

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 2016-171FSJ

BETWEEN

The BC Oil and Gas Commission

AND

Kanati Energy Incorporated

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Lance Ollenberger

Representing the Oil and Gas
Commission

Oil & Gas Operations Officer, Michael Lester

Representing Kanati Energy
Incorporated

President & CFO, Terry Lindquist

Decision Date

November 17, 2017

Introduction:

1. On August 12, 2016 Kanati Energy Incorporated (Kanati) was issued an Inspection Report (Inspection) requiring the removal of two plastic single wall chemical tanks containing cortron and methanol on an inactive wellsite at location C-010-L/094-J-15. No response was received from Kanati and an Inspection Report Second Notice (Second Notice) was issued on September 12, 2016 reiterating the requirement to remove the chemical tanks.
2. BC Oil and Gas Commission (Commission) personnel were in communication with Kanati regarding the outstanding deficiency between September and December 2016; however, the work to remove the fluid from the chemical tanks was never completed within the established timelines.
3. In March 2017, a Contravention Report (the Report) was sent to me. The Report alleged that Kanati, and Mr. Terry Lindquist (Lindquist) and Mr. Steve Polowick (Polowick) as Directors contravened section 15(3)(a) of the *Drilling and Production Regulation* (DPR). Lindquist and Polowick are the only two Directors of Kanati.
4. On April 4, 2017 the Commission sent out a letter and the Report informing Kanati, Lindquist and Polowick that the Commission was considering making a finding that Kanati, Lindquist and/or Polowick contravened section 15(3)(a) of the DPR. The letter informed Kanati, Lindquist and Polowick of their opportunity to be heard in written form and advised that a finding of contravention might result in the Commission imposing an administrative penalty in accordance with Section 63 of the *Oil and Gas Activities Act* (OGAA).
5. Kanati and its Directors provided a response in a letter dated May 6, 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 Kanati, Lindquist and/or Polowick contravened section 15(3)(a) 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 the Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

7. Section 15(3)(a) of the DPR states that a well permit holder must ensure that the well site is maintained in a condition so as to minimize hazards, including but not limited to hazards associated with pits, holes, storage of materials and equipment.
8. Maximum penalties for specific violations are set by regulation. Section 5(4) of the *Administrative Penalties Regulation* (APR) states that a person who contravenes section 15(3)(a) of the DPR is liable to an administrative penalty not exceeding \$100,000.
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(2) of OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.

11. 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.
12. 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

13. Commission personnel conducted an inspection at a suspended wellsite, WA 09032 on August 11, 2016 and advised Kanati of deficiencies found at the site through an inspection letter that required the removal of the fluids from the chemical tanks on the location to minimize the hazard to be completed by September 11, 2016.
14. On September 12, 2016, a second notice was issued to Kanati advising that it was to respond to the deficiencies immediately and notify the Commission of each deficiency correction by September 13, 2016 or further enforcement action would be taken. This notice was followed up by an email the next day to both Lindquist and Polowick requesting they call the Commission to discuss the outstanding deficiency; however, no call was received.
15. The Commission sent an email on October 3, 2017 to Lindquist and Polowick to advise that they were three weeks past the due date. Polowick responded by email to inform the Commission that Kanati would have personnel out to the site very soon and hoped to have the deficiency corrected. Subsequent communications with Polowick on October 18, 2017 indicated that the deficiency would be rectified as soon as possible.
16. The site was re-inspected on December 13, 2016; however, no corrective actions had been completed and the deficiency remained outstanding until January 6, 2017.

Issues

17. The issues which I will decide are:
 - Did Kanati fail to ensure that the well site was maintained in a condition that minimized hazards associated with the storage of materials?
 - Did Kanati exercise due diligence in its efforts to ensure that the well site was maintained in a condition that minimized hazards associated with the storage of materials?
 - Did Kanati contravene section 15(3)(a) of the DPR?

- If Kanati contravened section 15(3)(a) of the DPR, did Lindquist and/or Polowick authorize, permit or acquiesce in the contravention?
- If Kanati, Lindquist and/or Polowick are found to have contravened section 15(3)(a) of the DPR what if any, administrative penalty to impose?

Did Kanati fail to ensure that the well site was maintained in a condition that minimized hazards associated with the storage of materials?

18. Pursuant to section 15(3)(a) of the DPR a permit holder has the regulatory obligation to ensure that well sites are maintained in a condition so as to minimize hazards associated with storage of materials. The chemical tanks on site were plastic single walled containers approximately half full of cortron and methanol which are both considered to be hazardous materials. There was inadequate secondary containment and the site had been inactive for a substantial length of time which cumulatively enhanced the potential environmental risk of pollution or leaking.
19. In October 2013, Kanati advised the Commission that it would remove all chemical drums and confirmed no fluids would remain on site once road access was repaired. Despite this notification, a subsequent routine inspection almost three years later showed that the chemical tanks containing methanol and cortron were still on location.
20. Therefore, I find that Kanati failed to ensure the well site was maintained in a condition that minimized hazards.

Did Kanati exercise due diligence in its efforts to ensure that the well site was maintained in a condition that minimized hazards associated with the storage of materials?

21. Pursuant to section 62(5) of OGAA, I may not find that Kanati contravened section 15(3)(a) of the DPR if Kanati demonstrate to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Kanati has demonstrated that it took all reasonable steps to prevent the contravention. Kanati 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.
22. Kanati has not presented any evidence to demonstrate that it exercised due diligence to make certain the well site was maintained in a condition that minimized hazards. A reasonable step Kanati could have taken to confirm all hazardous fluids were removed from the site would have been to have a company representative inspect the location to ensure all deficiencies were completed satisfactorily. If field personnel were not able to complete the task within the timeline specified, it is reasonable to expect that Kanati would have retained a contractor or third party to achieve regulatory obligations and correct the outstanding non-compliance.
23. Kanati has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Kanati contravene section 15(3)(a) of the DPR?

24. I find that Kanati has failed to ensure that the well site was maintained in a condition that minimized hazards associated with the storage of materials. I am not satisfied that Kanati exercised due diligence to prevent the contravention. As such, I find that Kanati contravened section 15(3)(a) of the DPR.

If Kanati contravened section 15(3)(a) of the DPR, did Lindquist and/or Polowick authorize, permit or acquiesce in the contravention?

25. Section 62(2) of OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
26. I must decide if Lindquist and Polowick as the only two Directors of Kanati authorized, permitted or acquiesced in the contravention. I consider acquiesced the appropriate term for the purpose of this determination. By definition, acquiesced means to assent tacitly or passively or to submit or comply silently without protest.
27. Lindquist and Polowick are listed as the only Directors of Kanati Energy Incorporated and have been the main two contacts the Commission has engaged with in discussions relating to outstanding deficiencies or issues for Kanati sites. Polowick responded on behalf of Kanati in regards to the deficiency notices to remove the liquids from the site. In addition, Lindquist was copied on all correspondence from the Commission and he has been the main administrator entering deficiency responses into KERMIT on behalf of Kanati.
28. Neither Director responded to the Inspection or Second Notice identifying the deficiency nor did they initiate contact with the Commission to request an extension in order to rectify the non-compliance at the site. There was no action taken by either one of the Directors prior to the correction dates and in fact, the deficiency remained outstanding until almost 6 months after Kanati was advised of the deficiency.
29. For the reasons above, I find that both Lindquist and Polowick acquiesced in the contravention.

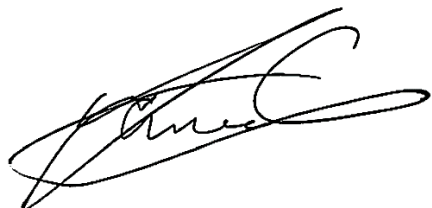
If Kanati, Lindquist and/or Polowick are found to have contravened section 15(3)(a) of the DPR what if any, administrative penalty is to be imposed?

30. Section 63 of OGAA sets out the 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.
31. There have been no previous contraventions, administrative penalties or orders issued to Kanati, Lindquist or Polowick.
32. The gravity and magnitude of the contravention is low; however, the hazard continued to increase over time considering the chemical tanks are single walled, there was inadequate secondary containment and the length of time the site has been inactive.
33. There was no harm to others resulting from the contravention.
34. The contravention was not repeated but was continuous since the tanks have been sitting on the site partially full of fluid since at least 2013.
35. The contravention is deemed deliberate considering Kanati, Lindquist and Polowick were aware of the deficiency and took no action to ensure the requirement to remove the liquids was met despite repeated reminders and extensions.

36. Kanati, Lindquist and Polowick did not derive an economic benefit from the contravention since the appropriate funds were expended to remove the tanks from the site.
37. Kanati, Lindquist and Polowick have since corrected the deficiency by removing the fluids from location and disposing of the chemicals, although it took more than 3 years to achieve compliance.

Conclusion

38. I have found that Kanati, Lindquist and Polowick contravened section 15(3)(a) of the DPR. Based on the above discussion of the various factors set out in section 63(2) I find that a monetary penalty is not appropriate in this situation.



Lance Ollenberger
Vice President, Operations
BC Oil and Gas Commission

Date: November 17, 2017