



Ministry of  
Energy, Mines and  
Petroleum Resources

Ref: 111553

File: 19000-02/MQGI

July 16, 2020

Email and Registered Mail

MountainSide Quarries Group Inc.  
Roger Brent James Palmer, President  
34912 Panorama Drive  
Abbotsford BC V2S 7S3

Attention: Roger Brent James Palmer

Registered Mail

**Re: Determination of Administrative Penalty**

Further to the Notice of Opportunity to be Heard issued to you on November 19, 2019 and your opportunity to be heard, via written submission on February 26, 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 Mountainside Quarries Group Inc. 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 Roger Brent James Palmer (Mine Manager) at the time of the incident.

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

Sincerely,

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Justyn Bell  
A/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/MQGI

### NAME OF PARTY:

Mountainside Quarries Group Inc.  
Roger Brent James Palmer, President  
39897 Quadling Road  
Abbotsford BC V3G 2E8

### AMOUNT OF ADMINISTRATIVE PENALTY:

**\$ 47,500.00**

### CONTRAVENTION OR FAILURE:

#### Contravention 1:

1. Section (s).1.11.1 of the Health, Safety and Reclamation Code for Mines in British Columbia (the Code) states:

“The manager shall ensure that

(1) workers are adequately trained to do their job or are working under the guidance of someone who has competency both in the job and in giving instruction, and

(2) ensure that all employees receive thorough orientation and basic instruction in safe work practices.”

2. The Mine Manager, Roger Brent James Palmer (Palmer) contravened s.1.11.1 of the Code by failing to ensure workers are adequately trained to do their job, ensure that all employees receive thorough orientation and basic instruction in safe work practices.

3. s.36.1(3) of the *Mines Act* (the Act) states:

“If an employee, contractor or agent of a corporation contravenes or fails to comply with a provision referred to in subsection (1) in the course of carrying out the employment, contract or agency, the corporation also contravenes or fails to comply with the provision and is also liable to an administrative penalty under section 36.2.”

4. Pursuant to s.36.1(3) of the Act, Mountainside Quarries Group Inc. (Mountainside) is liable to receive the administrative penalty.

Contravention 2:

5. Contravention 2, as referenced in the Administrative Monetary Penalty recommendation package contains references to two separate Code sections:

... did breach s.1.11.1 of the Health, Safety and Reclamation Code for Mines in British Columbia by failing to ensure that workers are adequately trained to do their job with regards to thorough orientation and basic instruction in the safe work practices pursuant to those required in part 4.4.16 (11b) where the manager shall develop safe work procedures for any work near moving conveyors, where any material may fall from the conveyor

6. s.1.11.1 of the Code is referenced in paragraph 1.

7. s.4.4.16 (11)(b) of the Code states:

“for cleanup of spillage, include a safe procedure or mechanism for return of material to a moving belt, and a procedure or mechanism to allow the removal of materials lying below the conveyor that protects the persons from contact with the moving parts or the conveyor and any material that may fall from the conveyor.”

8. It is alleged that the Palmer failed to meet all the elements related to training in relation to the conveyor at the Jaw Crusher. Having considered the evidence and arguments it is my opinion that Contravention 1 is general in its purpose to encompass all training contraventions and I will not make a determination on Contravention 2.

Contravention 3:

9. s.1.11.2 of the Code states:

“The manager shall maintain a record of all training workers and supervisors have received and make their record available to an inspector upon request.”

10. Palmer contravened s.1.11.2 by failing to maintain a record of all training workers and supervisors have received.

11. Pursuant to s.36.1(3) of the Act, as referenced in paragraph 3, Mountainside is liable to receive the administrative penalty.

**DATE AND LOCATION OF CONTRAVENTION OR FAILURE:**

12. The contraventions occurred on 2018-06-12.
13. The contraventions occurred at or near Abbotsford, in the Province of British Columbia.

**SUMMARY:**

14. The following will summarize the relevant events relating to contraventions 1 and 3.
15. The contraventions before me derived from an investigation that was commenced by the Ministry of Energy, Mines and Petroleum Resources (EMPR) staff, following a fatal work-related incident at the Mountainside property in June of 2018.
16. The Affected Person (AP), an employee of Mountainside, who had been working for Mountainside for approximately 8 months, was found by colleagues laying on the ground, unresponsive with injuries to their head, beside a Terex Finlay J-1175 Jaw Crusher (Jaw Crusher).
17. The Jaw Crusher is a heavy-duty mobile piece of equipment used in material processing, crushing and screening applications. Specifically, the Jaw Crusher is fed large boulders, and through mechanical means breaks them down into smaller material.
18. A large rock, approximately the size of a basketball, described as a “river rock” was found in the immediate vicinity of the AP. Additionally, the AP’s hard hat was found on the ground with the insert disconnected from the outer shell.
19. The AP died in hospital several hours after being discovered; the injuries to AP’s head and skull were considered consistent with an impact from the river rock. Although no witnesses observed the incident, there is anecdotal evidence that suggests the cause of the incident resulted from a river rock being ejected from the Jaw Crusher and hit the AP in the occipital region of his skull.
20. EMPR staff investigating the incident identified alleged contraventions relating to the training of employees around the Jaw Crusher, as well as a lack of training records’ maintenance.

**REASONS FOR DECISION:**

21. Pursuant to s.5 of the Act I have been appointed as an inspector of mines.
22. 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.
23. In making my finding that Mountainside has contravened the above-noted provisions of the Code, I have considered all the relevant information submitted to me, whether or not referenced in this determination, including the written submissions provided by Palmer. The determination

relates only to the contraventions listed above but will refer to the connection between training, hazardous equipment and worker health and safety. 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:

### General

24. In making my determination regarding the training related contraventions I will first address the reason the AP was located at the Jaw Crusher at the time of the incident. The evidence presented supports that the refuelling truck, located at the incident scene, was only driven by the AP during refuelling tasks. Additionally, witnesses observed that the plastic bag used as filler cap was seen on the ground, next to the Jaw Crusher when the AP was found unconscious. Based on the evidence, I believe on a balance of probabilities that the reason the AP was at the Jaw Crusher at the time of the incident was to begin refuelling the Jaw Crusher.

### Training

25. At the time of the investigation, Palmer could not provide EMPR with any written training materials to demonstrate what specific training the AP received on refuelling the Jaw Crusher. Palmer presented evidence that all training is provided to new staff by the Pit Foreman (PF), through verbal instruction and physical demonstration, as they believe this is more effective than relying on written materials. No evidence was presented to suggest the PF evaluates an employee's ability to perform a task after training has been received.
26. s.1.11.1 of the Code has three essential elements that are relevant for this contravention, which are that "workers are adequately trained", "employees receive thorough orientation" and "basic instruction in safe work practices" is provided. I do not agree with the Palmer's position that providing verbal instruction and physical demonstration, in the absence of written training materials, meets the element of "adequately trained" for the following reasons:
- a. The training requirements in s.1.11.1 are intended to supplement a mine's health and safety program as established in s.1.6.9. Training programs are expected to be written and comprehensive. I believe Palmer was aware of the requirements of the Code, based on the evidence that in 2015, Palmer was issued an order to develop and deliver training to staff on lock out procedures. Palmer prepared a comprehensive training package in response to the order which met the requirement of the inspector, resulting in the order being closed.
  - b. The absence of a written training program prevents a mine from demonstrating what training was delivered, what topics were covered, the level of detail in each topic area and how an employee was evaluated on knowledge or performance (if applicable). This provides structure and consistency in the materials that are being delivered.
  - c. Working around the Jaw Crusher is hazardous. The operations manual for the Jaw Crusher identifies the hazards and risks and establishes procedures for

maintenance tasks, such as refuelling. For this model of Jaw Crusher, the operator's manual states the crusher should be shut off during refuelling. There is no evidence to suggest that in the absence of any other training material prepared by Palmer the AP was, at least, trained on the refuelling procedures in the operator's manual. In my view, training to the standard in the operator's manual would have served as "adequate training".

27. In his written statutory declaration, presented as evidence during the opportunity to be heard, the PF expressed his professional opinion that the AP had received a thorough orientation. I do accept that the PF delivered an orientation, however, without detailed records to demonstrate what materials were covered, there is no evidence to support that it meets the threshold of "thorough". I could not find a definition for *thorough* in the Act or Code, so I referred to the Oxford Dictionary which defines it as: *adjective- complete with regard to every detail; not superficial or partial* [emphasis added].
28. The witness statements of several staff taken during the investigation confirm that a "safety orientation" occurred, but again, there is no evidence available to measure it for completeness.
29. To determine if the AP received "basic instruction in safe work practice" I refer to the following evidence:
  - a. The operator's manual for the Jaw Crusher states the procedure for refuelling consists of shutting down the Jaw Crusher.
  - b. Evidence was presented in the PF's statement to investigators on 2018-06-14 which stated:
    - i. There was "No procedure. No policy for fuelling. We used to do it. I don't know when it changed. Nothing was running. Everything would stop, and they would wait until he was done. I fuelled [others fuelled]... And why—just – I don't know why. I can't explain it."
  - c. The PF's statutory declaration states in summary:
    - i. He trained the AP in safety policies and procedures when the AP was hired in 2017.
    - ii. Training included both verbal and physical demonstrations concerning the safety practices and various pieces of machinery at the quarry.
    - iii. AP knew very well the procedures and best practices for operating near the machinery and in particular the Jaw Crusher.
    - iv. AP knew a safe distance to stay away from the Jaw Crusher.

- v. Regarding refuelling, AP would have ridden along with the person who previously had the job of fuelling machines, which person would have given him training on refuelling procedures in addition to the training I had given him.

d. Palmer's written response from April 8 stating:

- i. "the crusher would normally idle when the AP refuelled it, but it was not "running".

30. Based on that evidence, I have determined that the basic instruction in safe work practices the AP should have received should have referenced the operator's manual procedure to shut down the Jaw Crusher entirely before refuelling. However, the evidence demonstrates that common practice was for the Jaw Crusher to be refuelled while "idling", meaning the motor is still running. As mentioned earlier, in the absence of a written training program, it is not clear what "basic instruction in safe work practices" the AP received, but I have determined that what was taught, and practiced did not meet this standard.
31. For these reasons I find that the Palmer was not in compliance with s.1.11.1.

#### Training Records

32. As previously stated, the Code in 1.11.2 specifies that "the manager shall maintain a record of all training workers and supervisors have received..." [emphasis added]. The evidence presented by EMPR demonstrated that Palmer conducted training for lockout procedures in 2015. In this material Palmer maintained a detailed list of training participants, training materials covered, as well as a participant sign-off form, indicating they reviewed and understood the materials.
33. During the investigation into the incident, EMPR ordered training records for the Jaw Crusher, but none were provided. In the written submission, Palmer stated that:
- "Only after receiving their training would the employee sign required paperwork to begin work with Mountainside. The records show that (the AP) signed our required employment paperwork on November 1, 2017... By extension this means (the AP) had received all required training by (the Pit Foreman) prior to this date."
34. I have examined the employment paperwork (presented as evidence by EMPR and referenced in the written submission) and did not observe any indication or mention that any training was provided or received. Additionally, I did not see evidence of any policy statement supporting the position of Palmer, that employment documents represent the record of all training.
35. The employment paperwork was consistent with payroll documents, amongst others, that are commonly utilized for human resource purposes. Furthermore, the explanation that "by extension" the signing of employment records indicates training has been received is not consistent with the detailed training records Palmer maintained for the lockout procedure training.



36. In his statutory declaration the PF stated:
- a. “Regarding fueling of the jaw crusher and other machines, [the AP] would have ridden along with the person who previously had the job of fueling machines, which person would have given him training on refueling procedures in addition to the training I had given him.”
37. In my opinion, this helps to prove why written training records are required. The PF made assumptions on the level of training the AP received, instead of being able to demonstrate via training records what the actual level of competence the AP was training to for this task.
38. Additionally, as noted previously, the requirement for a manager to “maintain a record of all training” allows the employer to clearly demonstrate they have satisfied the regulatory requirement to provide the training in 1.11.1.
39. For these reasons, I have determined that Palmer did not comply with s.1.11.2.

**PENALTY CALCULATION:**

40. 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.

Contraventions 1 and 3:

41. s.1.11.1 of the Code states:
- “The manager shall ensure that
    - (1) workers are adequately trained to do their job or are working under the guidance of someone who has competency both in the job and in giving instruction, and
    - (2) ensure that all employees receive thorough orientation and basic instruction in safe work practices.”
42. The penalty for this contravention is prescribed in s.7(1) of the Regulation. A corporation committing this contravention may be considered for an administrative penalty not exceeding \$500,000.
43. s.1.11.2 of the Code states:
- “The manager shall maintain a record of all training workers and supervisors have received, and make their record available to an inspector upon request”

44. The penalty for this contravention is prescribed in section 7(3) of the Regulation. A corporation committing this contravention may be considered for an administrative penalty not exceeding \$40,000.

**Base Penalty Calculation:**

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

45. Failure to perform the required task of providing staff with adequate training, through orientations and basic instruction in safe work practices puts employees at an increased risk of exposure to unsafe work or work practices.
46. Failure to maintain training records limits the ability for the regulator to assess compliance with all aspects of training related to worker safety. Additionally, maintenance of training records can improve the chances of the operator complying with Code requirements.
47. For these reasons, I consider the gravity and magnitude to be major.

**Actual or Potential for Adverse Effect**

48. The actual adverse effect of not meeting all the requirements of s.1.11.1 may have serious consequences. The investigation giving rise to these contraventions derived from the tragic outcome in this work-related incident.
49. The actual adverse effect of not maintaining training records, pursuant to s.1.11.2, restricted inspectors' ability to thoroughly investigate any connection between this incident and the training the AP received.
50. For these reasons, I consider the adverse effect to be Very High.

**BASE PENALTY ASSESSMENT:**

BOX A

**\$50,000**

**Application of Penalty Adjustment Factors**

51. 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**

52. Evidence was presented that orders were written to Palmer for non-compliance with s.4.11.1 – Lockout procedures. The remedial action ordered by the inspector required the development of written procedures and ensuring staff were adequately trained in the procedure. Palmer fulfilled the requirements of the order to the satisfaction of the inspector. These training requirements were referenced in paragraphs 26 and 32 above.

53. In my view, the 2015 order should have been a deterrent for Palmer regarding the requirement of detailed lockout procedures and training records. I do accept that there is no additional evidence to suggest that EMPR staff inspected procedures and training records related to other aspects of the quarry, however, the absence of inspections does not negate the need to comply with provisions of the Act, regulations or the Code. Conversely s.24(1) of the Act requires the owner, agent or manager to take all reasonable measures to ensure compliance with Act, regulations or code.

54. This is an aggravating factor.

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

55. There is no evidence to suggest the contraventions were repeated or continuous.

**Whether contravention or failure was deliberate**

56. There is no evidence to suggest the contraventions were deliberate.

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

57. There is no evidence to suggest that Mine Manager derived an economic benefit from the contraventions.

**Efforts to prevent the contravention or failure**

58. There is no evidence to suggest the Mine Manager took any steps to prevent the contraventions from occurring.

**Efforts to correct the contravention or failure**

59. EMPR presented evidence that after the incident Palmer requested to activate equipment not associated with the Jaw Crusher that was previously ordered suspended. In order to ensure compliance with the Code Palmer was issued orders pursuant to s.1.6.9, s.1.11.1 and s.1.11.2 related to the equipment. Palmer complied with all the orders to the satisfaction of the issuing inspector.

60. This is a mitigating factor.

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

61. The evidence in paragraph 59 applies here. The corrections made to address the contraventions (established safe work procedures and improved training requirements) will serve towards preventing the re-occurrence of the contravention.

62. This is a mitigating factor

**Any additional factors that are relevant**

63. No additional relevant factors.

**TOTAL PENALTY  
ADJUSTMENTS:**

BOX B

**-\$2,500**

*Add Box A and Box B*

**PENALTY AFTER  
CONSIDERING ALL FACTORS:**

**\$47,500**

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

No

TOTAL PENALTY ASSESSMENT

**\$47,500**

**DUE DATE AND PAYMENT:**

64. 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.
65. 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:**

66. 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.
67. 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>
68. 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:**

69. 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 16 day of July, 2020.