

State of New Mexico
Energy, Minerals and Natural Resources Department

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Electronic Transmission

January 31, 2025

Sherry Burt-Kested, Environmental Services Manager
Freeport-McMoRan Tyrone Inc.
P.O. Box 571
Tyrone, New Mexico 88065

**RE: Technically Complete/Response to Comments, Emma Project, Regular (Part 4)
Exploration Permit Application, Permit No. GR095ER**

Dear Ms. Burt-Kested,

MMD has received your letter *Response to Comments, Emma Project, Regular (Part 4) Exploration Permit Application, Permit No. GR095ER*, dated January 21, 2025. Please see additional comments from MMD below. MMD hereby deems Permit No. GR095ER Technically Complete with the following follow-up comments.

MMD Comments

7. The 4th paragraph of the introduction to the project mentions that reclamation will not take place until the entire project has been completed and it is determined that no additional boreholes are required. Furthermore it states that the project area may also be left un-reclaimed because the area is to be mined in accordance with Revision 21-1 to Permit No. GR010RE. Per §19.10.4.403 A. NMAC this approach will be possible, however, MMD will evaluate Revision 21-1 to the GR010RE mine permit and the reclamation status of exploration permit GR095ER at the time of renewal each year to determine whether or not reclamation needs to be initiated or not. Furthermore, all areas left un-reclaimed must be stabilized and protected with the appropriate BMP's to minimize erosion, especially off-site of the disturbed areas.

FMI Response: Given the provision in 19.10.4.405.A NMAC, "Reclamation of the disturbed area shall be initiated and completed within the permit term, unless the area is included within a complete permit application for a new mining operation.", and Tyrone's planned stabilization of the disturbed areas, it is unclear why MMD would need to evaluate this aspect each year. As MMD is aware, Tyrone submitted a complete permit application for a new mining operation that includes this entire area in 2021. Please provide further clarity of the concerns so Tyrone may address them accordingly. Tyrone has been continuously reclaiming and re-disturbing this area

since the completed Emma Expansion Project application was submitted in 2021. Continuing to reclaim roads that will be re-disturbed in the future is a waste of resources as this is a proven mineral resource and will be mined. Unlike typical exploration projects in New Mexico, these drilling projects are generating data to further define the known mineral body which aids in development of the pit design and Tyrone's mine plan. See response to Comment 2 above as it relates to 19.10.4.403.J NMAC.

MMD Response:

Each year the proposed exploration permit will need to be renewed per 19.10.4.405 NMAC MMD's evaluation at renewal will include the current status of the GR010RE Modification 21-1 permit which can include items such as active mining in this area, future drilling, previous reclamation, and reclamation still not completed for the project.

13. Attachment A: Please Provide the remaining OSE POD's when available. MMD will need these prior to issuance of the permit.

FMI Response: Tyrone disagrees that the OSE PODs are necessary prior to permit issuance. The regulations for a Part 4 Exploration Permit do not include this requirement. 19.10.4.404 NMAC states: "Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with that responsibility under the applicable state or federal law, regulation or standard.". Additionally, 19.10.13.1303 NMAC provides assurance that the agency will avoid "duplicative and conflicting requirements" and for this situation, "to avoid enforcement of other statutes or regulations to be conducted by the agency charged with that responsibility under the applicable state or federal statute.". Tyrone must obtain permits through the OSE prior to drilling and it is not necessary for MMD to ensure that is completed. This MMD practice requiring OSE permits at the time of MMD application submittal creates multiple issues for operators that Tyrone would like to address. The OSE POD numbers have been provided on the updated application. However, due to the time restraints in processing this permit, additional newly established requirements by OSE, and modifications to the project such as the depth of holes, Tyrone must renew and modify the OSE permit. OSE permits are only valid for one year and are typically issued within two months of the application date. Since MMD permitting timeframes may be much longer than OSE, operators are at risk of having to reapply or renew OSE permits months before MMD permits expire. Additionally, MMD requires OSE permits at the time of application and prior to the agency field inspections. Often after the inspections, the agencies request that pad locations be moved for various reasons, and this triggers an amendment of the already permitted OSE POD locations. For these reasons, and because the regulations for a Part 4 exploration permit do not require the prior issuance of OSE permits, Tyrone is requesting that for this and all future exploration projects, MMD instead should modify permit language to acknowledge the operator will obtain OSE permits prior to conducting any drilling which is required by the OSE. Or MMD may eliminate redundant language and rely on the statements already in regulation and permits that remind operators to meet other regulatory requirements.

MMD Response:

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Page 2

January 31, 2025

MMD Understands FMI's perspective on this issue regarding the timing of the submittal of OSE documents to MMD. Please review the proposed new flow for the submittal of these documents below. If necessary MMD is willing to set up a meeting the FMI to discuss.

- *OSE Form WD-08 (Well Plugging Plan of Operations) or approved variance from 19.27.4.30.C NMAC, OSE approval of this form must come prior to actually drilling, but after issuance of the MMD permit.*
- *OSE Form WD-11 (Plugging Record) to be submitted to MMD prior to drilling activity past what is covered by Financial Assurance. This completed form will be used for proof of plugging and approval of moving to next bore-hole associated with rolling FA. OSE stamped approval will not be required at this point.*
- *At the time of termination of the Permit and full FA release all forms; WD-08, and WD-11 must be submitted to MMD with all OSE approvals completed.*

NMDGF Comment

One additional comment was received from NMDGF requesting that the perimeter of the tarps covering the mud pits are adequately secured to prevent small mammals and reptiles from crawling under the tarps and becoming entrapped in the mud fluids.

If you have any questions, please contact me at (505) 467-9589 or via e-mail at:
clinton.chisler@emnrd.nm.gov.

Sincerely,



Clint Chisler, Permit Lead
Mining Act Reclamation Program (MARF)

cc: DJ Ennis, Program Manager, MARF
Raechel Roberts, Senior Environmental Scientist, Tyrone Mine

Attachments: State Agency Comments

Mine File (GR095ER)