

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The OIL and GAS COMMISSION
Case File 19-001FN

BETWEEN

The Oil and Gas Commission

AND

Sanling Energy Ltd.

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Andrew Johnson

Representing the Oil and Gas
Commission

Compliance & Enforcement Officer, Peter Smith

Representing Sanling Energy Ltd.

Chief Operations Officer, Mark Hartzler

Decision Date

June 5, 2020

Introduction

1. On June 12, 2017, the Oil and Gas Commission (Commission) issued a direction to abandon well authority 20940 to Sanling Energy Ltd. (Sanling) under section 39(4) of the *Oil and Gas Activities Act* (OGAA), and on October 8, 2018, the Commission issued an order for security under section 30(1) of OGAA (Order) to Sanling.
2. A contravention report (Report) was sent to me on December 23, 2019 alleging that Sanling contravened section 39(4) of the OGAA and that Sanling contravened section 82 of the OGAA by failing to comply with an order issued under section 30(1) of the OGAA.
3. On January 21, 2020, the Commission sent Sanling a letter and copy of the Report. The letter informed Sanling that the Commission was considering making a finding that Sanling contravened section 39(4) of the OGAA and that Sanling contravened section 82 of the OGAA by failing to comply with an order issued under section 30(1) of the OGAA. In accordance with section 62(1) of the OGAA, the Commission gave Sanling an opportunity to be heard before making a determination.
4. Sanling provided two letters in response dated January 23, 2020 and February 4, 2020 (Responses). The first letter addressed the Order for security and the second letter related to the direction to abandon.
5. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether Sanling contravened sections 39(4) and section 82 of the OGAA; 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 the Responses. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

Direction to Abandon

6. Section 39(4)(c) of the OGAA states that a permit holder who suspends activities under section (1) or (3) must carry out any actions as directed by the Commission.
7. Maximum penalties for specific violations are set by regulation. Section 2(1) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 39(4) of the OGAA is liable to an administrative penalty not exceeding \$500,000.

Order for Security

8. Section 30(1) of the OGAA states that the Commission may require a holder or applicant to provide security to the Commission in the amount the Commission requires and in accordance with the regulations.
9. Section 82 of the OGAA states that a person to whom an order issued under the OGAA applies must comply with the order.

10. Section 2(5) of the APR provides that a person who contravenes, in relation to an order under the OGAA not referred to in subsection (1) or (3) of section 2 of the APR, section 82 of the OGAA is liable to an administrative penalty not exceeding \$20,000.
11. 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.
12. 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.
13. 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

14. On June 12, 2017, the Commission directed Sanling to abandon well authority 20940 (WA 20930) at or near Fort Nelson, BC by March 31, 2018, and to complete surface restoration without reasonable delay, as the associated petroleum and natural gas rights had expired.
15. On August 2, 2018 the Commission issued an invoice, and on October 2, 2018 the Commission issued an Order to Sanling pursuant to section 30 of the OGAA, for security following calculation of their Liability Management Rating, based on the ratio of deemed assets to liabilities, which was less than 1.0, and further analysis. The Order for security required Sanling to pay security in the amount of \$774,331 by November 1, 2018.

Issues

16. The issues which I will decide are:

Section 39(4) of the OGAA:

- Did Sanling fail to carry out the direction to abandon WA 20940?
- Did Sanling exercise due diligence to carry out the direction to abandon WA 20940?

- Did Sanling contravene section 39(4) of the OGAA?

Section 82 of the OGAA:

- Did Sanling fail to comply with the Order for security?
- Did Sanling exercise due diligence to comply with the Order for security?
- Did Sanling contravene section 82 of the OGAA?

Section 63 of the OGAA:

- If Sanling is found to have contravened sections 39(4) and/or 82 of the OGAA what if any, administrative penalty to impose?

Section 39(4) of the OGAA:

Did Sanling fail to carry out the direction to abandon WA 20940?

17. The direction to abandon required Sanling to abandon WA 20940 by March 31, 2018.
18. In its response letter dated February 4, 2020, Sanling does not dispute that WA 20940 has not been abandoned and proposes an extended timeline to undertake the work in January or February 2021.
19. I find that Sanling failed to carry out the direction to abandon WA 20940.

Did Sanling exercise due diligence to carry out the direction to abandon WA 20940?

20. Pursuant to section 62(5) of the OGAA, I may not find that Sanling contravened section 39(4) of the OGAA if Sanling demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Sanling has demonstrated that it took all reasonable steps to prevent the contravention. Sanling 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.
21. In Sanling's response of February 4, 2020 it outlines that the correspondence related to direction to abandon WA20940 was given to previous owners and management at Sanling and that it was not aware of the history or urgency until July, 2019. Permit holders have an obligation to know what is required of them to maintain compliance irrespective of management or ownership changes.
22. In Sanling's response of February 4, 2020 it outlines some of the steps that it would take to abandon WA20940 including road access and permitting and suggest a date of January or February 2021. I find no evidence that any site work has been completed to date to abandon the well.
23. A reasonable step Sanling could have taken was to contact the Commission on or before March 31, 2018, and request an amendment to the direction to abandon to extend the deadline to allow for completion of the well abandonment.

24. Sanling has not provided sufficient evidence to demonstrate that it exercised due diligence to complete the work.
25. Sanling has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Sanling contravene section 39(4) of the OGAA?

26. I find that Sanling has failed to comply with section 39(4) of the OGAA. I am not satisfied that Sanling exercised due diligence to prevent the contravention. As such, I find that Sanling contravened section 39(4) of the OGAA.

Section 82 of the OGAA:

Did Sanling fail to comply with the Order for security?

27. On October 2, 2018, the Commission ordered, pursuant to section 30 of OGAA, Sanling to provide security in the amount of \$774,331 by November 1, 2018.
28. To date the Commission has not received the outstanding security deposit from Sanling.
29. I find Sanling failed to comply with the Order for security.

Did Sanling exercise due diligence to comply with the Order for security?

30. On October 22, 2018, Sanling emailed the Commission and stated that it was not in a position to pay the required security, but instead it suggested that it would reactivate well B-15-F. In its Response, Sanling submits that 'no response was received from the OGC and Sanling took this to mean that the OGC was in agreement with the plan that was an alternate to paying the security.' Regardless of whether the Commission responded or not to Sanling's alternative, reactivation proposal, I find it is not relevant to whether Sanling exercised due diligence to supply the required security and thus comply with the Order.
31. The response of February 23, 2020 further states that 'Sanling is working within its constrained cash flow due to persistent low commodity prices'. The response goes on with 'allocating the limited free cash flow for reactivating wells is the most productive way to achieve the result OGC and Sanling need to achieve'. In the context of the outstanding Order for security I do not find that the 'effort to manage its LMR' is relevant to whether Sanling exercised due diligence to provide the security. The expectation is that a company would ensure it is equipped and has the financial capability to meet its regulatory obligations as an oil and gas permit holder in British Columbia. There is insufficient evidence presented to me to demonstrate that Sanling acted duly diligent.
32. Sanling has failed to satisfy me that it took all reasonable steps to comply with the Order.

Did Sanling contravene section 82 of the OGAA?

33. I find that Sanling failed to comply with the Order issued under s. 30(1) of OGAA. I am not satisfied that Sanling exercised due diligence to prevent the contravention. I find that Sanling contravened, in relation to the Order, section 82 of the OGAA.

If Sanling is found to have contravened sections 39(4) and/or 82 of the OGAA what if any, administrative penalty is to be imposed?

34. 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.

35. There has been one prior contravention by Sanling.

36. The gravity and magnitude of the contraventions are considered low given that there is minimal impact to the environment or public safety.

37. There was no harm to others as a result of the contraventions.

38. The contraventions were not repeated but are continuous until regulatory obligations are met and the security deposit is paid.

39. The contravention related to the outstanding requirement for security was deliberate as Sanling in its response outlines how it directed its free cash flow to reactivating wells. Sanling as an entity knew about the requirement to abandon WA20940 and thus I find that the decision not to abandon was deliberate.

40. Sanling is gaining a significant economic benefit by not submitting the required security deposit or completing the well abandonment.

41. Sanling has not made meaningful efforts to prevent or correct the contraventions.

Conclusion

42. In consideration of the foregoing, I have found that Sanling contravened sections 39(4) and 82 of the OGAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000 for contravention of section 39(4) of the OGAA and an administrative penalty of \$15,000 for contravention of section 82 of the OGAA, for a total amount of \$35,000.



Andy Johnson
Vice President, Operations
BC Oil and Gas Commission

Date: June 5, 2020