

State of New Mexico
Energy, Minerals and Natural Resources Department

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December 21, 2018

Mr. Jeff Smith
New Mexico Copper Corporation
P.O. Box 4209
Truth or Consequences, NM 87901

RE: Status Update and Steps Remaining for Permit Issuance, Copper Flat Mine, Sierra County, Permit Tracking No. SI027RN

The Mining and Minerals Division (“MMD”) has been asked by New Mexico Copper Corporation (“NMCC”) to provide a status update on the MMD permitting process for the Copper Flat Mine permit application. MMD staff has reviewed the record for the Copper Flat mine application, which MMD deemed to be “technically approvable” in July 2018. Since that time, NMCC has made significant progress toward fulfillment of the remaining requirements, including, but not limited to, submittal of an initial financial assurance cost estimate (August 2018), holding a two-day public hearing (October 2018), and submittal of a revised financial assurance cost estimate that responds to agency comments (December 2018).

While NMCC has made substantial progress, MMD identifies, as of the date of this letter, the remaining steps that have yet to be completed before MMD can issue a permit for the Copper Flat project. Some of these steps are specifically required by the NM Mining Act Statute, 69-36-1 to 69-36-20 NMSA 1978.

In no specific or chronological order, the steps remaining are:

1. Receipt of the Hearing Officer’s Summary Report on the public hearing held in Truth or Consequences on October 23 and 24, 2018, and that the MMD Director’s consideration of the record has been completed and the requirements of public participation met [§19.10.6.606.B(11), §19.10.9.905.A(3), and §19.10.9.906.C NMAC]. This is a regulatory requirement. MMD has not yet received the Hearing Officer’s Summary Report, but expects this to be forthcoming in the near future. MMD estimates that this step will likely be completed by MMD prior to December 31, 2018.
2. MMD’s receipt of a Written Determination from the Secretary of the Environment Department (“NMED”) stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the permit application [§19.10.6.606.B(3) NMAC; Mining Act 69-36-7(P)(2) NMSA 1978].

This is a statutory requirement within the Mining Act. 69-36-7(P)(2) of the Mining Act states that the commission shall “provide by regulation that, *prior to the issuance of any permit for a new mining operation* [emphasis added], the permit applicant or operator “shall provide to the director a written determination from the secretary of environment stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality, and other environmental standards if carried out as described.” As of the date of this letter, the written determination from NMED has not been received by MMD.

3. Completion of the technical review of the revised financial assurance proposal submitted by NMCC, to MMD, NMED, and the Bureau of Land Management (“BLM”), and submittal and execution by MMD, NMED and BLM of a suitable financial assurance instrument in an amount adequate to complete the reclamation plan. [§19.10.6.606.B(4) NMAC; §19.10.6.606.B(5) NMAC; Mining Act 69-36-7(Q) NMSA 1978; Mining Act 69-36-12(B)(2) NMSA 1978]. Financial assurance is composed of a cost estimate and the proposed instruments, supporting financial assurance. The revised cost estimate was submitted on December 12, 2018.

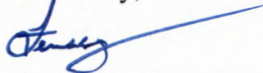
These two tasks are Mining Act statutory requirements. 69-36-7(Q) of the Mining Act states that the mining commission shall “require by regulation that the applicant file with the director, *prior to the issuance of a permit* [emphasis added], financial assurance.” This statute refers to submittal of the actual financial assurance instrument or mechanism such as a surety bond, letter of credit, certificate of deposit, or other acceptable mechanisms pursuant to §19.10.12.1208 NMAC.

Section 69-36-12(B)(2) of the Mining Act states that the director shall issue the permit for a new mining operation if the director finds that “the permit application fee has been paid and the financial assurance is adequate and has been provided.” This statute refers to the adequacy of the proposed amount and submittal of the actual instrument/mechanism prior to issuance of a permit. As of the date of this letter, MMD, BLM and NMED are reviewing the financial assurance adequacy [cost estimate amount] of the revised financial assurance proposal submitted by NMCC on December 12, 2018. The financial assurance instrument/mechanism has not been provided to MMD.

5. MMD’s receipt of BLM’s approval of the proposed mining operation [§19.10.6.606.B(10) NMAC]. This is a regulatory requirement. §19.10.6.606.B(10) NMAC states that “no permit shall be issued until the Director finds, in writing, that: (10) if the proposed mining operation is on state or federal lands, the appropriate land management agency approves the proposed mining operation if approval by the land management agency is required under that agency’s regulations.” As of the date of this letter, MMD has not received written approval of the mining operation from the BLM. Pursuant to this regulation, the Director cannot issue the MMD permit without this approval.

As stated previously, NMCC has made, and continues to make, significant progress toward fulfillment of these remaining requirements. One last overarching subject to be resolved by NMCC, prior to commencement of mining, is the acquisition of sufficient water rights to operate the mine at the proposed milling rate of approximately 27,890 tons per day. Acquisition of water rights is the jurisdiction of the Office of the State Engineer, and it is MMD’s understanding that NMCC is continuing to pursue various options through the State Engineer’s office to resolve this issue.

Sincerely,



Fernando Martinez, Director
Mining and Minerals Division

cc: Mr. Kurt Vollbrecht, NMED Mining Environmental Compliance Section
Dr. Ghassan Musharrafieh, Office of the State Engineer
Mr. Bill Auby, Bureau of Land Management Santa Fe