

State of New Mexico
Energy, Minerals and Natural Resources Department

Michele Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Cabinet Secretary

Michael W. Tompson, Interim Director
Mining and Minerals Division



January 29, 2020

Cynthia Gulde, PhD, Chevron EMC Project Manager
Questa Mine
354 State Highway 38
Questa, NM 87556-0469

RE: Financial Assurance Instruments for Modification 19-1 to Permit No. TA001RE – Updates to Financial Assurance

Dear Dr. Gulde,

In response to recent emails and phone conversations regarding Modification 19-1, Update to State Financial Assurance (“FA”), the Mining and Minerals Division (“MMD”) proposes the following FA instrument amounts:

Approved amount of State FA from the proposed Modification 19-1 (not including the work that is covered by both state permits and EPA requirements (“Overlap Work”)): **\$394,695,437**

Amount of FA for the Overlap Work as specified in Modification 16-1 to Permit No. TA001RE: **\$61,299,783**

Total amount for State FA : **\$455,995,220**

In accordance with 19.10.12.1208 G(1)(a) NMAC, a Third-Party Guarantee (“3PG”) may not exceed 75% of the total amount of the FA for a permit established pursuant to 19.10.12.1205 NMAC. Previously, the Modification 16-1 to Permit No TA001RE, set an amount of \$61,299,783 to be attributable as “Overlap Work” with jointly held FA between the State and the EPA. This interpretation is explained further in the letter, *MMD Permit TA001RE: Application for permit modification*, dated April 29, 2016.

The calculations below demonstrate how the 3PG and non-3PG numbers should be calculated.

FA Source	Amount	Amount
Total FA under State permits	\$455,995,220	
Maximum 3PG Amount Allowed by Rule (75% of Total FA)	(341,996,415)	341,996,415
Joint EMNRD, NMED, EPA 3PG amount ("Overlap Work" per Mod 16-1)		(61,299,783)
State only 3PG per Mod 19-1		<hr/> \$280,696,632
State only Non-3PG required per Mod.19-1	<hr/> \$113,998,805	

The "Overlap Work" under the Federal/State 3PG is no longer duplicated by FA instruments, but the State considers the cost associated with "Overlap Work" as part of the State's 3PG calculation. Please provide MMD with a draft Financial Assurance ("FA") proposal including proposed FA Instruments with associated amounts within 30 days of receipt of this letter. If you have any questions, please contact me at 505-476-3210 or via email at bill.brancard@state.nm.us or Clint Chisler at 505-476-3413 or via e-mail at: clinton.chisler@state.nm.us.

Sincerely,

Bill Brancard, General Counsel/Director

Permit Tracking No. TA001RE

CC: Holland Shepherd, Program Manager, MARP/MMD
 Clinton M. Chisler, Permit Lead
 Kevin Myers, MMD
 Anne Maurer, NMED
 Joseph Fox, NMED
 Kurt Vollbrecht, NMED

Mine File: TA001RE

Attachments: TA001RE Permit Modification 16-1

April 29, 2016 Letter: *MMD Permit TA001RE: Application for permit modification*

MOU FA Chevron Questa Mine Site between EPA and State, 2017

State of New Mexico
Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

David Martin
Cabinet Secretary

Tony Delfin
Deputy Cabinet Secretary

Fernando Martinez, Director
Mining and Minerals Division



April 29, 2016

Armando Martinez
Environmental Manager
Questa Mine
Chevron Environmental Management Company
P.O. Box 469
Questa NM 87556

MMD Permit TA001RE: Application for permit modification

Dear Mr. Martinez,

We have received the application of Chevron Mining Inc. (CMI) to modify its Mining Act permit for the Questa Mine, MMD Permit No. TA001RE (MMD Permit). The modification will add new financial assurance instruments and adjust the amounts allocated among the instruments.

CMI's application is based on extensive negotiations among the State of Mexico, the United States and CMI to implement portions of the remedy at the Questa Mine Superfund Site. These negotiations should hopefully soon result in a Partial Consent Decree (PCD) and an amended Administrative Order on Consent (AOC). Parts of the remedy embodied in the PCD and AOC will overlap with some of the requirements of the MMD Permit, and as a result, portions of the financial assurance that will be provided for the PCD and AOC will duplicate portions of the financial assurance currently provided for the MMD Permit.

The Mining Act provides that the requirements for financial assurance under the Act "shall neither duplicate nor be less comprehensive than the federal financial requirements." NMSA 1978, Section 69-36-7(L). Therefore, to achieve the goals of the Mining Act, MMD, with the concurrence of the parties to the Superfund remedy negotiation, agrees that upon the establishment of the guarantees for the PCD and the AOC (CERCLA guarantees), to which both the U.S. and the State will be beneficiaries, the MMD Permit will be modified to (1) recognize the CERCLA guarantees as additional financial assurance instruments under the MMD Permit, and (2) adjust the amount covered by the current Third Party guarantee.

The Third Party guarantee will be reduced by the amount that currently covers the work which will also be performed under the PCD and AOC and, therefore, will be included in the CERCLA guarantees. The parties have reviewed the financial assurance calculations for the MMD Permit

April 29, 2016

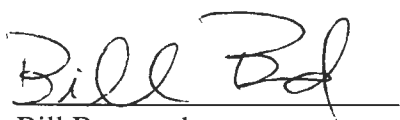
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and for the PCD and AOC and agreed on the amount to adjust the Third Party guarantees. That amount, and the calculations to support the amount, are provided in the application of CMI to modify the MMD Permit.

Should any of the amounts in the application change prior to the issuance of the modification, CMI shall notify MMD.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Bill Brancard". The signature is written in a cursive style and is positioned above a horizontal line.

Bill Brancard

Acting Director

Mining and Minerals Division

Energy, Minerals and Natural Resources Department



Cynthia Gulde, Ph.D.
EMC Project Manager, Questa Mine



February 14, 2018

Mr. Clint Chisler
Mr. Holland Sheppard
Mining and Minerals Division
Energy, Minerals and Natural Resources Department
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, NM 87505

RE: Permit Modification 16-1 to Permit No. TA001RE – Changes to Financial Assurance Amount

Dear Mr. Chisler and Sheppard,

Attached please find a signed copy of Permit Modification 16-1 to Permit TA001RE on behalf of Chevron Mining Inc. ("Chevron") to adjust the amount of financial assurance required for the reclamation of the former Questa Mine.

As was discussed through email and telephone correspondence in December 2017 and January 2018, Chevron will maintain the current Third-Party Guarantee ("TPG") amount (\$200,754,376.00) instead of changing the TPG to \$139,454,593.00, as identified in the permit modification 16-1. The basis of maintain the higher amount is because Chevron anticipates future changes will be made to the FA amount Chevron based on the to be determined 2018 FA amount.

Regarding the 2018 FA, Chevron will submit draft 2018 FA spreadsheets for MMD (and NMED) to review by March 12, 2018 as agreed to with Mr. Sheppard via email on February 2, 2018. Chevron will be available to discuss the revised FA upon request.

If you have any questions or need additional information, please contact me at (575) 586-7606 or Armando Martinez at (505) 586-7639.

Sincerely,

Cynthia Gulde
EMC Project Manager

Cc:
Armando Martinez, CEMC
Anne Maurer, NMED

Cynthia Gulde, Ph. D.
Chevron EMC Project Manager
Questa Mine
354 State Highway 38, Questa, NM 87556-0469
Tel 303-930-4116 Mobile 832-586-5984 Fax 575 586 0811
cgulde@chevron.com

**PERMIT MODIFICATION 16-1 TO PERMIT NO. TA001RE
QUESTA MINE AND MILL
EXISTING MINING OPERATION
MINING AND MINERALS DIVISION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

This Modification 16-1 ("Modification 16-1") to Permit No. TA001RE (as amended from time to time, "Permit") is issued by the Director of the Mining and Minerals Division ("MMD") of the New Mexico Energy, Minerals and Natural Resources Department ("EMNRD") to:

Chevron Mining Inc.

Whose correct address is: 116 Inverness Drive East, Suite 207
Englewood, Colorado 80112

("Permittee" or "CMI") for the Questa Mine and Mill, located in Taos County, New Mexico.

Whereas, Permittee has entered into agreements with the U.S. Environmental Protection Agency ("USEPA") and the State of New Mexico regarding the Chevron Questa Mine Superfund Site ("Site"). These agreements include obligations by Permittee to complete certain remedial design and remedial action projects, some of which overlap with the reclamation obligations under this Permit ("Overlap Work"). Since this Permit and the Site agreements both require financial assurance ("FA"), there is the potential for duplicative FA for the Overlap Work.

Whereas, USEPA previously recognized the existing FA under this Permit for Overlap Work and such arrangement was implemented in Modification 12-1. USEPA will no longer recognize the State FA but will allow the State to be a beneficiary of the FA provided under the federal FA.

Whereas, the New Mexico Mining Act requires financial assurance to assure the completion of the performance requirements of the permit if the work had to be performed by MMD, but provides that "financial requirements shall neither duplicate nor be less comprehensive than the federal financial requirements." NMSA 1978, Section 69-36-7(Q).

Therefore, the purpose of this Modification 16-1 is to ensure that adequate FA is maintained for the obligations under this Permit while avoiding duplication of federal FA. Modification 12-1 will be repealed and MMD will recognize the federal FA as covering the FA for the Overlap Work while reducing the current State FA instruments by the same amount.

In order to accomplish the approval contemplated by this Modification 16-1, the following sections are added to the Permit:

"Section 1 (16-1). STATUTES AND REGULATIONS

A. This Permit Modification 16-1 is issued pursuant to the New Mexico Mining Act, NMSA 1978, §69-36-1, et seq. (1993, as amended through 2009) ("Act") and New Mexico Mining Act Rules, Title 19, Chapter 10 of the New Mexico Administrative Code ("Rules" or "Regulations").

B. This Modification 16-1 is subject to the Act, the Rules and any other regulations that are now or hereafter in force under the Act."

"Section 4 (16-1). FINDINGS OF FACT

A. The \$1000.00 modification application fee was paid on November 6, 2017, pursuant to Subsection H of 19.10.2.201 NMAC.

B. Pursuant to Subsection B.1 of 19.10.5.505 NMAC, the Director has determined that the proposed modification will not have a significant environmental impact.

C. Pursuant to Subsection B.3 of 19.10.5.505 NMAC, the Director has consulted with the appropriate agencies in approving this modification.

D. Permittee and the United States Environmental Protection Agency entered into an Administrative Settlement Agreement and Order on Consent for Early Design Actions, effective October 19, 2012, as amended, ("AOC") which includes the Statement of Work for Early Design Actions at the Site.

E. On May 1, 2017, the U.S. District Court for the District of New Mexico entered the First Partial Remedial Design/Remedial Action Consent Decree ("PCD"), which includes a Statement of Work describing the work to be implemented under the PCD at the Chevron Questa Mine Superfund Site ("Site").

F. Both the PCD and AOC include obligations by Permittee to complete certain remedial design and remedial action projects, some of which overlap with the reclamation obligations under this Permit ("Overlap Work"). Under the FA calculations and amounts approved in Modification 12-2, MMD has calculated the FA attributable to the Overlap Work to be \$61,299,783.00.

"Section 9 (16-1). CONDITIONS

A. Section 9 (12-1) added to this Permit by Modification 12-1 is hereby deleted.

B. Within 60 days of receipt of this Modification 16-1, Permittee shall provide an updated cost estimate for items to be addressed under the state permits, DP-1539, DP- 1055, DP-933 and TA001RE

"Section 10 (16-1). CONCLUSIONS OF LAW

A. The Director has jurisdiction over the Permittee and the subject matter of this Modification 16-1.

B. This Modification 16-1 will not have a significant environmental impact, as that term is used in 19.10.5.505 NMAC.

C. This Modification 16-1 requires neither public notice nor an opportunity for public hearing.

D. All requirements under Title 19, Chapter 10, Part 5 NMAC have been met.

E. This Modification 16-1 does not change the amount of financial assurance required by or approved for this Permit."

"Section 12 (16-1) NEW FA CONDITIONS

Section 12 (12-2) is modified and replaced by the following:

"Permit requirements that set forth the specific amount of FA and that specify the type of FA instrument to be provided, excluding such requirements for the FA for the Subsidence Area Unit, are superseded by the type and amount of the instruments required by this Modification 16-1. No other requirements in the Permit, the Act or the Rules regarding FA are affected by this Modification 16-1.

A. The following instruments shall provide the interim FA under this Modification 16-1, and shall be in the form and substance acceptable to MMD, and shall be in the amounts indicated:

1. Standby Letter of Credit in the amount of \$66,918,125.00 (USD) issued by the US Bank;
2. Third Party Guarantee in the amount of \$139,454,593.00 (USD) in which Chevron Corporation is the guarantor;
3. Corporate Guarantee for CERCLA Work, dated September 12, 2016, 2016, in which Chevron Corporation guarantees to USEPA, EMNRD and the New Mexico Environment Department that it will pay for or perform the work required under the AOC which includes Overlap Work, for which MMD calculated, using the amounts in Modification 12-2, the applicable FA as \$4,274,905.00; and
4. Corporate Guarantee for CERCLA Work, dated May 12, 2017, in which Chevron Corporation guarantees to USEPA, EMNRD and the New Mexico Environment Department that it will pay for or perform the work required under the PCD which includes Overlap Work, for which MMD calculated, using the amounts in Modification 12-2, the applicable FA as \$57,024,878.00.

All other provisions contained in the Permit remain unchanged by this Modification 16-1.

CERTIFICATION

I certify that I have read, understand and will comply with the requirements of the Permit, this Permit Modification 16-1, the Act and the Rules, including without limitation that I will allow the Director to enter the Permit Area as required by the Permit and/or the Rules and/or as otherwise required by law.

[Handwritten Signature]

Authorized Representative of the Permittee

Environmental Manager

Title

Chercon Environmental Management Company

Company

Subscribed and sworn to before me this *20th* day of *February*, 2016

Anna C Martiney

Notary Public

My Commission expires:

July 24th, 2018



ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the Director approves Permit Modification 16-1 to Permit No. TA001RE.

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

By: Bill Brancard
Acting Director
Mining and Minerals Division
Energy, Minerals and Natural Resources Department

Date: February 27, 2018