

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 2019-092FSJ

BETWEEN

The BC Oil and Gas Commission

AND

Canadian Natural Resources Limited

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Andy Johnson

Representing the BC Oil and Gas Commission

Nicholas Herrmann, Compliance &
Enforcement Officer

Representing Canadian Natural Resources
Limited

Bill Clapperton, Vice President, Regulatory,
Stakeholder & Environmental Affairs

Decision Date

August 29, 2022

Introduction:

1. On or about September 7, 2019, Canadian Natural Resources Limited (CNRL) was preparing its Inga 06-19-088-23 005 treater to process oil. During the start-up process the treater unit was overfilled and approximately 7m³ of oil emulsion was spilled and migrated off the CNRL site. This was reported to the BCOGC as a Level 2 incident.
2. A Contravention Report (the Report) was sent to me on February 10, 2022, alleging that CNRL contravened section 37(1)(a) of the *Oil and Gas Activities Act* (OGAA).
3. The BC Oil and Gas Commission (Commission) sent CNRL a letter and the Report on March 9, 2022, informing CNRL that I was considering making a finding that it contravened section 37(1)(a) of the OGAA. The letter informed CNRL 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. CNRL provided a response in a letter dated April 8, 2022 (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 CNRL contravened section 37(1)(a) 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 CNRL'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* 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 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.
9. 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.
10. 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

11. On September 7, 2019, CNRL reported a spill of oil emulsion at its Inga process battery and that the spill had migrated off lease.
12. Both the Report and the Response identify the primary cause of the spill to be due to overfilling the treater unit during the start-up process which caused the emulsion to overflow the flare knock out and some exposed piping related to an old compressor that is on the same site.
13. The approximately 7m³ of emulsion first pooled up with the lease berm and then breached the berm and flowed off site and through a culvert and across the Alaska Highway. As a result, the Alaska Highway was temporarily closed.
14. This site had been partially abandoned by CNRL in 2017 which work included removing a previous compressor building and foundation.
15. As part of a post incident report CNRL submitted to the Commission a copy of a root cause analysis related to this event at the Inga process battery.

Issues

16. The issues which I will decide are:
 - Did CNRL fail to prevent spillage?
 - Did CNRL exercise due diligence to prevent spillage?
 - Did CNRL contravene section 37(1)(a) of the OGAA?
 - If CNRL is found to have contravened section 37(1)(a) of the OGAA what if any, administrative penalty to impose?

Did CNRL fail to prevent spillage?

17. CNRL is the permit holder for the facility. The Report alleges a spill of 7m³ of oil emulsion and CNRL does not dispute this finding in its Response. I am satisfied that there is no dispute that CNRL failed to prevent spillage from this facility.

Did CNRL exercise due diligence to prevent spillage?


18. Pursuant to section 62(5) of the OGAA, I may not find that CNRL contravened section 37(1)(a) of the OGAA if CNRL demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether CNRL has demonstrated that it took all reasonable steps to prevent the contravention. CNRL 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.
19. In its Response, CNRL submits that while there is a prima facie case that a spill occurred it has a defence of due diligence. I have considered the specific details of the actions taken by CNRL related to this specific event.
20. In paragraph 16 of the Response, CNRL disagrees with the statement in the Report regarding ground disturbance practice. I do not consider the issue of ground disturbance practice relevant to the alleged contravention and thus do not address it further in this decision.
21. In paragraph 20 of the Response, CNRL disagrees with certain statements in the Report regarding due diligence, specifically, that because CNRL personnel did not follow CNRL procedures, CNRL did not exercise due diligence. I do not accept the Report submissions in this regard. My focus is to assess the due diligence of CNRL and not the due diligence of CNRL staff.
22. In paragraph 26 of the Response, CNRL submits that the Commission should not look at the conduct of the personnel on September 7, 2019, but the steps that CNRL took beforehand to prevent spillage. I accept this submission and I will focus on the actions CNRL took, or did not take, to prevent spillage.
23. In paragraph 27 of the Response, CNRL outlines some of the steps it took to prevent the spill. In paragraph 27 a., CNRL points to the transfer pump and emergency shutdown valve. It appears that the procedure employed to start-up the site did not use the transfer pump so this safeguard was unavailable; a vac truck was used to fill the treater rather than the transfer pump. The procedure employed did not address the risk of overfilling given the failure to use the existing equipment. I also note that the horns and strobe warning lights were not in-service at the time of the incident.
24. In paragraph 27 b. of the Response, CNRL notes that there was a site-specific procedure on site that directed the personnel to use the transfer pump to fill the treater. It is unclear from the evidence whether the personnel on site knew of this procedure or if they could find it.
25. In paragraph 28 of the Response, CNRL asserts that had the Lead Operator's procedure been reviewed by the Superintendent as required by CNRL's procedure regarding the development of procedures for use in the field under its Safety Management System, it would likely have been corrected to use the transfer pump to fill the treater. I find that assertion is purely speculative.

26. The root cause analysis provided by CNRL provides some useful insight into the details of the spill that occurred on September 7, 2019, and as such, I consider this information in my determination. While the purpose of the root cause analysis (RCA) may be to improve CNRL's operational practices, it sets out much of the relevant information regarding the incident. I will not consider portions of the RCA that are speculative or opinion, but I will rely on some of the information contained in the RCA that is relevant and not inconsistent with any other evidence.
27. The root cause analysis suggests that a safety device was bypassed, namely an alarm horn that should have alerted the operators that the system was being overfilled. This appears to be contrary to an existing CNRL safety procedure. One thing that CNRL could have done was to ensure that site personnel were aware that the safety device was inoperable and that some other method would have to be employed to warn of overfilling.
28. The root cause analysis highlights that the flare piping had been sheared off by past abandonment work at site. It appears that this went unnoticed and that the operators on site were unaware of this exposed piping. CNRL could have required site personnel to verify the integrity of the piping system prior to start-up as part of their pre-start-up checks.
29. In its Response, CNRL states that the Foreman, Assistant Foreman, Lead Operator and Operator 1 and 2 were fully trained in the standard operating procedures set out in CNRL's Safety Management System. I accept this as fact, but I do not find any evidence that they were trained on site specific start-up procedures for this facility to ensure they understood the potential consequences of bypassing the existing pump and shut off valve.
30. CNRL has failed to satisfy me that it took all reasonable steps to prevent the contravention.
- Was any non-compliance the result of an officially induced error?
31. I have no evidence of officially induced error.
- Did CNRL contravene section 37(1)(a) of the OGAA?
32. I find that CNRL has failed to comply with section 37(1)(a) of the OGGA. I am not satisfied that CNRL exercised due diligence to prevent the contravention. As such, I find that CNRL contravened section 37(1)(a) of the OGAA.
- If CNRL is found to have contravened section 37(1)(a) of the OGAA what if any, administrative penalty is to be imposed?
33. 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.
34. There have been three findings of contravention made against CNRL and sixteen orders issued.

35. The gravity and magnitude of the contravention was moderate with a spill ending up in a wetland and potential risk to the public as the spill crossed the Alaska Highway.
36. The contravention was neither repeated nor continuous.
37. I find no evidence that the contravention was deliberate.
38. I find no evidence that there was any economic benefit from the contravention.
39. When the spill was detected CNRL promptly began cleaning up the spill and also completed a root cause analysis to learn from this incident.

Conclusion

40. I have found CNRL contravened 37(1)(a) 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: August 29, 2022