

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 2021-0105

BETWEEN

The British Columbia Energy Regulator

AND

ConocoPhillips Canada Resource Corp.

ADMINISTRATIVE FINDING

Before

Vice President, Compliance & Operations,
Andy Johnson

Representing the British Columbia
Energy Regulator (formerly the Oil and
Gas Commission)

Compliance and Enforcement Officer,
Ken McLean

Representing ConocoPhillips Canada
Resources Corp.

Vice President Operations & Capital Execution,
David Boyle

Decision Date

August 31, 2023

Introduction

1. On May 18, 2021, and June 2, 2021, inspections of pipeline project #24871 were conducted by the Oil and Gas Commission (Commission, now the British Columbia Energy Regulator) showing erosion on the pipeline right of way.
2. A Contravention Report (the Report) was sent to me on April 20, 2022, alleging that ConocoPhillips Canada Resources Corp. (Conoco) contravened section 3(1) of the Pipeline Regulation.
3. The Commission sent Conoco a letter and the Report on May 5, 2022, informing Conoco that I was considering making a finding that it contravened section 3(1) of the Pipeline Regulation. The letter informed Conoco 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. Conoco provided a response in a letter dated June 6, 2022 (the Response).
5. The Commissioner of the British Columbia Energy Regulator has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether Conoco contravened section 3(1) of the Pipeline Regulation; 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 Conoco's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 3(1) of the Pipeline Regulation states that a pipeline permit holder must not design, construct, operate or maintain any of the following except in accordance with CSA Z662:
 - a) a pipeline that is subject of the permit
7. Section 1(1) of the Pipeline Regulation states that "CSA Z662" means the standard published by the Canadian Standards Association as CSA Z662, Oil and Gas Pipeline Systems, as amended from time to time.
8. Section 6.2.9 of CSA Z662 states that, "Disturbed areas shall be restored to a stabilized condition and maintained to control erosion. Consideration shall be given to the state of the environment prior to its disturbance and to future access requirements."
9. Maximum penalties for specific violations are set by regulation. Section 6(1) of the Administrative Penalties Regulation provides that a person who contravenes section 3(1) of the Pipeline Regulation is liable to an administrative penalty not exceeding \$500,000.
10. 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.

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 the person exercised due diligence to prevent the contravention, or the person's actions relevant to the provision were the result of an officially induced error.
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. The permit for pipeline project #24871 (the Pipeline) was transferred to Conoco on September 15, 2020.
14. Prior to the transfer, in July 2020, Conoco contracted Millenium EMS Solutions Ltd. to conduct an environmental liability assessment of assets that were in the process of transfer. The report was received by Conoco on September 10, 2020. The assessment included an observance of erosion and sediment deposits on the Pipeline right of way.
15. On September 30, 2020, Conoco met with Commission staff to discuss the magnitude of work needed to bring the newly acquired assets into compliance.
16. The Commission conducted inspection #073297127-001 of the Pipeline on May 18, 2021, and issued an inspection deficiency notice to Conoco on June 11, 2021.
17. On June 2, 2021, Commission staff conducted a field inspection of the Pipeline noting erosion issues and sediment entering the Blueberry River.
18. An additional inspection by Commission staff on June 10, 2021, showed a lack of erosion control measures on the Pipeline.
19. By June 18, 2021, Conoco had installed temporary measures to prevent additional erosion and sediment.
20. Conoco corrected the identified erosion and sediment control deficiencies on the Right of Way in July 2021.

Issues

21. The issues which I will decide are:
- Did Conoco fail to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?
 - Did Conoco exercise due diligence in its efforts to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?
 - Was any noncompliance due to an officially induced error?
 - Did Conoco contravene section 3(1) of the Pipeline Regulation?
 - If Conoco is found to have contravened section 3(1) of the Pipeline Regulation, what if any, administrative penalty to impose?

Did Conoco design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?

22. Conoco did not design or construct the Pipeline. The company was responsible for operation and maintenance of the Pipeline as of September 15, 2020.
23. CSA Z662 states that disturbed areas shall be restored to a stabilized condition and maintained to control erosion. The Report alleges Conoco knew of the erosion issues when the permit was transferred.
24. The Response states that Conoco was not aware of the extent of the erosion on the Right of Way. Conoco relied on a report from Millenium which included an aerial inspection on July 27, 2020, which showed erosion, but did not point out any sedimentary issues into the river. Conoco also submitted a report conducted March 17, 2021, by Explore Surveys Inc. that considered depth of cover of the Pipeline.
25. Based on my review of the material including the photographs of the Right of Way, I find that the right of way was not maintained to control erosion and thus Conoco failed to comply with this requirement of CSA Z662 per section 3(1) of the Pipeline Regulation.

Did Conoco exercise due diligence in its efforts to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?

26. Pursuant to section 62(5) of the OGAA, I may not find that Conoco contravened section 3(1) of the Pipeline Regulation if Conoco demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Conoco has demonstrated that it took all reasonable steps to prevent the contravention. Conoco 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. The Report claims Conoco did not follow their Pipeline Integrity Management Plan regarding relevant inspections.
28. Conoco submits in its Response, the Pipeline was flown in July 2020 prior to the permit transfer, an aerial inspection was conducted on September 30, 2020, and the Pipeline was

again inspected March 2021, within the Pipeline Integrity Management Plan policy for annual inspection.

29. The Response also provides reports from an aerial inspection conducted September 30, 2020, and a depth of cover inspection where the pipeline was visually inspected March 2021.
30. I am not satisfied that Conoco did not meet the annual inspection requirement of their Integrity Management program.
31. The Response submits that on September 30, 2020, Conoco met with the Commission to share plans for compliance assurance and that the Commission expressed support for those plans. In my view, this assertion lacks particulars related to the specific contravention that is alleged. In addition, there is insufficient evidence before me to make a relevant finding.
32. Following the Commission's inspection identifying the sediment issues, Conoco established temporary measures on June 18, 2021, until the ground was stable enough to hold heavy equipment. Less than 30 days from being notified of the sediment entering the river, Conoco had erosion issues addressed.
33. It is reasonable to expect that Conoco promptly plan and carry out a ground inspection of the Pipeline to assess the severity of the erosion issue noted by the aerial inspection. Conoco's assertion that there was not enough time to fully complete any required work before winter weather onset is speculative. They did not take steps to understand what work was required including on any interim basis. Thus, Conoco has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

34. Based on the information before me, I do not find that Conoco's relevant actions were the result of an officially induced error.

Did Conoco contravene section 3(1) of the Pipeline Regulation?

35. I find that Conoco has failed to comply with section 3(1) of the Pipeline Regulation. I am not satisfied that Conoco exercised due diligence to prevent the contravention. As such, I find that Conoco did contravene section 3(1) of the Pipeline Regulation

Conclusion and Penalty Considerations

36. I have found Conoco did contravene section 3(1) of the Pipeline Regulation. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000.

Penalty Considerations

In imposing the above penalty, I have considered the following:

- a. Conoco has been issued two General Orders under section 49 of OGAA by the Regulator previously, but has not received a previous contravention.
- b. The gravity and magnitude of the contravention is moderate.
- c. There was no harm to others caused by the contravention.
- d. The contravention was continuous from September 2020 to July 2021.
- e. I see no evidence that the contravention was deliberate.
- f. Conoco did not derive economic benefit from the contravention.
- g. Conoco did conduct inspections of the pipeline, did act on correcting the contravention and provided information to the Commission in a timely manner.



Andy Johnson
Vice President, Compliance & Operations
BC Energy Regulator

Date: August 31, 2023