STATE OF NEW MEXICO
BEFORE THE NEW MEXICO MINING COMMISSION

In the Matter of:	
PROPOSED AMENDMENT	**No. 13-01 (R)**
TO 19.10.3 NMAC	
(Minimal Impact Rule)	

PETITION TO AMEND 19.10.3 NMAC (MINIMAL IMPACT RULE) AND REQUEST FOR HEARING

Pursuant to the New Mexico Mining Act (hereinafter, "Act"), Section 69-36-1 *et seq.* NMSA 1978 (2013) and the *Guidelines for Rulemaking New Mexico Mining Commission* (hereinafter, "*Guidelines*"), Mineris Vitae, LLC hereby petitions the New Mexico Mining Commission (hereinafter, "Commission") to amend the rules for Minimal Impact Operations, 19.10.3 NMAC (hereinafter, "Minimal Impact Rule").

I. SUMMARY OF PROPOSAL

Mineris Vitae, LLC (hereinafter, "MV") is a New Mexico limited liability corporation operating in the extractive industry and in related research of product extraction. Currently, the MV operations consist of a carbonaceous shale (hereinafter, "humate") operation located in McKinley County, New Mexico on Section 2, Township 19 North, Range 6 West NMPM. MV has a Rule 5 Mineral Lease, #HA0225, issued by the New Mexico State Land Office. The New Mexico Energy, Minerals and Natural Resources Department (hereinafter, "EMNRD") has assigned MV tracking number MK037MN. MV also works collaboratively with other groups in validation of agricultural and other uses of the type of materials mined on Section 2.

At the present time, the Minimal Impact Mining Rules (hereinafter, "MIM Rules") limit mining operations to a total of ten (10) acres of disturbed land. *See* 19.10.3.303(A) and

19.10.3.304(A) NMAC. Based on modern mining techniques, the underlying economics of mining, and proper environmental stewardship, MV maintains that the limit of 10 acres set forth under the current MIM Rules should be increased to 60 acres for the mining of humate if expeditious reclamation is conducted.

II. STATEMENT OF REASONS & PROPOSED REGULATORY CHANGES

MV hereby includes the following statement of reasons for the regulatory changes within this petition as required by Section 301 of the *Guidelines.* A copy of the proposed regulatory changes, indicating any language proposed to be added or deleted, is included as Attachment A. MV reserves the right to more fully support the reasons for the regulatory changes in Attachment A through testimony and evidence to be submitted as part of the hearing process.

A. Background on Humate Mining

Humate is a naturally occurring, organic substance, commonly associated with coal, lignite, shale, claystone, and mudstone. According to a report from Sandia National Laboratories, humate is not a mineral, industrial mineral, rock, or stone. Humate has no definite chemical composition, it lacks a highly ordered atomic structure, and it is without specific physical properties.

Humic substances have many beneficial effects on soils and plant growth, so humate is principally used as a soil amendment or conditioner for agriculture. The useful attribute of humic substances include increases in root growth, retention of soil moisture, increases in soil aeration, and decreases in soil density. The end result is an increase in plant quality, higher yields, less water usage, and greater drought resistance. In addition, expeditionary marketing analysis indicates significant new market opportunities for humate to be used in a variety of

agricultural, nutraceutical, pharmaceutical, and industrial applications. The vast agronomic and environmental importance of humic substances is just beginning to be appreciated.

Humate is surface-mined from beneath shallow overburden. The vegetation, top soil, and overburden are removed and stored. Front end loaders then extract the humate and the product is transported to a processing facility for conversion into finished products. Currently, there are 12 humate mine operations (approximately five that are active) permitted under the Mining Act, and these small mining operations are primarily located in the western and northwestern parts of the state.

B. Economic Reasons for Rule Changes to 19.10.3 NMAC

The mining sector is very important to the local, regional, and New Mexico economy in general. MV will present evidence demonstrating that humate mining, in particular, has the potential to expand, thereby generating new jobs and royalty income to state and federal stakeholders. MV anticipates that this economic growth can be accomplished in an environmentally sustainable fashion.

1. The proposed rule changes will benefit New Mexico's economy.

Humate produced in New Mexico has very favorable attributes, and its impact on soils and other beneficial characteristics are well documented by participants in the industry. MV will demonstrate during the rulemaking hearing that the demand for humate is increasing, and if larger MIM acreage is allowed, mining operations will expand too.

For example, MV will demonstrate the increasing demand for humate by presenting information how humate is used in the agriculture industry and how humate is used to support reclamation of areas impacted by oil and gas exploration and production, mining, and forest fires. MV will provide information on prospective markets outside of the aforementioned areas

which include industrial organic dyes and nutraceuticals. MV will provide a report from the University of New Mexico Anderson School of Business from 2012 outlining expeditionary markets for humate products.

In addition to demonstrating how the demand for humate is increasing, MV will present information on the local economic impacts of humate mining and its growth. MV will provide an economic impact analysis of an industry participant outlining the impacts of this entity to the community of Cuba, New Mexico. This study was done by Financial Strategy Group from Albuquerque, New Mexico. These economic figures will be supplemented with information regarding the operations of MV.

The MV mine operation currently employs five (5) full time equivalent employees, and it employs the services of several individuals ranging from archeologists, biologists, geologists, professional engineers, and mine planners. MV has ongoing research being undertaken with Sandia National Laboratories and the University of New Mexico in support of its operations, products, and markets, and a report from Sandia National Laboratories will be presented during the hearing. The processing operations that MV works with have an additional thirty-five (35) employees.

The lack of adequate and consistent mined humate would negatively impact these local operations by forcing them to look outside New Mexico or the county for products to meet demand. Therefore, it is critical that New Mexico take advantage of these new market opportunities in an environmentally responsible manner while protecting human health and the environment. The proposed rule changes will accomplish these objectives and benefit New Mexico's economy.

2. The proposed rule changes make humate mining more economical.

The production of humate from ten acre increments does not meet the necessary economies of scale that are required to support the rapidly expanding industry. Continuous mining on a sixty acre mine site will limit the aesthetic aspect from having several ten acre sites. Less mobilization and demobilization would be required with more acreage, thereby reducing impacts on local roads. Likewise, the ability to operate on a single, larger scale mine site would reduce oversight costs and long-term maintenance and operating costs.

A larger footprint combined with expeditious reclamation of mine sites would reduce the contingent liability exposure of both MV and the surface and mineral estate holder. Expeditious reclamation reduces the impact of noxious weeds, erosion, and drainage concerns, and it generally reduces the impacts on local flora and fauna. In addition, expeditious reclamation allows for a quick release of bond requirements, thereby furthering responsible exploration and development.

Bottom line, larger scale mining of humate would contribute to efficiencies of scale and reduce the cost of operations. By increasing the acreage limitation under the MIM Rules, MV will demonstrate that such a regulatory change will optimize mine and reclamation planning, thereby allowing for effective and efficient resource recovery and reclamation at a mine site. This reduction in costs would promote additional investment to be undertaken by new and existing mining operations, thereby increasing the number of industry and related industry jobs and revenues to the local, state, and federal governments. MV has considered the alternative of seeking a regular permit for a new mining operations, which would avoid acreage limits. Because of the rule requirements to collect at least a year of baseline data for the proposed mine

site, the extensive permit application and hearing requirements, the unreasonable burdens those permitting requirements impose on a smaller-scale mining operation for humate, and the fact that no mining operation has successfully sought a permit for a new mining operation since the Mining Act was passed in 1993, MV has concluded that pursuing a minimal impact permit is the only viable option for a humate mine.

C. Environmental Reasons for Rule Changes to 19.10.3 NMAC

Typically, humate is surface-mined from beneath shallow overburden which allows for minimal environmental impacts. MV maintains that the proposed rule will continue to protect human health and the environment.

As a report from Sandia National Laboratories indicates, humate is non-toxic to human health and the environment, and such determinations are supported by bodies of scientific research. Mineris will present evidence demonstrating that there should be minor, if any, changes in air or water quality issues at mine locations. Instead, the increased acreage for minimal impact mines will facilitate a larger operational footprint allowing for expeditious reclamation opportunities, and in doing so, the proposed rule changes will facilitate improved mining and reclamation efficiencies and best management practices.

The expeditious reclamation requirement allows for ongoing testing, assessment, and feedback on rehabilitation techniques that would allow for the option to fashion better reclamation solutions. In turn, the increased acreage would create efficiencies in handling and storing materials used in the mine reclamation phase.

For example, best management practices are infeasible within a ten acre site when stockpiling mulch, topsoil, overburden, mined material, and equipment. Increasing the acreage will allow for storage of mulch, topsoil, and overburden near mining operations. This practice

allows for a more efficient operational paradigm and subsequent reclamation. During reclamation, overburden, topsoil, and mulch can be quickly, judiciously, and systematically distributed on contoured reclamation areas in order to facilitate optimal growing conditions for vegetation.

Finally, due to regulatory timeline inefficiencies, an increase in the acreage limitation for minimal impact humate mines is necessary to reduce operational inefficiencies at mine operations. Such improvements in efficiencies reduce costs and operational risks of mines and result in additional revenues to the state and local governments.

III. REQUEST FOR HEARING

Petitioner respectfully requests that the Commission schedule a rulemaking hearing as soon as possible to consider these proposed amendments and that the Commission appoint a hearing officer to conduct this rulemaking hearing. Upon appointment of a hearing officer, MV requests that the Commission grant the hearing officer authority to set a schedule for submission of written direct testimony and responses prior to the hearing. It is anticipated that the rulemaking hearing will take approximately six (6) hours. Mineris reserves the right to supplement the statement of reasons with additional reasons in support of the proposed regulatory changes and to change the language set forth in Attachment A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition to Amend 19.10.3 NMAC (Minimal Impact Rule) and Request for Hearing was served on the following parties this 25th day of March, 2013:

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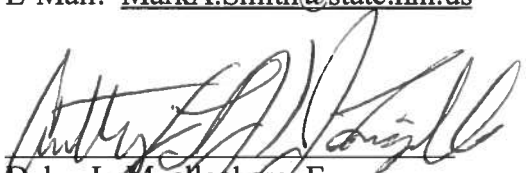

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ATTACHMENT A – PROPOSED REGULATORY CHANGES

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 3 MINIMAL IMPACT OPERATIONS

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19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS

A. An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, except that an existing mining operation extracting humate may exceed 10 acres but not 60 acres if its approved closeout plan or reclamation plan provides for expeditious reclamation of mined-out areas. ~~p~~Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the Act and 19.10 NMAC will be major factors in the Director's determination of minimal impact status.

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19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS

A. A minimal impact new mining operation will not exceed 10 acres of disturbed land, except that a new mining operation extracting humate may exceed 10 acres but not 60 acres if its approved closeout plan or reclamation plan provides for expeditious reclamation of mined-out areas. ~~p~~Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status.

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