

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 18-172FSJ

BETWEEN

The Oil and Gas Commission

AND

Pavilion Energy Corp.

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ADMINISTRATIVE FINDING

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Before

Vice President, Operations, Andrew Johnson

Representing the Oil and Gas  
Commission

Compliance & Enforcement Officer, Michaela  
Rhees

Representing Pavilion Energy  
Corp.

President, Cas Morel

Decision Date

February 11, 2021

## Introduction

1. In December 2018, the Oil and Gas Commission (Commission) discovered that a pipeline and facility may have been constructed without the required permits. An investigation commenced at this point and culminated in the creation of a contravention report.
2. The contravention report (Report) was sent to me on January 29, 2020, alleging that Pavilion Energy Corp. (Pavilion) contravened section 21(a)(i) of the *Oil and Gas Activities Act* (OGAA) by constructing a facility at location 05-10-86-20 and pipeline project 23543 segment 1 and segment 2 (Pipeline).
3. On February 19, 2020, the Commission sent Pavilion a letter and copy of the Report. The letter informed Pavilion that the Commission was considering making a finding that Pavilion contravened section 21(a)(i) of the OGAA. The letter informed Pavilion of its opportunity to be heard in written form and that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA.
4. Pavilion provided a response in a letter dated June 12, 2020 (Response).
5. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether Pavilion contravened sections 21(a)(i) 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

6. Section 21(a)(i) of the OGAA states that a person must not carry out an oil and gas activity unless the person holds a permit that gives the person permission to carry out that oil and gas activity.
7. Under section 1(2)(e) of OGAA, “oil and gas activity” is defined as including the construction or operation of a pipeline.
8. Under section 1(2)(g) of OGAA, “oil and gas activity” is defined as including the activities prescribed by regulation. In turn, the *Oil and Gas Activities Act General Regulation*, section 2, states that the construction and operation of a facility are prescribed activities for the purposes of paragraph (g) of the definition of “oil and gas activity” in section 1(2) of the OGAA.
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 21 of the OGAA 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 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.

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 May 3, 2010, the Commission issued an approval to Terra Energy Corp. (Terra) including permission to construct a wellsite at 05-10-86-20 under well authorization 26316 (WA 26316).
14. On March 30, 2015, the Commission issued a pipeline permit to Terra Energy Corp. (Terra) for project 23543 authorizing Terra to construct and operate a pipeline from 05-10-86-20 to 11-10-86-20 (Pipeline Permit).
15. In December 2016, the Commission transferred permits and authorizations including WA 26316 and the Pipeline Permit from Terra to Pavilion pursuant to section 29 of the OGAA.
16. On June 25, 2018, an application for a permit to construct and operate a facility at 05-10-86-20 was created in the Commission's system on behalf of Pavilion. The application for a facility permit was not submitted to the Commission for review at that time.
17. In October 2018, Pavilion completed construction of the Pipeline and a new pumpjack and separator package (Facility) at the site for WA 26316.
18. On December 13, 2018, the Commission issued General Order 2018-023 to Pavilion requiring that Pavilion shut-in WA 26316. Pavilion shut-in WA 26316.
19. On December 28, 2018, Pavilion submitted the application to the Commission for a permit for the Facility.

20. On January 10, 2019, the Commission issued a permit to Pavilion for the Facility.
21. On February 13, 2019, the Commission issued an amendment to the Pipeline Permit.

### **Issues**

22. The issues which I will decide are:

#### Section 21(a)(i) of the OGAA:

- Did Pavilion carry out an oil and gas activity without a permit by constructing the Facility and/or the Pipeline?
- Did Pavilion exercise due diligence to prevent carrying out an oil and gas activity without a permit?
- Was any noncompliance due to an officially induced error?
- Did Pavilion contravene section 21(a)(i) of the OGAA?

#### Section 63 of the OGAA:

- If Pavilion is found to have contravened section 21(a)(i) of the OGAA what if any, administrative penalty to impose?

#### **Section 21(a)(i) of the OGAA:**

#### Did Pavilion carry out an oil and gas activity without a permit by constructing the Facility, and/or the Pipeline?

23. Construction of each of the Facility and Pipeline constitutes an “oil and gas activity” as defined under the OGAA.
24. Based on the evidence before me, I find that Pavilion did not construct the Pipeline without a permit.
25. The Report indicates that Pavilion’s application for authorization to construct the Facility was approved by the Commission on January 10, 2019 and not prior.
26. The Response states that Pavilion “has no evidence to demonstrate to the Commission that a valid facility permit for the 5-10 Well site facilities was ever issued prior to or during the construction of such facilities.”
27. I find that in constructing the Facility, Pavilion carried out an oil and gas activity without a permit.

#### Did Pavilion exercise due diligence to prevent carrying out an oil and gas activity without a permit?

28. Pursuant to section 62(5) of the OGAA, I may not find that Pavilion contravened section 21(a)(i) of the OGAA if Pavilion demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Pavilion has

demonstrated that it took all reasonable steps to prevent the contravention. Pavilion 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.

29. In its Response, Pavilion submits that it believed that it had a permit to construct the Facility.
30. The Response claims that Pavilion relied “on the expertise and professionalism” of its engineering firm in providing services which included “obtaining the requisite facility permit”. I find no evidence that Pavilion took reasonable steps to ensure that its engineering contractor held the required permit on behalf of Pavilion before construction of the Facility commenced.
31. Pavilion has not provided sufficient evidence to demonstrate that it exercised due diligence to prevent carrying out an oil and gas activity without a permit by constructing the Facility.
32. Pavilion has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance the result of an officially induced error?

33. In its Response, Pavilion submits that it believed that the Pipeline Permit was in good standing due to officially induced error by the Commission. It is not necessary to address this contention given my finding above regarding the Pipeline Permit.

Did Pavilion contravene section 21(a)(i) of the OGAA?

34. I find that Pavilion has failed to comply with section 21(a)(i) of the OGAA. I am not satisfied that Pavilion exercised due diligence to prevent the contravention. As such, I find that Pavilion contravened section 21(a)(i) of the OGAA.

If Pavilion is found to have contravened sections 21(a)(i) of the OGAA what if any, administrative penalty is to be imposed?

35. 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.
36. There has been one prior contravention by Pavilion.
37. The gravity and magnitude of the contravention is considered high given that the requirement to obtain a permit to conduct an oil and gas activity is critical to the overall regulatory scheme that ensures public safety and the protection of the environment.
38. There was no harm to others as a result of the contravention.
39. The contravention was not repeated but was continuous until a permit for the Facility was issued in January 2019.
40. There is no evidence to suggest that the contravention was deliberate.
41. There is insufficient evidence to indicate that Pavilion gained any significant economic benefit from the contravention.

42. Pavilion offered to shut-in production prior to the Commission issuing General Order 2018-023 and submitted an application for the required permit in December 2018.

**Conclusion**

43. In consideration of the foregoing, I have found that Pavilion contravened sections 21(a)(i) 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 \$5000 for contravention of section 21(a)(i) of the OGAA.



Andy Johnson  
Vice President, Operations  
BC Oil and Gas Commission

Date: February 11, 2021