

**Casey Voight and Julie Voigt v. Coyote Creek Mining Company, United States District Court, District of North Dakota, July 2018**

I wanted to share a few of the many public documents accessible on the web, which are highly relevant to applying NSPS standards to Affected Facility(ies). I am providing links, bullet points and/or quotes from the pertinent documents. Also feel free to Google up these pertinent documents using your own key word search(es)!

*Disclaimer: I am not an attorney, nor am I providing legal advice. Please do not construe any comment made by me or the quotes taken from these pertinent documents, as legal advice!*

Per the Order Granting Summary Judgement of Dismissal, Case No. 1:15-cv-0019, Casey Voight and Julie Voigt, plaintiffs v. Coyote Creek Mining Company, LLC, defendant, United States District Court, District of North Dakota, dated 03Jul2018.

Follow either link:

<https://casetext.com/case/voigt-v-coyote-creek-mining-co-2>

<https://www.courtlistener.com/docket/4517027/voigt-v-coyote-creek-mining-company-llc-a-north-dakota-corporation/>

Or copy and paste these words into your google search:

Casey Voight and Julie Voigt Coyote Creek Mining Company United States District Court District of North Dakota

**Please review the following items, taken directly from the document.** I added underlining to convey emphasis on a several phrases.

- “The reason for the separate definition of “affected facilities” is that Subpart Y only imposes performance standards on “affected facilities” of the coal processing plant and not on the entire plant.”
- “And, while NSPS performance standards have not been established for coal mines, they have for coal processing plants that process more than 200 tons of coal per day.”
- “Defendant does not dispute that its coal processing facilities are subject to Subpart Y; rather, the dispute is which mine facilities are considered coal processing and subject to Subpart Y and which are not.”
- “But, what was not disclosed - at least not in the application - is that, while the belt of the conveyor is owned by the Coyote Station at the point of loading onto it, the conveyor structure itself is still owned by defendant for the first 750 feet, or so, until it crosses onto the property owned by the Coyote Station and permitted for its power plant. This may create an issue whether at least that portion of the conveyor that the defendant owns is part of defendant’s coal processing facilities and subject to regulation under Subpart Y.”
- “There is some indication that: (1) the very early plans called for the coal processing facilities to be located at the Coyote Station and this changed when the Coyote Station did not want the

facilities there because of implications it might have for its air permit; and (2) the location of the coal processing facilities had not yet been determined (or at least not finalized) when the representation was made. In other words, it was not, to put it bluntly, a “bait and switch.” But, what is not clear is whether other alternatives were contemporaneously being considered that placed the coal pile and coal crushing facilities on adjacent or contiguous to the Coyote Station, such that defendant should not have made the blanket representation it did. Notably, within a few months of defendant’s letter to the NDDOH, its draft mine permit application dated July 2013 (which likely was not written in one or two days and probably had been the basis of discussion for some time) stated that the mined coal would be transported from the principal area of mining some three to four miles away from the Coyote Station “to a location closer to the Coyote Station where it will be further prepared for sale.” (Doc. No. 85-14, p. 9).”

- **“CONCLUSION AND ORDER** For the reasons set forth above, the court concludes that defendant’s haul road and coal pile are not part of its coal processing facilities under 40 C.F.R. Pt. 60, Subpart Y. Given this determination, plaintiffs have not met their burden of demonstrating an ability of being able to prove that the 250 tpy major source threshold can be reached even if the court was to accept the PTE estimates of their expert and resolve the other disputed issues with respect to what emission points need to be included in their favor. Further, the determination that the coal pile is not a Subpart Y regulated facility in this instance disposes of plaintiffs NSPS performance claim for the reasons already articulated. Therefore, the court **GRANTS** defendant’s motion for summary judgment (Doc No. 83) and **DISMISSES WITH PREJUDICE** plaintiffs’ complaint. Plaintiffs’ cross motion for partial summary judgment (Doc. No. 85) is **DISMISSED AS MOOT.**”

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R N Kotschegarow 27Jan2022