



Ref: 118438

File: 19000-20/CJCI

March 24, 2023

Ernest Hatzl  
Mine Manger – Cassiar Jade Contracting Inc.  
P.O. Box 332  
Watson Lake, YT Y0A 1C0

[EHatzl@hotmail.com](mailto:EHatzl@hotmail.com)

Attention: Mr. Hatzl:

**Re: Determination of Administrative Penalty**

Further to the Notice of Opportunity to be Heard issued to you on December 5, 2022, and your opportunity to be heard, via oral hearing on January 24, 2023, respecting the alleged contraventions, I have now made a determination in this matter.

After reviewing the information available to me, I have concluded that Ernest Hatzl has contravened or failed to comply with provisions of the *Mines Act* ( the “Act”) as set out in the following pages, in respect of which an administrative penalty is being imposed pursuant to section (s) 36.2 of the *Act* and the Administrative Penalties (Mines) Regulation.

The specific contraventions and failures to comply, the amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions regarding this determination, please contact me at [AMPSInquiries@gov.bc.ca](mailto:AMPSInquiries@gov.bc.ca)

Sincerely,

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Brian Oke  
Senior Inspector of Mines  
Office of the Chief Inspector of Mines  
Mines Health, Safety and Enforcement Division  
Ministry of Energy, Mines and Low Carbon Innovation

Attachment: Determination of Administrative Penalty

**DETERMINATION OF ADMINISTRATIVE PENALTY**

File: 19000-20/CJCI

**NAME OF PARTY:**

Ernest Hatzl  
Mine Manger – Cassiar Jade Mine  
Cassiar Jade Contracting Inc.  
P.O. Box 332  
Watson Lake, YT Y0A 1C0

**AMOUNT OF  
ADMINISTRATIVE PENALTY:**  
  
**\$40,000**

**CONTRAVENTION OR FAILURE:**

Contravention 1:

1. In the Report to Statutory Decision Maker, the Ministry of Energy, Mines and Low Carbon Innovation (the “Ministry”), through the Mine Investigation Unit, alleged that Ernest Hatzl did fail to comply with a provision listed in section (s.) 36.1(1) of the *Mines Act* ( the “Act”) by failing to comply with an order made under s.35 of the *Act*.

**DATE AND LOCATION OF CONTRAVENTION OR FAILURE:**

2. Contravention 1 occurred on or about July 7, 2020.
3. The contravention occurred near Cassiar in the Province of British Columbia.

**SUMMARY:**

4. The following will summarize the relevant events relating to contravention 1.
5. Ernest Hatzl is the mine manager (the “manager”) of the Cassiar Jade mine. The Cassiar Jade mine is permitted to mine jade, as well as reclaim the historic Cassiar asbestos mine.
6. Between 2016 and 2019, multiple reclamation inspections were conducted and orders to develop and submit an updated mine plan and reclamation report were issued by inspectors. Though the development of the updated plan was initiated, it was never completed and therefore the manager did not ultimately comply with these orders.
7. On June 22, 2022, an inspector issued an order pursuant to s.35 of the *Act* to comply with the previous order that the manager failed to comply with. The manager failed to comply with this order as well.
8. During the January 24, 2023 opportunity to be heard, the manager admitted the updated reclamation plan was never completed and therefore he failed to comply with the orders mentioned above.

**REASONS FOR DECISION:**

9. Pursuant to s.5 of the *Act*, I have been appointed as an Inspector of Mines.
10. Pursuant to s.6 of the *Act*, I have been delegated the authority of the Chief Inspector of Mines as a Statutory Decision Maker for administrative penalties under s.36.1, s.36.2 and s.36.3 of the *Act*.
11. In making my finding that the manager failed to comply with the above noted provisions of the *Act*, I have considered all relevant information submitted to me, including the written submissions provided by the Mine Investigation Unit and information provided by the manager in the oral hearing. In determining the penalty amount, I have considered the matters listed in s.2 of the Administrative Penalties (Mines) Regulation, as applicable.

Contravention 1:

12. In the Report to Statutory Decision Maker, the Ministry alleges that the manager contravened the *Act* by failing to comply with an order made under the *Act*.
13. The Cassiar Jade Mine is in northern British Columbia, approximately 150km south of Watson Lake, Yukon and 120km north of Dease Lake, BC. The Cassiar Jade Mine is the site of the historic Cassiar asbestos mine, which operated from the early 1950's to the early 1990's.
14. In 2003 *Mines Act* permit M-18 was amended and Cassiar Jade Contracting Inc. (CJCI) became the permittee of the property. The permit authorizes CJCI to conduct jade mining activities, as well as to reclaim the previous asbestos mine.
15. Since CJCI took over the permit and the property, they have been mining jade, as well as reclaiming the old asbestos mine. Reclamation activities include (but are not limited to): tram line removal, underground portal closure, waste dump re-sloping, decommissioning buildings, salvage and disposal of equipment and scrap metal, recontouring, seeding, tailings pile capping and vegetating, etc. There is still much of the old asbestos mine to reclaim.
16. Ernest Hatzl has been appointed by CJCI to be the Mine Manager for the Cassiar Jade Mine (*Mines Act* permit M-18, Mine No. 137208) pursuant to s.21 of the *Act*.
17. On July 5, 2016, Inspector of Mines John Przewczek conducted a reclamation inspection of the Cassiar Jade Mine. In the subsequent inspection report# 74296, Inspector Przewczek issued multiple orders, including Order# 2:
  - A. *“Pursuant to Section 10.4.1 (Updated Plans) of the Code, the Manager shall, by **July 31, 2017**, develop and submit an updated Mine Plan and Reclamation Program to the Chief Inspector. The report shall detail the projected mining activities for the jade operation over the next 5 years and provide a detailed Reclamation and Closure Plan, with a detailed cost estimate to implement the plan based on third party rates, for all*

*disturbances permitted under M-18. The plan should be developed to address areas of concern identified in this inspection report and to meet end land use objectives, permit requirements, and other reclamation standards outlined in the Code. In addition, the plan should include:*

- *ongoing monitoring and maintenance requirements to ensure compliance with health, safety, and reclamation standards,*
- *operating procedures that will be followed to ensure health and safety of workers and public, as well as environmental compliance for both the mining operation and the areas undergoing reclamation and closure activities,*
- *a human health and ecological risk assessment should be conducted at a level that will assist the Permittee in identifying operational management and reclamation practices that will be required to contain and mitigate the asbestos contamination that has been observed at this site; the results of this assessment should be used to inform the reclamation prescriptions,*
- *characterization of waste materials and potential sources of soil/overburden to determine suitability for reclamation,*
- *decommissioning of unnecessary water management structures,*
- *closure plans for any underground openings, including consideration for bats and bat habitat if bat use is detected,*
- *an assessment of the 1440-meter elevation to determine the areas of the mine that will be exempt from land use and productivity objectives in accordance with the condition in the M-18 permit,*
- *plans to address the reclamation standards (Code and permit conditions) that continue to apply to the high elevation areas,*
- *an evaluation of the areas that have been left to revegetate through natural processes to determine effectiveness of the established vegetation communities with respect to Code requirements,*
- *resloping of waste dumps and tailings piles, including a safety assessment of the asbestos tailings pile,*
- *plans for treatment of all compacted areas,*
- *plans for surface preparation to reduce erosion potential, especially on slopes and areas where a soil cover may be required,*
- *prescriptions for placement of soil/overburden (depth/suitability) and revegetation, and*
- *a schedule for completing the works.”*

18. No documentation was submitted to the Ministry by the manager in response. No evidence was provided that indicates the order was complied with.
19. On September 20, 2017, Inspector of Mines Liz Murphy conducted a reclamation inspection of the Cassiar Jade Mine. In the subsequent inspection report# 80236, Inspector Murphy restated the orders from the 2016 report, including the above Order# 2.
20. In a letter dated October 30, 2017, the manager (through Jason Kearns) responded to the inspection report and orders and stated that:

*“Order 1 and 2, We have Contacted John Przeczek of Pryzm Environmental Ltd. And he has accepted the task of preparing a report that will cover the reclamation work from 2009 up to 2017 to bring us up to date. And also a five year plan going forward to cover 2018 till 2022, He has Committed to have a finished This report will encompass orders 1 and 2.”*

21. No evidence was submitted by the manager after this response to indicate the updated reclamation report was ever completed. Therefore, no evidence was provided that indicates the order was complied with.
22. On August 21, 2018, Inspector Murphy conducted a reclamation inspection of the Cassiar Jade Mine. In the subsequent inspection report# 099139, history of the previous two orders is discussed. Moreover, it was mentioned that there was a misunderstanding from CJCI that led to the delay, that it has been addressed, and the updated reclamation report will be developed during the winter months of 2018. Inspector Murphy restated the above order (to develop an updated reclamation report) and asked the mine manager to respond with the date the report would be submitted.
23. No documentation was submitted to the Ministry by the manager in response. No evidence was provided that indicates the order was complied with.
24. On August 15, 2019, Inspector of Mines Sonia Meili conducted a reclamation inspection of the Cassiar Jade Mine. In the subsequent inspection report# 137208, Inspector Meili re-issued the same order as previously ordered above to develop an updated reclamation report for the mine. The due date for this order was March 31, 2020.
25. The mine manager responded to this order and stated:  
*“Cassiar Jade has been working with Pryzm Environmental of Cranbrook BC On the reclamation plan and most of the mapping and data has been recorded the contractor is very busy at this time however Cassiar does expect to produce a plan for the Ministry by March 31, 2020”.*
26. On May 15, 2020, Inspector Meili followed up with the manager. Inspector Meili stated that no plans or reports to address the orders had been received and asked the manager when the outstanding information would be submitted. The manager did not respond.
27. No evidence was provided that indicates the order was complied with.
28. On June 22, 2022, Inspector Meili issued 3 orders to the manager pursuant to s.35 of the *Act*. Inspector Meili ordered the manager to comply with the three orders in inspection report# 137208. The due date for compliance with these orders was July 6, 2020. In this letter, Inspector Meili also stated that should Cassiar Jade remain out of compliance with the *Act*, further compliance and enforcement action may be taken, potentially including administrative monetary penalties.

29. On June 29, 2020, the manager (through Jason Kearns) responded to these orders. The response included reports/plans which satisfied the requirements of two of the s.35 orders (Order's #2 and 3). Regarding Order# 1 (which required the development of a reclamation report), the manager's response stated that the mostly completed reclamation report had been stalled and the ball is in their court to finish the plan.
30. On July 30, 2020, Inspector Meili followed up with the manager. Inspector Meili stated that Order# 1 remains unaddressed and asked the manager when the required report would be submitted. The manager did not respond.
31. On September 14, 2020, Inspector Meili followed up with the manager. Meile stated that she did not receive a response to the July 30<sup>th</sup> follow up and again asked when the required report would be submitted. The manager did not respond.
32. No evidence was provided that indicates the order was complied with.
33. On January 24, 2023, the manager (along with Kearns) participated in an Opportunity to Be Heard ( the "OTBH"). The OTBH was held as an oral hearing and was done virtually through Microsoft Teams video/audio conference meeting.
34. In the manager's oral hearing he stated that there were several contributing factors to why the reclamation report was never completed. These factors include, but may not be limited to:
  - The process has changed significantly over the years and is difficult to keep up to date on. Previously the manager would ask the inspector verbally on site what to clean up next, the inspector would tell him, and the mine would work on that. There were no formal reports and orders.
  - The shift from verbal and paper correspondence to computers and reports has caused the manager to have to rely on others to help him respond/comply. This can be difficult to keep track of and others are not always dependable.
  - The manager had contractor's (Przeczek and now Riordan) hired to do the reclamation report. They were working away on the report and then all of a sudden the manager found out they were not completed. the manager was surprised by the contractors suddenly quitting and that left him in a tough place.
  - The Covid 19 pandemic made it extremely difficult for anyone (himself and the contractors he hired to do the report) to go to the site. It was difficult to get work done, working from home presented other challenges, and communicating with contractors was tougher. Also, he couldn't get any crews at this time.
  - The Order in Counsel ( the "OIC") that started in 2020 to shut down jade mining in northern BC for three years made it difficult to do any work. The uncertainty put a run-on their customers, so they couldn't sell any jade. They had the most difficult years to make any money, yet at the same time were still required to pay for and do reclamation works.

- Shut down orders from other inspectors due to asbestos exposure concerns stopped any work on site for around a year.

35. While these are unique and extenuating circumstances, none of them prevented the manager from complying with the orders. These will be factored into the penalty considerations below.
36. In the hearing, the manager admitted multiple times that he did not comply with the order. He stated:  
*“We’re not denying it, the contravention is there. We didn’t complete the reclamation report, you don’t have it, and we still have to get it done. I keep saying we’re guilty; I mean there’s no disputing it, but we’re just asking for mercy so that we can still eat. I haven’t had my fingers slapped in the last 45 years, so hopefully that counts for something. Hopefully you’re not going to hit us too hard and if we do it again, we’ll take more fault and blame. We’ll just hope for the best.”*
37. No new evidence was provided that shows the order was complied with.
38. For these reasons, I believe on a balance of probabilities that the manager did fail to comply with a provision of an order made under the *Act* as set out in Contravention 1.

#### **Base Penalty Calculation:**

##### **Gravity and Magnitude of the contravention or failure**

39. Gravity and magnitude refer to how important the compliance requirement is to the overarching goals of the Ministry.
40. The requirement to comply with an order of an inspector underpins the regulatory regime for mining in BC. For the legal system in Canada and BC to function effectively, enforcement actions by government officials must be followed. Disregard for an order could result in a direct impact to or threaten the health and safety of workers, the environment, and the public. This is a serious contravention.
41. In the escalated enforcement regime of the *Act*, the issuance of a s.35 order is one tool that can be used when someone disregards an order of an inspector. To not comply with a s.35 order is a more egregious infraction than not complying with a different type or order.
42. This is further supported in s.4 of the *Administrative Penalties Regulation* in that there are three different contravention categories with different penalty amounts. s.35 orders are in the first/highest category with a maximum penalty of \$500,000. Whereas contravening a s.15(4)(d) order (which was what the initial orders to develop the reclamation report were issued under) fall into the middle category with a maximum penalty of \$100,000. Contraventions in the third category have a maximum penalty of \$40,000.

43. Failing to comply with a s.35 order is a most serious contravention. It undermines the integrity of the regulatory regime and interferes with the Ministry’s ability to regulate effectively. The corresponding penalty must be significant to be a deterrent.

44. For these reasons, I consider the gravity and magnitude to be **major**.

**Actual or Potential for Adverse Effect**

45. Real or potential adverse effects relates to the real or potential harm the contravention has on the health and safety of workers, the environment, or the public.

46. As the order was to develop a reclamation report for the entire Cassiar asbestos mine and not just the area that current jade mining is occurring, the actual or potential adverse effect is based on that whole, larger asbestos mine area. The Cassiar asbestos was a major mine, which included open pits, dumps, underground working, significant infrastructure (mill, shop, buildings, etc), a town site, an airstrip, etc. This is a very large footprint. There are multiple watercourses in and around the overall mine area as well.

47. The timeframe to develop the reclamation report has taken multiple years. Moreover, reclamation works have been ongoing for decades. It is likely that the fulsome reclamation works that the required reclamation report would outline will take many years to implement.

48. The adverse effect applies to a large and complex area, has significant potential for impact to the local site, as well as off-site, is long-term in nature, and cannot be addressed easily, nor in a reasonable time.

49. For these reasons, I find the adverse effects to be **high**.

**BASE PENALTY ASSESSMENT:**



**Application of Penalty Adjustment Factors**

50. The following factors reflect the unique circumstances of this file, including what happened before, during and after the contravention or failure.

**Previous contraventions or failures, AMP’s imposed or orders issued**

51. There is a history of multiple contraventions of this regulatory requirement. Prior to the failure to comply with the s.35 order, four reclamation inspections were conducted and from each of those the manager was ordered to develop a reclamation report. While the manager started developing the report, it was never completed. Thus, there was repeated instances of failing to comply with the order of an inspector prior to the s.35 order that is the subject of this administrative penalty.

52. While the Mine Investigation Unit could have recommended separate contraventions for each time the manager failed to comply with the orders of an inspector, they did not. Those previous contraventions or failures will be considered in this part of the penalty assessment.

53. A single past contravention or failure would be worth a modest penalty increase. A second would warrant an even higher increase. In this case, four previous contraventions or failures is, in my opinion excessive and warrants a substantive deterrent.

54. A penalty increase of \$20,000 will be made.

**Whether contravention or failure was repeated or continuous**

55. There is no evidence to support this contravention or failure was repeated or continuous.

56. No penalty adjustment will be made.

**Whether contravention or failure was deliberate**

57. There is no evidence to support this contravention or failure was deliberate.

58. No penalty adjustment will be made.

**Economic benefit derived by the party from the contravention or failure**

59. There could be an economic benefit to the manager by not completing the reclamation report. However, no evidence was provided to indicate how much money might have been saved by failing to complete the report. The manager did hire a contractor to start developing the report, but it was not completed. No evidence was provided to indicate how much money was spent on the report to date, nor how much might have been saved by not completing the report. Therefore, the potential for an economic benefit is not known; nor if there was one, the amount estimated. As such, there is no evidence provided to indicate an economic benefit.

60. No penalty adjustment will be made.

**Efforts to prevent the contravention or failure**

61. There is no evidence submitted to indicate any efforts were made to prevent the contravention or failure from occurring. The manager did attempt to comply by hiring a contractor to develop the reclamation report, but it was never completed. Inspectors followed up with the manager multiple times to check on the status of his response. The manager had ample opportunity to comply.

62. No penalty adjustment will be made.

**Efforts to correct the contravention or failure**

63. There is no evidence supporting efforts to correct the contravention or failure were made.

64. No penalty adjustment will be made.

**Efforts to prevent reoccurrence of the contravention or failure**

65. There is no evidence supporting efforts to prevent reoccurrence of the contravention or failure were made. As there were four previous failures to comply with the same order, it is clear that the manager did not take any effort to prevent reoccurrence.

66. No penalty adjustment will be made.

**Any additional factors that are relevant**

67. There were multiple extenuating circumstances that may have contributed to the failure to comply with the order. The Covid 19 pandemic made it challenging to get people to the site to complete the work. The OIC to suspend jade mining in northern BC may have impacted market conditions and made it financially difficult on the manager. However, at no time did the manager ask for an extension or seek alternatives to the orders he was issued. For some of the previous orders, the manager did not even provide a response, which is required by the *Act*.

68. Inspectors reached out to the manager multiple times to follow up and see when the report would be completed and when he might come into compliance with the order. The manager did not even respond to many of these offers. Ultimately, the manager had every opportunity to comply with the order and in his own words, “*just dropped the ball.*” No additional factors were presented that warrant penalty adjustment.

69. Therefore, no penalty adjustment will be made.

**TOTAL PENALTY ADJUSTMENTS:**

BOX B

**\$20,000**

One penalty adjustment (increase) will be made for previous contraventions or failures.

*Add Box A and Box B*

**PENALTY AFTER CONSIDERING ALL FACTORS:**

**\$40,000**

**IS A DAILY MULTIPLIER BEING APPLIED TO THIS PENALTY**

No

TOTAL PENALTY ASSESSMENT

**\$40,000**

**DUE DATE AND PAYMENT:**

70. If an appeal to this Determination is not made, payment of this administrative penalty is due within 40 days of the date you were given this Determination. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Attn: Samantha Suddes, Policy Analyst, Ministry of Energy, Mines and Low Carbon Innovation, PO Box 9395 Stn Prov Govt, Victoria, BC, V8W 9M9. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.
71. If payment has not been received within 40 days and no appeal was filed during that time, interest will be charged on overdue payments at a rate of 3% + the 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. In the event the penalty is not paid as required, the Chief Inspector of Mines may refuse to consider applications made by you for a permit, or for the amendment of a permit, until the penalty is paid in full.

**RIGHT TO APPEAL:**

72. If you disagree with this determination, s.36.7 of the Act provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with s.36.7 of the Act, if you wish to appeal this determination, you must commence your appeal within 30 days of being given this determination.
73. For information on how to commence an appeal, please consult the EAB:  
Address: 4th Floor, 747 Fort Street, Victoria, BC, V8W 3E9  
Telephone: (250) 387-3464  
Website: <http://www.eab.gov.bc.ca>
74. If the EAB upholds an administrative monetary penalty, payment is due within 40 days after the notice of the EAB's decision is given to you.

**PUBLICATION:**

75. Upon the conclusion of an appeal period, or appeal process, this determination will be published on the BC Mine Information Website at: <https://mines.nrs.gov.bc.ca/enforcement-actions>

Dated this 24<sup>th</sup> day of March 2023.