

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2022-0120

BETWEEN

The British Columbia Energy Regulator

AND

Pacific Canbriam Energy Ltd.

ADMINISTRATIVE FINDING

Before

Patrick Smook, Vice President, Compliance &
Operations

Representing the British Columbia Energy
Regulator (formerly the Oil and Gas
Commission)

Ken Mclean, Compliance & Enforcement Officer

Representing Pacific Canbriam Energy Ltd.

Nauman Rasheed, Chief Operating Officer

Decision Date

June 21, 2024

Introduction

1. On June 28, 2022, a BC Energy Regulator (Regulator) officer inspected two culverts that were recently replaced by Pacific Canbriam Energy Ltd. (PCE) at approximately kilometer 43 on the Kobes Creek Road.
2. A Contravention Report (the Report) was sent to me on January 16, 2024, alleging that PCE contravened section 11(b)(i) of the *Environmental Protection and Management Regulation* (EPMR) and/or section 6(1)(c) of the *Energy Resource Road Regulation* (ERRR) and/or section 21(b)(ii) of the *Energy Resource Activities Act* (ERAA).¹
3. The Regulator sent PCE a letter and the Report on February 15, 2024, informing PCE that I was considering making a finding that it contravened section 11(b)(i) of the EPMR and/or section 6(1)(c) of the ERRR and/or section 21(b)(ii) of the ERAA. The letter informed PCE 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. PCE provided an initial response in a letter dated March 15, 2024 (the Initial Response).
5. PCE provided a second response in a letter dated April 17, 2024 (the Second Response).
6. The Commissioner of the Regulator has delegated me authority under sections 62 and 63 of the ERAA. I will be making a determination with regards to: whether PCE contravened section 11(b)(i) of the EPMR and/or section 6(1)(c) of the ERRR and/or section 21(b)(ii) of the ERAA; 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 PCE's Initial Response and Second Response (the Responses). In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

7. At the material time, section 11(b)(i) of the EPMR stated that a person who carries out an 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.
8. The EPMR defines "stream" as "a watercourse ... that contains water on a perennial or seasonal basis, is scoured by water or contains observable deposits of mineral alluvium, and that
 - (a) has a continuous channel bed that is 100 m or more in length, or

¹ Effective September 1, 2023, the *Oil and Gas Activities Act* (the "former Act") was changed to the *Energy Resource Activities Act*, SBC 2008, c. 36 (the "ERAA") and the *Oil and Gas Road Regulation* (the "former OGRR") was changed to the *Energy Resource Road Regulation* (the "ERRR"). During all relevant times, the governing legislation was the former Act and the OGRR. However, the relevant statutory provisions were, at all material times, identical, other than where I have expressly set out in this decision. In order to assist the reader, both the former Act and the ERAA will be referred to as the "ERAA" and both the former OGRR and the ERRR will be referred to as the "ERRR" in this decision.

- (b) flows directly into
 - (i) a fish stream or a fish-bearing lake or wetland, or
 - (j) a waterworks;”

9. Maximum penalties for specific violations are set by regulation. Section 3 of *the Administrative Penalties Regulation* (APR) provides that a person who contravenes section 11(b)(i) of the EPMR is liable to an administrative penalty not exceeding \$500,000.
10. At the material time, section 6(1)(c) of the ERRR stated that a road permit holder may not construct or install a bridge or culvert on an oil and gas road unless the culvert, if it will be in a stream or a fish stream, is designed to pass the highest peak flow of the stream that can reasonably be expected within the return periods set out in column 2 of the following table for the period the road permit holder anticipates the bridge or culvert will remain on the site, as set out opposite in column 1 of the table.

Column 1 Anticipated period bridge or culvert will remain on site	Column 2 Peak flow period
bridge or culvert, 3 years or less	10 years
bridge other than a bridge within a community watershed, more than 3 years but less than 15 years	50 years
bridge within a community watershed, more than 3 years	100 years
bridge, 15 years or more	100 years
culvert, more than 3 years	100 years

11. Section 8(2) of the APR provides that a person who contravenes section 6(1)(c) of the ERRR is liable to an administrative penalty not exceeding \$250,000.
12. At the material time, section 21(b)(ii) of the ERAA stated, in part, that a person must not carry out an oil and gas activity unless the person carried out the oil and gas activity in compliance with a permit issued to the person.
13. At the material time, the ERAA stated, in part, that “oil and gas activity” included the construction or maintenance of an oil and gas road.
14. Section 2(1) of the APR provides that a person who contravenes section 21 of the ERAA is liable to an administrative penalty not exceeding \$500,000.
15. 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.
16. 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.

17. 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

18. In March 2014, PCE acquired the Kobes Creek Road and received a road permit from the Regulator.
19. The permit that was in effect in June 2022 for the Kobes Creek Road (Road number 2847) was issued to PCE on December 19, 2017.
20. Between June 26 and June 28, 2022, PCE installed two 26-inch culverts replacing existing damaged 24-inch and 16-inch culverts allowing for a stream to traverse the road.
21. An inspection report indicates culvert sizing concerns noted during an inspection completed on July 6, 2022.
22. Roy Northern Land and Environmental (RNE) provided a stream and culvert inspection report to PCE dated October 3, 2022, and a revised stream and culvert inspection report dated October 20, 2022.
23. Beginning in October 2022, PCE undertook a process to identify and install a suitable crossing at the location of interest. Ultimately, a major culvert was installed at the location on March 29, 2024.

Issues

24. The issues which I will decide are:

Section 11(b)(i) of the EPMR:

- Did PCE ensure the crossing did not prevent the movement of fish?
- Did PCE exercise due diligence in its efforts to ensure the crossing did not prevent the movement of fish?

- Was any noncompliance due to an officially induced error?
- Did PCE contravene section 11(b)(i) of the EPMR?
- If PCE is found to have contravened section 11(b)(i) of the EPMR what if any, administrative penalty to impose?

Section 6(1)(c) of the ERRR:

- Did PCE install a culvert designed to pass the highest peak flow of the stream that can reasonably be expected within the relevant return period?
- Did PCE exercise due diligence in its efforts to install a culvert to pass the highest peak flow of the stream that can reasonably be expected within the relevant return period?
- Was any noncompliance due to an officially induced error?
- Did PCE contravene section 6(1)(c) of the ERRR?
- If PCE is found to have contravened section 6(1)(c) of the ERRR what if any, administrative penalty to impose?

Section 21(b)(ii) of the Act:

- Did PCE carry out an oil and gas activity in compliance with a permit?
- Did PCE exercise due diligence in its efforts to carry out an oil and gas activity in compliance with a permit?
- Was any noncompliance due to an officially induced error?
- Did PCE contravene section 21(b)(ii) of the ERAA?
- If PCE is found to have contravened section 21(b)(ii) of the ERAA what if any, administrative penalty to impose?

Section 11(b)(i) of the EPMR:

Did PCE ensure the crossing did not prevent the movement of fish?

25. The RNE report of October 3, 2022, states that one of the 26-inch replacement culverts was perched, that this culvert was supporting stream flow at the time of assessment, and that the stream was in a low flow state at time of assessment. This indicates that the culvert would be supporting flow for a significant portion of the year.
26. The RNE report of October 20, 2022, states that the 26-inch replacement culverts were not suitable and that they should be replaced with a single structure that allows fish passage. This report further states that “To create a fish-passable structure using a non-corrugated culvert, the oversized pipe must be embedded for approximately 40 % of its diameter (please also refer to the BC Fish-stream Crossing Guidebook for details). Care must be taken to ensure that the inlet and outlet of the culvert are continuous with the streambed, that the culvert follows the same gradient and natural angle as the stream, and that impassable plunge pools are not created.”
27. The 26-inch culverts were made of smooth steel, were not embedded, and one was installed such that one end was not continuous with the stream bed (perched).

28. Given the above facts, I am satisfied that PCE did not ensure that the installed crossing did not prevent the movement of fish.

Did PCE exercise due diligence in its efforts to ensure the crossing did not prevent the movement of fish?

29. Pursuant to section 62(5) of the ERAA, I may not find that PCE contravened section 11(b)(i) of the EPMR if PCE demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether PCE has demonstrated that it took all reasonable steps to prevent the contravention. PCE 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.
30. The October 3, 2022, report by RNE classified the stream as fish bearing (S3) and noted that one of the culverts installed at the crossing was perched.
31. RNE provided a revised stream and culvert inspection report to PCE dated October 20, 2022. The revised report indicated that the replacement 26-inch culverts did not allow fish passage.
32. In its Initial Response, PCE provided a Habitat Wizard Streams Report from a Ministry of Environment database for the stream of interest. This report shows presence of rainbow trout and slimy sculpin as of a September 13, 2001, observation date. The October 3 RNE report notes that these observations were made at the confluence between the stream of interest and the next closest mapped stream, approximately 350m away from the crossing location.
33. PCE did not verify the classification of the stream prior to undertaking culvert replacement activities that led to the installation of the two 26-inch replacement culverts, instead relying on a stream classification recorded on a 2019 survey plan by Vector Geomatics.
34. The 2019 survey plan included a classification for the stream of interest as S6. As S6 streams are not fish-bearing, consideration of fish passage is not required when installing crossings on these streams.
35. No documentation supporting the accuracy of the S6 classification in the 2019 survey plan has been provided. Such documentation could include field notes showing stream measurements taken at that time, date and time of measurements taken, and identification and qualifications of the personnel who carried out the stream classification work.
36. The October 3, 2022, report by RNE indicates that a beaver dam upstream of the location of interest may be having a 'buffering' effect on the stream flow, potentially affecting stream classification. In its Initial Response, PCE shows evidence that this beaver dam came about in the years between the 2019 survey plan and the 2022 culvert replacements.
37. While I accept that stream classification can change over time, it is incumbent upon the permit holder to verify stream classification prior to undertaking culvert replacement works. In relying on the 2019 assessment as S6, it is reasonable to expect that PCE would have validated that assessment with a review of supporting documentation and re-checked classification in the field prior to starting maintenance works at the crossing. This validation and re-check would

have been especially important for the stream of interest, given the 2001 records of rainbow trout and slimy sculpin at the confluence with the next mapped stream. For personnel with the appropriate training, this is a relatively simple exercise. Had the stream classification been verified prior to culvert work at the location of interest, it follows that PCE personnel or contractors would have been prompted to consider fish passage in designing the replacement crossing.

38. At the time the two 26-inch culverts were installed, PCE did not have a corporate procedure for culvert replacement works. A procedure developed after this time requires that staff verify the stream classification as an early step in the process.
39. It is reasonable to expect that PCE maintain a corporate procedure for road maintenance works such as culvert replacements that includes a step for verification of stream classification.
40. In its Responses, PCE indicated that replacement culverts needed to be installed quickly after the existing culverts failed, as the failed crossing posed a safety hazard to road users and created a risk of further damage to the road from upstream flooding. If hazard and risk were created by the failure of the existing culverts, risk to road users could have been eliminated by closing the road on either side of the road crossing with road users being diverted to other routes in the area. Also, any risk of upstream flooding could have been eliminated by simply removing the failed culverts from the road and leaving a gap in the road surface to allow water flow while design of the replacement crossing was ongoing. While this solution would have required carrying out in-stream works outside of least risk timing windows, PCE could have sought an emergency approval from the Regulator to do so.
41. It is reasonable to expect that PCE verify stream classification while designing a replacement stream crossing.
42. It is reasonable to expect that PCE maintain corporate procedures for culvert replacement works that include steps for verification of stream classification.
43. I am not satisfied that installation of the two 26-inch culverts was the only available option to address any road safety and upstream flooding risks.
44. PCE has failed to satisfy me that it took all reasonable steps to prevent the noncompliance.

Was any noncompliance due to an officially induced error?

45. In reviewing both the Responses and the Report, I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did PCE contravene section 11(b)(i) of the EPMP?

46. I find that PCE has failed to comply with section 11(b)(i) of the EPMP. I am not satisfied that PCE exercised due diligence to prevent the contravention. As such, I find that PCE contravened section 11(b)(i) of the EPMP.

Section 6(1)(c) of the ERRR:

Did PCE install a culvert designed to pass the highest peak flow of the stream that can reasonably be expected within the return period identified in the table in s. 6(1)(c) of the ERRR?

47. The table included in section 6(1)(c) of the ERRR provides that culverts intended to be in place for more than three years must be designed to pass highest peak flow of the stream that can reasonably be expected within a 100-year return period.
48. The October 20, 2022, RNE report estimates that a culvert that would pass this flow amount would be greater than 2000mm in diameter (greater than 78.74 inches).
49. The two culverts installed by PCE at the location of interest were 26 inches in diameter.
50. Given the above facts, I am satisfied that PCE did not comply with section 6(1)(c) of the ERRR.

Did PCE exercise due diligence in its efforts to install a culvert designed to pass the highest peak flow of the stream that can reasonably be expected within the return period identified in the table in s. 6(1)(c) of the ERRR?

51. Pursuant to section 62(5) of the ERAA, I may not find that PCE contravened section 6(1)(c) of the ERRR if PCE demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether PCE has demonstrated that it took all reasonable steps to prevent the contravention. PCE 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.
52. In its Initial Response, PCE states that it relied on historical experience of its construction supervisor in deciding to install the 26-inch culverts at the location of interest, and that it had undertaken a reasonable level of analysis prior to installing the culverts June 26 – 28, 2022.
53. I have been provided with no information to suggest that the construction supervisor referenced in the Initial Response had sufficient knowledge, training and experience to design a crossing appropriate for the location of interest. It is reasonable to expect that PCE would verify that personnel tasked with this work had the required knowledge, training and experience.
54. I see no evidence that PCE undertook an assessment of highest peak flow for the stream of interest until the October 20, 2022, report by RNE. It is reasonable to expect that PCE would complete these assessments while designing a plan for a replacement stream crossing.
55. At the time the two 26-inch culverts were installed, PCE did not have a corporate procedure for culvert replacement works. A procedure developed after this time requires that PCE “ensure that the culverts follow the Oil and Gas Road Regulations including Section 6.” This would include ensuring that culverts to be installed will meet peak flow requirements provided in section 6(1)(c).

56. It is reasonable to expect that a company maintain a corporate procedure for road maintenance works such as culvert replacements that includes a step to ensure compliance with peak flow requirements, including necessary assessments of stream peak flow.
57. PCE has failed to satisfy me that it took all reasonable steps to prevent the noncompliance.

Was any noncompliance due to an officially induced error?

58. In reviewing both the Responses and the Report, I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did PCE contravene section 6(1)(c) of the ERRR?

59. I find that PCE has failed to comply with section 6(1)(c) of the ERRR. I am not satisfied that PCE exercised due diligence to prevent the contravention. As such, I find that PCE contravened section 6(1)(c) of the ERRR.

Section 21(b)(ii) of the ERAA:

Did PCE carry out an oil and gas activity in compliance with the permit for the Kobes Creek Road (road permit 02847)?

60. The October 3, 2022, report by RNE classified the stream as fish bearing (S3).
61. Condition 9(e) in road permit 02847 requires:
(e) in-stream activities within a fish bearing stream, lake or wetland must occur:
i. during the applicable reduced risk work windows as specified in the Peace Region Selected Terrestrial and Aquatic Wildlife Least-Risk Windows,
ii. in accordance with alternative timing and associated mitigation recommended by a qualified professional and accepted by the Commission, or
iii. in accordance with an authorization or letter of advice from Fisheries and Oceans Canada that is provided to the Commission;
62. The Report provides that the pertinent least-risk timing window for the stream of interest is July 15 – March 31.
63. The 26-inch replacement culverts were installed between June 26 and 28, 2022.
64. I see no evidence to suggest that PCE acted in accordance with alternative timing and associated mitigation from a qualified professional when installing the 26-inch replacement culverts.
65. I see no evidence to suggest that PCE acted in accordance with an authorization or letter of advice from Fisheries and Oceans Canada when installing the 26-inch replacement culverts.

66. Given the facts above, I am satisfied that PCE did not comply with condition 9(e) of the road permit 2847 and thus did not comply with section 21(b)(ii) of the ERAA.

Did PCE exercise due diligence in its efforts to carry out an energy resource activity in compliance with a permit?

67. Pursuant to section 62(5) of the ERAA, I may not find that PCE contravened section 21(b)(ii) of the ERAA if PCE demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether PCE has demonstrated that it took all reasonable steps to prevent the contravention. PCE 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.
68. The requirements in permit condition 9(e) apply to fish bearing streams.
69. PCE did not verify the classification of the stream prior to undertaking culvert replacement activities that led to the installation of the two 26-inch replacement culverts, instead relying on a stream classification recorded on a 2019 survey plan by Vector Geomatics.
70. The 2019 survey plan included a classification for the stream of interest as S6. As S6 streams are not fish-bearing, consideration of condition 9(e) is not required while crossing these streams.
71. No documentation supporting the accuracy of the S6 classification in the 2019 survey plan has been provided. Such documentation could include field notes showing stream measurements taken at that time, date and time of measurements taken, and identification and qualifications of the personnel who carried out the stream classification work.
72. The October 3, 2022, report by RNE indicates that a beaver dam upstream of the location of interest may be having a 'buffering' effect on the stream flow, potentially affecting stream classification. In its Initial Response, PCE shows evidence that this beaver dam came about in the years between the 2019 survey plan and the 2022 culvert replacements.
73. While I accept that stream classification can change over time, it is incumbent upon the permit holder to verify stream classification prior to undertaking culvert replacement works. In relying on the 2019 assessment as S6, it is reasonable to expect that PCE would have validated that assessment with a review of supporting documentation and re-checked classification in the field prior to starting maintenance works at the crossing. This validation and re-check would have been especially important for the stream of interest, given the 2001 records of rainbow trout and slimy sculpin at the confluence with the next mapped stream. For personnel with the appropriate training, this is a relatively simple exercise. Had the stream classification been verified prior to culvert work at the location of interest, it follows that PCE personnel or contractors would have been prompted to consider permit condition 9(e) in planning works to install a replacement crossing.
74. At the time the two 26-inch culverts were installed, PCE did not have a corporate procedure for culvert replacement works. A procedure developed after this time requires that staff verify the stream classification as an early step in the process.

75. It is reasonable to expect that a company maintain a corporate procedure for road maintenance works such as culvert replacements that includes a step for verification of stream classification.
76. It is reasonable to expect that stream classification be verified while designing a plan for a replacement stream crossing.
77. I see no evidence that PCE requested permission from the Regulator to operate in the stream outside of least-risk timing windows.
78. PCE has failed to satisfy me that it took all reasonable steps to prevent the noncompliance.

Was any noncompliance due to an officially induced error?

79. In reviewing both the Responses and the Report, I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did PCE contravene section 21(b)(ii) of the ERAA?

80. I find that PCE has failed to comply with section 21(b)(ii) of the ERAA. I am not satisfied that PCE exercised due diligence to prevent the contravention. As such, I find that PCE contravened section 21(b)(ii) of the ERAA.

Section 63 of ERAA:

If PCE is found to have contravened section 11(b)(i) of the EPMR and/or 6(1)(c) of the ERRR and/or 21(b)(ii) of the ERAA what if any, administrative penalty is to be imposed?

81. 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.
82. There have been zero contraventions and three orders issued to PCE.
83. Gravity and magnitude of the contraventions was moderate. While the contraventions were isolated to one stream crossing, they did involve excavations and material infill into the area of a fish-bearing water course that was several meters in length, creating potential impacts on spawning fish or eggs (installation of the 26-inch culverts outside of least risk timing windows) and fish movement. In making this determination, I have considered that undersized culverts had been in place at the location of interest for several years prior to the contraventions. Therefore, while any potential negative impact to fish as a result of a contravention is relatively serious and not minor, the 26-inch replacement culverts may have in part had the effect of prolonging an impact to fish that had been in ongoing for several years and thus the gravity and magnitude of the contraventions are not considered major.
84. I note that in the Second Response, PCE has compared the circumstances of the subject case with those of case file 2018-090FSJ, in which the gravity and magnitude was assessed

as moderate. PCE has asserted that since in case 2018-090FSJ the stream impacted by improperly sized culverts was a named stream with multiple observed fish species, and since the stream in the current case is not named and has not had fish actually observed, gravity and magnitude in the current case should be deemed lower than in case 2018-090FSJ. PCE also asserts that the relatively recently established beaver dam on the stream of interest further supports a lower assessment of gravity and magnitude.

85. I note that case 2018-090FSJ did not include a finding of contravention of section 21(b)(ii) of the ERAA. Therefore, comparison of gravity and magnitude of contraventions in that case with those in the current case must be limited to section 11(b)(i) of the EMPR and section 6(1)(c) of the OGRR. While I accept the differences in the streams between the two case files as presented by PCE, case 2018-090FSJ determined moderate gravity and magnitude while assessing the “possible” impact to fish movement evident in that case. In this case the RNE reports state that the stream of interest is “potentially” fish bearing, which would indicate “potential” or “possible” impact to fish movement posed by the improperly sized culverts. In addition, I do not accept that the relatively recent establishment of a beaver dam on the stream of interest supports a lower finding of gravity and magnitude, as it is incumbent upon the permit holder to verify stream conditions and classifications prior to conducting culvert replacement works.
86. There has been no evidence presented that shows harm to others.
87. The contraventions were not repeated, but the contraventions of section 11(b)(i) of the EMPR and section 6(1)(c) of the ERRR were continuous between June 26- 28, 2022, and March 29, 2024.
88. There has been no evidence presented to show that the contraventions were deliberate.
89. While I accept PCE’s statement that the contraventions were not economically motivated, I find that PCE delayed the significant costs associated with installation of a major culvert by more than a year by initially installing two 26-inch culverts rather than a major culvert. In its Second Response PCE submits that costs incurred in correcting the contravention(s) were greater than those that would have been incurred if a major culvert had been initially installed at the location of interest. I do not accept that any increased costs incurred by PCE in the course of correcting the contravention(s) are relevant in consideration of this factor under the circumstances.
90. I consider PCE's efforts to prevent the contraventions insufficient, particularly given the relevant guidance available to PCE including an Industry Bulletin issued by the Regulator on August 17, 2020, that highlighted specific requirements, including use of a qualified person for design, construction, and maintenance of an oil and gas road, and mandatory compliance with section 11 of the EPMR, and a previous contravention decision made by the Regulator on case file 2018-090FSJ and published on the Regulator's website in 2019, in which a permit holder was found in contravention for replacing failed culverts with undersized culverts, potentially affecting fish movement and in noncompliance with peak flow requirements.
91. I accept that PCE cooperated with the Regulator during the investigation into this matter. After the non-compliances were identified to PCE, it carried out various assessments through

consultants to ultimately identify and install a major culvert at the crossing of interest and correct the contraventions of section 11(b)(i) of the EMPR and section 6(1)(c) of the ERRR. The Report states that the Regulator had to issue a General Order to PCE to correct the contravention. In its Responses, PCE asserts that this is inconsistent with the facts and that the decision to delay installation of the major culvert from fall 2023 to fall 2024 was based on recommendations from RNE regarding optimal conditions for construction of a crossing of this type.

92. While it is accepted that construction of major crossings is generally best done in non-frozen conditions, that does not preclude this work being done in frozen conditions. Further, one reason the BCER issued the General Order was that a plan submitted by PCE in November 2023 stated that the work would be done in Q3/Q4 of 2024, and Regulator subject matter experts identified that the planned delay to Q3/Q4 2024 could have been detrimental to fish. Thus, I find that PCE did not act promptly to correct the contravention and the General Order was needed to ensure this work was done without further delay.

Conclusion

93. I have found PCE contravened section 11(b)(i) of the EMPR, section 6(1)(c) of the ERRR and section 21(b)(ii) of ERAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$60,000.



Patrick Smook
Vice President, Compliance & Operations
BC Energy Regulator

Date: June 21, 2024