

# NPDES PERMIT NO. NM0000205

## STATEMENT OF BASIS

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES.

Applicant: Chevron Mining Inc.  
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Issuing Office: U.S. Environmental Protection Agency  
Region 6  
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Permit Action: Proposed re-issuance of the current permit issued December 30, 2002,  
with an effective date of February 31, 2003, and an expiration date of  
January 31, 2008.

Date Prepared: August 12, 2008

40 CFR CITATION: Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed at Title 40, Code of Federal Regulations, revised as of July 3, 2008.

CERTIFICATION - The permit is in the process of certification by the State agency following regulations promulgated at 40 CFR Part 124.53. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers; to the Regional Director of the U.S. Fish and Wildlife Service; and/or to the National Marine Fisheries Service, prior to the publication of that notice.

FINAL DETERMINATION - The public notice describes the procedures for the formulation of final determinations.

### I. PROPOSED EFFLUENT LIMITATIONS

The proposed effluent limitations for those pollutants proposed to be limited are as follows:

See attached draft permit.

There are significant changes from the current permit issued December 30, 2002, with an effective date of February 1, 2003, and an expiration date of January 31, 2008:

1. Delete Outfall 004;
2. Delete monitoring requirements for human health-based pollutants of concern; and
3. Delete effluent limitations and monitoring requirements for selenium and vanadium.

## II. APPLICANT ACTIVITY

Under the Standard Industrial Classification (SIC) Code(s) 1221, the applicant operates a post-operative coal mine area. The York Canyon Complex is currently in the reclamation mode. There is no longer any active mining in regards to disturbance and removal of overburden. The facility has received a Phase II Bond release.

## III. DISCHARGE LOCATION

As described in the application, the York Canyon Mine is located in York Canyon, at the end of N.M. Highway 555, Colfax County, New Mexico. Discharges of mine drainage are to York Canyon, thence to Vermejo River, thence to the Canadian River in the Segment No. 20.6.4.309 of Canadian River Basin.

## IV. RECEIVING STREAM USES

The designated uses of York Canyon, in Water Quality Segment No. 20.6.4.97, are wildlife habitat, livestock watering, limited aquatic life and secondary contact. EPA was unable to approve section 20.6.4.97 of the NM WQS because the State did not submit a Use Attainable Assessment (UAA) to support an aquatic life designation that does not meet the CWA §101(a)(2) objective as required by 40 CFR 131.10(j)(1). The CWA sections 101(a)(2) and 303(c) require water quality standards to provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, wildlife, and recreation in and on the water, functions commonly referred to as “fishable/swimmable” uses. EPA's current water quality regulation effectively establishes a rebuttable presumption that “fishable/swimmable” uses are attainable and therefore should apply to a water body unless it can be demonstrated that such uses are not attainable. Prior to submittal of UAA, the designated uses of warmwater aquatic community and primary contact recreation are applicable to the receiving water.

## V. STREAM STANDARDS

The general and specific stream standards are provided in "State of New Mexico Standards for Interstate and Intrastate Surface Waters," (the NM WQS) (20.6.4 NMAC) as effective on August 1, 2007.

## VI. DISCHARGE DESCRIPTION

Outfall 004 included in the current permit, is deleted from the proposed permit as requested because the outfall is no longer existing. This proposed permit is authorizing discharges of mine drainage from reclamation areas through Outfall(s) 001, 005, 006, and 007.

## VII. TENTATIVE DETERMINATION

On the basis of preliminary staff review, the Environmental Protection Agency, after consultation with the State of New Mexico, has made a tentative determination to issue a permit for the discharge described in the application.

## VIII. DRAFT PERMIT RATIONALE

The following section sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. Also set forth are any calculations or other necessary explanations of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under 40 CFR Part 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed:

### A. REASON FOR PERMIT

The permittee operated a coal mine and has carried out a reclamation program since the last permit issuance. Mine drainage from reclamation areas may discharge from impoundments during a 10-year, 24-hour storm event. It is proposed that the current permit be reissued for a five-year term. The permit application for permit re-issuance was received by EPA dated April 16, 2008, and revised copy was received on June 18, 2008.

### B. TECHNOLOGY-BASED EFFLUENT LIMITATIONS AND/OR CONDITIONS

The Western Alkaline Coal Mining Subcategory that addresses drainage from coal mining reclamation and nonprocess areas in the arid and semiarid western United States was promulgated by EPA and the final regulation is effective February 22, 2002. In accordance with the provision in 40 CFR 434.82 and 434.83, the permittee is required to submit a Sediment Control Plan.

C. WATER QUALITY-BASED EFFLUENT LIMITATIONS AND/OR CONDITIONS

1. POST THIRD ROUND POLICY AND STRATEGY

Section 101 of the Clean Water Act (CWA) states that "...it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited..." To insure that the CWA's prohibitions on toxic discharges are met, EPA has issued a "Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants (49 FR 9016-9019, 3/9/84)." In support of the national policy, Region 6 adopted the "Policy for Post Third Round NPDES Permitting" and the "Post Third Round NPDES Permit Implementation Strategy" on October 1, 1992. The Regional policy and strategy are designed to insure that no source will be allowed to discharge any wastewater which (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical State water quality standard resulting in non-conformance with the provisions of 40 CFR Part 122.44(d); (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

2. AQUATIC TOXICITY TESTING

In a letter from Marcy Leavitt, NMED, to Claudia Hosch, EPA, December 16, 2005, NMED provided Narrative Toxics Implementation Guidance – Whole Effluent Toxicity, (WET Guidance), an update to the 1995 Implementation Guidance. In accordance with the WET Guidance, the facility is required to conduct acute WET testing at the 100% critical dilution for *Daphnia pulex*. The discharger must comply with the Toxicity test and reporting requirements when a discharge occurs.

3. DILUTION CALCULATIONS

The critical low flow (4Q3) for the receiving stream is zero and the critical dilution is 100%.

4. STATE STANDARDS

Applicable water quality standards are applied to the discharge at the end-of-pipe.

5. PERMITTING ACTION

This permit only authorizes discharges of mine drainage from reclamation areas resulting from precipitation events. Any discharge of runoff from reclamation areas shall comply with water quality standards for designated uses.

Effluent limitations and monitoring requirements for total selenium and total vanadium established in the expired permit are proposed to be removed from the draft permit because those pollutants were not detected in the discharge and the Detection Limits of those parameters are

below EPA's new Minimum Quantification Levels (MQLs). Effluent data reported in the application Form 2C have demonstrated no reasonable potential (RP) to exceed applicable water quality standards.

D. HUMAN HEALTH SCREENING

Monitoring requirements for human health-based pollutants established in the expired permit are proposed to be deleted because they were not detected in the discharge.

IX. VARIANCE REQUESTS

No variance requests have been received.

X. ENDANGERED SPECIES

The York Canyon mine is part of P&M's York Canyon Complex. This permit action only authorizes discharges of mine drainage from reclamation areas of York canyon mine during precipitation events. Because the authorized discharge is for stormwater only, with no process water included, EPA believes that this permitting action will not make threatened or endangered species more vulnerable to ingestion of toxic waste streams. In deed, the effluent characteristics have demonstrated that potential discharges would meet applicable water quality standards for wildlife habitat use.

Based on information available and EPA's previous "effect" analysis, EPA determines that the reissuance of this permit has "no effect" on the endangered or threatened species listed in Colfax County.

XI. ADMINISTRATIVE RECORD

The following section is a list of the fact sheet citations to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR Part 124.9:

- A. PERMIT(S)- NPDES Permit No. NM0000205 issued on December 30, 2002 and expiring January 31, 2008.
- B. APPLICATION(S)- NPDES Re-application for Permit No. NM0000205 received April 16, 2008, and revised copy received June 18, 2008, respectively.
- C. WATER QUALITY STANDARDS CITATION(S)- New Mexico State Water Quality Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC) effective December 29, 2006.

- D. IMPLEMENTATION GUIDANCE- Narrative Toxics Implementation Guidance, December 16, 2005.
- E. 40 CFR CITATION(S)- 40 CFR Part 434 for Coal Mining Point Source Category.