NPDES PERMIT NO. NM0031226
RESPONSE TO COMMENTS

RECEIVED ON THE SUBJECT DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT IN ACCORDANCE WITH REGULATIONS LISTED AT 40 CFR 124.17

APPLICANT: Mineral Acquisitions, LLC
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ISSUING OFFICE: U.S. Environmental Protection Agency, Region 6
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PERMIT ACTION: Final permit decision and response to comments received on the proposed NPDES permit publicly noticed on March 27, 2021

DATE PREPARED: May 12, 2021

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of May 12, 2021.

CHANGES FROM THE DRAFT PERMIT

- Bottom deposit and turbidity narrative conditions have been added to the permit

STATE CERTIFICATION

In a letter from Shelly Lemon, Bureau Chief, Surface Water Quality Bureau, to Charles W Maguire, Director, Water Division (EPA) dated May 11, 2021 NMED certified that the discharge will comply with the applicable provisions of Section 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law.

CONDITIONS OF CERTIFICATION

EPA shall add a narrative provision for bottom deposits and turbidity in Part I.A (Limitations and

Monitoring Requirements) of the Final Permit, similar to the floating solids or visible foam provision, to assure compliance with appropriate requirements of State law and reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable State WQS as cited above. The provision shall read as follows:

BOTTOM DEPOSITS AND TURBIDITY
Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates, or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function, or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom. Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function, or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water.

RESPONSE TO COMMENTS

EPA received comments from two individual/entities:

1. NMED

NMED Comment 1: EPA should request Mineral Acquisitions, LLC (Operator) to provide information on the status of their permit coverage under the current 2021 Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity for this facility and take necessary enforcement action, if needed. NMED did not find any data in a search for Mineral Acquisitions, LLC and/or Billali Mine of EPA's on-line Industrial Stormwater Notice of Intent searches in Grant County, New Mexico, under the 2008 MSGP, the 2015 MSGP, or the 2021 MSGP.

EPA Response 1: EPA has previously requested that permittee apply for stormwater coverage under the MSGP. At that time the permittee was unable to apply for coverage because the 2021 MSGP had not been finalized. EPA will encourage permittee to obtain coverage under the newly issued MSGP which became effective on March 1, 2021. No changes will be made to the permit.

NMED Comment 2: EPA should require more information on the location of the outfall and on potential for erosion and/or controls at or below the outfall as a follow up to Condition #1 above. EPA NPDES Application Form 3510-2D (New Mining) Revised March 2019 only requires an outfall latitude and longitude to the nearest 15 seconds. The Operator's NPDES application and EPA's Draft Permit provide an outfall location at Latitude 32° 53' 00.23" North, Longitude 108° 59' 00.74" West. An image in the Operator's application appears to be approximately 0.1 miles north of the outfall location latitude and longitude in the Draft Permit. Each provided location would be in uplands above Bitter Creek. No changes will be made to the permit.

EPA Response 2: The permittee is required to submit information on their facility's latitude and longitude location to EPA on Form 2D. The certification of statement on Form 2D, which was signed by CFO Frank Mueller states "Based on my inquiry of the person or persons who manage

the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete." EPA assumes that all information provided by the permittee is accurate to the best of their knowledge. EPA has verified the longitude and latitude of the facility with the permittee and a location identical to what was stated on the application was provided. No changes will be made to the permit.

NMED Comment 3: EPA, either in their Response to Comments and/or footnote of the Final Permit, should clarify monthly average calculations. EPA Fact Sheet Section III dated March 15, 2021, provides a summary table of effluent characteristic concentrations (both max and average) which appear to be obtained from the Operator's application. The Operator's NPDES application provided Maximum Daily Discharge and Average Daily Discharge with the date source code representing best professional estimate. The Operator's application average concentrations often appear to be one half (1/2) of the maximum concentrations. Unless EPA determines otherwise, "Average" is normally the arithmetic average of all sample measurements for each parameter obtained during the monitoring period and does not include days where there is no discharge.

EPA Response 3: Form 2D does not require the permittee to calculate the maximum and average daily discharges in a specified manner. It is up to the permittee to report this information to the best of their ability/knowledge. Furthermore, The certification of statement on Form 2D, which was signed by CFO Frank Mueller states "Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete." EPA assumes that all information provided by the permittee is accurate to the best of their knowledge. Part III.D.6 of the permit states "Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit." No changes will be made to the permit.

NMED Comment 4: EPA should provide additional information and/or provide instruction in their Response to Comments
on the Operator's options regarding effluent limitations that are lower than the best professional estimates provided on the Operator's application. The Operator may want to provide additional representative effluent data that EPA could use to re-calculate water quality-based effluent limitations. Options may include re-submitting the permit application with representative effluent data, permit modification, no discharge, and/or treatment. For example, EPA uses Stream Linear Partition Coefficients to convert total effluent concentrations for certain metals (Arsenic, Chromium III, Copper, Lead Nickel, Silver and Zinc) in their reasonable potential analysis to determine the need for water quality-based effluent limitations. NMED SWQB staff collected water samples on October 16, 2013 at the Norman King mine shaft which was piped water from the Billali Mine (Station 78Bitter006.8) and Bitter Creek below Billali Mine (Station78Bitter006.7). Station 78Bitter006.8 Total Suspended Solids (TSS) concentration of 6 milligrams per liter (mg/L) was provided to EPA. The provided TSS concentration, although lower than EPA's default value described in the EPA's Fact Sheet for the Draft Permit, is consistent with the Operator's application that indicated TSS was absent from the effluent. In addition, EPA NPDES Application Form 3510-2D (New Mining) Revised March 2019 does not

require dissolved hardness concentrations (i.e.,dissolved calcium and dissolved magnesium), which is used to calculate State WQS hardness-based numeric criteria for metals. Therefore, it is unknown if the higher dissolved hardness concentrations calculated from dissolved calcium and dissolved magnesium concentrations obtained at Station 78Bitter006.8 and 78Bitter006.7 is representative of effluent characteristics. EPA's lower dissolved hardness default, as described in the EPA's Fact Sheet for the Draft permit, is consistent with the Operator's application that indicated total magnesium was absent from the effluent. Higher dissolved hardness concentrations correspond to higher water quality criteria and higher water quality-based effluent limitations protective of applicable acute and chronic aquatic life numeric criteria for total recoverable aluminum, cadmium, chromium III, copper, lead, manganese, nickel, silver, and zinc.

EPA Response 4: In Part V.C.4 of the draft permit, EPA stated "may submit data for aluminum, copper, lead, nickel, silver and zinc in the dissolved form for a water quality screening directly with numeric criteria in the proper form. In addition, the permittee may submit receiving stream hardness and TSS data to be using in the water quality screening." In addition during the permitting process, EPA gave the permittee ample chances to resubmit data, as a result no changes will be made to the permit.

NMED Comment 5: Part I.A (Limitations and Monitoring Requirements) for Outfall 001 Footnote #5 states "The analysis of total recoverable aluminum is a sample that is filtered to minimize mineral phases as specified by the NMED." NMED's standard operating procedures are at https://www.env.nm.gov/surface-waterquality/ sop/. Currently, if turbidity is less than or equal to 30 Nephelometric Turbidity Units (NTUs), a total metal sample (non-filtered) is collected. If turbidity is greater than 30 NTUs, then the sample is filtered through a 10-micron filter prior to acidification. Applicants/Permittees may contact the NMED Program Manager at the address in Part III of the Final Permit for more information. NMED SWQB mainline is 505-827-0187 if there are additional questions..

EPA Response 5: Noted for the record. No changes will be made to the permit