

State of New Mexico
Energy, Minerals and Natural Resources Department

Michele Lujan Grisham
Governor

Sarah Cottrell Propst
Cabinet Secretary

Todd Leahy, JD, PhD
Deputy Cabinet Secretary

Jerry Schoeppner, Director
Mining and Minerals Division



Electronic Transmittal

November 1, 2021

Sherry Burt-Kested, Manager
Environmental Services
Freeport-McMoRan Chino Mines Company
P.O. Box 10
Bayard, NM 88023

Re: Transmittal of Modification 21-1 Continental Mine MMD No. GR002RE

Dear Ms. Burt-Kested,

The Energy, Minerals and Natural Resources Department (EMNRD), Mining and Minerals Division (MMD) hereby acknowledges the approval of Modification 21-1 of Permit No. GR002RE changing the face value of the Third-Party Guarantee and the Real Estate Collateral required amount pursuant to 19.10.12.1208(C) and (G) NMAC. The attached permit Modification 21-1 increases the total amount of financial assurance posted by Freeport-McMoRan Chino Mines Company (FMI-Chino).

Please contact me with any questions regarding this process or other permitting issues for the Continental Mine.

Sincerely,

Kevin Myers
Mining Act Reclamation Program
Mining and Minerals Division-EMNRD

cc: Jerry Schoeppner, EMNRD-MMD (gerard.schoeppner@state.nm.us)
Holland Shepherd, EMNRD-MMD (holland.shepherd@state.nm.us)
David Otori, EMNRD-MMD (david.ohori@state.nm.us)
David Ennis, EMNRD-MMD (david.ennis@state.nm.us)
Kurt Vollbrecht, NMED-MECS (kurt.vollbrecht@state.nm.us)
Anne Maurer, NMED-MECS (anne.maurer@state.nm.us)
Kariann Sokulsky, Chino (ksokulsk@fmi.com)
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Thomas L. Shelley, Chino (tshelley@fmi.com)
Allyson Siwik, GRIP (grip@gilaresources.info)

**PERMIT MODIFICATION 21-1 TO PERMIT NO. GR002RE
CONTINENTAL MINE
EXISTING MINING OPERATION**

**MINING AND MINERALS DIVISION
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

Permit Modification 21-1 (“Modification 21-1”) to Permit No. GR002RE (“Permit”) is issued by the Director of the Mining and Minerals Division (“MMD”) of the New Mexico Energy, Minerals and Natural Resources Department (“EMNRD”) to:

Freeport-McMoRan Chino Mines Company
whose correct address is: P.O. Box 10
Bayard, NM 88023
 (“Permittee” or “FM-Chino”)

for the Continental Mine located in Grant County, New Mexico.

This Modification 21-1 approves the change of the face value of Third-Party Guarantee for Freeport Minerals Corporation (“FMC”) pursuant to §19.10.12.1208(G) NMAC and the adjustment of the required amount of Real Estate Collateral pursuant to §19.10.12.1208(E) NMAC and in fulfillment of Condition 8 of Section 8.N of Revision 15-2 to Permit No. GR002RE. This modification increases the total amount of financial assurance (“FA”) required for the closure/closeout of the Continental Mine from \$21,444,901 (net present value or “NPV”) to \$23,261,489 NPV by approving supplemental costs of the 2019 revised cost estimate. The specific instruments being adjusted by Modification 21-1 are:

- The Third-Party Guarantee (“TPG”) in the amount of \$1,618,477.
- The Collateral required in the amount of \$15,250,400.

The TPG increases from \$1,143,389 to \$1,618,477, and the Collateral required amount increases from \$13,908,900 to \$15,250,400. The FA amounts and instruments for the Continental Mine Permit No. GR002RE are summarized as follows:

FMC Third-Party Guarantee	\$1,618,477
Cash Contribution/Cobre CCP Trust	\$5,760,000
Real Estate Collateral	\$15,250,400
<u>Surety Bond</u>	<u>\$632,612</u>
Total	\$23,261,489

In order to accomplish the approval contemplated by this Modification 21-1, the following subparagraphs are modified or added to Permit No. GR002RE:

Section 1 (21-1). **STATUTES AND REGULATIONS**

- A. This Permit modification is issued pursuant to the New Mexico Mining Act, NMSA 1978, §69-36-1, et seq. (1993, as amended through 2016) (“Act”) and New Mexico Mining Act

Rules, Title 19, Chapter 10 of the New Mexico Administrative Code (“NMAC” or “Rules”).

- B. This Permit modification is subject to the Act, the Rules and any other regulations which are now or hereafter in force under the Act; and are made a part of this Permit by this reference.

Section 1a (21-1).

PERMIT MODIFICATION PACKAGE

- A. The Modification 21-1 Permit Modification Package (“21-1 PMP”) is comprised of the following documents:
- 1) Letter dated December 4, 2020, from EMNRD and NMED to FM-Chino regarding Joint Agency Approval of the collateral [based on 2020 appraisal with discount] for the Continental Mine, MMD Permit No. GR002RE and Discharge Permit DP-1403.
 - 2) Letter dated April 30, 2021, from FM-Chino proposing an adjustment to the 2019 updated revised cost estimate (“RCE”) and the FA instruments for Permit GR002RE and Discharge Permit DP-1403.
 - 3) Letter dated July 8, 2021, from MMD and NMED to FM-Chino – Response to FMI Proposal for Adjustment of Cost Estimate and FA for Continental Mine, MMD Permit No. GR002RE and Discharge Permit DP-1403.
 - 4) Letter dated August 4, 2021, from FM-Chino– Financial Assurance for Continental Mine MMD Permit No. GR002RE and NMED Discharge Permit DP-1403.
 - 5) Joint letter dated August 13, 2021, from EMNRD and the New Mexico Environment Department (“NMED”) to FM-Chino regarding Continental Mine MMD No. GR002RE and DP-1403, approving the proposed updated RCE of \$27,005,640 in 2019 dollars, NPV amount of \$23,261,489 and FA instrument details.
 - 6) Letter dated September 13, 2021, from FM-Chino to EMNRD and NMED for the draft change in face amount for the Third-Party Guarantee FA instrument from \$1,143,389 to \$1,618,477.
 - 7) Document dated October 7, 2021, from FMI-Chino to EMNRD and NMED for face amount for the Third-Party Guarantee FA instrument of \$1,618,477.

Section 3 (21-1).

FINDINGS OF FACT

Application and Fees

- A. The Permittee has paid the permit modification fee of \$1,000.00 as required by §19.10.2.201 NMAC.
- B. Pursuant to §19.10.5.505(B) NMAC, the proposed change does not require public notice nor the opportunity for public hearing.
- C. Pursuant to §19.10.5.505(B)(1) NMAC, the proposed changes would not have a significant environmental impact.
- D. Pursuant to §19.10.5.505(B)(1) NMAC, the proposed changes would not result in a significant increase in the amount of financial assurance because the agency already holds FA in excess of the increased amount in the form of real estate collateral and cash trust.
- E. Pursuant to §19.10.5.505(B)(2) NMAC, the application was accompanied by sufficient information for the Director to determine whether any of the factors listed in §19.10.5.505(B)(1) NMAC are present.
- F. Pursuant to §19.10.5.505(B)(3) NMAC, the Director consulted with NMED regarding the proposed change to the financial assurance instrument and revised cost estimate.
- G. Pursuant to §19.10.5.505(C) NMAC, 21-1 PMP was in a format acceptable to the Director. The application for permit modification has been reviewed in accordance with §19.10.5.505 NMAC. The 21-1 PMP is complete, accurate, and complies with the requirements for permit modifications under §19.10.5.505 NMAC.

Financial Assurance

- H. Pursuant to §19.10.12.1209(B) NMAC, the Director approves the change to the FM-Chino TPG and real estate collateral through this Modification 21-1.
- I. Pursuant to §19.10.12.1209(B) NMAC, this change to the FA does not constitute a release of FA under §19.10.12.1210 NMAC.
- J. MMD holds FA in the total amount of \$23,261,489 NPV, which has been determined by MMD to be sufficient to meet the requirements of the Act, Rules, and the Permit.

Section 8 (21-1).

GENERAL OBLIGATIONS AND CONDITIONS

Financial Assurance – Subsection N (modification to Revision 15-2 and Modification 20-1)

The following conditions are required to ensure that adequate financial assurance is provided for the site, as required by §19.10.5.506.J(2) and §19.10.12 NMAC.

1. The Permittee may apply for and obtain release of financial assurance in accordance with §19.10.12.1210 NMAC.
 2. The Permittee shall evaluate the adequacy of the financial assurance at least every five years as part the CCP Update unless otherwise directed by MMD.
 3. The Permittee shall not be released from the requirements of the Mining Act for those areas approved as industrial until the industrial PMLU has been implemented.
 4. The Permittee has provided financial assurance in the NPV amount of \$23,261,489 using the following forms of financial assurance pursuant to Part 12 of the New Mexico Mining Act Rules: trust, surety bond, real property collateral and a third-party guarantee.
- 4A. The Permittee shall be responsible at all times to maintain financial assurance in a form or forms and in an amount sufficient to meet the requirements of the Mining Act Rules. In addition, the Permittee shall review the amount of funds in the Cobre Trust based upon the valuation report provided by the Trustee to MMD and NMED at the end of each calendar year and shall provide additional financial assurance as follows:
- a. If, at any annual review conducted under this paragraph, the amount of funds in the Trust plus any other financial assurance provided by FM Chino, excluding all amounts covered by a third-party guarantee, are not equal to or greater than twenty-five percent (25%) of the total amount of financial assurance required under this Permit at that time (based upon a net present value calculation), then FM Chino shall provide additional financial assurance such that the total value of all trust funds plus other financial assurance provided by FM Chino is equal to or greater than twenty-five percent (25%) of the total amount of financial assurance required under this Permit.
 - b. The Permittee shall report the ending balance of the Cobre CCP Trust for each calendar quarter to MMD and NMED no later than April 30, July 31, October 31, and January 31 of each year.
 - c. The Permittee shall review the amount of fund in the Cobre CCP Trust based upon the valuation reported provided by the Trustee to MMD and NMED as of the end of every calendar quarter and shall provide additional financial assurance as follows:
 - i. If the amount of funds in the Cobre CCP Trust is not equal to or greater than the minimum account balance of \$5,760,000 for the previous consecutive 90-Business

Days ending on the last day of the calendar quarter, then within 210-days after the end of the calendar quarter, the Permittee shall make payment sufficient to bring the Cobre CCP Trust account balance to \$5,760,000 (“**Supplemental Payment**”). To make this Supplement Payment the Permittee may establish a cash account pursuant to 19.10.12.1208.D or may establish a separate trust fund in a form approved by the Director in accordance with §19.10.12.1208.E NMAC in an amount such that the total of all trust funds provided as financial assurance for FM Chino equals at least \$5,760,000. When the amount of funds in the Cobre CCP Trust has been equal to or greater than the minimum account balance of \$5,760,000 for at least two consecutive quarters after the Supplemental Payment is made and the total amount of financial assurance, without considering the Supplemental Payment, is sufficient to meet the requirements of the Mining Act Rules, the Permittee may request that all amounts in a cash account or separate trust fund established to receive the Supplemental Payment be returned to Permittee.

- ii. Business Day is defined as any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.
- 5A. The Permittee shall not replace the Chino CCP Trust with other forms of financial assurance.
 - 6A. Earnings on invested funds shall be retained in the Chino CCP Trust.
 - 7A. The Director may require adjustment of the financial assurance as provided in §19.10.12.1206 NMAC.
 - 8A. Cost of administering the Chino CCP Trust and any taxes payable to the Chino CCP Trust shall be paid from the Chino CCP Trust.
 - 9A. MMD, NMED and the Permittee shall establish a management committee composed of members within State Government with experience in financial matters and investments and an equal number of members designated by Chino who shall meet annually regarding the performance of the Trust and possible adjustments to the Trust managers and advisors.
- 5.(c) Collateral. Real property collateral has been offered by the Permittee and has been accepted by the Director based on an agency review and approval of the 2020 appraisal with a discount. The real estate collateral has been provided to cover a portion of the financial assurance obligation, in the amount of \$15,250,400.00. The Permittee must annually provide a report on the current market value of the properties, and must, at least every five years, provide a new appraisal of all properties remaining as collateral. The Director may require that the Permittee provide additional documents, such as updated title reports and environmental assessments, as part of any review of collateral.

5.(d) Third-Party Guarantee. The balance of the financial assurance for the Continental Mine shall be covered by a Third-Party Guarantee from FMC. FMC has provided a Third-Party Guarantee, in a form acceptable to the Director, which is dated October 7, 2021, and which guarantees \$1,618,477.00 of the financial assurance required for the Continental Mine. The Third-Party Guarantee provides that if the Permittee fails to complete the performance requirements of this Permit, including closure and reclamation, FMC shall do so, or upon forfeiture, shall fund such account as instructed by the Director in the full amount of that portion of the financial assurance covered by the Third-Party Guarantee. FMC has provided the Director with audited financial statements and a Certificate of Compliance and has demonstrated financial soundness in accordance with §19.10.12.1208.G(8) NMAC.

B. The Permittee shall be responsible at all times to maintain FA in a form(s) and in an amount sufficient to meet the requirements of the Mining Act Rules including permit revisions and modification of No. GR002RE.

Section 9 (21-1).

CONCLUSIONS OF LAW

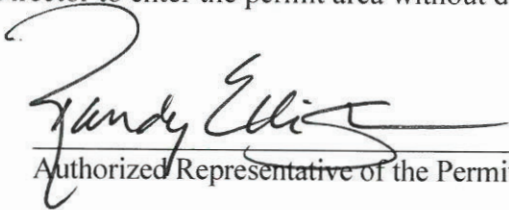
- A. The Director has jurisdiction over the Permittee and the subject matter of this proceeding.
- B. 21-1 PMP is complete, accurate, and complies with the requirements of the Act and §19.10.5.505 of the Rules and with conditions described in this Permit Modification 21-1 document.

All other provisions, modifications, and revisions for mining and reclamation contained in the Continental Mine Permit No. GR002RE, remain unchanged.

CERTIFICATION

I certify that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals responsible for obtaining the information; I believe the submitted information is true, accurate, and complete.

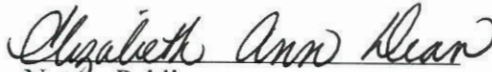
I certify that I have read, understand and will comply with the requirements of this Permit Modification. I also agree to comply with the performance and reclamation standards and requirements of the Permit, and Modifications and Revisions, the Rules, and the Act, and allow the Director to enter the permit area without delay for the purpose of conducting inspections.


Authorized Representative of the Permittee

President and General Manager
Title

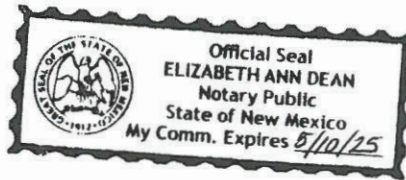
Freeport-McMoran China Mines Company
Company

Subscribed and sworn to before me this 26 day of October, 2021


Notary Public

My Commission Expires


May 10, 2025



ORDER

IT IS HEREBY ORDERED that Permit Modification 21-1 to Permit No. GR002RE allowing the changes to the total FA amount required and the FA amounts for Third-Party guarantee and cash trust are approved. The Permit may not be transferred without approval by the Director. The Permittee shall be responsible at all times for maintaining FA in a form(s) and in an amount sufficient to meet the requirements of the Mining Act Rules. The Permit is subject to all the Act and Rules and conditions set out in the Director's Findings of Fact, Conclusions of Law, General Obligations and Conditions, and Order.

By Order of the Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, of the State of New Mexico.

By: 

Jerry Schoeppner, Director
Mining and Minerals Division
Energy, Minerals & Natural Resources Department

Date: 11/1/2021

Myers, Kevin, EMNRD

From: Myers, Kevin, EMNRD
Sent: Monday, November 1, 2021 3:09 PM
To: Burt-Kested, Sherry
Cc: Schoeppner, Gerard, EMNRD; Shepherd, Holland, EMNRD; Ohori, David, EMNRD; Ennis, David, EMNRD; Vollbrecht, Kurt, NMENV; Maurer, Anne, NMENV; Sokulsky, Kariann; Krueger, Christian; Shelley, Thomas L.; Allyson Siwik (grip@gilaresources.info)
Subject: Modification 21-1 of GR002RE - Continental Mine
Attachments: 2021 1101 transmittal of Mod 21-1_Final.pdf; 2021 1101 Mod 21-1 Continental GR002RE CoverHaulage_acknowledged by FMI(signed).pdf

Good afternoon Sherry,

See attached letter and permit modification 21-1 of MMD permit No. GR002RE – Continental Mine.

Please contact us with any questions.

Kevin C. Myers
Hydrologist
Mining Act Reclamation Program (MARP)-Mining and Minerals Division (MMD)

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