

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 15-019DC

BETWEEN

The BC Oil and Gas Commission

AND

Synergy Land Services Ltd.

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Lance Ollenberger

Representing the Oil and Gas
Commission

Oil & Gas Operations Officer, Hack Waldon

Representing Synergy Land
Services Ltd.

Executive, Vice President, Keith Turner

Decision Date

November 17, 2017

Introduction:

1. In June 2015, Synergy Land Services Ltd. (Synergy) submitted two Archaeological Assessment Information Forms (AAIFs) to the BC Oil and Gas Commission (Commission). The AAIFs formed a part of applications that were submitted on behalf of Alliance Pipeline Ltd. (Alliance).
2. The applications were for permit approvals for OGC file numbers 9641259, geotechnical boreholes and access trails, and 9642556, a temporary water line. In accordance with the *Heritage Conservation Act* (HCA), portions of the AAIF must be completed and signed off by an archaeologist working under a current HCA Section 14 permit valid in the area where the AAIF applies. The Commission requires that an authorized signature be obtained from the applicant oil and gas company to verify agreement with the AAIF stipulations. Review of the applications by Commission staff revealed that the details contained in the AAIF documents were altered without the consent and signature of the archaeologist and the applicant company.
3. A Contravention Report (the Report) was sent to me in May 2017 alleging that Synergy contravened section 81 of the *Oil and Gas Activities Act* (OGAA).
4. On May 9, 2017, the Commission sent Synergy a letter and the Report informing Synergy that I was considering making a finding that it contravened section 81 of OGAA. The letter informed Synergy of its 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 OGAA.
5. Synergy provided a response in a letter dated June 8, 2017 (the Response).
6. The Commissioner of the Oil and Gas Commission has delegated me authority under sections 62 and 63 of OGAA. I will be making a determination with regards to: whether Synergy contravened section 81 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 Synergy's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

7. Section 81 of OGAA states that a person must not make a false or misleading statement in any application or other record submitted under this Act, or otherwise make a false statement to, or mislead or attempt to mislead, a person exercising a power or performing a duty or function under the Act.
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 81 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. In June of 2015, the Commission reviewed two applications that were submitted by Synergy on behalf of Alliance Pipeline. Commission staff noted that details in section A of both AAIF documents for the applications were altered to include different geographic areas and different purposes from the initial applications while retaining original signatures of the archaeologist and Alliance's company representative.
13. The Commission contacted the archaeological company, Archer CRM Partnership (Archer), who indicated it had not made any changes to the original documents nor had it been contacted to do any further field work. Alliance was also contacted and advised Commission personnel that it had no knowledge of the compliance issues and had not authorized Synergy to alter and submit the documents on its behalf.
14. The Commission assigned an investigator to speak to the parties involved to determine the circumstances that led to the submission of the altered AAIF documents. The investigator met with Archer who confirmed it only had knowledge of the original AAIF. Interviews were conducted with the Synergy employee involved in altering the documents (the "Employee") and her supervisor. Both of those interviews revealed that the Employee had limited experience, had only been with the company for a few months and was under time pressures to get project approvals. She did not understand the application requirements, had not received the proper training and was unaware that she did not have authorization to alter the forms. Another archaeological company was hired to redo the work for submission of the new AAIF forms.
15. In its Response, Synergy states that it conducted an internal investigation of the compliance issue and agreed that its findings align with the details summarized in the Report. Synergy also notes that the two individuals involved in this incident are no longer employed with the company.

Issues

16. The issues which I will decide are:
- Did Synergy make a false or misleading statement in an application or other record by submitting altered AAIF documents?
 - Did Synergy exercise due diligence in its efforts to ensure the compliance and accuracy of the information submitted in the AAIFs?
 - Did Synergy contravene section 81 of OGAA?
 - If Synergy is found to have contravened section 81 of OGAA what if any, administrative penalty to impose?

Did Synergy make a false or misleading statement in an application or other record by submitting altered AAIF documents?

17. The HCA regulates cultural and heritage archaeology sites in British Columbia and states that where new land is being applied for or any type of ground disturbance will take place, a properly permitted archaeologist must be engaged to complete the AAIF. The archaeologist must hold a current HCA Section 14 Permit in the area of the proposed works. The Commission also has Archaeology Process Guidelines that outline the process and requirements for submission of AAIFs.
18. Application file 9641259 for three boreholes was originally submitted to the Commission in July 2014 with the appropriate archaeological field assessment completed and the required signatures in place. The Commission received a subsequent application submission for the addition of an access trail and a geotechnical investigative area on the AAIF. The signatures and date on the form were the same as the original application; however, it was confirmed that the archaeologist did not assess the new components and did not sign off on the document. Archer indicated that it had not been contacted to perform any further fieldwork for the project nor had it authorized the use of their professional designate signatory.
19. A second AAIF was received a couple of days later for OGC file 9642556 that contained the exact same wording as the original form submitted with file 9641259. Details in the AAIF indicated the application was for drill holes even though the application was actually for a water line and water diversion.
20. Further conversations and investigation led to the conclusion that the Employee had altered both AAIF documents and submitted them without realizing that new signatures or fieldwork were required. After the applications were declined by the Commission, the Employee contacted the archaeologist to ask if she could change or re-sign the documents but the request was refused and Synergy was further advised that it should contact the Commission to inform of the unauthorized changes.
21. In its Response, Synergy concedes that the Employee made an error in judgement by making the changes to the document but contends it was in an effort to expedite the application in order to meet Alliance's timelines. Synergy acknowledges that the Employee did not receive sufficient training and supervision and emphasizes that it was not intentional to submit altered documents but rather attributed to a lack of knowledge and full understanding of the application requirements by the Employee.

22. The documents were submitted to give the appearance that Archer had signed off and mislead the Commission that the appropriate work had been done. In accordance with the HCA, AAIFs cannot be revised without the knowledge and/or authorization of the signatories; therefore, I find that Synergy did make a false or misleading statement in an application or other record by submitting two altered AAIF documents.

Did Synergy exercise due diligence in its efforts to ensure the compliance and accuracy of the information submitted in the AAIF's?

23. Pursuant to section 62(5) of OGAA, I may not find that Synergy contravened section 81 of OGAA if Synergy demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Synergy has demonstrated that it took all reasonable steps to prevent the contravention. Synergy 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.
24. Synergy has not provided any evidence to establish that it exercised due diligence in its efforts to ensure compliance and accuracy of the information submitted on the AAIF form but maintains that this is an isolated incident of human error. Synergy has not presented any evidence to demonstrate that it had a system of checks and balances in place at the time to eliminate the possibility of human error on submitted documentation. It would be reasonable to expect that Synergy would have an audit and review process administered by a senior employee prior to submission of documentation to the Commission by a junior employee. Some practical steps would have been for the supervisor to work more closely with the employee lacking experience, checking and verifying work and implementing a procedure manual that details application submission requirements.
25. The Commission acknowledges that Synergy has since taken several remedial steps to improve and mitigate the issue including altering its hiring practices to add a training component on documentation expectations and limitations along with the development of a policy employees are required to sign. Improvements also include: a required ethics course for new hires; the development of an organization chart and changes in the company structure to ensure daily project management; and, the acquisition of a branch manager to oversee the local Fort St. John office. However, none of these measures were in place at the time the AAIF documents were manually altered and submitted.

26. Synergy has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Synergy contravene section 81 of OGAA?

27. I find that Synergy made a false or misleading statement in an application by submitting two altered AAIF documents to the Commission. I am not satisfied that Synergy exercised due diligence to prevent the contravention. As such, I find that Synergy contravened section 81 of OGAA.

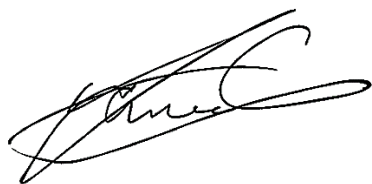
If Synergy is found to have contravened section 81 of OGAA what if any, administrative penalty is to be imposed?

28. 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.

29. Synergy has had no previous contraventions, administrative penalties imposed or orders issued.
30. The gravity and magnitude of the contravention is low as the alteration was discovered prior to the issuance of any permits; however, misleading the regulator is taken very seriously by the Commission because of the expectation that industry is authentic in its dealings with the Commission. Failure to do so erodes trust and can undermine the relationship.
31. The contravention was repeated as evidenced by the submission of the AAIF for 9642556 two days after the submission of the AAIF for 9641259 but was not continuous as the attempt to correct the errors occurred shortly after Synergy was notified of the altered documents.
32. Synergy did deliberately alter the AAIF documents in an attempt to expedite the application process although the Employee that did so was not aware it was a contravention at the time.
33. Synergy did not derive an economic benefit from this contravention since it had to hire another archaeological company to do the work to submit a corrected AAIF.
34. Synergy has implemented numerous preventive measures to ensure this type of occurrence does not happen again. In addition to the actions noted above, Synergy has made changes to the training process for handling of third-party documentation and implemented an internal audit process.

Conclusion

35. I find that Synergy contravened section 81 of OGAA. 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