

IN THE MATTER of a CONTRAVENTION  
of the *OIL AND GAS ACTIVITIES ACT*  
[SBC 2008] Chapter 36  
before  
The BC OIL and GAS COMMISSION  
Case File 2020-1011

BETWEEN

The BC Oil and Gas Commission

AND

ARC Resources Ltd.

---

ADMINISTRATIVE FINDING

---

Before

Vice President, Operations, Andy Johnson

Representing the BC Oil and Gas  
Commission

Michaela Rhees, Compliance & Enforcement  
Officer

Representing ARC Resources  
Ltd.

Brian Newmarch, Vice President

Decision Date

March 7, 2022

## **Introduction:**

1. On June 10, 2020, ARC Resources Ltd. (ARC) reported a condensate spill at its facility located at 8-13-81-17 (the Facility) that breached secondary containment and migrated off lease and into a gully of an unnamed stream.
2. A Contravention Report (the Report) was sent to me on May 28, 2021, alleging that ARC contravened sections 37(1)(a) and 37(2)(b) of the *Oil and Gas Activities Act* (OGAA) and section 12 of the Environmental Protection and Management Regulation (EPMR).
3. The BC Oil and Gas Commission (Commission) sent ARC a letter and the Report on September 29, 2021, informing ARC that I was considering making a finding that it contravened sections 37(1)(a) and 37(2)(b) of the OGAA and section 12 of the EPMR. The letter informed ARC of its opportunity to be heard in written form and advised that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA.
4. ARC provided a response in an email dated October 28, 2021 (the Response).
5. The Commissioner of the Oil and Gas Commission has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether ARC contravened sections 37(1)(a) and/or 37(2)(b) of the OGAA and/or section 12 of the EPMR; 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 ARC's Response. In making a determination, I rely on these documents, and the applicable legislation.

## **Applicable Legislation**

6. Section 37(1)(a) of the OGAA states that a permit holder, an authorization holder and a person carrying out an oil and gas activity must prevent spillage.
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 section 37(1)(a) of the OGAA is liable to an administrative penalty not exceeding \$500,000.
8. Section 37(2)(b) of the OGAA states if spillage occurs, a permit holder, an authorization holder or person carrying out an oil and gas activity must promptly contain and eliminate the spillage.
9. Section 2(1) of the APR provides that a person who contravenes section 37(2)(b) of the OGAA is liable to an administrative penalty not exceeding \$500,000.
10. Section 12 of the EPMR states a person who carries out an oil and gas activity on an operating area must ensure that the oil and gas activity does not result in any deleterious materials being deposited into a stream, wetland or lake.
11. Section 2(1) of the APR provides that a person who contravenes section 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000.

12. 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 Commission may find that the person has contravened the provision.
13. Section 62(5) of the OGAA states, in part, that the Commission 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 Commission that they exercised due diligence to prevent the contravention or if the person's actions were the result of an officially induced error.
14. Section 63(1) states that, if the Commission finds that a person contravened a provision of the OGAA or its regulations, the Commission 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**

15. On June 10, 2020, ARC reported a 30m<sup>3</sup> condensate spill that breached secondary containment and migrated off lease and into a gully of an unnamed stream.
16. Both the Report and Response identify that a primary cause of the spill was a compromised manway gasket on a 400 bbl tank located at the Facility.
17. The condensate migrated approximately 800m through an unnamed tributary to the confluence of 8-Mile Creek. Condensate was observed pooling downstream from the release and hydrocarbon odors were observed at the confluence of 8-Mile Creek.
18. On June 11, 2020, ARC was given an action request from the Commission which required ARC to install wildlife deterrents, conduct water and soil sampling, establish a visual monitoring plan and assign a qualified environmental specialist and wildlife specialist to the incident.
19. The Commission issued General Order 2020-1101-01 (the Order) to ARC on June 12, 2020. The Order required a number of actions, including implementing containment measures, installing wildlife deterrents, conducting water sampling and having a qualified professional on site to oversee spill response and recovery activities.

20. On June 14, 2020, ARC notified the Commission that severe weather conditions caused a loss of previously established containment.
21. On June 15, 2020, Oakridge Environmental attended the Facility on behalf of the Commission. Oakridge Environmental noted that a significant rainfall event was causing challenges for re-establishing containment and conducting remediation.
22. On June 17, 2020, ARC requested that the Order be terminated as all conditions had been met and that containment had again been achieved on June 15, 2020, following the site visit by Oakridge Environmental.
23. On July 10, 2020, the Commission attended the site to assess the remediation. One area with strong condensate odors was identified but no other issues were noted. The Order was terminated on July 15, 2020.

### **Issues**

24. The issues which I will decide are:

#### Section 37(1)(a) of the OGAA:

- Did ARC prevent spillage?
- Did ARC exercise due diligence to prevent spillage?
- Was any noncompliance due to an officially induced error?
- Did ARC contravene section 37(1)(a) of the OGAA?

#### Section 37(2)(b) of the OGAA:

- Did ARC promptly contain and eliminate the spillage?
- Did ARC exercise due diligence to contain and eliminate spillage?
- Was any noncompliance due to an officially induced error?
- Did ARC contravene section 37(2)(b) of the OGAA?

#### Section 12 of the EPMR:

- Did ARC fail to ensure that the oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did ARC exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Was any noncompliance due to an officially induced error?
- Did ARC contravene section 12 of the EPMR?

#### Section 63 of the OGAA:

- If ARC is found to have contravened sections 37(1)(a) and/or 37(2)(b) of the OGAA and/or section 12 of the EPMR what if any, administrative penalty to impose?

**Section 37(1)(a) of the OGAA:**

Did ARC fail to prevent spillage?

25. ARC is the permit holder for the Facility. The Report alleges that on June 10, 2020, approximately 30m<sup>3</sup> of condensate escaped a man door on a 400 bbl tank and migrated off lease. This was confirmed by ARC in its Response. I am satisfied that there is no factual dispute that ARC failed to prevent spillage at its Facility.

Did ARC exercise due diligence in its efforts to prevent spillage?

26. Pursuant to section 62(5) of the OGAA, I may not find that ARC contravened section 37(1)(a) of the OGAA if ARC demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether ARC has demonstrated that it took all reasonable steps to prevent the contravention. ARC 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.
27. In its response, ARC outlines three primary factors contributing to the release: a compromised manway gasket, insufficient secondary containment, and challenging weather conditions. I understand that the challenging weather conditions relate primarily to the alleged contravention of s. 37(2)(b).
28. The Report includes records provided by ARC of tank inspections, but these records do not specifically address the assessment or maintenance of the manway gaskets. I would have expected that ARC would have a proactive program to manage the integrity of these gaskets given their importance in maintaining the integrity of the condensate storage.
29. I note in the Report text and photographs that the impermeable liner within the secondary containment had 3 holes in it and it also did not extend up the side walls which rendered the secondary containment ineffective. I see no evidence that the secondary containment had recently been assessed by ARC to ensure its integrity. ARC could have had a preventative maintenance check for secondary containment on the site that would have identified these issues.
30. ARC failed to satisfy me that all reasonable steps were taken to prevent the contravention.

Was any noncompliance the result of an officially induced error?

31. I have no evidence before me of officially induced error.

Did ARC contravene section 37(1)(a) of the OGAA??

32. I find that ARC has failed to comply with section 37(1)(a) of the OGAA by not preventing spillage.

**Section 37(2)(b) of the OGAA:**

33. I have reviewed the Report and Response and will not be pursuing a contravention of section 37(2)(b) of the OGAA.

**Section 12 of the EPMR:**

**Did ARC fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?**

34. The Commission's Environmental and Protection Management Guideline defines "deleterious material" as including materials that could cause harm or damage to the environment or habitat. I am satisfied that condensate, a hydrocarbon, could harm or damage the environment.
35. In the Response, ARC does not dispute that deleterious material was deposited into a stream or waterbody. Both the Response and Report identify that condensate from ARC's Facility made it off lease and into the adjacent stream.
36. I note that "stream" is defined as follows in section 1(2) of the EPMR:

"stream" means a watercourse, including a watercourse that is observed by overhanging or bridging vegetation or soil mats, that contains water on a perennial or seasonal basis, is scoured by water or contains observable deposits of mineral alluvium, and that  
(a) has a continuous channel bed that is 100 m or more in length, or  
...

37. I am satisfied that the information and maps included in the Ridgeline Report dated June 24, 2020, establish that the unnamed stream has a continuous channel bed in excess of 100 metres.
38. Further, I find the photographs contained in the response and contravention report provide compelling evidence that fluids from the Facility migrated into the adjacent stream. Further detail in this regard is contained within the Ridgeline Report.
39. I find that ARC did fail to ensure that an oil and gas activity did not result in any deleterious material being deposited into a stream, wetland, or lake.

**Did ARC exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?**

40. One action that ARC could have reasonably taken to prevent this loss of containment from getting into the nearby environment would have been to manage the drainage on-site in a way that would prevent fluid from leaving the Facility. I note that ARC has subsequently installed a berm to contain any leaks as a learning from this event.
41. ARC has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

42. I have no evidence before me of officially induced error.

Did ARC contravene section 12 of the EPMR?

43. I find that ARC has failed to comply with section 12 of the EPMR.

If ARC is found to have contravened sections 37(1)(a) and/or 37(2)(b) of the OGAA and/or section 12 of the EPMR what if any, administrative penalty is to be imposed?

44. Section 63 of the OGAA sets out factors that the Commission 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.
45. ARC has no previous contraventions and has six previous orders.
46. The gravity and magnitude of the contravention is considered moderate.
47. There is no evidence to suggest harm to others as a result of the contravention.
48. The contravention was not repeated or continuous.
49. There is no evidence to suggest the contravention was deliberate.
50. There is insufficient evidence to suggest ARC gained any economic benefit from the contravention.
51. ARC took responsibility for its actions by updating policies and procedures as well as making changes to the Facility.

**Conclusion**

52. I have found ARC contravened section 37(1)(a) of the OGAA and section 12 of the EPMR. I did not find that ARC contravened section 37(2)(b) 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 \$25,000.



Andy Johnson  
Vice President, Operations  
BC Oil and Gas Commission

Date: March 7, 2022