



Tyrone Operations
P.O. Box 571
Tyrone, NM 88065

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 Tyrone Inc., Permit GR010RE

Dear Director Martinez:

Freeport-McMoRan Tyrone Inc. ("Tyrone") submits this application to modify its permit GR010RE ("Permit") in accordance with the request you made in your letter dated May 22, 2017. In particular, this application proposes deletion of obsolete or other language in Section 9, Condition M.4.a, Trust, and Condition M.4.D, Trust Balances and Additional Reclamation, that is no longer applicable regarding the Tyrone CCP Trust. In addition, in accordance with your May 22, 2017 letter, Tyrone proposes to modify Revision 01-01 regarding the Trust Balance to include the requirement that provides for increased funds in the Tyrone CCP Trust, if the amount in the Trust is not equal to or greater than the revised minimum account balance of \$48,200,000, at the end of any quarterly review period. In order to provide a more complete update of Section 9, Condition M, Tyrone 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 made since the permit was issued, and to address other obsolete provisions. Tyrone 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 April 2009 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. Tyrone has provided financial assurance in the net present value amount of ~~\$270,775,013~~179,504,992 using the following forms of financial assurance pursuant to Part 12 of the New Mexico Mining Act Rules: trust, real property collateral, surety bond, letter of credit and a third party guarantee, as stated in Permit Modification 16-3. During the term of this permit, Permittee shall maintain financial assurance in this amount, as adjusted from time-to-time through approved permit modifications.

This change is proposed to reflect the current amount of the required financial assurance based upon Permit Modification 16-3.

(a) Trust. A Trust has been established by the Permittee pursuant to 19.10.12.1208.E NMAC, and governed by the Tyrone CCP Trust Agreement, dated April 12, 2004 between Tyrone and Wells Fargo National Bank, N.A. as the Trustee (Trust Agreement), as amended. The Director has approved the Trustee, the Trust Agreement and the permitted investments of the Trust, which are provided in the Trust Agreement. ~~The Trust has been funded in the initial amount of \$17 million. Prior to the end of each calendar quarter, beginning with the first full calendar quarter following the initial funding, Tyrone shall deposit additional cash in the amount of \$500,000 into the Tyrone trust. Such cash deposits shall continue until a total of \$27 million has been deposited into the Tyrone trust, unless payment has been suspended as provided in Condition 9.M.4(d)(1).~~

This change is made to delete obsolete language, as Tyrone completed the required deposits to the trust fund in accordance with the schedule specified in the language proposed for deletion.

- (1) MMD, NMED and the Permittee shall establish a management committee composed of (a) members within State government with experience in financial matters and investments and (b) an equal number of members designated by Tyrone who shall meet annually to review the performance of the Trust and consider possible adjustments to the Trust managers and advisors and to the investment guidelines.
- (2) As provided in the Trust Agreement, the 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, except as may be distributed to Tyrone under Condition 9.M.4(d)(2) of this Permit.~~

This language is deleted to reflect the deletion of the referenced Condition 9.M.4(d)(2) of the permit. The rest of the sentence is deleted for consistency with subparagraph (4) below.

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

(4) The Permittee shall review the amount of funds in the Tyrone 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 Tyrone CCP Trust is not equal to or greater than the revised minimum account balance of \$48,200,000 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 Tyrone CCP Trust account balance to \$48,200,000. 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 Tyrone equals at least \$48,200,000.

(B) Notwithstanding anything in this section, if the amount of funds in the Tyrone CCP Trust is greater than the revised minimum account balance of \$48,200,000 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 Tyrone trust funds to less than \$48,200,000.

(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, Tyrone 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 Tyrone 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.

(b) Collateral. Real property collateral may be offered by the Permittee and may be accepted by the Director as providing financial assurance.

~~(1) The sum of the amount of cash contributed to the Trust and the amount of approved collateral placed as financial assurance shall be at least 30 % of the initial financial assurance amount required for Tyrone. If the Director has not approved collateral in an amount sufficient to meet this 30% requirement as of the Effective Date of this Permit, Permittee shall maintain the Surety Bond and the Letter of Credit described in paragraphs 4(e) and 4(f) of this section in an amount sufficient to meet this 30% requirement. Upon the Director's approval of collateral in an amount sufficient to meet the 30% requirement, Permittee shall not be required to maintain the Surety Bond or the Letter of Credit. As additional cash is deposited into the Trust as provided in Condition 9.M.4(a), the amount of collateral may be reduced by the Permittee on a dollar for dollar basis. In no event shall the value of the Third Party Guarantee exceed seventy percent of the total financial assurance obligation.~~

Tyrone proposes to remove this language as obsolete and inconsistent with the current rule requirements, which allow the amount of a Third Party Guarantee to be no more than 75% of the total financial assurance obligation. Tyrone believes that future changes in the amounts of the various forms of financial assurance should be governed by the applicable rules.

~~(21) The list of approved real property collateral, their locations and the amount of financial assurance provided by each property will be shown on an Exhibit to be attached to this Permit as part of a Permit Modification. The Exhibit will be modified as properties are approved as collateral and to address any changes in approved collateral. All properties shall be located in the State of New Mexico and none may be located within the Permit or affected area of a mining operation. The Permittee shall provide the Director with a first mortgage or other perfected first lien security interest for each property. The Director has approved the form of mortgage, and will evaluate the adequacy of the properties.~~

Tyrone proposes this change to reflect that changes in collateral are accomplished and documented through a permit modification.

~~(32) The Permittee shall provide an appraisal by an independent qualified appraiser for all properties. The Director shall reviewed the appraisals and shall require that the fair market value of the properties be in excess of the financial assurance amount by a margin that reflects market fluctuations and transaction costs. In the event that there are changes to a property held as collateral as a result of a partial sale or other disposition, a new appraisal shall not be required provided that evidence is presented by the Permittee that the change in the property is not expected to result in more than a *de minimis* change in its value, including but not limited to disposition of property for value less than two percent (2%) of the total appraised property value, and provided that the change will not cause the total amount of financial assurance provided to fall below the minimum total financial assurance required under this permit.~~

This change is proposed to reflect that there have been and may be minor changes to the large properties provided as financial assurance that have a de minimis effect on property values and overall financial assurance. Such changes may result from sales, voluntary transfers, condemnation, and other property transactions. It is unreasonable to require expensive new appraisals and to impose undue transaction costs and substantial delays in completing transactions due to such changes when they have a de minimis impact on the overall property value and do not cause the total amount of financial assurance to fall below the required minimum.

(43) Pursuant to 19.10.12.1208.C(1)(a) NMAC, the Director must require that the fair market value of collateral be in excess of the financial assurance coverage attributed to such collateral by a reasonable margin that reflects cost of disposition in event of forfeiture and changes in value anticipated over a five year period.

(54) For all real estate collateral, the Permittee shall place into escrow a special warranty deed conveying title from the current record owner of the property to the State of New Mexico subject only to those exceptions to title accepted by MMD and NMED. The Permittee and the agencies shall enter into one or more escrow agreements that provide for the delivery of the deed(s) to MMD and NMED upon forfeiture by the Permittee.

(65) Prior to the approval of any real property collateral, the Permittee shall provide phase I environmental assessments for all collateral properties to MMD and NMED. The environmental assessments shall be conducted in accordance with ASTM standards. MMD and NMED shall review the assessments, and provide any objections to the Permittee, within 30 days after receipt.

(77) The Permittee must annually provide a report on the current market value of the properties, and must, at least every five years, provide a new or updated appraisal of all properties remaining as collateral. The Director may require that the Permittee provide additional documents, such as updated title reports and environmental assessments, as part of any review of the collateral.

(c) Third Party Guarantee. The balance of the financial assurance for Tyrone, not to exceed seventy-five percent of the total amount of financial assurance required under this permit at any time, in accordance with 19.10.12.1208.G(1)(a) NMAC, shall be covered by a Third Party Guarantee ~~from the Phelps Dodge Corporation (PDC).~~ PDC As approved in Permit Modification 16-3 to this permit, Freeport Minerals Corporation has provided a Third Party Guarantee, in a form acceptable to the Director, which is dated April 12, 2004, and which guarantees \$189,542,509,50,804,400 of the financial assurance required for Tyrone. The Third Party Guarantee provides that if Tyrone fails to complete the performance requirements of this Permit, including closure and reclamation, ~~PDC~~ the Guarantor shall do so, or upon forfeiture, shall fund such account as instructed by the Director in the full amount of that portion of the financial assurance covered by the Third Party

Guarantee. ~~PDC has provided~~ The third party guarantor shall provide the Director with audited financial statements and a Certificate of Compliance and ~~has shall~~ demonstrated financial soundness in accordance with 19.10.12.1208.G(8) NMAC.

The changes above are made to update the Permit to reflect the current amount of the Third Party Guarantee, to reflect the name of the current Third Party Guarantor and to reflect the current applicable rule limiting the amount of financial assurance.

(1) The Third Party Guarantee provides that ~~PDC~~Guarantor must deliver to MMD and NMED within specified timeframes certain financial documents, including ~~PDC's Guarantor's~~ financial statements contained in its Annual Report on Form 10-K and in its Quarterly Report on Form 10-Q, and any applicable financial information contained in a Current Report on Form 8-K, and together, if applicable, with amended Certificates of Compliance, and must notify MMD and NMED (a) of any change in the rating of the ~~PDC's~~Guarantor's most recently issued senior credit obligation by Standard and Poor's or Moody's, (b) of any administrative or judicial action filed or initiated alleging the insolvency or bankruptcy of ~~PDC~~Guarantor or the Permittee, or alleging any violations which would result in suspension or revocation of the Guarantor's license to do business, or (c) of any increases in amounts that are being guaranteed by ~~PDC~~Guarantor for environmental permits issued in the U.S. for which ~~PDC~~Guarantor is obligated. Any failure by ~~PDC~~Guarantor to timely deliver or notify MMD and NMED in accordance with the terms of the Third Party Guarantee shall be a violation of this Permit.

(2) The Director may select an independent reviewer to evaluate and analyze the financial information provided or to monitor ~~PDC's~~Guarantor's financial ability to provide a guarantee. The Permittee shall pay for any such evaluation, analysis or monitoring.

(3) At any time that ~~PDC's~~Guarantor's financial condition is such that ~~PDC~~Guarantor no longer qualifies as a guarantor pursuant to the Rules or the Third Party Guarantee, the Permittee shall be deemed without financial assurance coverage. The Director shall specify to the Permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance coverage. If adequate financial assurance is not provided by the end of the period allowed, the Permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the Permit. The Director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the Director has determined that an acceptable replacement financial assurance has been provided.

The above changes are made to reflect that PDC is no longer the Third Party Guarantor and to reflect that the financial statements of the Third Party Guarantor may not be filed with the Securities Exchange Commission.

~~(d) Trust Balances and Additional Reclamation. The balance of the Trust shall be reported quarterly to the Director along with the balances of the trusts established for~~

~~the Chino Mine Permit No. GR009RE and the Continental Mine Permit No. GR002RE (collectively, the PD Trusts).~~

~~1) If at the end of any calendar quarter that ends before December 31, 2008, the total balance of the PD Trusts exceeds \$109.8 million, then Tyrone shall suspend the payment of the \$500,000 due that calendar quarter under Condition 9.M.4(a) and shall use the \$500,000 for additional reclamation as provided under Condition 9.M.4(d)(3). If at the end of any succeeding calendar quarter, the total balance of the PD Trusts drops below \$109.8 million, the \$500,000 quarterly payment shall be deposited into the Tyrone Trust rather than being committed to reclamation under Condition 9.M.4(d)(3).~~

~~2) If as of December 31, 2008, the total balance of the PD Trusts exceeds \$109.8 million, and the total balance in the Tyrone Trust exceeds \$27 million, then, an amount no greater than the lesser of (a) the total amount in the PD Trusts minus \$109.8 million or (b) the total amount in the Tyrone Trust minus \$27 million may be released from the Tyrone Trust to the Permittee for use for additional reclamation at Tyrone as approved by NMED and MMD. The Permittee may request release of the funds and the funds shall be released from the Tyrone Trust upon a determination by NMED and the Director that the release of the funds will be in compliance with this section and Condition 9.M.4(d)(3) of the Permit. The release of funds under this subsection shall be a one-time occurrence and future growth in the Tyrone Trust shall be subject to the terms of the Trust Agreement. The funds authorized for release from the Tyrone Trust under this subsection shall remain in the Trust until released to cover specific reclamation expenditures as they are incurred by Permittees from time to time.~~

~~3) Quarterly payments suspended under Condition 9.M.4(d)(1), and funds released from the Tyrone Trust under Condition 9.M.4(d)(2), shall be used for reclamation at the projects identified in Table 1 of this Permit. Reclamation using these funds shall be in addition to the \$30 million required under Condition 9.P of this Permit. Tyrone shall obtain the confirmation of NMED and MMD that any proposed reclamation under this Section will be conducted in a manner consistent with the requirements of this Permit. The Permittee shall report annually to the Director regarding reclamation expenditures under this Section.~~

The preceding paragraphs are proposed for deletion because they are obsolete. Tyrone has completed both the required payments to the Trust and the reclamation work identified in Table 1 of the Permit, which also is proposed to be removed from the Permit. Provisions for reporting the Trust balances and conditions for any withdrawal of funds from the Trust have been replaced with the proposed provisions presented above.

~~e) Surety Bond. The Permittee currently has in place a Surety Bond (#202267) in the amount of \$57,975,900 with the New Mexico Environment Department covering cost associated with the Closure Discharge Permit 1341 ("Surety Bond"). The Mining Act Rules provide that MMD shall not duplicate federal or state financial requirements so long as those financial assurance~~

~~requirements are at least as stringent as required by the Mining Act Rules. Requirements imposed by DP-1341 are also included within this Permit Revision. The Surety Bond #202267 secures performance of reclamation requirements at least as stringent as those required by this Permit Revision. The Permittee is deemed to have satisfied financial assurance requirements for those requirements currently covered by the Surety Bond.~~

This paragraph is proposed for deletion because the referenced surety bond has been released.

~~(fd) Surety Bonds and Letters of Credit. The Permittee has provided an Irrevocable Letter of Credit, dated April 12, 2004, issued by Scotiabank to MMD and NMED as beneficiaries, in the amount of \$6,256,604.00. ("Letter of Credit"). Tyrone may propose and MMD may accept, in accordance with the applicable rules, surety bonds and letters of credit to cover the balance of the required total financial assurance amount that is not covered by trust funds, collateral, or a third party guarantee. The current amounts of financial assurance provided by surety bonds and/or letters of credit is reflected in Permit Modification 16-3.~~

~~Surety bonds and letters of credit are a straightforward way to provide financial assurance either to make up a gap in the required financial assurance amount or to cover financial assurance obligations on federal public lands for which the federal land manager is not a party to the trust or collateral agreements and cannot accept a guarantee under current federal regulations. The proposed change simplifies this section and references the current Permit Modification as reflecting these forms of financial assurance.~~

- ~~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 value of the Trust and the collateral based upon (a) the Trust valuation report provided by the Trustee to MMD and NMED and (b) the collateral value reports or appraisals each as of the end of calendar year 2005 and the end of each calendar year thereafter, and shall provide additional financial assurance if necessary to meet the requirements of 19.10.12 NMAC and this Permit.~~

~~*Note: Although this provision is somewhat duplicative of the quarterly reporting for the Trust, it also addresses the collateral, and a yearly review to ensure that the total minimum financial assurance obligation is adequately covered.*~~

- ~~6. The Permittee may not replace the Trust with other forms of financial assurance. The Permittee may replace all or any portion of the Third Party Guarantee or the collateral with other forms of financial assurance acceptable to the Director pursuant to 19.10.12.1209 NMAC, provided, however, that collateral may not be replaced with a third party guarantee. The Director may require adjustment of the financial assurance as provided in 19.10.12.1206 NMAC.~~

~~The Permittee may only replace the Surety Bond and the Letter of Credit with collateral~~

~~as described in Condition M.4(b) or another form of financial assurance acceptable to the Director and must comply with Condition M.4(b)(1) above which states that a 30% portion of the total financial assurance must be provide in collateral or cash. No portion of the Surety Bond or Letter of Credit amount can be replaced with a Third Party Guarantee.~~

~~Funds released from the Tyrone Trust under Condition 9.M.4(d)(2), shall be used for reclamation at the projects identified in Table 1 of this Permit. Reclamation using these funds shall be in addition to the \$30 million required under Condition 9.P of this Permit. Tyrone shall obtain the confirmation of NMED and MMD that any proposed reclamation under this Section will be conducted in a manner consistent with the requirements of this Permit. The Permittee shall report annually to the Director regarding reclamation expenditures under this Section.~~

This provision is proposed for deletion as obsolete, as the required minimum reclamation work has been completed. In addition, the financial assurance rules have been modified since this provision was included in the permit and currently set a 75% maximum amount for the third party guarantee. Other changes to the amounts and forms of financial assurance would need to be approved through a permit modification approved by MMD and NMED in accordance with applicable laws and rules. Consequently, this provisions is not necessary and is unduly restrictive of future changes to financial assurance.

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