

IN THE MATTER of a CONTRAVENTION
of the *ENERGY RESOURCE ACTIVITIES ACT*

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2023-0050

BETWEEN

The British Columbia Energy Regulator

AND

Coastal GasLink Pipeline Ltd.

ADMINISTRATIVE FINDING

Before

Vice President, Compliance & Operations,
Patrick Smook

Representing the British Columbia Energy
Regulator

Compliance and Enforcement Officer, Ken
McLean

Representing Coastal GasLink Pipeline Ltd.

Director, Regulatory and CGL ELR, Alison
Denby

Decision Date

March 12, 2026

Introduction:

1. Between April 24th and June 8th, 2023, the British Columbia Energy Regulator (the Regulator) staff inspected section 3 of the Coastal GasLink pipeline project (the Project).
2. A Contravention Report (the Report) was sent to me on June 2, 2025, alleging that Coastal GasLink Pipeline Ltd. (CGL) contravened section 3(1)(a) of the Pipeline Regulation (PR) and/or sections 11(b)(i), 12 and/or 17(a) of the Environmental Protection and Management Regulation (EPMR) under the *Energy Resource Activities Act* (ERAA).
3. The Regulator sent CGL a letter and the Report on June 23, 2025, informing CGL that I was considering making a finding that it contravened section 3(1)(a) of the PR and/or sections 11(b)(i), 12 and/or 17(a) of the EPMR. The letter informed CGL of its opportunity to be heard in written form and advised that a finding of contravention could result in the Regulator imposing an administrative penalty in accordance with section 63 of the ERAA.
4. CGL provided a response in a letter dated September 30, 2025 (Response).
5. The Commissioner of the BC Energy Regulator has delegated me authority under sections 62 and 63 of the ERAA. I will be making a determination with regards to: whether CGL contravened section 3(1)(a) of the PR and/or sections 11(b)(i), 12 and/or 17(a) of the EPMR; whether to impose an administrative penalty under section 63 of the ERAA; and the amount of the penalty, if any. I have reviewed the Report and CGL's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation:

6. At the material time, section 3(1)(a) of the PR stated that a pipeline permit holder must not design, construct, operate, maintain, deactivate, reactivate or abandon the pipeline that is the subject of the permit except in accordance with CSA Z662 and Annex A of CSA Z662.
7. At the material time, section 1(1) of the PR stated 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 "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* (APR) provides that a person who contravenes section 3(1)(a) of the PR is liable to an administrative penalty not exceeding \$500,000.
10. Section 11(b)(i) of the EPMR states that a person who carries out an energy resource activity (formerly oil and gas activity) on an operating area must, for each crossing of a stream, wetland and lake, ensure the crossing does not prevent the movement of fish.

11. Maximum penalties for specific violations are set by regulation. Section 3 of the APR provides that a person who contravenes section 11(b)(i) of the EPMR is liable to an administrative penalty not exceeding \$500,000.
12. Section 12 of the EPMR states that a person who carries out an energy resource activity (formerly oil and gas activity) on an operating area must ensure that the energy resource activity (formerly oil and gas activity) does not result in any deleterious materials being deposited into a stream, wetland or lake.
13. Maximum penalties for specific violations are set by regulation. Section 3 of the APR provides that a person who contravenes section 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000.
14. Section 17(a) of the EPMR states that a person carrying out an energy resource activity (formerly an oil and gas activity) that disturbs the surface of an operating area must not cause the soil of the area to become unstable.
15. Maximum penalties for specific violations are set by regulation. Section 3 of the APR provides that a person who contravenes section 17(a) of the EPMR is liable to an administrative penalty not exceeding \$500,000.
16. Section 62(1) of the ERAA 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 Regulator may find that the person has contravened the provision.
17. Section 62(5) of the ERAA states, in part, that the Regulator may not find that a person has contravened a provision of the ERAA or the regulations if the person demonstrates to the satisfaction of the Regulator that they exercised due diligence to prevent the contravention or if the actions were the result of officially induced error.
18. Section 63(1) states that, if the Regulator finds that a person contravened a provision of the ERAA or its regulations, the Regulator may impose an administrative penalty. Section 63(2) of the ERAA 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:

19. The Regulator issued CGL a permit under the former *Oil and Gas Activities Act*, now the ERAA, to construct a natural gas pipeline including Section 3 for the Project on November 5, 2018.
20. On October 23, 2014, the BC Environmental Assessment Office (BCEAO) granted CGL an Environmental Assessment Certificate (EAC) for the Project under the *Environmental Assessment Act*. Accordingly, the Project engages the respective regulatory responsibilities of each of the BCEAO and the Regulator.
21. Construction of the Project was subject to requirements for erosion and sediment control (ESC) set forth in the EAC, in addition to requirements under ERAA, associated regulations and permits.
22. Subsequent orders issued by the BCEAO and a compliance agreement into between CGL and the Minister of Environment and Climate Change Strategy (Compliance Agreement) on July 13, 2022 created additional requirements for ESC on the Project. These included additional ESC plans, training requirements, inspection regimes and reviews to help ensure compliance, were within the scope of regulatory authority of the BCEAO, and do not represent a limit on the regulatory powers and responsibilities of the Regulator in relation to the Project. Each of the BCEAO and the Regulator have certain authorities to undertake compliance and enforcement actions with respect to the Project within their respective mandates.
23. Between April 24th and June 8th, 2023, the Regulator conducted inspections of Section 3 of the CGL pipeline. At this time, the pipeline trench had been backfilled, and the right of way (ROW) had been graded. Results of these inspections showed significant slumping and erosion on the ROW, as well as sedimentation on streams on and off the ROW.
24. At the time of the Regulator's inspections, spring freshet was underway, with snow melting quickly. Crews working for CGL had been on site to install ESC measures, or were actively doing so, on some streams.
25. At the time of the inspections, turbid water was leaving the ROW, ultimately reaching the Anzac River via some of its tributaries.
26. The streams that are subject of the Report are part of the greater Anzac watershed, which has been designated a fisheries sensitive watershed by the BC Government due to significant downstream fisheries values and need for special conservation measures.

Issues:

27. The issues which I will decide are:
 - Section 3(1)(a) of the PR: Did CGL construct and/or maintain their pipeline in accordance with CSA Z662?
 - Section 11(b)(i) of the EPMR: Did CGL ensure the crossing does not prevent the movement of fish?

- Section 12 of the EPMR: Did CGL ensure that the energy resource activity does not result in any deleterious materials being deposited into a stream, wetland or lake?
- Section 17(a) of the EPMR: Did CGL cause the soil of the area to become unstable?
- Did CGL exercise due diligence in its efforts to maintain compliance with PR s. 3(1)(a), EPMR s. 11(b)(i), EPMR s. 12 and EPMR s. 17(a)?
- Was any noncompliance due to an officially induced error?
- Decisions under section 62 of ERAA: Did CGL contravene section 3(1)(a) of the PR, EPMR s. 11(b)(i), EPMR s. 12 and/or EPMR s. 17(a)?
- Decisions under section 63 of ERAA: If CGL is found to have contravened section 3(1)(a) of the PR, EPMR s. 11(b)(i), EPMR s. 12 and/or EPMR s. 17(a), what if any, administrative penalty to impose?

Assessment of Compliance with Subject Regulations:

28. The assessment of compliance in the following paragraphs includes consideration of the streams listed below where sufficient evidence has been provided to enable assessment in relation to certain provisions. Other streams listed in the Report are not considered, as insufficient evidence was provided.

- WC 189 / Stream 3;
- WC 191 / Stream 2;
- WC 192 / Stream 1; and
- Stream B

Section 3(1)(a) of the PR: Did CGL construct and/or maintain their pipeline in accordance with CSA Z662?

29. Section 3(1)(a) of the PR at the material time required that, among other requirements, permit holders construct and maintain pipelines in accordance with CSA Z662. Section 6.2.9 of that standard requires that disturbed areas be restored to a stabilized condition and maintained to control erosion.

30. With respect to Water Course (WC) 189, evidence presented in the Report shows significant bulk soil movement (slope failure) towards and into WC 189 from the slopes on either side of the creek on the ROW. During inspection by the Regulator on May 10, 2023, no erosion control measures were observed on the slopes that failed. These inspection records note that no water bars, diversion ditches or non-erodible materials were found on either slope. CGL inspection records from November 8, 2022, indicate that temporary ESC measures had been installed on the slopes on either side of WC 189, and that permanent measures were expected to be installed. There is no indication as to what these measures would have been, but the inspection evidence detailed above suggests that permanent measures were not installed prior to the slumping event.

31. With respect to stream B, Regulator inspection evidence from May 9, 2023, shows that flow across the ROW scoured the stream channel. There were no ESC measures observed on stream B during that inspection, beyond the diversion of the stream through a polydam pipe apparatus. I assume the polydam and pipe system was implemented after the erosion events

took place, as erosion in the stream channel was evident in May 9th, 2023 inspection photos, and the polydam and pipe system was effective in separating streamflow from the surface of the ROW.

32. With respect to WC 191, Regulator inspection evidence from May 10, 2023 shows that flow across the ROW scoured a channel in the ROW. This scour represents erosion of the ROW soils by water flow from WC 191.
33. In addition to the above, there were several other observations from site visits on May 9 and 10, 2023, presented in the Report showing erosion and slumping of the ROW. In particular, the evidence including relevant photographs indicates that the practice of mixing snow with soil fill in restoring the ROW led to significant portions becoming unstable after weather warmed up.
34. Given the above, I am satisfied that CGL failed to construct and maintain the ROW to control erosion, and so failed to comply with PR section 3(1)(a).

Section 11(b)(i) of the EPMR: Did CGL ensure the crossing does not prevent the movement of fish?

35. Stream WC 189 was classified by CGL as an S4 stream (fish bearing) before and during construction. Evidence presented in the Report shows a mass slumping event infilled the entire channel at the pipeline ROW, covering any fish habitat present and blocking fish movement.
36. In the Response, CGL highlights a stream re-classification from S4 to S6 (non-fish bearing) by Jacobs, based on 2023 field observations. The key observation leading to the re-classification was overland flow and approximately 50 meters of no channel downstream of the ROW. The Regulator submits in the Report that the observations of no channel and overland flow were made after the sedimentation / infill events, and were due in part to those events.
37. I note that:
 - neither CGL nor the Regulator provided photos or other information regarding site conditions of the channel downstream of the ROW prior to construction;
 - CGL's initial classification of the stream was S4;
 - CGL was treating the stream as fish bearing at the material time and prior, as evidenced by their establishment of fish netting up- and downstream of the crossing location and electrofishing was completed during the sedimentation event;
 - the re-classification to S6 was based on observations of the stream after it had been impacted by significant sedimentation events that are the subject of this contravention decision. CGL QP field visit notes from May 2023 (after the sediment infill event) state "no visible channel was observed for 50 m prior to reaching a fish bearing stream." These observations were relied on to justify the change in stream classification contained in the November 2, 2023 report by Jacobs.

38. Given the above, I find it appropriate to consider the stream S4 and fish bearing for the purposes of assessment of compliance with EMPR s. 11(b)(i). In making this determination, it is important to highlight that CGL's qualified professional saw fit to afford the stream the protections associated with a fish-bearing designation prior to construction. Regardless of whether this assessment was conservative, it was the assessment of a qualified professional prior to any impact associated with construction. I place significant weight on this fact, and that CGL was taking certain action as though the stream was fish bearing at the material time.
39. In the Response, CGL makes reference to Regulator Case File 2022-0030. In that case, the Regulator's decision maker determined that insufficient evidence was presented to determine that the permit holder had failed to ensure their activities did not prevent fish movement. In particular, the decision maker in that case noted a lack of evidence on the extent of blockage of stream flow and indicating presence of fish at the time of inspection. I am not bound by previous contravention findings. In any event, in my view, that case was different than the present one before me including because in Case File 2022-0030 it was not clear whether the permit holder's activities had fully blocked stream flow. In contrast, in the current case, total blockage of stream flow from the mass slumping event into the stream channel is clear and obvious at the crossing point on the ROW. I conclude that direct evidence of the movement of fish being blocked is not required in this case.
40. Given my above findings regarding stream classification and that the mass slumping and infill event completely and significantly infilled the stream channel with soil material both directly at the crossing point on the ROW, and downstream via materials transported from the ROW by water flow, respectively, I find that CGL failed to maintain compliance with EMPR section 11(b)(i) by failing to ensure their crossing of WC 189 did not prevent the movement of fish.

Section 12 of the EPMR: Did CGL ensure that the oil and gas activity does not result in any deleterious materials being deposited into a stream, wetland or lake?

41. Evidence presented in the Report shows significant sedimentation into WC 189, Stream B and WC 191 coming from the CGL ROW. These streams are connected to streams 3, 1 and 2, respectively. Evidence further shows that streams 3, 1 and 2 all received sediment from their upstream connected streams, and transported sediment to the downstream Rock Soup Creek. Based on this evidence, I am satisfied that the CGL pipeline activities resulted in sediment being introduced to the above-noted streams.
42. In the Response, CGL asserts that the sedimentation was not deleterious because of low habitat potential of the creeks, that the deleterious nature of sediment in a specific event depends in part on sediment amounts, and that there was not observed any dead or stressed fish. CGL then asserts that based on this, there could not have been a contravention of EPMR section 12.
43. The Report includes an assessment of impact fish and fish habitat from Warren Coughlin, MSc, RPBio. In this report, Coughlin provides a general description of how sediment can have negative effects on fish and fish habitat. In addition, he notes that the sedimentation events in question could have negatively impacted fish and fish habitat.

44. While the EPMPR does not include a definition of ‘deleterious material,’ section 34(1) of the federal *Fisheries Act* provides that a deleterious substance is “any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,..” In addition, the Regulator’s Environmental Protection and Management Guideline (EPMG) provides that a “deleterious material includes any material that could cause harm or damage to the environment or habitat, including sediment from roads or activity areas....” and “It is an offence to put debris or other foreign matter into a stream or well. It is also an offence to allow debris or foreign matter to fall, spill, drain, or otherwise get into a stream or well. It is the duty of the applicant or permit holder carrying out the oil and gas activity to ensure and demonstrate compliance with this requirement.”
45. Under the definitions and guidance material noted above, sediments introduced into waterways that support aquatic life could be considered deleterious at any concentration. If sediment is entering one such waterway from several sources, the sediment from one source may not be enough to cause mortality in aquatic life or degradation of habitat. However, sediments from all sources combined could have such effects. In such a scenario, sediments from one source are “part of a process of degradation or alteration,” as provided in the *Fisheries Act* definition, and would constitute incremental harm or damage to the environment. Therefore, evidence of acute impact on habitat or aquatic life is not required to determine that a substance is deleterious to the aquatic system and thus is not required to determine there has been a non-compliance with EPMPR section 12. It is evident that CGL field staff shared this understanding of compliance requirements for EPMPR section 12, as evidenced by field notes from CGL environmental inspectors (see Daily Environmental Report CGL4703, April 24, 2023).
46. I am satisfied that sediment was introduced to the subject streams as a result of CGL’s pipeline activities, and that sediment represents a deleterious material for the purposes of section 12 of the EPMPR. I am therefore satisfied that CGL failed to ensure that their pipeline activities did not introduce deleterious material to the subject streams.

Section 17(a) of the EPMPR: Did CGL cause the soil of the area to become unstable?

47. The Report provides evidence that:
- CGL used significant amounts of snow mixed with dirt (termed ‘snirt’ in the field records) in backfilling and attempting to establish final grade of the ROW. This led to slumps and erosion at spring freshet;
 - no final ESC measures were installed on the slopes adjacent to stream WC 189. These slopes became unstable and failed at spring freshet;
 - no ESC measures were implemented on stream B prior to it being piped across the ROW. The banks of this stream had been scoured by water flow from adjacent slumps in the ROW; and
 - CGL did not re-establish a stream channel for WC 191, which would have kept flow in the area where ESC measures had been implemented. Instead, water scoured the ROW in other places.

48. In the Response, CGL submits that it did not contravene section 17(a) of the EPMR because slopes were stabilized after temporary instability, and that any temporary instability was caused by unseasonal and unforeseeable weather.
49. In assessing compliance with EPMR section 17(a), it is important to note that no specified duration of instability is identified in the regulation. Thus, the fact that slopes were stabilized after a period of instability is irrelevant in determining whether the soil was caused to be unstable.
50. I have reviewed weather data submitted with the Response. The data shows a significant increase in average temperature during the last week of April 2023, with 8 rainy days during that month. I accept that this weather may have increased the rate of snow melt in the area over what was experienced in other recent years. However, snow melt and associated runoff are to be expected in April and May in the subject area. In addition, large amounts of snow incorporated into the ROW fill will melt and cause susceptibility to slumping and other instability. Therefore, I do not accept that the weather was the cause of instability in the ROW and stream channels described above. Ensuring that an activity does not cause soil to become unstable requires accounting for the effects of seasonal warming and associated melting.
51. Given this evidence, I am satisfied that CGL did cause soils on the ROW to become unstable.

Oversight by the BCEAO

52. Throughout construction, the CGL project was subject to inspection by each of the BCEAO and the Regulator for compliance with requirements under their respective purviews.
53. It is acknowledged that the Regulator and the BCEAO are parties to a joint Memorandum of Understanding (MOU) intended to identify opportunities to facilitate collaboration between the parties to maximize overall effectiveness and efficiency in fulfilling their respective regulatory mandates on projects, including compliance and enforcement activities. The MOU does not determine or affect the extent or exercise of legal authority by either party.
54. It is acknowledged that at the time of the alleged contraventions, the EAO had ordered CGL to follow specific erosion control plans and maintain the IESCA program in order to manage erosion and sedimentation. These requirements were imposed under the EA Act, and do not supersede or negate the requirements under ERAA and/or its regulations.
55. The Compliance Agreement expressly confirms that CGL must carry out all actions under the agreement in accordance with, and will remain bound by all associated obligations, for all "Applicable Permits" and "Applicable Laws", which would include regulatory requirements enforced by the Regulator. Further, the Compliance Agreement expressly confirms that there are no impacts to the rights of any "Governmental Authority" to address any breaches of, or non-compliance with, the "Permits and Applicable Laws" which are not specifically addressed by the terms of conditions of the Compliance Agreement. The terms and conditions of the Compliance Agreement do not specifically address any breaches of, or non-compliance with, permits, authorizations and applicable laws enforced by the

Regulator. The Regulator retains powers to address matters within its purview irrespective of the Compliance Agreement.

56. While I make no finding as to CGL's compliance with EAO-imposed ESC requirements, compliance with these requirements does not guarantee compliance with ERAA or its regulations. I find that ERAA requirements were applicable at the material time, and CGL was required to maintain compliance with them.

Legislated Defenses

Did CGL exercise due diligence in its efforts to maintain compliance with each of PR s. 3(1)(a), EPMR s. 11(b)(i), EPMR s. 12 and EPMR s. 17(a)?

57. Pursuant to section 62(5) of the ERAA, I may not find that CGL contravened any of these sections if CGL demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether CGL has demonstrated that it took all reasonable steps to prevent the contravention. CGL 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.
58. During construction, CGL and its contractors had various plans in place for erosion and sediment control. These included the project Environmental Management Plan (EMP), CGL's Erosion and Sediment Control Plan, SA Energy Group Project Erosion and Sediment Control Management Plan, site specific erosion and sediment control plans (SSESCPs) and work execution plans (WEPs). In addition, in its Response CGL provided a list of measures that were implemented in the subject section of the project to manage ESC, per these plans. Select measures are discussed below in detail as they relate to due diligence in this case, as I have found that these particular measures are especially pertinent to my assessment of due diligence.

1. *"Conducted snow removal in advance of clean-up activities to reduce moisture content within subsoil and backfill material."*

Snow removal prior to cleanup operations is an important step to ensuring stability of the right of way during the ensuing spring freshet. That CGL conducted these operations shows that it was understood that increased water content due to snow in the subsoil could cause instability and ESC issues. However, evidence shows that CGL spread "snirt," (snow mixed with dirt) onto the ROW as part of cleanup operations. CGL ought to have known, or did know, that this would cause instability due when the snow melted. That significant amounts of snow were mixed into the subsoil of the right of way shows a lack of due diligence in achieving compliance with section 3(1)(a) of the PR and sections 12 and 17(a) of the Environmental Protection and Management Regulation.

2. *"Installed ESC measures per EMP, SSESCPs, and WEP, such as water bars, diversion berms, rollback hydro mulching, and seeding / tackifying following completion of cleanup activities;"*

Evidence presented does not support this statement in relation to WC189, Stream B or WC191.

With respect to WC 189, CGL inspection records from November 8 2022 indicate that temporary ESC measures had been installed on the slopes on either side of WC 189, and that permanent measures were expected to be installed. There is no indication as to what these measures would have been, but evidence suggests that permanent measures were needed but not installed at the material time. Photo evidence does show, however, that large woody debris / logs had been placed on the ROW prior to the material time. In addition, coco matting is visible mid-slope in photo evidence, as well as sand bags and synthetic permeable barriers in the creek channel downstream of the crossing area. The Project Erosion and Sediment Control Management Plan provided as Attachment D to the Response lists several measures that may be implemented to control erosion on slopes, including water bars, synthetic permeable barriers and diversion ditch berms, among others. However, Regulator inspection records specifically note no cross ditches or water bars were installed.

After my review of the evidence, I deem it reasonable for CGL to have implemented additional measures to maintain slope stability adjacent to WC 189, per their ESC plans. This shows a lack of due diligence in managing stability of the slopes adjacent to the stream. This constitutes a lack of due diligence in maintaining compliance with EPMR section 12, EPMR section 17(a), EPMR section 11, and PR section 3(1)(a).

With respect to Stream B, field inspection by the Regulator showed that water from adjacent slumps in the ROW flowed into stream B causing scour to the channel and resulting impact to water quality. There were no ESC measures observed on stream B, beyond the diversion of the stream through a polydam pipe apparatus implemented after the erosion and sedimentation events took place. This lack of ESC measures on the stream shows lack of due diligence in managing for compliance with EPMR sections 12 and 17(a), as well as PR section 3(1)(a).

With respect to WC 191, there is evidence showing attempts at controlling erosion using coco matting on the ROW where flow was expected. However, CGL did not re-establish a channel to confine the stream's water. This would have been an appropriate step to keep flow within the area where erosion control measures had been implemented. Ultimately, after the erosion events that are subject of the Report, CGL did establish an armored channel for this stream. Doing so prior to spring freshet would likely have prevented much of the scouring observed on the ROW and is reasonable to expect of CGL given that a channel exists upstream of the ROW. This failure constitutes a lack of due diligence in managing for compliance with EPMR sections 12 and 17(a), as well as PR section 3(1)(a).

59. Given the circumstances and evidence presented, and the analysis above, I am not satisfied that CGL was duly diligent in its efforts to maintain compliance with PR section 3(1)(a), EPMR sections 11(1)(b), 12 or 17(a).

Was any noncompliance due to an officially induced error?

60. No evidence of officially induced error has been presented to me in this case.

Decisions under Section 62 of ERAA:

61. I find that CGL has failed to comply with each of section 3(1)(a) of the PR, and sections 11(b)(i), 12 and 17(a) of the EPMR. I am not satisfied that CGL exercised due diligence to prevent the contraventions, and I have been presented with no evidence of officially induced error. As such, I find that CGL contravened section 3(1)(a) of the PR, and each of sections 11(b)(i), 12 and 17(a) of the EPMR.

Section 63 of ERAA:

If CGL is found to have contravened section 3(1)(a) of the PR and/or 11(b)(i) of the EPMR and/or 12 of the EPMR and/or 17(a) of the EPMR what if any, administrative penalty is to be imposed?

62. Section 63 of the ERAA sets out factors that the Regulator 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 this contravention.
63. I have considered CGL’s enforcement history, which includes two previously issued orders under section 49 of ERAA, which are listed below.

Type	File Number	Date	Legislation
Section 49 Order	2019-009	September 13, 2019	ERAA
Section 49 Order	2021-0023-01	February 2, 2021	ERAA

64. In reviewing these files, I have found that Order 2019-009 and 2021-0023-01 involved matters that are dissimilar to the non-compliances that are the subject of this decision and thus carry little weight in determining penalty amount.
65. I have considered CGL’s submission that the history of regulator involvement and oversight with respect to ESC, including \$1,382,600 in administrative penalties to the EAO, should lessen any penalty imposed in this case. I make no finding regarding whether prior administrative penalties imposed by the EAO involved matters of a similar nature to the case before me. Regardless, I am not persuaded that any similarity would justify a reduction in penalty for this case.
66. I find each of the gravity and magnitude of the contraventions to be moderate.
67. Regarding gravity, while CGL did have an ESC program in place for the project, there were several key measures lacking that gave rise to the contraventions. These included:
- avoiding mixing snow into the ROW grade;
 - establishing water bars, synthetic permeable barriers and diversion ditch berms on erodible slopes; and
 - implementing ESC measures and re-establishing stream channels on S6 and NCD streams.

68. In addition, the contraventions involved creation of unstable soil conditions, introduction of deleterious material into streams, and significant impact (complete infill with soil) to a fish bearing stream that created impact to fish movement in a fisheries sensitive watershed. In making this determination, I have considered and accept that there was no evidence of acute impact to fish and that the effects of the contraventions were temporary in nature. Therefore, while the impacts of the contraventions are serious and not minor, I do not consider the magnitude of the contraventions to be major.
69. There is no evidence of harm to others as a result of the contraventions.
70. The contraventions were not repeated. The contraventions were continuous. In the Report, the Regulator states that the contraventions began as early as April 1st, when they were discovered by CGL inspectors, and continued until the following September when the final remedial activities were completed. However, CGL argues that the Regulator would not have had sufficient knowledge of the contraventions until their first inspections took place (April 24th). Further, CGL argues that efforts to correct the contraventions were slowed by saturated soils, and that since time extensions were approved by the Regulator, the extended time should not be considered as part of the total time CGL was in contravention. After reviewing these arguments, I find that regardless of the specific start and end dates of the contraventions, the contraventions were continuous for a period of several weeks.
71. There is no evidence to indicate that the contraventions were deliberate.
72. There is no evidence that CGL derived economic benefit from the contraventions.
73. CGL had implemented an ESC program at the time of the contraventions, which represents certain efforts to prevent the contravention. In addition, CGL took several steps to correct the contraventions and remediate their effects in the months following discovery. Finally, CGL's cooperation during the investigation was noted in the Report.

Conclusion:

74. I have found CGL contravened section 3(1)(a) of the PR, and sections 11(b)(i), 12 and 17(a) of the EPMR. In determining a penalty amount, I recognize that fairness dictates only one penalty for contraventions of both section 3(1)(a) of the PR and section 17(a) of the EPMR under these circumstances. Based on this and on the above discussion of the various factors set out in section 63(2), I am imposing a total administrative penalty of \$150,000.



Patrick Smook
Vice President, Compliance & Operations
BC Energy Regulator

Date: March 12, 2026