

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2022-0144

BETWEEN

The British Columbia Energy Regulator

AND

Petronas Energy Canada Ltd.

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ADMINISTRATIVE FINDING

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Before

Patrick Smook, Vice President, Compliance &  
Operations

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

Toby Turner, Compliance and Enforcement  
Officer

Representing Petronas Energy Canada Ltd.

Joe Leonard, Vice President, Production

Decision Date

October 24, 2024

## Introduction

1. On July 1, 2021, new provisions under the *Drilling and Production Regulation* (DPR) came into effect, requiring well permit holders who operate a well to ensure that the emissions of natural gas from the surface casing vent flow (SCVF) do not exceed 100 m<sup>3</sup> per day.
2. On September 5, 2022, Petronas Energy Canada Ltd (Petronas) tested the SCVF for well WA# 8183 (the Well) and found a SCVF rate of 130m<sup>3</sup> per day, which was determined to exceed the allowable limit.
3. A Contravention Report (the Report) was sent to a British Columbia Energy Regulator (Regulator) decision maker on December 21, 2023, alleging that Petronas contravened the former section 52.11 of the DPR.
4. The Regulator sent Petronas a letter and the Report on March 4, 2024, informing Petronas that a decision maker was considering making a finding that it contravened the former section 52.11 of the DPR. 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 *Energy Resource Activities Act* (ERAA).
5. Petronas provided a response in a letter dated May 1, 2024 (the 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 Petronas contravened the former section 52.11 of the DPR; 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 Petronas' Response. In making a determination, I rely on these documents, and the applicable legislation.

## Applicable Legislation

7. Former section 52.11 of the DPR stated that beginning on July 1, 2021, a well permit holder who operates a well must ensure that the emissions of natural gas from the surface casing vent flow do not exceed 100 m<sup>3</sup> per day.
8. Maximum penalties for specific violations are set by regulation. At the material time, section 5(4) of the *Administrative Penalties Regulation* provided that a person who contravenes section 52.11 of the DPR is liable to an administrative penalty not exceeding \$100,000.
9. 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.
10. 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.

11. 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**

12. Petronas is the permit holder for WA 8183 located at B-20-B/094-G-08 (the Well).
13. On July 1, 2021, new provisions under the DPR came into effect, requiring well permit holders who operate a well to ensure that the emissions of natural gas from the SCVF do not exceed 100 m<sup>3</sup> per day.
14. Petronas tested the Well on May 19, 2021, and found a SCVF rate of 121.16 m<sup>3</sup> per day.
15. Petronas tested the Well on September 5, 2022, and found a SCVF rate of 130 m<sup>3</sup> per day.
16. The Regulator issued General Order 2022-0144-01 (the Order) on December 7, 2022, requiring Petronas to correct the SCVF exceedance.
17. On March 28, 2023, the Regulator terminated the Order after Petronas satisfied the requirements of the Order.

## **Issues**

18. The issues which I will decide are:
  - Did Petronas fail to ensure that the emissions of natural gas from the surface casing vent flow did not exceed 100 m<sup>3</sup> per day?
  - Did Petronas exercise due diligence in its efforts to ensure that the emissions of natural gas from the surface casing vent flow did not exceed 100 m<sup>3</sup> per day?
  - Was any non-compliance due to an officially induced error?
  - Did Petronas contravene former section 52.11 of the DPR?
  - If Petronas is found to have contravened former section 52.11 of the DPR what if any, administrative penalty to impose?

Did Petronas ensure that the emissions of natural gas from the surface casing vent flow do not exceed 100 m<sup>3</sup> per day?

19. In the Response, Petronas does not dispute the SCVF rate measured on September 5, 2022, as noted in the Report.
20. I am satisfied that the SCVF rate was above 100 m<sup>3</sup> of natural gas per day after the DPR regulation change prohibited this SCVF rate effective July 1, 2021.
21. I am thus satisfied that Petronas failed to ensure that emissions of natural gas from the SCVF did not exceed 100 m<sup>3</sup> per day.

Did Petronas exercise due diligence in its efforts to ensure that the emissions of natural gas from the surface casing vent flow do not exceed 100 m<sup>3</sup> per day?

22. Pursuant to section 62(5) of the ERAA, I may not find that Petronas contravened the former section 52.11 of the DPR 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. Both the Report and the Response reference discussions between Petronas and the Regulator regarding the new provisions under the DPR, taking place prior to and after the new provisions under the DPR came into effect.
24. The Report provides that both the Regulator's Oil and Gas Activity Operations Manual and the former section 52.11 of the DPR state that the SCVF limits of the regulation pertain to natural gas. Neither document specifies methane.
25. The Report provides email evidence regarding a misunderstanding by a Petronas employee of the relevant DPR provision, which was mistakenly understood to pertain only to volume of methane from a SCVF, rather than all natural gas. The Response includes evidence that Petronas acted upon this mistaken understanding, to ensure compliance with what it believed to be the incoming regulatory requirement. Given this evidence, I accept that there was a misunderstanding of the DPR.
26. However, it is well established at law that the fact that a defendant has exercised due diligence to find out and verify the nature of the applicable law is not a defense. In addition, regulated parties voluntarily accept the obligations associated with the privilege of participating in a regulated industry.
27. Accordingly, I make no finding as to whether Petronas exercised due diligence to find out and verify the nature of the new regulatory provision, which would not constitute a defense in any event. As a regulated party, Petronas voluntarily accepted the regulatory obligation under the DPR.

Was any noncompliance due to an officially induced error?

28. The defense of officially induced error is available when there is an alleged violation of a regulatory statute where an accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law.
29. There must be a sufficient evidentiary basis in support of the elements of the defense.
30. In the Response, Petronas claims that the erroneous understanding of the new DPR provision came about through conversations with Regulator representatives that were responsible for administration of SCVF requirements. The Response, however, does not provide any evidence to support this claim.
31. Appendix 13 of the Report is an email from a Petronas employee stating that the misunderstanding came about as a result of a simple misinterpretation by a team member and that the team member had read about methane on the Regulator's website and did not adequately clarify with the Regulator. In the email, Petronas accepted responsibility for the error. This contradicts Petronas' claim that the misinterpretation came about from conversations with the Regulator.
32. The Response notes that the Regulator's Well Emissions website references methane emissions, rather than natural gas, and that this supported Petronas' incorrect understanding that the DPR provision applied only to methane. I accept that the referenced webpage references methane as the focus of venting reduction efforts. However, the DPR and the Oil and Gas Activity Operations manual both state that the regulation applies to natural gas volumes, not only methane. Given this, it is reasonable to expect that Petronas would have questioned any previous advice or review material that led to an incorrect or different understanding.
33. After reviewing the evidence presented, I find that that the evidence available is too sparse and inconsistent to sufficiently establish a defense of officially induced error.

Did Petronas contravene the former section 52.11 of the DPR?

34. I find that Petronas has failed to comply with the former section 52.11 of the DPR. I am not satisfied that Petronas exercised due diligence to prevent the contravention, nor am I satisfied that the non-compliance was the result of officially induced error. As such, I find that Petronas contravened the former section 52.11 of the DPR.

If Petronas is found to have contravened the former section 52.11 of the DPR what if any, administrative penalty is to be imposed?

35. 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.

36. In establishing relative weighting of past orders and contravention decisions for purposes of determining a penalty amount, I will assess:
- a) Whether any of Petronas' past contraventions or orders involved non-compliance with the former section 52.11 of the DPR.
  - b) Whether any of Petronas' past contraventions or orders showed a pattern of behavior on the part of Petronas that is similar to that which has been found to have led to the contravention in this case.
37. In the Response, Petronas highlights that the Report does not reference any similar contravention decisions. I acknowledge that the Report does not reference any specific contravention decisions, section 63 of ERAA requires that I consider past contravention decisions and orders issued to Petronas in determining any penalty amount. I also note that the past decisions and orders that I have reviewed here are common information among all parties.
38. I have reviewed and considered the following previous findings by the Regulator of contraventions by Petronas and administrative penalties imposed by the Regulator on Petronas including decisions under its former name of Progress Energy Canada Ltd. (Progress):

| Case File Number | Date Issued       |
|------------------|-------------------|
| 2013-136         | November 7, 2014  |
| 2014-041         | June 2, 2015      |
| 2015-107         | November 17, 2017 |
| 2018-087         | June 24, 2020     |
| 2020-1014        | February 8, 2023  |
| 2021-026         | February 13, 2024 |

39. I have also reviewed and considered the following previous orders issued by the Regulator to Petronas including orders under its former name of Progress.

| Order    | Date Issued        |
|----------|--------------------|
| 2013-11  | July 3, 2013       |
| 2013-52  | December 16, 2013  |
| 2014-014 | September 19, 2014 |
| 2014-015 | September 19, 2014 |
| 2014-017 | November 5, 2014   |
| 2015-018 | September 10, 2015 |
| 2016-003 | May 25, 2016       |
| 2017-023 | May 23, 2017       |
| 2017-026 | May 23, 2017       |
| 2017-028 | May 23, 2017       |

|           |                    |
|-----------|--------------------|
| 2017-029  | May 23, 2017       |
| 2017-030  | May 23, 2017       |
| 2017-034  | June 7, 2017       |
| 2017-035  | June 7, 2017       |
| 2017-093  | August 25, 2017    |
| 2017-094  | September 13, 2017 |
| 2017-095  | September 13, 2017 |
| 2017-096  | September 13, 2017 |
| 2017-097  | September 13, 2017 |
| 2017-098  | September 13, 2017 |
| 2022-0144 | December 7, 2022   |

40. After review of the above, I have found that:

- (a) Petronas has an enforcement history with the Regulator spanning six past contravention decisions and twenty-one orders.
- (b) None of the contravention decisions involved contravention of the former section 52.11 of the DPR, nor did any of the contravention decision files show a pattern of behavior on the part of Petronas similar to that which has been found to have led to the contravention in this case. Accordingly, I place low weight on the past contravention decisions as inputs in determining a penalty amount in this case.
- (c) Other than the order that was issued by the Regulator in direct response to the contravention that is subject of this case, none of the past orders involved non-compliance with the former section 52.11 of the DPR or show a pattern of behavior similar to that which has been found to have led to the contravention in this case. Accordingly, I place low weight on the 20 past orders as inputs in determining a penalty amount in this case.

41. Order 2022-0144 was issued by the Regulator in direct response to the non-compliance that is subject of this contravention decision. In the Response, Petronas states that the Order was not necessary, as Petronas was actively working with the Regulator to address the non-compliance when the order was issued. While I accept that there was communication between Petronas and the Regulator about the subject non-compliance prior to the order being issued, as the Order is valid, I am required under ERAA to consider it as part of penalty determination in this case. Petronas did comply with the Order requirements, but the Order is directly related to the non-compliance that is subject of this contravention decision, thus I place more weight on this Order than the others in Petronas' compliance history for purposes of penalty determination.

42. Regarding the gravity and magnitude of the contravention, for the purposes of this decision I consider "gravity" to involve a consideration of Petronas' actions that gave rise to the contravention while "magnitude" refers to any resulting damage from the contravention. I consider gravity of this contravention to be low, as it came about from a misunderstanding of

the requirements and Petronas has demonstrated that it attempted to be in compliance with what it believed to be the requirement. I consider the magnitude of the contravention to be low as natural gas venting to the environment exceeded allowable amounts, but this exceedance was 30% above the limit and I deem the impact of the incremental venting on the environment to be low.

43. There is no evidence of harm to others as a result of the contravention.
44. The contravention was not repeated, and I have insufficient evidence before me to conclude that it was continuous.
45. I find no evidence that the contravention was deliberate.
46. I find no evidence that there was any economic benefit from the contravention.
47. Efforts to prevent the contravention included engagement with the Regulator prior to the new requirements coming into effect, review of the Regulator's website materials, ordering extra tests of the SCV and acting in accordance with those test results. Once the non-compliance was identified, Petronas created a working group to develop a plan to address the SCVF in consultation with the Regulator. The plan was implemented, resulting in the SCV being tied into production piping. Petronas also took steps to ensure that all team members understood the regulation.
48. There are no other matters prescribed by the Lieutenant Governor in Council relevant to this decision.

### **Conclusion**

49. I have found Petronas contravened the former section 52.11 of the DPR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$10,000.



Patrick Smook  
Vice President, Compliance & Operations  
BC Energy Regulator

Date: October 24, 2024