

October 9, 2023

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RE: New Metals Strategies LLC, Additional information to address Agency Review Comments and Request for Additional Information, Bella Group Lode Exploration, Sierra County, New Mexico, Permit Tracking No. SI056EM

Ms. Keeven, Mr. Barnes
New Metals Strategies LLC is submitting the following response to the September 15, 2023, Agency Review Comments and Request for Additional Information, Bella Group Lode Exploration. I have done my best to list all of the items I believe the commentators wanted to address. I also included several of the NMAC code citations mentioned in the review for easy reference in the Appendix section and a copy of the Agency review document. In the event I missed any items or did not adequately address an item, please telephone or email me directly with any questions or requests for additional information.

Thank you.

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NMS Response to comments in the May 24, 2023 Memorandum to David Ennis, from David Mercer New Mexico Environmental Department.

Comment(s): Mining Environmental Compliance Section (MECS)

The MECS has the following comments:

1. Regulations associated with minimal impact exploration operations are found at 19.10.3.302 NMAC. Required information associated with application for a minimal impact exploration operation with regard to groundwater are found at 19.10.3.302.D(5) NMAC and state, “an estimate of depth to groundwater and total dissolved solids concentration”. The application does not contain the information necessary to determine the *total dissolved solids concentration*. MECS requests the applicant obtain this information from a well that is proximal to the exploration project.

Response: As per the New Mexico Bureau of Geology & Mineral Resources database, the closest water well (~4 miles) with TDS data available on the website is shown in Figure 1 has a TDS of 351.

Source: [Total Dissolved Solids in NM Well Water \(nmt.edu\)](https://geoinfo.nmt.edu/resources/water/chemistry/tds.html)

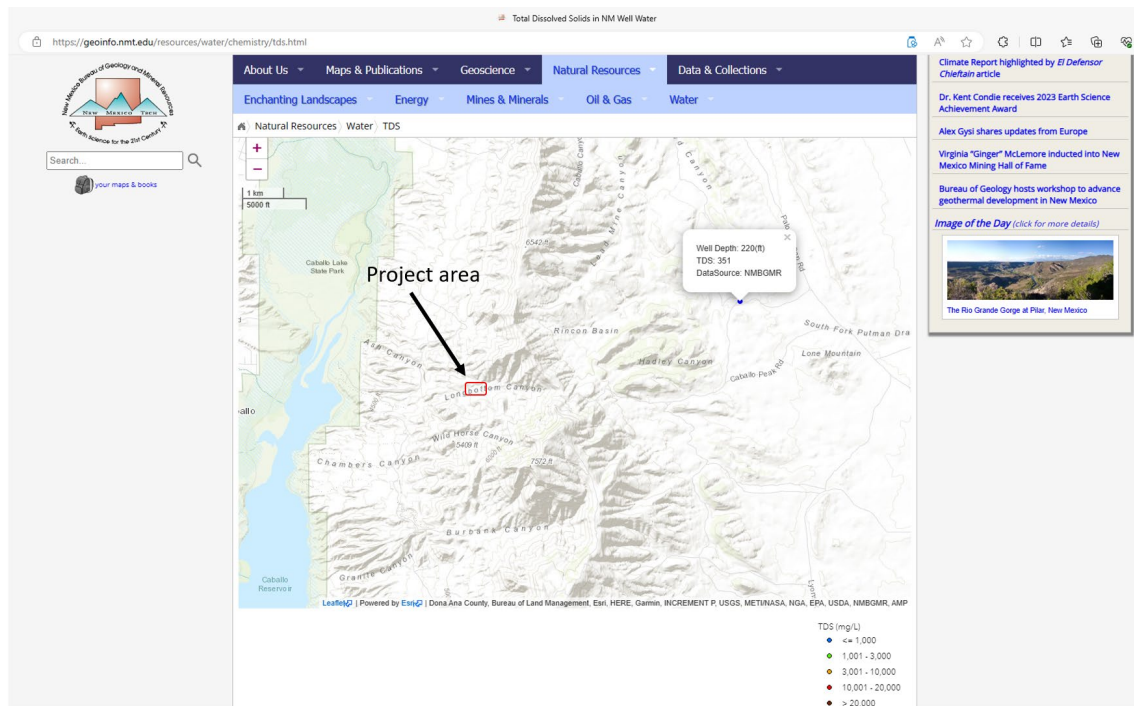


Figure 1: Project area and nearest well in NM TDS database.

2. The applicant indicated that produced water would be contained on site. However, there were no details provided on whether the produced water would be tested and the method of disposal. It is not clear that a contingency plan has been developed for such an occurrence. If the applicant checks a box that produced water would be collected, they should provide a plan

to sample and manage any water produced during drilling even if encountering water is unlikely.

Response: NMS proposes to drill using air and potable water trucked to the location for drilling. Wet or moist, drill cuttings will be contained adjacent to drill hole using a 10'(l)x4'(w)x4'(d) mud pit at each drill location. Each drill hole is calculated to produce approximately 1.5 cy of cuttings. The drill cuttings and drill water are expected to be inert. NSM proposes to dispose of drill water in the mud pit through evaporation and or ground absorption. No groundwater is expected to be encountered as per the Sate Engineers office comment. In the event ground water is encountered, the volume recovered to the surface is expected to be minimal and will be contained in the drill mud pit. Intercepted ground water will be tested for Total Dissolved Solids (TDS)> Pits will be located on high ground above Arroyo, 100'+ distant from the high water mark. Ground water run-off or flooding of the mud pits is not likely.

3. The application indicates that there will be 6 boreholes drilled with locations provided in the table in Section 3. However, Section 4 indicates that there will be 6 boreholes drilled with air and 6 boreholes drilled with mud/fluid. Based on discussions with MMD, the applicant is proposing to drill a total of 6 boreholes, but this needs to be confirmed based on the information provided in the application. If mud is going to be used, the type of drilling mud or fluid needs to be provided.

Response: A total of six (6) boreholes are planned. No drilling additives, muds or fluids will be used. Only clean potable water and compressed air. The use of the term "mud/fluid" was intended to refer to the wet muddy cuttings that will be produced by the drilling program using air and water to expel the cuttings. Nothing will be added to the process other than water.

4. The applicant did not commit to cleaning the equipment prior to the project.

Response: All motor vehicles, trailers and mobile equipment will be washed, including undercarriage, prior to mobilization to the site to avoid the introduction of noxious weeds.

5. If the applicant encounters groundwater, they should obtain the proper permits from OSE. The applicant must comply with all OSE procedures and applications to be in compliance with their exploration permit.

Response: If NSM encounters groundwater, we will obtain the proper well permits from the OSE. will contact the Office of Sate Engineer.

NMS Response to comments in the May 8, 2023 Memorandum to Anne Maurer, from John Money. Watershed Protection Section, Groundwater Quality Bureau.

Comment: Excavation of mud pits or exploratory trenches within the Ordinary High-Water Mark of Longbottom Canyon may be subject to dredge-and-fill permitting by the US Army Corps of Engineers (USACE).

Response: NSM has been in contact with Mr. Justin Riggs of the United States Army Corps of Engineers (USACE) and has applied for a 404 permit for trenching portion of the project.

Comment: Drilling and trenching may affect Surface Waters of the State as defined in 20.6.4.7 NMAC, which includes ephemeral arroyos within the exploration operation and are subject to 20.6.4.98 NMAC. Furthermore, operations must ensure protection of surface waters of the state including General Criteria at 20.6.4.13 NMAC, established to sustain and protect existing or attainable uses of surface waters of the State. These general criteria apply to all surface waters of the state at all times. Surface waters of the State shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

Response: The Longbottom arroyo is "dry" and devoid of surface waters the vast majority of the year. NMS will not conduct exploration activities in the arroyo during the monsoon season or at the rare times when surface water is present. NMS drilling and activities will not be using chemicals or drill additives. NSM has been in contact with the USACE and has applied for a 404 permit for trenching portion of the project.

Comment: The Applicant is required to report all spills immediately to the 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 505-428-2500. 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 Dept of Public Safety).

Response: NMS agrees to do this.

Comment: In addition to the above regulatory standards, SWQB requires the following practices to avoid contamination and to protect surface and groundwater quality:

- Mud and fluid pits adjacent to drilling operations must be sized to prevent overtopping during precipitation events.

Response: NMS agrees to do this.

- Process water must be contained within the closed-loop system or lined pits and may not be discharged unless a discharge permit has been secured from the EPA and/or NMED.

Response: NMS agrees to do this.

- Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must have a secondary containment system to prevent spills. Store these materials outside of the flood-prone zone.

Response: NMS agrees to do this.

- Perform all work, when practicable, in the dry season and postpone work during wet and muddy conditions. It is advised that work be completed prior to the onset of the monsoon season, or delayed until the danger of flash flooding has passed.

Response: NMS agrees to do this.

- Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during road construction, site preparations, drilling and reclamation to address potential spills.

Response: NMS agrees to do this.

- Provide a minimum 50' setback from existing drainages to drill pads, staging areas and exploratory trenches. Several drill locations appear to be placed in the bottom of Longbottom Canyon should be moved upslope and out of the drainage.

Response: NMS agrees to relocate the two drill holes planned for the Arroyo to high ground 100'+ away from the high water mark of Longbottom Canyon. NMS will obtain a ACOE 404 permit to do the trenching in the sandy bottom of Longbottom canyon. The purpose and goal of the trenching is to expose possible heavy minerals that nature has classified and concentrated in the canyon bottom.

NMS Response to comments in the May 19, 2023 Memorandum to Anne Maurer, from Sufi Mastfa of the Air Quality Bureau.

Comment: The applicant is expected to comply with all requirements of federal and state laws pertaining to air quality.

Response: NMS agrees to do this. NMS will take reasonable precautions to prevent excessive particulate matter from becoming airborne including visual opacity monitoring and using water spray/injection for drill dust suppression.

Comment: Paragraph (1) of Subsection A of 20.2.72.200 NMAC, *Application for Construction, Modification, NSPS, and NESHAP - Permits and Revisions*, states that air quality permits must be obtained by: "Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in

this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review.”

Further, Paragraph (3) of this subsection states that air quality permits must be obtained by: “Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC, *New Source Performance Standards*, 20.2.78 NMAC, *Emission Standards for Hazardous Air Pollutants*, or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant.”

Response: NMS will comply with all applicable State and Federal air quality regulations. The proposed activities using mobile equipment do not appear to fall under 20.2.77 NMAC, New Source Performance Standards, 20.2.78 NMAC for stationary equipment. Nor do the proposed activities fall under 40 CFR Part 61 for stationary equipment.

Comment: Also, Paragraph (1) of Subsection A of 20.2.73.200 NMAC, *Notice of Intent*, states that: “Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a notice of intent with the department.”

Response: NMS will comply with all applicable State and Federal air quality regulations. The proposed activities using mobile equipment do not appear to fall under 20.2.73.200 NMAC.

Comment: Fugitive Dust

Air emissions from this project should be evaluated to determine if an air quality permit is required pursuant to 20.2.72.200.A NMAC (e.g. 10 lb/hour or 25 TPY).

Response: NMS will comply with all applicable State and Federal air quality regulations. NMS does not anticipate producing 10 lb/hour or 25 TPY from our mobile equipment. Water and water misting will be used for drill dust suppression.

LS300T+ Water Well Drill



Figure 2: NMS proposed type of drilling equipment.

NMS Response to comments in the July 14, 2023 Correspondence to Mr. Kevin Barnes from Vergina Seamster/Ronald Kellermuller New Mexico Department of Game and Fish.

Comment: To minimize the likelihood of adverse impacts to migratory birds, nests, eggs, or nestlings during drill pad, trenching, and road construction activities, the Department recommends that ground disturbance and vegetation removal activities be conducted outside of the primary breeding season for migratory songbirds and raptors (1 March – 1 September; 1 January – 15 July for golden eagle and great horned owl).

Response: As per a telephone call with Mr. Ronald Kellermuller on October 3, 2023, the habitat of the NMS project along Longbottom Gulch is not typically suitable for all bird species. Therefore the proposed NMS project activities would be appropriate to conduct September through March. If NMS conducts activities outside this timeframe, the hiring of a qualified professional to do a bird nesting survey is recommended.

Comment: The Department recommends capping drill pipes as the most effective way to prevent wildlife entry. At a minimum, each section of pipe should be visually inspected prior to use to verify that no wildlife, e.g., small mammals or reptiles, are inside.

Response: NMS agrees to cap or check drill pipe for wildlife prior to use.

Comment: In the permit application, the boxes for both air and mud/fluid drilling are checked.

Response: Air and water will be used to flush cuttings from the drill hole. Mud or muddy water will be produced. No drilling additives, muds or fluids will be used. Only clean potable water and compressed air. The use of the term "mud/fluid" was intended to refer to the wet muddy cuttings that will be produced by the drilling program. Nothing will be added to the process other than water.

Comment: Closed loop systems eliminate the need to build fences or install netting to exclude wildlife from mud pits. The Department recommends netting or covering fenced mud pits and sloping one side at 3:1 to provide an escape ramp for wildlife.

Response: NMS will evaluate the possibility of using a closed loop system. If a closed loop system is not used NMS will follow the NMGF recommendations on netting and 3:1 slope.

Comment: Several of the proposed drill pad sites and the trenches appear to be located in the arroyo in Longbottom Canyon. To minimize any additional soil erosion, the Department recommends that these sites and trenches be moved to maintain a buffer zone of undisturbed native vegetation for at least 100 feet on both sides of Longbottom Arroyo.

Response: NMS will relocate drill holes out of the Arroyo at least 100' from the high water mark. NMS will orient the exploration trenches in such a manner that they do not disturb native vegetation in the riparian area, between the active occasional water flow and the floodplain / bank vegetation.

NMS Response to comments in the July 18, 2023 Memorandum to Mr. Kevin Barnes from Katie Zemlick New Mexico Office of the State Engineer.

Comment: 1. *Groundwater*

Groundwater level data in the area of the proposed application is sparse. The closest well of other ownership with recent data (LRG-080906) is more than 2.5 miles from the site. The application cites the elevation difference between the proposed location and Caballo Reservoir (500 ft.), located 1.2 miles to the east as the basis for their depth to water estimate. This is consistent with estimated water elevation using measurements at the closest well (LRG-080906) of 600 to 800 ft. **Therefore, it is unlikely that groundwater will be encountered** and so MMD regulations (19.10.3 NMAC) will prevail and NMOSE regulations (19.27.4 NMAC) would not apply. However, if groundwater is encountered the NMOSE District 4 Office should be contacted immediately.

Response: NMS will comply with the applicable State of New Mexico regulation(s) that apply to the situation.

2. *Borehole Abandonment*

The Applicants do not anticipate that groundwater will be encountered during the drilling process. In the unlikely event that the groundwater is encountered, NMOSE regulations for plugging NM OSE Comments on MMD Permit No. S1056EM 2 (Subsection C of 19.27.4.30 NMAC) would prevail over MMD regulations for plugging (Subsection L of 19.10.302 NMAC).

Response: NMS will comply with the applicable State of New Mexico regulation(s).

3. Surface Water

The proposed project will occur in and around Longbottom Canyon, an ephemeral stream located 2 miles east of Caballo Reservoir. It is recommended to avoid drilling in or within 100 feet of any drainages.

Response: NMS will relocate drill holes out of the Arroyo at least 100' from the high water mark.

Comment: NMOSE regulation 19.27.4.29.P.(2) NMAC notes that drilling fluids and cuttings shall not be allowed to migrate or be discharged off property under the control of the well owner, and that no drilling fluid or cuttings be discharged into any waters of the State.

Response: NMS will not allow drill water or cuttings to migrate or be discharged into Longbottom Canyon, off the project area or NMS mining claims. NMS will comply with the applicable State of New Mexico regulation(s).

4. Other

When mapped based on the locations of the drill holes and trenches in Section 3 (pg. 7), the location of T2 is inconsistent with the map provided. It appears northing latitude may be incorrect and perhaps the seconds should be changed from 47.07" to 42.07" to be consistent with Figure A2.

Response: Thank you for the correction.

Response: Attached is a new map Figure 3 including adjusted drill hole locations to move drill holes out of the Arroyo.

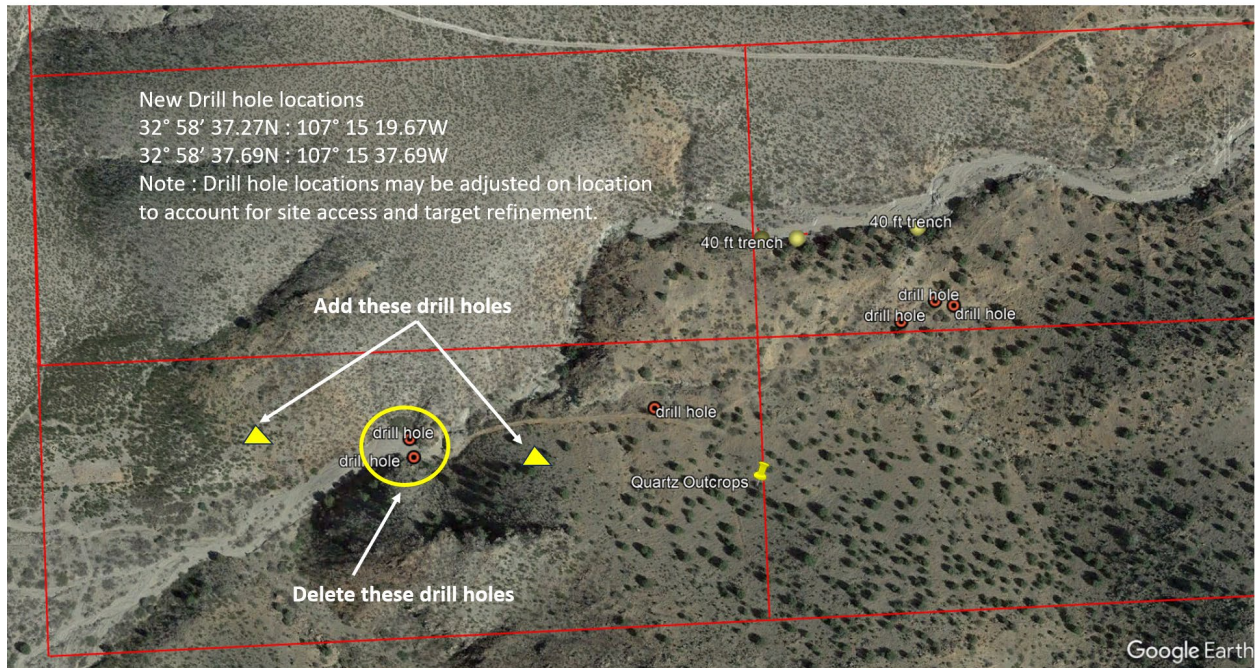


Figure 3: Two drill holes moved 100'+ out and away from the Arroyo bottom.
Note: Red lines indicate the claim boundaries of the Bella 1 – 4 mining claims.

NMS Response to comments in the May 15, 2023 Correspondence to Mr. Kevin Barnes from Erika Rowe.

Comment: I don't have any comments regarding this exploratory project (SI056EM). There are currently no documented rare species in the immediate vicinity.

Response: None required.

NMS Response to comments in the May 5, 2023 Correspondence to Mr. Kevin Barnes from Richard Raycraft, New Mexico Department of Cultural Affairs, Historic Preservation Division.

Comment: According to our files, the project area has never been surveyed for cultural resources and there are no historic properties listed on the NRHP or the SRCP present. Based

on this information, this permit will have no adverse impacts to burial grounds or cultural resources listed either on the National or State Registers.

However, 19.10.3.302 NMAC also states, that *“if the permit area includes state or federally owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation...”*

Response: A “NOTICE” has been submitted to the BLM. NMS recognizes the value of historical, cultural and paleontological resources on BLM lands and will conform to the applicable 3809 regulations.

NMS Response to comments in the May 10, 2023 Correspondence to Mr. Kevin Barnes from Mark Altaha, White Mountain Apache Tribe – THPO, Office of Historic Preservation.

Comment: We have reviewed the consultation letter and the information provided, we have reviewed the information provided and determined the project will have a “No Adverse Effect” on the tribe traditional cultural properties and/or historic properties. No further consultation is necessary and/or required for this project.

Response: None required.

APPENDIX A

Source: [N.M. Code R. § 19.10.3.302 - MINIMAL IMPACT EXPLORATION OPERATIONS | State Regulations | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

N.M. Code R. § 19.10.3.302 - MINIMAL IMPACT EXPLORATION OPERATIONS

A minimal impact exploration operation will not exceed 1000 cubic yards of excavation per permit. Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.

- A. Timing of applications and deadlines for approval for minimal impact exploration operations must be in accordance with [19.10.4.401](#) NMAC, except that a complete application for minimal impact exploration operations shall be submitted not less than 45 days prior to the anticipated date of commencement of operations.
- B. An applicant for a minimal impact exploration operation permit shall submit six copies of a completed application on a form provided by the director. If the proposed operation is on federal land, information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information. Any confidential information shall be submitted separately in accordance with Subsection B of [19.10.4.402](#) NMAC.

D. The application shall include the following information:

- (1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;
- (2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on the permit area; areas and types of proposed disturbances shall be indicated; the anticipated dimensions of each proposed disturbance shall also be provided;
- (3) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with [19.10](#) NMAC;

(4) a general description of the minerals sought and the methods of exploration; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration; and

(6) a general description of how the operation will be operated and reclaimed to meet the requirements of reclamation, as defined in [19.10.1.7](#) NMAC.

C. The application must be accompanied by the permit fee as required by [19.10.2](#) NMAC.

F. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

G. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of [19.10.4.402](#) NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection F of [19.10.4.402](#) NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making a determination of eligibility for minimal impact status.

H. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct a site visit in making this determination.

I. No permit for a minimal impact exploration operation will be issued until the director finds the following:

(1) the application is complete and demonstrates that the proposed operation and reclamation will meet the requirements of reclamation, as defined in [19.10.1.7](#) NMAC; reclamation of the disturbed area will be initiated as soon as possible, and will be completed within the permit term unless the disturbed area is included within a complete permit application for a new mining operation;

(2) the applicant has paid the permit fee determined by [19.10.2](#) NMAC;

(3) the applicant has signed a statement indicating he agrees to comply with the reclamation requirements of the permit, [19.10](#) NMAC, and the act and allows the director to enter the permit area, without delay, for the purpose of conducting inspections during exploration and reclamation;

(4) the applicant has certified he is not in violation of the New Mexico Mining Act or [19.10](#) NMAC; and

(5) the applicant has provided satisfactory financial assurance in an amount determined by the director; acceptable forms of financial assurance are limited to surety bonds, letters of credit or cash accounts described in [19.10.12.1208](#) NMAC.

J. The term of a permit for a minimal impact exploration operation is governed by Subsections A, C and D of [19.10.4.405](#) NMAC. Modifications to the permit are governed by [19.10.4.406](#) NMAC. A termination report pursuant to [19.10.4.407](#) NMAC is also required at the conclusion of an exploration operation not being renewed, unless the permittee has applied for a mining operation permit.

K. Reclamation of the disturbed area shall be initiated as soon as possible and completed in accordance with the schedule in the permit. Topsoil or topdressing material removal and stockpiling shall precede any excavation within the drill site area. All lands, including access roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition unless otherwise requested by the landowner and applicant and approved by the director. Where vegetation has been removed or destroyed within the permit area, vegetative cover shall be reestablished by seeding, planting, transplanting, or other adequate methods. All open mud pits shall be constructed in a manner to prevent wildlife entrapment, and shall be constructed to prevent any overflows. When drilling is completed, the mud pits shall be allowed to dry and then backfilled with native cover.

L. Each drill hole shall be plugged from total depth to within 2 feet of the original ground surface or the collar of the hole, whichever is lower, with a column of cement, high-density bentonite clay or other materials specified in the permit. If the approved plugging material is not cement, then the top ten feet of the column must be a cement plug. The hole shall be backfill with topdressing or topsoil from above the cement plug to the original ground surface. The hole shall be plugged as soon as practicable and satisfy the requirements of the state engineer and the New Mexico environment department for proper plugging of such holes. This plugging requirement may be waived if the state engineer issues a permit for a well for the exploration drill hole.

M. Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of [19.10.4.407](#) NMAC and the director has determined, after inspection, that the reclamation requirements of this section and the permit have been satisfied.

Notes

N.M. Code R. § 19.10.3.302

7-12-94, 2-15-96; [19.10.3.302](#) NMAC - Rn, 19 NMAC 10.2.3.302, 05-15-2001; A, 04-30-09

Appendix B

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 15 PUMICE, MICA AND PERLITE PROCESSING

20.2.15.1 ISSUING AGENCY: Environmental Improvement Board.
[11/30/95; 20.2.15.1 NMAC - Rn, 20 NMAC 2.15.100 10/31/02]

20.2.15.2 SCOPE: All geographic areas within the jurisdiction of the Environmental Improvement Board.
[11/30/95; 20.2.15.2 NMAC - Rn, 20 NMAC 2.15.101 10/31/02]

20.2.15.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).
[11/30/95; 20.2.15.3 NMAC - Rn, 20 NMAC 2.15.102 10/31/02]

20.2.15.4 DURATION: Permanent.
[11/30/95; 20.2.15.4 NMAC - Rn, 20 NMAC 2.15.103 10/31/02]

20.2.15.5 EFFECTIVE DATE: November 30, 1995.
[11/30/95; 20.2.15.5 NMAC - Rn, 20 NMAC 2.15.104 10/31/02]
[The latest effective date of any section in this Part is 10/31/02.]

20.2.15.6 OBJECTIVE: The objective of this Part is to establish particulate matter emission standards for pumice, mica and perlite process equipment.
[11/30/95; 20.2.15.6 NMAC - Rn, 20 NMAC 2.15.105 10/31/02]

20.2.15.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

A. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

B. "Process weight" means the total of all materials including solid fuel but not including liquid or gaseous fuel or combustion air introduced into any specific process.

C. "Process weight per hour" means a quantity derived by dividing the total process weight by the number of hours in the complete operation, excluding any time during which the equipment is idle.

[11/30/95; 20.2.15.7 NMAC - Rn, 20 NMAC 2.15.107 10/31/02]

20.2.15.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation ("AQCR") 505 -- Pumice, Mica and Perlite Process Equipment last filed September 13, 1971.

A. All references to AQCR 505 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 505 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 505.
[11/30/95; 20.2.15.8 NMAC - Rn, 20 NMAC 2.15.106 10/31/02]

20.2.15.9 to 20.2.15.107 [RESERVED]

20.2.15.108 EMISSION LIMITATIONS:

A. The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere from a stack or stacks in excess of the maximum amounts specified in the following table:

Process Rate Pounds per Hour	Maximum Stack Emission Rate Pounds per Hour
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000 & above	50

B. When the process rate is between any two consecutive process rates in the table, the maximum stack emission rate is determined by interpolation. Where an operation has more than one stack, the maximum stack emission rate applies to the total of the emissions from all stacks.

[11/30/95; 20.2.15.108 NMAC - Rn, 20 NMAC 2.15.108 10/31/02]

20.2.15.109 STACK CONFINEMENT OF EMISSIONS: Within technical feasibility, all particulate matter emissions to the atmosphere resulting directly from the operation of pumice, mica or perlite process equipment shall be limited to the stack outlet or outlets. Particulate matter emissions not governed by this section are governed by 20.2.15.110 NMAC.

[11/30/95; 20.2.15.109 NMAC - Rn, 20 NMAC 2.15.109 10/31/02]

20.2.15.110 OTHER PARTICULATE CONTROL: The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow any material to be handled, transported, stored or disposed of or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

[11/30/95; 20.2.15.110 NMAC - Rn, 20 NMAC 2.15.110 10/31/02]

HISTORY OF 20.2.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, 01/27/70.

ACQR 505, Air Quality Control Regulation 505 - Pumice, Mica And Perlite Process Equipment, 09/13/71.

History of Repealed Material: [RESERVED]

Other History:

ACQR 505, Air Quality Control Regulation 505 - Pumice, Mica And Perlite Process Equipment, 09/13/71, was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.15, Pumice, Mica And Perlite Process Equipment, filed 10/30/95.

20 NMAC 2.15, Pumice, Mica And Perlite Process Equipment, filed 10/30/95, was **renumbered, reformatted and replaced** by 20.2.15 NMAC, Pumice, Mica And Perlite Process Equipment, effective 10/31/02.

Appendix C**TITLE 20 ENVIRONMENTAL PROTECTION**
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 77 NEW SOURCE PERFORMANCE STANDARDS

20.2.77.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[06/16/95; 20.2.77.1 NMAC - Rn, 20 NMAC 2.77.100, 06/23/00]

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through January 15, 2017.
[06/16/95, 11/19/97, 09/08/99; 20.2.77.2 NMAC - Rn & A, 20 NMAC 2.77.101, 06/23/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, 1/29/16; A, 5/30/17]

20.2.77.3 STATUTORY AUTHORITY: The environmental improvement board “shall promulgate regulations and standards in...air quality management” (Section 74-1-8.A NMSA 1978) and “regulations adopted by the environmental improvement board...shall...ensure that regulations and standards under...the federal act will not be violated” (Section 74-2-7.B NMSA 1978).
[06/16/95; 20.2.77.3 NMAC - Rn, 20 NMAC 2.77.102, 06/23/00]

20.2.77.4 DURATION: Permanent.
[06/16/95; 20.2.77.4 NMAC - Rn, 20 NMAC 2.77.103, 06/23/00]

20.2.77.5 EFFECTIVE DATE: June 16, 1995, except where a later date is cited at the end of a section.
[06/16/95, 08/02/96; 20.2.77.5 NMAC - Rn, 20 NMAC 2.77.104, 6/23/00]
[The latest effective date of any section in this part is May 30, 2017.]

20.2.77.6 OBJECTIVE: The objective of Part 77 of Chapter 2 is to adopt or establish state authority to implement new source performance standards for stationary sources in New Mexico subject to 40 CFR Part 60.
[06/16/95; 20.2.77.6 NMAC - Rn, 20 NMAC 2.77.105, 06/23/00]

20.2.77.7 DEFINITIONS: [RESERVED]
[20.2.77.7 NMAC - N, 06/23/00]

20.2.77.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This part amends and supersedes Air Quality Control Regulation (AQCR) 750, last filed on April 10, 1994. All references to AQCR 750 in any other rule shall be understood as a reference to this part.
[06/16/95; 20.2.77.8 NMAC - Rn, 20 NMAC 2.77.106, 06/23/00]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through January 15, 2017 are hereby incorporated into this part (20.2.77 NMAC).

[06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn & A, 20 NMAC 2.77.107, 06/02/00; A, 02/18/02; A, 06/13/03; A, 06/15/07; A, 08/17/09; A, 09/02/11; A, 12/19/13; A, 1/29/16; A, 5/30/17]

20.2.77.10 MODIFICATIONS AND EXCEPTIONS: The following modifications or exceptions are made to the incorporated federal standards:

A. Amend 40 CFR Part 60, Section 60.2, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary of the department or the secretary's authorized representative.

B. Exclude 40 CFR - Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters.

C. The federal standards of performance incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 (Variances).

D. Exclude 40 CFR Part 60, Subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.

[06/16/95; 20.2.77.10 NMAC - Rn, 20 NMAC 2.77.108, 06/23/00; A, 06/15/07; A, 1/29/16]

20.2.77.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau.

[06/16/95; 20.2.77.11 NMAC - Rn, 20 NMAC 2.77.109, 06/23/00; A, 08/17/09; A, 1/29/16]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe NM, 87505]

HISTORY OF 20.2.77 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 07/24/84.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 08/18/87.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 07/07/88.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/27/89.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 05/29/90.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/22/91.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/14/92.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/21/93.

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, 04/12/94.

History of Repealed Material: [RESERVED]

Other History:

EIB/AQCR 750, Air Quality Control Regulation 750 - New Source Performance Standards, filed 04/12/94 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.77, New Source Performance Standards, filed 05/17/95.

20 NMAC 2.77, New Source Performance Standards, filed 05/17/95, was **renumbered, reformatted, amended and replaced** by 20.2.77 NMAC, New Source Performance Standards, effective 06/23/00.

Appendix D**20.2.72.200 APPLICATION FOR CONSTRUCTION, MODIFICATION, NSPS, AND NESHAP - PERMITS AND REVISIONS:**

A. Permits must be obtained from the department by:

(1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;

(2) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted by the modification are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;

(3) Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC [Any stationary source] (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant;

(4) For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

(5) Any person constructing a stationary source which has a potential emission rate for lead greater than 5 tons per year or modifying a stationary source which either prior to or following the modification has a potential emission rate for lead greater than 5 tons per year; or

(6) Sources which are major sources of hazardous air pollutants by the definitions in 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).

B. Fugitive dust emissions from a coal mining operation shall not be subject to the requirements of Paragraph 1 of Subsection A of 20.2.72.200 NMAC. Note: New coal mining operations are required to have an approved air pollution control plan for fugitive dust emissions by the New Mexico surface coal mining commission.

C. Any source or modification meeting the applicability requirements of this part, but which is a major stationary source or a major modification as defined in 20.2.74 NMAC, shall in addition be subject to 20.2.74 NMAC (Prevention of Significant Deterioration).

D. Any source or modification meeting the applicability requirements of this part but which is a major stationary source or a major modification as defined in 20.2.79 NMAC, shall in addition be subject to 20.2.79 NMAC (Permits - Nonattainment Areas).

E. For all sources subject to this part, applications for permits shall be filed prior to the commencement of the construction, modification or installation. Regardless of the anticipated commencement date, no construction, modification or installation shall begin prior to issuance of the permit.

F. Temporary installations and portable stationary sources are subject to this part.

G. If a source consists of more than one unit, a separate permit may be required for each unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

H. Any source which previously did not require a permit because it was in existence before August 31, 1972 shall be subject to the requirements of this Part if operations cease for a period of five years or more and the source has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard.

I. Any source meeting the applicability requirements of this part, but which is a major source of hazardous air pollutants, shall in addition be subject to 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).
[20.2.72.200 NMAC - Rn, 20 NMAC 2.72.II.200, 2/2/01]

Appendix E

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 3 MINIMAL IMPACT OPERATIONS

19.10.3.1 ISSUING AGENCY: New Mexico Mining Commission.
[19.10.3.1 NMAC - N, 05-15-2001]

19.10.3.2 SCOPE: All persons subject to the New Mexico Mining Act NMSA 1978,
Section 69-36-1 et. seq.
[19.10.3.2 NMAC - N, 05-15-2001]

19.10.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-36-1 et. seq.
[19.10.3.3 NMAC - N, 05-15-2001]

19.10.3.4 DURATION: Permanent.
[19.10.3.4 NMAC - N, 05-15-2001]

19.10.3.5 EFFECTIVE DATE: February 15, 1996, unless a later date is cited at the end of
a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be
understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not
affect any administrative or judicial enforcement action pending on the effective date of this
amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.
[19.10.3.5 NMAC - N, 05-15-2001]

19.10.3.6 OBJECTIVE: The objective of Parts 1-14 of 19.10 NMAC is to establish
regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These
regulations are designed to ensure proper reclamation through permitting for operations
subject to the Mining Act, in accordance with provisions and standards outlined in the Mining
Act.
[19.10.3.6 NMAC - N, 05-15-2001]

19.10.3.7 DEFINITIONS: [RESERVED]
[19.10.3.7 NMAC - N, 05-15-2001]
[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.3.8 - 19.10.3.299 [RESERVED]
[19.10.3.8 - 19.10.3.299 NMAC - N, 05-15-2001]

19.10.3.300 EXCLUSION: Prospectors, gold panners and rock collectors causing no or very
little surface disturbance with their activities are excluded from the requirements of the Act

and 19.10 NMAC pursuant to the definition of "Exploration," in 19.10.1 NMAC. Excavation(s) by one operator totaling greater than 2 cubic yards per year or the use of mechanized mining equipment, including mechanized sluices or dredges, are not eligible for this exclusion. [7-12-94, 2-15-96, 12-14-96; 19.10.3.300 NMAC - Rn, 19 NMAC 10.2.3.300, 05-15-2001]

19.10.3.301 GENERAL PERMITS:

A. Validity:

- (1) Operators must have a valid permit prior to commencing operations.
- (2) A general permit for operations not occurring in intermittent streams, perennial streams or other bodies of water is valid for a period of one year once the applicant has submitted a signed copy of the general permit application to the director.
- (3) For general permit operations occurring in intermittent streams, perennial streams or other bodies of water, the permit is valid for a period of one year once the applicant submits a signed copy of the general permit to the director and the environment department sends the director a copy of a certification from the environment department stating that water quality standards are expected to be met if the operation is conducted as described.
- (4) General permits must be submitted for renewal at least 10 days prior to expiration.

B. Mining operations not occurring in intermittent streams, perennial streams or other bodies of water may apply to the director for a general permit if they meet the following requirements:

- (1) the operation does not have any of the disqualifying characteristics listed in Subsection M, Paragraph (2), Subparagraphs (a) through (i) of 19.10.1.7 NMAC;
- (2) not excavate greater than 200 cubic yards per year, with no more than 25 cubic yards and no more than 2 acres of unreclaimed surface disturbance at any time with all new disturbances including roads included in these amounts; for the purposes of this paragraph "unreclaimed" means the failure to meet the commitments of Subsection D, Paragraph (2), Subparagraphs (b) through (d) of 19.10.3.301 NMAC; and
- (3) not cause a discharge of process water or drilling mud.

C. Mining operations occurring in intermittent streams, perennial streams or other bodies of water may apply to the director for a general permit if they meet the following requirements:

- (1) the operation does not have any of the disqualifying characteristics listed in Subsection M, Paragraph (2), Subparagraphs (b) through (i) of 19.10.1.7 NMAC;
- (2) not excavate greater than 2 cubic yards per day and 100 cubic yards per year;
- (3) maintain a distance of at least 50 yards from other mining operations;
- (4) not excavate into stream banks; and
- (5) not drill.

D. An application for a general permit shall be on the form approved by the director and will include the following:

- (1) the name and address of the operator, and location of the operation;

- (2) a commitment from the applicant to comply with the following requirements:
- (a) not to exceed the applicable characteristics of Subsection B of 19.10.3.301 NMAC or Subsection C of 19.10.3.301 NMAC;
 - (b) regrade the disturbed area to blend into and compliment the drainage pattern of the surrounding terrain upon cessation of operations;
 - (c) revegetate the disturbed area with a seed mix appropriate for the surrounding area upon cessation of operations;
 - (d) minimize erosion and sedimentation by use of best management practices;
 - (e) safeguard against hazards to the health and safety of humans and domestic animals;
 - (f) agree that the operation is subject to the inspection, enforcement and penalty provisions of 19.10.11 NMAC;
 - (g) provide information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" Subsection M, Paragraph (2) of 19.10.1.7 NMAC or achieve reclamation;
 - (h) agree to complete the requirements of Subsection D, Paragraph 2, Subparagraphs b through e of 19.10.3.301 NMAC prior to expiration of the permit; and
 - (i) comply with applicable state and federal requirements and standards; and
- (3) a signed statement by the operator agreeing to allow the director to inspect the operation, and to follow the terms of the general permit.

E. Operations meeting the general permit provisions are not required to provide financial assurance. An application fee of \$50.00 is required. General permit inspections are at the discretion of the director.

F. Operations not excluded from the act or not eligible for a general permit must meet the requirements of the definition of "minimal impact mining operation" in 19.10.1.7 NMAC in addition to the specific requirements set forth below for each type of operation in order to be granted minimal impact status. If the operation does not meet minimal impact status it must be permitted in accordance with 19.10.4 NMAC, 19.10.5 NMAC or 19.10.6 NMAC. [7-12-94, 2-15-96, 12-14-96, 12-29-2000; 19.10.3.301 NMAC - Rn, 19 NMAC 10.2.3.301, 05-15-2001; A, 05-31-2001]

19.10.3.302 MINIMAL IMPACT EXPLORATION OPERATIONS:

A. A minimal impact exploration operation will not exceed 1000 cubic yards of excavation per permit. Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.

B. Timing of applications and deadlines for approval for minimal impact exploration operations must be in accordance with 19.10.4.401 NMAC, except that a complete

application for minimal impact exploration operations shall be submitted not less than 45 days prior to the anticipated date of commencement of operations.

C. An applicant for a minimal impact exploration operation permit shall submit six copies of a completed application on a form provided by the director. If the proposed operation is on federal land, information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.4.402 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on the permit area; areas and types of proposed disturbances shall be indicated; the anticipated dimensions of each proposed disturbance shall also be provided;

(3) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(4) a general description of the minerals sought and the methods of exploration; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration; and

(6) a general description of how the operation will be operated and reclaimed to meet the requirements of reclamation, as defined in 19.10.1.7 NMAC.

E. The application must be accompanied by the permit fee as required by 19.10.2 NMAC.

F. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

G. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.4.402 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection F of 19.10.4.402 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making a determination of eligibility for minimal impact status.

H. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct a site visit in making this determination.

I. No permit for a minimal impact exploration operation will be issued until the director finds the following:

(1) the application is complete and demonstrates that the proposed operation and reclamation will meet the requirements of reclamation, as defined in 19.10.1.7 NMAC; reclamation of the disturbed area will be initiated as soon as possible, and will be completed within the permit term unless the disturbed area is included within a complete permit application for a new mining operation;

(2) the applicant has paid the permit fee determined by 19.10.2 NMAC;

(3) the applicant has signed a statement indicating he agrees to comply with the reclamation requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area, without delay, for the purpose of conducting inspections during exploration and reclamation;

(4) the applicant has certified he is not in violation of the New Mexico Mining Act or 19.10 NMAC; and

(5) the applicant has provided satisfactory financial assurance in an amount determined by the director; acceptable forms of financial assurance are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

J. The term of a permit for a minimal impact exploration operation is governed by Subsections A, C and D of 19.10.4.405 NMAC. Modifications to the permit are governed by 19.10.4.406 NMAC. A termination report pursuant to 19.10.4.407 NMAC is also required at the conclusion of an exploration operation not being renewed, unless the permittee has applied for a mining operation permit.

K. Reclamation of the disturbed area shall be initiated as soon as possible and completed in accordance with the schedule in the permit. Topsoil or topdressing material removal and stockpiling shall precede any excavation within the drill site area. All lands, including access roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition unless otherwise requested by the landowner and applicant and approved by the director. Where vegetation has been removed or destroyed within the permit area, vegetative cover shall be reestablished by seeding, planting, transplanting, or other adequate methods. All open mud pits shall be constructed in a manner to prevent wildlife entrapment, and shall be constructed to prevent any overflows. When drilling is completed, the mud pits shall be allowed to dry and then backfilled with native cover.

L. Each drill hole shall be plugged from total depth to within 2 feet of the original ground surface or the collar of the hole, whichever is lower, with a column of cement, high-density bentonite clay or other materials specified in the permit. If the approved plugging material is not cement, then the top ten feet of the column must be a cement plug. The hole shall be backfill with topdressing or topsoil from above the cement plug to the original ground surface. The hole shall be plugged as soon as practicable and satisfy the requirements of the state engineer and the New Mexico environment department for proper plugging of such holes. This plugging requirement may be waived if the state engineer issues a permit for a well for the exploration drill hole.

M. Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has

determined, after inspection, that the reclamation requirements of this section and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.3.302 NMAC - Rn, 19 NMAC 10.2.3.302, 05-15-2001; A, 04-30-09]

19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS:

A. An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

B. A minimal impact existing mining operation that has discontinued or does not continue active mining operations may consist of unlimited acres of disturbed land; however, sites with the following characteristics will not be determined to be minimal impact operations:

- (1) sites that exceed state or federal standards for soil or water contamination from mining activities that are subject to the act;
- (2) sites likely to create acid mine drainage; or
- (3) sites where the applicant proposes to seek a waiver from the usual reclamation requirements for a pit or waste unit.

C. Timing of applications and deadlines for approval for minimal impact existing mining operations must be in accordance with 19.10.5.501 NMAC or 19.10.5.511 NMAC.

D. An applicant for a minimal impact existing mining operation permit shall submit six copies of a completed application form provided by the director. If the proposed operation is on federal land, then information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.5.502 NMAC. Any information that was submitted with the site assessment must be updated to reflect current conditions.

E. The application shall include the following information:

- (1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;
- (2) the location of the operation as shown on a topographic map which indicates the proposed permit area with the existing and proposed area of disturbance and

gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within one-half mile of the permit area;

(3) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;

(4) an estimate of depth to ground water and total dissolved solids concentration;

(5) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(6) a closeout plan, whether submitted with the permit application or as a modification, shall include a general description of how the permit area will be reclaimed to a condition that allows for re-establishment of a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use; each closeout plan must be developed to meet the site-specific characteristics of the mining operations and the site; the closeout plan must specify incremental work to be done within specific time frames to accomplish the reclamation; and

(7) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(8) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" in Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

F. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than 2 acres total disturbance are not required to provide financial assurance.

G. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

H. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

I. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.5.502 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection E of 19.10.5.506 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

J. The director shall determine if an operation is eligible for a minimal impact operation permit. The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of

disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.

K. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the closeout plan will meet the performance and reclamation standards and requirements Paragraphs (5) and (6) of Subsection E of 19.10.3.303 NMAC or provides a schedule for submitting such a plan in the shortest time practicable;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance; and

(4) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC and the act and allows the director to enter the permit area for the purpose of conducting inspections.

(5) the secretary of environment has provided a written determination 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 closeout plan; this determination will address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection I of 19.10.3.303 NMAC, or the requirement is waived.

L. Modifications to a permit are allowed pursuant to 19.10.5.505 NMAC including modifications to incorporate a closeout plan. The term of a permit is governed by 19.10.5.504 NMAC. Annual reports are required for each permit pursuant to 19.10.5.510 NMAC.

[7-12-94, 2-15-96, 12-14-96; 19.10.3.303 NMAC - Rn, 19 NMAC 10.2.3.303, 05-15-01; A, 02-28-14; A, 05-31-16]

19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS:

A. A minimal impact new mining operation will not exceed 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. In determining whether a proposed operation with between 10 and 40 acres of disturbed land is eligible for a minimal impact new mining permit, the director shall conduct a site visit that may include other agencies in accordance with Subsection I of 19.10.3.304 NMAC.

Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is

issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

B. Timing of applications and deadline for approval for minimal impact new mining operations must be in accordance with 19.10.6.601 NMAC.

C. An applicant for a minimal impact new mining operation permit shall submit six copies of a completed application on a form to be provided by the director. If the proposed operation is on federal land, then the information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.6.602 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within 1/2 mile of the permit area;

(3) a listing of other environmental permits held by the applicant for other mining operations within the United States and any violations issued for non-compliance with those permits;

(4) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration;

(6) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(7) a general description of how the operation will meet the following performance standards:

(a) the mining and reclamation operation shall be designed and operated using the most appropriate technology and best management practices;

(b) the mining and reclamation operation shall assure protection of human health and safety, the environment, wildlife and domestic animals;

(c) measures will be taken to safeguard the public from unauthorized entry into shafts, adits and tunnels and to prevent falls from highwalls or pit edges; depending on site-specific characteristics, the following measures shall be required:

(i) closing shafts, adits or tunnels to prevent entry;

(ii) posting warning signs, and restricting access to

hazardous areas; and

(iii) posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies;

(d) the disturbed area shall not contribute suspended solids above background levels, or where applicable the water quality control commission's standards, to intermittent and perennial streams; and

(e) mining and reclamation operations shall be conducted to control erosion;

(8) a general description of how the operation will be operated and reclaimed to a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use;

(9) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(10) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

E. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than two acres total disturbance are not required to provide financial assurance.

F. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

G. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

H. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.6.602 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection C of 19.10.6.605 which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

I. The director shall determine if an operation is eligible for a minimal impact operation permit. The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.

J. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the proposed operation will comply with the performance and reclamation standards and requirements of Paragraphs (6) through (8) of Subsection D of 19.10.3.304 NMAC;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance;

(4) the applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) are not currently in violation of the terms of another permit issued by the division or in violation of any substantial environmental law or substantive regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States; for purposes of this subparagraph, a substantial environmental law or substantive regulation is one which is intended to protect natural resources from degradation and does not include violations of record-keeping or reporting requirements; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(b) have not demonstrated a pattern of willful violations of the act or other New Mexico environmental statutes; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(5) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area for the purpose of conducting inspections until release of the financial assurance;

(6) the secretary of environment has provided a written determination 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 closeout plan; this determination shall address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection H of 19.10.3.304 NMAC, or the requirement is waived.

K. The term of a permit is governed by 19.10.6.607 NMAC. Modifications to a permit are allowed pursuant to 19.10.6.608 NMAC. Annual reports are required for each permit pursuant to 19.10.6.610 NMAC.

[7-12-94, 2-15-96; 19.10.3.304 NMAC - Rn, 19 NMAC 10.2.3.304, 05-15-01; A, 02-28-14; A, 05-31-16]

History of 19.10.3 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

Rule 3, New Mexico Mining Act - Minimal Impact Operations, filed 07-12-94.

History of Repealed Material: [Reserved]

Other History:

Rule 3, New Mexico Mining Act - Minimal Impact Operations, filed 07-12-94, renumbered and reformatted as Subpart 3 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 3, Minimal Impact Operations, filed 01-31-96 was renumbered and reformatted to 19.10.3 NMAC, effective 05-15-2001.

November 13, 2023

Kevin Barnes
Reclamation Specialist
Mining and Minerals Division
Mining Act Reclamation Program
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(505) 470-5354

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10262 Via Pastoral
Moreno Valley, CA 92557
(907) 347-9091
foxmining@gmail.com

RE: Agency follow-up questions from November 1, 2023 Email. Bella Lode Exploration

Mr. Barnes

This letter is in response to a few final clarifications requested in your November 1, 2023 Email.

From the Email:

MMD has reviewed your response to agency comments and has the following comments regarding the proposed project:

- The proposed new locations for borings H1 and H2, while appearing to be sufficiently outside of Longbottom Gulch, also appear to be in locations that could be difficult to access and may require the construction of new roads and/or cutting into the hillside to create space for the drill pad/mud pit. There is insufficient information in your comments to determine the extent of additional disturbance these new borings would require or the feasibility of their construction. Has New Metal Strategies been out to the site to ground truth these new proposed borings and calculate the extent of additional disturbance?

Response:

New Metal Strategies intent is to create as little ground disturbance as possible. The drill holes have been relocated a second time to ensure flat access and no earthwork for roads and leveling will be required. The original disturbance calculations will be valid for these locations. Access to the westerly drill site is via existing roads to and around the cattle corrals. Please see Figure 1 for the drill hole locations and updated coordinates. These locations are away from Longbottom canyon.

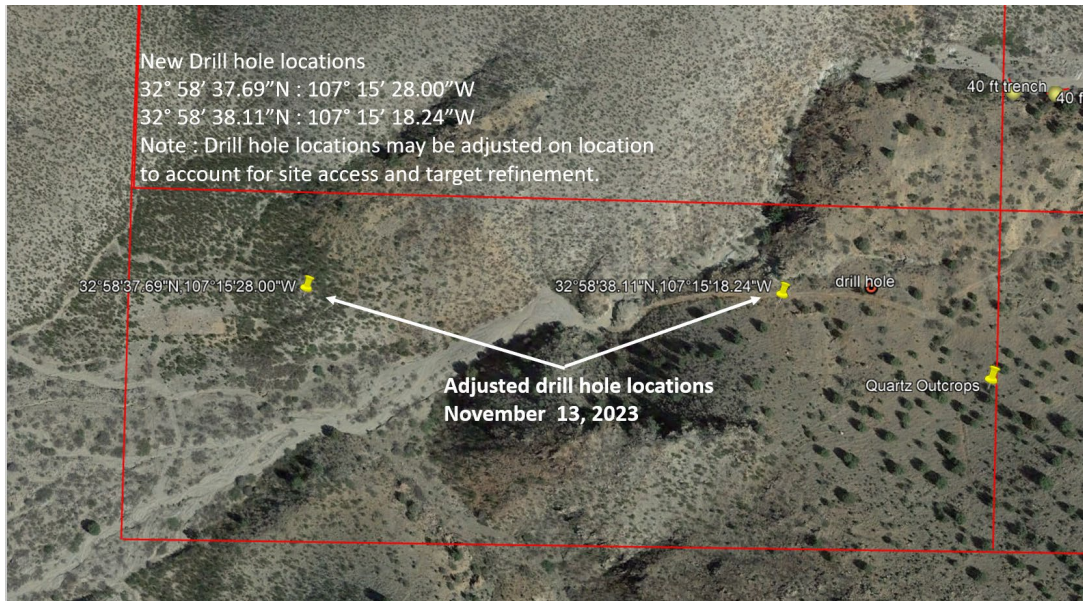


Figure 1: Relocated Drill holes H1 & H2.

- In addition, in early September, severe storms hit this region and caused damage to and/or blocked several roads in the vicinity of this site. Does New Metal Strategies know if access to the site along road B040 is still possible or would require additional road repairs?

Response: At this time new Metal Strategies has no updated information about the road conditions. We do have the contact information for the local rancher/local grazing lease holder and can make inquires as to current road conditions. At this time we do not have a date set for the start of work.

- The revised coordinates of boring H1 (north of Longbottom Gulch) do not correspond to where it appears in Figure 3 of your response to comments. Please update with the correct coordinates.

Response:

The updated drill hole coordinates are:

32° 58' 37.69" N : 107° 15' 28.00" W

32° 58' 38.11" N : 107° 15' 18.24" W

Note : Drill hole locations may be slightly adjusted on location to account for site access and target refinement.

Sincerely

Randy Powelson

Randy Powelson

Barnes, Kevin, EMNRD

From: Fox Mining LLC <foxmining@gmail.com>
Sent: Thursday, December 7, 2023 11:03 AM
To: Barnes, Kevin, EMNRD
Cc: Alex Callan; Teri Norgrove; John Casey; Ennis, David, EMNRD
Subject: [EXTERNAL] Bella Group Lode Exploration - confirmation delete drill hole.

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good Morning Kevin, David and Bella Team.

As per this mornings call. This email will serve as official notice that NMS wishes to delete the drill hole located near the corral at Longbottom Canyon.

Kevin, Please route all official documents, permits, bonding etc. that are sent by US Mail to:

Teri Norgrove
New Metals Strategies
530-B Harkle Road
Suite 100
Santa Fe, NM 87505

terinorgrove@gmail.com
(775) 691-1995

Thank you

On Wed, Dec 6, 2023, 11:41 AM Barnes, Kevin, EMNRD <Kevin.Barnes@emnrn.nm.gov> wrote:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 244 494 031 29
Passcode: zL4MRn

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