

State of New Mexico
Energy, Minerals and Natural Resources Department

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Deputy Cabinet Secretary

Fernando Martinez, Director
Mining and Minerals Division



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CERTIFIED MAIL – RETURN RECEIPT REQUEST

August 5, 2014

Timothy E. Eastep
Senior Manager - Administration
Freeport-McMoRan Copper & Gold, Tyrone Operations
P.O. Drawer 571
Tyrone, NM 88065

RE: Construction of the 9AX Waste Rock Stockpile, Permit Modification 14-1, Permit No. GR010RE, Tyrone Mine

Dear Mr. Eastep,

The New Mexico Mining and Minerals Division (“MMD”) received a letter from Freeport-McMoRan Copper & Gold, Tyrone Operations (“Tyrone”), dated July 11, 2014, responding to MMD and other agency comments on the application to modify Permit No. GR010RE for the construction of the 9AX waste rock stockpile at the Tyrone Mine (“Tyrone Response”).

MMD has reviewed the Tyrone Response and provides the following comments:

1. MMD Comment on Tyrone Response to MMD Comment 1:

A meeting was held on July 16, 2014 between representatives of Tyrone and MMD to discuss the reclamation requirements for the 9AX stockpile, in particular, the cover material and thickness of cover material to be applied to the 9AX stockpile at reclamation. Subsequently, Tyrone has committed to provide a reclamation cost estimate on using a one foot thick layer of Gila Conglomerate cover material for the 9AX stockpile. On July 29, 2014, MMD received an e-mail from Lynn Lande, Tyrone Chief Environmental Engineer, with a revised reclamation cost estimate for the 9AX stockpile that includes placement of a one foot thick layer of Gila cover material over the 9AX stockpile during reclamation. MMD has reviewed the revised reclamation cost estimate, and provides comments on it, below. MMD’s approval of a one foot thick layer of Gila Conglomerate as cover for the 9AX stockpile does not affect any other cover requirements currently in Permit No. GR010RE. Any modification or revision of the current Cover Placement Plan, including whether MMD will require a modified Cover Placement Plan for the 9AX stockpile, will be made based upon test plot results regarding the amount of Gila Conglomerate, if any, that is required as a cover material over leach cap material to successfully revegetate.

2. MMD Comment on Tyrone Response to MMD Comment 2:

The Tyrone Response committing to include stormwater drainage features to handle a 100-year, 24-hour storm event in the reclamation plan for the 9AX stockpile is acceptable.

3. MMD Comment on Tyrone Response to MMD Comment 3:

MMD has reviewed the revised reclamation cost estimate received on July 29, 2014 and provides comments, below.

4. MMD Comment on Tyrone Response to MMD Comment 4:

MMD requested that a representative from the New Mexico Environment Department Surface Water Quality Bureau ("SWQB") visit the McCain Spring and the location of the proposed 9AX stockpile. On July 28, 2014, a representative of the SWQB visited the McCain Spring and subsequently reported their observations and concerns in an e-mail to MMD, dated July 29, 2014 (attached). The SWQB has expressed similar concerns as MMD and the New Mexico Department of Game & Fish ("NMDG&F") regarding potential impacts from stormwater runoff, and slope failure to the McCain Spring from the 9AX stockpile and recommends increasing the setback or buffer between the proposed reclaimed toe of the 9AX stockpile and the McCain Spring from 100 feet.

MMD currently requires a minimum 100 foot setback for minimal impact exploration operation permits from ephemeral, intermittent or perennial watercourses. MMD considers the larger scale of the 9AX stockpile compared to minimal impact exploration operations warrants a greater level of protection for the McCain Spring.

Condition 9.E.1.d of Permit Revision 01-1 to Permit No. GR010RE for the Tyrone Mine allows Tyrone to reclaim individual slopes that would intersect a designated Surface Water of the State with interbench slopes steeper than 3H:1V, but no steeper than 2.5H:1V in order to avoid the intersection. In order to increase the buffer between the McCain Spring and the 9AX stockpile, MMD would consider a reclamation design for the 9AX stockpile reclaimed slope facing the McCain Spring designed in accordance with this condition. In the past, MMD has approved the regrading of the No. 1C stockpile at the Tyrone Mine under this condition. MMD also recommends that a berm be constructed and maintained at toe of the reclaimed 9AX stockpile slope, and other best management practices be implemented as needed, to prevent stormwater and other impacts to the McCain Spring from the 9AX stockpile.

5. MMD Comment on Tyrone Response to MMD Comment 5:

As stated above, MMD has received a revised reclamation cost estimate for the 9AX stockpile from Tyrone. MMD has reviewed the cost estimate and provides comments,

below. Once MMD has determined the application to be technically approvable, MMD will request Tyrone to submit a financial assurance proposal.

6. MMD Comment on Tyrone Response to Office of the State Engineer (“OSE”) Comment:

The Tyrone response is acceptable. MMD notes that the revised reclamation cost estimate includes the costs to abandon one monitor well.

7. MMD Comment on Tyrone Response to NMDG&F Comment:

See MMD Comment to Tyrone Response to MMD Comment 4 above.

8. MMD Comment on Tyrone Response to State Historic Preservation Office Comment:

The Tyrone response is acceptable.

9. MMD Comment on Tyrone Response to NMED and NM Air Quality Bureau (“NMAQB”):

MMD has no additional comments on the Tyrone Response.

Additional MMD Comments:

A. Revised Reclamation Cost Estimate

As mentioned above, MMD has reviewed a revised reclamation cost estimate that was received on July 29, 2014. Table 4, 9AX Borrow Material Stockpile – Productivity and Hours Required for Loader and Truck Use, and Table 5, 9AX Borrow Material Stockpile – Summary of Earthmoving Costs, shows that the cover material will be obtained in the “Borrow Area”. MMD requested the location of the Borrow Area at a meeting with Tyrone held on July 31, 2014. Tyrone’s response was that the source of the Gila Conglomerate cover material will be from a deposit of Gila Conglomerate located near the No. 1A tailing impoundment that was a source of cover material during the reclamation of the No. 1 series tailing impoundments. Condition 9.E.2.c of Revision 01-1 requires that all borrow areas of cover material shall be graded for stormwater control, ripped or topdressed to a minimum depth of 24 inches, and revegetated in accordance with the permit.

Please adjust the revised reclamation cost estimate to include the third party costs for grading, ripping and revegetation of the proposed borrow area. In addition, please provide the location of the proposed borrow area on a plan view drawing.

Please respond to the MMD comments within 30 days of receipt of this letter.

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Please contact me at (505) 476-3432 or at David.Ohori@state.nm.us if you have any questions.

Sincerely,



David R. Ohori
Permit Lead
Mining Act Reclamation Program ("MARP")

Enclosure

cc: Holland Shepherd, Manager, MARP
Keith Ehlert, Mining Environmental Compliance Section, NMED Ground Water
Quality Bureau
Allyson Siwik, Gila Resources Information Project
Mine File (GR010RE)

Ohori, David, EMNRD

From: Moeny, John, NMENV
Sent: Tuesday, July 29, 2014 2:16 PM
To: Ehlert, Keith W., NMENV; Llewellyn, George, NMENV; Ohori, David, EMNRD
Cc: Vollbrecht, Kurt, NMENV; Schaeffer, Neal, NMENV; Yurdin, Bruce, NMENV; Canavan, Chris, NMENV; Franklin, Abraham, NMENV
Subject: RE: 9AX Stockpile - site visit and SWQB comments

Keith and David,

George Llewellyn and I were able to visit McCain Spring and the proposed 9AX stockpile on Monday. Here are my observations and concerns from the surface water quality perspective:

“As currently proposed, the 9AX stockpile will place waste rock within 100 feet of McCain Spring. McCain Spring consists of a rock-lined well and vertical stand-pipe at the spring source, combined with a small area of wetland down-gradient of the spring which terminates in an excavated stock-pond type basin approximately 200 feet from the spring source. At the time of inspection, the wetland was supporting obligate wetland plant species typically found in perennial waters. For the purposes of surface water regulations within the state of New Mexico, the spring and associated wetland community would be considered a perennial, unclassified “water of the state” and subject regulations of the New Mexico Administrative Code (NMAC), Title 20, Chapter 6, Part 4—*Standards for Interstate and Intrastate Surface Waters*. An unclassified surface water of the state is presumed to support the uses specified in Section 101(a)(2) of the federal Clean Water Act. These include: primary contact, livestock watering, warm-water aquatic life and wildlife habitat (NMAC 20.6.4.99). Activities which degrade the designated uses or impair the water quality of McCain Spring may be subject to mitigation.

Additionally, a permit from the EPA under Section 402 (NPDES) of the Clean Water Act may be required for discharge emanating from the stockpile. The permittee should submit the appropriate application to EPA prior to initiating any wastewater discharge. For additional information, contact:

EPA Region 6
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202
Ph: 800-887-6063

The Surface Water Quality Bureau shares MMD’s concern that the proposed waste rock pile might impact the spring due to stormwater runoff, pile slope failure, or other means. Increasing the stockpile setback from the proposed 100 feet within the vicinity spring and wetland is advised. Surface Water Quality Bureau supports yearly monitoring to ensure pile stability and stormwater runoff control to prevent degradation to McCain Spring and the associated wetland.”

Thanks for the opportunity to comment.

John

