

IN THE MATTER of a CONTRAVENTION

of the *OIL AND GAS ACTIVITIES ACT*

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2019-041

BETWEEN

British Columbia Energy Regulator

AND

AQT Water Management Inc.

ADMINISTRATIVE FINDING

Before

Andy Johnson, Vice President, Compliance &
Operations

Representing the BC Energy Regulator

R.A.Workman, Manager, Enforcement

Representing AQT Water Management Inc.

Tom Johnston, President

Decision Date

July 12, 2023

Introduction

1. On July 12, 2019, the Oil and Gas Commission (the Commission), now known as the British Columbia Energy Regulator (BCER) issued General Order 2019-007 to AQT Water Management Inc. (AQT).
2. A Contravention Report (the Report) was sent to me on October 4, 2022, alleging that AQT contravened section 82 of the *Oil and Gas Activities Act* (OGAA).
3. The BCER sent AQT a letter and the Report on November 29, 2022, informing AQT that I was considering making a finding that it contravened section 82 of the OGAA. The letter informed AQT of its opportunity to be heard in written form and advised that a finding of contravention could result in the BCER imposing an administrative penalty in accordance with section 63 of the OGAA.
4. AQT provided a response in a letter dated December 28, 2022 (the Response).
5. The Commissioner of the BC Energy Regulator has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether AQT contravened section 82 of the OGAA; whether to impose an administrative penalty under section 63 of the OGAA; and the amount of the penalty, if any. I have reviewed the Report and AQT's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 82 of the OGAA states that a person to whom an order under this Act applies must comply with the order.
7. Maximum penalties for specific violations are set by regulation. Section 2(1) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes, in relation to an order issued under section 49 of the OGAA, section 82 of the OGAA is liable to an administrative penalty not exceeding \$500,000.
8. Section 62(1) of the OGAA states that, after providing an opportunity to be heard to a person who is alleged to have contravened a provision of the Act, the regulations, a permit, an authorization or an order, the BCER may find that the person has contravened the provision.
9. Section 62(5) of the OGAA states, in part, that the BCER may not find that a person has contravened a provision of the OGAA or the regulations if the person demonstrates to the satisfaction of the BCER that they exercised due diligence to prevent the contravention.
10. Section 63(1) states that, if the BCER finds that a person contravened a provision of the OGAA or its regulations, the BCER may impose an administrative penalty. Section 63(2) of the OGAA sets out the factors that must be considered when determining whether to impose an administrative penalty under section 63(1) and the amount of the penalty. These include:

- (a) previous contraventions by, administrative penalties imposed on, or orders issued to the person;
- (b) the gravity and magnitude of the contravention;
- (c) the extent of harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to prevent and correct the contravention; and
- (h) other prescribed matters.

Background

- 11. AQT is the permit holder for well WA3010 (the Well), which is the subject of an approval for produced water and non-hazardous waste disposal under section 75 of the OGAA.
- 12. On July 12, 2019, the BCER issued General Order 2019-007 (the Order) under section 49 of the OGAA to AQT identifying that a prior lack of hydraulic isolation at the Well may have resulted in produced water entering the usable groundwater zone.
- 13. The Order required AQT to submit to the BCER for review and approval a detailed proposal for a preliminary groundwater assessment as described in Appendix A to the Order on or before August 15, 2019. Appendix A to the Order required, among other things, that the proposal for a preliminary groundwater assessment involve collection of baseline groundwater samples from all existing domestic water wells within 600 metres of the Well.
- 14. The Order also required AQT to conduct a groundwater assessment as per the proposal and submit the report to the BCER on or before December 2, 2019.
- 15. On August 9, 2019, AQT requested a review of the Order under section 70 of the OGAA.
- 16. The BCER amended the Order on August 22, 2019 (the Amended Order) updating the deadlines to September 30, 2019, to submit the proposal for a preliminary groundwater assessment, and December 31, 2019, to submit the completed report.
- 17. The reasons stated for the Amended Order included that the BCER considered that a proposal submitted by AQT on August 12, 2019 did not satisfy the first item of the Order.
- 18. The Amended Order also added a requirement to collect baseline groundwater samples from existing domestic water wells located within 600 metres of the Well pad boundary and submit the results to the BCER by December 31, 2019. The Amended Order removed the requirement from Appendix A that the proposal for a preliminary groundwater assessment involve collection of baseline groundwater samples from existing domestic water wells within 600 metres of the Well.
- 19. On September 23, 2019, AQT requested a review of the Amended Order under section 70 of the OGAA and new timelines.

20. The review official issued a decision on August 12, 2020 (the Review Decision). The Review Decision upheld the requirements in the Amended Order and extended the timeline for the submission of the proposal for a preliminary groundwater assessment for review and approval to September 21, 2020. The Review Decision extended the dates required to complete and submit the results of the domestic water well sampling, and to complete the preliminary groundwater assessment and submit the report each to December 31, 2020.
21. AQT submitted a proposal for a preliminary groundwater assessment to the BCER on September 21, 2020.

Issues

22. The issues which I will decide are:
- Did AQT comply with the Amended Order?
 - Did AQT exercise due diligence in its efforts to comply with the Amended Order?
 - Was any noncompliance due to an officially induced error?
 - Did AQT contravene section 82 of the OGAA?
 - If AQT is found to have contravened section 82 of the OGAA what if any, administrative penalty to impose?

Did AQT comply with the Amended Order?

23. The Amended Order included four requirements summarized as follows:
- (i) to submit to the BCER for review and approval a proposal for a preliminary groundwater assessment;
 - (ii) to complete the collection of baseline groundwater samples from all existing domestic water wells within 600m of the Well pad;
 - (iii) to submit the results of the domestic water well sampling to the BCER; and
 - (iv) to conduct a groundwater assessment as per the approved proposal and submit a report to the BCER.
24. I will consider each of the above requirements separately.
25. Per the Review Decision, the deadline to submit the proposal for a preliminary groundwater assessment was September 21, 2020. According to the Report and the Response (Appendix 14), AQT submitted a Preliminary Groundwater Assessment Plan – FSJ 11-12-084-19 W6M on September 21, 2020, addressed to the BCER’s Compliance & Enforcement Director.
26. The second requirement of the Amended Order was confirmed in the Review Decision and the deadline was extended to December 31, 2020. AQT’s submitted proposal dated September 21, 2020, refers in Table 3 to completing domestic water well sampling over a period of 3 days in fall 2020.
27. In its Response, AQT states the BCER did not approve a proposal to complete the domestic water well sampling in the Preliminary Groundwater Assessment Plan. However, I find that AQT did not require approval from the BCER to complete the domestic water well sampling, which was a separate requirement under the second item of the Amended Order. In the

Amended Order, the second requirement regarding sampling was not conditional on any approval of a proposal for a preliminary groundwater assessment under the first requirement.

28. I find no evidence that AQT collected domestic water well samples as required by the Amended Order and confirmed through the Review Decision. I note that AQT does not dispute in its Response that it did not complete the domestic water well sampling.
29. The third requirement of the Amended Order was to submit the results of the domestic water well sampling to the BCER. Therefore, because AQT did not complete requirement two, it failed to complete requirement three.
30. The last requirement of the Amended Order required AQT to conduct a preliminary groundwater assessment as per the approved proposal and submit a report to the BCER by December 31, 2020. As there is no evidence before me that the BCER approved the proposal submitted by AQT, it is not necessary for me to consider whether AQT complied with the last requirement of the Amended Order.
31. For the reasons stated above, I find that AQT complied with the first requirement of the Amended Order. I find that AQT did not comply with requirements two and three of the Amended Order. The evidence before me does not establish a failure to comply with item four. The remaining decision will focus on items two and three.

Did AQT exercise due diligence in its efforts to comply with the Amended Order?

32. Pursuant to section 62(5) of the OGAA, I may not find that AQT contravened section 82 of the OGAA if AQT demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether AQT has demonstrated that it took all reasonable steps to prevent the contravention. AQT is not required to show that it took all possible or imaginable steps to avoid the contravention. The standard is not one of perfection, but rather of a reasonable person in similar circumstances.
33. My analysis of due diligence is confined to items two and three in the Amended Order.
34. AQT asserts that it exercised due diligence by including the domestic groundwater sampling in the Preliminary Groundwater Assessment Plan and that it was the BCER that failed to approve that plan. It is my conclusion that the Amended Order did not require approval of domestic groundwater well sampling. AQT chose to treat the requirement of the Amended Order as conditional in this way and looked for a response and multiple extensions from the BCER.
35. AQT suggests budget approval was a factor for requirement two not to be completed. As a permit holder, AQT is responsible for ensuring it has the financial resources available to complete work required to meet regulatory obligations.
36. In addition, according to AQT's plan, domestic groundwater sampling would entail three days of work. I infer that associated cost would be limited accordingly.

- 37. AQT had ample time to complete the limited work involved.
- 38. The evidence suggests a lack of due diligence as items two and three were clear in the Amended Order and Review Decision.
- 39. AQT has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

- 40. In reviewing both the Response and the Report, I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did AQT contravene section 82 of the OGAA?

- 41. I find that AQT, in relation to an order issued under section 49 of the OGAA, has failed to comply with section 82 of the OGAA. I am not satisfied that AQT exercised due diligence to prevent the contravention. As such, I find that AQT contravened section 82 of the OGAA.

If AQT is found to have contravened section 82 of the OGAA what if any, administrative penalty is to be imposed?

- 42. Section 63 of the OGAA sets out factors that the BCER must take into consideration when determining whether or not to impose an administrative penalty. In the following paragraphs, I consider the applicability of those factors to this contravention.
- 43. AQT has been found in contravention of section 82 of OGAA two previous times for failing to comply with an order issued under section 49 of OGAA. There have been five orders issued under section 49 of the OGAA to AQT since 2016.
- 44. The gravity and magnitude of the contravention is moderate.
- 45. There is no evidence of harm to others as a result of the contravention.
- 46. The contravention was continuous until September 2022 at the earliest.
- 47. There is insufficient evidence demonstrating that the contravention was deliberate.
- 48. There is insufficient evidence to establish economic benefit derived as a result of contravention.

Conclusion

49. I have found AQT contravened section 82 of the OGAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$50,000.



Andy Johnson
Vice President, Compliance & Operations
British Columbia Energy Regulator

Date: July 12, 2023