

NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Coyote Creek Mining Co., L.L.C.)	
Revision 13, Permit NACC-1302)	Case No. RC-24-244
Renewal 2, Permit NACC-1302)	Case No. RC-24-245
Applications)	

**PETITION FOR ATTORNEY’S FEES PURSUANT
TO N.D.C.C. § 38-14.1-36 AND N.D.A.C. § 69-05.2-01-07**

[1.] Coyote Creek Mining Company, L.L.C. (“CCMC”) petitions the Commission for an award of attorney’s fees and costs that it incurred in connection with Casey and Julie Voigt’s objections and request for formal hearing. N.D.C.C. § 38-14.1-36; N.D.A.C. § 69-05.2-01-07. Exhibit A contains redacted account statements evidencing the requested attorney’s fees.

INTRODUCTION

[2.] For the past decade, the Voigts and their counsel have abused the Commission’s well-intentioned informal and formal processes to forestall development of a coal lease that the Voigts now regret executing. *See* Case No. RC-13-850; Case No. RC-19-189; Case No. RC-19-190; Case No. RC-22-233; Case No. RC-23-348. Nothing will change unless the Commission holds them accountable, as the Voigts and their counsel are only becoming more harassing, vexatious, and defiant of Commission orders, rules, and even simple requests before hearings.

[3.] The Voigts made their intentions clear from the outset of these proceedings—use baseless accusations, intimidation tactics, slander, and even a threatening tone toward the Commission because they had no valid basis to oppose CCMC’s permit Applications. The Voigts first accused the Commission and its staff of exhibiting “bias . . . in these proceeding [sic].” *See, e.g.*, Case No. 24-244, Dkt. No. 18, at p. 6. The Voigts then slandered CCMC concerning topics they and their

counsel admitted they did not understand. *Id.* at p. 3. And most concerningly, the Voigts and their counsel concluded by making threats against the Commission. *Id.* (“the pressure release valve . . . has been plugged. Now the pressure builds” – towards what, the reader is left to guess). Because those objections were meritless, the Commission approved CCMC’s permit Applications. Case No. 24-244, Dkt. No. 41; Case No. 24-245, Dkt. No. 26.

[4.] The Voigts nevertheless requested a formal hearing with sweeping and unspecified claims of error. *See, e.g.*, Case No. 24-244, Dkt. No. 45. Because that request did not fairly identify the issues to be raised at a formal hearing, as is expressly required by N.D.C.C. § 28-32-21(1)(a), the Chair of the Commission requested “a clear and concise statement of the claims, including non-compliance or violation of applicable statutes or rules, and relief sought by the Voigts.” *See, e.g.*, Case No. RC-24-244, Dkt. Nos. 51, 54. The Voigts repeatedly refused. Case No. RC-24-244, Dkt. No. 53. Why the Voigts wanted to ambush the Commission staff and CCMC at the formal hearing was clear—they knew their allegations were frivolous. At the formal hearing, the Voigts attempted to relitigate the same issues they previously raised, including road access, dust, SPGM, and wanting the Commission to impose performance standards that do not exist. The Commission rightfully rejected the Voigts’ claims. Case No. RC-24-244, Dkt. No. 98.

[5.] Years ago, the Commission made its expectations clear to the Voigts: “once a petition for formal hearing is received, particularly for parties with counsel, the Commission will expect that such claims have a reasonable basis, be supported by sufficient allegations of facts and supporting evidence, and take care to avoid relitigation of issues.” Case No. RC-19-189, Dkt. No. 185, at p. 3 (emphasis added); Case No. RC-19-190, Dkt. No. 201, at p. 3 (same). The Voigts and their counsel have repeatedly ignored that admonishment and clearly have no intention of stopping. Unless and until the Commission imposes some consequence, the Voigts will continue to drag

CCMC before the Commission on a near-annual basis for formal hearings in an attempt to harass CCMC using the latest issue that they and their counsel want to relitigate and/or have invented without evidence. CCMC has continuously gone above and beyond to accommodate many of the Voigts' requests, despite not being required to do so, in hopes the Voigts' animosity towards CCMC would subside, but the harassment continues and only appears to grow stronger. The Commission should award attorney's fees. N.D.C.C. § 38-14.1-36; N.D.A.C. § 69-05.2-01-07.

BACKGROUND

[6.] The complete lack of legal and factual support for the Voigts' allegations in these proceedings must be taken in context of their prior administrative abuses.

I. The Voigts' history of vexatious conduct in judicial and administrative proceedings.

[7.] The Voigts own certain surface and mineral estates in Mercer County, North Dakota. In 2010, the Voigts, with the assistance of counsel, leased approximately 3,508.96 acres of their property to an affiliate company of CCMC for coal mining. Case No. RC-19-189, Dkt. No. 60, at ¶ 12; Case No. RC-19-190, Dkt. No. 68, at ¶ 12. Apparently regretting that lease, the Voigts have in bad faith repeatedly used both administrative and judicial proceedings to undermine that binding contract since the time the first surface coal mining permit was issued to CCMC.

A. There was and is no alluvial valley floor.

[8.] On November 1, 2013, CCMC submitted a permit seeking to engage in surface coal mining and reclamation operations on land including the Voigts' property. Case No. RC-13-850, Dkt. No. 1. On November 24, 2014, Casey Voigt requested a formal hearing on the permit application because he claimed an alluvial valley floor existed. Case No. RC-13-850, Dkt. No. 35. After three days of formal hearing, the Commission approved CCMC's application with certain additional conditions and issued permit NACC-1302. Case No. RC-13-850, Dkt. No. 125. The Voigts

appealed to district court and the North Dakota Supreme Court, both of which affirmed. *Voigt v. N.D. Public Serv. Comm'n.*, 2017 ND 76, 892 N.W.2d 149. The Voigts nevertheless repeatedly raised this alluvial valley floor issue in the years to come.

B. There was and is no violation of the Clean Air Act.

[9.] On December 17, 2014, CCMC filed an application seeking to expand NACC-1302 to include the acreage necessary for a haul road and a coal processing facility. Case No. RC-14-846, Dkt. No. 1. On May 11, 2015, Casey Voigt requested an informal conference because the Voigts wanted to discuss dust. Case No. RC-14-846, Dkt. No. 15. After conducting the requested informal conference, the Commission approved the application. Case No. RC-14-846, Dkt. Nos. 56–59. The Voigts thereafter filed a federal lawsuit against CCMC, alleging violations of the Clean Air Act. Both the federal district court and the Eighth Circuit Court of Appeals rejected the Voigts' claims. *Voigt v. Coyote Creek Mining Co., LLC*, 999 F.3d 555 (8th Cir. 2021); *Voigt v. Coyote Creek Mining Co., LLC*, 329 F.Supp.3d. 735 (D.N.D. 2018).

C. There were and are no unlawful road closures.

[10.] On December 16, 2015, CCMC petitioned the Mercer County Commission to temporarily close certain roads so as to allow CCMC to conduct surface mining operations. Instead of asking for reasonable accommodations at that point, the Voigts insisted on proceeding with four public hearings. The Mercer County Commission approved CCMC's petition on March 16, 2016. The Voigts appealed to district court, which concluded the Mercer County Commission complied with the law regarding road closures and "the Voigts will have readily accessible alternative routes of travel . . . [and] the road closure does not deprive them of access to their property." *Voigt v. Mercer Cnty. Bd. of Cnty. Commr's*, Case No. 29-2016-CV-00054, Dkt. No. 118 (Mercer County District Court). The Voigts further appealed to the North Dakota Supreme Court. *See Voigt v. Mercer*

Cnty. Bd. of Cnty. Commr's, Case No. 20170025 (N.D. 2017). Despite already complying with the law, CCMC came to a further agreement with the Voigts to avoid yet another costly appeal.

D. The Voigts sought to relitigate issues they already lost or that were outside the Commission's jurisdiction.

[11.] In Case Nos. RC-19-189 and RC-19-190, CCMC sought a 2019 renewal and revision of NACC-1302. In response, the Voigts filed seven objections concerning road access, fugitive dust, alluvial valley floors, cultural resource sites, sedimentary buildup, CCMC's reclamation abilities, and CCMC's financial incentives. Not content, the Voigts also sought to deprive CCMC of its counsel by disqualifying Crowley Fleck PLLP, which was rightfully and summarily rejected. Case No. RC-19-189, Dkt. No. 26; Case No. RC-19-190, Dkt. No. 34.

[12.] The Voigts subsequently dropped many of these issues they raised. However, they delayed doing so until after the Commission had published notice of the informal conference. Case No. RC-19-189, Dkt. No. 14; Case No. RC-19-190, Dkt. No. 19. As a result, those issues (which the Voigts tacitly admitted were frivolous by not pursuing them), were disseminated for public view. No reasonable explanation existed to assert those issues, have those issues published, and then withdraw those issues other than the Voigts intended to embarrass and harass CCMC.

[13.] The Commission held the informal conference requested by the Voigts on October 8, 2019. The Voigts, through their counsel, offered the testimony of three retained experts. After a five-hour hearing in which CCMC rebutted every objection and explained why the Voigts' experts were wrong, the Voigts' counsel concluded by representing the Voigts only wanted to have a "conversation" about their concerns. The Commission approved CCMC's applications on October 21, 2019. Case No. RC-19-189, Dkt. No. 60; Case No. RC-19-190, Dkt. No. 68.

[14.] The Voigts then requested a formal hearing to address their concerns about reclamation, reclamation liability, dust control, water erosion, alluvial valley floors, and road closures and

access. Case No. RC-19-189, Dkt. No. 64; Case No. RC-19-190, Dkt. No. 75. That formal hearing occurred on December 16, 2019. On February 7, 2020, the Commission affirmed its prior order, concluding that most, if not all, of these issues had already been addressed and/or litigated to the highest courts available. Case No. RC-19-189, Dkt. No. 181; Case No. RC-19-190, Dkt. No. 197.

[15.] On December 5, 2019, CCMC moved for attorney’s fees. Case No. RC-19-189, Dkt. No. 73; Case No. RC-19-190, Dkt. No. 84. On March 4, 2020, the Commission held:

The Commission is not exercising its discretion to grant attorney fees in the present case, but continued persistence in litigation of claims with little to no merit and repetitive litigation of issues evidence bad faith and harassment. CCMC is correct when it states that a “conversation” may occur outside of the administrative process, even with the participation of the Reclamation Division. A petition for an informal conference by an interested party that is adversely affected or by the Commission’s request may also be necessary. However, once a petition for formal hearing is received, particularly for parties with counsel, the Commission will expect that such claims have a reasonable basis, be supported by sufficient allegations of facts and supporting evidence, and take care to avoid relitigation of issues.

Case No. RC-19-189, Dkt. No. 185, at p. 3 (emphasis added); Case No. RC-19-190, Dkt. No. 201, at p. 3 (emphasis added). That admonishment did not have its intended effect.

E. The Voigts litigate and lose the SPGM issue.

[16.] On March 17, 2022, CCMC applied to revise NACC-1302. Case No. RC-22-233, Dkt. No. 1. On August 29, 2022, the Voigts objected and accused CCMC of trying to “significantly reduce the amount of suitable plant growth material [“SPGM”] being respread across the mine.” Case No. RC-22-233, Dkt. No. 16, at p. 2. At that informal conference, “Mr. Braaten and the Voigts admitted that they did not fully understand . . . how the [SPGM] calculations are conducted.” Case No. RC-22-233, Dkt. No. 52, at ¶ 36. They admitted that lack of understanding despite Mr. Voigt having multiple discussions with both Commission staff and CCMC representatives regarding the calculations. They also (again) discussed dust, road access, their coal lease, and so on, going so far as to begin the informal conference by attempting to display a video concerning dust that was

taken prior to 2018. *Id.* at ¶ 16. The Commission rightfully rejected those issues and approved the NACC-1302 revisions on November 9, 2022. *Id.*

[17.] The Voigts filed a complaint against CCMC on November 22, 2023, alleging that CCMC's SPGM respread did not comply with N.D.A.C. § 69-05.2-15-04(4)(a)(2). Case No. RC-23-348, Dkt. No. 1. Despite having that issue informally explained to them on multiple occasions, and despite CCMC having formally explained that issue to them in a three-hour deposition, the Voigts proceeded to the formal hearing on December 22, 2023. Based upon the evidence and testimony, the Commission rejected the Voigts' arguments and affirmed the disputed grade approvals. Case No. RC-23-348, Dkt. No. 104. On appeal, the district court affirmed. *Voigt v. N.D. Public Serv. Comm'n*, Case No. 08-2024-CV-00694, Dkt. No. 140 (Burleigh County District Court).

II. The Voigts' vexatious conduct continues in this proceeding.

[18.] The Voigts objected to the Applications in these proceedings, claiming: (1) they had the right to choose reference areas; (2) CCMC's proposed road location violated their property rights; (3) CCMC was violating SPGM regulations; and (4) challenging the Commission's entire permitting program. *See, e.g.*, Case No. 24-244, Dkt. No. 18. After CCMC and the Reclamation Division refuted those objections, Case No. 24-244, Dkt. Nos. 29, 30, the Commission approved the Applications. Case No. 24-244, Dkt. No. 40; Case No. 24-245, Dkt. No. 26.

A. The Voigts refused to identify the issues to be raised at the formal hearing.

[19.] The Voigts nevertheless requested a formal hearing on November 15, 2024. Case No. RC-24-244, Dkt. No. 45. The Voigts' attorney has on multiple occasions stated the Voigts just want to have a conversation. *See* Case No. RC-19-189; Case No. RC-19-190. Yet, the Voigts did not even ask for an informal conference before requesting a formal hearing, indicating their rhetoric was simple pretext for their continued effort to harass CCMC. In their November 15, 2024 hearing

request, the Voigts identified 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.” *Id.* On November 20, 2024, the Commission issued its Notice of Formal Hearing, setting the formal hearing for December 13, 2024. Case No. RC-24-244, Dkt. No. 48.

[20.] On November 21, 2024, the Chair of the Commission 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. The request correctly noted that the Voigts had been asked for similar particularity in other Commission proceedings. *Id.* On November 26, 2024, the Voigts responded, claiming the Chair had no authority to request more specificity and blaming the Chair for sending his request in “the lead up to the Thanksgiving holiday.” Case No. RC-24-244, Dkt. No. 53. On November 27, 2024, the Chair responded with specific authority and asked the Voigts when “the Commission can expect an updated response.” Case No. RC-24-244, Dkt. No. 54.

[21.] Despite never having shown any prior restraint regarding making their unfounded opinions known, the Voigts went conspicuously silent. They never responded to the Chair’s request. 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. Case No. RC-24-244, Dkt. No. 61. Both the Commission staff and CCMC, thus, went to the December 13, 2024 hearing not knowing what issues the Voigts would attempt to litigate, which is exactly what the Chair sought to avoid. As the Chair’s repeated requests made clear, the requested specificity was necessary to ensure “fairness and efficiency” for everyone involved. Case No. RC-24-244, Dkt. No. 54.

B. The Commission (correctly) limited the scope of the formal hearing.

[22.] The Commission is well aware of the Voigts trying to relitigate issues ad nauseum in a long and continued effort to harass or embarrass CCMC. The Commission, accordingly, limited the scope of the formal hearing, ordering that “hearing topics [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.” *See* Case No. RC-24-244, Dkt. No. 64. That, too, did not have its intended effect.

C. The Voigts presented no evidence showing any legal or regulatory violation.

[23.] Why the Voigts wanted to ambush the Commission staff and CCMC at the hearing was clear—they had no reason to lodge an objection in the first place, other than to harass CCMC. The Voigts’ single witness, Casey Voigt, disregarded the Commission’s order limiting the formal hearing, offering sweeping testimony with no credible facts or evidence concerning unnoticed topics about which he was uninformed and/or were contrary to the law and regulations. As discussed further below, the Commission rightfully rejected his testimony.

ARGUMENT

[24.] The Commission has the authority to award costs and expenses, including attorney’s fees, in any proceeding when that award is “proper.” N.D.C.C. § 38-14.1-36(1); *see also* N.D.A.C. § 69-05.2-01-07(1). Any party may request those costs and expenses within forty-five days of receipt of the Commission’s order. N.D.C.C. § 38-14.1-36(1); *see also* N.D.A.C. § 69-05.2-01-07(2). Specific as to permittees, the Commission may award costs and expenses to the permittee “where the permittee demonstrates that the person . . . participated in the proceeding in bad faith to harass or embarrass the permittee.” N.D.A.C. § 69-05.2-01-07(5)(d).

[25.] The Commission warned the Voigts what would happen if they brought meritless grievances to a formal hearing. And the Commission warned the Voigts that the scope of the formal hearing would be limited. The Voigts and their counsel disregarded both. Without having suffered any consequence thus far for raising frivolous issues, the Voigts and their counsel took their actions one step further and made clear threats to the Commission and CCMC. Case No. 24-244, Dkt. No. 18, at p. 6. Only an award of attorney’s fees will stop this unacceptable behavior and abuse of the well-intended public processes.

I. The Voigts’ objections had no legal basis, and they knew it.

[26.] What the Voigts think North Dakota law should provide landowners does not allow them to ignore what the law actually provides. That is nevertheless what the Voigts did.

A. The Voigts raise multiple issues over which the Commission lacks jurisdiction.

[27.] The Commission has repeatedly made the scope of its jurisdiction clear. As to road issues, the Commission concluded those are within the jurisdiction “of the Mercer County Commission.” *See* Case No. RC-19-189, Dkt. No. 60, at ¶ 13. As to air issues, the Commission concluded that “DEQ has exclusive jurisdiction over permitting of air quality in North Dakota.” *See id.* at ¶ 67. As to lease issues, the Commission held that it “does not have jurisdiction over coal or surface lease terms, conditions, practices, or private agreements and negotiations.” Case No. RC-22-233, Dkt. No. 52, at ¶ 45. The passage of time did not somehow provide jurisdiction.

[28.] The Voigts nevertheless brought those issues back to the Commission, with predictable results. As to the Voigts’ objection about the proposed road location and how this road location was presented in Permit NACC-1302, the Commission’s September 25, 2024 response to the Voigts’ comments clearly explained “that the depiction and description of 18th Street SW in Revision 13 is proposed and not finalized.” Case No. RC-24-244, Dkt. No. 98, at ¶ 27. The

Commission appropriately addressed the Voigts’ concerns before their November 15, 2024 request for formal hearing and made it clear the depicted road location was proposed only. Yet, the Voigts spent considerable time at the hearing complaining that the Commission was illegally allowing a road to be placed on the Voigts’ property – a clear example of abusing the processes and wasting the Commission and CCMC’s time and resources addressing this issue.

[29.] After the formal hearing, the Commission again concluded that issue “is subject to the jurisdiction of Mercer County, North Dakota” and the Commission has no authority to site a road. Case No. RC-24-244, Dkt. No. 98, at Conclusion of Law ¶ 8. As to the Voigts’ objections concerning dust, the Commission again concluded that the “issue of dust is primarily subject to the jurisdiction of the Department of Environmental Quality.” *Id.* at ¶ 81. And as to the Voigts’ objection concerning access under their lease, the Commission again concluded that it “does not have jurisdiction over coal or surface leasing terms, conditions, or practices.” *Id.* at ¶ 33. Left for the imagination is how the Voigts believed the Commission had jurisdiction—the Voigts knew otherwise, but again chose to waste the Commission and CCMC’s time and resources addressing this issue. The Voigts knowingly disregarded that the Commission previously told them it lacked jurisdiction over these issues, leaving their claims once again without a credible foundation.

B. The Commission rightly rejected the Voigts’ attempted rulemaking.

[30.] Despite the Commission telling them only a year ago that they cannot circumvent the rulemaking process, the Voigts (again) tried to rewrite the law rather than apply the law as written. Case No. RC-23-348, Dkt. No. 104, at ¶ 41. As to the crop monitoring issue that the Voigts again raised, the Commission need only compare what it wrote a year ago with what it wrote here:

Case No. RC-23-348, Dkt. No. 104, at ¶ 55	Case No. RC-24-244, Dkt. No. 98, at ¶ 72
“There are no requirements in the Commission statutes, rules or orders for CCMC to collect crop production data at this time and the Voigts did not demonstrate that additional monitoring is warranted.”	“There are no requirements in the Commission’s statutes, rules, or orders for CCMC to collect yield maps and the Commission finds the Voigts did not demonstrate that additional monitoring is warranted.”

As to the soil compaction the Voigts raised, the Commission noted it “does not have performance standards that define the limits of excess compaction.” Case No. RC-24-244, Dkt. No. 98, at Conclusion of Law ¶ 12. Again left for the imagination is how the Voigts reasonably believed the Commission could and/or would engage in rulemaking—they knew otherwise.

[31.] The rulemaking process under N.D.C.C. ch. 28-32 and N.D.A.C. ch. 69-02-07 has always been and remains available to the Voigts. Instead of availing themselves of that process, the Voigts have repeatedly asked the Commission to change the rules on CCMC midstride. Whether to approve the Applications was necessarily limited to determining whether they comply with the laws and regulations as written, not the laws and regulations as the Voigts wish they were written. By litigating issues that were beyond the scope of this proceeding, the Voigts wasted the Commission and CCMC’s time and resources, once again harassing CCMC in bad faith.

C. The Commission correctly applied the plain language of the Commission’s April 14, 2015 order because the Voigts do not get to “choose” reference areas.

[32.] The Voigts next claimed the Commission’s April 14, 2015 Order in Case No. RC-13-850 gave them the unilateral right “to choose reference areas” and the Commission was allowing CCMC “to shirk its responsibility again.” Case No. 24-244, Dkt. No. 18, at p. 2. That order never provided the Voigts with any unilateral right to choose reference areas; it instead required CCMC to consult “with Casey Voigt when selecting and establishing management practices for the

reference areas,” Case No. RC-13-850, Dkt. No. 125, and CCMC did consult with him. Applying that plain text, the Commission found that “CCMC has not violated provision 2(c) of the Commission’s April 14, 2015 order.” Case No. RC-24-244, Dkt. No. 98, at ¶ 20.

[33.] Again, this issue could have been completely avoided had the Voigts been willing to simply read the order and trust the permitting experts at the Commission. The Voigts provided no experts to testify on permitting and do not trust the permitting experts at the Commission. The Commission’s September 25, 2024 response to the Voigts’ comments clearly stated that “the proposed reference areas in Revision 13 do not finalize the sites, and once the reference areas have been finalized, the finalized reference areas will need to be included in a future permit revision.” Case No. RC-24-244, Dkt. No. 98, ¶ 15. The Voigts wasted the Commission and CCMC’s time and resources addressing this issue. The reference area selection process always has been and will remain a collaborative process. Rather than read and follow the plain language of the order, the Voigts claimed at a public hearing that they had not been consulted despite Casey Voigt himself being present for that consulting, clearly displaying bad faith.

II. The Voigts’ objections had no factual basis, and they knew it.

[34.] The Voigts were aware “the Commission will expect that” any claims raised at a formal hearing will “be supported by sufficient allegations of facts and supporting evidence.” Case No. RC-19-189, Dkt. No. 185, at p. 3. What the Voigts offered fell miserably short, once again.

A. The Voigts purposefully deprived the Commission and CCMC of the right to meaningfully cross-examine their witnesses and impeach their “evidence.”

[35.] “The use of trial by ambush is not an acceptable trial technique.” *Tormaschy v. Tormaschy*, 1997 ND 2, ¶ 13, 559 N.W.2d 813. To that end, the Chair recognized that the Voigts needed to provide more specificity concerning the issues they wanted to litigate to ensure “fairness and efficiency” for everyone involved. Case No. RC-24-244, Dkt. No. 54. If the Voigts had a good

faith basis for requesting a formal hearing on November 15 because they knew the issues they wanted to discuss, the four business days preceding the Thanksgiving holiday should have been ample time to provide the requested specificity. By ignoring the Chair (other than faulting the Chair for making them respond around the Thanksgiving holiday), the Voigts showed they never had any intention of participating in these proceedings in good faith.

[36.] The Voigts' petulance had predictable consequences. For example, the Voigts complained of dust on their property on or about October 8, 2024 that they claimed eroded from CCMC's nearby subsoil stockpile. But because the "issue of dust was not identified in the Voigts' formal hearing requests as a matter to be addressed," the "Commission was not prepared to consider concerns related to dust from wind erosion." Case No. RC-24-244, Dkt. No. 98, at ¶ 76. Likewise, CCMC did not have the opportunity to review its own security camera footage that, as discussed further below, made clear the Voigts and their scoria pit were the most likely source of the dust about which they complained. Case No. RC-24-244, Dkt. No. 94. All of that could have been addressed had the Voigts' fairly noticed the formal hearing—they did not.

[37.] Cross-examination plays an important part in protecting the due process rights of all parties, as the Voigts made clear. In opposing CCMC's Motion to Supplement concerning the unnoticed dust issue, the Voigts emphasized the importance of meaningful cross-examination by claiming they did not receive that opportunity. Case No. RC-24-244, Dkt. No. 103. That is the epitome of projectionism—CCMC had to raise the wind erosion issue in a motion to supplement because the Voigts did not properly notice the issue. All of this could have been aired at the formal hearing had the Voigts simply abided by the Chair's multiple and reasonable requests for specificity. That the Voigts and their counsel have the audacity to complain about a lack of cross-examination again shows that they never had and still have no intention of good faith participation.

B. The Voigts knowingly and falsely blame CCMC for dust appearing on their vehicle on October 8, 2024.

[38.] While the Voigts testified that “dust from the mine is still an ongoing issue and offered a picture of their vehicle covered in dust on October 8, 2024,” the Commission correctly noted that Commission staff and CCMC met with Casey Voigt that day and he did not complain of any dust, and Commission staff did not note any dusty conditions that existed. Case No. RC-24-244, Dkt. No. 98, at ¶¶ 73, 75. The Voigts, of course, did not dispute that the dust came from the numerous trucks going through their yard to their own scoria pit for their own purposes, not from CCMC:



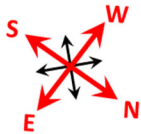
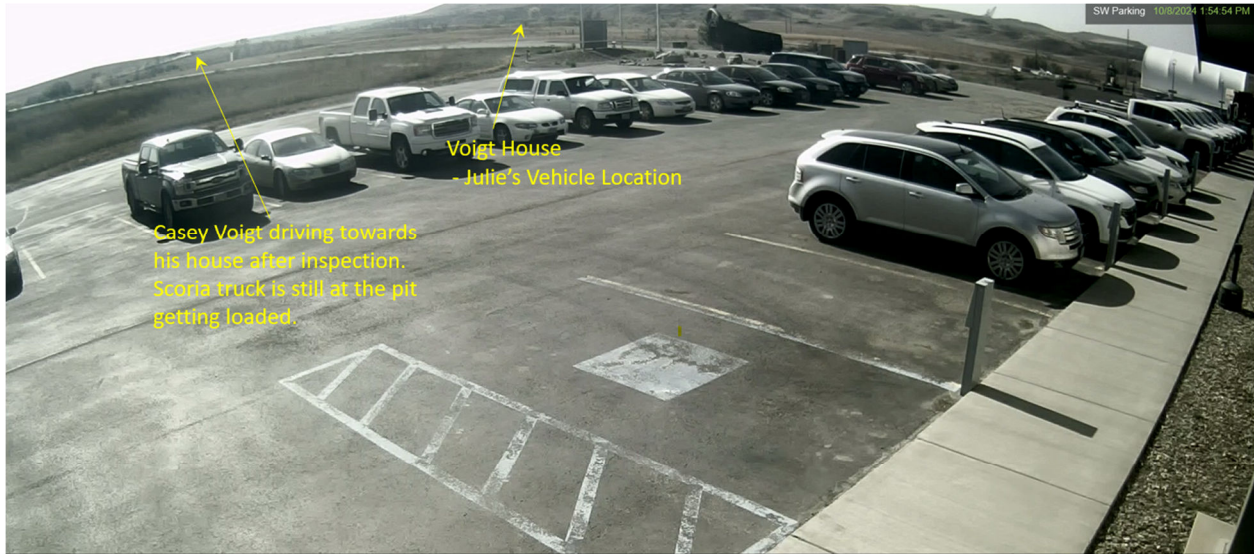
Case No. RC-24-244, Dkt. No. 95. The Voigts did not dispute that those trucks passed within sixty feet of the dust covered truck depicted in their photographs:

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

Id. And the Voigts did not dispute that the pictures they submitted were likely taken within minutes of a scoria truck passing through their yard:



October 8, 2024
1:54 PM
Avg Wind Speed: 10.0 mph
Wind Direction: South

Id. While the Voigts may try to interpret events based upon their own reality, the security camera footage presents a truthful account. As the Commission correctly found, “the Voigts did not

demonstrate the source of the dust or provide evidence of wind erosion that would give the Commission reason to believe that CCMC is in violation of [any] requirement of N.D.C.C. ch. 38-14.1, N.D.A.C. art. 69-05.2, or any permit condition.” Case No. RC-24-244, Dkt. No. 98, at ¶ 81. The Voigts’ accusations using misleading photographs and conjecture is the definition of participating in a proceeding in bad faith to harass or embarrass the permittee.

C. The Voigts fail to present any evidence in their attempt to relitigate their allegation that CCMC is capping sodic spoil with glacial till.

[39.] The Voigts litigated and lost the SPGM issue in Case No. RC-23-348, which the district court affirmed on appeal. *Voigt v. N.D. Public Serv. Comm’n*, Case No. 08-2024-CV-00694, Dkt. No. 140 (Burleigh County District Court). There, the Voigts accused CCMC of capping sodic spoil in an effort to lessen the amount of SPGM respread that the Commission’s regulations require. Case No. RC-23-348, Dkt. No. 104, at ¶ 39. In no uncertain terms, CCMC emphatically made clear under oath that no capping was occurring. *Id.* at ¶ 40.

[40.] The Voigts either were not listening or (more likely) did not care, because they again raised the issue at the formal hearing. Despite having the issue explained to them in the prior proceeding, the Voigts inexplicably remained “under the impression that CCMC is capping sodic spoil with twelve inches of glacial till.” Case No. RC-24-244, Dkt. No. 98, at ¶ 82. Just as in Case No. RC-23-348, the Voigts presented “no data” to “corroborate” that allegation. *Id.* While they claimed that “glacial till placed over sodic spoil” was discovered “based on Western Plains Consulting, Inc.’s soil investigation,” the “Voigts failed to present any evidence from Western Plains Consulting, Inc.’s soil investigation to substantiate these alleged findings.” *Id.* at ¶¶ 83–84 (emphasis added). The Voigts tellingly called no expert witnesses from Western Plains Consulting, or anywhere else, to support their claim. Accordingly, the Commission again found that “[t]he Voigts did not demonstrate that the graded spoil sampling procedures outlined in

N.D.A.C. and Policy Memorandum No. 17 are deficient; therefore, no special conditions or permit requirements addressing graded spoil sampling are warranted.” *Id.* at ¶ 90. The Voigts’ strategy of relitigating issues over and over with no data in hopes of a different result (again) did not work. [41.] In fact, the Commission’s Order in this case points out that “the testing depth for graded spoil contained in Policy Memorandum 17 was brought up during a formal hearing by the Voigts in Case No. RC-23-348.” Case No. RC-24-244, Dkt. No. 98, at ¶ 88. The Order continues, “[d]uring the hearing, the Voigts did not meet the burden of demonstrating that the current sampling methodology was inadequate or in violation of [any] regulation. Subsequently, the Commission’s February 14, 2024 order was appealed to district court and the district court affirmed the Commission’s Findings of Fact, Conclusions of Law, and Order.” *Id.* Despite all that, the Voigts chose to again raise this issue at this formal hearing. The Voigts continue to abuse the well-intentioned public processes and continue to be an unnecessary drain on the resources of the Commission, its staff, and CCMC.

D. The Voigts fail to present any drilling data concerning compaction.

[42.] Although not in their request for a formal hearing, Case No. RC-24-244, Dkt. No. 45, the Voigts extensively complained about alleged compaction. The Voigts, however, could not offer even basic details in support. The Voigts claimed soil testing was conducted on May 18, 2024 and August 27, 2024, but presented no data. And notably, the Voigts had no representative from the testing companies testify. The Voigts admitted “they were not aware of any law or regulation that sets a compaction limit for reclaimed lands” and further admitted they had “not seen the details” on how Permit NACC-1302 requires CCMC to minimize compaction, specifically Section 3.1.1.1. Case No. RC-24-244, Dkt. No. 98, at ¶¶ 39, 43. Most tellingly, the Voigts admitted their “concerns with compaction of reclaimed land was based on common sense observations without any specific

data or measurements.” *Id.* at ¶ 42 (emphasis added). Simply put, the Voigts knew nothing about why they were complaining and presented no evidence or data in support.

[43.] A major goal of the surface coal mining regulations is to demonstrate reclamation success, and one of the many issues the Commission staff monitor to achieve that goal is compaction. Despite having no direct notice that compaction would be an issue raised at the formal hearing, the Commission staff and CCMC addressed issues concerning compaction at the formal hearing. That testimony indicated that the “Voigts expressed satisfaction with the productivity of their undisturbed land.” *Id.* at ¶ 52. Directly contradicting the Voigts common sense observations, those undisturbed lands had higher compaction levels than the disturbed lands about which the Voigts were complaining. *Id.* On the evidence presented, the Commission correctly found “CCMC’s reclamation practices and methods to minimize compaction are adequate.” *Id.* at ¶ 65.

E. The Voigts (again) present yield maps from third parties that are not reclaimed lands.

[44.] Like Case No. RC-23-348, the Commission (again) heard about Mr. John Weinand’s crop yields. Instead of having Mr. Weinand testify, the Voigts tried to testify for him, showing yield maps allegedly from Mr. “John Weinand who farms some land the Voigts own within Permit NACC-1302 that was partially disturbed by mining operations.” *Id.* at ¶ 66. But the areas for which Mr. Voigt provided that production data were never mined and were only associated disturbance areas. *Id.* at ¶ 69. And as CCMC explained, the decreased crop yields in the areas to which Mr. Voigt offered could easily be explained by the fact that a combine’s yield monitoring system often does not take accurate readings while turning around at the end of fields, the very areas Mr. Voigt was referencing. *Id.* at ¶ 70. Mr. Weinand’s crop yields are no more relevant now than when the Commission disregarded them a year ago and again did not warrant discussion in a

formal hearing format. As such, the Commission did not even bother to address this irrelevant issue in the order, yet it was on display at the public hearing in a bad faith effort to harass CCMC.

CONCLUSION

[45.] The Commission warned the Voigts what would happen if they persisted in bringing claims that lacked any reasonable basis, were not supported by facts, or which were previously litigated. Instead of acting in good faith, the Voigts:

1. Purposefully defied the Chair's multiple requests for specificity;
2. Purposefully disregarded the Commission's order limiting the scope of the formal hearing;
3. Purposefully ignored the law and scope of the Commission's jurisdiction;
4. Purposefully asked the Commission to engage in improper rulemaking;
5. Purposefully relitigated issues they had raised and lost; and
6. Knowingly failed to present any evidence to substantiate their complaints.

The Voigts did not participate in these proceeding with a reasonable, legitimate purpose.

[46.] The Legislature gave the Commission authority to award attorney's fees and costs precisely for situations such as this. N.D.C.C. § 38-14.1-36. If the Commission does not award fees or costs here, it is unclear what it takes for this legislatively granted authority to be exercised. The Voigts have (again) abused the administrative processes available through the Commission for no purpose other than harassing CCMC. All of that was on purpose, as the Voigts' counsel previously explained some of this is the result of being "simply what lawyers do when they get paranoid and scared." Case No. RC-23-348, Docket No. 15 at ~00:08:35. The Voigts have been given ample opportunity to meet with and work with Commission staff and/or CCMC to understand, address, and resolve issues. Yet despite all those opportunities, they repeatedly request public hearings where they provide no evidence to support their outrageous claims, defy basic Commission laws

and rules, and then claim they only want to have conversations. As above, clearly their actions do not match their rhetoric. There is only one way to stop the Voigts from continuing with frivolous complaints and from continuing to act in bad faith by using publicly available processes to harass CCMC—an award of attorney’s fees and costs.

[47.] On the foregoing, CCMC requests that the Commission award CCMC its costs and expenses, including attorney’s fees, under N.D.C.C. § 38-14.1-36 and N.D.A.C. § 69-05.2-01-07.

Redacted invoices evidencing the requested attorney’s fees are included in Exhibit A.

Dated this 13th day of February, 2025.

/s/ Wade C. Mann

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