

IN THE MATTER OF A CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT* [SBC 2008 c. 36]
before the OIL AND GAS COMMISSION
Case File 2018-137FSJ

BETWEEN

The Oil and Gas Commission

AND

Plateau Pipe Line Ltd.

ADMINISTRATIVE FINDING

Before

Andy Johnson
Vice President, Operations

Representing the Oil and Gas Commission

Ken McLean
Compliance & Enforcement Officer

Representing Plateau Pipe Line Ltd.

John Stevenson
Senior Manager, Projects and Lands

Decision Date:

April 29, 2021

Introduction

1. On May 3, 2018, Pembina Pipeline Corporation reported a level 1 incident involving a pipeline and stream crossing on their Plateau Pipeline Ltd. (**Plateau**) pipeline construction project. The incident was identified following a flight observation on May 1, 2018, by Plateau and subsequent site visit on May 2, 2018.
2. A contravention report (**Report**) was sent to me on November 12, 2020, alleging that Plateau contravened section 12 of the Environmental Protection and Management Regulation (**EPMR**) and section 3(1) of the Pipeline Regulation (**PR**).
3. On December 16, 2020, the British Columbia Oil and Gas Commission (**Commission**) sent Plateau a letter and copy of the Report. The letter informed Plateau that the Commission was considering making a finding that Plateau contravened section 12 of the EPMR and section 3(1) of the PR.
4. The letter informed Plateau 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 *Oil and Gas Activities Act* (**OGAA**).
5. Plateau provided a response in a letter dated February 22, 2021 (**Response**).
6. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether Plateau contravened section 12 of the EPMR and/or section 3(1) of the PR; 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 12 of the EPMR states that a person who carries out an oil and gas activity on an operating area must ensure that the oil and gas activity does not result in any deleterious materials being deposited into a stream, wetland or lake.
8. Under section 1(2)(e) of the OGAA, "oil and gas activity" is defined as including the construction or operation of a pipeline.
9. Section 3(1) of the PR states:
 - (1) Subject to subsection (2), a pipeline permit holder must not design, construct, operate or maintain any of the following except in accordance with CSA Z662:
 - (a) the pipeline that is the subject of the permit;
10. 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 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000. Section 6(1) of the APR provides that a person who contravenes section 3(1) of the PR is liable to an administrative penalty not exceeding \$500,000.
11. 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 OGAA, the regulations, a

permit, an authorization or an order, the Commission may find that the person has contravened the provision.

12. 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.
13. 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

14. Plateau is a subsidiary of Pembina Pipeline Corporation (**Pembina**).
15. In 2017 Plateau completed construction of a 147km long pipeline expansion from an area northwest of Wonowon to Taylor called the Northeast BC Expansion Project (**Pipeline Project**).
16. The Commission authorized the construction and operation of the Pipeline Project by way of six permits for each of six sections. Among those, the Commission issued a permit for construction of a pipeline between 11-29-088-23 and 10-19-088-23 under AD #100101072 (**Pipeline**). This is in the area of Altares and will be referred to as such within this decision.
17. On May 1, 2018, an overflight of the Pipeline in the Altares area by Plateau construction staff observed surface runoff. A site visit on May 2, 2018, confirmed that there was sediment flowing across the Pipeline right of way and into watercourse 63 (**WC63**).
18. On May 3, 2018, Pembina reported a level 1 incident, involving their Pipeline construction and stream crossing WC63. The incident details were described as "sediment runoff from a newly constructed pipeline right of way is entering a

watercourse. Based on discussions with permit holder this has been classified as a level 1.” The Altares incident was given BCOGC Incident number 47483069.

19. On May 4, 2018, Commission staff inspected the area where the incident occurred and temporary measures put in place. The inspectors took photographs of the erosion trenches noted at this area, water bypassing existing erosion and sediment control (**ESC**) measures, and of particular note, sediment deposited off the right of way. These photographs are date stamped May 4, 2018, and are included in the Report.
20. On May 14, 2018, Plateau’s Environmental team noted that the sediment load leaving the right of way was significantly reduced and by May 22, 2018, had returned to background levels.
21. On July 24, 2018, a follow-up inspection was completed by Commission staff at the Altares location. Among other items noted during the inspection were the following: ESC measures had failed or were not working and water was flowing around them, a lack of cross berms and no evidence of maintenance on the ESC measures in place. A number of photographs dated July 24, 2018, contained within the Report highlight their observations.
22. A subsequent site inspection by Commission staff on August 1, 2018, noted, among other items, that walking downstream showed silt deposits and sediment approximately 150 metres downstream and that there was no evidence of cross berms on the slope. There are a series of photographs dated August 1, 2018, that support the inspectors’ observations during the site visit.
23. On August 7, 2018, the Commission issued General Order (Order 16) 2018-16 (**General Order**) to Plateau to control water runoff and submit a plan for remediation of the affected S3 stream.
24. On August 10, 2018, Plateau submitted a letter outlining the measures installed to prevent further impacts to the S3 stream – WC63 as required under the General Order.
25. On August 17, 2018, Plateau submitted a plan to reclaim and remediate the erosion and sedimentation as required under the General Order.
26. On November 8, 2018, the Commission terminated the General Order.

Issues

27. The issues I will decide are:

Section 12 of the EPMR:

- Did Plateau fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did Plateau exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Was any noncompliance due to an officially induced error?

- Did Plateau contravene section 12 of the EPMR?

Section 3(1) of the PR:

- Did Plateau fail to design, construct, operate or maintain its pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?
- Did Plateau exercise due diligence to design, construct, operate or maintain its pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662? Was any noncompliance due to an officially induced error?
- Was any noncompliance due to an officially induced error?
- Did Plateau contravene section 3(1) of the PR?

Section 63 of the OGAA:

- If Plateau is found to have contravened section 12 of the EPMR and/or section 3(1) of the PR what, if any, administrative penalty to impose?

Did Plateau fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?

28. The Commission's Environmental and Protection Management Guideline defines "deleterious material" as including materials that could cause harm or damage to the environment or habitat. The BC Fish-stream Crossing Guidebook specifically identifies sediment as a deleterious material.
29. In its Response, Plateau does not appear to dispute that deleterious material, namely sedimentation, was deposited into a stream or waterbody. The Permit Holder Post Incident Report for this event has the following narrative in Part I: "overflight of the pipeline right of way on May 1, 2018 identified potential sedimentation in a watercourse (class S3) issue resulting from surface erosion. Ground visit on May 2, 2018 confirmed sedimentation in the watercourse." The Pembina/Wapta report of May 2, 2018, notes "significant sediment laden water flowing east along Altares across NEBC and into WC63".
30. Further, I find that photographs contained in the Report provide compelling evidence of deposition of deleterious materials into a stream or waterbody.
31. Based on the information contained in both the Report and the Response, I find that Plateau failed to ensure that an oil and gas activity did not cause deleterious material to be deposited into a stream, namely WC63 in the Altares area.

Did Plateau exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?

32. Pursuant to section 62(5) of the OGAA, I may not find that Plateau contravened section 12 of the EPMR if Plateau demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Plateau has demonstrated that it took all reasonable steps to prevent the contravention. Plateau 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.

33. In its Response, Plateau submits that it exercised due diligence in relation to prevent the contravention by developing and implementing specific policies and procedures specific to controlling erosion and sedimentation control which included a comprehensive Environmental Protection Plan (**EPP**) with specific ESC measures, designs, and specifications.
34. The Plateau EPP, Section 8.0, General Environmental Mitigation Measures, suggests "Maintain and control surface drainage (i.e. install cross ditches, culverts, berms) to prevent excess ponding or unintentional channelization of surface water flow on the construction ROW".
35. I note that the Response states that "[b]ased on the recommendations of the Synergy Report, and the natural characteristics of the Altares ROW, Plateau implemented the following ESC measures, in accordance with the design models listed in Appendix "L" of the EPP" and then lists certain measures, namely longitudinal containment berms, lateral stub berms, silt fencing and settling ponds.
36. Based on all the evidence, I find that Plateau implemented some minimal ESC measures. However, the Report, including photographs and records from Commission inspections, identifies that Plateau did not construct cross berms on the slopes near WC63 and did not manage the water on the Altares right of way thus causing eroded sediment to enter WC63. I accept this evidence.
37. In its Response, Plateau also submits that ESC measures were overwhelmed by the "unseasonably high snow pack and sudden warming event in late April." In my view, regardless of whether or not the weather was an aggravating factor, the ESC measures should have been constructed in a way that contemplates such weather events. Unexpected or extreme weather will not excuse a lack of due diligence. As stated in *R. v. Stratabound Minerals Corp, 2015 NBPC 7*, "[t]he vagaries of nature do not excuse non-compliance with strict regulatory directives designed to protect our environment."
38. In summary, I am not convinced that Plateau took reasonable steps to ensure that appropriate ESC measures were implemented.
39. Plateau has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

40. In reviewing both the Response from Plateau and the Report I find no evidence to suggest any officially induced error.

Did Plateau contravene section 12 of the EPMR?

41. I find that Plateau has failed to comply with section 12 of the EPMR. I am not satisfied that Plateau exercised due diligence to prevent the contravention. As such, I find that Plateau contravened section 12 of the EPMR.

Did Plateau fail to design, construct, operate or maintain its pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?

42. Under the PR, “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.
43. CSA Z662, section 6.2.1.1 (Clearing, grading and ground disturbances) provides that disturbed areas shall be maintained in a condition that adequately controls environmental degradation.
44. CSA Z662, section 6.2.9 (Clean-up and restoration) provides, in part, that disturbed areas shall be restored to a stabilized condition and maintained to control erosion.
45. In the Report, including the relevant Wapta Environmental Inspection Daily Reports and accompanying photographs, there is clear evidence the Altares section was in an unstable condition and was not maintained to control erosion.
46. Based on the information contained in both the Report and the Response, I find that Plateau did not restore the disturbed area to a stabilized condition and maintain it to control erosion as required by CSA Z662, section 6.2.9.
47. I decline to make a finding regarding whether Plateau met section 6.2.1.1 of CSA Z662.

Did Plateau exercise due diligence to design, construct, operate or maintain its pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?

48. In the Response on behalf of Plateau, Pembina outlines the elements of a ‘Proper System Developed’ as a part of their due diligence defence. According to the Response, this proper system is composed of an overarching Health, Safety, and Environment Policy (HSE Policy) and a specific Environmental Protection Plan (EPP) developed for the Pipeline Project to ensure that the commitments in the HSE Policy were attained.
49. The EPP for the Pipeline Project was completed in September 2016 prior to construction of the project – this document is meant to cover all environmental aspects of the Pipeline Project including measures to control erosion and manage surface water. Upon review of the EPP including attached documents and appendices, I find it clear that there were appropriate policies and procedures to address erosion.
50. I note that the Response states that “[b]ased on the recommendations of the Synergy Report, and the natural characteristics of the Altares ROW, Plateau implemented the following ESC measures, in accordance with the design models listed in Appendix “L” of the EPP” and then lists certain measures, namely longitudinal containment berms, lateral stub berms, silt fencing and settling ponds.
51. Based on all the evidence, I find that Plateau implemented some minimal ESC measures. However, the Report, including photographs and records from Commission inspections, identifies that Plateau did not construct cross berms on the slopes near WC63 and did not manage the water on the Altares right of way. I accept this evidence.
52. In its Response, Plateau also submits that ESC measures were overwhelmed by the “unseasonably high snow pack and sudden warming event in late April.” In my view, regardless of whether or not the weather was an aggravating factor, the ESC measures

should have been constructed in a way that contemplates such weather events. Unexpected or extreme weather will not excuse a lack of due diligence. As stated in *R. v. Stratabound Minerals Corp*, 2015 NBPC 7, “[t]he vagaries of nature do not excuse non-compliance with strict regulatory directives designed to protect our environment.”

53. In summary, I am not convinced that Plateau took reasonable steps to ensure that appropriate ESC measures were implemented.
54. Plateau has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

55. I have no evidence before me of officially induced error.

Did Plateau contravene section 3(1) of the PR?

56. I find that Plateau has failed to comply with section 3(1) of the PR by failing to comply to section 6.2.9 of CSA Z662.

If Plateau is found to have contravened section 12 of the EPMR and/or section 3(1) of the PR what, if any, administrative penalty to impose?

57. 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.
58. There have been no prior contraventions or administrative penalties imposed on Plateau. Plateau was issued three previous orders.
59. The gravity and magnitude of the contraventions are considered moderate given the extent of the sedimentation and erosion.
60. There was no harm or injury to others as a result of the contraventions.
61. The contraventions were not repeated but were continuous until such time as the pipeline right of way area was remediated to stop further erosion and sedimentation from occurring.
62. There is no evidence to suggest that the contraventions were deliberate.
63. Once the issues were identified by Plateau and the Commission, Plateau made efforts to remediate the site and correct the contraventions.

Conclusion

64. In consideration of the foregoing, I have found that Plateau contravened sections 12 of the EPMR and section 3(1) of the PR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000 for contravention of section 12 of the EPMR and section 3(1) of the PR.



Andy Johnson
Vice President, Operations
Oil and Gas Commission

April 29, 2021
Dated