

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The OIL and GAS COMMISSION
Case File 2018-087FSJ

BETWEEN

The Oil and Gas Commission

AND

Petronas Energy Canada Ltd

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Andy Johnson

Representing the Oil and Gas
Commission

Compliance Officer Officer, Ken Mclean

Representing Petronas Energy

Vice President, Production, Joe Leonard

Decision Date

June 24, 2020

Introduction

1. On July 20, 2018, the Oil and Gas Commission (Commission) received a Level 1 incident report from Progress Energy Canada Ltd. (Progress) that a suspected pipeline flange failed, causing a leak of sweet produced water. The produced water left the permitted pipeline right of way and impacted trees and vegetation on and off the right of way. On September 11, 2018, Progress reported a second Level 1 incident of a spill of produced water on a pipeline right of way that impacted vegetation on the right of way. The Commission investigated these incidents and it was determined that the pipelines flange's were undertorqued.
2. On January 21, 2020, a Contravention Report (the Report) was sent to me alleging that Progress contravened section 37(1)(a) of the *Oil and Gas Activities Act* (OGAA).
3. On November 22, 2018, Progress became Petronas Energy Canada Ltd. (Petronas).
4. On March 4, 2020 the Commission sent Petronas a letter and copy of the Report. The letter informed Petronas that the Commission was considering making a finding that it contravened section 37(1)(a) of the OGAA. The letter informed Petronas 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.
5. On March 25, 2020, Petronas requested an extension to provide the Commission with its response. The Commission granted an extension to May 4, 2020.
6. Petronas provided a response in an email dated May 1, 2020 (the Response).
7. Pursuant to my delegated authority under sections 62 and 63 of the OGAA, I will be making a determination regarding whether Petronas 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 Petronas' Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

8. 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.
9. Section 1 of the OGAA states 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.
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 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. On July 14, 2018, an operator for Petronas discovered dead vegetation at a produced water pipeline located at a-65-J/94-B-16. Further investigation revealed that there was spillage of produced water and that the spillage was as a result of loose pipeline flanges.
14. On September 6, 2018 Petronas conducted an aerial right of way assessment on and discovered additional dead vegetation on a parallel water pipeline at c-69-J/94-B-16. Further investigation revealed the same issue of loose flange bolts.
15. The volume of the spillage was estimated at 348.4 m³ for the a-65-J/94-B-16 site and 35 m³ for c-69-J/94-B-16.
16. The flanges on both pipelines were re-torqued and hydrostatically tested. One pipeline passed the hydrotest while fresh water was found at compressor site c-59-J/94-B-16 and failed the hydrotest. Further investigation determined that this was a result of the same issue of loose flange bolts. Petronas took the pipeline that failed the hydrotest out of service.
17. Between July 2018 and March 2019 Petronas conducted a variety of environmental remedial work related to the areas affected by the spillage to assist with mitigation efforts and environmental impacts.

Issues

18. The issues which I will decide are:

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

- Did Petronas fail to prevent spillage?
- Did Petronas exercise due diligence to prevent spillage?
- Did Petronas contravene section 37(1)(a) of the OGAA?

If Petronas is found to have contravened section 37(1)(a) of the OGAA what if any, administrative penalty to impose?

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

Did Petronas fail to prevent spillage?

19. Petronas does not dispute that spillage occurred at its a-65-J/94-B-16 and C-69-J/94-B-16 locations.
20. Therefore, I find that Petronas failed to prevent spillage.

Did Petronas exercise due diligence to prevent spillage?

21. Pursuant to section 62(5) of the OGAA, I may not find that Petronas contravened section 37(1)(a) of the OGAA if Petronas demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Petronas has demonstrated that it took all reasonable steps to prevent the contravention. Petronas 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.
22. Petronas submits that it exercised due diligence during the installation of its pipelines by relying on the expertise of its contractor to install the flanges without any sign-off supervision from the prime contractor. Petronas submits that it is industry standard practice to hire a contractor for their expertise and rely on them to perform the service in accordance with the terms and conditions of their scope of work
23. I have insufficient information to assess whether this is a standard industry practice. These flanges are a key component to the integrity of the pipeline and as such are part of a barrier to spillage. I have not been provided any documentation that verifies that at the time of construction these flanges were torqued appropriately. A step that Petronas could have taken was to perform some quality assurance on the contractor performing this work to verify that the work performed on behalf of Petronas was of adequate quality rather than simply rely on vague contract language. Petronas did not provide any evidence that there was any system in place to assess quality control at these flange connections.
24. Petronas also submits that it exercised due diligence by completing right-of-way and water surveillance inspections of the pipelines which were aligned with general industry standards and CSA Z662.
25. Petronas submits that it reviewed the right-of-way inspection reports performed by a third party. I have not been provided any information that demonstrates the results of these inspections, nor how Petronas ensured that the inspections conducted by the third party were done appropriately and in accordance with industry standards. As noted previously, a step that Petronas could have taken was to perform some quality assurance on the contractor performing this work to verify that the work performed on behalf of Petronas was of adequate quality. In the absence of any documentation in respect of these inspections, the frequency in which they were performed is immaterial.

26. In respect of the water surveillance inspections, Petronas acknowledges that unless an anomaly was found, it would not record any information related to the inspection. As a result, I have not been provided, nor, based on its inspection program in place at the time, could Petronas provide any documentation to demonstrate to me the results of the inspections. Indeed, Petronas has since acknowledged the deficiency in its inspection program by recording the results of every inspection, regardless of the results.
27. Therefore, Petronas has failed to satisfy me that it exercised due diligence.

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


28. I find that Petronas has failed to comply with section 37(1)(a) of the OGAA. I am not satisfied that Petronas exercised due diligence to prevent the contravention. As such, I find that Petronas contravened section 37(1)(a) of the OGAA.

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

29. 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 these contraventions.
30. The contraventions were of moderate gravity and magnitude. The incidents involved spills of approximately 348 and 35 cubic meters of produced water and required contaminated materials be removed; however Petronas' immediate response prevented the possibility of greater impacts and avoided sustained environmental effects.
31. The contraventions did not result in any harm to others.
32. The contravention was not repeated but continuous in that Petronas operated the pipeline for some period of time while the produced water leaked from the loose flanges. The pipeline failure and spillage were remediated and resolved quickly once discovered, although it is unclear from the evidence or Petronas' Response as to how long the spill was active.
33. There is no evidence to show the contraventions were deliberate.
34. There is no evidence to indicate that Petronas derived an economic benefit.
35. Petronas took prompt measures to contain and control the incident as soon as the pipeline failure and spillage was discovered. Petronas' swift corrective actions limited the impacts of the spill and effectively remediated the site. Petronas has subsequently implemented several changes including improvements to its pipeline installation and pipeline monitoring program including formal sign-off procedures for pipelines flange torqueing to ensure similar incidents do not occur in the future.
36. Petronas has had 4 previous contravention decisions, 4 administrative penalties at the time of this contravention, and 24 previous orders issued

Conclusion

37. I have found that Petronas contravened section 37(1)(a) of the OGAA on or before July 15 and again on or before September 11, 2018. 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: June 24, 2020