



MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

DETERMINATION OF ADMINISTRATIVE PENALTY

June 10, 2024

File: 2024-01
106563

Email: united@quesnelbc.com, charlesboulet@united-concrete.ca

United Concrete and Gravel Ltd.
1279 Sword Avenue
Quesnel, BC V2J 7H2

Attention: United Concrete and Gravel Limited

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on April 8, 2024, and your opportunity to be heard respecting the alleged contraventions, I have now made a Determination in this matter.

After reviewing the information available to me, I have concluded United Concrete and Gravel Ltd. has contravened the *Environmental Management Act* (EMA) Section 6(2) in respect of which an administrative penalty is being imposed pursuant to Section 115 EMA and the Administrative Penalties (EMA) 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 regards to this Determination, please contact me at 778-622-6908 or Stephanie.Little@gov.bc.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Little". The signature is fluid and cursive.

Stephanie Little
for Director, *Environmental Management Act*

Attachments:

2024-04-08 2024-01 Penalty Assessment Form

cc: Keith Connolly, Senior Environmental Protection Officer
Keith.Connolly@gov.bc.ca

Kevin Vu, Environmental Protection Technician
Kevin.Vu@gov.bc.ca

Brady Nelles, Executive Director, Compliance & Environmental Enforcement
Brady.Nelles@gov.bc.ca

[COS Zone Mailbox](#)



DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2024-01

Name of Party:

United Concrete & Gravel Ltd.

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$18,281

Contravention or Failure:

Contravention of the *Environmental Management Act* Section 6(2) (Waste disposal):

Subject to subsection (5), a person must not introduce or cause or allow waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business.

Date of Contravention or Failure:

April 10, 2021 to April 3, 2024

Directors Summary:

1. United Concrete & Gravel Ltd. (UCGL) is a company registered in British Columbia (BC) that operates a concrete manufacturing and glass abrasives manufacturing facility (Quesnel facility) in Quesnel, BC.
2. UCGL runs four operations throughout the Cariboo and Fraser Valley regions of BC, employing approximately 75 people. The Quesnel facility opened in 2013.
3. As a result of the production of concrete and glass abrasives manufacturing, a number of waste discharges occur. The Quesnel facility holds two waste discharge authorizations, Permit 106563 (air), and Permit 110396 (effluent).
4. This Administrative Penalty (AMP) assessment is for February 28, 2021 to February 28, 2024, when UCGL contravened Section 6(2) of the Environmental Management Act, S.B.C. 2003, c. 53 (EMA).
5. The provincial regulatory authorization governing the discharge of contaminants to the air from the Quesnel facility is Permit 106563 (Permit) issued pursuant to EMA.
6. The Permit was issued and is administered by the BC Ministry of Environment and Climate Change Strategy (Ministry).

7. The Permit authorizes the discharge of contaminants to the air from a glass abrasives manufacturing plant.
8. The Permit was first issued on June 21, 2013, and was most recently amended on August 11, 2020.
9. This AMP applies to the August 11, 2020, version of the Permit.
10. An unauthorized discharge occurs when waste is introduced into the environment while conducting an industry, trade, or business that is prescribed under the Waste Discharge Regulation (WDR) of EMA, and the discharge is not authorized by the Ministry.
11. The glass and glass products industry is a prescribed industry under Schedule 1 of the WDR and the concrete and concrete products industry is a prescribed industry under Schedule 2 of the WDR. Therefore, all discharges to the environment from the Facility must be authorized by the Ministry.
12. On April 8, 2024, the Ministry issued a Notice Prior to Determination of Administrative Penalty (Notice) and accompanying Penalty Assessment Form (PAF) to UCGL via email. In the Notice, UCGL was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
13. On April 8, 2024, UCGL confirmed receipt of the Notice and PAF via email.
14. On April 18, 2024, UCGL requested an OTBH.
15. On April 18, 2024, the Ministry acknowledged UCGL's request for an OTBH and confirmed the OTBH would be by written submission and set a due date of May 21, 2024.
16. On May 14, 2024, the Ministry emailed UCGL a courtesy reminder of the upcoming due date (May 21, 2024) to submit their OTBH.
17. On May 16, 2024, UCGL submitted their OTBH (OTBH Submission) to the Ministry.
18. On May 28, 2024, the Ministry emailed UCGL requesting supporting documentation be provided by June 3, 2024.
19. On May 28, 2024, UCGL provided the requested documentation for consideration.

Reasons for Decision:

20. In making this Determination of Administrative Penalty (Determination), I have considered all of the information available to me, including the OTBH Submission provided by UCGL. My reasons for decision include a consideration of the failures to comply with the Permit as well as the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation (APR), as applicable.

21. The “Ministry of Environment and Climate Change Strategy, Administrative Penalties Handbook – *Environmental Management Act* and *Integrated Pest Management Act*” (AMP Handbook) provides high level guidance to Ministry staff considering the assignment of administrative penalties. Statutory Decision Makers consider, and decisions are informed by, this document. I have considered the AMP Handbook in making this Determination.
22. Considering the AMP Handbook in making my Determination is consistent with the Environmental Appeal Board’s (EAB) findings in *United Concrete & Gravel Ltd. v Director, Environmental Management Act* (Decision No. EAB-EMA-21-A005(a), September 27, 2021)¹ (United Concrete), at para. 72:

“Throughout my reasons, I have referred to the Handbook. After having reviewed the Handbook, I find it to be a reasonable guide for determining the appropriate quantum of an administrative penalty under the Act. It fosters consistency and predictability in decision-making. No other resources or authorities were provided to me. For these reasons, I have found the Handbook persuasive in my reasoning.”

PENALTY CALCULATION

FILE: 2024-01

EMA Section 6(2)

The Contravention or Failure:

23. Glass and glass products industry is a prescribed industry under WDR Schedule 1 and the concrete and concrete products industry is a prescribed industry under WDR Schedule 2.
24. UCGL is conducting a prescribed industry and is responsible for ensuring that it complies with all applicable regulations, including EMA Section 6(2).
25. From April 10, 2021, to April 3, 2024, UCGL contravened EMA Section 6(2) for discharging emissions to the air from unauthorized sources.
26. The PAF shared at Notice identified four unauthorized sources of emissions discharge: one cyclone treating air from a building heat boiler, one cyclone and two baghouses in series treating ambient air, a baghouse treating air from a wood residue energy system, and a baghouse treating discharge from a bagging operation.
27. In the OTBH submission, UCGL address the errors made in the Attachment 1 of Inspection Report (IR) 213593. Section 3.2.1 and 3.3.1, of the OTBH Submission stated,

“3.2.1 The Baghouse in Photo 5 [of the AMP IR] is not Directly connected to the “Residue Energy System” (AKA Kiln). It is an ambient air Baghouse used to reduce any dust in the Grit bagging area.

...

3.3.1 The Baghouse described [in para. 20.4 of the PAF] is in Photo 5, not Photo 4.”

¹ [EAB-EMA-21-A005a.pdf \(bceab.ca\)](#)

28. Despite these corrections, I find that the issue of four unauthorized discharges forming the basis of the contravention has not changed.
29. As the contravention itself was not disputed, my reasons for decision will address each factor individually. My considerations under Section 7(1) of the APR are as follows:

Factor a): Nature of Contravention or Failure

30. The PAF shared at Notice proposed that the contravention was moderate. Moderate natures of contravention or failure are described in the AMP Handbook. Included in the AMP Handbook description of moderate natures of contravention is this category refers to the “*failure to perform required tasks or actions...*”. UCGL was directed to apply for an amendment in 2019 and 2020 and ignored that required task. Although an unauthorized discharge can also be classified as major (for undermining the regulatory regime), I find that in this specific instance, the installation of pollution control technology and having an existing authorization already in place (although lacking all sources of discharge) reasonable rationale to classify this situation as moderate.
31. This factor was not disputed in the OTBH Submission.
32. After considering the relevant information, I confirm the contravention is moderate.

Factor b): Actual or Potential Adverse Effects

33. Section 7(1)(b) of the APR requires that I must consider the real **or potential** adverse effect of the contravention. A finding of potential adverse effect of the contravention is enough to apply this factor.
34. The PAF shared at Notice proposed that the contravention was medium. UCGL contravened EMA Section 6(2) when it discharged emissions from various air treatment systems that are not authorized under the Permit. This contravention is assessed as medium which aligns with the AMP Handbook description “*interferes with Ministry’s capacity to protect the environment or human health....any effect is localized, short-term...*” Without authorization, discharge limits have not been set which are designed to be protective of human health and the environment. Monitoring programs to ensure protection have also not been implemented, which increases the potential for risk.
35. This factor was not disputed in the OTBH Submission.
36. I have considered my previous assessment and am satisfied it meets the assessment of medium as proposed at Notice. The lack of discharge limits and associated required monitoring interferes with the Ministry’s capacity to protect the environment.
37. The base penalty is therefore confirmed at \$10,000 as proposed at Notice.

38. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the contravention, and the OTBH Submission from UCGL.

Factor c): Previous contraventions or failures, penalties imposed, or orders issued:

39. I am guided by the AMP Handbook for this factor, to consider UCGL's compliance history. This factor could increase or decrease the penalty.

40. In 2019, UCGL was previously issued a \$12,000 AMP for contravening EMA Section 6(2) from July 26, 2016, to August 24, 2017, for discharging solid waste at the same site without authorization.

41. The PAF shared at Notice proposed an increase of fifty percent of the base penalty for the previous contraventions.

42. This factor was not disputed in the OTBH Submission.

43. I find that a previous AMP for the same contravention at the same site is appropriate rationale for an increase.

44. After considering the relevant information, I confirm the increase of fifty percent of the base penalty proposed at Notice.

Factor d): Whether contravention or failure was repeated or continuous

45. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the contravention should have alerted UCGL to the contravention and the need to take action. If I am persuaded that UCGL failed to take action, this factor could increase the penalty.

46. The contravention was continuous from April 10, 2021 to April 3, 2024.

47. The PAF shared at Notice proposed an increase of fifty percent of the base penalty for the continuous nature of the contravention.

48. This factor was not disputed in the OTBH Submission.

49. I find that the significant duration of the contravention warrants the increase proposed at Notice.

50. After considering the relevant information, I confirm the increase of fifty percent of the base penalty proposed at Notice.

Factor e): Whether contravention or failure was deliberate

51. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that UCGL deliberately discharged emissions from an unauthorized source. If I am persuaded that UCGL deliberately discharged emissions from an unauthorized source, this factor could increase the penalty.
52. As early as 2019, UCGL was aware of the contravention of EMA Section 6(2) and the requirement for authorization.
53. In 2019 and 2020, UCGL was warned of the contravention of EMA Section 6(2) and was reminded to apply for a permit amendment to authorize the unauthorized discharges.
54. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty for the deliberateness of the contravention.
55. This factor was not disputed in the OTBH Submission.
56. I find that UCGL had a high degree of awareness and control over this contravention, therefore satisfying me that the contravention was deliberate.
57. After considering the relevant information, I confirm the increase of twenty-five percent of the base penalty proposed at Notice.

Factor f): Economic benefit derived by the party from the contravention or failure

58. The PAF shared at Notice proposed an increase of \$781 for the economic benefit of delayed costs.
59. UCGL derived an economic benefit by delaying fees associated with a permit amendment and Qualified Professional (QP) costs to support an amendment application.
60. This factor was not disputed in the OTBH Submission.
61. While a permit amendment application fee and a QP have since been engaged, the economic benefit was calculated a delayed. After reviewing the initial assessment for this factor, I continue to find it a reasonable estimation of economic benefit gained since April of 2021.
62. After considering the relevant information, I confirm this increase of \$781 for this factor.

Factor g): Exercise of due diligence to prevent the contravention or failure

63. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence that UCGL took all reasonable care to prevent the contravention. If I am persuaded that UCGL took all reasonable care to prevent the contravention, this factor could decrease the penalty.

64. As early as 2019, UCGL was aware of the contravention of EMA Section 6(2) and the requirement for authorization.
65. In 2019 and 2020, UCGL was warned of the contravention of EMA Section 6(2) and was reminded to apply for a permit amendment to authorize the unauthorized discharges.
66. The PAF shared at Notice proposed no adjustment for this factor.
67. This factor was not disputed in the OTBH Submission.
68. I find there is no evidence presented that could lead to a finding of due diligence.
69. After considering the relevant information, I confirm no adjustment for this factor.

Factor h): Efforts to correct the contravention or failure

70. I am guided by the AMP Handbook for this factor, to consider what UCGL did **after** the contravention to restore compliance or reverse or mitigate the impacts. If I am persuaded that UCGL did take actions after the contravention to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
71. A search of Ministry files on April 3, 2024, found that UCGL had not submitted any applications for permit or clause amendments to include the unauthorized discharges identified in IR 140576 and IR 160808.
72. The PAF shared at Notice proposed no adjustment for this factor.
73. UCGL disputes their awareness of the actions needed to be taken to correct the contravention. Section 2.3 of the OTBH Submission states, *“2.3 It was only after receiving your Notice prior to Determination of Administrative Penalty sent April 8, 2024, that included the supporting documentation, that I understood how to proceed.”*
74. Although Ministry records show the previous two inspection reports leading up to the AMP inspection referral were sent to Dave Zacharius (Director), the responsibility lies with the company, not individual employees.
75. UCGL submitted evidence of efforts to correct the contravention in an email correspondence between UCGL and the Ministry’s Authorizations administration staff. This correspondence shows that on February 9, 2024, UCGL submitted an Air Quality Permit Amendment Application along with the \$400 fee to the Ministry’s Authorizations Branch.
76. In this correspondence, between UCGL and the Ministry’s Authorization Branch, UCGL was instructed to submit a Discharge Factors Application Form. This was an error, and UCGL was subsequently instructed to submit a Discharge Factors Amendment Form.

77. A search of the Ministry authorizations management system on June 7, 2024, confirms there is still no application pending for UCGL on this matter.
78. I acknowledge that there was an attempt to initiate a permit amendment in February of this year. I further find that the authorization administration staff identified the error and provided the correct form and a copy of the previously submitted amendment form to rectify the issue on April 16, 2024.
79. I acknowledge this effort with a ten percent reduction from the base penalty. Had further steps been taken by UCGL since April 16, 2024 (i.e. submitting an application with the corrected guidance), I would have considered a larger reduction.
80. After considering the relevant information, I confirm a reduction of ten percent of the base penalty.

Factor i): Efforts to prevent reoccurrence of the contravention or failure

81. I am guided by the AMP Handbook for this factor, to consider whether UCGL has taken any action to avoid the contravention happening again in the future. If I am persuaded that UCGL has taken any action to avoid the contravention happening again in the future, this factor could decrease the penalty.
82. A search of Ministry files on April 3, 2024, found UCGL has not submitted any applications for permit or clause amendments to include the unauthorized discharges identified in IR 140576 and IR 160808.
83. The PAF shared at Notice proposed no adjustment for this factor.
84. UCGL submits efforts to prevent reoccurrence of the contravention in their OTBH Submission. Section 5 of the OTBH Submission states, “*5.1.1 Several consultants have been retained to continue this monitoring and reporting program. 5.2 Warren Chase of ECO2 Environmental Consultants (2017) Inc. has been retained to perform future air quality testing from all of our current air discharge points.*”
85. In addition to this, UCGL submitted evidence plans for testing of the unauthorized discharges by ECO2 Environmental Consulting. These plans include the testing of the unauthorized discharges identified in the PAF as well as additional unauthorized discharges identified by UCGL.
86. I find that the evidence provided demonstrates that UCGL is making the appropriate effort by engaging a qualified professional to conduct work that will support a future permit amendment. This work does not need to be completed in advance of making the application for amendment, but will be needed during that process.
87. After considering the relevant information, I confirm a decrease of forty percent of the base penalty for this factor.

Factor j): Other

- 88. The PAF shared at Notice proposed no adjustment for this factor.
- 89. This factor was not disputed in the OTBH Submission.
- 90. I find no new evidence to consider for this factor.
- 91. After considering the relevant information, I confirm no adjustment for this factor.

Total Penalty after base penalty determination and Factors c) to j) considered:

- 92. After determining a base penalty of \$10,000 for this contravention and applying the mitigating and aggravating factors (\$8,281) discussed above, the penalty is established at \$18,281.
- 93. The final penalty calculations are summarized in the table below:

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Actual or potential adverse effect	medium	medium
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$5,000	+ \$5,000
d) Whether contravention or failure was repeated or continuous	+ \$5,000	+ \$5,000
e) Whether contravention or failure was deliberate	+ \$2,500	+ \$2,500
f) Economic benefit derived by the party from the contravention or failure	+ \$781	+ \$781
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	\$0	- \$1,000
i) Efforts to prevent reoccurrence of the contravention or failure	\$0	- \$4,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	\$13,281	\$8,281

Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$23,281	\$18,281
Application of multiplier: No	N/A	N/A
Final Penalty:	\$23,281	\$18,281

DUE DATE AND PAYMENT

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty (Determination). You will be sent an invoice, to be paid via cheque or money order made **payable to the Minister of Finance**. Payment can be mailed to Business Services at:

Financial Services Branch
 Corporate Services for the Natural Resource Ministries
 Ministry of Water, Land and Resource Stewardship
 PO Box 9356 Stn Prov Govt
 Victoria, BC V8W 9M2

Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received in the thirty (30) calendar day period, 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 will be ineligible for a permit or approval, or to amend a permit or approval, until the penalty is paid in full. Further, I am authorized by Section 18 of EMA to cancel or suspend your current authorization in the event of non-payment and if I decide to do so, you will be notified accordingly.

RIGHT TO APPEAL

If you disagree with this Determination, Division 2 of Part 8 of EMA provides information for how to appeal my decision to the Environmental Appeal Board (EAB). In accordance with EMA and with the EAB Procedures Regulation, the EAB must receive Notice of the Appeal no later than 30 calendar 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 shall 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 is available online at <https://www.bceab.ca/resources/forms-and-templates>. It should be completed and filed by registered mail or by leaving a copy at the EAB office during normal business hours. The street address is 4th Floor, 747 Fort Street, Victoria, BC, and the office is open from 8:30 am – 4:30 pm Monday through Friday, excluding public holidays.

Notice may also be sent by email or fax, provided the original Notice of Appeal and the appeal fee follows by mail. The mailing address of the EAB is:

Environmental Appeal Board
PO Box 9425 Stn Prov Govt
Victoria, BC V8W 9M6

For further information, please consult the EAB website at <https://www.bceab.ca>. If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 calendar days after receiving a copy of the order or decision of the appeal board, or, if the EAB has sent the matter back to the decision maker, within 30 calendar days after a new Determination of Administrative Penalty is served.

PUBLICATION

Seven days after the date of service, this Determination will be published on the Natural Resource Compliance and Enforcement Database (NRCED) Website: <https://nrcecd.gov.bc.ca/>

Dated this 10th day of June, 2024.