

BHP Navajo Coal Company



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Mr. Mychal Yellowman
Navajo Mine Team Leader
Indian Programs Branch
Office of Surface Mining/Western Regional Coordinating Center
1999 Broadway, Suite 3320
Denver, Colorado 80202-3050

Re: Navajo Mine SMCRA Permit No. NM-0003F : (a) Notification of Name Change, (b) Application for Permit Transfer Approval in Conjunction with Entity Conversion; (c) Updated Ownership and Control Information, and (d) Application for Permit Transfer Approval in Conjunction with Merger

Dear Mr. Yellowman,

BHP Navajo Coal Company ("BNCC"), the current Surface Mining Control and Reclamation Act ("SMCRA") permittee and applicant, and Navajo Transitional Energy Company, LLC ("NTEC"), a wholly owned subsidiary of the Navajo Nation organized under the Navajo Nation's Limited Liability Company Act, hereby provide notification of a restructuring of BNCC and merger with NTEC (the "Transaction") and request approval of the transfer of BNCC's SMCRA permit, pursuant to SMCRA's transfer, assignment, and sale ("TAS") provisions.

BNCC and NTEC have previously informed OSM of a delay in the proposed Transaction resulting from a decision by the Arizona Public Service Company ("APS") to delay its purchase of Southern California Edison's ("SCE's") share of Units 4 and 5 at the Four Corners Power Plant ("FCPP"). APS's delay in acquiring SCE's share of Units 4 and 5 arises from the Arizona Corporation Commission's ("ACC") announcement that it is considering regulatory reform relating to electric retail competition. The deadline for submitting comments on the ACC's investigation expired August 16, 2013. The ACC has not yet set a firm date for a hearing on the investigation, but may hold a hearing as early as the first week of October.

Because the Transaction documents, including pending revisions to the existing coal supply agreement, reflect APS's prior purchase of SCE's share of Units 4, the transacting parties (BNCC and NTEC) could not close the Transaction by the July 1, 2013 deadline set forth in BNCC's original TAS application. BNCC and NTEC, however, are diligently continuing the process for signing and executing the agreement that will govern the sale of BNCC to NTEC. The sale will not close, however, until among other things, APS completes its transaction with

SCE and executes a pending amendment to the coal sales agreement. BNCC thus submits this updated TAS application, which removes references to the prior July 1, 2013 deadline and updates the application to reflect the transacting parties' current understanding of the timing of the steps of the transaction.

Significantly, other than postponing the timing of the Transaction, the delay does not affect the substance of BNCC's TAS application. Thus, BNCC and NTEC request that OSM continue to review the application and approve the permit transfer application, pending and conditioned upon the close of the Transaction. BNCC and NTEC commit to providing additional information to OSM regarding the timing of the close of the Transaction as that information becomes available.

Again, the delay does not affect or alter the steps of the Transaction outlined in the original TAS application. As described in BNCC's original TAS application, NTEC and the Navajo Nation desire to control the mineral rights and operations of Navajo Mine. As part of the Transaction, BNCC intends to change its name and convert to a Delaware limited liability company ("LLC"). NTEC then intends to acquire 100% of the equity of the Delaware LLC as a subsidiary of NTEC, and shortly thereafter (within several days), NTEC plans to merge with subsidiary, with NTEC as the surviving entity and permittee under the SMCRA permit. If the permit transfer is approved, NTEC will continue engaging in surface mining and reclamation activities at Navajo Mine in accordance with the existing SMCRA permit and the approved mine plan. As part of this process, NTEC will comply with SMCRA's regulatory requirements regarding bond and insurance.

The Transaction will have no on-the-ground impacts. Although the SMCRA permit will be held by NTEC after the Transaction, another BHP Billiton New Mexico Coal, Inc. ("BBNMC") owned company, BHP Billiton Mine Management Company ("MMCo."), will continue to operate the mine, consistent with the OSM approved mine plan and permit terms and conditions, on behalf of NTEC under a mine management agreement.

The following is a summary of the steps of the Transaction:

- BNCC plans to change its name to Navajo Mine Coal Company ("NMCC"). This name change is purely administrative and requires no approval by OSM. SMCRA's regulations require timely submittal of appropriate information advising of these changes and updating specified SMCRA permit information, which we are providing with this letter. See Attachment A.
- Following, NMCC will convert from a Delaware corporation to a Delaware LLC. The post-conversion entity is referred to herein as NMCC, LLC. This conversion is a transitory step intended to facilitate financial efficiencies occasioned by the sale of BNCC to NTEC, requires only administrative filings in the State of Delaware, and most importantly, only involves a change of entity-type. It will not result in any changes to the officers, ownership or operations of the company. However, this change in entity-type may technically trigger the Transfer, Assignment and Sale provisions of the regulations implementing SMCRA. See 30 C.F.R. § 774.17. In the event this conversion does trigger these regulations, we submit for your review and approval an application transferring Permit No.

NM-0003F to NMCC, LLC. As part of this application, we provide ownership and control information for both BNCC and NMCC, LLC, however the ownership and control information for these two entities is the same. See Attachment B.

- Immediately following the conversion, BBNMC (NMCC, LLC's parent company) plans to sell 100% of NMCC, LLC's membership interest to NTEC. The change in ownership and control does not require OSM approval. See 30 C.F.R. § 774.17; 72 Fed. Reg. 68000, 68008-09 (December 3, 2007). The regulations require timely submittal of appropriate information advising of these changes and updating specified SMCRA permit information. See Attachment C.
- Following NTEC's purchase of NMCC, LLC's membership interests, NTEC will merge with NMCC, LLC, and NTEC will be the surviving entity. The merger will result in a permit transfer, triggering the Transfer, Assignment and Sale provisions of the regulations implementing SMCRA. See 30 C.F.R. § 774.17. Therefore, BNCC and NTEC submit for your review and approval an application for a permit transfer in which BNCC and NTEC seek OSM's approval of the transfer of Permit No. NM-0003F. See Attachment D.

Please let us know if you have any questions or if we can provide additional information to assist your review and approval of this four part submittal.

Sincerely,



Steven Perkins

Superintendent Environmental Permitting and Technical Services

cc. John Grubb, NTEC Management Committee Executive
Harrison Tsosie, Attorney General, Navajo Nation; Project Lead
Dana Bobroff, Deputy Attorney General, Navajo Nation
Pat Risner, President, BHP Navajo Coal Company
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Craig Moyer, Manatt, Counsel to Navajo Nation and NTEC
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Enc: Attachment A (Update 1302 – Notification of Name Change)
Attachment B (Update 1303 – Application for Permit Transfer Approval in Conjunction with Entity Conversion)
Attachment C (Update 1304 – Ownership and Control Information)
Attachment D (Update 1305 – Transfer Application in Conjunction with Merger)