

ENVIRONMENTAL ASSESSMENT OFFICE: ADMINISTRATIVE
PENALTY DECISION DOCUMENT

EAC NO: M05-02

PROJECT NAME: Red Chris Porphyry Copper-Gold Mine Project

PART ONE: THE CONTRAVENTION

Party

Newmont Corporation (formerly Newcrest Red Chris Mining Limited (Newcrest))

Contravention or Failure

Failure to comply with the January 9, 2019 enforcement order (the Order) issued under Section 34(1) of the *Environmental Assessment Act* (2002) (the former Act) (Appendix 1), which requires operational electric fencing around all camp facilities that contain wildlife attractants to be installed prior to April 1, 2019. The Order specifies the electric fence must be operational, maintaining a minimum of 6000 volts through all electrified strands, between April 1 and November 15 each year for as long as the camp facilities contain wildlife attractants.

Date of Contravention or Failure

The Environmental Assessment Office Compliance and Enforcement Branch (EAO CEB) became aware of Newcrest's non-compliance with the Order on November 16, 2021. EAO CEB also identified Newcrest's non-compliance with the Order on April 1, 2022.

Executive Director's Summary

The Red Chris Porphyry Copper-Gold Mine Project (Project) is an open-pit copper-gold mine and mill located in northwestern British Columbia (B.C.), approximately 18 kilometres (km) southeast of the Village of Iskut and 80-km south of Dease Lake. The Project is currently in operation.

On August 24, 2005, Environmental Assessment Certificate #M05-02 (Certificate) was issued to Red Chris Development Company Ltd. (Appendix 3). The Certificate authorized the construction and operation of the Project in accordance with an attachment entitled *Summary of Red Chris Development Company Ltd's Commitments* (Appendix 4), in which Commitment C11 requires the Certificate Holder to implement specific mitigation measures to prevent or reduce the potential for adverse impacts to bears at the mine site, including the strict management of attractants and, upon indication of problematic human/bear interaction in the vicinity of the accommodation complex, the use of fencing to deter bears from entering the accommodation complex.

In a June 17, 2015 field inspection EAO CEB identified non-compliance with Commitment C11 and as part of the followup to that inspection information was provided from the BC

Conservation Office Service showing a request from Project Security to the Project Environment Superintendent urgently requesting action be taken in response to a persistent Grizzly Bear in the camp. In response EAO CEB issued an Order on March 3, 2016 for the management of wildlife attractants in a manner that prevents the attraction of wildlife and/or access to attractant by wildlife.

On September 20, 2018, EAO CEB inspected the Project and determined that the Project was non-compliant with Commitment C11 due to gaps in the fencing of the accommodation complex rendering it ineffective in deterring bears. EAO CEB issued another order in Jan 2019 (the Order) this time specific to electric fencing – that was required to be installed prior to and energized April 1 – November 15th of each year.

On July 30, 2019, EAO CEB inspected the Project and determined that the Project was non-compliant with Commitment C11 and the Order due to a lack of electric fencing at the accommodation camp.

On June 15, 2020, a Warning was issued to Newcrest¹ for non-compliance with Commitment C11 and the Order. The final inspection record detailed that Project was non-compliant at the time of the inspection, and also acknowledged that, before the inspection record was finalized, the Project installed temporary electric fencing around the camp in order to regain compliance with the Order.

On November 2, 2021, EAO CEB initiated an administrative inspection of the Project, as a part of this process Newcrest identified that fencing at the recently expanded accommodation camps would not be electrified until 2022.

On January 12, 2022, EAO CEB issued a Warning to Newcrest in final Inspection Record for non-compliance with the Order. In further follow up On March 22 to 23, 2022, EAO CEB conducted a field inspection of the Project during which the Newcrest representative present identified that, contrary to the requirement of the Order, the camp electric fences would not be energized on April 1. On April 1, 2022, in response to an information request of the same day as part of that inspection, Newcrest confirmed that the camp electric fences were not energized, citing existence of snow as rationale.

On August 3, 2022, EAO CEB advised Newcrest that ongoing non-compliance with the Order was being referred to an Administrative Penalty.

In the Opportunity to Be Heard (OTBH) on October 11, 2023 (Attachment 3), Newcrest submitted information that outlined several points for consideration regarding the nature of the non-compliances in relation to project requirements as well as the basis for this administrative penalty. This information has been incorporated into the decision document and final calculated amount.

¹ On August 15, 2019, the Certificate was amended to transfer the Certificate to Newcrest

Reasons for Decision

I have considered all of the information submitted, including the written submission by Newcrest. My evaluation has included a consideration of matters listed in Section 2(1) of the Administrative Penalties (*Environmental Assessment Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

Administrative penalties are monetary penalties imposed on individuals or companies who do not comply with the legal requirements of the Act, its regulations or a requirement of an order made under the Act. The standard of proof for proving liability and issuing an administrative penalty is a “balance of probabilities”.

An Order under Section 53 of the Act allows EAO C&E to clearly identify the action(s) required to prevent, remedy or cease non-compliance(s) for projects with EACs. The Order was issued in response to non-compliance with Commitment C11.

I have decided to issue this administrative penalty based on Newcrest’s non-compliance with the Order to have electric fencing operational between April 1st and November 15th each year for as long as the camp facilities contain wildlife attractants.

Newcrest’s non-compliance with the Order was documented during EAO CEB inspections that found that the non-compliance was ongoing for undetermined periods in 2021 and 2022.

This administrative penalty is supported by ongoing history of non-compliance with commitment C11 and the Order and is being issued in direct response to the April 1, 2022 inspection when Newcrest confirmed that the camp electric fences were not energized.

In its OTBH, Newcrest acknowledged and accepted the findings of the Environmental EAO CEB following their inspections of the Project on July 30, 2019, November 2, 2021 and March 22 to 23, 2022 that determined the Project did not comply with the January 9, 2019 Enforcement Order by not having operational electric fencing around camp facilities between April 1 and November 15.

Newcrest did bring to attention to two penalty adjustments that had been included in the initial penalty assessment calculation that I have since removed as I am in agreement with Newcrest statements. Specifically Newcrest has noted that:

- its ongoing efforts to operate and maintain the bear mitigation actions, including the fence, counter the finding that Newcrest deliberately contravened the requirement; and,
- that it did not derive economic benefit from the contravention of the order through “diminished maintenance costs” due to ongoing operational and maintenance cost associated with the camp included maintenance costs for the fence upkeep.



Due Date and Payment

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Corporate Services, Attn: Accounts Receivable, Environmental Assessment Office, 2nd Floor 837 Yates St PO Box 9426 Stn Prov Govt Victoria, BC V8W 9V1. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received in the 30 calendar day period, interest will be charged at 3% + prime lending rate of the principal banker to the Province per month and the amount payable is recoverable as a debt due to the government.

Appendices

See List of Appendices in Attachment 2 – Penalty Assessment Form

Date this 12th day of December 2023.