



Ref: 112333

File: 19000-02/NNCL

November 17, 2020

Registered Mail and Email

New North Construction Ltd.

562 Highway 27 South
PO Box 2503
Vanderhoof BC V0J 3A0
[REDACTED]

Attention: [REDACTED]

Re: Determination of Administrative Penalty

Further to the Notice of Opportunity to be Heard issued to you on November 28, 2019 and your opportunity to be heard, via oral submission on August 27, 2020, respecting the alleged contraventions. I have now made a determination in this matter.

After reviewing the information available to me, I have concluded that New North Construction Ltd. has contravened the *Mines Act* (Act) as set out in the following pages, in respect of which an administrative penalty is being imposed pursuant to section 36.2 of the Act and the Administrative Penalties (Mines) Regulation. The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

In considering all the information before me as statutory decision maker, I have decided not to apply a second and separate administrative penalty against [REDACTED] McKone.

If you have any questions regarding this determination, please contact me at AMPSInquiries@gov.bc.ca

Sincerely,

Justyn Bell
Director, Health and Safety Specialists
Health and Safety Branch | Ministry of Energy, Mines and Petroleum Resources

Attachment: Determination of Administrative Penalty

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 19000-02/NNCL

NAME OF PARTY:

New North Construction Ltd.
562 Highway 27 South
PO Box 2503
Vanderhoof BC V0J 3A0

**AMOUNT OF
ADMINISTRATIVE PENALTY:**

\$5,000.00

CONTRAVENTION OR FAILURE:

Contravention 1:

1. Inspection Report 76358, Order #3 states:
 - a. *“Reclamation and safe removal of overburden and waste materials dumped over the edge of the waste dump at Area 5 has not yet been completed. Condition 4(c)(vii) of Mines Act permit P-13-138 states " all mined or otherwise disturbed ground surfaces, including cut banks, fill slopes and tailings piles shall be stabilized annually by contouring and re-vegetating to prevent erosion and surface runoff from carrying sediment into adjacent watercourses". The Manager shall ensure compliance with section 4(c)(vii) of Mines Act permit P-13-138, section 9.8.1 of the HSR Code, and inspection orders issued August 21, 2015.*
 - b. *The Manager shall adhere to safe operating procedures within the geotechnical report developed for Area 5 and shall complete remediation works at Area 5 preventing waste materials from entering the Germansen River and failure of the waste dump, to be completed prior to July 31, 2017. The Manager shall provide adequate photographs of the completed remediation work, to this inspector, prior to July 31, 2017. Failure to comply with this order will result in the immediate confiscation of the reclamation security held under permit P-13-138. The stop work order previously issued for the mine site remains in place and mining activities, other than reclamation and remediation, are not authorized on the mine site until written authorization is provided by the Regional Inspector of Mines rescinding the stop work order.”*
2. New North Construction Ltd. (New North) contravened Order 3, of Inspection Report 76358 issued under section (s).15(4)(d) of the *Mines Act* (Act).

Contravention 2:

3. Inspection Report 76358, Order #2 states:
 - a. *“At the time of the inspection, adequate signage was not posted at the road entrance to the mine site. The Manager shall ensure compliance with section 1.3.2 of the HSR Code and ensure notice of authority to enter the mine is posted to all road entrances to the mine, to be completed immediately.”*
4. New North contravened Order 3, of Inspection Report 76358 issued under s. 15(4)(d) of the Act.

DATE AND LOCATION OF CONTRAVENTION OR FAILURE:

5. The contraventions occurred on or about 2017-10-16.
6. The contraventions occurred at or near the community of Manson Creek, in the Province of British Columbia.

SUMMARY:

7. The following synopsis captured from the Administrative Monetary Penalty Recommendation submitted to me by Energy, Mines and Petroleum Resources (EMPR) staff on 2019-04-26 adequately summarizes the events related to the contraventions:
 - a. [REDACTED] (MCKONE) of New North Construction Ltd. holds a current Mines Act permit to conduct mining activities at mine site #1300336 commonly referred to as the McKorkell mine site. The McKorkell mine site is a placer mining operation. MCKONE is the designated mine manager for the site. The mine site is located north of Manson Creek, BC.
 - b. Inspector of Mines Victor KOYANAGI (KOYANAGI) and Inspector of Mines Bambi SPYKER (SPYKER) conducted an inspection of the McKorkell mine site on 2015-08-20. They observed a location within the mine site, hereinafter referred to as “Area 5,” with a large overburden pile located between the active pit and the Germansen River. A section of the overburden materials had migrated to the edge of the river. Based on the position of the soils, it is presumed sediment entered the Germansen River. The overburden pile also showed extension fractures indicating instability. An order was issued to address the overburden through a sediment and erosion control plan along with a reclamation plan. Other orders were issued to address high-wall faces, unconsolidated materials at the top of wall faces, no shoulder barriers on roads, and to resubmit a new Notice of Work plan (NOW).
 - c. An Inspection was completed on 2016-05-04 by KOYANAGI, SPYKER, and Mines Inspector Brian OKE (OKE). The inspection revealed the issues with the overburden waste pile had not been addressed as ordered in 2015. Also, the

shoulder barriers had not been installed as ordered in 2015. Orders were written to address these issues.

- d. KOYANAGI and SPYKER completed an inspection on the mines site on 2017-06-20. At the time of inspection, KOYANAGI observed and issued orders on the following non-compliances:*
 - i. Order 1: The mine manager did not have adequate access control to the mine site.*
 - ii. Order 2: The mine manager did not have signs posted restricting access to the site*
 - iii. Order 3: Overburden material, in a location of the McKorkell mine site known as Area 5, did not have erosion or sediment control, the ground was not stable, and the area was not reclaimed.*
- e. These orders were to be complied with by 2017-07-31.*
- f. A follow up inspection was conducted by KOYANAGI and SPYKER on 2017-10-16. KOYANAGI observed the overburden pile in Area 5 had not been adequately reclaimed and stabilized as per the previous orders. Also, no signage was posted at the road access restricting entry to the mine site. Order numbers 2 and 3 were to be complied with by 2017-07-31.*

REASONS FOR DECISION:

- 8. Pursuant to s.5 of the Act I have been appointed as an inspector of mines.
- 9. 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, as set out in s.36.1, s.36.2 and s.36.3 of the Act.
- 10. In making my finding that New North has contravened the above-noted provisions of the Act, I have considered all the relevant information submitted to me, whether referenced in this determination, including the written submissions provided by respondent. In determining the penalty amount, I have considered the matters listed in s.2 of the Administrative Penalties (Mines) Regulation (the Regulation). Based on this assessment, I offer the following comments:
- 11. The evidence submitted by EMPR demonstrates a pattern of attempts to achieve compliance at the McKorkell site with little progress or success over a period of a couple of years. Inspectors made numerous attempts through follow up communications with McKone to either get status updates or encourage compliance. After issuing several repeat orders the decision to escalate to an AMP was made.
- 12. For the contravention at Area 5, EMPR submitted several evidentiary documents including inspection reports and photographs that clearly demonstrates no remedial action was undertaken

between the period of the first order (2015) and the last inspection related to the contravention (2017).

13. In Mr. McKone's Offer To Be Heard, he submitted that he did not intentionally fail to comply with the orders, but rather did not fully understand what was required of him. Compounding the issue was the challenges he faced to get consultants and heavy equipment onto the site. For these reasons the remedial action was not completed until 2018.
14. I appreciate that a proponent can face any number of challenges when trying to address a requirement for remedial action, however there are mechanisms in place for proponents to work with Mines Inspectors to address challenges. Examples include timely and clear communication with the issuing Mines Inspector, this may result in due dates being modified. However, those conversations are expected to occur before any due dates for remedial action expire. In other cases, if the proponent feels they are adversely affected by an order, they may choose to appeal to the Chief Inspector of Mines within the specified time limits as set out in s.33 of the Act.
15. Neither option guarantees the proponent will be relieved of the duty to comply but is better than ignoring legally issued orders. The evidence demonstrates to me that Mr. McKone did not take seriously the orders issued by mines inspectors. Mr. McKone's failure to comply with multiple repeat orders undermined the regulatory scheme and increased the potential for compounded environmental damage in the Germansen River.
16. Regarding contravention 2, I am satisfied with the evidence submitted by EMPR that adequate signage was not posted as per the order. Mr. McKone was notified of the failure to comply with the signage requirement in two (2) subsequent follow up inspections in September and November 2017.

PENALTY CALCULATION:

17. The penalty is assessed in consideration of the matters set out in s.2 of the Regulation. The assessment establishes a base penalty to reflect the seriousness of the contravention or failure based on the gravity and magnitude of the contravention or failure and the actual or potential adverse effect. Using the base penalty as a starting point, additional mitigating or aggravating factors are then considered.
18. The penalty for these contraventions are prescribed in s.4(2) of the Regulation. A corporation committing this contravention may be considered for an administrative penalty not exceeding \$100,000.

Base Penalty Calculation:

Gravity and Magnitude of the contravention or failure

19. The Gravity and Magnitude of the contraventions refers to how important compliance with the requirement is to the ministry's regulatory goals. Continued non compliance with repeated orders undermines the basic integrity of the overarching regulator regime and significantly interferes with the Ministry's ability to regulate.

20. Both contraventions were the result of numerous repeat orders issued over a two (2) year period. Contravention 1 addressed serious environmental concerns, contravention 2 addressed requirements to protect the health and safety of the public.

21. For these reasons I believe the gravity is Major

Actual or Potential for Adverse Effect

22. Area 5 consists of a large overburden waste pile adjacent to the Germansen River, a portion of which had slumped in one area with overburden materials possibly entering the stream. Evidence of significant settlement, erosion and small scale slope failures have deposited material at the toe of the slope and likely into the Germansen River. The actual or potential adverse effect of sedimentation entering streams can have harmful effects on fish populations, including increasing mortality, affecting growth rates, preventing development of fish eggs and modifying migration to name a few.

23. Failure to maintain adequate signage at the entrance of the mine site has the potential affect to interfere with the health and safety of the public, however is a localized issue that was resolved in the short term.

24. For these reasons I believe the actual or potential adverse effect is medium.

25. In addition to the above two factors, the base penalty assessment also takes into consideration the deterrent aspect of this penalty in relation to the scale of the named party. Based on general information from the recommendation package about the scale of the placer project, I consider the base penalty to provide an adequate deterrent for New North Construction, as the party subject to the penalty.

BASE PENALTY ASSESSMENT:



Application of Penalty Adjustment Factors

26. 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

27. There were no previous AMP's imposed, however the non-compliance at Area 5 continued through six inspections between 2015-08-20 and 2017-10-16.

Whether contravention or failure was repeated or continuous

28. Both non-compliances were repeated and continuous over the period referenced in paragraph 26.

29. This is an aggravating factor, however due to the size and general condition of the New North Construction Ltd operation no additional penalty will be imposed.

Whether contravention or failure was deliberate

30. There is no evidence to support whether the contravention was deliberate. Mr. McKone submitted he never intended to intentionally contravene the orders, but rather was faced with a multitude of challenges, such as securing a lowbed to transport heavy equipment to site and acquiring a consultant to conduct a site assessment.

Economic benefit derived by the party from the contravention or failure

31. There is no evidence to support that Mr. McKone derived any economic benefit from the contravention.

Efforts to prevent the contravention or failure

32. No evidence was submitted to demonstrate Mr. McKone made efforts to prevent the contravention from occurring.

Efforts to correct the contravention or failure

33. Mr. McKone submitted photographs taken in July of 2018 to demonstrate the remedial action ordered was completed. Mr. McKone advised he removed more material than what the consultant required of him, in order to decrease weight from the edge of the bank. The consultant has not been able to return to site to review and approve the works to date.
34. Evidence of remedial action being completed is a mitigating factor, however due to the significant time delay to remediate the site no penalty subtraction will be imposed.

Efforts to prevent reoccurrence of the contravention or failure

35. No evidence presented.

Any additional factors that are relevant

36. Mr. McKone advised that purchased a truck and lowbed trailer for the express purpose of hauling heavy equipment to site at an approximate price of \$47,000.00. No evidence was presented to verify the purchase price. Mr. McKone still owns the truck and trailer and is able to use them for other purposes as well.
37. No penalty adjustment is made.

**TOTAL PENALTY
ADJUSTMENTS:**

BOX B

\$5,000.00

Add Box A and Box B

**PENALTY AFTER
CONSIDERING ALL FACTORS:**

\$5,000.00

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

No

TOTAL PENALTY ASSESSMENT

\$5,000.00

DUE DATE AND PAYMENT:

38. If you do not appeal this determination, 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: Eva Armstrong, Sr. Reclamation Security Coordinator, Ministry of Energy, Mines and Petroleum Resources, PO Box 9320 Stn Prov Govt, Victoria, BC, V8W 9N3. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.
39. 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:

40. 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.
41. 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>
42. If the EAB upholds an administrative penalty, payment is due within 40 days after the notice of the EAB's decision is given to you.

PUBLICATION:

43. 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 17th day of November 2020.