

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2022-0042

BETWEEN

The British Columbia Energy Regulator

AND

Pacific Northern Gas LTD.

ADMINISTRATIVE FINDING

Before

Patrick Smook,
Vice President, Compliance & Operations

Representing the British Columbia Energy
Regulator

Kevin Petersen,
Compliance and Enforcement Officer

Representing Pacific Northern Gas LTD.

Amanda Ward,
Vice President,
Regulatory Affairs, Legal & Gas Supply

Introduction

1. Between September and November 2023, Pacific Northern Gas (PNG) conducted an integrity dig on a pipeline near Welsh Creek, approximately 24.5 km north-east of Vanderhoof, BC.
2. A Contravention Report (the Report) was sent to me on June 12, 2025, alleging that PNG contravened Environmental Protection and Management Regulation (EPMR) section 11(b)(i), EPMR section 12 and Energy Resource Activities Act (ERAA) section 21(b)(ii).
3. The British Columbia Energy Regulator (Regulator) sent PNG a letter and the Report on July 16, 2025, informing PNG that I was considering making a finding that it contravened section 11(b)(i) of the EPMR, section 12 of the EPMR and/or section 21(b)(ii) of the ERAA. The letter informed PNG 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. PNG provided a response in a letter dated October 15, 2025 (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 PNG contravened EPMR section 11(b)(i), EPMR section 12 and/or ERAA section 21(b)(ii); 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 PNG's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. EPMR section 11(b)(i) states that a person who carries out an energy resource 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 nor impede the movement of fish to the extent that it is harmful to the survival of the fish.
7. Maximum penalties for specific violations are set by regulation. Section 3 of the Administrative Penalties Regulation (APR) provides that a person who contravenes EPMR section 11(b)(i) is liable to an administrative penalty not exceeding \$500,000.
8. EPMR section 12 states that a person who carries out an energy resource activity on an operating area must ensure that the energy resource activity does not result in any deleterious materials being deposited into a stream, wetland or lake.
9. Maximum penalties for specific violations are set by regulation. Section 3 of the APR provides that a person who contravenes EPMR section 12 is liable to an administrative penalty not exceeding \$500,000.

10. ERAA section 21(b)(ii) states that a person must not carry out an energy resource activity unless the person carries out the energy resource activity in compliance with the permit issued.
10. Maximum penalties for specific violations are set by regulation. Section 2 of the APR provides that a person who contravenes ERAA section 21(b)(ii) is liable to an administrative penalty not exceeding \$500,000.
11. ERAA Section 62(1) 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.
12. ERAA section 62(5) 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.
13. ERAA 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. ERAA section 63(2) 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. Between September and November 2023, PNG conducted an integrity dig on an existing pipeline (pipeline project 26021, AD# 100084758) at a location accessible by crossing Welsh Creek.
15. To access the work site, a temporary stream crossing was constructed at Welsh Creek using soil-fill placed within the stream channel.
16. The crossing remained in place following completion of the integrity dig activities and was subsequently identified by the Regulator during inspection operations.
17. After receiving notice from the Regulator that the crossing was still in place, PNG undertook corrective actions and removed the fill material from the stream crossing location.

18. The Regulator conducted an investigation into the construction and use of the stream crossing and subsequently prepared a Contravention Report relating to potential non-compliance with EPMR sections 11(b)(i) and 12, and ERAA section 21(b)(ii).
19. In the Response, PNG acknowledged that a soil-fill stream crossing had been used at the location and provided submissions regarding the circumstances surrounding the construction, monitoring, and remediation of the crossing.

Issues

20. The issues which I will decide are:
 - EPMR section 11(b)(i): Did PNG ensure the crossing did not prevent the movement of fish?
 - EPMR section 12: Did PNG ensure no deleterious materials were deposited into a stream, wetland or lake?
 - ERAA section 21(b)(ii): Did PNG carry out an oil and gas activity in compliance with a permit?
 - Did PNG exercise due diligence in its efforts to maintain compliance with each of EPMR section 11(b)(i), EPMR section 12 and ERAA section 21(b)(ii)?
 - Was any non-compliance due to officially induced error?
 - Decisions under ERAA section 62: Did PNG contravene EPMR section 11(b)(i), EPMR section 12 and/or ERAA section 21(b)(ii)?
 - Decisions under ERAA section 63: If PNG is found to have contravened EPMR section 11(b)(i), EPMR section 12 and/or ERAA section 21(b)(ii), what, if any, penalty to impose?

Assessment of Compliance:

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

21. Photo evidence shows that Welsh Creek was completely blocked by a soil-filled stream crossing left in place by PNG's contractor. The Report states that PNG's environmental work plan from a previous integrity dig identified Welsh Creek as a fish-bearing watercourse known to contain Lake Chubb approximately two kilometres upstream of the crossing location. The Report also notes that Welsh Creek exhibits characteristics consistent with a fish-bearing stream, including a defined channel, flow, substrate, and riparian characteristics.
22. The Report includes an assessment of impact of PNG's crossing at Welsh Creek on fish and fish habitat, prepared by Warren Coughlin, MSc., RPBio (The Coughlin Report).
23. The Coughlin Report states that fish have been observed both upstream and downstream of the stream crossing location and concludes that Welsh Creek is fish bearing. The Coughlin Report further states that movement of adults and juveniles of spring-spawning and fall-spawning species could have been impacted by the stream infill.
24. In its Response, PNG submits that historical assessments of Welsh Creek have produced differing classifications. PNG relies upon a 2007 classification that designated the stream as non-fish bearing (S6) and submits that the 2014 fish-bearing classification was a default

precautionary classification rather than evidence of actual fish presence. PNG further submits that the presence of Lake Chubb upstream does not establish fish presence at the stream crossing location and that the ephemeral nature of Welsh Creek limits its suitability for spawning.

25. I have considered PNG's submissions. The 2014 assessment was completed by PNG's qualified environmental professional after reviewing available historical information. Despite the existence of the 2007 (S6) classification, the qualified professional elected to classify Welsh Creek as default fish-bearing and recommended further sampling. It is reasonable to conclude that the historical data, together with observations made during the assessment, supported continued protection of the stream as fish-bearing. PNG subsequently relied upon that assessment in planning its operations at the stream crossing location. While PNG submits that the 2014 classification was precautionary and not evidence of actual fish presence, I note that the assessment did not conclude that the stream was non-fish-bearing. Rather, the qualified professional determined that a fish-bearing classification was appropriate pending further assessment. The recommendation for further sampling reflects uncertainty as to the extent of fish use, not a conclusion that fish were absent.
26. Given the documented presence of fish upstream and downstream of the stream crossing location, the absence of evidence of barriers to fish movement, and the classification assigned by PNG's qualified professional, I find it appropriate to consider Welsh Creek a fish-bearing stream for the purpose of assessing compliance with EPMR section 11(b)(i). While PNG notes that fish have not been captured at the crossing location and submits that the ephemeral nature of Welsh Creek limits its suitability for fish movement and spawning, I do not find those submissions sufficient to outweigh the evidence before me. The absence of fish captures at a particular location does not establish that fish movement cannot occur through that location, particularly where fish have been documented both upstream and downstream and there is no evidence of a natural barrier preventing movement between those areas.
27. The evidence demonstrates that the stream channel was completely blocked by soil infill introduced by PNG's contractor and left in place for more than a year. Given the complete blockage of a fish-bearing stream, I find that direct evidence of fish movement being impeded is not required. Section 11(b)(i) requires that a crossing not prevent the movement of fish. Where a stream that is reasonably considered fish-bearing is completely infilled such that passage through the channel is not possible, it is reasonable to conclude that fish movement through the crossing location was prevented. I am satisfied that PNG failed to ensure the stream crossing did not prevent the movement of fish.

EPMR Section 12: Did PNG ensure no deleterious materials were deposited into a stream, wetland or lake?

28. EPMR section 12 requires that energy resource activities be carried out such that they do not result in deleterious materials being deposited into a stream, wetland or lake.
29. While the EPMR 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.”

30. In its Response, PNG submits that there is insufficient evidence to conclude that the material deposited in Welsh Creek caused harm to fish habitat, that other sources may have contributed sediment to the creek, and that the remediation materials used to restore the crossing location were appropriate and not deleterious. I have considered those submissions.
31. I do not find it necessary to determine the precise extent of any downstream impact or to conclude that actual harm to fish or fish habitat occurred. EPMR section 12 requires that an energy resource activity not result in deleterious materials being deposited into a stream. The material at issue was soil fill placed directly within the stream channel. Consistent with the Fisheries Act definition and the guidance contained in the EPMG, the soil fill introduced into Welsh Creek as part of the stream crossing was capable of degrading or altering fish habitat and therefore constituted deleterious material for the purpose of assessing compliance with EPMR section 12.
32. I also do not find that the possibility of other sources contributing sediment to Welsh Creek alters this conclusion. The evidence before me establishes that PNG's contractor deposited soil fill into the stream as part of constructing the stream crossing. Whether additional sediment may have entered the stream from other sources does not change the fact that the energy resource activity resulted in soil fill being deposited within the stream channel. Similarly, PNG's submissions regarding the adequacy of the remediation work do not alter the fact that soil fill had previously been placed in the stream and remained there for an extended period.
33. Under the definitions and guidance noted above, soil introduced into Welsh Creek as part of PNG’s crossing would be considered deleterious. Therefore, I find that PNG did fail to ensure their operations were in compliance with EPMR section 12, by failing to ensure deleterious material was not introduced to Welsh Creek.

ERAA Section 21(b)(ii): Did PNG carry out an oil and gas activity in compliance with a permit?

34. Condition 14(b) of the permit for pipeline project 26021 identifies acceptable stream crossing methods for the authorized activity. The evidence before me establishes that a soil-fill stream crossing method was used by PNG at Welsh Creek and that such a crossing method is not included as an acceptable crossing method under Condition 14(b) of the permit. In its Response, PNG acknowledges that its contractor installed a stream crossing method that did not comply with the permit requirements.

35. Accordingly, PNG failed to comply with the terms and conditions of its permit. I am satisfied that PNG failed to carry out the activity in compliance with a permit and therefore failed to comply with ERAA section 21(b)(ii).

Legislated Defenses:

Did PNG exercise due diligence in its efforts to maintain compliance with each of Section EPMR section 11(b)(i), EPMR section 12 and ERAA section 21(b)(ii)?

36. Pursuant to ERAA section 62(5), I may not find that PNG contravened EPMR section 11(b)(i), EPMR section 12 and/or ERAA section 21(b)(ii) if PNG demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether PNG has demonstrated that it took all reasonable steps to prevent the contravention. PNG 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.

PNG Policies and Procedures, Inspection Frequency

37. In the response, PNG states that it had the appropriate programs, policies and controls in place to seek to prevent environmental and permit contraventions. These included:
- An over-arching environmental management program,
 - Safety Standard Practice Instructions (SPIs),
 - Planning and Operational Measures (POMs), and,
 - Risk-based work inspection protocols.
38. Further, PNG states that the SPIs include a clause where PNG's inspection frequency on contractor work will increase with complexity of work or frequency of infraction, and that this was the inspection regime in place for the work at Welsh Creek. Further, PNG notes that since the contractor did not have a history of infraction and that the work was not complex, PNG was justified in not completing a post-construction inspection of the site.
39. In reviewing the above-listed materials, as available in the Report and Response, I note the following in the PNG POMs:
- (p. iv) A watercourse is listed as a 'resource value,'
 - (p. 2) 'Major works' with higher environmental risk includes right of way access with interactions with identified resource values, and,
 - (p.9) 'Major projects' with high environmental risk require continuous onsite presence by a Quality Professional (QP), and 'minor projects' with moderate environmental risk require daily inspection by a QP.
40. Given that the work involved construction and removal of a stream crossing in a watercourse classified by PNG's qualified professional as default fish-bearing, I would have expected the work to attract a level of environmental oversight commensurate with the environmental sensitivities present at the site. PNG's POMs identify watercourses as resource values and contemplate increased oversight where work interacts with such values. Therefore, having regard to the environmental sensitivities present at the site and

the expectations reflected in PNG's POMs, I deem it reasonable to expect that some form of inspection would have been undertaken during or after completion of the work.

41. To the extent that PNG's POMs contemplated increased oversight for work involving resource values such as watercourses, the evidence before me does not demonstrate that such oversight occurred. This weighs against a finding of due diligence in ensuring compliance with EPMR section 11(b)(i), EPMR section 12, and ERAA section 21(b)(ii).

Reporting from the Contractor

42. In the response, PNG provides that despite not having inspectors on site, it did have process in place to ensure compliance. This process involves requiring the contractor to complete and submit a Backfill & Site Demob Report, which includes required acknowledgement that the access or approach had been removed. This form was completed and submitted by the contractor. Thus, PNG asserts that "PNG had no reason to believe that the crossing identified by BCER existed or that there were any deficiencies at the site."
43. I have considered that submission. I acknowledge that requiring contractors to complete and submit documentation confirming site restoration is an appropriate compliance measure and weighs in favour of PNG's due diligence efforts. However, the effectiveness of that process depends upon the information submitted by contractors being meaningfully reviewed and assessed.
44. I have reviewed the Backfill & Site Demob Report completed by the contractor and included in the Report. It includes photos that clearly show Welsh Creek blocked with soil fill, under the photo headers "finished subsoil looking west," and "seeding finished site looking west," with soil work and seeding completed.
45. While PNG submits that it relied on the contractor's representations that the access had been removed and all evidence of construction had been removed, I am not persuaded that reliance on those representations relieved PNG of the obligation to review and assess the information provided by the contractor. In the circumstances, I find that PNG did not establish that its contractor reporting process was implemented in a manner sufficient to identify and prevent the continued existence of the non-compliant crossing. This weighs against a finding of due diligence with respect to EPMR section 11(b)(i), EPMR section 12, and ERAA section 21(b)(ii).

Contractor Selection

46. In the response, PNG notes that the SPIs include process for contractor selection that takes into account the contractor's environment, health and safety program, past performance

and agreement to comply with PNG's policies and procedures. I acknowledge that this is an appropriate and positive element in diligence towards preventing non-compliance and a factor weighing in PNG's favour in assessing the due diligence defense.

Assessment of Due Diligence

47. I find that:
- PNG did not implement an inspection regime commensurate with the environmental sensitivities present at the site and the expectations reflected in their corporate POMs, and,
 - PNG did not establish that its contractor reporting process was implemented in a manner sufficient to identify and prevent the continued existence of the non-compliant crossing.
48. Given the above, I determine that PNG was not duly diligent in their efforts to ensure compliance with EPMR section 11(b)(i), EPMR section 12 or ERAA section 21(b)(ii).

Was any noncompliance due to an officially induced error?

49. I do not have evidence before me that there was officially induced error.

Decisions under Section 62 of the ERAA:

50. I find that PNG failed to comply with each of EPMR sections 11(b)(i) and 12 and ERAA section 21(b)(ii). I am not satisfied that PNG exercised due diligence to prevent the contraventions, and I have been presented with no evidence of officially induced error. As such, I find that PNG contravened EPMR sections 11(b)(i) and 12 and ERAA section 21(b)(ii).

Section 63 of ERAA:

If PNG is found to have contravened EPMR section 11(b)(i), EPMR section 12 and/or ERAA section 21(b)(ii), what, if any, administrative penalty is to be imposed?

51. 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.
52. In reviewing PNG's enforcement history, I have found that all orders previously issued to PNG involved matters that are dissimilar to the non-compliances that are subject of this decision and thus carry little weight in determining penalty amount. I have also found that PNG has not been found in contravention in the past.
53. The gravity and magnitude of the contraventions were moderate. With respect to gravity, while PNG did have several programs, policies and procedures in place for the project, I have found that the inspection regime and contractor reporting process implemented for the work could reasonably have included additional aspects that could have prevented or reduced the duration of the contraventions.

54. The contraventions involved completely infilling with soil a stream that is assessed as being default fish-bearing, which created potential impact to fish and fish movement. In making this determination, I have considered that there is no evidence of acute impact to fish or fish movement, and that while the stream was blocked for a period of 9 months, the effects were ultimately temporary in nature. Therefore, while the contraventions were serious and not minor, I do not consider the magnitude of the contraventions to be major.
55. There is no evidence of harm to others as a result of the contraventions.
56. The contraventions were not repeated, but the contraventions were continuous from the time the stream crossing was installed sometime between September and November 2023, to the time it was removed on August 27-29, 2024. The contraventions were therefore continuous for at least a period of 9 months.
57. There is no evidence to indicate that the contraventions were deliberate.
58. There is no evidence that PNG derived economic benefit from the contraventions.
59. PNG had corporate policies and procedures in place to manage compliance during operations such as those ongoing when the contraventions occurred, including an overarching environmental management program, safety standard practice instructions, planning and operational measures, and risk-based inspection protocols. These represent effort to prevent the contraventions. After the subject stream crossing was reported to PNG by the Regulator, PNG acted expeditiously to have it removed and correct the contraventions. PNG's cooperation in the investigation and commitment to continuous program improvement are noted.

Conclusion

60. I have found PNG contravened EMPR sections 11(b)(i), EMPR section 12 and ERAA section 21(b)(ii). While I have found no deliberate conduct, no economic benefit, and no demonstrated harm to others, I place significant weight on the complete blockage of a fish-bearing stream and the duration of the contraventions. Having also considered PNG's remediation efforts, cooperation, and existing compliance measures, I find that an administrative penalty of \$112,500 appropriately reflects the seriousness of the contraventions and the mitigating circumstances present in this case.



Patrick Smook
Vice President, Compliance & Operations
BC Energy Regulator

Date: August 19, 2026