

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

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

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COYOTE CREEK MINING COMPANY, L.L.C.’S MOTION TO  
SUPPLMENT THE RECORD

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[1.] Coyote Creek Mining Company, L.L.C. (“CCMC”) moves to supplement the record in the above-captioned matters concerning the previously unidentified issues that Casey and Julie Voigt (the “Voigts”) raised concerning dust at the formal hearing held on December 13, 2024.

**A. The Voigts refused to identify the issues for which they sought a hearing, disregarded the Commission’s order, and seek to again raise issues concerning dust.**

[2.] The Voigts requested a formal hearing in these matters on November 15, 2024, vaguely identifying that “[i]ssues to be raised at the formal hearing include reclamation practices, testing and sampling practices, and reclamation success, as well as general review of the permit and concerns of the landowners hosting this Mine on their property.” Case No. RC-24-244, Dkt. No. 45. On November 21, 2024, the Chair requested that the Voigts file a “clear and concise statement of the claims, including non-compliance or violation of applicable statutes or rules, and relief sought” because the Voigts’ hearing request did “not meet these specifications.” Case No. RC-24-244, Dkt. No. 51. On November 26, 2024, the Voigts rebuffed the Chair. Case No. RC-24-244, Dkt. No. 53. On November 27, 2024, the Chair responded with specific authority for the requested specificity and additionally noted such specificity was necessary for “fairness and efficiency” for everyone involved. Case No. RC-24-244, Dkt. No. 54.

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[3.] The Voigts, notably, never responded. They never responded to multiple requests to set a prehearing conference to discuss issues for disposition at the formal hearing, procedure, exhibits, and other routine matters. At the prehearing conference, the Voigts remained adamant that they “were not required to specify issues for hearing.” Case No. RC-24-244, Dkt. No. 67. Because of their failure to identify the issues they wanted to raise, the Commission ordered that the hearing would “be limited to new issues or concerns not previously raised at a formal hearing about reclamation practices, reclamation success, general review of the permit, testing and sampling practices, and land owner concerns unless there is new evidence regarding any issues raised in previous formal hearings.” Case No. RC-24-244, Dkt. No. 64.

[4.] Despite not being one of the items identified, the Voigts spent a considerable portion of the formal hearing (again) complaining of dust. In support, the Voigts submitted photographs dated October 8, 2024 of a dust covered vehicle. Case No. RC-24-244, Dkt. No. 79. According to the Voigts, CCMC’s stockpiles located several hundred feet to the southwest of their farmstead was the source of that dust.<sup>1</sup> As the only support for that theory, the Voigts submitted two years old photographs of a subsoil stockpile. *See* Case No. RC-24-244, Dkt. Nos. 80, 81. CCMC presumes the Voigts are referring to the subsoil stockpile in the SW ¼ of Section 31. Declaration of Jeremy Eckroth, at ¶ 5. The Voigts did not submit any photographs of that stockpile taken on or around October 8, 2024. Because this issue was not one of the issues identified in the Voigts’ hearing request or in the Commission order, CCMC requests this motion be granted and the record be

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<sup>1</sup> The Voigts for years complained of the dust allegedly arising from CCMC’s haul roads. Apparently finally accepting the conclusion that “DEQ has exclusive jurisdiction over permitting of air quality in North Dakota” generally and specifically as to any mine haul roads, Case No. RC-19-189, Dkt. No. 60, at ¶ 67; Case No. RC-19-190, Dkt. No. 68 (same), the Voigts now claim CCMC’s subsoil pile is the source of the dust.

supplemented to give CCMC an opportunity to fairly respond to the false dust allegations submitted by the Voigts.

**B. Indisputable evidence establishes that the Voigts themselves were most likely responsible for the dust about which they complained.**

[5.] The Voigts clearly knew of the alleged dust issue when they requested the formal hearing and when the Chair requested a clear and concise statement of their claims. But because they refused to identify the issue, CCMC had no way of knowing that the Voigts would once again bring up dust, let alone complain of a particular instance of dust that occurred on a particular day. Following their ambush at the formal hearing, CCMC has now had the opportunity to review its records, including security camera footage. That review indicates the Voigts' own activities were the likely source of that dust. The Commission should grant this motion to complete the factual record and to allow CCMC the fair opportunity to respond to these specific, untrue, allegations.

**1. General layout of mine/farmstead.**

[6.] For general reference, CCMC has prepared the following map rendering with notations.



Declaration of Jeremy Eckroth, at ¶ 6; Exhibit CCMC9 (Slide 1). As shown, CCMC’s office is located to the northeast of the Voigts’ farmstead and has a security camera facing to the southwest.

*Id.* A gravel road begins near CCMC’s office, proceeds south and west, then turns northward going through the Voigts’ farmstead, and then on to the Voigts’ scoria pit located northwest of the Voigts’ farmstead.

*Id.* Between the Voigts’ farmstead and CCMC’s office is the Voigts’ cornfield.

*Id.* And, finally, CCMC’s subsoil pile is located to the southwest of the Voigts’ farmstead. *Id.*

**2. CCMC’s subsoil stockpile was not the source of the dust at issue because the prevailing winds were neither strong enough nor from the correct direction.**

[7.] The Public Service Commission staff is well aware of CCMC’s subsoil stockpile presumably in Exhibit LO8 and LO9. That stockpile is fully vegetated to specifically prevent wind erosion. While the Voigts submitted grainy photographs of that stockpile taken from years past, the photo below is the current state of that pile:



Declaration of Jeremy Eckroth, at ¶ 7; Exhibit CCMC9 (Slide 22). The Voigts' theory presupposes that the winds were of such strength and direction that they eroded that vegetated stockpile and carried that eroded material a quarter mile on or around October 8, 2024.

[8.] CCMC has compiled and reviewed the wind data taken near Zap, North Dakota for October 6 through October 8.<sup>2</sup> Declaration of Jeremy Eckroth, at ¶ 8; Exhibit CCMC13. Based upon its location to the Voigts' farmstead, only a southwest wind would be capable of carrying any eroded material from the vegetated stockpile to the Voigts' farmstead. As the wind data makes clear, the wind blew from the southwest for only two hours in that entire three-day period. Exhibit CCMC13. For those two hours, the maximum average windspeed was 10.2 miles per hour and the maximum wind gust was 17.9 miles per hour. *Id.* Based upon CCMC's experience, those windspeeds are mild and are not of sufficient strength to erode a well vegetated soil stockpile. Declaration of Jeremy Eckroth, at ¶ 8. Thus, CCMC's subsoil stockpile likely is not the source of the dust.

**3. The Voigts chopped their cornfield directly northeast of their farmstead on October 6, 2024, creating excess dust.**

[9.] On October 6, the Voigts chopped silage on the cornfield to the immediate northeast of their farmstead. Declaration of Jeremy Eckroth, at ¶ 9. In doing so, the Voigts created a considerable amount of dust, as shown by CCMC's security camera footage. Exhibit CCMC10.

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<sup>2</sup> This data is also available through the North Dakota Agricultural Weather Network. *See* <https://ndawn.ndsu.nodak.edu/weather-data-hourly.html>



Declaration of Jeremy Eckroth, at ¶ 9; Exhibit CCMC9 (Slide 4). Based upon its review of the camera footage, the Voigts took approximately 30 truckloads of silage from that field over a nearly six-hour period. Declaration of Jeremy Eckroth, at ¶ 9. The Voigts, of course, forgot to mention that detail when they were blaming CCMC for dust at the formal hearing.

**4. Numerous scoria trucks passed within feet of the Voigts' vehicle on October 7 and October 8 as they passed through the Voigts' farmstead.**

[10.] The Voigts also failed to mention that they have an active scoria pit northwest of their farmstead, with which CCMC has nothing to do. *Id.*, at ¶ 10. As noted on the map rendering above, trucks use the highlighted road to access and haul from that scoria pit. In doing so, the scoria trucks go directly through the Voigts' farmstead and come within approximately 65 feet of where the Voigts' vehicle was parked. *Id.* An additional map rendering provides perspective concerning the proximity of that road to the Voigts' vehicle.



Exhibit CCMC9 (Slide 2). Confirming that point, the Commission need only look in the background of the Voigts' exhibits to see just how close that road was to their vehicle:

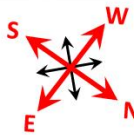
Another view of the road used by the semi trucks hauling scoria right next to the Voigts' dust covered vehicle.



Photo 2 of 2  
from Voigt Exhibit L07

Exhibit CCMC9 (Slide 21). That context is key given what happened on October 7 and 8.

[11.] On October 7, at least three loads of scoria were taken from the Voigts' pit. Declaration of Jeremy Eckroth, at ¶ 11. CCMC has submitted still frames from two of those loads. Exhibit CCMC9 (Slides 5–10). One representative frame shows the dust generated by those trucks:



October 7, 2024

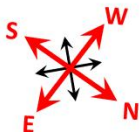
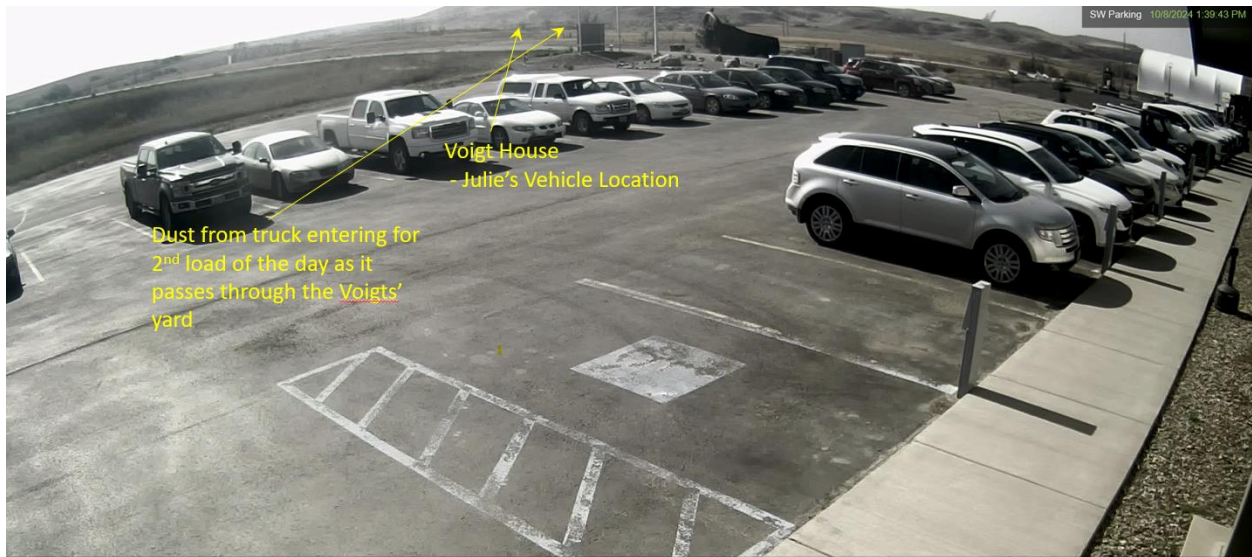
10:06 AM

Avg Wind Speed: 9.5 mph  
Wind Direction: South

Note: The semi truck drives right through the Voigts' yard to access the scoria pit and to exit the area (as seen on the "Location Map")

Exhibit CCMC9 (Slide 8). Each of those three loads went directly through the Voigts' farmstead twice, once coming and once going. Declaration of Jeremy Eckroth, at ¶ 11.

[12.] On October 8, the day of the Voigt photographs, at least two loads of scoria were taken from the Voigts' pit. *Id.*, at ¶ 12. Each of those loads went directly through the Voigts' farmstead twice, once coming and once going. *Id.* CCMC has submitted both still frames and video of those loads. Exhibit CCMC9 (Slides 12–19); Exhibit CCMC11; Exhibit CCMC12. As one representative frame shows, those trucks produced a considerable amount of dust directly in the Voigts' yard directly next to their parked vehicle, which can be seen from far away:



October 8, 2024

1:39 PM

Avg Wind Speed: 10.0 mph

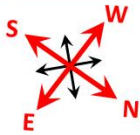
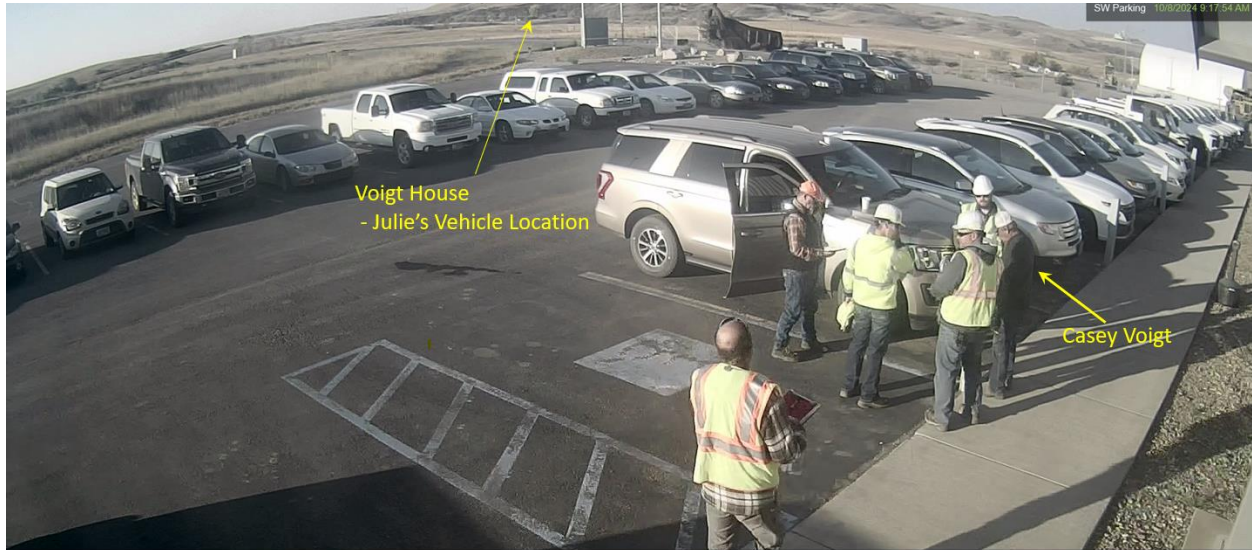
Wind Direction: South

Exhibit CCMC9 (Slide 15). Importantly, those loads occurred in the early afternoon. Declaration of Jeremy Eckroth, at ¶ 12. Based upon CCMC’s review, that is approximately the same time period in which the Voigts’ photograph was taken. *Id.* And that is approximately the same time that Casey Voigt returned to his property on October 8. *Id.* at ¶ 13; *see also* Exhibit CCMC9 (Slides 16–17) (showing Casey Voigt returning to his property at approximately 1:55 p.m.).

[13.] One of two things thus happened to create the dust about which the Voigts complain. Either a short, mild breeze eroded a highly vegetated subsoil stockpile and carried that eroded material nearly a quarter mile to the Voigts’ farmstead (but nowhere else). Or the Voigts’ own activities in the vicinity at the time—scoria trucks producing a considerable amount of dust and passing approximately 65 feet from the Voigts’ vehicle and the corn chopping and silage hauling just to the north of the Voigts’ farmstead—deposited that dust on the vehicle. Only one of those possibilities has any shred of credibility. The Voigts, again, forgot to mention these details when they were blaming CCMC at the formal hearing.

**5. Commission staff, CCMC, and Casey Voigt met on October 8, 2024.**

[14.] A final and important issue warrants mentioning. On the morning of October 8, Commission staff, CCMC, and Casey Voigt met at the mine to survey Ecosites.



**October 8, 2024**

**9:17 AM**

Avg Wind Speed: 6.5 mph

Wind Direction: South

*Note: Casey meeting with Coyote Creek and ND PSC personnel and there is no mention of any dust concerns*

Declaration of Jeremy Eckroth, at ¶ 13; Exhibit CCMC9 (Slide 11). At no time during the nearly four hours that everyone spent together did Casey Voigt mention any concerns with dust that had occurred from the mine, including from CCMC's subsoil stockpile. Declaration of Jeremy Eckroth, at ¶ 12. Certainly, Commission staff would have seen and noted any excess dust eroding from CCMC's subsoil stockpile if that erosion was occurring—there was none.

**CONCLUSION**

[15.] The Voigts have previously blamed CCMC for conditions that they themselves created. As the Commission may recall, the Voigts previously accused CCMC of causing sediment build up in the Coyote Creek when, in fact, that sediment most likely came from the failure of a Voigt-built diversion structure east of the Voigts' house and not CCMC's mining practices. Case No. RC-19-189, Dkt. No. 60 at ¶ 59; Case No. RC-19-190, Dkt. No. 68 at ¶ 59. This is just another

example in that pattern. Nothing in the record supports the Voigts' assertion that the dust about which they complain is attributable to wind erosion from CCMC's subsoil stockpile. Instead, the Voigts' activities on or around their farmstead are the likely sources of that dust.

[16.] CCMC could have explained all of this had the Voigts disclosed what their complaints were prior to the formal hearing. That they had nothing to support their objections explains why the Voigts so adamantly refused to specify the issues they would contest at the formal hearing. This is just further activity in a familiar pattern from the Voigts – that is, request an administrative hearing and submit photos or testimony with no basis in reality, with only the intent to embarrass or harass CCMC. Fairness and equity require that this motion be granted to allow CCMC the opportunity to respond to this fabricated allegation and to let the record reflect the real facts.

[17.] CCMC has always been and remains committed to working with the Voigts to the extent that they have valid concerns. But the Voigts cannot invent concerns just to ambush CCMC with them at a formal hearing, again. That is what they have tried to do here. A complete record shows that the Voigts' allegations of dust caused by CCMC were very likely caused by their own activities in the area, and not by CCMC. Thus, it is important that this motion be granted to provide a full record to set the facts straight on this issue.

Dated this 23<sup>rd</sup> day of December, 2024.

*/s/ Wade C. Mann*

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