



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary
Reese Fullerton
Deputy Cabinet Secretary

Bill Brancard
Division Director
Mining and Minerals



August 22, 2008

Rick Karlson, Manager
Project Development
Neutron Energy Corporation
2511 Broadbent Parkway, Suite A
Albuquerque, NM 87107

**RE: Request for Information, Subpart 4 Exploration Permit Application,
Marquez Canyon Confirmation Drilling Project, Permit No. MK023ER**

Dear Mr. Karlson:

The New Mexico Mining and Minerals Division (MMD) has reviewed the Permit Application Package (PAP), for an exploration permit, submitted by Neutron Energy Corporation (NEI), under Subpart 4 of the New Mexico Mining Act Rules (Rules). MMD has also received agency comments on the January 22, 2008 submittal from NEI. Enclosed with this letter are the reviewing agency comment letters submitted by the following state agencies: the New Mexico Environment Department (NMED), the NM Office of the State Engineer (OSE), the New Mexico Department of Game and Fish (NMDG&F), and the New Mexico Department of Cultural Affairs Historic Preservation Division (NMDCA). Additionally, please find enclosed comment letters submitted by the New Mexico Environmental Law Center, on behalf of the Pueblo of Acoma, and a letter from the Bluewater Valley Downstream Alliance. Electronic copies of these letters had previously been provided to NEI by MMD, as they were received from the reviewing agencies. In addition to the aforementioned agency comments, please also find specific comments, based on the MMD's review of this application, shown below with the same numerical listing as included within the January 22, 2008 PAP.

General Comments:

MMD has reviewed the PAP and deemed it administratively complete, pursuant to §19.10.4.402 NMAC, in a letter to NEI dated January 28, 2008. **MMD has reviewed the PAP and has found it to be *technically incomplete* until receipt of acceptable supplemental information as requested by this letter.**

Specific Comments:



1. Section 3.1 Right to Enter Information (§ 402.D.3 & 4): MMD has been contacted by Mr. Reynaldo M. Martinez, on behalf of himself and his immediate and extended family who are members of the Juan Tafoya Land Corporation (JTLC). Mr. Martinez claims that the listings within this section of the permit application showing surface and mineral owners of individual land tracts within the boundary of the JTLC property and the proposed permit area are incomplete and do not accurately or entirely represent all individual surface and/or mineral owners of each of the individual land tracts. **Please contact Mr. Martinez at the address shown below to discuss and review the list of individuals making the complaint, and advise MMD concerning the accuracy of the information. The listing may require updating to include ownership of all individual surface and mineral rights within the boundary of the JTLC property and the proposed permit area.**

**Reynaldo M. Martinez
5225 W. Evans Dr.
Glendale, AZ 85306
Telephone: 602-330-6021**

2. Section 4 Maps and Location (§ 402.D.4 & 5): MMD has been contacted by Mr. Paul Martinez, the surface and mineral owner of Tract 52 which has been excluded from the proposed permit area. Although this individually owned tract was excluded by NEI from the proposed project area, Mr. Martinez has indicated that he believes the Maps shown as Figure 1 and 2A of the PAP do not accurately represent the on-the-ground location of the existing haul road. Mr. Martinez indicated that he has blocked the haul road and/or has rendered it otherwise impassible until NEI addresses the issue of the haul road crossing his individually owned tract of land (Tract 52). **Please address the accuracy of the location of the existing haul road as shown in Figure 1 and 2A of the PAP and verify whether the road is accurately shown. NEI will be required to re-submit any new maps should Figure 1 and/or Figure 2A prove inaccurate.**
3. Attachment A-1 Excerpts from Mining Lease: The "Uranium Mining Lease and Agreement" describes a mining lease existing between the "Lessor," which is identified as the "Juan Tafoya Land Corporation," and the "Lessee", which is identified as "Neutron Energy, Inc."; however, within Section 30 of the lease excerpt entitled "Notices," the "Lessee" is identified differently as being "Nuclear Energy, Inc." and having the same mailing address as that of the applicant "Neutron Energy Inc.". **Please explain why within the Mining Lease agreement, the permit applicant, Neutron Energy Inc., is different from that of the Lessee, Nuclear Energy, Inc. Furthermore, if such a company (Nuclear Energy, Inc.) does exist and is U.S. owned, operated or directly controlled by the applicant, Neutron Energy, Inc., please explain why this party (Nuclear Energy, Inc.) and/or any other parties, are not listed as required within Section 2.B & C of the Subpart 4 Exploration Permit Application submitted by NEI and provide the information as required.**

NMED Ground Water and Surface Water Quality Bureau Comments: Please find enclosed a memorandum from NMED, dated April 1, 2008 which jointly provides comments based on the Groundwater and Surface Water Quality Bureau's review of the PAP submittal and address each of the following issues and recommendations:

1. All exploration activities must implement Best Management Practices (BMP's) in a manner that prevents direct impacts to surface water and watercourses (ephemeral, intermittent and perennial). For surface disturbances during exploration and reclamation activities, the operator must commit to implementing erosion control measures that are designed, constructed and maintained using professionally recognized standards (i.e., Natural Resource Conservation Service Standards, or the Bureau of Land Management "Gold Book"). In particular, the applicant must prevent head-cutting associated with any road crossings. NEI has provided information to address head-cutting at road crossings, but has not identified the location of these crossings. **Please identify the locations of any proposed watercourse (drainage) crossings within the project area, on the project area map identified as Figure 2A of the PAP, for approval.**
2. Discharging any water and/or any other drilling related fluids to any watercourse could result in a violation of the Clean Water Act. The applicant should utilize BMP's to contain any water produced from the exploration holes at the drill site, in addition to the implementation of BMP's for spill prevention. **Please provide a spill contingency plan for approval to address the control of potential spills that may occur within and adjacent to the permit area.**
3. The proposed project will require coverage under a National Pollution Discharge Elimination System (NPDES) Construction General Permit (CGP) or Multi Sector General Stormwater Permit (MSGP). Failure to receive and implement proper permit coverage would be a violation of the Clean Water Act. **Please provide information regarding the requirements to address NPDES, GCP and/or MSGP permitting.**
4. The applicant must contact the U.S. Army Corps. of Engineers (USACE) regarding any requirements for Clean Water Act Section 404 permitting requirements. **Please provide any information obtained from the USACE regarding requirements relating to the Clean Water Act and/or Section 404 permitting applicable to the project.**
5. The applicant should develop a plan to address the potential for cross-connection between of shallow alluvial aquifers. **Please submit for review and approval, a plan for addressing the cross-connection of groundwater aquifers.**
6. Regardless of whether or not drilling muds contain toxic or otherwise harmful contaminants, the applicant must submit Material Data Safety Sheets (MSDS) for all drill fluids expected to be used during exploration. **Please provide Material Safety Data Sheets (MSDS) or similar documentation for drilling mud**

and/or drilling mud additives, polymers, LCMs, off-site water, or any other chemicals proposed for use in the exploration project.

NMED Air Quality Bureau Comments: Please find enclosed a memorandum from NMED's Air Quality Bureau (AQB) dated April 1, 2008 which provides comments based on the AQB's review of the PAP. If required, any necessary air quality permits must be obtained prior to startup of the permitted operation or activity. Please address each of the following issues and recommendations:

1. Air Quality Permits must be obtained, if necessary, from the Air Quality Bureau by any person constructing a stationary source which has the potential emission rate of 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 these thresholds are exceeded for any one regulated air contaminant; all regulated air contaminants with National or New Mexico Ambient Air Quality Standards are subject to further permit review. **Please provide information regarding any potential within the proposed project area for the presence of equipment or stationary source emissions (i.e. drilling rigs) having rates greater than those specified above or within the attached memo for any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard.**
2. Any person constructing or modifying any source or installing any equipment that is subject to 20.2.77 NMAC, *New Source Performance Standards*, must in addition, also comply with those applicable federal *New Source Performance Standards*. **Please provide information regarding any potential within the proposed project area for the presence of any equipment or stationary source emissions subject to state or federal New Source Performance Standards.**
3. 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 contaminant or 1 ton per year of lead shall file a Notice of Intent with the NMED/AQB pursuant to 20.2.73.200 NMAC. **Please provide information regarding any potential within the proposed project area for the presence of any stationary source emissions containing lead and/or having rates greater than those specified above or within the attached memo.**
4. Fugitive dust is a common problem at mining sites and while the Air Quality Bureau does not regulate fugitive dust, the AQB does recommend controls to minimize emissions of particulate matter from fugitive dust sources. **Please provide information regarding any planned control strategies for controlling and minimizing fugitive dust from being emitted from the project area.**

NMDCA Comments: In a letter from MMD to NEI dated May 15, 2008, MMD provided NEI with NMDCA's comment letter resulting from their review of the PAP. Therein, MMD requested that NEI provide information describing how it will address all the items

specified within the NMDCA's comment letter, in addition to requesting that NEI provide specific plans for consultation with the tribes and to further address cultural resource protection at the proposed drilling sites. MMD has discussed proposed plans for tribal consultation with NEI's contracted consultant, Lynne Sebastian. MMD appreciates the cooperative attempts to gain information from tribal contacts to help develop a tribal consultation plan. In a phone call with Ms. Sebastian on August 14th, MMD requested a summary of all correspondence from NEI regarding tribal consultation and the status of attempts to contact each tribal office. Once the summary is provided, MMD will determine if further information is needed from NEI.

NMOSE Comments: Please find enclosed a letter from the NMOSE, dated February 7, 2008. The NMOSE's review found no reason to deny the permit application request and found that NEI's application expressed an adequate understanding of the State Engineer's *Rules and Regulations Governing Well Driller Licensing; Construction, Repair and Plugging of Wells* pursuant to 19.27.4.36 NMAC. **No response to the NMOSE comment will be necessary.**

NMDG&F Comments: Please find enclosed a letter from the NMDG&F, dated April 1, 2008 and address each of the following issues and NMDG&F recommendations:

1. The project area is situated immediately adjacent to the NM Game Commission's Marquez Wildlife Management Area (WMA). **Please provide information regarding any necessary steps NEI plans to implement to ensure that the proposed project will not adversely effect the WMA property, or the property's fence line, and that no trespassing or encroachment occurs onto the adjacent WMA property; particularly within any areas proposed for drilling that are near the property line.**
2. Disturbance to riparian areas and wetlands shall be minimized during exploration pursuant to 19.10.4.403 (F) NMAC, which also requires that any adverse effects on riparian areas and wetlands within the project area be mitigated during reclamation. Although riparian vegetation exists throughout the project area and is further identified within the biological inventory submitted with the PAP, these areas do not qualify as a U.S. Army Corps of Engineers jurisdictional wetlands; however, these riparian areas should be avoided. **Please provide information regarding NEI's plan for avoiding and, if necessary, mitigating any adverse effects on areas identified as being riparian, throughout the project area, to ensure that no net decrease in riparian function occurs as a result of the proposed project.**
3. During a site inspection conducted during the spring of 2008, a colony of cliff swallows were discovered to be nesting in the cliffs and overhangs directly above one of the proposed drill locations (171-B) along the upper benches of the project area. Although cliff swallows are not a special status species, they are protected under the federal Migratory Bird Treaty Act and the New Mexico Wildlife Conservation Act (New Mexico Statute 17-2-13). **Because any drilling and/or associated activities could potentially cause the abandonment of the colony's nests during the breeding season, drilling should be timed and**

performed to mitigate impacts at proposed locations (145-B, 167-B, 168-B, 171-B, 176-BC, 258-B) that are located along the upper bench area during the cliff swallow's breeding season, which occurs annually from approximately mid-March through early September.

4. A biological inventory submitted with the PAP recommended additional follow-up surveys to be conducted during the appropriate season (spring) to document any active raptor nests, nesting gray vireos or early flowering plant species of concern. **These additional surveys shall be completed as recommended and the results submitted to the MMD for review with any appropriate mitigation steps, prior to permit approval.**

New Mexico Environmental Law Center (NMELC): Please find enclosed a letter to MMD from NMELC, written and submitted on behalf of the Pueblo of Acoma, dated February 19, 2008. In addition to providing comments, NMELC requests within their letter that MMD hold a public hearing on NEI's proposed exploration application. **Please include a response to the NMELC letter in your response to MMD.**

Bluewater Valley Downstream Alliance (BVDA): Please find enclosed a letter to MMD from BVDA, dated February 23, 2008. In addition to providing comments, BVDA requests within their letter that MMD hold a public hearing on NEI's proposed exploration application. **Please include a response to the BVDA letter in your response to MMD.**

Should you have any questions, comments, or require additional information concerning this letter or any enclosures, please contact me at (505) 476-3436, or via email at: james.hollen@state.nm.us

Sincerely,



James Hollen – Permit Lead
Mining Act Reclamation Program (MARP)
New Mexico Mining and Minerals Division

Enclosures

Cc: Karen Garcia, Chief, Mine Reclamation Bureau
Holland Shepherd, Program Manager, MARP
Kurt Vollbrecht, Team Leader, NMED/MECS
Matthew Wunder, Ph.D., Chief, Conservation Services Division, NMDG&F
Andrew B. Core, Hearing Officer, NMOSE
Michelle Ensey, Archaeologist, NMDCA/HPD
Eric Jantz, Staff Attorney, NMELC
Milton Head, President, BVDA
Mine File (MK023ER)