

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 2020-1016

BETWEEN

The BC Oil and Gas Commission

AND

Tourmaline Oil Corp.

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ADMINISTRATIVE FINDING

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Before

Vice President, Operations, Andy Johnson

Representing the BC Oil and Gas  
Commission

Compliance and Enforcement Officer, Ken  
McLean

Representing Tourmaline Oil  
Corp.

Chief Operating Officer, Al Bush

Decision Date

February 8, 2022

## **Introduction:**

1. On June 17, 2020, the BC Oil and Gas Commission (Commission) conducted an aerial flight of Tourmaline Oil Corp.'s (Tourmaline's) right of way for pipeline project 24783 (AD 100103846) (the Pipeline). During the aerial flight, and through subsequent onsite investigation, it was identified that the newly constructed Pipeline right of way was intercepting water and diverting it onto a road and into a stream.
2. A Contravention Report (the Report) was sent to me on November 3, 2021, alleging that Tourmaline contravened section 12 of the Environmental Protection and Management Regulation (EPMR).
3. The Commission sent Tourmaline a letter and the Report on November 15, 2021, informing Tourmaline that I was considering making a finding that it contravened section 12 of the EPMR. The letter informed Tourmaline 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 *Oil and Gas Activities Act* (OGAA).
4. Tourmaline provided a response in a letter dated January 14, 2022 (the Response).
5. The Commissioner of the Commission has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether Tourmaline contravened section 12 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 Tourmaline'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. 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.
8. 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.
9. 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 or if the person's actions were the result of an officially induced error.

10. 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**

11. Tourmaline is the permit holder for the Pipeline. The permit was issued on November 15, 2018, and the Pipeline was constructed in early 2019. According to the Schedule B Assessment provided by Tourmaline, reclamation of the Pipeline right of way was completed in 2019.
12. On June 17, 2020, while conducting an aerial inspection of the Pipeline, Commission staff identified a potential erosion trench on a road that led from the Pipeline right of way to a nearby stream. On June 18, 2020, a Commission inspector attended the site and noted that seasonal non-classified drainage and water runoff was being intercepted by the Pipeline right of way and being diverted down a road and into a stream. The erosion trench on the road was approximately 1.8 metres wide, 1.1 metres deep and 15 metres in length. The materials from the trench were being eroded by the water runoff and entering the stream.
13. The Commission inspector noted very little evidence of erosion control measures other than some failed silt fencing along the stream bank.
14. On June 19, 2020, the Commission inspector contacted Tourmaline to advise of the erosion and requested documentation as well as a plan for addressing the issue. On June 22, 2020, Tourmaline provided a plan to remediate the erosion identified by the Commission.

## **Issues**

15. The issues I will decide are:
- Did Tourmaline fail to ensure that an oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake?
  - Did Tourmaline exercise due diligence in its efforts to ensure that the oil and gas activity on an operating area 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 Tourmaline contravene section 12 of the EPMR?

- If Tourmaline is found to have contravened section 12 of the EPMR what if any, administrative penalty to impose?

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

16. The Report alleges that the newly constructed Pipeline right of way resulted in water runoff pooling and causing an erosion trench to form between the right of way and a nearby stream. This resulted in not only the runoff but also the eroded materials entering the stream.

17. I note that “stream” is defined as follows in section 1(2) of the EPMR:

“stream” means a watercourse, including a watercourse that is obscured by overhanging or bridging vegetation or soil mats, that contains water on a perennial or seasonal basis, is scoured by water or contains observable deposits of mineral alluvium, and that

(a) has a continuous channel bed that is 100 m or more in length, or

(b) flows directly into

(i) a fish stream or a fish-bearing lake or wetland, or

(ii) a waterworks;

18. In turn, section 1(1) of the EPMR defines a “fish stream” as follows:

“fish stream” means a stream that

(a) is frequented by any of the following species of fish:

(i) anadromous salmonids;

(ii) rainbow trout, cutthroat trout, brown trout, bull trout, Dolly Varden char, lake trout, brook-trout, kokanee, largemouth bass, smallmouth bass, mountain whitefish, lake whitefish, arctic grayling, burbot, white sturgeon, black crappie, yellow perch, walleye or northern pike

...

19. The Report includes information with respect to the stream and identifies that it is a fish bearing stream and that it is a tributary to Gundy Creek which provides habitat for arctic grayling and bull trout.

20. Further, the Report references the EPMR Guidelines which identify that “A deleterious material includes any material that could cause harm or damage to the environment or habitat, including sediment from roads or activity areas...”.

21. I note that in its Response, Tourmaline does not dispute the facts leading to the erosion as alleged in the Report. I have reviewed all of the material before me and I am satisfied that there is sufficient evidence that the newly constructed right of way for the Pipeline intercepted runoff and diverted the water onto the road, causing an erosion trench to form and resulting in the runoff water being deposited into a “stream”. The photographs included in the Report are particularly persuasive with respect to the extent of the erosion. I am further satisfied that the volume of sediment that the runoff removed from the erosion trench resulted in a deleterious substance entering the stream.

Did Tourmaline exercise due diligence in its efforts to ensure that the oil and gas activity on an operating area 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 Tourmaline contravened section 12 of the EPMR if Tourmaline demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Tourmaline has demonstrated that it took all reasonable steps to prevent the contravention. Tourmaline 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 Tourmaline's Response, it points to its 'annual pipeline integrity surveillance and monitoring' that was scheduled for July 2020 as part of its due diligence. The July time frame happened to be after Tourmaline was made aware of the erosion by the Commission and after it had completed its remediation.
24. Tourmaline's Response also identifies the erosion control measures taken on the project – specifically the installation of silt fencing to re-direct run-off which could occur in the spring. The Response notes that silt fencing was the most appropriate given the frozen conditions during construction and that coconut matting was not practical. I would have expected, however, that given the limited erosion control methods utilized, and the environmental sensitivity that was known to Tourmaline as part of its environmental assessments, that it would have planned an inspection in the spring to verify the effectiveness of the measures it had employed. This would have allowed Tourmaline to address the sedimentation issues much earlier.
25. Tourmaline has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

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

Did Tourmaline contravene section 12 of the EPMR?

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

If Tourmaline is found to have contravened section 12 of the EPMR what if any, administrative penalty is to be imposed?

28. 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 this contravention.
29. Tourmaline has been issued six general orders and one contravention.

30. The gravity and magnitude of the contravention is low.
31. There is no evidence to suggest harm to others as a result of the contravention.
32. The contravention was not repeated but it was continuous until the erosion was identified and corrected.
33. There is no evidence demonstrating that the contravention was deliberate.
34. There is no evidence to indicate that Tourmaline gained any economic benefit as a result of the contravention.
35. After the Commission identified the issue, Tourmaline acted on correcting it and provided material to the Commission in a timely manner.

### **Conclusion**

36. I have found Tourmaline contravened section 12 of EPMR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000.



Andy Johnson  
Vice President, Operations  
BC Oil and Gas Commission

Date: February 8, 2022