

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

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2023-0101

BETWEEN

The British Columbia Energy Regulator

AND

Procyon Energy Corp.

ADMINISTRATIVE FINDING

Before

Executive Director, Compliance &
Enforcement, Dax Bourke

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

R.A. Workman, Manager, Enforcement

Representing Procyon Energy Corp.

Ron McKellar, President & CEO

Decision Date

April 17, 2024

Introduction

1. By December 31, 2021, Procyon Energy Corp. (Procyon) was required to decommission two type A sites as required by the Dormancy and Shutdown Regulation (DSR).
2. A Contravention Report (the Report) was sent to me on October 25, 2023, alleging that Procyon contravened section 15(1)(a) of the DSR.
3. The British Columbia Energy Regulator (Regulator) sent Procyon a letter and the Report on January 25, 2024, informing Procyon that I was considering making a finding that it contravened section 15(1)(a) of the DSR. The letter informed Procyon 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).
4. Procyon did not provide a Response, nor did they request an extension by the required deadline of February 25, 2024. Procyon submitted a response March 1, 2024 (Response). Given the short delay in submitting the Response, I have accepted the Response and considered it as part of my decision.
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 Procyon contravened section 15(1)(a) of the DSR; 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 in making a determination, I rely on this document, and the applicable legislation.

Applicable Legislation

6. Section 15(1)(a) of the DSR states that a permit holder for type A sites that were not decommissioned by December 31, 2018, must decommission one of the type A sites or 30%, whichever is greater by December 31, 2021.
7. The DSR defines a Type A site as a dormant site or former site classified as a type A site under section 4(1).
8. Section 4(1)(a) of the DSR states that a site is a type A site if the site became a dormant site under section 3(1)(a) and the last of the 5 calendar years referred to in that section is 2018.
9. Maximum penalties for specific violations are set by regulation. Section 11(1) of the Administrative Penalties Regulation provides that a person who contravenes section 15(1) of the DSR is liable to an administrative penalty not exceeding \$500,000.
10. 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.

11. 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.
12. 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

13. On May 30, 2019, the Dormancy and Shutdown Regulation came into effect.
14. Section 15 of the Regulation requires permit holders for type A sites that were not decommissioned by December 31, 2018, to decommission those sites on a graduated schedule with the first deadline of one site or 30% of sites, whichever is greater, be decommissioned by December 31, 2021.
15. Procyon, at the time the Regulation came into effect, was the holder of six type A dormant sites and thus was required to decommission two type A sites by December 31, 2021.

Issues

16. The issues which I will decide are:
 - Did Procyon fail to decommission two type A sites?
 - Did Procyon exercise due diligence in its efforts to decommission the required sites?
 - Was any noncompliance due to an officially induced error?
 - Did Procyon contravene section 15(1)(a) of the DSR?
 - If Procyon is found to have contravened section 15(1)(a) of the DSR what if any, administrative penalty to impose?

Did Procyon fail to decommission two type A sites?

17. Pursuant to section 11 of the DSR, Procyon submitted its 2019 Dormant Site Annual Work Plan to the Regulator on September 17, 2019. The plan acknowledged Procyon having six type A dormant sites. The plan indicated that no decommissioning activities were going to be completed in 2019.

18. Procyon's submitted its 2020 Dormant Site Annual Work Plan January 20, 2020. The plan acknowledged Procyon having the same six type A dormant sites. The Report indicates that no decommissioning activities were completed in 2020.
19. Procyon updated its annual work plan in February 2021. The updated work plan did not include any decommissioning activities on the six sites previously identified sites, rather it indicated the intent to restart wells for production.
20. On June 18, 2021, and August 4, 2021, the Regulator requested Procyon to confirm the sites requiring decommissioning and outline Procyon's anticipated work plan to meet the DSR requirements.
21. Procyon responded to the requests indicating that they were attempting to restart wells to obtain the finances required to conduct decommissioning activities.
22. On January 10, 17, and 27, 2022, the Regulator requested Procyon to provide supporting information demonstrating compliance with Procyon's type A decommissioning requirements.
23. On January 28, 2022, Procyon responded to the Regulator indicating that they had not completed any abandonment work in 2021 and that they were "negligent in their abandonment program in BC."
24. Even if Procyon took steps to abandon and plug the wells, abandonment and plugging of wells is only one of the requirements of decommissioning. Procyon provided no other evidence of meeting the full decommissioning requirements of the DSR.
25. Therefore, I find that Procyon failed to decommission two type A wells by December 31, 2021.

Did Procyon exercise due diligence in its efforts to decommission the required sites?

26. Pursuant to section 62(5) of the ERAA, I may not find that Procyon contravened section 15(1)(a) of the DSR if Procyon demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Procyon has demonstrated that it took all reasonable steps to prevent the contravention. Procyon 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.
27. The Report shows that Procyon did not conduct any decommissioning work in 2019 or 2020. Procyon only started to communicate with the Regulator in 2021 its intention and plans for decommissioning.
28. Rather, Procyon could have worked proactively with the Regulator in the years leading to the deadline in understanding its decommissioning requirements and developing plans to ensure compliance was achieved.
29. Throughout the Report and within the Response, Procyon indicated that it could not meet its regulatory obligations due to low commodity pricing and lack of revenue.

30. As a permit holder, Procyon is responsible for ensuring it has the financial resources available to complete work required to meet regulatory obligations. The expenditure of financial resources to comply with Procyon's regulatory requirements, including decommissioning obligations, is the cost of participating in the regulated activity.
31. In the Response, Procyon provided a single power point slide providing 8 bullets which outlined Procyon's current infrastructure and its intention to complete five wells for oil production. This level of response does not provide adequate scope, cost, or schedule of work that would indicate how Procyon would meet its regulatory obligations under section 15(1)(a) of the DSR.
32. It would be reasonable for Procyon to have developed a detailed plan including work plans, contract agreements, key milestones and a clear end state in which Procyon would meet the regulatory requirements for decommissioning.

33. Procyon has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

34. I do not have evidence that the noncompliance was a result of an officially induced error.

Did Procyon contravene section 15(1)(a) of the DSR?

35. I find that Procyon has failed to comply with section 15(1)(a) of the DSR. I am not satisfied that Procyon exercised due diligence to prevent the contravention. As such, I find that Procyon contravened section 15(1)(a) of the DSR.

If Procyon is found to have contravened section 15(1)(a) of the DSR what if any, administrative penalty is to be imposed?

36. 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.

37. There has been one previous contravention issued to Procyon and three previous Orders.

38. The gravity and magnitude of the contravention is moderate. Procyon failed to meet its regulatory requirements leaving two type A dormant sites which require decommissioning and has no meaningful plan to address them.

39. There is no evidence of harm to others resulting from the contravention.

40. The contravention is continuous as no work has been done by Procyon to meet the requirements of section 15(1)(a) of the DSR to date.

41. There is evidence demonstrating that the contravention was deliberate. The Report and Response indicated that Procyon made the decision to spend capital on reactivating infrastructure instead of using it to meet DSR regulatory requirements.
42. Procyon derived some economic benefit from this contravention by not spending the capital resources necessary to decommission the required sites and meet their regulatory obligations.

Conclusion

43. I have found Procyon contravened section 15(1)(a) of the DSR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$45,000.



Dax Bourke
Executive Director, Compliance & Enforcement
BC Energy Regulator

Date: April 17, 2024