b>	97	92	109	114	0	0%
<b>Sheep Creek</b>	40		0	40	0	0%
<b>Basin</b>	0	0	0	0	0	0%
<b>Velva</b>	167	94	69	142	25	15%

### **III.CCMC is attempting to relocate a road illegally and in violation of the Voigt's property rights.**

The Mine is proposing to relocate a road that it closed in the SE/4 of Section 36, T143N-R89W. It is shown on the 4.1.2 Post Mine Topography and Land Use Map, and it is discussed in Section 4.1.1 of the permit.

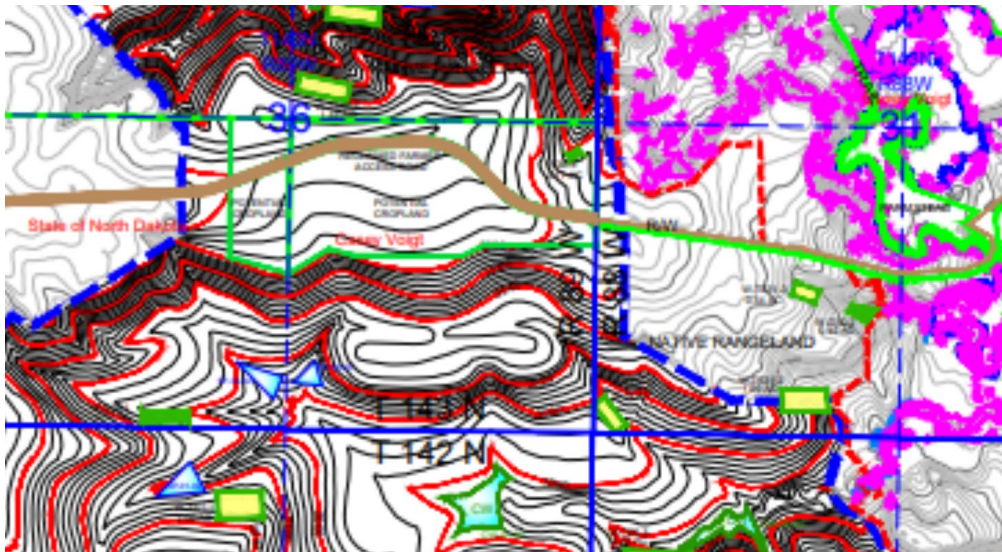
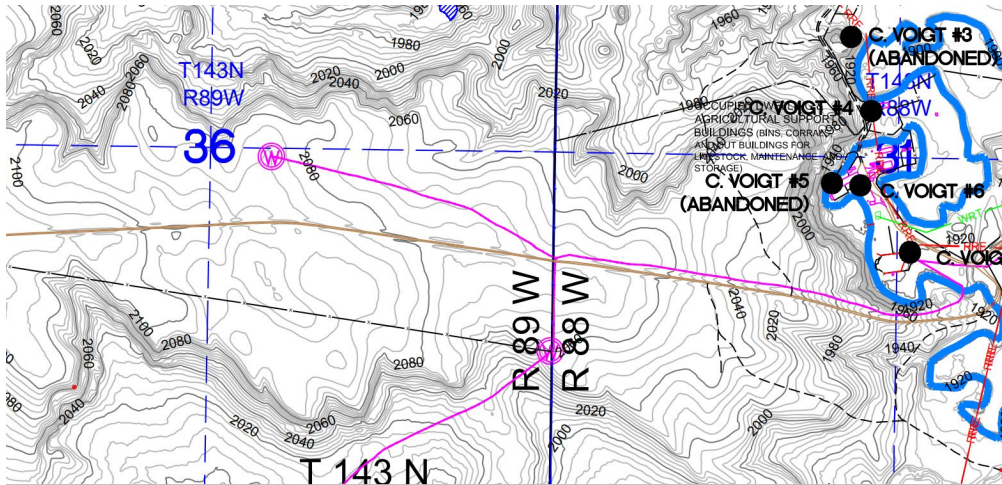
A discussion on reclaimed public roads can be found in Section 3.2.1 Transportation Facilities and Section 3.1.1.6 Landowner and Public Access. One identified unnamed road with an east-west orientation described in Section 3.1.1.6 between County Road 13 and County Road 25 will be disturbed by mining activities. Although this was not a public road prior to mining, an agreement between CCMC and Mercer County can be found in Section 1.2.8 to continue to provide access to land owners during mining operations. A further commitment to replace the unnamed road following mining activities was also agreed upon, resulting in a potential land use conversion to a public road following mining activities, pending attainment of proper easements by Mercer County.

CCMC has verbal agreement from the Voigts and the ND Dept of Trust Lands on an alignment for the reclaimed farmer access road through Section 36, T143N, R183W. Revision 12 updated the road alignment in the Post-Mining Topography and Land Use Map - Section 4.1.2. CCMC is continuing to work with Mercer County to obtain the easements required for construction of the road. Once all easements have been obtained and mining progresses, the farmer access road will be constructed of subsoil.

4.1.1 (Land Use Conversions). Section 3.1.1.6 also states:

An unnamed, roughly east-west oriented gravel road is located between County Road 13 and 17th Street SW. It follows an irregular bearing, angling across the middle of two sections and is signed as a minimum maintenance road, however it is a privately owned road. It provides the Casey Voigt farmstead with access to County Road 13 and County Road 25, but is also open to the public. When Coyote Creek is in high flood conditions, the road floods and is not passable to through traffic. The portion of the trail between Voigt's and County Road 13 has little to no gravel on it, so is only usable by all vehicle types during dry, snow free conditions. This portion of the road will be mined through. Limited access through this area will be maintained during mining and replaced after reclamation according to the 2016 agreement between CCMC and Mercer County as found in Section 1.2.8. The portion of the road between Voigt's and County Road 25 is signed as a minimum maintenance road, but is graveled and has had more grading done to it, so is in better condition than the portion west of the farmstead. Access to the farmstead for the Voigt family will be maintained from the east. This is the only farmstead in the permit area.

The pre and post mine land use maps at 3.1.2 with 4.1.2 illustrate the Mine’s plan for replacing the road, although its narratives are less than clear.



This road relocation was not approved by the Voigts and they object to this plan and the inclusion in the Mine’s permit of maps that show the relocation of the road in violation of law and of the Voigt’s property rights.

**IV. The testing depth for graded spoil contained in Policy Memo 17 is insufficient and should be changed or at least adjusted based on site-specific concerns.**

The Commission relies on Policy Memo 17 for its refusal to require testing to greater depths when the situation calls for it. This is treating Policy Memo 17 like a regulation, which it is not. It can and should be changed. At a prior hearing on the SPGM issue, Casey Voigt testified that two mine employees told him they were “capping” spoil with 12” of glacial till. Casey Voigt took pictures and testified about how the pictures illustrated what he was referring to. Donn Steffen with the

Mine then testified that he believed Mr. Voigt was wrong about everything and that the Mine was doing something entirely different. The Commission's ready willingness to believe the Mine's employee without further support and a second thought and its quick dispensing of Mr. Voigt's testimony shows the bias inherent in these proceeding. It is similar to the Commission's quickness in siding with the Mine and believing there is credibility to its cries of harassment and frivolity while hiding behind the skirts of the Commission.

If the Commission was interested in seeking truth, it could have conducted further testing or required the Mine to conduct further testing to put the matter to rest. Instead the Commission forces the Voigts to attempt to conduct agricultural testing in their own fields while under constant threat of litigation and attack from the Mine, as is evident in the attached overly defensive threats from the Mine to the Voigts.

## **V. Conclusion**

For the foregoing reasons, the Voigts object to CCMC's applications for Revision 13 and Renewal 2 to surface mining permit NACC-1302. The Voigts request no informal conference understanding that to do so would likely subject them to an award of fees by the Commission for harassing the Mine. The Voigts will of course persist in defense of their land, but have heard the message loud and clear that they are welcome to participate in the public participation process of SMCRA at their own risk and peril. The stakes have been raised and the pressure release valve that is the public participation process has been plugged. Now the pressure builds.

Submitted this 26<sup>th</sup> day of August, 2024.

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