

**PERMIT MODIFICATION 16-3 TO PERMIT NO. GR010RE  
TYRONE MINE  
EXISTING MINING OPERATION**

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

Permit Modification 16-3 (“Modification 16-3”) to Permit No. GR010RE (“Permit”) is issued by the Director of the Mining and Minerals Division (“MMD”) of the New Mexico Energy, Minerals and Natural Resources Department to:

Freeport-McMoRan Tyrone Inc. (“Tyrone”)  
whose correct address is: P.O. Box 571  
Tyrone, NM 88065

(“Permittee”) for the Tyrone Mine located in Grant County, New Mexico.

This Modification 16-3 approves the change of the Guarantor of the Tyrone Third Party Guarantee from Freeport-McMoRan Inc. (“FCX”) to Freeport Minerals Corporation (“FMC”) pursuant to §19.10.12.1208(G) NMAC. The total amount of financial assurance (“FA”) required for the closure/closeout of the Tyrone Mine is \$179,504,992 (net present value or “NPV”). The specific instrument being adjusted by Modification 16-3 is:

- The Tyrone Third Party Guarantee (“TPG”) in the amount of \$50,804,400.

The financial assurance amounts and instruments for the Tyrone Mine Permit No. GR010RE are summarized as follows:

FMC Third Party Guarantee	\$50,804,400
Cash Contribution/Tyrone CCP Trust	\$48,200,000
Real Estate Collateral	\$48,549,200
Surety Bonds	\$31,780,518
<u>Letter of Credit</u>	<u>\$170,874</u>
Total	\$179,504,992

In order to accomplish the approval contemplated by this Modification 16-3, the following subparagraphs are added to Permit No. GR010RE:

**Section 1 (16-3).                      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 (16-3).**

**PERMIT MODIFICATION PACKAGE**

- A. The Modification 16-3 Permit Modification Package (“16-3 PMP”) is comprised of the following documents:
- 1) Letter dated December 13, 2016, from Tyrone applying for a modification to Permit No. GR010RE for the Tyrone Mine to change the Guarantor of the Tyrone TPG from FCX to FMC and requesting a thirty-day time extension to cure the deficiencies identified in the MMD letter titled, “Notice of failure to Maintain Financial Soundness”, dated September 16, 2016.
  - 2) Letter dated January 13, 2017, from Gallagher and Kennedy, legal counsel on behalf of Tyrone with additional information in support of the 16-3 PMP.
  - 3) Letter dated January 13, 2017, from FCX requesting a second thirty-day time extension to cure the deficiencies identified in the MMD letter titled, “Notice of Failure to Maintain Financial Soundness”, dated September 16, 2016.
  - 4) Letter dated February 2, 2017, from FCX with additional information in support of the 16-3 PMP.
  - 5) Electronic mail submittals from Gallagher and Kennedy on behalf of Tyrone dated February 3, 2017, with additional information including proposed TPG including Exhibits B, C and D in support of the 16-3 PMP.
  - 6) Letter dated February 9, 2017, from Industrial Economics, Inc. with a summary of findings based on a review of the unaudited financial statements for FMC and pro forma Certificates of Compliance for the first, second and third quarter 2016, and the audited annual financial statements for FMC as of end of year 2015.
  - 7) Electronic mail submittals from Gallagher and Kennedy on behalf of Tyrone dated February 13, 2017, with TPG signed by FMC including Exhibits A, B, C, D and E in support of the 16-3 PMP.

**Section 3 (16-3).**

**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)(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) are present.
- E. Pursuant to §19.10.5.505(B)(3) NMAC, the Director consulted with NMED regarding the proposed change of the Guarantor of the Tyrone TPG from FCX to FMC.
- F. Pursuant to §19.10.5.505(C) NMAC, 16-3 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 application for permit modification is complete, accurate, and complies with the requirements for permit modifications under §19.10.5.505 NMAC.

*Financial Assurance*

- G. Pursuant to §19.10.12.1209(A) NMAC, the proposed change to the Tyrone TPG provides equivalent coverage.
- H. Pursuant to §19.10.12.1209(B) NMAC, the Director approves the change to the Tyrone TPG through this Modification 16-3.
- 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. Pursuant to 19.10.12.1208(G)(1)(b) NMAC the Permittee has provided information to substantiate that the guarantor and the permittee do not exercise dominion and control over the other so pervasive as to render one a mere instrumentality of the other.
- K. Pursuant to 19.10.12.1208(G)(3) NMAC the Tyrone TPG has been signed by an authorized representative, and legal counsel of the guarantor certifying that the guarantor can legally engage in the guarantee and certifies the amounts and names of the beneficiaries of all other guarantees for which the guarantor is obligated.
- L. Pursuant the 19.10.12.1208(G)(4) NMAC the guarantor is a corporation that has provided authorization documentation including a board of directors' resolution and proof that the corporation can validly execute a guarantee under the laws of the state of its incorporation, and its bylaws and articles of incorporation.
- M. Pursuant to 19.10.12.1208(G)(7) NMAC the guarantor, its successors and assignees have agreed to remain bound jointly and severally liable for all litigation costs incurred in any successful effort to enforce the third party guarantee against the guarantor.

- N. Pursuant to 19.10.12.1208(G)(8) NMAC the guarantor has demonstrated financial soundness by meeting alternative 1 soundness test.
- O. MMD holds FA in the total amount of \$179,504,992 NPV, which has been determined by MMD to be sufficient to meet the requirements of the Act, Rules, and the Permit.

**Section 8 (16-3).**

**GENERAL OBLIGATIONS AND CONDITIONS**

*Financial Assurance*

- A. Tyrone Third Party Guarantee. With this Modification 16-3, the Guarantor of the Tyrone TPG is hereby is changed from FCX to FMC. FMC has provided a revised TPG in a form acceptable to the Director. The revised TPG is hereby incorporated into Permit No. GR010RE.
- 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.
- C. The Guarantor shall submit annual FMC financial statements audited by an independent certified public accountant together with an amended annual certificate of compliance to MMD within ten calendar days of receipt or no later than 90-days after the end of the fiscal year pursuant to 19.10.12.1208(G)(2) NMAC. The Guarantor shall pay for all costs incurred for the audit and certification.
- D. The Guarantor shall submit quarterly FMC unaudited financial statements together with an amended certificate of compliance within ten calendar days of receipt or no later than 60-days of the end of each calendar quarter pursuant to 19.10.12.1208(G)(2) NMAC. The Guarantor shall also provide a certification from its Chief Financial Officer, or equivalent approved by MMD, attesting to the accuracy of the quarterly unaudited financial statements.
- E. The Permittee shall pay for an evaluation and analysis of the audited annual FMC financial statements by an independent reviewer selected by the Director and any information regarding the Guarantor provided to or requested by the Director to evaluate the Guarantor's financial ability to provide a guarantee pursuant to 19.10.12.1208(G)(6) NMAC.
- F. The Guarantor shall notify the Director within ten calendar days of receipt by the Guarantor of notice of any change in the rating of the Guarantor's most recently issued senior credit obligation by Standard and Poor's or Moody's Investors Service.
- G. The Guarantor shall notify the Director within ten calendar days of any increases in the amount of the guarantees for environmental permits issued in the United States for which the Guarantor is obligated.

- H. The Guarantor shall notify the Director within ten calendar days of any administrative or judicial action filed or initiated alleging the insolvency or bankruptcy of the Guarantor or the Permittee, or alleging any violations which would result in suspension or revocation of the Guarantor's license to do business.

**Section 9 (16-3)**

**CONCLUSIONS OF LAW**

- A. The Director has jurisdiction over the Permittee and the subject matter of this proceeding.
- B. 16-3 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 16-3 document.

All other provisions, modifications, and revisions for mining and reclamation contained in the Tyrone Mine Permit No. GR010RE, 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.

WB Calk  
Authorized Representative of the Permittee

VICE PRESIDENT  
Title

Freeport-McMoRan Tyrone Inc.  
Company

Subscribed and sworn to before me this 15<sup>th</sup> day of February, 2017

Sandra G. Skinner  
Notary Public

My Commission Expires


July 22, 2018



**ORDER**

IT IS HEREBY ORDERED that Permit Modification 16-3 to Permit No. GR010RE allowing the change of the Guarantor of the Tyrone TPG from FCX to FMC is approved. The Permit may not be transferred without approval by the Director. 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. The Permit is subject to all the Act and Rules and conditions set out in the Director's Findings of Fact, General Obligations and Conditions, and Conclusions of Law, and Order.

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

By:   
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Fernando Martinez, Director  
Mining and Minerals Division  
Energy, Minerals & Natural Resources Department

Date: 2/15/2017