



Ministry of
Energy, Mines and
Petroleum Resources

Ref: 106221

March 4, 2019

File: 19000-01/Pinegreen

Registered Mail

Pinegreen Gold Mining (Canada) Ltd.

9229 Hardy Road
Delta BC V4C 4V4

Attention: Mr. Li Zhong Zhi (Charlie Li)

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on September 6, 2018 and your opportunity to be heard on November 28, 2018 respecting the alleged contravention, I have now made a Determination in this matter.

After reviewing the information available to me, I have concluded that Pinegreen Gold Mining (Canada) Ltd. has contravened section 10(1) of the *Mines Act* in respect of which an administrative penalty is being imposed pursuant to section 36.2 of the *Mines 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.

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

Sincerely,

Tania Demchuk, MSc, PGeo
Deputy Chief Inspector of Mines
Mines Health, Safety and Enforcement Division
Ministry of Energy and Mines

Attachment: Determination of Administrative Penalty

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 19000-01/Pinegreen

NAME OF PARTY:

Pinegreen Gold Mining (Canada) Ltd.
9229 Hardy Road
Delta BC V4C 4V4

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$28,000

CONTRAVENTION OR FAILURE:

Mines Act s.10 (1)

“Before starting any work in, on or about a mine, the owner, agent, manager or any other person must hold a permit issued by the Chief Inspector and, as part of the application for the permit, there must be filed with an inspector a plan outlining the details of the proposed work and the program for the conservation of cultural heritage resources and for the protection and reclamation of the land, watercourses and cultural heritage resources affected by the mine, including the information, particulars and maps established by the regulations or the code.”

Pinegreen Gold Mining Canada Ltd. (Pinegreen) contravened s.10(1) of the *Mines Act* by commencing work at the Joel’s Bar placer mine without a permit issued by the Chief Inspector.

The contravention of s.10(1) of the *Mines Act* is prescribed in s.4(1) of the Administrative Penalties (Mines) Regulation. A person making this contravention may be considered for an administrative penalty not exceeding \$500,000.

DATE OF CONTRAVENTION OR FAILURE:

The contravention occurred starting on or about 2017-05-17 and continued until Inspector of Mines Cloet issued a *Mines Act* permit on 2017-06-05.

SUMMARY:

On 2017-02-04, Zenith Mineral Resources Ltd. (Zenith) submitted a Notice of Work for a placer mine permit at an area commonly known as Joel’s Bar, located near Cottonwood, British Columbia (BC). Subsequent to this, Zenith entered into discussions with Pinegreen for the purposes of transferring the permit to Pinegreen. At this time, no permit had been issued for the site in either party’s name.

On or about 2017-05-17, near Cottonwood, BC, Pinegreen commenced mining activities at the Joel’s Bar placer mine following discussion with Zenith. It is understood that work was commenced prior to permit issuance because Pinegreen was running out of time to follow through on an installation agreement for technicians to set up their equipment.

On 2017-06-05 a permit was issued to Zenith after the Notice of Work review and consultation with First Nations. It was not known by the Ministry of Energy, Mines and Petroleum Resources

(EMPR) at that time that mining activity had already commenced. The permit included a condition, based on comments received during First Nations consultation, to conduct an archaeological assessment prior to commencing any work at the site.

On 2017-06-15 Zenith's agent and an archaeologist attended the site to conduct the required archaeological assessment. While on site, they discovered that activities had commenced which prevented the conduct of the required assessment. This was reported by phone to Inspector of Mines Cloet by the archaeologist upon leaving the site. The archaeologist subsequently followed up by email to provide photographs taken during the site visit.

On 2017-06-16 Inspector Cloet attended the site to conduct an inspection and issued a suspension of work order to stop activity at the site. At this time, an employee of Zenith volunteered drone footage to Inspector Cloet, which shows that work commenced as early as 2017-05-17.

On 2017-07-04 the permit for the site was transferred into Pinegreen's name following a written request submitted by Pinegreen to EMPR on 2017-07-04.

I reviewed the recommendation package for consideration of an administrative monetary penalty, prepared by EMPR staff dated 2017-12-14. On 2018-09-06 a Notice for Opportunity to be Heard was provided to current Pinegreen Mine Manager, Mr. Charlie Li, in relation to this recommendation. An in-person opportunity to be heard was conducted in Victoria on the afternoon of 2018-11-28.

I understand from the recommendation package and the presentation by Mr. Li, that Zenith and Pinegreen had a pre-existing business relationship. Pinegreen was under pressure to commence mining activities and find a successful location due to previous challenges at other placer locations in the province and an installation timeline for newly purchased equipment that was about to expire.

During the Opportunity to be Heard, Mr. Li stated that the agreement in which Zenith allowed Pinegreen to commence work at the Joel's Bar site was verbal between the two companies. Mr. Li stated that Pinegreen did not know that Zenith did not yet have a permit for activities at Joel's Bar. Mr. Li also confirmed that Pinegreen had commenced work without confirming that a permit was in place for activities at the site and acknowledged that the work occurred without a permit.

I also understand from the recommendation package that during the Province's consultation with First Nations in relation to this application for placer mining at Joel's Bar, the Lhtako Dene Nation specifically requested that an archaeological assessment be conducted due to overlap of the proposed mining area with an area of high archaeological potential. Ultimately, this assessment was not able to be completed due to the level of disturbance at the site created by the unauthorized work.

Based on information presented during the opportunity to be heard, I understand that Pinegreen is undertaking reclamation/remediation of the site. Mr. Li indicated that this is occurring even

though the company is experiencing some financial difficulties because he understands this is a requirement. A document dated 2018-09-26, prepared by Trillium Environmental was provided by Mr. Li as evidence that this work is under way. The report itself is an addendum to a previous report dated 2018-08-10, which was not provided to me. The 2018-09-26 document states that it is "...for the purposes of responding to concerns and questions raised by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and Ministry of Energy and Mines...". I also understand that the 2018-08-10 report was specific to orders contained in a mine inspection report dated 2018-06-05, which was not part of the information presented to me. I note that this set of documentation is not relevant to the matter under consideration because it is about meeting the legal obligation to reclaim the site and address the inspection orders of 2018-06-05.

I note that during the opportunity to be heard Mr. Li indicated that Pinegreen was bankrupt; however a follow-up bankruptcy and insolvency records search has found that a formal filing for bankruptcy has not been made in Canada.

Mr. Li also stated that he has now taken his Mine Supervisors Certification online so that he is more familiar with regulatory requirements. On 2018-12-19, I confirmed that Mr. Li has completed his certification.

REASONS FOR DECISION:

I have considered all of the information submitted to me, including the recommendation by Ministry staff dated 2017-12-14 and the verbal submission and supporting documentation provided on 2018-11-28 by Mr. Charlie Li, Mine Manager and Director of Pinegreen Gold Mining Canada Ltd. My evaluation has included a consideration of the matters listed in s.2 of the Administrative Penalties (Mines) Regulation, as applicable. Based on this assessment, I offer the following comments:

- There is agreement between the Ministry and Mr. Li that Pinegreen conducted work at the Joel's Bar location, commencing in May 2017 and that this work occurred prior to issuance of the required *Mines Act* permit. This is indicated in the information provided in the recommendation package and in Mr. Li's verbal submission of 2018-11-28.
- Although Zenith reportedly stated to Pinegreen that work could commence at the site, it is my determination that Pinegreen contravened the s.10(1) of the *Mines Act* by undertaking mining activity as defined by the *Mines Act* because it was Pinegreen that was responsible for physically creating the disturbance and conducting mining activities without a permit. In commencing mining activities, it was Pinegreen's responsibility to ensure that all required authorizations were in place, and not rely solely on a verbal indication from Zenith without seeing a permit and any associated conditions. For this reason, the facts and content of discussions between the two companies is less relevant to this determination.
- Work conducted at the Joel's Bar site prevented the ability to complete the required archaeological assessment, a condition of the *Mines Act* permit resulting from

consultation with the Lhtako Dene Nation. It is noted that the assessment was attempted but was not conclusive due to the extent of the disturbance resulting from unauthorized mining activity.

- Pinegreen is undertaking to reclaim the Joel's Bar site.

PENALTY CALCULATION:

The contravention of s.10(1) of the *Mines Act* is prescribed in s.4(1) of the Administrative Penalties (Mines) Regulation. A person making this contravention may be considered for an administrative penalty not exceeding \$500,000.

The penalty is assessed in consideration of the matters set out in s.2 of the Administrative Penalties (Mines) 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 for adverse effect. Using the base penalty as a starting point, additional mitigating or aggravating factors are then considered.

Base Penalty Calculation:

Gravity and Magnitude of the contravention or failure

Gravity and magnitude considers the importance of the requirement with respect to the regulatory structure. The initiation of work prior to issuance of a permit to conduct that work is a major contravention of the *Mines Act* because this contravention undermines the basis of the overarching regulatory regime and interferes with the Ministry's ability to regulate.

Obtaining the required permit pursuant to s.10(1) of the *Mines Act* and then complying with regulatory requirements including permit conditions is the underpinning of the regulatory regime for mining in this province. Knowledge of the regulatory requirements that govern the mineral exploration and mining industry is a reasonable expectation of parties undertaking mineral exploration and mining activities. In this instance, Mr. Li stated during the Opportunity to be Heard that Pinegreen had a previous history of placer mining at other locations in this province. In making this reference, Mr. Li indicated challenges getting permits in relation to First Nations and as such I find it reasonable to expect an understanding that activity such as that occurring at Joel's Bar required a *Mines Act* permit as well as adherence to any site specific conditions established by that permit.

Actual or Potential for Adverse Effect

In this instance, I consider there to be two actual or potential adverse effects:

1. The commencement of work without a permit interferes with the Ministry's capacity to regulate effectively because the Ministry did not know that the work had commenced at site and also because there was no opportunity to implement permit conditions. This creates a potential adverse effect on the ability to regulate adequately to protect health and safety of workers, the environment and the public, as well as plan any compliance verification inspections.

2. The commencement of work at Joel's Bar placer operation without a permit pursuant to *Mines Act* s.10(1) had the adverse effect of preventing a conclusive assessment for archaeological or cultural heritage resources at the site. Specifically, the permit condition requiring this assessment was included as a result of consultation with the Lhtako Dene Nation, resulting from a response received during consultation conducted by the province in relation to the notice of work for this project.

When the permit was issued to Zenith Mineral Resources Ltd. on 2017-06-05, for work proposed on the notice of work submitted on 2017-02-04, the following condition was included as a regulatory requirement: *"Approval is subject to an Archaeological Assessment by a qualified archaeologist. All proposed mining and/or exploration areas that are new and that overlap High Arch potential must be assessed. No work may commence until an Archaeology Assessment has been completed and copy provided to this office."*

Although an assessment was attempted on receipt of the Mines Act permit, the result was inconclusive due to the disturbance that had already occurred. The area of disturbance was estimated to be less than three hectares.

It is highly problematic that conditions established by the Province during the permitting process were not able to be fully implemented because of the work that proceeded in advance of permit issuance. It is equally problematic that because of this, the Province was not able to follow through on requests made during consultation undertaken in good faith with First Nations. I take seriously the Province's obligations to First Nations, and it is critical that the Province be able to fulfill any commitments made and maintain trust in the regulatory system.

Based on the moderate scale of the disturbance (approximately 2.75 hectares), the potential adverse effect on the Ministry's ability to regulate the activity, the real effect on the ability to fulfill the permit condition and the resulting uncertainty about impact to cultural heritage resources, I consider this to be an overall medium adverse effect.

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 work occurring at Joel's Bar, I consider the base penalty to provide an adequate deterrent given the moderate size of Pinegreen as the person subject to the penalty.

BASE PENALTY ASSESSMENT:

BOX A

\$ 40,000

Application of Penalty Adjustment Factors

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 by, AP's imposed or orders issued

This is the first major contravention noted for this project. The recommendation package did not include an analysis of previous orders issued.

Whether contravention or failure was repeated or continuous

This contravention was not repeated, however the non-compliance with the requirement for a permit continued over a period two to three weeks from the estimated start of unpermitted activity to the time of permit issuance on 2016-06-05. The duration of the activity that occurred without a permit is not considered to be an aggravating factor in this circumstance.

Whether contravention or failure was deliberate

While the proponent should have known of the requirement for a permit and potential for permit conditions to be in place, it is unclear if the contravention was deliberate.

Economic benefit derived by the party from the contravention or failure

Evidence in witness statements suggests that there is potential that a cost savings was derived by commencing the work in advance of permit issuance by ensuring that equipment installation and maintenance was able to be conducted in accordance with a time-limited purchase agreement. The costs saved were not indicated in the statements collected and no adjustment factor is assessed in this instance because I do not have sufficient evidence to determine if an economic benefit was realized.

Exercise of due diligence to prevent the contravention or failure

There were no attempts to prevent this contravention.

Efforts to correct the contravention or failure

The permit that was applied for on 2017-02-04 was received by Zenith on 2017-06-05 subsequent to the commencement of work. This is not considered to be a mitigating factor as that process was already underway when the decision to commence work was made.

The mitigating factor related to this item is that subsequent to initiating work, Pinegreen understood that a *Mines Act* permit was required and they initiated the permit transfer process. Correspondence requesting that the permit be transferred into the name of Pinegreen was received and processed by Inspector Cloet on 2017-07-04 such that the permit for this site was transferred into Pinegreen's name.

Efforts to prevent reoccurrence of the contravention or failure

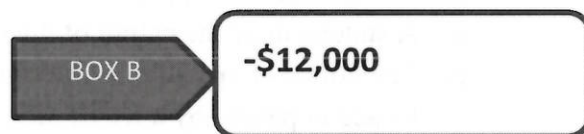
During the opportunity to be heard, current Mine Manager and Pinegreen Director Mr. Li stated that he had taken steps to ensure that he is more familiar with regulatory requirements since he has taken on the Mine Manager role. Specifically, he has completed the online Mine Supervisor Certification. This reflects this individual's attempt to ensure he is more familiar with the *Mines Act* and Health, Safety and Reclamation Code for Mines in British Columbia. On 2018-12-19, I confirmed that he is listed in the database as having completed this certification. I have considered this to be a mitigating factor, which would have been given more weight had there been an indication of company-wide efforts to become more familiar with regulatory requirements.

Any additional factors that are relevant

Several additional factors have been considered in the assessment of this penalty amount:

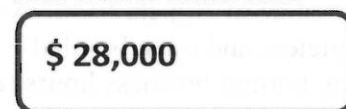
1. The parties subject to the investigation in relation to this contravention were fully cooperative with the inspector and the investigators. This is viewed as an important mitigating factor.
2. The required archaeological assessment was attempted to be completed. Although the area was too disturbed to make any final determination about the presence of cultural heritage resources, the effort was made to reduce the adverse effect of having initiated work without having made the assessment. I consider this to be a minor mitigating factor and note that this does not outweigh importance of the province's ability to address results of First Nations consultation and(or) implement requirements via permit conditions.
3. Although Pinegreen is responsible for understanding and operating within the bounds of regulatory requirements, the company was apparently relying on advice from Zenith in relation to the ability to enter the site and conduct work. Based on information on Zenith's website, they hold permits for and operate a number of mines across the province and offer contracted consulting services to other mining companies. Given this, Pinegreen may have believed it to be acceptable to rely on Zenith's advice and I have considered it to be a minor mitigating factor in the overall penalty assessment.
4. During the opportunity to be heard Mr. Li stated that Pinegreen is in a financially difficult state but is committed to conducting the required remediation for this site. Proof of the intention to remediate was provided by way of a remediation document by Trillium Environmental. The document sets out that the remediation plan has been developed in response to an order to remediate the site. Mine reclamation is a regulatory requirement and it is important that the remediation be completed. In considering this information, I have assessed that the commitment to follow through on regulatory requirements is neutral with respect to mitigating or aggravating factors.

**TOTAL PENALTY
ADJUSTMENTS:**



**PENALTY AFTER
CONSIDERING ALL FACTORS:**

Add Box A and Box B



IS A DAILY MULTIPLIER BEING APPLIED TO THIS PENALTY

No

This was a single occurrence.

TOTAL PENALTY ASSESSMENT	\$28,000
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DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within forty (40) days after the date of service of this Determination of Administrative Penalty OR within forty (40) days after the date of an appeal decision if an appeal is requested. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services, Attn: Reclamation Security Administrator, Ministry of Energy, Mines and Petroleum Resources, PO Box 9320 Stn Prov Govt, Victoria BC, V8W 9N6. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received within the required timeframe set out above, 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 of non-payment you may be ineligible to apply for new or amended authorizations until payment is received in full.

RIGHT TO APPEAL:

If you disagree with this determination, s.36.7 of the *Mines Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board Procedures Regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal must be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email (eabinfo@gov.bc.ca) or fax (250-356-9923), provided the original notice of appeal and the appeal fee follows by mail. The mailing address of

the EAB is: PO Box 9425 Stn Prov Govt, Victoria BC, V8W 9V1. The street address is:
4th Floor, 747 Fort Street, Victoria, BC.

For further information, please consult the Environmental Appeal Board website at
<http://www.eab.gov.bc.ca>.

If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 40 days after receiving a copy of the order or decision of the EAB, or, if the EAB has sent the matter back to the decision maker, within 40 days after a new Determination of Administrative Penalty is served.

Dated this ___4___ day of ___March, 2019__.