



Electronic Transmission

MEMORANDUM

Date: May 15, 2023

To: David Ennis, Program Manager, Mining Act Reclamation Program

Through: Anne Maurer, Mining Act Team Leader, Mining Environmental Compliance Section (MECS)

From: Alan Klatt, Surface Water Quality Bureau (SWQB)
Sufi Mustafa, Air Quality Bureau (AQB)

Subject: **New Mexico Environment Department (NMED) Comments, Updated Closure/Closeout Plan, Cost Estimate, and Response to Agency Comments,, Revision 20-1, Cunningham Hill Mine, LAC Minerals (USA), LLC, Santa Fe County, New Mexico, New Mexico Mining Act Permit No. SF002RE**

The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on March 9, 2023 requesting that NMED review and provide comments on the above-referenced MMD permitting action. Pursuant to the Mining Act, the Cunningham Hill Mine is a regular existing mine. MMD requested comments on the application within 45 days of receipt of the request for comments. NMED requested an extension to submit comments by May 15, 2023. NMED has the following comments.

Background

LAC Minerals (USA), LLC (applicant) submitted to MMD the Revision 20-1 application on October 21, 2021. The Revision 20-1 application includes the updated Closure/Closeout Plan (CCP) and a request to update the financial assurance associated with closure activities. NMED sent MMD comments on the updated CCP on February 10, 2022. The applicant responded to agency comments and submitted two closure cost estimates including one for the remaining surface reclamation activities and activities covered under DP-

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55 that are jointly held by MMD and NMED and a second cost estimate for activities associated with AP-27 that are held solely by NMED. NMED submitted comments to MMD on the cost estimates on October 12, 2022. The applicant submitted responses to agency comments and updated cost estimates in addition to a net present value schedule to MMD on February 23, 2023. NMED is hereby providing additional comments on the cost estimates and net present value (NPV) schedule.

Air Quality Bureau

The AQB has no comments

Surface Water Quality Bureau

The SWQB comments are attached.

Mining Environmental Compliance Section

The MECS has the following comments:

1. The updated CCP was submitted to MECS as part of the requirements in DP-55, which was renewed on November 20, 2020. In addition, the CCP includes the proposed AP-27 abatement costs. MECS will have additional comments on AP-27 based on technical review of Appendix B in the CCP. As such, comments will be submitted under separate letterhead directly to the applicant with a copy to MMD to ensure that AP-27 is technically complete and updated to reflect current conditions. MECS will coordinate responses to these documents with MMD prior to issuance of a comment letter to the applicant. That being said, MECS has reviewed the cost estimate for AP-27 and is providing comments on this cost estimate in this memo given the applicant is updating costs associated with surface reclamation under the Mining Act permit and water management costs associated with DP-55.

MECS understands that the applicant is providing three separate cost estimates for agency approval with the option to consolidate financial assurance under one jointly-held bond. MECS supports a jointly-held bond for costs associated with DP-55, AP-27 and SF002RE due to the fact that MMD has a Mine Forfeiture Fund that both NMED and MMD can access in the event the Cunningham Hill Mine goes into forfeiture. The fund is a protective regulatory and financial mechanism that both agencies can use to pay for site reclamation and long-term water management and monitoring in the event of a forfeiture. NMED does not have financial assurance rules nor does NMED have its own Mine Forfeiture Fund that can be invested to ensure there is money to pay for long-term operation and maintenance of mine sites. MECS, therefore, has reviewed the AP-27 cost estimate to ensure that there are appropriate and sufficient costs to cover long-term (100-years) operation, maintenance and monitoring of the abatement activities covered under AP-27 with the understanding that the applicant will be proposing a jointly-held financial assurance instrument for SF002RE, DP-55 and AP-27 as part of the renewal of the Mining Act permit. Furthermore, DP-55 is up for renewal in 2025. The cost estimates for DP-55 and AP-27 can be revisited and updated if needed at that time.

2. Based on a review of the AP-27 cost estimate and the Financial Assurance Cost Estimate Summary (Summary), the applicant is assuming that the pit will need to be treated every 20 years. It is unclear what assumptions were used for these costs, and more specifically, the associated timelines for treatment other than the applicant is stating that forecasted pit water quality will be sustainable with source controls. Additional information is needed to justify the treatment timelines proposed in the AP-27 cost estimate.
3. The costs for plugging and abandonment of the wells shown on the AP-27 cost estimate, "Well Abandonment" sheet appear to be low. Direct costs should be provided based on vendor quotes or another source to back-up these costs.
4. The borrow area as designated in the DP-55 cost estimate under the "Quarries and Borrow Pits" tab is not clearly identified in any figure. Based on discussions with the applicant, this area will be located to the southeast of the Residue Pile. A figure showing this location should be provided and verification of the haul distance from this borrow area to the areas where this material will be used should be performed. The cost estimate may need to be updated to reflect these haul distances.
5. The contingency costs associated with placement of cover on up to eight acres of the waste rock pile as shown in the "Waste Rock Dumps" tab is not eligible for NPV under the Mining Act because it will take less than five years to perform this work. NMED has agreed to NPV the long-term water management costs, but does not support inclusion of earthwork costs in the NPV schedule. It appears that these costs were included in the NPV schedule. These costs either need to be placed in the surface reclamation cost estimate or need to be removed from the NPV schedule and treated as direct costs under the DP-55 cost estimate.
6. MECS is working with the applicant on addressing conditions required pursuant to Condition C101.D of DP-55. Costs associated with meeting Condition C101.D including any bench repairs or bench regrades need to be included in the DP-55 cost estimate and are not eligible for NPV.

NMED Summary Comment

NMED is withholding issuance of the environmental determination pending satisfactory applicant response to the comments herein.

If you have any questions, please contact Anne Maurer at (505) 660-8878.

cc: Carmen Rose, Permit Lead, EMNRD-MMD
Joseph Fox, Program Manager, NMED-MECS
Shelly Lemon, Bureau Chief, NMED-SWQB
Elizabeth Bisbey-Kuehn, Bureau Chief, NMED-AQB



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

MEMORANDUM

DATE: April 20, 2023

TO: Anne Maurer, Mining Environmental Compliance Section, Ground Water Quality Bureau, New Mexico Environment Department

THROUGH: Shelly Lemon, Chief, Surface Water Quality Bureau, New Mexico Environment Department

FROM: Alan Klatt, Watershed Protection Section, Surface Water Quality Bureau, New Mexico Environment Department

SUBJECT: **Request for Review and Comment, Revision 20-1, Updated Closure/Closeout Plan and Financial Assurance, Cunningham Hill Mine, LAC Minerals (USA) LLC, Santa Fe County, New Mexico, Mining Act Permit No. SF002RE**

The New Mexico Environment Department (NMED)-Surface Water Quality Bureau (SWQB) received the subject request for comments on April 10, 2023. The application for permit revision 20-1 is to update the closure/closeout plan (CCP) and financial assurance for the Cunningham Hill Mine. NMED provided comments to permit revision 20-1 on March 19, 2021, February 10, 2022, and October 12, 2022. SWQB did not include any additional comments with NMED's comments dated October 12, 2022. On February 23, 2023, LAC Minerals (USA) LLC (LAC) provided a response to NMED's comments dated October 12, 2022. SWQB has reviewed the response from LAC and does not have any additional comments to permit revision 20-1.

For questions related to these comments, please contact Alan Klatt, SWQB, at 505-819-9623.