

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The BC OIL and GAS COMMISSION
Case File 2020-1014

BETWEEN

The BC Oil and Gas Commission

AND

Petronas Energy Canada Ltd.

ADMINISTRATIVE FINDING

Before

Andy Johnson, Vice President, Compliance &
Operations

Representing the BC Oil and Gas
Commission

Ken McLean, Compliance and Enforcement
Officer

Representing Petronas Energy Canada Ltd.

Max Vorobiev, Vice President, Development

Decision Date

February 8, 2023

Introduction:

1. On June 11, 2020, the BC Oil and Gas Commission (Commission) received notification from Petronas Energy Canada Ltd. (Petronas) of a pipeline erosion incident on pipeline project no. 25416.
2. A Contravention Report (the Report) was sent to me on February 10, 2022, alleging that Petronas contravened sections 12 and 17(a) of the *Environmental Protection and Management Regulation* (EPMR).
3. The Commission sent Petronas a letter and the Report on March 11, 2022, informing Petronas that I was considering making a finding that it contravened section 12 of the EPMR and/or section 17(a) of the EPMR. The letter informed Petronas of its opportunity to be heard in written form and advised that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA.
4. Petronas provided a response in a letter dated May 11, 2022 (the Response).
5. The Commissioner of the Oil and Gas Commission has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether Petronas contravened sections 12 and/or 17(a) of the of the EPMR; whether to impose an administrative penalty under section 63 of the OGAA; and the amount of the penalty, if any. I have reviewed the Report and Petronas's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 12 of the EPMR states that a person who carries out an oil and gas activity on an operating area must ensure that the oil and gas activity does not result in any deleterious materials being deposited into a stream, wetland or lake.
7. Section 17(a) of the EPMR states that a person who carries out an oil and gas activity that disturbs the surface of an operating area must not cause the soil of the area to become unstable.
8. Maximum penalties for specific violations are set by regulation. Section 3 of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000 and a person who contravenes section 17(a) of the EPMR is liable to an administrative penalty not exceeding \$500,000.
9. Section 62(1) of the OGAA states that, after providing an opportunity to be heard to a person who is alleged to have contravened a provision of the Act, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.

10. Section 62(5) of the OGAA states, in part, that the Commission may not find that a person has contravened a provision of the OGAA or the regulations if the person demonstrates to the satisfaction of the Commission that they exercised due diligence to prevent the contravention.
11. Section 63(1) states that, if the Commission finds that a person contravened a provision of the OGAA or its regulations, the Commission may impose an administrative penalty. Section 63(2) of the OGAA sets out the factors that must be considered when determining whether to impose an administrative penalty under section 63(1) and the amount of the penalty. These include:
 - (a) previous contraventions by, administrative penalties imposed on, or orders issued to the person;
 - (b) the gravity and magnitude of the contravention;
 - (c) the extent of harm to others resulting from the contravention;
 - (d) whether the contravention was repeated or continuous;
 - (e) whether the contravention was deliberate;
 - (f) any economic benefit derived by the person from the contravention;
 - (g) the person's efforts to prevent and correct the contravention; and
 - (h) other prescribed matters.

Background

12. Petronas is the holder of a permit (the Permit) for pipeline project no. 25416 (the Pipeline Project) located in the Town field. The Permit was issued by the Commission on December 20, 2019, and Petronas started pipeline construction on February 20, 2020.
13. On May 29, 2020, Petronas conducted an inspection of the Townsend Creek Crossing on the Pipeline Project and noted that conditions were good.
14. On June 9, 2020, Petronas noted an "area of concern" along a creek during an aerial inspection. Upon inspection on June 10, 2020, erosion was observed. On June 11, 2020, Petronas reported the pipeline erosion incident to the Commission.
15. A Commission officer conducted a site visit on June 12, 2020 and noted evidence of water running down the right-of-way via erosion ditches. A slide was observed, and material had entered Townsend Creek.
16. Roy Northern prepared a draft 'Environmental Protection Plan' in relation to the Townsend Creek Landslide dated June 12, 2020, which was provided to the Commission. This report outlined environmental protection measures to be used during the reclamation of the landslide.

Issues

17. The issues which I will decide are:

Section 12 of the EPMR:

- Did Petronas fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did Petronas exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Was any noncompliance due to an officially induced error?
- Did Petronas contravene section 12 of the EPMP?

Section 17(a) of the EPMP:

- Did Petronas disturb the surface of an operating area and cause the soil of the area to become unstable?
- Did Petronas exercise due diligence to ensure that the disturbed surface of an operating area was not disturbed and cause the soil of the area to become unstable?
- Was any noncompliance due to an officially induced error?
- Did Petronas contravene section 17(a) of the EPMP?

Section 63 of the OGAA:

- If Petronas is found to have contravened section 12 of the EPMP and/or section 17(a) of the EPMP what, if any, administrative penalty to impose?

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

18. The Commission's Environmental and Protection Management Guideline (EPMG), a reference document regarding requirements under the EPMP, defines "deleterious material" as including materials that could cause harm or damage to the environment or habitat, including sediment from roads or activity areas.
19. In its Response, Petronas states it does not dispute that a pipeline erosion event occurred on the Pipeline Project.
20. Photographs submitted in the Report and the Response provide evidence of deposition of deleterious materials into a stream, namely Townsend Creek.
21. Based on the information contained in both the Report and Response, I find that Petronas failed to ensure that an oil and gas activity did not cause deleterious material to be deposited into a stream, namely Townsend Creek.

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

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

23. In its Response, Petronas submits that it took all reasonable steps to prevent the contravention and exercised due diligence in the planning, construction and maintenance of the Pipeline Project.
24. Petronas submits that it carefully planned the Pipeline Project as evidenced by the creation of a document titled "Fish Habitat Assessment and Area-Based Analysis Mitigation Plan". I accept that this document provided some reasonable direction regarding general timing and method of construction.
25. In its Response, Petronas submitted an "Environmental Monitoring Summary Report" dated February 2020. This report is a summary of on-site Environmental Inspectors' findings during construction. I find this Report shows adequate oversight during construction with no relevant issues noted; however, I find little evidence of measures taken or proposed to manage erosion and sediment control outside of the creek crossing area.
26. Petronas provided additional detail on the mitigation measures on the right of way. It points to the erosion berms that were angled to direct water to the tree line. The angle of the berms Petronas installed was identified in the Report as contributing to the erosion event. There is insufficient evidence before me to assess the adequacy of the angle of the berms.
27. The Report alleges that the berms installed were made out of erodible material with no evidence of the use of non-erodible material like sandbags. I find no evidence provided by Petronas to the contrary. I find the photographs provided in the Report compelling such that I see no evidence of any non-erodible material used in the construction of the erosion berms.
28. The Report suggests that the spring on the east side of the right of way contributed to the event by further saturating the soil. In its Response, Petronas outlined the identification of the spring prior to construction and the measures it took to address the issues presented by this spring. I accept that these measures to address the spring were reasonable at the time of discovery.
29. After reviewing the material in the Report and the Response, I find that the erosion berms that were installed were constructed of erodible material and were likely to fail prematurely and hence cause erosion issues. More detailed planning of the site-specific measures to be used post construction would have assisted in developing more robust measures to control water especially during spring run-off. I also note that Petronas states a similar conclusion in its "Permit Holder Post Incident Report", namely that the incident causes included "inadequate work planning" with respect to the condition the site was left post construction. I conclude that Petronas did not exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake.

Was any noncompliance due to an officially induced error?

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

Did Petronas contravene section 12 of the EPMR?

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

Did Petronas disturb the surface of an operating area and cause the soil of the area to become unstable?

32. On reviewing the information in the Report and information in the Response, I am satisfied that Petronas' pipeline construction activities at this site did disturb the surface of the operating area.
33. In its Response, Petronas states it does not dispute that a pipeline erosion event occurred on its pipeline right of way.
34. I find the photographs included in both the Report and Response compelling evidence that the soil in this area was unstable and clearly moved downslope.
35. Based on the information in both the Report and the Response, I am satisfied that Petronas did disturb the surface of an operating area and cause the soil to become unstable.

Did Petronas exercise due diligence to ensure the surface of an operating area was not disturbed and cause the soil of the area to become unstable?

36. Pursuant to section 62(5) of the OGAA, I may not find that Petronas contravened section 17(a) of the EPMR if Petronas demonstrates to my satisfaction that it exercised due diligence to ensure that the surface of an operating area was not disturbed and cause the soil to become unstable.
37. In its Response, Petronas submits that it took all reasonable steps to prevent the contravention and exercised due diligence in the planning, construction and maintenance of the Pipeline Project.
38. Petronas provided additional detail regarding the mitigation measures on the right of way. It points to the erosion berms that were angled to direct water to the tree line. The angle of the berms Petronas installed was identified in the Report as contributing to the erosion event. There is insufficient evidence before me to assess the adequacy of the angle of the berms and the potential impact on soil stability.
39. The Report alleges that the berms installed were made out of erodible material with no evidence of the use of non-erodible material like sandbags. I find no evidence provided by Petronas to the contrary. I find the photographs provided in the Report compelling such that I see no evidence of any non-erodible material used in the construction of the erosion berms.

40. After reviewing the material in the Report and the Response, I find that the erosion berms that were installed were constructed of erodible material and were likely to fail prematurely and hence cause erosion issues and issue with soil stability. More detailed planning of the site-specific measures to be used post construction would have assisted in developing more robust measures to control water especially during spring run-off. I also note that Petronas states a similar conclusion in its "Permit Holder Post Incident Report", namely that the incident causes included "inadequate work planning" with respect to the condition the site was left post construction. I conclude that Petronas did not exercise due diligence exercise due diligence to ensure that their disturbance of an operating area did not cause the soil to become unstable.

Was any noncompliance due to an officially induced error?

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

Did Petronas contravene section 17(a) of the EPMR?

42. I find that Petronas has failed to comply with section 17(a) of the EPMR. I am not satisfied that Petronas exercised due diligence to prevent the contravention. As such, I find that Petronas contravened section 17(a) of the EPMR.

If Petronas is found to have contravened section 12 of the EPMR and/or section 17(a) of the EPMR, what if any, administrative penalty is to be imposed?

43. Section 63 of the OGAA sets out factors that the Commission must take into consideration when determining whether or not to impose an administrative penalty. In the following paragraphs, I consider the applicability of those factors to these contraventions.
44. Petronas has been issued four previous orders.
45. The gravity and magnitude of the contraventions is moderate.
46. There is no evidence to suggest harm to others as a result of the contraventions.
47. The contraventions were not repeated but were continuous until the erosion event was identified and corrected.
48. There is no evidence demonstrating that the contraventions were deliberate.
49. There is no evidence to indicate that Petronas gained any economic benefit as a result of the contraventions.
50. After the issue was identified, Petronas acted on correcting it once it was safe to do so and provided material to the Commission in a timely manner.

Conclusion

51. I have found Petronas contravened sections 12 and 17(a) of the EPMR. Based on the above discussion of the various factors set out in section 63(2) of OGAA, I am imposing an administrative penalty of \$40,000.



Andy Johnson
Vice President, Compliance & Operations
BC Oil and Gas Commission

Date: February 8, 2023