

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 2016-005FSJ

BETWEEN

The BC Oil and Gas Commission

AND

Aqua Terra Water Inc.

ADMINISTRATIVE FINDING

Before

Vice President, Compliance Operations,
Lance Ollenberger

Representing the Commission

R.A Workman, Manager, Enforcement

Representing Aqua Terra Water Inc.

Tom Johnston, President

Decision Date

April 5, 2017

Introduction:

1. On January 20, 2016, BC Oil and Gas Commission (Commission) personnel observed Aqua Terra Water Inc., (Aqua Terra) injecting sweet produced water directly into a well at location 06-24-84-19, WA 3060. Injection occurred without continual casing and tubing electronic monitoring as required by Order 10-02-001 Amendment #1, (the Order) issued under section 75 of the *Oil and Gas Activities Act* (OGAA).
2. The Operations Officer also noted that there was no measurement of the injection pressure at the wellhead as required under section 74 of the *Drilling and Production Regulation* (DPR). Aqua Terra was advised that no further injection should be done until the Order conditions were complied with.
3. In December 2016, a Contravention Report (the Report) was sent to me. The Report alleged that Aqua Terra failed to comply with an Order issued under section 75 of OGAA thereby contravening section 82 of OGAA and failed to comply with section 74 of the DPR.
4. On December 8, 2016, a letter and the Report were sent to Aqua Terra. The letter informed Aqua Terra that I was considering making a finding that it had contravened section 82 of OGAA by failing to comply with section 75 of OGAA and failed to comply with section 74 of the DPR. The letter informed Aqua Terra of their opportunity to be heard in written form.
5. Aqua Terra provided a response in a letter dated January 12, 2017 (the Response).
6. I have been delegated authority under sections 62 and 63 of OGAA. I will be making a determination with regards to: whether Aqua Terra contravened section 82 of OGAA and/or section 74 of the DPR; whether to impose an administrative penalty under section 63 of OGAA; and the amount of the penalty, if any. I have reviewed the Report and Aqua Terra's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

7. Section 82 of OGAA states that a person whom an order under this Act applies must comply with the order.
8. Maximum penalties for specific violations are set by regulation. Section 2(5) of the *Administrative Penalties Regulation* (APR) states that a person who contravenes an order under the Act not referred to in subsection (1) or (3) of this section, section 82 of the Act is liable to an administrative penalty not exceeding \$20,000.
9. Section 74 of the DPR states a well permit holder must ensure that the quantity and rate of water, gas, air or any other fluid injected through a well to an underground formation is metered and that the injection pressure at the wellhead is measured.
10. Maximum penalties for specific violations are set by regulation. Section 5(2) of the *Administrative Penalties Regulation* (APR) states a person who contravenes section 74 of the DPR is liable to an administrative penalty not exceeding \$250,000.

11. Section 62(1) of OGAA states that, after providing an opportunity to be heard to a person who is alleged to have contravened a provision of OGAA, 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 OGAA states, in part, that the Commission may not find that a person has contravened a provision of 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 OGAA or its regulations, the Commission may impose an administrative penalty. Section 63(2) of 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. Commission personnel attended Aqua Terra disposal well WA 3060 located at 06-24-84-19 north of Fort St. John on January 20, 2016. A Vacuum (Vac) truck was observed at the site, with a bull plug on the wellhead removed and a hose connected for injecting directly into the well. The Commission Operations Officer took photos of the truck and wellhead while the injection activity transpired and then followed the Vac truck to Aqua Terra's main disposal facility to advise the employee at the site of the section 75 Order conditions.
15. An impromptu meeting of Commission personnel subsequently occurred at the disposal site in order for staff to review the Order conditions and perform further inspection to determine if any other non-compliance was evident at the site. A third party contractor who was working on the location at the time stated that three groundwater monitoring wells had recently been installed and they were in the process of beginning the collection of samples from these wells.
16. Commission personnel were informed by Aqua Terra personnel that 12 m³ of sweet produced water had been injected into WA 3060 on January 19, 2016 and 24 m³ had been injected on January 20, 2016.
17. Shortly thereafter, the Aqua Terra employee at the main facility was advised that no further injection should be completed at the disposal well until the Order conditions were complied with and regulatory requirements adhered to.

Issues to be Decided

18. The issues which I will decide are:

Section 82 of OGAA:

- Did Aqua Terra fail to comply with an order issued under section 75 of OGAA and thereby section 82 of OGAA?
- Did Aqua Terra exercise due diligence in its efforts to comply with the Order?
- Did Aqua Terra contravene section 82 of OGAA?
- If Aqua Terra is found to have contravened section 82 of OGAA what if any, administrative penalty to impose?

Section 74 of the DPR:

- Did Aqua Terra fail to ensure the injection pressure at the wellhead was measured?
- Did Aqua Terra exercise due diligence in its efforts to ensure the injection pressure at the wellhead was measured?
- Did Aqua Terra contravene section 74 of the DPR?
- If Aqua Terra is found to have contravened section 74 of the DPR what if any, administrative penalty to impose?

Section 82 of OGAA:

Did Aqua Terra fail to comply with an order issued under section 75 of OGAA and thereby section 82 of OGAA?

19. As set out above, Order 10-02-001 Amendment #1 states at paragraph 2(e) that the permit holder, in this case Aqua Terra, shall “continually measure and record the wellhead casing and tubing pressures electronically” (the Condition).
20. Aqua Terra acknowledges in the Response that at the time of the inspection it did not have the continual casing and tubing electronic pressure monitoring equipment (the Equipment) in place. Aqua Terra submits that it had ordered the Equipment, but it was on backorder.
21. Therefore, I find Aqua Terra failed to comply with an order issued under section 75 of OGAA and thereby did not comply with section 82 of OGAA.

Did Aqua Terra exercise due diligence in its efforts to comply with the Order?

22. Pursuant to section 62(5) of OGAA, I may not find that Aqua Terra contravened section 82 of OGAA if Aqua Terra demonstrate to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Aqua Terra has demonstrated that it took all reasonable steps to prevent the contravention. Aqua Terra 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. Aqua Terra maintains it exercised due diligence in monitoring continual casing and tubing electronic pressure by using a pressure truck equipped with a system that monitors continuous and accurate flow rate and pressure readouts. Aqua Terra submits that this equipment affords equivalent protection from pressure concerns. The evidence offered to substantiate this claim is the pressure truck tickets that indicate the pumping of two loads down the well on two separate days by Tidy Trucking Ltd.
24. The Condition does not simply require the monitoring of pressure, it requires both the tubing and casing pressures be continually measured and recorded. A pressure truck may be able to monitor the pressure on the tubing; however, it would not be capable of monitoring the casing pressure. Further, as set out in the Water Service Wells Summary Information (which can be found on the Commission's website), "continuous" infers sampling and recording values at intervals of 1 minute or less. In addition, the Condition requires the recording of pressures. The permit holder is required to keep records of continuous monitoring on file and the Commission may request and audit them for a period of up to 1 year.
25. Aqua Terra has presented no evidence that the pressure truck could meet the requirements of the Condition as set out in the paragraph above and thus was in fact a reasonable alternative to the Equipment.
26. Aqua Terra has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Aqua Terra contravene section 82 of OGAA?

27. I find that Aqua Terra has failed to comply with the section 75 Order and thereby section 82 of OGAA. I am not satisfied that Aqua Terra exercised due diligence to prevent the contravention. As such, I find that Aqua Terra contravened section 82 of OGAA.

If Aqua Terra is found to have contravened section 82 of OGAA what if any, administrative penalty is to be imposed?

28. There have been no previous contraventions, administrative penalties or orders issued against Aqua Terra.
29. The gravity and magnitude are deemed low based on the small volume of fluid disposed and the fact that activity ceased as soon as the Commission advised Aqua Terra of the contravention.
30. There has been no harm to others resulting from the contravention, although it is unknown if any environmental harm has been done, as we have no evidence of the injection pressures utilized.
31. The contravention did occur on two separate days; therefore, repeated but not considered continuous.

32. The contravention was not deliberate but attributed to human error and a lack of communication between departments to ensure the requirements in the Order were understood by all personnel involved.
33. Aqua Terra states in the Response that it ordered the Equipment, but it was on backorder. The temporary solution was to move the continual electronic wellhead tubing and casing pressure-monitoring equipment from the WA 2010 site to the WA 3060 site. Instead of waiting until the temporary solution was in place, Aqua Terra moved forward with the testing operation, which I infer to have been economically motivated. I do not accept Aqua Terra's argument that as the disposal facility was operating at a loss it demonstrates that Aqua Terra did not derive an economic benefit from starting testing operations sooner than it otherwise would have been able to.
34. Once informed of the Order conditions, Aqua Terra responded quickly to correct the contravention and subsequently made changes to operating procedures to ensure the improvement of communication between departments.
35. Based on the above, I find that a penalty of \$2500 for contravention of section 82 is appropriate.

Section 74 of the DPR:

Did Aqua Terra fail to ensure the injection pressure at the wellhead was measured?

36. As set out above, section 74 of the DPR requires that "a well permit holder must ensure that the quantity and rate of water, gas, air or any other fluid injected through a well to an underground formation is metered and that the injection pressure at the wellhead is measured".
37. The Contravention Report states that the inspector noted a meter on the truck but no meter on the wellhead and as such put forward an allegation that Aqua Terra was in contravention of section 74 of the DPR.
38. Aqua Terra states a pressure truck with metering capability was utilized during disposal at the well and maintains that the injection pressure along with the quantity and rate of water were being measured by the meter equipment on the truck. This is in line with the observations of the inspector who stated that there was a meter on the truck.
39. Section 74 of the DPR is a results based requirement and I have no evidence before me to indicate that Aqua Terra did not "ensure that the quantity and rate of water [...] injected through a well to an underground formation [was] metered and that the injection pressure at the wellhead [was] measured.
40. Therefore, I find that Aqua Terra did ensure the injection pressure at the wellhead was measured thus did not contravene s. 74 of the DPR.

Conclusion

41. Based on the above discussion of the various factors set out in section 63(2) I have found that Aqua Terra contravened section 82 of OGAA. I am imposing a penalty of \$2500 for contravention of section 82.

A handwritten signature in black ink, appearing to read 'Lance Ollenberger', written in a cursive style.

Lance Ollenberger
Vice President, Compliance Operations
BC Oil and Gas Commission

Date: April 5, 2017