



United States Department of the Interior



OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

November 1, 2013

NM-0003-F-T-01

Certified Mail Return Receipt Requested

Mr. John Grubb
Navajo Transitional Energy Company
Bureau of Indian Affairs Club Building
Window Rock, AZ 86515

RE: *Acceptance of Application to Change Ownership & Control of Navajo Mine; and
Conditioned Approval of a Permit Transfer Application from Navajo Mine Coal Co LLC (NMCC
Inc., formerly BNCC) to Navajo Transitional Energy Company LLC (NTEC).*

Federal Permit NM0003F

Navajo Mine

OSM Project No. NM-0003-F-T-01

Dear Mr. Grubb:

On May 3, 2013, the Office of Surface Mining Reclamation & Enforcement (OSM) received an application (ARMS¹ 13/05/06-01) from BHP Navajo Coal Company (BNCC), the current holder of Federal Permit NM0003F, to transfer the Permit to Navajo Transitional Energy Company (NTEC). This application indicates that NTEC (the proposed new permittee), through its contract miner [BHP Billiton Mine Management Company (MMco.), a newly formed company of BHP New Mexico Coal, Inc.], intends to continue engaging in surface mining and reclamation activities at the Navajo Mine in accordance with the Surface Mining Control and Reclamation Act (SMCRA), the requirements of Permit No. NM-0003F, the approved mine plan, and associated leases and rights of way. On May 10, 2013, BNCC provided information updating the permit transfer application (ARMS 13/05/13-01).

Application Background

On April 29, 2013, the Navajo Nation Council passed legislation to form NTEC, a Navajo Nation owned Limited Liability Company (LLC) organized under the Navajo Nation's Limited Liability Company Act. Subsequent to this legislation, the Navajo Nation informed OSM) that they were seeking to purchase all interests in BNCC from BHP Billiton New Mexico Coal Company.

As contemplated in the referenced legislation, NTEC intends to acquire the current permittee (BNCC) for the Navajo Mine. As part of the overall business transaction, BNCC would change its name to Navajo Mine Coal Company Inc. (NMCC Inc.) and covert NMCC Inc. into NMCC LLC.

¹ OSM's Administrative Records Management System

NTEC would then purchase 100% of the equity in NMCC LLC and merge the two companies, with NTEC as the surviving entity.

Application Administrative Completeness and Preparation of an Environmental Assessment (EA)

On May 16, 2013, OSM's initial review determined the May 3, 2013, permit transfer submittal, as updated on May 10, 2013, to be an 'administratively complete application'; and subsequently instructed BNCC to provide public notice of the availability of the application for public review & comment. Concurrent with OSM's review of the permit transfer application, OSM directed a third party consultant to develop, on behalf of OSM, a draft EA in accordance with the National Environmental Policy Act (NEPA). Along with the permit transfer application, this draft EA was made available for public review and comment.

Public Notices

Public notices advertising the availability of the application and EA appeared in the Farmington Daily Times newspaper on May 18, 19 & 26, and the Navajo Times newspaper on May 23 and 30, 2013. Additionally, OSM instructed BNCC to run radio announcements (in both Navajo and English languages) on two local radio stations (KNDN & KTNN) from May 18 through May 25 daily, then two times per week until June 10, 2013. The announcements included the locations for public review of the transfer application and EA, as well as the originally planned June 17, 2013 deadline for providing comments. Due to a previously unanticipated delay in the overall business transactions associated with the permit transfer application, OSM subsequently extended the public comment period from June 17 to September 27, 2013. BNCC submitted minor updates to the permit transfer application on August 30, September 3, and October 17, 2013. The original permit transfer application submittal, as well as all subsequent updates; and OSM's Draft EA, were made available for public inspection at the following locations:

The Navajo Nation
Minerals Department
Corner of Morgan Blvd. and Window Rock Blvd.
Window Rock, AZ 86515
(928) 871-6587

Tiis Tsoh Sikaad Chapter House
P.O. Box 7359
Newcomb, NM 87455
(505) 696-5471

Nenahnezad Chapter House
P.O. Box 438
Fruitland, NM 87416
(505) 960-6657

The Farmington Public Library
2101 Farmington Avenue
Farmington, NM 87401
(505) 599-1270

Office of Surface Mining Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, CO 80202-3050
(303) 293-5046

In addition to the above physical locations, OSM made the permit transfer application and the EA available for public review and inspection on OSM's Western Region Homepage at: www.wrcc.osmre.gov/Current_Initiatives/Navajo_Mine/Permit_Transfer.shtm.

Public Comment

A total of 31 commenters provided comments on the transfer application and the draft EA. All comments were reviewed by OSM. Substantive comments were categorized by resource (i.e. air, water, socio-economics, etc.) and OSM prepared summarized responses to those comments in its Decision Document. As a part of the OSM decision discussed herein, commenters will receive a copy of OSM's responses to the summarized comments.

Review Completion and Conditional Approval

In accordance with the regulations at 30 CFR 774.17, OSM has completed its review of the Navajo Mine permit (NM-0003-F) transfer application submittals dated May 3, 2013, May 10, 2013, August 30, 2013, September 4, 2013 and October 17, 2013. The following Sections and accompanying actions were included within the permit transfer application:

- A. Change the name of the operating coal mine company from BNCC to Navajo Mine Coal Company (NMCC).
- B. Convert NMCC from Incorporated (Inc.) status to a Delaware Limited Liability Company (LLC).
- C. BHP Billiton New Mexico Coal Inc. to sell 100% interest of NMCC LLC to NTEC.
- D. NMCC LLC and NTEC to merge into one single entity, with NTEC as the surviving entity.

In its permit transfer application submittals, BNCC has provided OSM with updated and corrected information required at 30 CFR 778.13(a)-(d) (ownership & control) and 778.14 (violation information). The permit revision material in Sections C and in Section D (above) have been found to be technically adequate in accordance with the requirements at 30 CFR 774.17. The permit revision material in Sections A and in Section B (above) have also been found to be technically adequate in accordance with the requirements at 30 CFR 774.17, and are addressed in a separate letter to BNCC also dated November 1, 2013.

With this letter to NTEC, OSM is conditionally approving the following parts of the permit transfer application: 1) Section C. Permit revision material changing Ownership & Control as NTEC acquires 100% interest of NMCC from BHP Billiton New Mexico Coal Inc., and 2) Transferring the Navajo Mine Permit from NMCC LLC to NTEC as a result of NMCC LLC and NTEC merging into one single entity, with NTEC as the surviving entity. As indicated above, within a separate OSM letter to NTEC, also dated November 1, 2013, OSM has discussed the approval of Sections A and B (above noted) of the permit transfer application.

OSM's approval of Sections C and D of the permit transfer application is hereby conditionally approved based on the receipt and acceptance of the following:

CONDITIONS:

- a. NMCC LLC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument to cover projected reclamation costs at Navajo Mine to comply with 30 CFR 774.17.**
- b. NMCC LLC must contract for liability insurance under its operating name and this liability to comply with 30 CFR 778.18**
- c. NMCC LLC must provide the telephone numbers and Federal Identification Numbers for NMCC LLC and NTEC to comply with 30 CFR 778.11.**
- d. NMCC LLC/NTEC must revise the application materials shown in Section C and in Section D such that the permit revision material to SMCRA Permit NM-0003F "Section 1: Identification of Interests for MMco." is submitted for review and approval as part of the stock sale described in Section C of this TAS to comply with 30 CFR 777.11 and 30 CFR 778.11.**
- e. NTEC must provide a contract for liability insurance and this liability insurance must be accepted and be in place prior to approval of this Application in order to comply with 30 CFR 778.18.**
- f. NTEC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and an actual bonding instrument for reclamation actions at Navajo to comply with 30 CFR 774.17.**
- g. NTEC and NMCC LLC must provide official documentation identifying which members of the Management Committee may sign and execute the Surety Bond or Collateral Bond and Indemnity Agreement and the bonding instrument. To comply with 30 CFR 774.17.**
- h. Post merger, NTEC must provide its Federal Identification Number to comply with 30 CFR 778.11.**
- i. MMco should provide a new Statement of Verification that only certifies the accuracy of the information specific to MMco to comply with 30 CFR 777.11(c) and 30 CFR 778.9.**
- j. In accordance with 30 CFR 774.17(e)(2), notification to OSM of consummation transactions of NTEC acquiring the permit rights previously held by NMCC LLC. (formerly NMCC Inc.).**

Should Sections A, B, C & D of the transfer occur before NMCC LLC has responded to the conditions stated in OSM's separate conditioned approval letter for Sections A & B; then only the

conditions contained in this letter for Sections C & D apply.

Additionally, the approval conditions identified for Section C are identical to those identified for Section D. If the TAS process is completed through the merger action described in Section D and before Section C conditions are addressed, and if NTEC satisfactorily addresses all of the Application approval conditions described in Section D according to the regulations identified, then OSM would also consider the approval conditions identified for Section C to be satisfactorily addressed as well.

Upon OSM receipt and acceptance of the information specified in the above listed Conditions, OSM will issue Federal Permit NM0003F, applicable to the Navajo Mine, to NTEC.

Upon OSM's issuance of Federal Permit NM0003F to NTEC, OSM will notify and request other Federal and Tribal agencies that maintain a copy of the approved permit application package (PAP) for Federal Permit NM-0003-F, to update the PAP in accordance with the instructions included within the above cited submittals.

The applicant, permittee, or any other person with an interest which is or may be adversely affected may seek administrative review on the reasons for this decision in accordance with 30 CFR 775.11 and under the procedures set out at 43 CFR 4.1360 *et. seq.* Should you have any questions regarding what is discussed within this letter, please contact Mychal Yellowman, Leader, Navajo Mine Team, by phone at 303-293-5049, or email (myellowman@osmre.gov).

Sincerely,



Rick L. Williamson, Manager
Indian Programs Branch, Program Support Division
OSM-Western Region

cc: OSM, Albuquerque Field Office w/enclosure
Navajo Nation Minerals Department w/enclosure
BLM Farmington Resource Area w/enclosure
BIA Navajo Regional Office w/enclosure
Tiis Tsoh Sikaad Chapter no enclosure
Nenahnezad Chapter no enclosure
BNCC w/enclosure

**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
(OSM)**

Findings and Conditional Approval of a Permit Transfer Application (*Acceptance of Application to Change Ownership & Control of Navajo Mine; and Conditioned Approval Permit Transfer Application from Navajo Mine Coal Co LLC (NMCC Inc., formerly BNCC) to Navajo Transitional Energy Company LLC (NTEC).*)

**OSM Project NM-0003-F-T-01
Federal Permit NM-0003-F
Navajo Transitional Energy Company LLC (NTEC)
Navajo Mine**

The permit Transfer, Assignment, or Rights Sale (TAS) Application (OSM project tracking number: NM-0003-F-T-01) submitted by BHP Billiton Navajo Coal Company (BNCC) proposes to sell coal mining interest and operations at Navajo Mine to the Navajo Nation entity company identified as 'Navajo Transitional Energy Company (NTEC)'. The following Sections are proposed in this Application:

- A. Change the name of the operating coal mine company from BNCC to Navajo Mine Coal Company (NMCC).
- B. Convert NMCC from Incorporated (Inc.) status to a Delaware Limited Liability Company (LLC).
- C. BHP Billiton New Mexico Coal Inc. to sell 100% interest of NMCC LLC to NTEC.
- D. NMCC LLC and NTEC to merge into one single entity with NTEC as the surviving entity.

OSM's initial review determined the May 3, 2013, permit transfer submittal, as updated on May 10, 2013, to be an 'administratively complete application' on May 16, 2013; and subsequently instructed BNCC to provide public notice of the availability of the application for public review & comment. Concurrent with OSM's review of the permit transfer application, OSM directed a third party consultant to develop, on behalf of OSM, a draft EA in accordance with the National Environmental Policy Act (NEPA). Along with the permit transfer application, this draft EA was made available for public review and comment. Public notices for this application and OSM's draft EA appeared in local newspapers and radio stations. A total of 31 commenters provided comments on the transfer application and the draft EA. All comments were reviewed by OSM. Substantive comments were categorized by resource (i.e. air, water, socio-economics, etc.) and OSM has prepared a summarized response to those comments in its Decision Document. Review of the applicant's eligibility for receiving a permit in accord with 30 CFR 773.12 was completed on November 1, 2013.

For administrative purposes, OSM has reviewed the permit revision material in Section A and the initial permit transfer in Section B (Sections A & B as noted above) separately from the permit revision material in Section C and final permit transfer in Section D (Sections C & D as noted above). This findings document addresses only Sections C and D of the permit transfer application. Sections A and B has been addressed in a separate Findings document. Based on OSM's review of the permit revision application of the permit transfer application from NMCC LLC to NTEC (Sections C & D), which includes all materials submitted by BNCC to OSM dated May 3, May 10, August 30, September 3 and October 17, 2013, the Environmental Assessment that was prepared in

accordance with the NEPA, written comments that were submitted during the public review period, and consultation with other agencies, I find that:

2. NTEC is eligible to receive a permit in accordance with 30 CFR 773.15(n), pending OSM's receipt and acceptance of the following:
 - a. **NMCC LLC. must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument to cover projected reclamation costs at Navajo Mine to comply with 30 CFR 774.17.**
 - b. **NMCC LLC. must contract for liability insurance under its operating name and this liability to comply with 30 CFR 778.18**
 - c. **NMCC LLC. must provide the telephone numbers and Federal Identification Numbers for NMCC LLC. and NTEC to comply with 30 CFR 778.11.**
 - d. **NMCC LLC./NTEC must revise the application materials shown in Section C and in Section D such that the permit revision material to SMCRA Permit NM-0003F "Section 1: Identification of Interests for MMco." is submitted for review and approval as part of the stock sale described in Section C of this TAS to comply with 30 CFR 777.11 and 30 CFR 778.11.**
 - e. **NTEC must provide a contract for liability insurance and this liability insurance must be accepted and be in place prior to approval of this Application in order to comply with 30 CFR 778.18.**
 - f. **NTEC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and an actual bonding instrument for reclamation actions at Navajo to comply with 30 CFR 774.17.**
 - g. **OSM notes that NTEC and NMCC LLC. must provide official documentation identifying which members of the Management Committee may sign and execute the Surety Bond or Collateral Bond and Indemnity Agreement and the bonding instrument. To comply with 30 CFR 774.17.**
 - h. **Post merger, NTEC must provide its Federal Identification Number to comply with 30 CFR 778.11.**
 - i. **MMco should provide a new Statement of Verification that only certifies the accuracy of the information specific to MMco to comply with 30 CFR 777.11(c) and 30 CFR 778.9.**
 - j. **In accordance with 30 CFR 774.17(e)(2), notification to OSM of consummation transactions of NTEC acquiring the permit rights previously held by NMCC LLC. (formerly NMCC Inc.).**
3. Conditioned in OSM's approval is OSM receipt of a performance bond, submitted by NTEC as required by 30 CFR Chapter VII, Subchapter J. See requirements under 1(a-d) above.
4. No other approval requirements at 30 CFR 774.17(d)(3) are applicable to this permit transfer application.
5. Environmental Evaluation and Finding of No Significant Impact under the National Environmental Policy Act.

- a. The proposed permit transfer would not result in any additional environmental impacts beyond those identified in OSM's previous NEPA documents as supplemented by the November 2013 Environmental Assessment for the Navajo Mine Permit Transfer Application.
- b. Previous NEPA documents adequately address the impacts of the mine.
- c. OSM has issued a Finding of No Significant Impact (FONSI) for the permit transfer application.
- d. The approval of this permit transfer application would not significantly impact the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). Therefore, an Environmental Impact Statement (EIS) is not required.

Should Sections A, B, C & D of the transfer occur before NMCC LLC has responded to the conditions stated in OSM's separate conditioned approval letter for Sections A & B; then only the conditions contained in this letter for Sections C & D apply.

Additionally, the approval conditions identified for Section C are identical to those identified for Section D. If the TAS process is completed through the merger action described in Section D and before Section C conditions are addressed, and if NTEC satisfactorily addresses all of the application approval conditions described in Section D according to the regulations identified, then OSM would also consider the approval conditions identified for Section C to be satisfactorily addressed as well.

The Navajo Nation, the Bureau of Land Management, and the Bureau of Indian Affairs were notified concerning this transfer and had no comments on the proposed permitting action. These agencies participated in the development and review of the Environmental Assessment prepared for the permit transfer application.

The proposed permit transfer application for Federal Permit NM0003F from NMCC LLC (formerly NMCC Inc.) to NTEC, tracked as OSM Project No. NM-0003-F-T-01, is hereby Conditionally approved.



Rick L. Williamson, Manager
Indian Programs Branch, Program Support Division
Western Region

Nov. 1, 2013
Date

**TECHNICAL EVALUATION
TRANSFER, ASSIGNMENT AND SALE APPLICATION**

1. **COMPANY:** **BHP Navajo Coal Company (BNCC) and Navajo Mine Coal Company (NMCC)**
2. **MINE/OPERATION:** **Navajo Mine**
3. **TRACKING SYSTEM INFORMATION.**
- A. **Mine Information Project Planning System (MIPPS):** **NM-0003F-T-01**
- B. **Workload Assignment Tracking System (WATS):** **FPD08598**
- C. **Administrative Records Management System (ARMS):** **13/10/23-01**
Please note that BNCC has submitted previous versions of this Application under ARMS Numbers: 13/05/13-01, 13/09/03-09 and 13/09/04-08.
- D. **Letterhead date of submittal:** **October 17, 2013**

4. **TYPE OF APPLICATION/DOCUMENT REVIEWED.**

- New permit application
- Permit revision application
- Permit renewal application
- Permit transfer, assignment, or rights sale application**

5. **EVALUATION.**

BHP Billiton Navajo Coal Company (BNCC) has submitted a proposed Permit Transfer, Assignment, or Rights Sale (TAS) Application to the Office of Surface Mining (OSM.) BNCC proposes to sell its coal mining interest and operations at Navajo Mine to the Navajo Nation company: Navajo Transitional Energy Company (NTEC.) The following Sections are proposed in this Application:

- A. Change the name of the operating coal mine company from BNCC to Navajo Mine Coal Company Inc. (NMCC Inc.).
- B. Convert NMCC Inc. to NMCC LLC, a Delaware Limited Liability Company.
- C. BHP Billiton New Mexico Coal Inc. to sell 100% interest of NMCC LLC to NTEC.
- D. NMCC LLC and NTEC to merge into one single entity with NTEC as the surviving entity.

OSM will review Sections A and B in this evaluation. OSM will review Sections C and D in a separate review.

BHP Billiton New Mexico Coal Inc. has created BHP Billiton Mine Management Company (MMco.) to act as a contract-mining company operating at Navajo Mine once ownership of NMCC LLC is conveyed to NTEC.

OSM completed its Administrative Completeness Review of the TAS Application May 16, 2013.

A. Part of application/document reviewed: Transfer, Assignment, or Rights Sale application, Section A.

(1) Citation of applicable regulations:

30 CFR 774.17	Transfer, Assignment, or Sale of Permit Rights
30 CFR 777.11	Format and Contents: Clear and Concise
30 CFR 778.9	Certifying and updating existing permit application information
30 CFR 778.11	Providing applicant and operator information.
30 CFR 778.12	Providing permit history information.
30 CFR 778.14	Providing violation information
30 CFR 778.18	Insurance

(2) Evaluation of compliance with the requirements of the applicable regulations:

BNCC presents in Section A its proposed SMCRA Permit Application Package (PAP) documentation for a change-of-name of the coal mining operator (permittee) at Navajo Mine from BNCC to NMCC Inc. OSM has reviewed Section A of the application with the following:

(a) Evaluation of compliance with the permit application requirements (30 CFR Parts 777 through 784):

BNCC produced all materials presented in this Application and provided them to OSM on October 17, 2013, prior to processing of any of the actions proposed in the Application. At the time of this TAS processing, BNCC will change its name to NMCC Inc. OSM has written its review of Section A in context of the entity named BNCC as the current permittee.

BNCC has provided a summary of the reason for the proposed action where it states that “BHP Navajo Coal Company (“BNCC”) intends to change its name to Navajo Mine Coal Company (“NMCC”). Any references in this application (Permit #NM-0003F) to BHP Navajo Coal Company, BNCC, BHP, BHP Billiton, or BHP Minerals International are replaced by Navajo Mine Coal Company or NMCC.” OSM determines that the proposed application is consistent with 30 CFR 774.14.

BNCC has provided Appendix 1-A: BHP Billiton Ownership and Control to present its proposed corporate structure including each of NMCC’s parent companies as well as other companies owned by its parent companies who have interest in coal mining. The proposed corporate structure shows that the entity NMCC Inc. would be a subsidiary company of BHP Billiton and shows that NMCC Inc. would occupy the same position in the corporate structure as BNCC currently does. OSM finds that the corporate structure provided is compliant with 30 CFR 778.11.

BNCC has provided a proposed list of all active and resigned Owners and Controllers for each of the companies identified in its corporate structure including the Owners and Controllers identified for NMCC Inc. OSM has verified that the list of Owners and Controllers provided in Appendix 1-A, proposed for NMCC Inc. is identical to those currently associated with BNCC. The current and proposed list of Owners and Controllers is accurate with the information reported in the Applicant Violator System (AVS) as of the date of this report. OSM has reviewed AVS and found that none of the Owners or Controllers proposed for NMCC Inc. in Section A have any unabated violations as of the date of this report. OSM finds that the Ownership and Control information provided is compliant with 30 CFR 778.11.

OSM notes that BNCC updates its Owners and Controllers in this Application. OSM finds the information presented in this Application to comply with 30 CFR 774.12(c) as of the date of this submittal.

BNCC has provided a list of addresses, telephone numbers and Federal Identification Numbers for each of the companies shown in its corporate structure, including the proposed NMCC Inc. OSM notes that the address, telephone number and Federal Identification Number shown for NMCC Inc. are identical to the information reported for BNCC in currently-approved SMCRA Permit NM-0003F. OSM finds that this application complies with 30 CFR 778.11.

BNCC has provided a written and notarized Statement of Verification stating that the Ownership and Control information in this application is accurate and complete. OSM notes that this Statement of Verification is provided in context of Section A and the change-of-name of BNCC to NMCC Inc. OSM finds that this application complies with 30 CFR 777.11(c) and 30 CFR 778.9.

OSM makes the determination that the information presented in Section A indicates that the change-of-name process, changing the name of the operator from BNCC to NMCC Inc, is superficial. The information in Section A of the Application demonstrates that the Owners and Controllers, Federal Identification Number, contact information, and the position of BNCC within the BHP corporate structure would be identically assigned to NMCC Inc. OSM determines that there is no change of Ownership or Control associated with Section A of the Application. The change-of-name does not remove BNCC from historic Ownership and Control of Navajo Mine and SMCRA Permit NM-0003. AVS maintains an Ownership and Control, permit issuance/renewal and violation history for Navajo Mine that clearly shows BNCC's permitting history at Navajo Mine and the change-of-name transition from BNCC to NMCC Inc. whenever this action takes place. OSM notes that this action is consistent with 30 CFR 778.12 and 30 CFR 778.14.

OSM notes that NMCC Inc. must produce an approved bonding instrument covering reclamation actions at Navajo Mine prior to final approval of this TAS. The current bonding instrument for SMCRA Permit NM-0003F identifies "BHP Financial International, Inc. (on behalf of BHP Navajo Coal Company ("Permittee") and the Navajo Mine)" as the applicant. **When BNCC completes its change-of-name to NMCC Inc. it must also produce an amendment to OSM's Collateral Bond and Indemnity Agreement to change the name of the permittee from BHP Navajo Coal Company Inc. to Navajo Mine Coal Company Inc. BNCC must also amend its Letter of Credit issued by Bank of America to reflect this change-of-name action. BNCC/NMCC Inc. must complete this action to comply with 30 CFR 774.17.** OSM conditions approval of this TAS upon BNCC providing an amendment to the Collateral Bond and Indemnity Agreement and the Letter of Credit as described above.

NMCC must also contract for liability insurance under its most-current operating name and this liability insurance must be approved and be in place prior to approval of this Application in order to comply with 30 CFR 778.18. OSM conditions approval of this TAS upon NMCC Inc. securing liability insurance in its name upon completion of the change-of-name action.

(b) Evaluation of compliance with the bonding and performance standards (30 CFR Parts 800, 816 and 817):

There are no evaluations of this TAS under bonding and performance standards of 30 CFR 800, 816 or 817. However, SMCRA permit NM-0003F remains in effect after the change-of-name action including the permit conditions regulated under performance standards of 30 CFR 800, 816 and 817.

B. Part of application/document reviewed: Transfer, Assignment, or Rights Sale application, Section B.

(1) Citation of applicable regulations:

30 CFR 773.12	Permit Eligibility Determination
30 CFR 774.17	Transfer, Assignment, or Sale of Permit Rights
30 CFR 777.11	Format and Contents: Clear and Concise
30 CFR 778.9	Certifying and updating existing permit application information
30 CFR 778.11	Providing applicant and operator information.
30 CFR 778.12	Providing permit history information.
30 CFR 778.13	Providing property interest information.
30 CFR 778.14	Providing violation information
30 CFR 778.18	Insurance

OSM is also guided by language at Federal Register Volume 72, No. 231/Monday December 3, 2007 which states that a reorganization including change Incorporation to LLC constitutes a change in the permittee and thus triggers provisions of TAS regulations at 30 CFR 774.17.

(2) Evaluation of compliance with the requirements of the applicable regulations:

NMCC Inc. presents in Section B its proposed SMCRA Permit Application Package documentation for conversion of NMCC from Incorporated status to a Delaware LLC. OSM has reviewed Section B of the TAS application with the following:

(a) Evaluation of compliance with the permit application requirements (30 CFR Parts 777 through 784):

BNCC produced all materials presented in this TAS Application and provided them to OSM on October 17, 2013, prior to processing of any of the actions proposed in the Application. At the time of the TAS processing, BNCC has changed its name to NMCC Inc., which then converts to NMCC LLC. NMCC Inc. states in the TAS summary that the conversion from NMCC Inc. to NMCC LLC triggers TAS regulations at 30 CFR 774.17. OSM has written its review of Section B in context of the entity named NMCC Inc. as the current permittee.

NMCC Inc. has provided a TAS Application that includes the address, telephone number and Federal Identification Number for proposed NMCC LLC. NMCC Inc. has provided a summary describing the TAS Application for the proposed action which names the current permit (NM-0003F) and permit holder Navajo Mine Coal Company Inc. (formerly BHP Navajo Coal Company), the transferee (Navajo Mine Coal Company LLC) and the reason for transfer.

NMCC Inc. has provided Appendix 1-A: BHP Billiton Ownership and Control to show the corporate structure proposed for NMCC LLC including each of its parent companies as well as other companies Owned and Controlled by its parent companies who have interest in coal mining. Appendix 1-A includes a list of addresses, telephone numbers and Federal Identification Numbers for each of the companies shown identified in its corporate structure, including the proposed NMCC LLC.

The proposed corporate structure shows that the entity NMCC LLC would be a subsidiary company of BHP Billiton and shows that NMCC LLC occupies the same position in the corporate structure as the current NMCC Inc. does and the former BNCC did. The address, telephone number and Federal Identification Number proposed for NMCC LLC are identical to the information reported for NMCC Inc. and previously reported for BNCC.

NMCC Inc. has provided a list of proposed active (and resigned) Owners and Controllers for each of the companies identified in its corporate structure including the Owners and Controllers proposed for NMCC LLC. OSM notes that the Owners and Controllers proposed for NMCC LLC are identical (as of the date of this report) to those proposed for NMCC Inc. and for those provided for BNCC as of the date of this report. The current and proposed list of Owners and Controllers is accurate with the information reported in the Applicant Violator System (AVS) as of the date of this report. OSM has reviewed AVS and found that none of the Owners or Controllers proposed for NMCC LLC and shown in Section B have any unabated violations as of the date of this report. OSM finds that this application complies with 30 CFR 778.11.

NMCC Inc. has also provided a brief summary where it states that “Navajo Mine Coal Company (“NMCC”) intends to change its name to Navajo Mine Coal Company (“NMCC LLC”). Any references in this application (Permit #NM-0003F) to BHP Navajo Coal Company, BNCC, BHP, BHP Billiton, or BHP Minerals International are replaced by Navajo Mine Coal Company or NMCC.” OSM finds this proposed application to comply with 30 CFR 774.14.

BNCC published a written public notice of the proposed change to the permittee of surface mining and reclamation operation at Navajo Mine in the Navajo Times & the Farmington Daily Times newspapers for general circulation in the locality. These advertisements occurred as follows: Farmington Daily Times (May 18, 19 & 26, 2013) and Navajo Times (May 23 and 30, 2013.) BNCC requested written public feedback on the proposed TAS (conversion from NMCC Inc. to NMCC LLC) in the public notice. BNCC also provided radio announcements (in both Navajo and English languages) on two local radio stations (KNDN & KTNN) began airing on May 18 and continued daily for one week from May 18th to May 25th (2013) then two times a week until June 10th (2013). The advertisements contained the information required at 30 CFR 774.17(b)(2).

OSM finds that the information presented in Section B indicates that the TAS from NMCC Inc. to NMCC LLC reassigns the Owners and Controllers, Federal Identification Number, contact information, and place of NMCC Inc. in the BHP corporate structure. The TAS does not remove NMCC Inc. from historic Ownership and Control responsibility and does not remove historic association of predecessor BNCC from Navajo Mine or the SMCRA permit. OSM also notes that the Navajo Mine operator and holder of the approved SMCRA permit would change to NMCC LLC; however, AVS maintains a clear history of the Ownership and Control of Navajo Mine. AVS would clearly show the transition from NMCC Inc. to NMCC LLC following completion of the transfer action. OSM notes that this action is consistent with 30 CFR 778.12 and 30 CFR 778.14.

BNCC has provided a written and notarized Statement of Verification stating that the TAS Application is accurate and complete. OSM notes that this Statement of Verification is provided in context of Section B and the TAS of NMCC Inc. to NMCC LLC. OSM finds that this application complies with 30 CFR 777.11(c) and 30 CFR 778.9.

OSM notes that NMCC LLC must produce an approved bonding instrument covering reclamation actions at Navajo Mine prior to final approval of this TAS. The current bonding instrument for SMCRA Permit NM-0003F identifies identifies “BHP Financial International, Inc. (on behalf of BHP Navajo Coal Company (“Permittee”) and the Navajo Mine)” as the applicant. **As part of completion of this TAS**

(conversion from NMCC Inc. to NMCC LLC) NMCC LLC also must produce an amendment to OSM's Collateral Bond and Indemnity Agreement to change the name of the permittee from Navajo Mine Coal Company Inc. to Navajo Mine Coal Company LLC. NMCC Inc. must also amend its Letter of Credit issued by Bank of America to reflect the change-of-name action to NMCC LLC. NMCC LLC must complete this action to comply with 30 CFR 774.17. OSM conditions approval of this TAS upon BNCC providing an amendment to Collateral Bond and Indemnity Agreement and the Letter of Credit as described above in order to comply with 30 CFR 774.17(d)(2.)

NMCC LLC must also contract for liability insurance under its operating name and this liability insurance must be approved and be in place prior to approval of this Application in order to comply with 30 CFR 778.18. OSM conditions approval of this TAS upon NMCC securing liability insurance in its name upon completion of the change-of-name action.

In accordance with 30 CFR 773.12, OSM finds that NMCC LLC is conditionally eligible to receive SMCRA Permit NM-0003F and conduct surface coal mining at Navajo Mine in accordance with the provisions stated in SMCRA Permit NM-0003F.

(b) Evaluation of compliance with the performance standards (30 CFR Parts 800, 816 and 817):

There are no evaluations of this TAS under performance standards of 30 CFR 800, 816 or 817. However, SMCRA permit NM-0003F remains in effect after the TAS including the permit conditions regulated under performance standards of 30 CFR 800, 816 and 817.

(3) On the basis of the preceding evaluation, I conclude that:

This part of the application/document conditionally complies with the requirements of the applicable regulations.

OSM conditions approval of this Transfer, Assignment, or Sale Application on the permittee providing the Collateral Bond amendments and Certificate of Liability insurance as described in this review.

The above evaluation concerns a proposed revision of the reclamation plan that affects reclamation costs. Mine team leader/mine permit coordinator, please make the team bond cost estimator aware of this revision so that he or she can determine whether the bond amount needs to be adjusted.

6. PRIMARY AND PEER REVIEWERS.

A. Reviewer:



Matthew Hulbert, Civil Engineer
Program Support Division



Date

B. Co-reviewer:



Karen Jass, Mining Engineer
Program Support Division



Date

**TECHNICAL EVALUATION
TRANSFER, ASSIGNMENT AND SALE APPLICATION**

1. **COMPANY:** Navajo Mine Coal Company LLC
Navajo Transitional Energy Company

2. **MINE/OPERATION:** Navajo Mine

3. **TRACKING SYSTEM INFORMATION.**

A. **Mine Information Project Planning System (MIPPS):** NM-0003F-T-01

B. **Workload Assignment Tracking System (WATS):** FPD08598

C. **Administrative Records Management System (ARMS):** 13/10/23-01
Please note that BNCC has submitted previous versions of this Application under ARMS
Numbers: 13/05/13-01, 13/09/03-09 and 13/09/04-08.

D. **Letterhead date of submittal:** October 17, 2013

4. **TYPE OF APPLICATION/DOCUMENT REVIEWED.**

- New permit application
- Permit revision application
- Permit renewal application
- Permit transfer, assignment, or rights sale application**

5. **EVALUATION.**

BHP Navajo Coal Company (BNCC) has submitted a proposed Permit Transfer, Assignment, or Rights Sale (TAS) Application to the Office of Surface Mining (OSM.) BNCC proposes to sell coal mining interest and operations at Navajo Mine to the Navajo Nation company: Navajo Transitional Energy Company (NTEC) in this Application. The following Sections are proposed in this Application:

- A. Change the name of the operating coal mine company from BNCC to Navajo Mine Coal Company (NMCC Inc.)
- B. Convert NMCC from Incorporated (Inc.) status to a Delaware Limited Liability Company (LLC)
- C. BHP Billiton New Mexico Coal Inc. to sell 100% interest of NMCC LLC to NTEC
- D. NMCC LLC and NTEC to merge into one single entity with NTEC as the surviving entity.

OSM will review Sections C and D in this evaluation. OSM has reviewed Sections A and B in a separate review.

BHP Billiton New Mexico Coal Inc. has created BHP Billiton Mine Management Company (MMco.) to act as a contract-mine operator at Navajo Mine.

OSM completed its Administrative Completeness Review of the TAS Application May 16, 2013.

C. Part of application/document reviewed: Revised Transfer, Assignment, or Rights Sale Application, Section C.

(1) Citation of applicable regulations:

30 CFR 773.12	Permit Eligibility Determination
30 CFR 774.11	Post-permit issuance requirements for regulatory authorities and other actions based on Ownership, Control, and violation information
30 CFR 774.17	Transfer, Assignment, or Sale of Permit Rights
30 CFR 777.11	Format and Contents: Clear and Concise
30 CFR 778.9	Certifying and updating existing permit application information
30 CFR 778.11	Providing applicant and operator information.
30 CFR 778.12	Providing permit history information.
30 CFR 778.13	Providing property interest information.
30 CFR 778.14	Providing violation information
30 CFR 778.15	Right of Entry
30 CFR 778.17	Permit Term
30 CFR 778.18	Insurance

OSM is also guided by language at Federal Register Volume 72, No. 231/Monday December 3, 2007 which states that a reorganization including change Incorporation to LLC constitutes a change in the permittee and thus triggers provisions of TAS regulations at 30 CFR 774.17.

(2) Evaluation of compliance with the requirements of the applicable regulations:

NMCC LLC presents in Section C the proposed SMCRA Permit Application Package documentation supporting the stock sale of NMCC LLC and the SMCRA Permit NM-0003F for Navajo Mine from BHP Billiton to Navajo Transitional Energy Company. Following the stock sale, NMCC LLC will be owned by the Navajo Nation's NTEC. OSM has reviewed Section C of the TAS Application with the following:

(a) Evaluation of compliance with the permit application requirements (30 CFR Parts 777 through 784):

BNCC produced all materials presented in this Application and provided them to OSM on October 17, 2013, prior to processing of any of the actions proposed in the Application. OSM has written its review of Section C in context of the entity named NMCC LLC (owned by BHP Billiton) as the current permittee proposing to sell 100% of its stock to NTEC. At the time of the TAS processing, NTEC will purchase 100% of the NMCC LLC stock. Following the stock sale NMCC LLC will remain as a separate entity subsidiary to NTEC and will be the holder of SMCRA Permit NM-0003F. Because NMCC LLC remains the holder of SMCRA Permit NM-0003F, this action does not trigger TAS provisions under 30 CFR 774.17.

NMCC LLC has provided Appendix 1-A: Ownership and Control; Appendix 1-A-A: Owner Ownership and Control; and Appendix 1-A-B: Operator Ownership and Control to show the corporate structure proposed for post-stock-sale NMCC LLC including its parent company NTEC. Appendix 1-A shows that proposed post-stock-sale NMCC LLC would be a subsidiary company of NTEC. NMCC LLC has provided a name and address for the post-stock-sale company office location. **However, NMCC LLC has not provided a telephone number or Federal Identification Number for the post-stock-sale**

NMCC LLC or NTEC. NMCC LLC must provide the telephone numbers and Federal Identification Numbers to comply with 30 CFR 778.11. NMCC LLC indicates in Appendix 1-A-B that the Federal Identification Number application is in progress for both post-stock-sale NMCC LLC and for NTEC. OSM conditionally finds this Application to comply with 30 CFR 778.11, conditional upon NMCC LLC and NTEC providing their respective telephone numbers and Federal Identification Numbers. OSM notes that NTEC's Application for Employer Identification Number is included at the end of Section D.

NMCC LLC has provided a list of proposed Owners and Controllers for post-stock-sale NMCC LLC and a list of current Owners and Controllers for NTEC. OSM has reviewed the Applicant Violator System (AVS) and found that none of the Owners or Controllers proposed for NMCC LLC or shown for NTEC have any unabated violations as of the date of this report. After completion of the stock sale, OSM will update AVS to assign these Owners and Controllers to post-stock-sale NMCC LLC and will associate NTEC as the new owner of NMCC LLC. OSM finds that this Application complies with 30 CFR 778.11.

NTEC does not report a history of Ownership or Control of coal mining operations or a violation history; OSM has confirmed in AVS that NTEC does not have previous Ownership or Control of coal mining nor does it have a violation history as of the date of this report. OSM has confirmed in AVS that none of the Owners and Controllers proposed for post-stock-sale NMCC LLC have any unabated violations as of the date of this report. OSM finds that the information reported in Section C is complies with the requirements of 30 CFR 778.12 and 30 CFR 778.14.

OSM notes that SMCRA Permit NM-0003F will still be in effect after completion of the stock sale as it will remain in the ownership of NMCC LLC. NMCC LLC will assume all permit conditions of the SMCRA permit including right-of-entry and property interest conditions as required by 30 CFR 778.13 and 30 CFR 778.15.

The permit term for SMCRA permit NM-0003F ends in September 2014, in accordance with 30 CFR 778.17.

NMCC LLC has provided a written and notarized Statement of Verification stating that the Ownership and Control information in this Application is accurate and complete. OSM notes that this Statement of Verification is provided in context of Section C following the stock sale of NMCC LLC.

OSM notes that the Statement of Verification extends to the information provided for the contract-mine operator MMco as shown in Section C. OSM finds that this Application complies with 30 CFR 777.11(c) and 30 CFR 778.9.

NMCC LLC must produce an approved bonding instrument covering reclamation actions at Navajo Mine prior to approval of this TAS. NMCC LLC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument to cover projected reclamation costs at Navajo Mine prior to OSM's approval of this TAS. The Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument must identify OSM as the beneficiary. A draft submittal of the agreement must be sent to OSM to verify correctness, before to the watermarked original is sent to NTEC for signature. NMCC LLC must complete this action to comply with 30 CFR 774.17. OSM conditions approval of this TAS upon NMCC LLC providing a Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument as described above in order to comply with 30 CFR 774.17(d)(2.)

OSM notes that NMCC LLC must provide official documentation identifying which members of the Management Committee may sign and execute the Surety Bond or Collateral Bond and

Indemnity Agreement and the bonding instrument. OSM conditionally approves compliance of this Application, conditioned upon compliance with requirements to post a bond in accordance with 30 CFR 774.17.

NMCC LLC must also contract for liability insurance under its operating name and this liability insurance must be approved and be in place prior to approval of this Application in order to comply with 30 CFR 778.18. OSM conditions approval of this TAS upon NMCC LLC securing liability insurance in its name upon completion of the change-of-name and post-stock sale action.

NMCC LLC has also provided a list of addresses, telephone numbers and Federal Identification Numbers for the contract-mine company MMco. and for each of the companies shown identified in the corporate structure of MMco. OSM notes that the address, telephone number and Federal Identification Number shown for MMco. are identical to the information reported for the former holders of SMCRA Permit NM-0003F: BNCC; NMCC Inc; and the pre-stock-sale NMCC LLC. OSM finds that this Application complies with 30 CFR 778.11.

NMCC LLC has provided a list of active (and resigned) Owners and Controllers for each of the companies identified for MMco. and for all of the companies in the MMco. corporate structure. The list of Owners and Controllers is accurate with the information reported in the Applicant Violator System (AVS) as of the date of this report. OSM has reviewed AVS and found that none of the Owners or Controllers identified for MMco. and shown in Section C have any unabated violations as of the date of this report. OSM finds that this Application complies with 30 CFR 778.11.

As a contract-mine operator, MMco. is not required to seek leaseholder interest or right-of-entry to Navajo Mine as these rights are held by NTEC under the provisions of SMCRA Permit NM-0003F.

MMco. is acting as a contract-mine operator is not required to provide a reclamation bond or a certificate of liability insurance to OSM for approval.

In accordance with 30 CFR 773.12, OSM finds that BHP Billiton Mine Management Company is conditionally eligible to act as a contract-mine operator at Navajo Mine contracted by the permittee NMCC LLC under provisions stated in SMCRA Permit NM-0003F.

(b) Evaluation of compliance with the performance standards (30 CFR Parts 800, 816 and 817):

There are no evaluations of this TAS under performance standards of 30 CFR 800, 816 or 817. However, SMCRA permit NM-0003F remains in effect after the stock sale to the new mine owner including the permit conditions regulated under performance standards of 30 CFR 800, 816 and 817.

D. Part of application/document reviewed: Revised Transfer, Assignment, or Rights Sale Application, Section D.

(1) Citation of applicable regulations:

30 CFR 773.12	Permit Eligibility Determination
30 CFR 774.11	Post-permit issuance requirements for regulatory authorities and other actions based on Ownership, Control, and violation information

30 CFR 774.17	Transfer, Assignment, or Sale of Permit Rights
30 CFR 777.11	Format and Contents: Clear and Concise
30 CFR 778.9	Certifying and updating existing permit application information
30 CFR 778.11	Providing applicant and operator information.
30 CFR 778.12	Providing permit history information.
30 CFR 778.13	Providing property interest information.
30 CFR 778.14	Providing violation information
30 CFR 778.15	Right of Entry
30 CFR 778.17	Permit Term
30 CFR 778.18	Insurance

OSM is also guided by language at Federal Register Volume 72, No. 231/Monday December 3, 2007 which states that a merger where there is a change in the permittee triggers provisions of TAS regulations at 30 CFR 774.17.

(2) Evaluation of compliance with the requirements of the applicable regulations:

NMCC LLC presents in Section D the proposed SMCRA Permit Application Package documentation supporting the merger of NMCC LLC with NTEC, where NTEC would be the surviving entity. NTEC will assume coal mining interest at Navajo Mine under conditions of SMCRA Permit NM-0003F. OSM has reviewed Section D of the TAS Application with the following:

(a) Evaluation of compliance with the permit application requirements (30 CFR Parts 777 through 784):

BNCC produced all materials presented in this Application and provided them to OSM on October 17, 2013, prior to processing of any of the actions proposed in the Application. NMCC LLC will merge with NTEC, with NTEC being the surviving entity and holder of SMCRA Permit NM-0003F. OSM has written its review of Section D in context of the entity named NMCC LLC as the current permittee.

NTEC has provided revised materials updating SMCRA Permit NM-0003F Section 1; Appendix 1-A: Ownership and Control and Appendix 1-A-A: Owner Ownership and Control to show the corporate structure proposed for post-merger NTEC and its Ownership and Control of Navajo Mine. Section 1.1: Identification of Interests identifies NTEC as the owner of Navajo Mine and MMco. as the contract-mine operator at Navajo Mine. NTEC provides its legal status, office address, telephone number and resident agent information. **However, NTEC has not provided its Federal Identification Number as required by 30 CFR 778.11.** OSM conditionally approves the revised text to Section 1: Identification of Interest, conditioned upon NTEC providing the Federal Identification Number and updating all appropriate text and sections of the permit to comply with 30 CFR 778.11. OSM notes that NTEC's Application for Employer Identification Number is included at the end of Section D.

NTEC has provided a list of all active Owners and Controllers within its corporate structure. OSM has verified that the list of Owners and Controllers provided in Appendix 1-A is accurate with the information reported in the Applicant Violator System (AVS) as of the date of this report. OSM has reviewed AVS and found that none of the Owners or controllers shown for NTEC as shown in Section D have any unabated violations as of the date of this report. OSM will update AVS to reassign SMCRA Permit NM-0003F from NMCC LLC to NTEC in AVS after completion of the TAS. OSM finds that this Application

complies with 30 CFR 778.11. OSM finds that the information provided for NTEC in Section D complies with 30 CFR 778.12 and 30 CFR 778.14.

NTEC has provided a name and address for the post-stock-sale company office location in Appendix A-1-B. **However, NTEC has not provided its Federal Identification Number in Appendix A-1-B. NTEC must provide its Federal Identification Number to comply with 30 CFR 778.11.** NTEC indicates in Appendix 1-B-A that the Federal Identification Number application is in progress for both post-stock-sale NMCC LLC and for NTEC. OSM conditionally finds this Application to comply with 30 CFR 778.11, conditional upon NTEC providing its Federal Identification Number. OSM notes that NTEC's Application for Employer Identification Number is included at the end of Section D.

NTEC has provided in the TAS Application a brief summary of the proposed actions to include the merger action proposed in Section D. OSM finds this TAS to comply with 30 CFR 774.17.

NTEC published a written public notice of the proposed change of the permittee of surface mining and reclamation operation at Navajo Mine in the Navajo Times & the Farmington Daily Times newspapers for general circulation in the locality. These advertisements occurred as follows: Farmington Daily Times (May 18, 19 & 26, 2013) and Navajo Times (May 23 and 30, 2013.) NTEC requested written public feedback on the proposed TAS (conversion from NMCC Inc. to NMCC LLC) in the public notice. NTEC also provided radio announcements (in both Navajo and English languages) on two local radio stations (KNDN & KTNN) began airing on May 18 and continued daily for one week from May 18th to May 25th (2013) then two times a week until June 10th (2013). NTEC has included a copy of the text including the Navajo Language translation of the written notice in Section D of this TAS Application. The advertisements contained the information required at 30 CFR 774.17(b)(2).

NTEC has provided a written and notarized Statement of Verification stating that the Ownership and Control information in this Application is accurate and complete. OSM notes that this Statement of Verification is provided in context of Section D and the merger of NMCC LLC with NTEC, where NTEC is the surviving entity. OSM approves compliance of this Application with 30 CFR 777.11(c) and 30 CFR 778.9.

NMCC LLC has also provided a Statement of Verification of the accuracy and completeness of the information provided. **However, this Statement of Verification was signed by the Mine Manager of MMco. on behalf of NTEC. This Statement of Verification should originate from MMco. and should only certify the accuracy of the information specific to MMco.** OSM conditionally approves compliance of this Application with 30 CFR 777.11(c) and 30 CFR 778.9, conditioned upon MMco providing a corrected Statement of Verification limited to information for MMco.

NTEC has provided revisions to text in the PAP. Specifically, NTEC changes the Coal Leasehold entity from NMCC LLC to Navajo Transitional Energy Company, headquartered at the BIA Affairs Club Building, Window Rock, Navajo Nation (Arizona) 86515. OSM finds the revised text to comply with 30 CFR 778.13.

OSM notes that SMCRA Permit NM-0003F is still in effect after completion of the stock sale. NMCC LLC assumes all permit conditions of the SMCRA permit including right-of-entry and property interest conditions as required by 30 CFR 778.13 and 30 CFR 778.15.

The current permit term for SMCRA permit NM-0003F ends in September 2014, in accordance with 30 CFR 778.17.

NTEC must produce an approved bonding instrument covering reclamation actions at Navajo Mine prior to approval of this TAS. **NTEC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and an actual bonding instrument for reclamation actions at Navajo Mine prior to OSM's approval of this TAS. The Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument must identify OSM as the beneficiary. NTEC must complete this action to comply with 30 CFR 774.17. A draft submittal of the agreement must be sent to OSM to verify correctness, before to the watermarked original is sent to NTEC for signature.** OSM conditions approval of this TAS upon NTEC providing a Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument as described above in order to comply with 30 CFR 774.17(d)(2.)

OSM notes that NTEC must provide official documentation identifying which members of the Management Committee may sign and execute the Surety Bond or Collateral Bond and Indemnity Agreement and the bonding instrument. OSM conditionally approves compliance of this Application, conditioned upon compliance with requirements to post a bond in accordance with 30 CFR 774.17.

NTEC must also contract for liability insurance under its operating name and this liability insurance must be approved and be in place prior to approval of this Application in order to comply with 30 CFR 778.18. OSM conditions approval of this TAS upon NTEC securing liability insurance in its name upon completion of the change-of-name action.

In accordance with 30 CFR 773.12, OSM finds that Navajo Transitional Energy Company is conditionally eligible to receive SMCRA Permit NM-0003F and conduct surface coal mining at Navajo Mine in accordance with the provisions stated in SMCRA Permit NM-0003F.

NTEC has also revised materials updating SMCRA Permit NM-0003F Section 1: Identification of Interests for MMCo in Section D. The revised information identifies MMCo. as a separate company that will act as the contract-mine operator at Navajo Mine. NTEC has provided the violation history for MMCo. and the companies in its corporate structure. OSM finds this TAS Application to comply with 30 CFR 778.14. NTEC explicitly states an Exemption to Presumption is not claimed for MMCo. MMCo. is regulated as an Owner and/or Controller by virtue of not being Exempt from Presumption until an Exemption to Presumption is claimed and approved. OSM finds this TAS to comply with 30 CFR 778.11.

NTEC has also provided information in Appendix 1-A-B: Operator Ownership and Control for MMCo as the contract-mine operator including MMCo's legal status, address, telephone number and Federal Identification Number. NTEC has provided the operator corporate organizational structure for MMCo in Appendix 1-A-B. NTEC has provided a list of active (and resigned) Owners and Controllers for MMCo and for all of the companies in the MMCo. corporate structure. OSM finds that this Application complies with 30 CFR 778.11.

OSM has verified that the list of MMCo. Owners and Controllers provided in Appendix 1-A-B is accurate with the information reported in AVS as of the date of this report. OSM has reviewed AVS and found that none of the Owners or Controllers identified for MMCo. and shown in Section D have any outstanding violations as of the date of this report. OSM finds this Application to comply with 30 CFR 778.12 and 30 CFR 778.14.

NTEC has provided Appendix 1-B-B to show the violation history for MMCo through its predecessor BNCC. All violations shown in Appendix 1-B-B have been abated. OSM has verified in AVS that there are no outstanding violations associated with BNCC, NMCC Inc, NMCC LLC or MMCo. OSM has verified in the AVS that neither MMCo. nor any of the companies in its current corporate structure have

any outstanding violations. OSM finds that the information provided for MMco. in Section D Appendix 1-B-B complies with 30 CFR 778.14.

NTEC has provided Appendix 1-B-C to show the violation history for MMco's sister BHP Billiton New Mexico Coal Company's San Juan Coal Company-La Plata Mine. There are no violations shown in Appendix 1-B-C for San Juan Coal Company-La Plata Mine. OSM has verified in AVS that there are no outstanding violations for San Juan Coal Company-La Plata Mine. OSM finds that the information provided for MMco. in Section D Appendix 1-B-C complies with 30 CFR 778.14.

NTEC has provided Appendix 1-B-D to show the violation history for MMco's sister BHP Billiton New Mexico Coal Company's San Juan Coal Company-San Juan Mine. All violations shown in Appendix 1-B-D have been abated. OSM has verified in AVS that there are no outstanding violations for San Juan Coal Company-San Juan Mine. OSM finds that the information provided for San Juan Coal Company-San Juan Mine in Section D Appendix 1-B-D complies with 30 CFR 778.14.

OSM notes that MMco. would be employed as the contract-mine operator by NMCC LLC immediately after the stock sale, prior to NMCC LLC's complete merger with NTEC. OSM notes that the information provided for MMco, including the information shown in the proposed revision to SMCRA Permit NM-0003F Section 1: Identification of Interests should actually be presented in Section C of this TAS Application rather than in Section D of this TAS Application. OSM finds that NMCC LLC/NTEC must revise the Application materials shown in Section C and in Section D such that the permit revision material to SMCRA Permit NM-0003F Section 1: Identification of Interests for MMco is submitted for review and approval as part of the stock sale described in Section C of this TAS. **MMCo is an existing company and would be the contract-mine operator at Navajo Mine immediately after the stock sale, through and following the NTEC merger.** OSM conditionally approves this TAS Application in accordance with 30 CFR 777.11 and 30 CFR 778.11, conditioned upon NMCC LLC/NTEC providing the applicant information supplied in to SMCRA Permit NM-0003F Section 1: Identification of Interests in Section C of this TAS, not in Section D. NMCC LLC/NTEC must complete this action to fully comply with 30 CFR 777.11 and 30 CFR 778.11.

In conducting its evaluation of this TAS Application, OSM notes that the approval conditions identified in Section C are identical to those identified in Section D. If the TAS process is completed through the merger action described in Section D and before Section C comments are addressed, and if NTEC satisfactorily addresses all of the Application approval conditions described in Section D according to the regulations identified, then OSM would also consider the approval conditions identified for Section C to be satisfactorily addressed as well.

(b) Evaluation of compliance with the performance standards (30 CFR Parts 800, 816 and 817):

There are no evaluations of this TAS under performance standards of 30 CFR 800, 816 or 817. However, SMCRA permit NM-0003F remains in effect after the TAS including the permit conditions regulated under performance standards of 30 CFR 800, 816 and 817.

(3) On the basis of the preceding evaluation, I conclude that:

This part of the application/document conditionally complies with the requirements of the applicable regulations.

OSM conditions approval of this Application based upon the following:

- NMCC LLC/NTEC must revise the Application materials shown in Section C and in Section D such that the permit revision material to SMCRA Permit NM-0003F Section 1: Identification of Interests for MMco. is submitted for review and approval as part of the stock sale described in Section C of this TAS to comply with 30 CFR 777.11 and 30 CFR 778.11.
- NTEC must contract for liability insurance to comply with 30 CFR 778.18.
- NTEC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and an actual bonding instrument for reclamation actions at Navajo to comply with 30 CFR 774.17.
- OSM notes that NTEC and NMCC LLC must provide official documentation identifying which members of the Management Committee may sign and execute the Surety Bond or Collateral Bond and Indemnity Agreement and the bonding instrument. To comply with 30 CFR 774.17.
- NTEC must provide its Federal Identification Number to comply with 30 CFR 778.11.
- MMco should provide a new Statement of Verification that only certifies the accuracy of the information specific to MMco to comply with 30 CFR 777.11(c) and 30 CFR 778.9.
- NMCC LLC must contract for liability insurance under its operating name and this liability to comply with 30 CFR 778.18.
- NMCC LLC must have in place an approved Surety Bond or Collateral Bond and Indemnity Agreement and bonding instrument to cover projected reclamation costs at Navajo Mine to comply with 30 CFR 774.17.
- NMCC LLC must provide the telephone numbers and Federal Identification Numbers for NMCC LLC and NTEC to comply with 30 CFR 778.11.

The above evaluation concerns a proposed revision of the reclamation plan that affects reclamation costs. Mine team leader/mine permit coordinator, please make the team bond cost estimator aware of this revision so that he or she can determine whether the bond amount needs to be adjusted.

6. PRIMARY AND PEER REVIEWERS.

A. Reviewer:

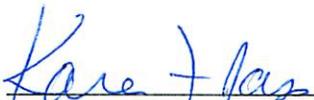


Matthew Hulbert, Civil Engineer
Program Support Division

10/31/13

Date

B. Co-reviewer:



Karen Jass, Mining Engineer
Program Support Division

10/31/13

Date