



Ministry of  
Energy, Mines and  
Petroleum Resources

Ref: 112049

File: 19000-02/WHL

September 17, 2020

Registered Mail

Stage Coach Enterprises Ltd.  
9202 Young Road  
PO Box 372  
Chilliwack BC V2P 6J4

Attention: [REDACTED]

**Re: Determination of Administrative Penalty**

Further to the Notice of Opportunity to be Heard issued to you on March 2, 2020 and your opportunity to be heard, via written submission on May 5, 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 Stage Coach Enterprises Ltd. has contravened 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 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 Wacor Holdings Ltd.

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

### NAME OF PARTY:

Stage Coach Enterprises Ltd.  
9202 Young Road  
PO Box 372  
Chilliwack BC V2P 6J4

### AMOUNT OF ADMINISTRATIVE PENALTY:

**\$26,000.00**

### CONTRAVENTION OR FAILURE:

#### Contravention 1:

1. Section (s).10(1) of the *Mines Act* (Act) states:

“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 a 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.”

2. Stage Coach Enterprises Ltd (Stage Coach) contravened s.10(1) of the Act.

### DATE AND LOCATION OF CONTRAVENTION OR FAILURE:

3. The contraventions occurred on or between 2017-06-11 and 2018-07-14.
4. The contraventions occurred at or near the Village of Cumberland, in the Province of British Columbia.

### SUMMARY:

5. The following will summarize the relevant events relating to contravention 1.
6. Stage Coach owns a 100 hectare property (the property) within the Village of Cumberland Development Permit Area (PID 023-888-491; Lot A, Section 26, Township 10, Comox District, Plan VIP65968).
7. Coal Valley Estates Ltd. (Coal Valley) is a land development company formed to develop the Coal Valley Estates subdivision that abuts the southern boundary of the property.

8. Stage Coach and Coal Valley are related corporations, having the same directors and shareholders, one of which includes [REDACTED].
9. Wacor Holdings Ltd. (Wacor) is a civil construction company that operates various mining pits. Wacor engages in mining activity pursuant to a valid *Mines Act* permit (G-8-344) on the property. [REDACTED] is the sole director and shareholder.
10. Between 2012 and 2017 various mining activities occurred on the property that were brought to the attention of the Village of Cumberland. It was determined that numerous activities required a development permit from the Village. Stage Coach was requested to submit a retroactive permit application to the Village. During a review of the permit application in 2019, it was identified that potential mining activities occurred on the property without a valid *Mines Act* permit.
11. Through a referral, the Ministry of Energy, Mines and Petroleum Resources (EMPR) was made aware of the potential non-compliance and conducted subsequent compliance verification activities.
12. On 2019-03-15 Mines Inspector Jim DUNKLEY conducted a site inspection and confirmed that unauthorized work was being conducted outside of a permitted area on the property. DUNKLEY estimated approximately 5.42 hectares of land had been disturbed.
13. Pursuant to s.15(4.1) of the Act, DUNKLEY ordered that all mining and mining-related activities on the site closed.
14. The aggregate deriving from the unauthorized disturbance was used to provide backfill on the Coal Valley subdivision project.

#### **REASONS FOR DECISION:**

15. Pursuant to s.5 of the Act I have been appointed as an inspector of mines.
16. 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.
17. In making my finding that Stage Coach has contravened the above-noted provisions of the Act, I have considered all the relevant information submitted to me, whether or not 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:

#### Company Ownership:

18. Counsel for Wacor and Stage Coach (the Respondent) submitted a joint written response (the submission) during the Opportunity to be Heard period. As noted in the summary, ownership of

the three companies, Wacor, Stage Coach and Coal Valley is split amongst a few key individuals. It is also noted that the Respondent stated the following:

- a. “The operations of Stage Coach and Coal Valley are inextricably intertwined, to the extent that Stage Coach does not have its own bank account and engages in all of its banking transactions on its behalf through Coal Valley.”

#### Responsibility

19. In the submission Stage Coach accepted full responsibility for the contravention as identified in the following paragraphs:

- a. “Stage Coach acted innocently, operating under the mistaken belief that the development permit held by its related corporation, Coal Valley Estates Ltd. (“Coal Valley”), was sufficient to allow it to extract and remove aggregate, strictly for the purposes of the development.”
- b. “...Wacor’s involvement in the unauthorized disturbance was limited to hourly work for hire at the direction of Stage Coach and Coal Valley (which are, for the present purposes, indistinguishable) to the benefit of Coal Valley. Wacor did not invoice for any aggregate extracted and did not sell the aggregate on the open market or otherwise.”
- c. “Wacor’s involvement was limited to hourly work for hire extracting aggregate and hauling same to the Coal Valley subdivision development for use as backfill. The work was invoiced on a force account basis, with Wacor therefore remunerated on the basis of time and materials, without regard to the volume of aggregate extracted from the Unpermitted Site. No material from the Wacor Mine was used at the Coal Valley subdivision.”

20. As noted in para 19 (a) it was stated that Stage Coach was operating under the mistaken belief that the development permit (issued by the Village of Cumberland) held by Coal Valley, was sufficient to allow it extract and remove aggregate for the purposes of the development. The submission included three documents related to the development permit, identified as Appendix C. I have reviewed these documents and determined they are all related to the Village of Cumberland development permit application, and not the permit itself. I could not identify any language in those materials that would give rise to a mistaken belief; I will summarize my understanding of the contents of the submitted documents:

- a. Appendix C Document C-1 is an ecological assessment of the property, which includes bio-inventory information and mitigation options. This document formed part of the updated development permit application, required by the Village of Cumberland. There is no reference to mining activity in this document.
- b. Appendix C Document C-2 consists of an office based third party audit of Stagecoaches’ development permit application. Within this document the auditors

identify mining that has occurred outside of the permitted area. The audit recommends that Stagecoach implement a detailed mitigation and compensation plan that clearly demonstrates how the environmental impacts caused by road construction, road widening, and mining activities will be mitigated and/or compensated for.

- c. Appendix C Document C-3 is a response to document C-2 submitted by the authors of C-1. This document provides additional clarity and rationale for the content in document C-1 and indicates that the mining activity of the site was not assessed as it was deemed outside of the scope of the authors assessment.
21. The development permit was not included in the submission, it's not clear to me if a Village of Cumberland development permit has been obtained.
22. The Respondent did submit evidence to support that Wacor's involvement in the unauthorized activity was limited to hourly work for the purposes of extraction and hauling.

#### Disturbance Area

23. EMPR and the Respondent disagree on the estimated disturbance area and volume of material extracted where the unauthorized works occurred. EMPR estimated 5.42 hectares had been disturbed where the Respondents argue the disturbance was limited to 3.63 hectares.
24. I note that EMPR's estimate included the entire footprint of the disturbed area – including the location of where the overburden material was deposited minus 0.03 hectares of previously disturbed land.
25. The Respondent's position is the previously disturbed land equates to 0.35 hectares prior to their activity (and ownership of the land). Additionally, the Respondent does not believe the overburden constitutes part of the disturbed area.
26. I agree with EMPR that the estimate of the disturbed land includes the overburden area. The overburden material at site includes part of the area that would normally require to be reclaimed and form part of the reclamation plan in a notice of work application. I agree with the Respondent that 0.35 hectares of previously disturbed land existed.
27. DUNKLEY estimated 293,340 tonnes had been extracted, whereas the Respondent estimates the volume extracted does not exceed 147,000 tonnes. DUNKLEY's estimates are based off calculations provided in the AMP recommendation package. I have no supporting documentation to determine how the respondent estimated their total.

#### **PENALTY CALCULATION:**

28. 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.

29. The penalty for this contravention is prescribed in s.4(1) of the Regulation. A corporation committing this contravention may be considered for an administrative penalty not exceeding \$500,000.

### Base Penalty Calculation:

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

30. The commencement of work without a permit significantly interferes with the Ministry's ability to effectively regulate and undermines the integrity of the overarching regulatory regime. In this case the Ministry was unable assess environmental and reclamation plans, and implement any potential permit conditions related to health, safety and the environment.
31. For these reasons, I consider the gravity and magnitude to be major.

#### Actual or Potential for Adverse Effect

32. By mining without a permit, Stage Coach bypassed any public and First Nations concerns and consultations, the potential for environmental assessments, and government-based regulations both municipal and provincial.
33. For these reasons, I consider the adverse effect to be High.
34. 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 about the scale of work that occurred on the property, I consider the base penalty to provide an adequate deterrent given the moderate size of Stage Coach as the party subject to the penalty.

**BASE PENALTY ASSESSMENT:**

BOX A

**\$20,000**

### Application of Penalty Adjustment Factors

35. 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

36. No previous contraventions, failures, AMP's or orders were identified relating to similar contraventions.

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

37. Once the contravention was brought to the attention of the Respondent works were suspended.

**Whether contravention or failure was deliberate**

38. The Respondent has stated they were operating under the mistaken belief that the Development Permit was sufficient for authorization of aggregates to be extracted for the purposes of supporting the development. As noted in paragraph 20, I did not see any evidence to support this argument.
39. There is no additional evidence to support whether the contravention was deliberate.

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

40. The Respondents would have financially benefited by avoiding the requirement to pay permit application fees, estimated to be in the range of \$8K to \$50K.
41. This is an aggravating factor.

**Efforts to prevent the contravention or failure**

42. There is no evidence to suggest any steps were taken to prevent the contraventions from occurring.

**Efforts to correct the contravention or failure**

43. The unauthorized activity has ceased and Stage Coach has indicated their intention to remediate the disturbed area.
44. This is a mitigating factor.

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

45. As mentioned in paragraph 41 the site will be remediated. No additional calculation applies.

**Any additional factors that are relevant**

46. Stage Coach accepted responsibility for the unauthorized works. Evidence was provided to demonstrate Wacor's involvement was strictly for labour, in which Wacor did not derive an economic benefit beyond compensation for hourly work.
47. The respondent has shown a willingness to cooperate with the Ministry, including a desire to enter into an agreed statement of facts to settle the matter. The Ministry's structural inability to undertake that approach prohibited the parties from pursuing that approach.
48. These are mitigating factors.



**TOTAL PENALTY  
ADJUSTMENTS:**

BOX B

**+ \$6,000**

*Add Box A and Box B*

**PENALTY AFTER  
CONSIDERING ALL FACTORS:**

**\$26,000**

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

No

TOTAL PENALTY ASSESSMENT

**\$26,000**

**DUE DATE AND PAYMENT:**

49. 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.
50. 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:**

51. 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.
52. 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>
53. 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:**

54. 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 17<sup>th</sup> day of September, 2020.