

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 2015-107

BETWEEN

The BC Oil and Gas Commission

AND

Energy Fluid Services Ltd.

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ADMINISTRATIVE FINDING

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Before	Vice President, Operations, Lance Ollenberger
Representing the Oil and Gas Commission	Operations Supervisor, Dax Bourke
Representing Energy Fluid Services Ltd.	President, Jay Gyug
Decision Date	November 17, 2017

## **Introduction:**

1. On August 26, 2015, Energy Fluid Services (EFS) was working as a contractor for Progress Energy Canada Ltd. (Progress) while hydraulic fracturing operations were being conducted on a wellsite located at C-E025-D/094-G-10, WA 31073. During a temporary shutdown of activities, an aboveground walled storage system (AWSS) overflowed spilling approximately 51m<sup>3</sup> of produced liquid.
2. Progress had suspended operations temporarily for mechanical maintenance during which time each service was required to cease their individual works and wait for notification to continue. EFS was tasked with filling the AWSS during this period. At 0200hrs a truck operator encountered fluids and communicated via radio that the produced water pit was overflowing.
3. A Contravention Report (the Report) was prepared by an Operations Supervisor and sent to me by the Director, Compliance and Enforcement on February 10, 2017 alleging that EFS contravened section 37(1)(a) of the *Oil and Gas Activities Act* (OGAA).
4. On February 16, 2017, the BC Oil and Gas Commission (the Commission) sent EFS a letter and the Report informing EFS that the Commission was considering making a finding that EFS contravened section 37(1)(a) of OGAA. The letter informed EFS of its opportunity to be heard in written form (the OTBH Letter) and advised that a finding of contravention might result in the Commission imposing an administrative penalty in accordance with section 63 of OGAA.
5. EFS provided a response and Incident Report Form in an email dated March 9, 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 EFS contravened section 37(1)(a) of OGAA; 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 EFS's Response. In making a determination, I rely on these documents, the applicable legislation and my expertise and knowledge of the industry.

## **Applicable Legislation**

7. Section 37(1)(a) of OGAA states that a permit holder and a person carrying out an oil and gas activity must prevent spillage.
8. Maximum penalties for specific violations are set by regulation. Section 2(1) of the *Administrative Penalties Regulation* (APR) states that a person who contravenes section 37(1)(a) of OGAA is liable to an administrative penalty not exceeding \$500,000.
9. 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 the Act, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
10. 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.

11. 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**

12. On August 26, 2015, EFS was providing water services as a contractor for Progress during hydraulic fracturing operations at wellsite, WA 31073. On the day of the incident, the Progress well site supervisor (also known as the completions supervisor) met with all on-site personnel, including EFS representatives which consisted of one supervisor and one employee, to conduct a safety and pre-operational meeting to discuss responsibilities and procedures. The EFS employees were assigned the task of monitoring the fluid levels of the AWSS, taking measurements and providing the numbers to the data-van; however, critical information, including shutdown procedures were not communicated between the EFS employees.
13. Progress initiated hydraulic fracturing operations at the wellsite but halted the operation late in the evening to enable Progress to perform maintenance on equipment. The well site supervisor gave notification to personnel via the radio to cease their operation and await further instruction to resume. The Progress supervisor requested that EFS continue with the water transfer activity in order to fill the AWSS in preparation for when fracture operations resumed.
14. At 0200hrs, a nitrogen truck operator noticed the AWSS overflowing and communicated the spill over the radio. Water transfer operations were stopped and Progress initiated cleanup of the spill and off-site fluids. Vacuum and tank trucks were dispatched to the site as well as environmental professionals to collect soil and surface water samples.
15. 51m<sup>3</sup> of produced fluids overflowed from the AWSS. The fluid migrated across the pad and along the north and south pad catchment ditches where it pooled in the southwest corner surface water retention pond. An undetermined amount of fluid moved off-site from this location.

### **Issues**

16. The issues which I will decide are:
- Did EFS fail to prevent spillage?
  - Did EFS exercise due diligence in its efforts to prevent spillage?
  - Did EFS contravene section 37(1)(a) of OGAA?

- If EFS is found to have contravened section 37(1)(a) of OGAA what if any, administrative penalty is to be imposed?

Did EFS fail to prevent spillage?

17. EFS does not dispute that approximately 51m<sup>3</sup> of produced water was spilled during a maintenance shutdown at wellsite C-E025-D/094-G-10 as a result of inadequate monitoring of the AWSS.
18. EFS personnel were responsible for overseeing the levels of the AWSS and advising the contractor filling the fluid containment when to switch off the pumps. The EFS supervisor on site had been awake for 24 hours due to personal reasons and went to sleep during the maintenance period. The second EFS employee was assigned to watch the AWSS and told to wake the supervisor when the fracturing operations were to resume; however, critical information, including shutdown procedures was not communicated between the EFS employees.
19. Both EFS employees were sitting in the same truck during the shutdown period and did not perform continuous checks and measurements to monitor the water levels, which led to the AWSS overflowing and spilling onto the ground.
20. There is no dispute that there was in fact spillage at the wellsite and EFS concedes in its Response, including the Post Incident Report which was enclosed, that its employees failed to follow the proper procedures and safe work practices. I find that this failure to follow proper procedures and safe practices along with a lack of communication and judgement, resulted in the spill.
21. After considering all the evidence before me, I do not believe the EFS employees deliberately filled the AWSS higher than they knew they were supposed to but contributed to the spill as a result of a combination of issues including poor communication between the workers, the absence of communication with the contractor operating the pumps to fill the AWSS and a lack of proper attention to the fluid levels during the maintenance period. Therefore, I find EFS failed to prevent spillage.

Did EFS exercise due diligence in its efforts to prevent spillage?

22. Pursuant to section 62(5) of OGAA, I may not find that EFS contravened section 37(1)(a) of OGAA if EFS demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether EFS has demonstrated that it took all reasonable steps to prevent the contravention. EFS 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. EFS has not raised the defense of due diligence with respect to section 37(1)(a) of OGAA. Regardless, I must still consider whether EFS demonstrated due diligence by their actions during the incident in question. EFS states that it accepts accountability for the employee making a very poor decision and demonstrating a lack of judgement that was a direct cause of the incident occurring.
24. EFS states in the Response that it is against company policy to sleep while on shift under any circumstances and management would have removed the employee and substituted a

replacement on site if it had been aware and informed of the employee's personal issues. A copy of EFS' policy and how it was communicated to personnel was not provided to me to substantiate this statement. Regardless, the EFS policy was not followed during the incident, and it is apparent that one of the EFS individuals was a supervisor, who should be aware of the policy. The lack of communication and clear direction between the two workers also contributed to the insufficient monitoring of the water levels in the AWSS.

25. It is reasonable to expect that EFS would have written policy and procedures in place that are clearly communicated to all personnel with a sign off protocol established to demonstrate understanding and acknowledgement of the policy and procedures. A reasonable step that could have been taken in these circumstances where the employee was starting on the job site for the first day was to have additional supervision arranged and a defined system of communication in place between the employees.

26. For the above reasons, EFS has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did EFS contravene section 37(1)(a) of OGAA?

27. I find that EFS has failed to prevent spillage as required by section 37(1)(a) of OGAA and further, I am not satisfied that EFS exercised due diligence to prevent the contravention. As such, I find that EFS contravened section 37(1)(a) of OGAA.

If EFS is found to have contravened section 37(1)(a) of OGAA what if any, administrative penalty is to be imposed?

28. Section 63 of 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. There have been no previous contraventions by, administrative penalties imposed on or orders issued to EFS.

30. The contravention was of relatively minor gravity and magnitude. A moderate amount (51 cubic meters) of fluid was released; the impact to the environment was temporary; and a follow up inspection confirmed the vegetation in the offsite spill area was not negatively affected.

31. There was no harm to others as a result of this incident.

32. The spill was a one-time occurrence and not continuous due to the immediate corrective action taken.

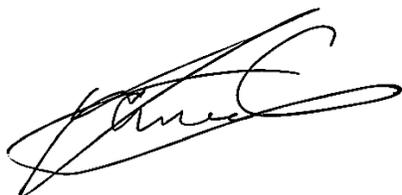
33. The contravention was not deliberate; however EFS has acknowledged the spill was directly caused by its employee's disregard of company procedures and safe work practices. Poor communication, a lack of proper monitoring and attention to the pumping operations and insufficient supervision by Progress also contributed to the incident.

34. EFS did not derive economic benefit from the contravention.

35. EFS subsequently put corrective actions in place that include a review of formal hazard assessment and procedures for containment filling and monitoring prior to shift change by Supervisors and lead hands.

**Conclusion**

36. I have found that EFS contravened section 37(1)(a) of OGAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$2,500.



Lance Ollenberger  
Vice President, Operations  
BC Oil and Gas Commission

Date: November 17, 2017