

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 2016-062

BETWEEN

The BC Oil and Gas Commission

AND

Procyon Energy Corp.

ADMINISTRATIVE FINDING

Before

Vice President, Compliance Operations,
Lance Ollenberger

Representing the Commission

R.A. Workman, Manager, Enforcement

Representing Procyon Energy Corp

Ron McKellar, President

Decision Date

April 21, 2017

Introduction:

1. Procyon Energy Corp. (Procyon) was issued administrative deficiency LMR-715 on August 21, 2015 for failure to submit the required security deposit. Procyon failed to comply and as a result the BC Oil and Gas Commission (Commission) issued an Order for payment of a security deposit of \$932,544.
2. Over the next several months, discussions ensued between Commission Liability Management personnel and Procyon to allow time for submission of a proposed operational plan and a schedule for payment of the security; however, there were no acceptable solutions presented to bring their negative LMR status to resolution.
3. Order 2016-004 was issued to Procyon under section 49 of the *Oil and Gas Activities Act* (OGAA) on May 30, 2016. The Order required the submission of suspension reports and plans for a list of wells, as well as the submission of an acceptable Liability Management Plan demonstrating a scheduled return to a Liability Management Rating (LMR) of 1.0 by January 1, 2017.
4. In January 2017, a Contravention Report (the Report) was sent to me. The Report alleged that Procyon and Mr. Ron McKellar (McKellar) as President contravened section 82 of OGAA.
5. A letter and the Report were sent to Procyon and McKellar on January 10, 2017. The letters informed Procyon and McKellar that I was considering making a finding that Procyon and McKellar as President contravened section 82 of OGAA. The letter informed Procyon and McKellar of their opportunity to be heard in written form.
6. Procyon provided a response in a letter dated February 9, 2017 (the Response).
7. I have been delegated authority under sections 62 and 63 of OGAA. I will be making a determination with regards to: whether Procyon and McKellar contravened section 82 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 Procyon and McKellar's Response. In making a determination, I rely on these documents and the applicable legislation.

Applicable Legislation

8. Section 82 of OGAA states that a person whom an order under this Act applies must comply with the order.
9. 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 82 of OGAA is liable to an administrative penalty not exceeding \$500,000.
10. 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.

11. 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.
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. Procyon is a small privately owned oil and gas company that currently owns 15 wells, 11 facilities, 11 pipelines and 32 ancillaries in British Columbia.
15. The Commission's Liability Management Rating (LMR) group initiated discussions with Procyon in 2015 after the company was unable to comply with the security requirements and correction timeline outlined in administrative deficiency notification LMR-715.
16. Compliance was not achieved despite the continuation of regular communication between the Commission and Procyon from August 2015 until May 2016. The matter proceeded to enforcement, which resulted in the issuance of Order 2016-004 to Procyon on May 30, 2016.
17. Seven days after the Order deadline, Procyon submitted the required well suspension reports and plans for the list of eight wells itemized in the Order but did not produce and implement a Liability Management Plan that demonstrated a scheduled return to an LMR of 1.0.

Issues to be Decided

18. The issues which I will decide are:
 - Did Procyon fail to comply with the Order?
 - Did Procyon exercise due diligence in its efforts to comply with the Order?
 - Did Procyon contravene section 82 of OGAA?
 - If Procyon contravened section 82 of OGAA, did Mr. Ron McKellar as Director, authorize, permit or acquiesce in the contravention?

- If Procyon is found to have contravened section 82 of OGAA what if any, administrative penalty to impose?

Did Procyon fail to comply with the Order?

19. The contravention report alleges that Procyon failed to comply with the Order requirement to submit a Liability Management Plan acceptable to the Commission on or before June 30, 2016. In its Response, Procyon acknowledges that it did not satisfy its obligation to produce a plan to address a scheduled return to a LMR of 1.0 by January 2017.
20. Procyon states that high operating costs and low netbacks forced it to shut in its core facility operations in February 2015. It maintains that these circumstances were out of their control and prevented the submission of a credible plan. In spite of this, a difficult economy does not exempt Procyon from fulfilling its legislative obligations to produce and implement a LMR plan.
21. Based on the above factors, I find that Procyon failed to comply with the Order.

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

22. Pursuant to section 62(5) of OGAA, I may not find that Procyon contravened section 82 of OGAA if Procyon demonstrate to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Procyon has demonstrated that it took all reasonable steps to prevent the contravention. Procyon 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. Procyon states in its response it is a privately held oil and gas company that was founded by a small group of shareholders that consists primarily of colleagues with management capital and limited access to further capital. Procyon did not submit any argument addressing its efforts to exercise due diligence in its response.
24. The reasonable expectation is that Procyon, regardless of company size, would exert an effort to plan how it would continue to manage its liabilities and pay for asset retirement when entering into the oil and gas industry in BC. Procyon did not put forward any effort towards submitting a Liability Management Plan in recognition of its obligations. At the very least, Procyon could have presented a future scheduled proposed plan that considered progressive security submission, divestment or development plans for resource potential that would have allowed for continued discussion towards resolution with the Commission.
25. Procyon has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Procyon contravene section 82 of OGAA?

26. I find that Procyon has failed to comply with section 82 of OGAA. I am not satisfied that Procyon exercised due diligence to prevent the contravention. As such, I find that Procyon contravened section 82 of OGAA.

If Procyon contravened section 82 of OGAA, did Mr. Ron McKellar as Director, authorize, permit or acquiesce in the contravention?

27. 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 acquiesces in the contravention also contravenes the provision.
28. There has been no evidence presented to me that would demonstrate that Mr. Ron McKellar as Director was the exclusive decision authority for Procyon. The Alberta Corporate Registration System shows that Procyon consists of three Directors and four alternate voting shareholders. For that reason, I am unable to establish without a reasonable doubt that the decision not to comply with the Order rests solely with Mr. McKellar.
29. I find that Mr. Ron McKellar as Director did not authorize, permit or acquiesce in the contravention.

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

30. Procyon was previously issued a section 30 order under OGAA in 2015 for payment of security deposit of \$932,544 and a section 49 order under OGAA to produce an acceptable Liability Management Plan.
31. The gravity and magnitude of the contravention are considered low given that there is minimal impact to the environment or public safety.
32. There was no harm to others as a result of the contravention.
33. The contravention was not repeated but was continuous until regulatory obligations were met and an acceptable Liability Management Plan submitted.
34. The contravention was deliberate. Procyon acknowledged missing the Order deadline due to the company's lack of employee resources and concentrating on demands in Alberta.
35. Procyon is gaining a significant economic benefit by not submitting the LMR security deposit.
36. Procyon has recently made some effort to correct the contravention by providing a proposed Liability Management Plan as part of its response to this contravention. The Commission is willing to consider this plan as acceptable in satisfying the requirements of the original Order. The plan outlines a series of proposed steps to restart production and suggests growth potential.

Conclusion

37. I find that Procyon contravened section 82 of OGAA. In these particular circumstances, the Commission has issued a subsequent General Order 2017-009 to Procyon to do the following:

1. On or before May 31, 2017 complete and submit electronically to the Commission at C&E@bcogc.ca a supplemental plan (the Plan) listing each well Procyon intends to reactivate and outlining the reactivation proposal. The Plan must be to the satisfaction of the Commission and include the following:
 - i. Details on well completion/workover requirements for any well Procyon plans to reactivate;
 - ii. A scheduled timeline of all reactivations and monthly production projections associated with each well; and
 - iii. A defined timeline of submissions of security to return to a LMR of 1.0.
2. On or before September 30, 2017 complete all steps in the Plan.
3. On or before September 30, 2017 complete and submit electronically to the Commission at C&E@bcogc.ca a signed statement confirming completion of all steps in the Plan or that the full outstanding security of \$2,688,192 has been submitted to the Commission.

Based on the above discussion of the various factors set out in section 63(2) of OGAA and the issuance of General Order 2017-009 I am not imposing an administrative penalty at this time.



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

Date: April 21, 2017