

IN THE MATTER of a CONTRAVENTION
of the *ENERGY RESOURCE ACTIVITIES ACT*

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2021-0194

BETWEEN

The British Columbia Energy Regulator

AND

Canadian Natural Resources Ltd.

ADMINISTRATIVE FINDING

Before

Executive Vice President, Safety &
Compliance, Andy Johnson

Representing the British Columbia Energy
Regulator

Compliance & Enforcement Officer, Ray
Pilon

Representing Canadian Natural Resources Ltd.

Legal Counsel, Jeff Davidson

Decision Date

February 9, 2024

Introduction

1. On September 20, 2021, a BC Energy Regulator (Regulator) officer observed fluid coming from a Canadian Natural Resources Limited (CNRL) location at d-93-E/94-P-1.
2. A Contravention Report (Report) was sent to me on October 11, 2023, alleging that Canadian Natural Resources Ltd. (CNRL) contravened section 37(1) of the *Energy Resource Activities Act* (ERAA).
3. The Regulator sent CNRL a letter and the Report on October 27, 2023, informing CNRL that I was considering making a finding that it contravened section 37(1) of the ERAA. The letter informed CNRL of its opportunity to be heard in written form and advised that a finding of contravention could result in the Regulator imposing an administrative penalty in accordance with section 63 of the ERAA.
4. CNRL provided a response in a letter dated December 11, 2023 (the Response).
5. The Commissioner of the BC Energy Regulator has delegated me authority under sections 62 and 63 of the ERAA. I will be making a determination with regards to: whether CNRL contravened section 37(1)(a) of the ERAA; whether to impose an administrative penalty under section 63 of the ERAA; 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.

Preliminary Matter

6. The Report alleges a contravention of former section 37(1) of ERAA. I note that section 37(1) imposes two distinct obligations on a permit holder, authorization holder and a person carrying out an oil and gas activity. First, they must prevent spillage (section 37(1)(a)) and second, promptly report to the Regulator any damage or malfunction likely to cause spillage that could be a risk to public safety or the environment (section 37(1)(b)). As I have no evidence of any failure by CNRL to report under section 37(1)(b) of ERAA, I will limit my findings to whether CNRL failed to prevent spillage.

Applicable Legislation

7. Prior to its amendment effective September 1, 2023, the former section 37(1)(a) of the *Oil and Gas Activities Act* (OGAA), now ERAA, stated that a permit holder, an authorization holder and a person carrying out an oil and gas activity must prevent spillage.
8. Former section 1 of the OGGA stated that "spillage" means petroleum, natural gas, oil, solids or other substances escaping, leaking or spilling from (a) a pipeline, well, shot hole, flow line, or facility, or (b) any source apparently associated with any of those substances.
9. 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 ERAA is liable to an administrative penalty not exceeding \$500,000.

10. Section 62(1) of the ERAA 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 Regulator may find that the person has contravened the provision.
11. Section 62(5) of the ERAA states, in part, that the Regulator may not find that a person has contravened a provision of the ERAA or the regulations if the person demonstrates to the satisfaction of the Regulator that they exercised due diligence to prevent the contravention or if the actions were the result of officially induced error.
12. Section 63(1) states that, if the Regulator finds that a person contravened a provision of the ERAA or its regulations, the Regulator may impose an administrative penalty. Section 63(2) of the ERAA 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

13. CNRL is the permit holder for the well located at d-93-E/94-P-1.
14. On September 20, 2021, while conducting helicopter inspections in the area, a Compliance & Enforcement Officer observed a plume of water coming from a well site located at d-93-E/94-P-1. The Officer landed and observed that the operator was venting a pig barrel to the atmosphere causing fluid to spray into the air and covering the northern portion of the lease area.
15. In September and October 2021, CNRL undertook remedial work to removal impacted material from the area impacted by the spill. The Response includes an environmental report dated November 21, 2021, from Oakridge Environmental Engineering Inc. on the site assessment of site d-093-E/094-P-01 post release. The Response identifies that residual hydrocarbons remain above and below ground infrastructure but that these areas can be left to naturally attenuate "with minimal risk".

Issues

16. The issues which I will decide are:
 - Did CNRL fail to prevent spillage?
 - Did CNRL exercise due diligence in its efforts to prevent spillage?
 - Was any noncompliance due to an officially induced error?

- Did CNRL contravene section 37(1)(a) of the ERAA?
- If CNRL is found to have contravened section 37(1)(a) of the ERAA what if any, administrative penalty to impose?

Did CNRL prevent spillage?

17. The Report alleges that the Compliance & Enforcement Officer observed a plume of liquid rising from a pigging barrel on CNRL site d-093-E/094-P-01. Photographs of this plume of liquid are contained within the Report. The photographs also show the ground surrounding the pigging barrel is wet and stained from the fluid.
18. The Compliance & Enforcement Officer also landed at the site and determined that a CNRL operator was at the site conducting this venting operation.
19. According to the Response, CNRL does not deny that spillage occurred. I am satisfied there is no dispute that CNRL failed to prevent spillage.

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

20. Pursuant to section 62(5) of the ERAA, I may not find that CNRL contravened section 37(1)(a) of the ERAA 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.
21. In its Response, CNRL submits that, while a spill occurred, it has a defence of due diligence. In its Response, CNRL submits that the BCER should not look to the conduct of the operator at the time of the pigging procedure, but rather the steps that CNRL took to prevent the spillage. I agree with this submission and I will focus on the actions that CNRL took, or did not take, to prevent spillage.
22. CNRL also submits that the information contained in the Report that consists of notes taken by the Compliance & Enforcement Officer from his interview with the operator should be disregarded. I am satisfied that I do not need to rely on these notes in determining whether CNRL exercised due diligence, and accordingly, will not consider them further in this decision.
23. CNRL submits that it exercised due diligence by implementing a number of policies to prevent the contravention. CNRL also submits it had a Code of Practice – Line Pigging in place at the time of the incident. I accept this as fact; however, the Response does not show evidence the operator on site had reviewed the document.
24. CNRL also identifies a site-specific pigging procedure. CNRL submits that the procedure was unwritten but “worked well” from at least 2014 to the incident. I have no means to verify this assertion, and regardless, given both the potential safety and environmental impacts from the pigging of this site it would be expected that a site-specific and formalized procedure would be in place and that operators expected to conduct this operation would be trained and their competency verified. An undocumented procedure does not provide assurance that the

operator was educated in the site-specific procedure nor that their knowledge or awareness of the procedure was verified.

25. CNRL also points to a Working Alone Procedure that provides guidance to employees where they do not have a procedure in place and have concerns or gaps in how to complete their work. While I accept that this procedure provides general guidance when working alone, due diligence requires evidence of steps related to compliance with the specific regulatory obligation. I am not satisfied that on its own, the Working Alone Procedure demonstrates that CNRL took all reasonable steps to prevent the contravention.

26. For these reasons, I find that CNRL did not exercise in its efforts to prevent the contravention.

Was any noncompliance due to an officially induced error?

27. I have no evidence of officially induced error.

Did CNRL contravene section 37(1) of the ERAA?

28. I find that CNRL has failed to comply with section 37(1)(a) of the ERAA. 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 ERAA.

If CNRL is found to have contravened section 37(1)(a) of the ERAA what if any, administrative penalty is to be imposed?

29. Section 63 of the ERAA sets out factors that the Regulator 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.

30. There have been four findings of contravention made against CNRL and 16 orders issued.

31. The gravity and magnitude of the contravention was moderate with an impact on the environment. Although the environmental report submitted by CNRL identifies that remaining hydrocarbons will naturally attenuate over time with minimal risk, hydrocarbons currently remain present above and below ground infrastructure, which presently pose an impact on the environment.

32. The contravention was not repeated nor continuous.

33. There is no evidence that the contravention was deliberate.

34. I find no evidence that there was economic benefit from the contravention.

35. As soon as CNRL was notified of the spill, they promptly began cleanup efforts.

Conclusion

36. I have found CNRL contravened 37(1) of ERAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$40,000.



Andy Johnson
Executive Vice President, Safety & Compliance
BC Energy Regulator

Date: February 9, 2024