

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2021-0190

BETWEEN

The British Columbia Energy Regulator

AND

Ovintiv Canada ULC

ADMINISTRATIVE FINDING

Before

Executive Director, Responsible Development,
Patrick Smook

Representing the BC Energy Regulator

Compliance and Enforcement Officer,
John Warner

Representing Ovintiv Canada ULC

Vice President, Environment, Health & Safety,
Dave Lye

Decision Date

November 24, 2023

Introduction:

1. On November 19, 2021, there was an uncontrolled release of hydrocarbons while completion work was being done on a well identified as C 16-23-077-14, WA 37143 (the Well) which was operated by Ovintiv Canada ULC (Ovintiv).
2. A Contravention Report (the Report) was sent to me on June 19, 2023, alleging that Ovintiv contravened section 37(1)(a) of the *Energy Resource Activities Act* (ERAA) and sections 11(1)(c) and 11(1)(a) of the *Emergency Management Regulation* (EMR).
3. The BC Energy Regulator (Regulator) sent Ovintiv a letter and the Report on July 28, 2023, informing Ovintiv that I was considering making a finding that it contravened section 37(1)(a) of the ERAA, section 11(1)(c) of the EMR and section 11(1)(a) of the EMR. The letter informed Ovintiv 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. Ovintiv provided a response in a letter dated August 28, 2023 (the 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 Ovintiv contravened sections 37(1)(a) of the ERAA and/or section 11(1)(c) of the EMR and/or section 11(1)(a) of the EMR; 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 Ovintiv's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 37(1)(a) of the ERAA states that a permit holder, an authorization holder and a person carrying out an energy resource activity must prevent spillage.
7. 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 37(1)(a) of the ERAA is liable to an administrative penalty not exceeding \$500,000.
8. Section 11(1)(c) of the EMR states that when an emergency occurs, a permit holder must notify the commission within one hour of becoming aware of the incident.
9. Section 9(1) of the APR provides that a person who contravenes section 11(1)(c) of the EMR is liable to an administrative penalty not exceeding \$500,000.
10. Section 11(1)(a) of the EMR states that when an emergency occurs, a permit holder must immediately respond to the emergency in accordance with the permit holder's plan.
11. Section 9(1) of the APR provides that a person who contravenes section 11(1)(a) of the EMR is liable to an administrative penalty not exceeding \$500,000.

12. 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.
13. 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.
14. 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

15. On November 19, 2021, at 14:08 the Well released pressurized fluids during a workover operation resulting in a release of gas and emulsion.
16. The Response identifies the cause of the release as a hydrate formation resulting from the casing valve being left in a partial open position sometime prior to November 19, 2021.

Issues

17. The issues which I will decide are:

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

- Did Ovintiv fail to prevent spillage? If so,
- Did Ovintiv exercise due diligence to prevent spillage?
- Was any noncompliance due to an officially induced error?
- Did Ovintiv contravene section 37(1)(a) of the ERAA?

Section 11(1)(c) of the EMR:

- Did Ovintiv fail to notify the Regulator within one hour of becoming aware of the incident? If so,
- Did Ovintiv exercise due diligence to notify the commission within one hour of becoming aware of the incident?

- Was any noncompliance due to an officially induced error?
- Did Orintiv contravene section 11(1)(c) of the EMR?

Section 11(1)(a) of the EMR:

- Did Orintiv fail to immediately respond to the emergency in accordance with the permit holder's plan? If so,
- Did Orintiv exercise due diligence to immediately respond to the emergency in accordance with the permit holder's plan?
- Was any noncompliance due to an officially induced error?
- Did Orintiv contravene section 11(1)(a) of the EMR?

Section 63 of the ERAA:

- If Orintiv is found to have contravened sections 37(1)(a) of the ERAA and/or 11(1)(c) of the EMR and/or section 11(1)(a) of the EMR what if any, administrative penalty to impose?

Did Orintiv fail to prevent spillage?

18. Orintiv is the permit holder of the Well. The Report alleges a release of gas and emulsion from the Well. Orintiv acknowledges the spillage incident in its Response and its responsibility for that incident. I am satisfied that Orintiv failed to prevent spillage.

Did Orintiv exercise due diligence in its efforts to prevent spillage?

19. Pursuant to section 62(5) of the ERAA, I may not find that Orintiv contravened section 37(1)(a) of the ERAA if Orintiv demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Orintiv has demonstrated that it took all reasonable steps to prevent the contravention. Orintiv 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.
20. Orintiv states in its Response the valve was not properly closed at some point prior to November 19, 2021, and as a result a hydrate formed inside the valve. During operations on November 19, workers had difficulty opening and closing the valve to the point where the valve handle was broken. The valve was believed to be in a closed position when it was in fact blocked by a hydrate. When workers attempted the planned operation using a different valve, the hydrate released, and the spillage occurred.
21. Orintiv should have ensured all the equipment was in proper working order prior to the work over. I note that Orintiv has a policy that prohibits the use of damaged or inoperable equipment. Adherence to this policy likely would have prevented the incident.
22. Orintiv 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?

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

Did Ovintiv contravene section 37(1)(a) of the ERAA?

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

Did Ovintiv fail to notify the Regulator within one hour of becoming aware of the incident?

25. The release occurred at 14:08.
26. The Report states that since the EMR requires notification to the Regulator one hour after the permit holder becomes aware of the incident, a report was due by 15:08. In the Report, it is thus assumed that the permit holder was aware of the incident as soon as it occurred.
27. Ovintiv states in its Response that it was not aware of the incident until its contractor called Ovintiv's Manager of Completions and Engineering Operations in Calgary at 14:15. Ovintiv submits, and I accept, that there were no Ovintiv employees on site at the time of the incident.
28. EMR section 11(1)(c) requires "awareness" on the part of the permit holder. In my view, this is a requirement for subjective knowledge on the part of Ovintiv. Ovintiv's contractor was on site at the time of the release and was likely immediately aware of the incident. However, in the absence of evidence of something akin to an agency relationship between Ovintiv and the contractor, I am not satisfied that the knowledge of the contractor is also the knowledge of Ovintiv.
29. Thus, I am satisfied that the permit holder became aware of the incident at 14:15, and the report of the incident to the BCER being due at 15:15.
30. The Report states that Ovintiv reported the incident to the Regulator at 16:11.
31. The Report and Response state that a Regulator Compliance & Enforcement Officer arrived at the site at 15:15, in response to an odour complaint from the public. Both the Report and the Response state that when the Compliance & Enforcement Officer arrived, the officer was briefed on the incident by onsite personnel.
32. Section 11(1)(c) is silent on how permit holders must report incidents to the Regulator.
33. I am satisfied that a verbal report of an incident by onsite personnel to a Regulator Compliance & Enforcement Officer constitutes a report for purposes of EMR section 11(1)(c).
34. Given the forgoing, I have determined that Ovintiv did not contravene EMR section 11(1)(c).

Did Ovintiv fail to respond to the emergency in accordance with the permit holder's plan?

35. EMR section 11(1)(a) requires that when an emergency occurs, the permit holder immediately respond in accordance with the permit holder's applicable emergency response plan (ERP).

36. I am satisfied that the applicable ERP for the site at the time of the Incident was the “British Columbia Core Field Supplements Emergency Response Plan” updated June 26, 2021, found in the Response.
37. The Report states that Ovintiv failed to fully implement their ERP in response to the incident, as they did not promptly make notifications to area residents within the EPZ as is required by the ERP.
38. The Report and the Response both state that the two residents within the EPZ were notified by end of day.
39. The Response states that the well was brought under control at 14:43, while Ovintiv staff were enroute to the Emergency Operations Centre (EOC) location, and that by bringing the well under control it had effectively ended the emergency. The Response states that had the emergency continued for a longer period of time, residents would have been contacted in accordance with ERP process. However, once the well was brought under control, Ovintiv’s EOC Director made the decision to end emergency response operations (ie “stand down the incident”), as the emergency and associated hazards were no longer. With operations under the ERP concluded, the task of notifying nearby residents was given to another team within the company.
40. At issue is whether Ovintiv followed ERP procedures by standing down the incident after the Well was brought under control, rather than continuing to follow emergency response procedures to notify area residents.
41. I have reviewed the ERP document and note that multiple pages include this passage: “Escalate, Downgrade or Stand-Down Levels of Emergency: As the emergency is brought under control, the decision to downgrade the level and/or stand down the emergency will be based on air monitoring readings in consultation with the Incident Commander and the applicable government regulator.” In this case, the applicable government regulator would be the Regulator.
42. Ovintiv’s Response states that the Incident Commander received word that the Well had been brought under control at 14:43, and immediately took steps to stand down the incident.
43. I am satisfied that the Regulator was notified of the incident at 15:15, at the earliest. Thus, the permit holder did not consult the Regulator before standing down the incident and so did not follow its ERP.
44. I note that there is a section of the ERP that somewhat contradicts the passage referenced above. Page 1 of the “Post Incident” section states that the Incident Commander will call down an incident after consultation with a senior company official or one of several government agencies. This section does not seem to require consultation with the Regulator prior to standing down an incident. Nevertheless, I am satisfied that Ovintiv did not follow some sections of their ERP in standing down the incident, and thus should have continued with contacting area residents as per ERP process until such time as consultation with the Regulator could be carried out.

Did Ovintiv exercise due diligence in its efforts to respond to the emergency in accordance with the permit holder's plan?

45. Ovintiv has failed to satisfy me that it took all reasonable steps to prevent the contravention. A simple phone call to the Regulator before standing down the incident would have been sufficient to satisfy the requirements of the ERP, and thus section 11(1)(a) of the EMR. If Ovintiv intends that incidents should be stood down in accordance with the "Post Incident" section, the language of the ERP should be made consistent throughout.

Was any noncompliance the result of an officially induced error?

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

Did Ovintiv contravene section 11(1)(a) of the EMR?

47. I find that Ovintiv has failed to comply with section 11(1)(a) of the EMR. I am not satisfied that Ovintiv exercised due diligence to prevent the contravention. As such, I find that Ovintiv contravened section 11(1)(a) of the EMR.

If Ovintiv is found to have contravened section 37(1)(a) of the ERAA and/or section 11(1)(c) of the EMR and/or section 11(1)(a) of the EMR, what if any, administrative penalty is to be imposed?

48. Section 63 of the OGAA 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.
49. Ovintiv has been found in contravention once and has received two orders from the Regulator in the past.
50. Gravity and magnitude were low to moderate. The one cubic metre of fluid spillage from the incident was contained to lease and promptly cleaned up. While 4,000 cubic metres of sour natural gas was released, dangerous levels of sour gas were not detected off lease, and the duration of the spillage event was approximately 35 minutes. The incident did cause alarm among some area residents. The alarm caused by the incident was aggravated by the amount of time it took for Ovintiv to contact area residents with information about what happened and the level of risk posed by the incident.
51. The extent of harm to others was low. Harm to the environment was limited to on-lease contamination of soils. This was promptly remediated. I am satisfied that no physical harm was done to workers or members of the public.
52. The contraventions were not continuous.
53. The contraventions were not deliberate. However, I note that the events leading to the incident included multiple contractor personnel failing to follow internal company policy that prohibits the use of damaged or inoperable equipment.

54. Ovintiv did not derive economic benefit from the contraventions.
55. Ovintiv has implemented measures to prevent re-occurrence of the contraventions. These include reviewing and reaffirming several policies and procedures including that inoperable equipment must be identified, recorded, isolated and taken out of service until made safe to use. In addition, Ovintiv has reviewed and updated their post-incident communication procedures to ensure prompt communications to area residents.

Conclusion

56. I have found Ovintiv contravened section 37(1)(a) of the ERAA and section 11(1)(a) of the EMR. I found Ovintiv did not contravene section 11(1)(c) of the EMR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000.



Patrick Smook
Executive Director, Responsible Development
BC Energy Regulator

Date: November 24, 2023