

## TECHNICAL EVALUATION

1. **COMPANY:** Navajo Transitional Energy Company and  
BHP Billiton Mine Management Company

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

3. **TRACKING SYSTEM INFORMATION.**

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

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

C. **Administrative Records Management System (ARMS):**

14/01/07-01 (Surety Bond);  
14/01/09-01 (Resolution);  
14/01/13-14 (Certificate of Liability Insurance)  
14/01/21-07 (Updated Violation History)  
14/01/30-02 (Certificate of Merger)  
14/01/30-03 (Affidavit of Company Council)

D. **Letterhead date of submittal:** December 31, 2013 (Surety bond);  
January 8, 2014 (Resolution);  
January 9, 2014 (Certificate of Liability Insurance)  
January 16, 2014 (Updated Violation History)  
January 27, 2014 (Certificate of Merger)  
January 28, 2014 (Affidavit of Company Council)

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

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

5. **EVALUATION.**

A. **Part of application/document reviewed:**

Response to Regulatory Comments on Transfer, Assignment, or Sale Application for Surface Coal Mining Actions at Navajo Mine.

(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 778.11	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
30 CFR 800.5	Definition of Surety Bond
30 CFR 800.16	General Terms and Conditions of Bond
30 CFR 800.20	Surety Bonds
30 CFR 800.60	Terms and conditions for liability insurance

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

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

OSM processed and conditionally approved four separate permit revision applications to support the Transfer, Assignment, or Sale of surface coal mining permit NM-0003F for Navajo Mine to Navajo Transitional Energy Company (NTEC.) OSM identified individual approval conditions for each permit revision application; however, OSM noted that successful completion of the merger of Navajo Mine Coal Company LLC (NMCC LLC) with NTEC would satisfy all approval conditions identified in each of the separate permit revision applications and would result in OSM’s approval of Transfer, Assignment or Sale of SMCRA Permit NM-0003F to NTEC.

OSM conditionally approved NTEC’s Transfer, Assignment or Sale (TAS) application, conditional upon NTEC providing its Employer Identification Number (EIN) as issued by the Internal Revenue Service. NTEC has provided its EIN, and OSM considers its approval condition requiring submission of the EIN to be satisfied in accordance with 30 CFR 778.11.

OSM conditionally approved NTEC’s TAS application, conditional upon NTEC providing proof of Liability Insurance. BHP Billiton Mine Management Company (MMco) has submitted a Certificate of Liability Insurance for contract-mining operations at Navajo Mine. MMco has been contracted to conduct surface coal mining operations by NTEC and NMCC LLC at Navajo Mine. MMco’s Certificate of Liability Insurance states that both NTEC and NMCC LLC are “Additional Insureds” under this policy. OSM considers this Certificate of Liability Insurance to be compliant with 30 CFR 778.18 and to satisfy the approval condition identified in its October 31, 2013 review of NMCC LLC’s and NTEC’s TAS application with respect to Liability Insurance Requirements of 30 CFR 778.18.

OSM conditionally approved NTEC’s TAS application, conditional upon MMco providing a certification of accuracy and completeness that only certified the accuracy of the information specific to MMco. MMco provided a Certification of Completeness and Accuracy specific to its own Ownership and Control information. OSM finds MMco's Certification of Completeness and Accuracy to satisfy the approval condition and to be compliant with 30 CFR 777.11(c) and 30 CFR 778.9.

OSM conditionally approved NTEC’s TAS application, conditional upon NTEC revising permit language in SMCRA Permit NM-0003F Section 1: Identification of Interests. In its initial review OSM found that information showing MMco as the contract-mining operator should actually be presented in Section C of this TAS Application rather than in Section D of this TAS Application. OSM made this finding as a worst-case approval condition, worst-case being the event that NMCC LLC did not merge with NTEC. However, OSM received official documentation of completion of the merger from NTEC demonstrating the merger of NMCC LLC with NTEC, with NTEC being the survivor. By virtue of the merger, NTEC is the holder of SMCRA Permit NM-0003F, with NTEC directly employing MMco as a contract-mining operator. OSM finds that, by virtue of the successful merger of NMCC LLC with NTEC, the information presented in SMCRA Permit NM-0003F Section 1: Identification of Interests showing MMco as contract-mining operator (Section D of the TAS Application) satisfies OSM’s conditions for approval of the TAS. OSM finds that the conditions for approval of the TAS requiring information describing the

contract-mining operator have been met and finds the TAS application to meet the requirements of 30 CFR 777.11 and 30 CFR 778.11.

NTEC has submitted Surety Bond No. 09143016 effective December 30, 2013 to cover the cost of completion of all reclamation and abatement actions as required by SMCRA and conditions of SMCRA Permit NM-0003F. Surety Bond No. 09143016 has been executed by the Permittee: NTEC, as Principal, and by the Surety: Zurich American Insurance Company (Zurich, NAIC 16535) who is licensed to operate in New Mexico. Surety Bond No. 09143016 identifies SMCRA Permit NM-0003F and the lands in the legal description (Appendix A) as being covered by this bond for the completion of reclamation and abatement work associated with surface coal mining operations. OSM notes that Surety Bond No. 09143016 replaces the Letter of Credit procured by the former permittee BHP written for the same amount.

According to the U.S. Department of Treasury's Circular 570, Zurich American Insurance Company may write a single bond up to \$693 million. Zurich American Insurance Company provides property, marine and transportation, casualty, surety and vehicle insurance and is based in Schaumburg, IL.

Surety Bond No. 09143016 was signed by Mr. Steve Gundersen, Chair of NTEC Management Committee (the Principal) on December 27, 2013 and was notarized on the same date. NTEC submitted an original resolution authorizing Mr. Gundersen "to sign and execute the surety bond and related bonding instruments for transfer of the SMCRA permit of the Navajo Mine." This resolution was dated November 26, 2013 and signed by Timothy H. McLaughlin, Vice Chair of the NTEC Management Committee.

Surety Bond No. 09143016 includes a document extract from the Zurich American Insurance Company bylaws citing the authorization of a company designated attorney-in-fact to execute bonds on behalf of Zurich. This document extract is dated December 24, 2013 and signed by Geoffrey Delisio, Vice President of Zurich American Insurance Company. Also accompanying Surety Bond No. 09143016 is the power-of-attorney appointing Mr. Poplawski as Attorney-in-Fact authorized to fully execute and bind on behalf of Zurich, effective June 17, 2013. This was signed by Mr. Thomas O. McClellan, Vice President and Erick D. Barnes, Assistant Secretary with Zurich American Insurance Company and notarized on June 17, 2013 by Maria D. Adamski.

All signatures, stamps and seals in the surety bond document and all attachments have been notarized as required. OSM reviewed the legal description of areas to be affected by surface coal mining operations described on Surety Bond No. 09143016 and found it to be accurate with the legal description shown in SMCRA Permit NM-0003F.

OSM conditionally approved NTEC's TAS application, conditioned upon NTEC providing a Surety Bond that meets the requirements of 30 CFR 774.17(d)(2) for transfer of SMCRA Permit NM-0003F from BHP Navajo Coal Company to Navajo Transitional Energy Company, LLC. OSM finds that the condition for approval of the TAS requiring a performance bond have been satisfied and that Surety Bond No. 09143016 meets the requirements of 30 CFR 774.17(d)(2).

NTEC did not report a history of Ownership or Control of coal mining operations or a violation history. In its initial review and conditional approval of the TAS, OSM confirmed in the Applicant Violator System (AVS) that NTEC did not have previous Ownership or Control of coal mining nor did it have a violation history as of the date of the conditional approval. Additionally, OSM verified that none of the Owners and Controllers proposed for the NTEC Management Committee have Ownership and Control history over a surface coal mining operation with unabated violations. Prior to its final approval of all TAS conditions, OSM reconfirmed the accuracy of the list of Owners and Controllers proposed for NTEC. OSM reconfirmed in AVS that NTEC does not have a history of Ownership or Control of coal

mining operations or a violation history as of the date of this evaluation. OSM also reconfirmed in AVS that none of the Owners and Controllers proposed for the NTEC Management Committee have Ownership and Control over a surface coal mining operation with unabated violations. OSM finds that the information reported in the TAS complies with the requirements of 30 CFR 778.12 and 30 CFR 778.14.

NTEC's contract-mining operator MMCo submitted updates to 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 and the violation history is current as of January 16, 2014. 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 Applicant Violator System (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's contract-mining operator MMCo submitted updates to 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 and the violation history is current as of January 16, 2014. 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 NTEC did not update Appendix 1-B-C for MMCo's sister company BHP Billiton New Mexico Coal Company's San Juan Coal Company-La Plata Mine. OSM verified in AVS that there are no outstanding violations for San Juan Coal Company-La Plata Mine. OSM finds that the original information provided for San Juan Coal Company-La Plata Mine in Section D Appendix 1-B-C complies with 30 CFR 778.14.

NTEC provided a list of active (and resigned) Owners and Controllers for MMCo and for all of the companies in the MMCo corporate structure as part of its initial submittal. OSM found that the list of Owners and Controllers associated with MMCo and its parent companies was accurate with the information reported in the AVS. OSM reviewed AVS and found that none of the Owners or Controllers identified for MMCo and its parent companies were associated with a surface coal mining operation with unabated violations. Prior to its final approval of all TAS conditions, OSM reconfirmed the accuracy of the list of Owners and Controllers for MMCo and its parent companies in AVS. OSM reconfirmed that MMCo and its parent companies do not have Ownership or Control of coal mining operations with unabated violations as of the date of this evaluation. OSM also reconfirmed in AVS that none of the Owners and Controllers associated with MMCo have Ownership and Control over a surface coal mining operation with unabated violations. OSM finds that the information reported for MMCO and its parent companies complies with the requirements of 30 CFR 778.11, 30 CFR 778.12 and 30 CFR 778.14.

OSM finds that Navajo Transitional Energy Company has satisfied all conditions for approval of the TAS of SMCRA Permit NM-0003F. In accordance with 30 CFR 773.12, OSM finds that Navajo Transitional Energy Company is eligible to receive SMCRA Permit NM-0003F and conduct surface coal mining at Navajo Mine in accordance with the provisions of SMCRA Permit NM-0003F.

OSM finds that Navajo Transitional Energy Company and its contract-mining operator: BHP Billiton Mine Management Company have satisfied all conditions for approval of employment of MMCo as a contract-mining operator at Navajo Mine under terms of SMCRA Permit NM-0003F. In accordance with 30 CFR 773.12, OSM finds that BHP Billiton Mine Management Company is eligible to act as a contract-mining operator at Navajo Mine contracted by the permittee NTEC in accordance with the provisions of SMCRA Permit NM-0003F.

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

OSM has reviewed MMco's December 31, 2013, submittal of a Certificate of Public Liability Insurance for surface coal mining actions at Navajo Mine. OSM has found that Willis of Texas, the broker selling this coverage is a licensed seller of insurance in New Mexico and that the two Insurers: National Union Fire, Commerce and Industry Insurance, and New Hampshire Insurance are authorized to offer insurance products in New Mexico. MMco's Liability Insurance is valid from December 30, 2013 to December 30, 2014.

OSM requires that surface coal mine operators carry a minimum of \$300,000 for individual occurrences and \$500,000 for aggregate occurrences. MMco's policy for \$5,000,000 individual and \$10,000,000 aggregate occurrences exceeds the minimum limits set by the Federal regulations under 30 CFR 800.60(a).

Additionally, Certificates of Liability Insurance for surface coal mining operations must include a statement that the insurance policy provides for coverage for bodily injury and property damage as a result of mining operations and reclamation including damages resulting from the use of explosives. MMco's Certificate contains this language and is compliant with 30 CFR 800.60(a).

MMco has contracted this policy as an "Occurrence" policy. This type of coverage allows for claims to be made against this policy after the expiration of the policy term and thus no retroactive date is needed. OSM finds the certificate to be compliant with 30 CFR 800.60(b).

OSM notes that the Certificate of Liability Insurance has been procured by MMco to cover its actions as a contract-mining operator. MMco has elected to add NTEC and NMCC LLC as "Additional Insureds" on this policy. To this end, the Liability Insurance policy procured by MMco would also cover claims made against NTEC and NMCC LLC on Navajo Mine. OSM notes that its regulations require the Surface Coal Mine Operator (NTEC in this case) to produce Liability Insurance from an authorized carrier. OSM's regulations do not explicitly require the Permittee to be the purchaser of the insurance. OSM will accept MMco's Certificate of Liability Insurance and consider it to be valid liability coverage for NTEC and NMCC LLC on Navajo Mine so long as NTEC and NMCC LLC are named as "Additional Insureds." **However, if MMco cancels its Liability Insurance policy or exits its agreement with NTEC to act as the contract-mining operator at Navajo Mine, then NTEC and NMCC LLC must immediately procure Liability Insurance from an authorized producer in order to remain in operation. NTEC will be required to cease mining operations at Navajo Mine until it obtains its own Liability Insurance.** OSM considers the Certificate of Liability Insurance provided by MMco to comply with the requirements of 30 CFR 800.60(a).

Regulation 30 CFR 800.60(c) requires issuing insurance brokers to include a Rider to the Certificate stating that the insurer will provide notification of any impending substantive changes, cancellation, or failure to renew the liability insurance policy. This Certificate contains a Rider explicitly stating that the Insurer will provide OSM with a 30-day notice of substantive change or cancellation, or failure to renew the policy. OSM finds that the Certificate is compliant with 30 CFR 800.60(c).

NTEC submitted Surety Bond No. 09143016 using OSM's approved template for bond forms. This bond is in full effect for five (5) years covering surface coal mining of lands permitted under SMCRA Permit NM-0003F, including all earlier issued NM-0003 permits for the Navajo Mine, until the Principal

completes all reclamation and abatements required by SMCRA Permit NM-0003F and under SMCRA regulations. Surety Bond No. 09143016 has been written for the amount of \$163,000,000.00 USD and is payable to the United States Office of Surface Mining Reclamation and Enforcement. The amount of \$163,000,000.00 was determined by OSM and reflects the cost of reclamation and abatements at Navajo Mine. OSM finds that Surety Bond No. 09143016 meets the requirements of 30 CFR 800.16.

Surety Bond No. 09143016 is non-cancellable and the Surety will provide prompt notice to OSM and the Principal of any notice of insolvency or bankruptcy of the Surety or if it becomes unable to fulfill its obligation for the bond. The Surety is licensed to offer indemnity products in the State of New Mexico. OSM finds that Surety Bond No. 09143016 meets the requirements of 30 CFR 800.20.

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

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

**6. PRIMARY AND PEER REVIEWERS.**

**A. Primary reviewer:**

  
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Matthew Hulbert  
Program Support Division

2/4/14  
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[Date]

  
\_\_\_\_\_  
Karen Jass  
Program Support Division

2/4/14  
\_\_\_\_\_  
[Date]