

**PERMIT NO. SA012MN
HORIZON AG-PRODUCTS CUBA FACILITY
MINIMAL IMPACT NEW MINING OPERATION**

**MINING AND MINERALS DIVISION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

Permit No. SA012MN (“Permit”) is issued by the Director of the Mining and Minerals Division (“MMD”) of the New Mexico Energy, Minerals and Natural Resources Department to:

Whose correct address is: Horizon Ag-Products
 1450 Infinite Dr.
 Louisville, CO 80027

(“Permittee”) in order to conduct mining (which includes milling per §19.10.1.7.M(3) NMAC) and reclamation at the Horizon Ag-Products Cuba Facility (“Facility”) located at 23 Cubita Road, Cuba, NM 87013 in Sandoval County, New Mexico.

Section 1. STATUTES AND REGULATIONS

- A. This Permit is issued pursuant to the New Mexico Mining Act, NMSA 1978, §69- 36-1, et seq. (1993, as amended through 2017).

- B. This Permit is subject to all applicable regulations of the New Mexico Mining Act (“Act”), New Mexico Mining Act Rules, Title 19, Chapter 10 of the New Mexico Administrative Code (“NMAC” or “Rules”), and any other regulations which are now or hereafter in force under the Act; and all such regulations are made a part of this Permit by this reference.

Section 2. PERMIT APPLICATION PACKAGE

- A. The Permit Application Package (“PAP”) consists of the following:
 - 1. A Subpart 3 Minimal Impact New Mining Operations Permit Application, received by MMD on July 22, 2014;
 - 2. Addendum #1 to the PAP, dated July 21, 2014. This addendum is marked as confidential by the Permittee and describes the property identified as the “H1 site” where humate has been stockpiled by the Permittee.
 - 3. Addendum #2 to the PAP, dated July 21, 2014. This addendum is marked as confidential by the Permittee and provides justification of a non-mining, post-reclamation use of the Cuba Facility, and provides a third party contractor’s bid for removal of equipment not able to be re-used for a commercial/industrial PMLU.

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4. Addendum #3 to the PAP, dated July 1, 2014. This addendum is marked as confidential by the Permittee and provides justification for several pieces of equipment for use in a commercial/industrial PMLU.
5. Addendum #4 to the PAP, dated December 14, 2016. This addendum is marked as confidential by the Permittee and provides justification for several pieces of equipment for use in a commercial/industrial PMLU.
6. Addendum #5 to the PAP, received March 14, 2017. This addendum is marked as confidential by the Permittee and provides justification for equipment for use in a commercial/industrial PMLU.
7. Addendum #6 to the PAP, received approximately June 19, 2017. This addendum is a financial assurance cost estimate to achieve a commercial/industrial PMLU.

Any correspondence subsequently submitted to MMD, by the Permittee or its representatives, can be found at MMD offices within the Division's files, and is entitled *Horizon Ag-Products Cuba Facility* or similar.

Section 3. PERMIT AREA

- A. The Permittee is authorized to conduct mining and reclamation operations only on those lands that are specifically designated and authorized within the permitted area ("Permit Area"). The Permit Area is located entirely on private land owned by the Permittee within Section 29/32, Township 21 North, Range 1 West, within Sandoval County, New Mexico. The Permit Area is addressed as 23 Cubita Road, Cuba, NM 87013.
- B. For this Permit, the Permit Area is defined as approximately 10 acres as shown in Figure 1 within this Permit. The design limit for this Permit is also no more than 10 acres of disturbed land.
- C. The Permit Area does not include the property identified as the H1 site located north of 23 Cubita Road in Section 19, Township 21 North, Range 1 West. However, the H1 site is an "Affected Area" as defined by §19.10.1.7.A(3) NMAC.

Section 4. FINDINGS OF FACT

The Permit Application Package

- A. The PAP is complete and demonstrates that the proposed operation will meet the performance and reclamation standards and requirements of §19.10.3.304.D NMAC.

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- B. The Permittee has paid the initial permit application fee of \$1,000.00 in accordance with §19.10.2.201 NMAC.
- C. The PAP provides that the proposed operation meets the standards of a "Minimal impact mining operation," addressed in §19.10.1.7.M(2) NMAC, and in §19.10.3.304 NMAC, and does not fall within the exclusions in §19.10.1.7.M(2) NMAC. MMD and the other agencies, pursuant to §19.10.3.304.H NMAC, reviewed the minimal impact designation.
- D. The approved Post Mining Land Use ("PMLU") is industrial/commercial.
- E. The term of the Permit is governed by Subsections A, C and D of §19.10.6.607 NMAC.

Right-To-Enter / Property Access Information

- F. The Permit does not grant or create any property rights. Nor does MMD, by issuing this Permit or otherwise, make any comment on the surface or mineral rights that the Permittee may or may not have in the area covered by the Permit; only that the Permittee has provided a statement of basis on which the Permittee has a right-to-enter the property to conduct mining and reclamation. Permittee is solely responsible to take whatever steps are necessary to ensure that Permittee has property rights sufficient to support the activities contemplated by the Permit.
- G. The surface estate of the Permit Area is owned by the Permittee. The Permittee has adequately provided a basis of the applicant's right-to-enter.

General Information Regarding the Permittee

- H. Neither the Permittee, entities that are directly controlled by the Permittee, nor entities that directly control the Permittee: (i) are in violation of the terms of another permit issued by the Director or in violation of a substantial environmental law or substantive regulation, as those terms are defined in §19.10.3.304.J(4)(a) NMAC at another mining operation in the United States, (ii) have forfeited or had forfeited financial assurance required for another mining, reclamation or exploration permit in the United States, or (iii) have demonstrated a pattern of willful violations of the Act or other New Mexico environmental statutes.
- I. The Permittee has signed a notarized statement agreeing to comply with the requirements of the Permit, the Rules, and the Act, and allows the Director to enter the Permit Area for the purpose of conducting inspections.

MMD's Request for Comments to the Agencies and Tribes

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- J. MMD provided the agencies (the New Mexico Environment Department (“NMED”), the Department of Game & Fish, the State Forestry Division, the State Historic Preservation Office, and the Office of the State Engineer with a copy of the PAP and requested comments from the agencies.
- K. The Secretary of NMED provided a written determination, dated February 10, 2017. This determination addresses applicable standards for air, surface water and ground water protection enforced by or for which NMED is otherwise responsible.
- L. MMD provided the PAP to the following tribal entities and requested review and comment: Hopi Tribe, Jicarilla Apache Nation, Navajo Nation, Pueblo of Jemez, and Ute Mountain Ute Tribe.
- M. MMD provided the Permittee with MMD’s comments and comments provided by the other agencies through an electronic mail message dated March 8, 2017.

Financial Assurance

- N. The approved PMLU is industrial/commercial, therefore the 12-year revegetation period described in §19.10.12.1204.A NMAC does not apply. Financial assurance can be released in its entirety upon successful attainment of the PMLU as determined by MMD.
- O. The Permittee has provided satisfactory financial assurance, as required by §19.10.3.304.J(3) NMAC, in the amount of \$34,603.00 in the form of an Irrevocable Letter of Credit number S325426, dated July 24, 2017, issued by KeyBank National Association, Mail Code OH-01-49-0455, 4900 Tiedeman Road, Cleveland, OH 44144-2302.

Section 5. COMPLIANCE REQUIREMENTS

- A. The Permittee shall comply with the statutes and regulations referred to in Section 1 of this Permit and with all other applicable state or federal statutory, regulatory or permitting requirements. The issuance of this Permit does not relieve the Permittee from the responsibility of complying with other state and federal requirements and standards.

Section 6. AGENCY RIGHT OF ENTRY

- A. The Permittee shall allow employees of MMD who are the authorized representatives of the Director, without advanced notice, upon presentation of appropriate credentials, after completion of proper on-site safety training, and without delay:
 - 1. to enter upon, or through, any mining or reclamation operation at any time, as provided for in §19.10.3.304.J(5) NMAC and §19.10.11.1101.E(1) NMAC for the

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purpose of conducting inspections and to determine if the Permittee is in compliance with the Permit requirements and conditions; and

2. at reasonable times, and without delay, have access to and copies of any records associated with permitting and compliance required by the Act, §19.10 NMAC or the Permit.

Section 7. PERMIT COVERAGE

- A. This Permit shall be binding on any person or persons conducting mining and reclamation operations under this Permit.

Section 8. ENVIRONMENTAL COVERAGE

- A. The Permittee shall take all necessary steps to minimize any adverse impact to the environment or public health and safety resulting from non-compliance with any term or condition of the Permit, the Rules or the Act.

Section 9. COMPLIANCE WITH THE PERMIT & PAP

- A. The Permittee shall conduct mining and reclamation operations only as described in the approved PAP, this Permit, and any other modifications approved by the Director, pursuant to §19.10.6.608 NMAC. The Permittee shall comply with the statutes and regulations in Section 1 of this Permit, the applicable regulatory and permitting requirements, and any and all conditions that are incorporated into this Permit.
- B. Where the PAP is ambiguous or in apparent conflict with the provisions outlined in this Permit, the language of this Permit will supersede the PAP.

Section 10. GENERAL OBLIGATIONS AND CONDITIONS

Description of Project / Authorized Disturbances

- A. Within the approved Permit Area, the Permittee will operate a humate processing plant within a total of no more than 10 acres of disturbance. The operation consists of several large metal buildings as well as office buildings, humate storage areas, stormwater detention ponds, truck scale, equipment yard, and other similar and miscellaneous equipment.
- B. Pursuant to §19.10.3.304.A, the mining operation shall not exceed the Permit Area of approximately 10 acres without prior written modification of the Permit.

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- C. The approved Permit Area does not include the property known as the “H1 site” where the Permittee has fine humate stockpiled/bagged. Permittee is prohibited from adding additional humate or any other product or waste material to this Affected Area or any other location outside of the Permit Area.

Reporting Requirements

- D. Permittee is currently removing humate from the H1 site to the Permit Area at the Facility for processing and shall continue to do so. The Permittee shall report annually by April 30 (when annual fees and annual reports are due):
1. The approximate volume of humate removed from the H1 site during the previous calendar year; and,
 2. The approximate volume of humate remaining on the H1 site at the end of each calendar year.
- E. Permittee shall report to MMD any new processing equipment that is added to the Facility in writing within 45-days after delivery to the Facility. Permittee shall either provide justification for the use of any new equipment in a commercial/industrial PMLU or provide an updated financial assurance cost estimate for removal of said equipment.

Reclamation Requirements to Achieve Commercial/Industrial PMLU

- F. The Permittee is obligated to complete reclamation sufficient to meet the approved commercial/industrial PMLU as determined by MMD.
- G. The Permittee shall leave all disturbances in a manner that is stable, both long term and short term, and non-hazardous to humans and wildlife.
- H. All lands to be disturbed by the mining operation will be addressed under the performance reclamation standards and requirements of §19.10.3.304 NMAC.
- I. The Permittee shall notify MMD, within at least thirty (30) days, prior to initiating any reclamation pursuant to this Permit.

Best Management Practices

- J. The Permittee shall implement and/or maintain best management practices (“BMPs”) in a manner that prevents direct impacts to surface water and ephemeral, intermittent, and perennial water courses. The Permittee shall maintain erosion control measures that have been designed, constructed and maintained using professionally recognized standards. The

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Permittee shall also maintain a multi-sector general storm water permit coverage under the National Pollutant Discharge Elimination System ("NPDES"), from the U.S. Environmental Protection Agency ("USEPA"), for discharges of storm water from this facility.

- K. No storage of fuels or chemicals shall take place within any watercourse. No excavation or filling shall take place within any watercourse until the required permits or consultations are obtained from the U.S. Army Corps. of Engineers.
- L. Appropriate spill clean-up materials, such as absorbent pads, must be available on-site at all times during mining activities to address potential spills. Spills must be reported immediately to NMED as required by the New Mexico Water Quality Control Commission Regulations (§20.6.2.1203 NMAC). For non-emergencies during normal business hours, call (505) 476-6000. For non-emergencies after hours, call (866) 428-6535 or (505) 428-6535 (voice mail, twenty-four hours a day). For emergencies only, call (505) 827-9329 twenty-four hours a day (NM Department of Public Safety).

Cultural and Paleontological Resource Preservation Requirements

- M. The Permittee is obligated to comply with procedures established in Section 18-6-11.2 of the Cultural Properties Act, NMSA and §4.10.11 NMAC to protect such cultural items as human remains, associated funerary objects, sacred objects, and objects of cultural patrimony discovered inadvertently during the course of project implementation. In the event that any of the cultural items listed above are discovered during the course of project work, the Permittee shall immediately halt the disturbance and contact the Office of the Medical Investigator and the local law enforcement agency pursuant to Section 18-6-11.2 of the Cultural Properties Act and the Department of Cultural Affairs within 24 hours for instructions. The Permittee shall be held responsible for protecting, evaluating, reporting, excavating, treating, and disposing of these cultural items according to the procedures established by the Department of Cultural Affairs in consultation with Indian Tribes.

Changes, Modifications, or Revisions to the Permit

- N. Any changes, modifications or amendments to the approved Permit must be approved, in writing, prior to implementation.

Financial Assurance

- O. The Permittee shall maintain financial assurance, after approval of this Permit, in the approved amount of \$34,603.00, using one, or more, approved financial assurance instruments until released, pursuant to Part 12 of the Rules and sufficient to cover third-party costs.

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- P. The amount of financial assurance required for the site shall be updated every five years, at a minimum, to account for operational changes, inflation, and other factors. Permittee shall provide the updated financial assurance amount in order to maintain this Permit.

Annual Report and Fees

- Q. The Permittee shall submit annual reports pursuant to §19.10.6.610 NMAC, and any fees as required by §19.10.2 NMAC.

Additional Obligations

- R. The Permittee shall maintain this Permit until reclamation is complete at the site and until the site is released from the requirements of the New Mexico Mining Act. The term of this Permit is governed by §19.10.6.607 NMAC.
- S. The Permittee shall monitor the site, at least once per year, for the duration of the Permit in order to assure knowledge of the general site conditions and compliance with the Permit and the approved Permit Area.

Section 11. CONCLUSIONS OF LAW

- A. The Director concludes the application meets the requirements of a “Minimal Impact Mining Operation,” addressed in §19.10.1.107.M(2) NMAC. The operation authorized by this Permit is eligible as a minimal impact operation, and the Permittee is authorized to operate a minimal impact mining operation, pursuant to §19.10.1.107.M(2) NMAC and §19.10.3.304 NMAC. The Horizon Ag-Products Cuba Mill Facility will no longer qualify as a Minimal Impact operation if permit authority is exceeded or if any of the characteristics described in §19.10.1.7.M(2) NMAC exist.
- B. The PAP is complete and accurate and complies with the requirements of the Act and §19.10.3.304 NMAC.
- C. The Director has jurisdiction over the Permittee and the subject matter of this Permit and process.
- D. The Permittee is permitted to conduct mining and reclamation operations within the Permit Area upon the condition that the Permittee complies with the requirements and conditions of the Act, the Rules, and this Permit, and upon the submission of such annual reports and fees as may be required under §19.10.6.610 NMAC and §19.10.2 NMAC.

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CERTIFICATION

I certify that I have read, understand and will comply with the requirements of the Permit. I further certify that I am not in violation of the Act or §19.10 NMAC. I also agree to comply with the performance and reclamation standards and requirements of the Permit, the Rules, and the Act, and allow the Director to enter the Permit Area without delay for the purpose of conducting inspections during mining and reclamation.

[Signature]
Authorized Representative of the Permittee

Operations Manager
Title

Horizon Ag Products
Company

Subscribed and sworn to before me this 21st day of August, 2017

[Signature]
Notary Public

My Commission Expires

02/25, 2019



OFFICIAL SEAL
Lucy M. Morfin
NOTARY PUBLIC - STATE OF NEW MEXICO

My Commission Expires: 02/25/2019


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ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that Permit No. SA012MN, for the operation of the Horizon Ag-Products Cuba Facility, located in Sandoval County, New Mexico, is approved. The Permit may not be transferred without approval by the Director.

By Order of the Director, Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department, of the State of New Mexico.

By: 

Fernando Martinez, Director
Mining and Minerals Division
Energy, Minerals and Natural Resources Department

Date: 8/28/2017