



Chino Mines Company
P.O. Box 10
Bayard, NM 88023

July 14, 2017

Mr. Fernando Martinez, Director
Mining and Minerals Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Freeport-McMoRan Chino Mines Company, Permit GR009RE

Dear Director Martinez:

Freeport-McMoRan Chino Mines Company ("Chino") submits this application to modify Revision 01-1 of its permit GR0009RE ("Permit") in accordance with the request you made in your letter dated May 22, 2017 that Chino apply to modify Revision 01-01 regarding the Trust Balance to include the requirement that provides for increased funds in the Chino CCP Trust, if the amount in the Trust is not equal to or greater than the revised minimum account balance of \$121,000,000 at the end of any quarterly review period. In addition, in order to provide a more complete update of Section 9, Condition M, Chino has identified additional changes to reflect previously approved permit modifications to this condition as well as other changes for consistency within Condition M, to address rule changes since the permit was issued, and to address other obsolete provisions. Chino notes that this modification could require review of and changes to the Trust Agreement, but consideration of changes to the Trust Agreement should await your action on this application.

The following is the language of Section 9, Condition M of the Permit, showing language proposed for removal from the Permit by ~~strikeout~~ and language proposed to be added to the Permit by underline. Reasons for the proposed changes to the Permit condition are shown in *italics*.

M. FINANCIAL ASSURANCE

The following conditions are required to ensure that adequate financial assurance is provided for the site, pursuant to §19.10.5.506.J.2, §19.10.12.1202.B, §19.10.12.1204.A, §19.10.12.1206.A, and §19.10.12.1210 NMAC.

1. The Permittee may apply for and obtain release of financial assurance in accordance with §19.10.12.1210 NMAC.
2. The Permittee shall evaluate the adequacy of the financial assurance approved as a part of the Permit every five years, beginning November 2008 or sooner as required by the director. This evaluation shall be provided to MMD with the annual report due April 30th. The evaluations shall be due 4/30/09, 4/30/14, 4/30/19, etc. If upon review of the evaluation, MMD determines that a change to the financial assurance amount or form is required, the Permittee shall submit to MMD a request to revise the Permit. The Permittee may request a change to the financial assurance in accordance with §19.10.12 NMAC.

3. The Permittee shall not be released from the requirements of the Mining Act for those areas approved as industrial until the industrial PMLU has been implemented as described in condition I.1.(c) of this Permit Revision .
4. Chino Mines Company has provided financial assurance in the net present value amount of \$171,640,047 using the following two forms of financial assurance pursuant to Part 12 of the New Mexico Mining Act Rules, as provided in Permit Modification 16-5:
 - a) Trust established by the Permittee pursuant to 19.10.12.1208.(E) NMAC, in the ~~initial minimum~~ amount of ~~\$64,042,304~~ 121,000,000 to be administered by a qualified Trustee approved by the Director pursuant to the Trust Agreement governing the Trust entered into on December 16, 2003, as amended, by and between the Permittee and Wells Fargo Bank, National Association, for the benefit of MMD and NMED. ~~The initial amount of the trust established by the Permittee is equivalent to one third (1/3) of the total amount of financial assurance required for reclamation and completion of the closeout plan, based upon a net present value calculation.~~
 - b) ~~The Third Party Guarantee made by Phelps Dodge Corporation as guarantor on behalf of the Operator to the State of New Mexico, acting through MMD and NMED, pursuant to 19.10.12.1208.G(1)(a) NMAC, in the face amount of \$128,084,608~~ 45,336,545 based upon a net present value calculation, under terms and conditions of the guarantee instrument executed by the Phelps Dodge Corporation December 18, 2003 executed by Freeport Minerals Corporation on December 13, 2016. ~~The initial face amount of the Third Party Guarantee is equal to two thirds (2/3) of the total financial assurance required for reclamation and completion of the closeout plan, based upon a net present value calculation.~~
 - c) Surety bonds in the amount of \$5,303,502.

This change is proposed to reflect the current amount of the required financial assurance based upon Permit Modification 16-5.

5. The Permittee shall be responsible at all times to maintain financial assurance in a form or forms and in an amount sufficient to meet the requirements of the Mining Act Rules. In addition, the Permittee shall review the amount of funds in the Trust based upon the valuation report provided by the Trustee to MMD and NMED as of the end of calendar year 2005 and the end of each calendar year thereafter, and shall provide additional financial assurance as follows:
 - a) ~~If, at any annual review conducted under this paragraph, the amount of funds in the Trust is not equal to or greater than the initial amount set forth in paragraph 4, subparagraph (a) of this section, then within sixty (60) days after the end of the calendar year, the Permittee shall make payments sufficient to equal the initial amount required to be in the trust at the time this permit revision was approved. To~~

~~make this payment the Permittee may establish a separate trust fund in a form approved by the Director in accordance with 19.10.12.1208.E NMAC in an amount such that the total of all trust funds provided as financial assurance for Chino equals the initial amount. The terms of the trust fund established under this subparagraph shall provide that if on December 31, 2008, the balances of the two Chino trusts total more than the initial amount required of the trust then Permittee may request a withdrawal from the trust established under this subparagraph in an amount no greater than the amount by which the two Chino trusts exceeds the initial amount, provided that any amounts withdrawn may be used only for reclamation at the Chino Mine that is commenced and completed before it is scheduled under section 8.P, Table 1 of this permit. Notwithstanding anything in this section, any withdrawal from the Chino trusts established under this subparagraph shall not reduce the total balance of all of the Chino trust funds to less than the initial amount.~~

This provision is proposed for deletion because the annual review is replaced by the quarterly review below, the "initial amount" of the trust has been effectively replaced by the "minimum amount" expressed in Permit Modification 16-5, and the reclamation of inactive portions of the Chino Mine as addressed in Table 1 has been completed.

a) If, at any annual review conducted under this paragraph, the amount of funds in the Trust plus any other financial assurance provided by Chino, excluding all amounts covered by a third-party guarantee, are not equal to or greater than twenty-eightfive percent (2825%) of the total amount of financial assurance required under this permit at that time (based upon a net present value calculation) then Chino shall provide additional financial assurance such that the total value of all trust funds and collateral provided by Chino as financial assurance is equal to twenty-eightfive percent (2825%) of the total amount of financial assurance required under this permit, based upon a net present value calculation. Any cash provided by Chino under this subparagraph shall be placed in a trust fund established under the terms set forth in subparagraph (a) of this paragraph. The additional financial assurance shall be provided within sixty (60) days of the end of the calendar year.

This provision is modified to reflect changes to the financial assurance rules adopted after this section was placed in the permit. The changes allow up to 75% of the total amount of required financial assurance to be provided in the form of a third party guarantee.

(b) The Permittee shall report the ending balance of the Trust for each calendar quarter to MMD and NMED no later than April 30, July 31, October 31, and January 31 of each year.

(c) The Permittee shall review the amount of funds in the Chino CCP Trust based upon the valuation report provided by the Trustee to MMD and NMED as of the end of every calendar quarter and shall provide additional FA as follows:

(A) If the amount of funds in the Chino CCP Trust is not equal to or greater than the revised minimum account balance of \$121,000,000 for the previous consecutive 90 Business Days ending on the last day of the calendar quarter,

then within sixty (60) days after the end of the calendar quarter, the Permittee shall make payment sufficient to bring the Chino CCP Trust account balance to \$121,000,000. To make this payment the Permittee may establish a separate trust fund in a form approved by the Director in accordance with 19.10.12.1208.E NMAC in an amount such that the total of all trust funds provided as financial assurance for Chino equals at least \$121,000,000.

(B) Notwithstanding anything in this section, if the amount of funds in the Chino CCP Trust is greater than the revised minimum account balance of \$121,000,000 for 180 consecutive Business Days ending on the last day of any calendar quarter, a withdrawal from the Tyrone trust(s) is permissible, however, no withdrawal shall reduce the total balance of all of the Chino trust funds to less than \$121,000,000.

(C) Business Day is defined as any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

Subparagraphs (3) and (4) are proposed to address MMD's request that the permit be modified to require quarterly reporting of the trust fund balance and payment of additional funds into the trust if the balance falls below the required minimum amount. Due to the growth of the fund over time, the fund balance is normally above the minimum amount and trends higher. However, market fluctuations can result in the fund balance temporarily falling below the minimum. To avoid a situation where a temporary market fluctuation results in a deficient fund balance on a single day, Chino proposes that the trigger event for additional payment into the fund should be a deficient fund balance for 90 consecutive business days, indicating that the deficiency may be due to more than a temporary market fluctuation. The proposed language also allows Chino to withdraw funds from the Trust if the balance recovers above the minimum amount for at least 180 consecutive business days, indicating that there is a stable balance above the required minimum.

6. ~~The Permittee may not replace the Trust Fund with other forms of financial assurance, but the Permittee may replace all or any portion of the Third Party Guarantee with other forms of financial assurance acceptable to the Director pursuant to 19.10.12.1209 NMAC. The Director may require adjustment of the financial assurance as provided in 19.10.12.1206 NMAC.~~

The stricken language above is proposed for removal to avoid inconsistencies with the language proposed above relating to withdrawal of funds from the Trust Fund and because other changes to the financial assurance would have to be addressed through permit modifications or revisions approved by the Director under the applicable rules. Consequently, this provision is not necessary and is unduly restrictive of future changes to financial assurance.

7. Cost of administering the Trust and any taxes payable to the Trust shall be paid from the Trust. ~~Earnings on invested funds shall be retained in the Trust.~~

The stricken sentence is proposed for deletion because of the language above that allows for withdrawal from the trust(s) in certain instances.

- ~~8. The balance of the Trust shall be reported quarterly to MMD and NMED.~~

This provision is deleted as it is replaced by the more detailed new language proposed above.

98. The MMD, NMED and the Permittee shall establish a management committee composed of members within State government with experience in financial matters and investments and an equal number of members designated by Chino who shall meet annually regarding the performance of the Trust and possible adjustments to the Trust managers and advisors.

Also enclosed is a check in the amount of \$1,000 as the fee for the application. We appreciate your attention to this matter and look forward to timely action on this request.

Sincerely,



William E. Cobb
Vice President

Cc: William Brancard, General Counsel, New Mexico Energy, Minerals and Natural Resources Department
Gabriel Wade, Attorney, Mining and Minerals Division
Holland Shepherd, Manager, Mining Act Reclamation Program, MMD
Bruce Yurdin, Director, Water Protection Division, NMED
Kurt Vollbrecht, Manager, Mining Environmental Compliance Section, NMED