

State of New Mexico
Energy, Minerals and Natural Resources Department

Michelle Lujan Grisham
Governor

Melanie A. Kenderdine
Cabinet Secretary

Ben Shelton
Acting Deputy Secretary

Albert Chang, Director
Mining and Minerals Division



January 31, 2025

Darin Klewsaat, Mining Manager
Miocene, LLC
100 Fillmore Street, Suite 350
Denver, CO 80206

RE: Agency Review Comments and Request for Additional Information, Brie 1 Mine, McKinley County, New Mexico, Permit Tracking No. MK039MN – Modification 24-1

Dear Mr. Klewsaat,

The New Mexico Mining and Minerals Division (“MMD”) has reviewed the Permit Application Package for Modification 24-1 (“PAP”) submitted by Miocene, LLC, for the Brie 1 Mine, Section 7 Permit Area, located in McKinley County, New Mexico. In accordance with 19.10.3.302.G NMAC, MMD requested comments on the PAP from cooperating state and federal agencies.

Enclosed with this letter are the reviewing agency comment letters submitted by the following state agencies: the New Mexico Environment Department (“NMED”), the New Mexico Department of Game and Fish (“NMDG&F”), the New Mexico Department of Cultural Affairs - Historic Preservation Division (“NMDCA/HPD”), and the New Mexico Forestry Division (“Forestry”). Additionally, please find general comments from MMD based on review of this application.

General Comments:

MMD has reviewed the PAP and has found it to be *technically complete* contingent on the Permittee’s response to the following comments by reviewing agencies. Please respond to any comments or recommendations in writing within 30 days.

NMED Surface Water Quality Bureau Comments:

Please review the comment letter received from NMED Surface Water Quality Bureau and respond to any concerns.

NMED Air Quality Bureau Comments:

Please review the comment letter received from NMED Air Quality Bureau and respond to any concerns.

NMDG&F Comments:

Please review the comment letter received from NMDG&F and respond to all concerns and recommendations raised.

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NMDCA/HPD Comments:

Please review the comment letter received from NMDCA/HPD and respond to any concerns.

Forestry Comments:

Please review the comment memo received from Forestry and respond to any concerns.

If you have any questions, please contact me at (505) 470-5354, or via email at kevin.barnes@emnrn.dnm.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Barnes', with a long horizontal flourish extending to the right.

Kevin Barnes, Permit Lead
Mining Act Reclamation Program (“MARP”)

Enclosures: Agency Letters

Cc w/o enclosures: David “DJ” Ennis, Program Manager, MARP/MMD
File (MK039MN)



Electronic Transmission

MEMORANDUM

Date: November 22, 2024

To: David Ennis, Program Manager, Mining Act Reclamation Program

Through: Amber Rheubottom, Acting Mining Act Coordinator, Mining Environmental Compliance Section (MECS)

From: Eliza Martinez & Alan Klatt, Surface Water Quality Bureau (SWQB)
Sufi Mustafa, Air Quality Bureau (AQB)
Dave Hays (MECS)

Subject: **New Mexico Environment Department (NMED) Comments, Brie 1 Mine, Modification 24-1, McKinley County, New Mexico, Mining Act Permit No. MK039MN**

The New Mexico Environment Department (NMED) received correspondence from the Mining and Minerals Division (MMD) on October 4, 2024, requesting that NMED review and provide comments on the above-referenced MMD permitting action. Pursuant to the Mining Act, there is a minimal impact mine project. MMD requested comments on the application within 30 days of receipt of the request for comments. NMED requested an extension to that timeline.

Background

Miocene LLC (Applicant) is requesting to expand the Brie 1 permit area. Total disturbance to the site will be increased.

Air Quality Bureau

The AQB comments are attached.

Surface Water Quality Bureau

The SWQB comments are attached.

Mr. David Ennis
Brie 1 Mine
November 22, 2024
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Mining Environmental Compliance Section

MECS does not have any comments.

NMED Summary Comment

NMED has determined the proposed activities will be protective of the environment if done in accordance with the approved permits and pollution controls as presented.

If you have any questions, please contact Amber Rheubottom at (505) 660-2379.

cc: Joseph Fox, Program Manager, NMED-MECS
Shelly Lemon, Bureau Chief, NMED-SWQB
Cindy Hollenberg, Acting Bureau Chief, NMED-AQB
Kevin Barnes, EMNRD-MARP



Environment Department Internal Memorandum

DATE: November 1, 2024

TO: Amber Rheubottom, Mining Environmental Compliance Section, Ground Water Quality Bureau, New Mexico Environment Department

FROM: Eliza Martinez, Watershed Protection Section, Surface Water Quality Bureau, New Mexico Environment Department

SUBJECT: **Request for Review and Comments, Brie 1 Mine, McKinley County, New Mexico Mining Act Permit No. MK039MN**

On October 9, 2024, the Surface Water Quality Bureau (SWQB) received a request for comments regarding the Subject application submitted by Miocene, LLC. The application for permit modification 24-1 requests the expansion of the Brie 1 permit area to include the NE $\frac{1}{4}$ of Section 3, Township 19N, Range 9W. SWQB has prepared the following comments pursuant to 19.10.3.302.G New Mexico Administrative Code (NMAC).

There is an unnamed ephemeral drainage within the proposed disturbance area. All unnamed tributaries that meet the definition of "surface water(s) of the state" at 20.6.4.7 NMAC are subject to section 20.6.4.98 Standards for Interstate and Intrastate Surface Waters, New Mexico Administrative Code (NMAC) with designated uses that include livestock watering, wildlife habitat, limited aquatic life, and secondary contact. Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property (20.6.4.13 NMAC). Mining activities that have the potential to contribute pollutants to waters of the states must be implemented with appropriate and reasonable Best Management Practices (BMPs) in order to prevent impacts to water quality. Any discharge of a water containment, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, must be reported to the Environment Department within twenty-four hours (20.6.2.1203 NMAC).

To protect and maintain surface water quality standards, SWQB WPS recommends the following:

- Appropriate spill clean-up materials such as absorbent pads must be available on-site at all times during road construction, site preparations, and drilling activities to address potential spills. Report all spills immediately to the NMED as required by the New Mexico Water Quality Control Commission Regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535. For emergencies only, call 505-817-9329 twenty-four hours a day (New Mexico Department of Public Safety). For spills that reach a WOTUS and or surface waters of the state (SWOTS), including ephemeral streams, also report via email at SWQ.reporting@env.nm.gov.
- All mobile equipment used in the project area must be pressure washed and/or steam cleaned off-site before the start of the project to facilitate noxious weed management and inspected daily for leaks to ensure surface waters are protected from contaminants. Keep a written log of inspections and maintenance activities. Utilize a secondary containment system for fuel, oil, hydraulic fluid, lubricants, and other petrochemicals to prevent spills.

- The use of overland travel and site selection, design, and construction of well pads, reserve pits, and roads should comply with the guidelines described in the Bureau of Land Management “Gold Book”¹. Suspend construction, maintenance activities, or off-road travel during periods when the soil is too wet to adequately support heavy equipment without causing surface disturbance. The operator should commit to repair any surface disturbance they caused.
- Roads, pads, and other facility structures should be set back a minimum of 100 feet from any water courses, including springs, wetlands, and arroyos.
- Suspend construction, maintenance activities, or off-road travel during periods when the soil is too wet to adequately support heavy equipment without causing surface disturbance. The operator should commit to repair any surface disturbance they caused.
- Implement Best Management Practices (BMPs) to prevent or mitigate direct impacts to watercourses, including springs, wetlands, and arroyos. For temporary surface disturbances during exploration and reclamation activities, implement erosion control measures that are designed, constructed, and maintained using professionally recognized standards (e.g., Natural Conservation Service standards or the Bureau of Land Management “Gold Book”).
- Ensure that stormwater entering the project area (“run-on”) is diverted from soil storage piles and places pile uphill of excavations when possible.
- Design and construct containment systems that are capable of retaining stormwater runoff from the mining area during precipitation events. The containment system should be sufficient in size to contain stormwater generated within its catchment area from 100-year, 3- day storm event.
- The request to include additional area in the permit area may require permitting through U.S. Environmental Protection Agency (USEPA). The USEPA administers the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Federal Clean Water Act (CWA) in the State of New Mexico. The USEPA may require an NPDES permit for operations that discharge to a Water of the U.S. (WOTUS). Coverage under the NPDES 2021 Multi Sector General Permit (MSGP) is required for storm water discharges to waters of the US from industrial operations, currently the Brie I mining operation does not have coverage under the 2021 MSGP. The described project may be required to obtain MSGP coverage under C (chemical and allied products manufacturing and refining) and/or Sector J (non-metallic mineral and dressing) of the NPDES 2021 MSGP. The applicant should update their Stormwater Pollution Prevention Plan, Sediment Control Plan, or other control plans based on the reclamation activities. More information on USEPA’s NPDES Stormwater Program is available at on-line at <https://www.epa.gov/npdes/npdes-stormwater-program>. The point of contact with USEPA Region 6 for MSGP related questions is Nasim Jahan who can be contacted at 214-665-7522 or jahan.nasim@epa.gov.

For questions related to these comments, please contact Eliza Martinez, SWQB, at 505-819-8099.

¹ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book>



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

MEMORANDUM

DATE: October 27, 2024

TO: Amber Rheubottom, Acting Mining Act Team Leader, Mining Environmental Compliance Section, NMED

FROM: Sufi Mustafa, Staff Manager, Air Dispersion Modeling and Emission Inventory Section, Air Quality Bureau.

Request for Comments on Modification 24-1 Application for Brie 1, Expansion of Permit Area into NE ¼ of Section 3, McKinley County, New Mexico, Permit No. MK039MN:

The New Mexico Air Quality Bureau (AQB) has completed its review of the above-mentioned mining project. Pursuant to the New Mexico Mining Act Rules, the AQB provides the following comments.

Details

Miocene requested the inclusion of the NE ¼ section 3, township 19N, Range 6 W, within the Brie 1 permit area. These areas are requested for addition to the permit in anticipation of future production.

Air Quality Requirements

The New Mexico Mining Act of 1993 states that "Nothing in the New Mexico Mining Act shall supersede current or future requirements and standards of any other applicable federal or state law." Thus, the applicant is expected to comply with all requirements of federal and state laws pertaining to air quality.

20.2.15 NMAC, *Pumice, Mica and Perlite Processing*. Including 20.2.15.110 NMAC, *Other*

Particulate Control: "The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow any material to be handled, transported, stored or disposed of or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne."

Request for Comments on Modification 24-1 Application for Brie 1, Expansion of Permit Area into NE ¼ of Section 3, McKinley County, New Mexico, Permit No. MK039MN

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Paragraph (1) of Subsection A of 20.2.72.200 NMAC, *Application for Construction, Modification, NSPS, and NESHAP - Permits and Revisions*, states that air quality permits must be obtained by:

“Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review.”

Further, Paragraph (3) of this subsection states that air quality permits must be obtained by:

“Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC, *New Source Performance Standards*, 20.2.78 NMAC, *Emission Standards for Hazardous Air Pollutants*, or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant.”

Also, Paragraph (1) of Subsection A of 20.2.73.200 NMAC, *Notice of Intent*, states that:

“Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a notice of intent with the department.”

The above is not intended to be an exhaustive list of all requirements that could apply. The applicant should be aware that this evaluation does not supersede the requirements of any current federal or state air quality requirement.

Fugitive Dust

Air emissions from this project should be evaluated to determine if an air quality permit is required pursuant to 20.2.72.200.A NMAC (e.g. 10 lb/hour or 25 TPY). Fugitive dust is a common problem at mining sites and this project will temporarily impact air quality as a result of these emissions. However, with the appropriate dust control measures in place, the increased levels should be minimal. Disturbed surface areas, within and adjacent to the project area, should be reclaimed to avoid long-term problems with erosion and fugitive dust. EPA’s *Compilation of Air Pollutant Emission Factors, AP-42, “Miscellaneous Sources”* lists a variety of

Request for Comments on Modification 24-1 Application for Brie 1, Expansion of Permit Area into NE ¼ of Section 3, McKinley County, New Mexico, Permit No. MK039MN

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control strategies that can be included in a comprehensive facility dust control plan. A few possible control strategies are listed below:

Paved roads: covering of loads in trucks to eliminate truck spillage, paving of access areas to sites, vacuum sweeping, water flushing, and broom sweeping and flushing.

Material handling: wind speed reduction and wet suppression, including watering and application of surfactants (wet suppression should not confound track out problems).

Bulldozing: wet suppression of materials to “optimum moisture” for compaction.

Scraping: wet suppression of scraper travel routes.

Storage piles: enclosure or covering of piles, application of surfactants.

Miscellaneous fugitive dust sources: watering, application of surfactants or reduction of surface wind speed with windbreaks or source enclosures.

Recommendation

The Air Quality Bureau does not have any objection to this project.

This written evaluation does not supersede the applicability of any forthcoming state or federal regulations.

If you have any questions, please contact me at 505 629 6186.

GOVERNOR
Michelle Lujan Grisham



DIRECTOR AND SECRETARY
TO THE COMMISSION
Michael B. Sloane

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

One Wildlife Way, Santa Fe, NM 87507

Tel: (505) 476-8000 | Fax: (505) 476-8180

For information call: (888) 248-6866

<https://wildlife.dgf.nm.gov>

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Silver City

21 November 2024

Kevin Barnes, Permit Lead
Mining Act Reclamation Program
Mining and Minerals Division (MMD)
1220 South St. Francis Drive
Santa Fe, NM 87505

**RE: Modification 24-1, Brie I Mine, Expansion of Permit Area into NE ¼ of Section 3
McKinley County, New Mexico, Permit No.MK039MN; NMDGF No. NMERT-3888.**

Dear Mr. Barnes,

The New Mexico Department of Game and Fish (Department) has reviewed the above referenced project. Miocene, LLC (Miocene) is requesting to expand the Brie I mine permit area to include the NE ¼ of Section 3, Township 19N, Range 9W. Staff from the Department, New Mexico Environment Department, MMD, and the Operator conducted a site inspection on 20 November 2024.

The expansion of the permit area is being requested to allow for the construction of a new road to access a mining area that is located within the existing mine permit area. At this time, construction of this new road is the only activity proposed to occur within the requested expansion of the mine permit area. The length of the proposed new road will be approximately 2,590 feet and it will be constructed through big sagebrush (*Artemisia tridentata*)/grassland habitat. Prior to initiating road construction, the Department recommends that Miocene survey the grassland areas along the proposed route for Gunnison's prairie dog (*Cynomys gunnisoni*) colonies. Gunnison's prairie dogs are designated as a New Mexico Species of Greatest Conservation Need, and their colonies provide important habitat for other grassland wildlife. If any prairie dog colonies are documented, road construction activities should avoid disturbing the colony by establishing a 100-foot buffer zone from the outermost burrows.

Thank you for the opportunity to review and comment on the proposed permit modification. If you have any questions, please contact Ron Kellermueller, Mining and Energy Habitat Specialist, at (505) 270-6612 or ronald.kellermueller@dgf.nm.gov.

Sincerely,

Virginia Seamster, Ph.D.
Assistant Chief, Ecological and Environmental Planning Section
cc: USFWS NMES Field Office



Michelle Lujan Grisham,
Governor

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

BATAAN MEMORIAL BUILDING
407 GALISTEO STREET, SUITE 236
SANTA FE, NEW MEXICO 87501
PHONE (505) 827-6320 NM.SHPO@dca.nm.gov

November 4, 2024

Mr. Kevin Barnes
Energy, Minerals and Natural Resources Department
Mining and Minerals Division
Minig Act Reclamation Program
1220 South St. Francis Drive
Santa Fe, NM 87505
Alaina.Osimowicz@emnrd.nm.gov

Via Email Only

RE: HPD Log #123698—

Dear Mr. Barnes:

Thank you for *submitting Request for Comments on Modification 24-1 Application for Brie 1, Expansion of Permit Area into NE ¼ of Section 3, McKinley County, New Mexico, Permit No. MK039MN* to the New Mexico State Historic Preservation Officer (SHPO) for comments. Based on the information provided, it appears the area in question (NE ¼ of Section 3, Township 19N, Range 6W) is on lands belonging to or administered by the Navajo Nation. The SHPO does not comment on activities that take place on the Navajo Nation. Please contact Mr. Richard M. Begay, at the Navajo Nation Historic Preservation Department. He can be reached via post at PO Box 4950 Window Rock, AZ 86515; or via phone: (928) 871-7198, et. 6540; or via email: r.begay@navajo-nsn.gov.

If you have any questions or concerns, please contact me at cortney.wands@dca.nm.gov.

Sincerely,

Cortney Wands

Cortney Wands
Archaeological Reviewer