

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2021-0026

BETWEEN

The British Columbia Energy Regulator

AND

Petronas Energy Canada Ltd.

ADMINISTRATIVE FINDING

Before

Executive Director, Compliance &
Enforcement, Dax Bourke

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

Compliance & Enforcement Officer,
Enforcement, Ken McLean

Representing Petronas Energy Canada Ltd.

Vice President, Production, Joe Leonard

Decision Date

February 13, 2024

Introduction

1. On February 17, 2021, the Oil and Gas Commission, now named the British Columbia Energy Regulator (Regulator) received an incident report from Petronas Energy Canada Ltd. (Petronas) advising of a produced water spill at the B-085-I/094-B01 facility that had migrated off lease.
2. On September 1, 2023, the name of the Oil and Gas Activities Act was changed to the Energy Resource Activities Act (the Act).
3. A Contravention Report (the Report) was sent to me on October 10, 2023, alleging that Petronas contravened section 37(1)(a) of the Act.
4. The Regulator sent Petronas a letter and the Report on November 1, 2023, informing Petronas that I was considering making a finding that it contravened section 37(1)(a) of the Act. The letter informed Petronas 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 Act.
5. Petronas provided a response in a letter dated January 11, 2024 (the Response).
6. The Commissioner of the BC Energy Regulator has delegated me authority under sections 62 and 63 of the Act. I will be making a determination with regards to: whether Petronas contravened section 37(1)(a) of the Act; whether to impose an administrative penalty under section 63 of the Act; and the amount of the penalty, if any. I have reviewed the Report and Petronas' Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

7. Prior to its amendment effective September 1, 2023, the former section 37(1)(a) of the Act stated that a permit holder, an authorization holder and a person carrying out an oil and gas activity must prevent spillage.
8. Prior to its amendment effective September 1, 2023, the former section 1 of the Act stated that "spillage" was defined as meaning "petroleum, natural gas, oil, solids or other substances escaping, leaking or spilling from (a) a pipeline, well, shot hole, flow line, or facility, or (b) any source apparently associated with any of those substances."
9. Maximum penalties for specific violations are set by regulation. Section 2(1) of the Administrative Penalties Regulation provides that a person who contravenes section 37(1)(a) of the Act is liable to an administrative penalty not exceeding \$500,000.
10. Section 62(1) of the Act 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.

11. Section 62(5) of the Act states, in part, that the Regulator may not find that a person has contravened a provision of the Act or the regulations if the person demonstrates to the satisfaction of the Regulator that they exercised due diligence to prevent the contravention, or the person's actions relevant to the provision were the result of an officially induced error.
12. Section 63(1) states that, if the Regulator finds that a person contravened a provision of the Act or its regulations, the Regulator may impose an administrative penalty. Section 63(2) of the Act 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

13. At the material time, Petronas was the holder of well facility authorization #00024627, which was transferred to it on June 25, 2016. On November 4, 2021, the Regulator approved an application submitted by Petronas to transfer permits including well facility authorization #00024627 to Canadian Natural Resources Limited, which is the current permit holder for the facility located at B-085-I/094-B01 (the Location).
14. On or about February 17, 2021, a produced water spill occurred at the Location and was promptly reported to the Regulator as a minor incident, number 071676292-001. Once it was determined the spill had migrated off lease the incident was upgraded to a level one incident, number 071709179-001.
15. The permit holder post-incident report indicated that 5m³ of sweet, produced water was spilled with the fluid migrating off lease through a berm and onto Crown land.

Issues

16. The issues which I will decide are:
 - Did Petronas fail to prevent spillage?
 - Did Petronas exercise due diligence in its efforts to prevent spillage?
 - Was any noncompliance due to an officially induced error?
 - Did Petronas contravene section 37(1)(a) of the Act?
 - If Petronas is found to have contravened section 37(1)(a) of the Act what if any, administrative penalty to impose?

Did Petronas fail to prevent spillage?

17. The Report alleges that spillage of sweet, produced water occurred. The Response submitted by Petronas acknowledges that “On February 17, 2021, at approximately 12:15 pm, a sweet, produced water spill occurred involving on-lease pipe at the Location and was found by the PETRONAS Field Operator.” With the Response acknowledging that spillage occurred, I find that Petronas failed to prevent spillage.

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

18. Pursuant to section 62(5) of the Act, I may not find that Petronas contravened section 37(1)(a) of the Act 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.
19. In its Response, Petronas submits that while a spill occurred due to a pipe freeze after a generator failed to heat trace the line, it has a case for due diligence.
20. The Response submits that Petronas exercised reasonable care and was duly diligent in taking steps to prevent the contravention by showing that Petronas had an established inspection program in place to reduce the likelihood of issues such as spills arising. The inspection program included annual heat trace inspections, annual wellsite inspections, weekly generator checks and weekly operator visits.
21. Further, the Response submits that Petronas made additional efforts to address the issue from occurring again in the future, including increasing resources and formulating more specific processes relevant to the incident.
22. The Report states that the primary generator providing power to the heat trace had a malfunction on December 11, 2020.
23. This malfunction resulted in the fluids in the pipeline riser to freeze and thaw during changing weather conditions. The freezing and thawing of fluids caused the flange studs to stretch creating a gap in the gasket, resulting in the release of sweet, produced water.
24. The spill occurred on or about February 17, 2021.
25. The time between the generator malfunction and the spill shows a period greater than two-months without evidence of functioning heat trace. No other evidence was provided which showed other reasonable measures implemented to rectify the issue.
26. I note that Petronas did have a portable generator delivered to the Location at some point in time between the malfunction and incident; however, Petronas indicated that the generator was not installed/electrically connected at the time of the incident, and therefore the heat trace was not active. In my view, it would be reasonable to expect that Petronas take further

steps to ensure timely electrical connection of the portable generator to establish working heat trace given the circumstances.

27. Petronas has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

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

Did Petronas contravene section 37(1)(a) of the Act?

29. I find that Petronas failed to comply with section 37(1)(a) of the Act. I am not satisfied that Petronas exercised due diligence to prevent the contravention, or that its actions were the result of an officially induced error. As such, I find that Petronas contravened section 37(1)(a) of the Act.

If Petronas is found to have contravened section 37(1)(a) of the Act what if any, administrative penalty is to be imposed?

30. Section 63 of the Act 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.

31. Petronas has two previous finding of contravention, and one general order.

32. In addition, Petronas had four findings of contraventions, and twenty-two general orders when it was formerly named Progress Energy Canada Ltd. It is noted that none of the previous contraventions resulted from a similar root cause.

33. The gravity and magnitude of the contravention were moderate with the spill leaving the lease and entering Crown forested land.

34. There is no evidence of harm to others as a result of the contravention.

35. The contravention was neither repeated nor continuous.

36. I find no evidence that the contravention was deliberate.

37. I find no evidence that there was any economic benefit from the contravention.

38. When the spill was detected, Petronas promptly reported it and began cleaning up the spill immediately. Petronas also completed a post incident report.

Conclusion

39. I have found Petronas contravened section 37(1)(a) of the Act. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$22,500.



Dax Bourke
Executive Director, Compliance & Enforcement
BC Energy Regulator

Date: February 13, 2024