

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 2021-0002

BETWEEN

The BC Oil and Gas Commission

AND

Cancen Oil Processors BC Inc. and Keith Talbot

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ADMINISTRATIVE FINDING

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Before

Vice President, Operations, Andy Johnson

Representing the BC Oil and Gas  
Commission

Nicholas Herrmann

Representing Cancen Oil Processors BC Inc.

Keith Talbot

Decision Date

July 25, 2022

## **Introduction**

1. On August 31, 2021, the BC Oil and Gas Commission (Commission) issued General Order 2021-0002-01 (the Order) to Cancen Oil Processors BC Inc. (Cancen) under section 49(1)(d) of the *Oil and Gas Activities Act* (OGAA). The Order required Cancen to conduct a full-scale exercise for the Kotcho field under the *Emergency Management Regulation* (EMR).
2. A Contravention Report (the Report) was sent to me on February 10, 2022, alleging that Cancen and Mr. Keith Talbot (Mr. Talbot) as director each contravened section 82 of the OGAA.
3. On March 11, 2022, the Commission sent Cancen a letter and the Report informing them that the Commission was considering making a finding that it contravened section 82 of the OGAA. The letter informed Cancen 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 on Cancen in accordance with section 63 of the OGAA.
4. On March 11, 2022, the Commission also sent Mr. Talbot a letter and the Report informing him that the Commission was considering making a finding that Mr. Talbot as director of Cancen contravened section 82 of the OGAA. The letter informed Mr. Talbot of the opportunity to be heard in written form and advised that a finding of contravention could result in the Commission imposing an administrative penalty on Mr. Talbot in accordance with section 63 of the OGAA.
5. Cancen provided a response in a letter dated April 11, 2022 (the Response).
6. 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 Cancen and/or Mr. Talbot 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 the Response. In making a determination, I rely on these documents, and the applicable legislation.

## **Applicable Legislation**

7. Section 82 of the OGAA states that a person to whom an order under this Act applies must comply with the order.
8. 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 82 of the OGAA is liable to an administrative penalty not exceeding \$500,000.
9. 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.

10. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
11. 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.
12. 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**

13. Cancen is an incorporated company registered to operate in British Columbia with one director, Keith Talbot. Cancen is the permit holder for one well and one facility in the Kotcho field. Both the well and facility are currently suspended.
14. On August 9, 2021, Cancen submitted a request to the Commission for an exemption from the requirement to conduct a tabletop exercise.
15. On August 16, 2021, the Commission declined Cancen's request for an exemption.
16. On August 25, 2021, Cancen conducted a tabletop exercise. Cancen failed to perform this exercise in a manner that met the requirements of the EMR.
17. On August 31, 2021, the Commission issued an order to Cancen under section 49(1)(d) of the OGAA, General Order 2021-0002-01 requiring Cancen to conduct a full-scale exercise in the Kotcho field on the basis that Cancen had not conducted such an exercise as required by section 4(2) of the EMR.
18. Cancen has not conducted a full-scale (major) exercise as required by section 4(2) of the EMR since becoming the permit holder for WA22847 in 2010.
19. Cancen has not conducted the full-scale exercise as required.

## Issues

20. The issues which I will decide are:

### Section 82 of the OGAA

- Did Cancen fail to comply with an order issued under the OGAA?
- Did Cancen exercise due diligence to comply with the Order?
- Was any noncompliance due to an officially induced error?
- Did Cancen contravene section 82 of the OGAA?
- If Cancen contravened section 82 of the OGAA, did Mr. Talbot authorize, permit or acquiesce in the contravention?
- Did Mr. Talbot exercise due diligence to comply with the Order?
- Was any noncompliance due to an officially induced error?
- Did Mr. Talbot contravene section 82 of the OGAA?

### Section 63 of the OGAA

- If Cancen and/or Mr. Talbot are found to have contravened section 82 of the OGAA what if any, administrative penalty to impose?

### Did Cancen fail to comply with an order issued under the OGAA?

21. The Report alleges that Cancen failed to comply with the Order requirements.
22. Based on the information before me, there is no dispute that in response to the Order, Cancen did not complete a full-scale exercise as required.
23. Therefore, I find Cancen failed to comply with an order issued under section 49 of the OGAA and thus contravened section 82 of the OGAA.

### Did Cancen exercise due diligence to comply with the Order?

24. Pursuant to section 62(5) of the OGAA, I may not find that Cancen contravened section 82 of the OGAA if Cancen demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Cancen has demonstrated that it took all reasonable steps to prevent the contravention. Cancen 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.
25. There is no evidence in the Response or the Report that an exercise was completed as per the Order. The Response states “Cancen is a small company that does not possess the in-house capabilities to immediately prepare and undertake a full-scale exercise as required”. As a permit holder, Cancen is obligated to comply with the regulatory requirements regardless of its in-house capacity and capability, so I do not consider this relevant.
26. The Response states “that the terms of the Order were unattainable for Cancen within the one-month timeframe”. Cancen could have requested an extension such that it could obtain the necessary resources to execute a full-scale exercise. I find no evidence of such a request.

27. The Response also submits that the site is low risk given its remote location and lack of surface facilities. I note that regardless of the level of risk associated with the site, having demonstrated emergency response capability by the permit holder ensures that unforeseen incidents can be properly managed to protect the public and environment.

28. Therefore, I find insufficient evidence in the Report or the Response to support a due diligence defence.

Was any noncompliance due to an officially induced error?

29. I have no evidence before me of an officially induced error.

Did Cancen contravene section 82 of the OGAA?

30. I find that Cancen failed to comply with an order issued under the OGAA and thereby contravened section 82 of the OGAA.

If Cancen contravened section 82 of the OGAA, did Mr. Talbot authorize, permit or acquiesce in the contravention?

31. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (a), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.

32. I must decide if Mr. Talbot authorized, permitted or acquiesced in the contravention. For the purpose of this decision, I consider "authorized" to be the appropriate term. Authorized, by definition, means to give official permission for or approval.

33. Mr. Talbot is the sole director of Cancen. Based on the correspondence back and forth with the Commission in which Mr. Talbot responds to matters regarding the Order, it is reasonable to conclude that Mr. Talbot was aware of the exercise requirements in the Order.

34. In Mr. Talbot's Response, on behalf of Cancen, he suggests that meeting the terms of the Order would require significant money and effort and that the well is low risk. I infer that based on this view, Mr. Talbot decided after receiving the Order that it was not appropriate and/or necessary for Cancen to comply. Therefore, I find evidence that Mr. Talbot authorized the contravention.

Did Mr. Talbot exercise due diligence to comply with the Order?

35. Pursuant to section 62(5) of the OGAA, I may not find that Mr. Talbot contravened section 82 of the OGAA if Mr. Talbot demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Mr. Talbot has demonstrated that it took all reasonable steps to prevent the contravention. Mr. Talbot 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.

36. A reasonable step that Mr. Talbot could have taken was to ensure that Cancen had a system to proactively manage Cancen's EMR responsibilities.
37. Mr. Talbot could have sought to retain the resources necessary on behalf of Cancen to conduct the required exercise. I find no evidence that Mr. Talbot took such steps in an effort to comply with the requirements of the Order.
38. Mr. Talbot has failed to satisfy me he took all reasonable steps to prevent the contravention.
- Was any noncompliance due to an officially induced error?
39. I have no evidence before me of an officially induced error.
- Did Mr. Talbot contravene section 82 of the OGAA?
40. I find that Mr. Talbot failed to comply with an order issued under section 49(1)(d) of the OGAA and thereby contravened section 82 of the OGAA.
- If Cancen and/or Mr. Talbot are found to have contravened section 82 of the OGAA what if any, administrative penalty is to be imposed?
41. 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 the contravention by each of Cancen and Mr. Talbot.
42. There have been three previous orders issued to Cancen. Cancen has been found in contravention previously by failing to fully comply with General Order 13-118 in relation to the same well location. There are no previous orders issued to or contraventions by Mr. Talbot.
43. The gravity and magnitude are deemed low based on the suspended status of the well. There has been no harm to others or the environment resulting from the contravention.
44. The contravention is continuous and ongoing.
45. The contravention was deliberate given the conscious decision not to comply with the Order.
46. There was minor economic benefit by not spending funds to perform the exercise.

## Conclusion

47. I have found Cancen and Mr. Talbot each 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 \$2,000 to Cancen and \$2,000 to Mr. Keith Talbot.



Andy Johnson  
Vice President, Operations  
BC Oil and Gas Commission

Date: July 25, 2022