



Ministry of
Energy, Mines and
Petroleum Resources

Ref: 108944

File: 19000-02/SIA

January 09, 2020

Registered Mail

South Island Aggregates Ltd.

c/o Cobble Hill Holdings Ltd.
1 – 505 Fisgard Street
Victoria BC V8W 1R3

Attention: Mine Manager

Re: Determination of Administrative Penalty

Further to the Notice of Opportunity to be Heard issued to you on 2019-08-15 and your opportunity to be heard, via oral submission on 2019-10-16, respecting the alleged contraventions, I have now made a determination in this matter.

After reviewing the information available to me, I have concluded that South Island Aggregates Ltd. has contravened the *Mines Act* (Act) as set out in the following pages, in respect of which an administrative penalty is being imposed pursuant to section (s) 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.

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

Sincerely,

Justyn Bell

A/Director – Emergency Management
Health and Safety Branch

Attachment: Determination of Administrative Penalty

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 19000-02/SIA

NAME OF PARTY:

South Island Aggregates Ltd.
c/o Cobble Hill Holdings Ltd.
1 – 505 Fisgard Street
Victoria BC V8W 1R3

AMOUNT OF ADMINISTRATIVE PENALTY:

\$10,000.00

CONTRAVENTION OR FAILURE:

Contravention 1:

1. Section (s.)15 (5) of the *Mines Act* states:

“(5) If an inspector is of the opinion that a delay in remedying a hazard would be dangerous to persons or property, the inspector must issue an order

- (a) for immediate remedial action,
- (b) to suspend regular work until remedial action is taken, or
- (c) to close the mine or part of it until remedial action is taken.”

2. South Island Aggregates Ltd. (SIA) contravened s.15 (5) of the *Mines Act* by importing and depositing aggregate material in violation of the amended suspension of work order, dated 2017-08-25, prohibiting blasting, stockpiling and loading out of aggregates.

DATE AND LOCATION OF CONTRAVENTION OR FAILURE:

3. Contravention 1 occurred on 2017-10-16 and 2017-10-17.
4. The contraventions occurred near Shawinigan Lake in the Province of British Columbia.

SUMMARY:

5. The following will summarize the relevant events relating to contravention 1.
6. SIA operates under *Mines Act* Permit Q-8-094 (the Permit), originally issued on 2006-10-04. The Permit has been amended three times, most notably on 2015-07-17 and 2015-10-28 where site specific condition 19 (a and b) was included:

“19. Property boundaries shall be permanently marked and maintained, and pit boundaries (mine footprint) shall be permanently marked and maintained. All persons working on the property will be instructed as to the meaning of the markings; and,

a) the Permittee shall install a substantial fence along the property boundary.

b) this fence can be installed in stages with completion by September 1, 2016...”

7. On 2016-10-04 an inspection was conducted at SIA where it was determined site specific condition 19, of the 2015-10-28 amended permit, had not been completed. SIA was ordered to forward a plan and install the fence by 2016-12-16. The Mine Manager requested an extension to the installation date; ultimately the Ministry of Energy and Mines (MEM) and the Mine Manager mutually agreed the installation would be completed by 2017-01-31. The Mine Manager was informed in writing by MEM that failure to comply with the installation would result in a stop work order (suspension of work) being issued.
8. On 2017-02-01 MEM conducted an inspection at SIA and determined the construction of the fence was not completed. On 2017-02-02 a stop work order was issued to SIA. The stop work order stated the following prohibitions:

“...A Stop Work Order is hereby issued effective immediately. Under this order all site activity, including, but not limited to, the importation of material of any type, the removal of material of any type, the movement in or out of the site of any and all equipment, both mobile and stationary, is prohibited unless prior written authorization is granted by the Inspector.”
9. On 2017-08-25 MEM amended the stop work order to include the following:

“...The above noted Stop Work Order is amended as follows:

 - 1. All blasting, screening, stockpiling and loading out of aggregates is prohibited until further notice.”*
10. On 2017-10-17 Ministry of Environment (ENV) staff were at SIA and witnessed several trucks dump rock and soil onto the mine site. The Mine Manager advised the material originated from a construction project in the Greater Victoria area and SIA’s intention was for the material to be dumped, crushed, screened and then shipped back to the construction project.
11. ENV notified MEM inspectors of the importation of material, MEM believed a contravention of the suspension of work order had occurred. Mines Inspector Jim DUNKLEY phoned the Mine Manager discuss the importation of material contrary to the suspension of work order. Inspector DUNKLEY reminded the Mine Manager that importation of material was prohibited. The Mine Manager immediately contacted the construction company and suspended the hauling of materials.
12. On 2017-10-25 MEM confirmed that a minimum of 76 loads of material were deposited into the quarry site.

13. On 2017-10-25 MEM received a geochemical characterization report generated by a third party consultant that was previously conducted on the material hauled to SIA. The report was prepared to meet requirements of the Ministry of Transportation on 2016-06-22. The report indicated the material that was imported was free of concerns regarding metal leaching and acid rock drainage.

REASONS FOR DECISION:

14. In making my finding that SIA has contravened the above noted provisions of the Act, I have considered all of the relevant information submitted to me, including the oral submission provided by the Mine Manager. 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:
15. The matter before me as Statutory Decision Maker derived from a contravention in relation to a stop work order that was issued on 2017-02-02 which was subsequently amended on 2017-08-25. The Administrative Penalties (Mines) Regulation came into effect 2017-02-27, after the original order was issued, however the amended order, which provides the prohibition against importation of materials, and the contraventions are within the scope of my authority to make a determination.
16. In his oral submission, the Mine Manager spoke to his concerns regarding the factors that led up to the suspension of work order. Specifically the Mine Manager conveyed his opinion that site specific condition 19, in the permit, had been satisfied since he ensured that a snow fence had been installed around a significant portion of the perimeter, and for that reason the suspension of work order should never have been issued.
17. It is my understanding that the purpose of the requirement for a substantial fence within the permit was to ensure public safety by preventing access onto the quarry site. MEM submitted evidence of an email authored by the Mine Manager to regional inspectors on 2016-11-06 that states:
“...Jim [DUNKLEY] was going take a look and see if the orange fencing we had installed on the south boundary would deal with the requirement to clearly mark the mine boundary. While we can all agree it does that, I also agree it is not capable of keeping people off the mine site as it is only a plastic safety fence.”
18. I can appreciate that the Mine Manager's opinion on the topic may have changed, however based on the evidence before me I believe the orange snow fence did not satisfy the requirement or purpose of installing a substantial fence along the property boundary.
19. Regarding the alleged deception towards Inspector DUNKLEY on 2017-10-17, the evidence presented to me does not support the assertion that the Mine Manager was not aware of the activity [importation of material], conversely the email from ENV to MEM indicated that the Mine Manager was forthright to ENV inspectors as to the SIA's plan for the imported material. The Mine Manager indicated it was his belief that the contractor had a permit in place that allowed for the importation of the material in question.

20. Upon the notification from MEM of the contravention the Mine Manager was quick to cease the importation of the materials as supported by the subsequent inspection on 2018-10-18.
21. Regarding MEM's requests in relation to the consultant's report on metal leaching and acid rock drainage, the Mine Manager articulated his opinion that additional requests made by MEM were outside the scope of MEM's jurisdiction. These orders are not directly relevant to the contravention and do not form part of this determination.
22. The Mine Manager did admit that the importation of material in contravention of the stop work order was an oversight and that he accepts full responsibility.

Contravention 1:

Base Penalty Calculation:

Gravity and Magnitude of the contravention or failure

23. Failure to comply with suspension of work orders is considered a major contravention. This contravention demonstrates a disregard for the authority of the inspector and undermines the overarching regulatory regime by interfering with the Ministry's ability to regulate. Suspension of work orders issued under s. 15(5) of the Act are significant as they are intended to protect persons or property from dangerous hazards.

Actual or Potential for Adverse Effect

24. Contravening suspension of work orders either directly interferes or has the potential to interfere with the Ministry's capacity to regulate or protect the public and/or environment. In this case the order was issued to protect the public. The adverse effect was localized within the quarry; materials were deposited onto the site during the suspension of work order while the fence installation remained outstanding. The fence was required for the purpose of preventing public access to the quarry site. For these reasons, I consider the potential for adverse effect to be moderate.
25. 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 the quarry project, I consider the base penalty to provide an adequate deterrent for SIA as the party subject to the penalty.

BASE PENALTY ASSESSMENT:

BOX A

\$10,000.00

Application of Penalty Adjustment Factors

26. 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

27. SIA has two previous contraventions regarding working outside the permitted boundaries of a mine site and trespass onto another property. These contraventions are not directly related to this contravention, in my opinion they would not have acted as a deterrent for failing to comply with a suspension of work order.

Whether contravention or failure was repeated or continuous

28. The contravention occurred over two days. Between 2017-10-16 and 2017-10-17, approximately 76 truckloads of material were deposited to the quarry site before MEM was made aware of the breach. This is an aggravating factor.

Whether contravention or failure was deliberate

29. Although it is not entirely clear, I find it unlikely that the Mine Manager deliberately imported the materials knowing he was contravening the stop work order. A large quantity of materials was delivered to the site. The Mine Manager was forthright with ENV inspectors his plan for the material. The Mine Manager stated he had a belief that the contracting company had a permit in place to haul material to the quarry site. It was the Mine Manager's intention for the material to be delivered to the quarry from a construction project in the Greater Victoria area. It was shot rock that was to be crushed, added to quarry rock – blended together then sent back as finished aggregate.

Economic benefit derived by the party from the contravention or failure

30. No evidence was presented to demonstrate an economic benefit was derived as a result of the contravention.

Exercise of due diligence to prevent the contravention or failure

31. There is no evidence to suggest due diligence was exercised to prevent the contravention. The order was issued because a fence that adequately prevents public access was not installed. Following the order, materials were deposited into the quarry site. The Mine Manager admitted he assumed that the contracting company was authorized to deposit materials via a separate permit. This assumption demonstrated a lack of due diligence to ensure compliance with the Act its Regulations, the Health, Safety and Reclamation Code for Mines in British Columbia, or inspectors orders.

Efforts to correct the contravention or failure

- 32. The importation ceased on 2017-10-17 immediately after MEM contacted the Mine Manager.
- 33. Although it is not clear when this occurred, the blast rock materials had been removed from the quarry site at the expense of SIA.
- 34. These are mitigating factors.

Efforts to prevent reoccurrence of the contravention or failure

- 35. There is no evidence to suggest additional steps taken to prevent the reoccurrence of the contravention.

Any additional factors that are relevant

- 36. The penalty amount applied factors in the relative deterrent value to motivate against future non compliances.

**TOTAL PENALTY
ADJUSTMENTS:**

BOX B

\$0

**PENALTY AFTER
CONSIDERING ALL FACTORS:**

Add Box A and Box B

\$10,000.00

IS A DAILY MULTIPLIER BEING APPLIED TO THIS PENALTY

No

TOTAL PENALTY ASSESSMENT

\$10,000.00

DUE DATE AND PAYMENT:

37. 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.
38. 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:

39. 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.
40. 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>
41. If the EAB upholds an administrative monetary penalty, payment is due within 40 days after the notice of the EAB's decision is given to you.

PUBLICATION:

42. 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 09 day of January, 2020.