

## Review Decision R-2025-02

In the matter of a request for review under section 70 of the *Energy Resource Activities Act* of General Order 2025-0041-01 issued to Harvest Operations Corp.

**Decision Date: October 15, 2025**

### Introduction

- [1] Harvest Operations Corp. (“**Harvest**”) has requested a review of General Order 2025-0041-01 issued to it on June 16, 2025 (the “**Order**”). The Order was made pursuant to section 49(1)(d) of the *Energy Resource Activities Act* (“**ERAA**”).
- [2] The Commissioner of the BC Energy Regulator (“**BCER**”) has designated me as the review official for the purpose of reviewing the Order.

### Background

- [3] On April 21, 2025, Harvest reported a release of approximately 140m<sup>3</sup> of produced water. To address the spillage, Harvest developed a plan which included pumping water from the spillage site approximately 3.2 km using a 3” lay-flat hose (the “**Hose**”).
- [4] On May 22, 2025, BCER staff advised Harvest the Hose was an unauthorized activity and that Harvest would either need to use an alternative method or obtain a permit from the BCER.
- [5] Harvest continued to use the Hose.
- [6] On June 16, 2025, the BCER issued the Order to Harvest. The Order required Harvest to:
1. Cease using the 3” flat lay down hose to transport spilled contaminated water from the pipeline spill located just north of D-047-H/094-I-09 (D-047) to the Hay River Plant located at B-076-H/094-I-09 (B-076 plant) by 12:00 PM on June 17, 2025.
- [7] The Order was issued pursuant to section 49(1)(d) of the ERAA, which states:
- 49** (1)An official may issue an order to
- (a)a person carrying out an energy resource activity, an off-site environmental mitigation activity or a related activity, with respect to those activities or any of the person's obligations under the Act or the regulations,
  - (b)a permit holder, former permit holder, authorization holder or former authorization holder, with respect to any of the person's obligations under the Act or the regulations or the person's permit or authorization, if any, or
  - (c)a person who may enter on land under section 23, with respect to that entry,
- if, in the opinion of the official,
- (d)the person fails to comply with the Act, the regulations, a previous order made under the Act, or the person's permit or authorization, or
- ...
- [8] In the reasons provided in the Order, the BCER decision maker identified Harvest was carrying out an energy resource activity, namely the construction or operation of a pipeline, without a permit.

- [9] On June 23, 2025, Harvest requested a review of the Order under section 70 of ERAA (the “**Review Request**”). Harvest submits it should be allowed to continue to use the Hose.
- [10] Section 71(1)(a) of the ERAA gives me the power to confirm, vary or rescind the Order.
- [11] On August 5, 2025, I sent a letter to the BCER and Harvest, acknowledging the Review Request, and providing specific questions for the parties to consider as well as a general opportunity to be heard. Both parties made submissions in accordance with the schedule I provided. The BCER provided its submissions on September 5, 2025 (the “**BCER Submission**”) and Harvest provided its submissions on September 12, 2025 (the “**Harvest Submission**”).
- [12] In conducting this review, I rely on the Order, applicable legislation and regulations, the Review Request, the BCER Submission and the Harvest Submission. I have thoroughly considered all those documents whether or not I make specific reference to the material.

### **Issue**

- [13] In the Review Request, Harvest requests the following relief:
- Classify the temporary lay-flat hose system as an emergency remediation activity or associated oil and gas activity, not a pipeline;
  - Permit continued operation under agreed-upon controls and oversight;
  - Acknowledge that no ongoing conveyance of produced water is occurring – only groundwater recovery;
  - Recognize our proactive communication, which has not yet received a meaningful response;
  - Acknowledge community and First Nations support, and professional oversight of this very safe system.
- [14] I note under section 71(1)(a) I am only authorized to “confirm, vary or rescind” the Order, which is the decision under review. Some of the relief requested by Harvest is beyond my authority. In the Harvest Submission, Harvest requests the BCER acknowledge the Hose is not a pipeline or, alternatively, issue a temporary permit to allow it to temporarily use the Hose to complete its remediation efforts. I understand Harvest is requesting, at least in part, that I either rescind or vary the order to allow it to continue to use the Hose on a temporary basis. This is the extent of the relief I will consider.
- [15] The BCER Submission reiterates its position the Hose is a pipeline that fits within the definition of an energy resource activity and therefore Harvest requires a permit to carry out that activity. The BCER decision maker does not agree with allowing Harvest to continue using the Hose.
- [16] The decision I will make is whether the Order should be confirmed, varied or rescinded. The key issues I must consider are:
1. Is Harvest carrying out an energy resource activity without a permit?

2. If so, should the Order be varied to allow Harvest to continue using the Hose?

## Analysis

### *Is Harvest carrying out an energy resource activity without a permit?*

[17] Section 49(1)(d) of ERAA provides a BCER decision maker authority to issue an order to a person who fails to comply with that act. Although it was not specifically stated in the Order, it implies, and the BCER Submission confirms, section 21 of ERAA is the provision the decision maker determined was not complied with. Section 21 states,

21. Subject to section 23, a person must not carry out an energy resource activity unless

- (a) either
  - (i) the person holds a permit that gives the person permission to carry out that energy resource activity, or
  - (ii) the person is required to carry out that energy resource activity by an order issued under section 49, and
- (b) the person carries out the energy resource activity in compliance with
  - (i) this Act and the regulations,
  - (ii) a permit issued to the person, if any, and
  - (iii) an order issued to the person, if any.

[18] The energy resource activity the BCER decision maker determined occurred without a permit was the “construction or operation of a pipeline” which is included in the definition of energy resource activity in section 1 of ERAA. ERAA defines “pipeline” as:

“pipeline” means, except in section 9, piping through which any of the following is conveyed:

...

- (b) water used for, or produced in the course of, an energy resource activity

[19] There does not appear to be any dispute the initial spillage occurred when pipeline project 011389 ruptured and discharged produced water. This is acknowledged in both the Harvest Submission and the BCER Submission. Harvest is the permit holder for pipeline project 011389. The initial spillage therefore occurred while Harvest was carrying out an energy resource activity.

[20] Harvest submits<sup>1</sup> the water transported in the Hose was not used in the course of an energy resource activity but instead related to environmental remediation. I disagree. The remediation efforts undertaken by Harvest are a direct result of Harvest operating pipeline project 011389. It is illogical that addressing spillage resulting from an energy resource activity is not also part of that activity.

[21] Alternatively, Harvest argues the water being transported is not “produced water” and points to BCER guidance stating that above ground lines used for freshwater are not considered pipelines. Although the BCER and Harvest may characterize the recovered

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<sup>1</sup> See pp. 1-2 & 7 of the Harvest Submission.

water differently, Harvest acknowledges it is “impacted”<sup>2</sup> or “moderately impacted”<sup>3</sup> and the water chemistry results provided by Harvest indicate exceedances above the BC Water Quality Guidelines<sup>4</sup>. This is certainly not freshwater, so I do not need to consider the applicability or accuracy of that guidance for the purposes of my decision.

[22] I also note the definition of pipeline states “water used for, or produced in the course of”. This definition is not limited to “produced water”, which is typically understood to be waste water produced from oil and gas operations. Whether the liquid being transported through the Hose is produced water directly spilled from the pipeline or, instead, is water that has been impacted as a result of the spillage or the remediation efforts, is an immaterial distinction. I am satisfied the water being transported through the Hose is water used for, or produced in the course of, an energy resource activity, namely, the remediation of spillage resulting from pipeline project 011389.

[23] I now turn to whether the Hose is “piping”, which is an undefined term in ERAA. Harvest consistently refers to the Hose as a “3” lay-flat hose”. In the BCER Submission, it is further described as “double lined and made with PVC and nitrile braid”<sup>5</sup>. Both parties agree the Hose is being operated over a distance of approximately 3.2 km. Absent a legislated definition, I will consider the plain meaning of the term within the context of the legislative scheme. I have reviewed all the submissions and am of the view that piping is generally understood as a tube or system of tubes that can be used to transport a product. Harvest takes the position that the Hose is “fundamentally different from the systems contemplated in CSA Z662” and therefore it should not fall within the definition of pipeline in ERAA. In reading ERAA and, specifically the purpose section set out in section 4, it is evident the BCER is tasked with ensuring energy resource activities are undertaken in a manner that protects the environment. To interpret piping as excluding above grounds systems such as the Hose would allow parties to avoid application of ERAA by transporting product (including gas, oil or produced water) using a similar design. This interpretation is not consistent with the purpose of the BCER. I am satisfied the Hose constitutes piping.

[24] Based on the foregoing, I am of the view Harvest’s use of the Hose constitutes an energy resource activity and it does not hold a permit enabling it to carry out that activity.

***Should the Order be varied to allow Harvest to continue using the Hose?***

[25] I have confirmed Harvest is carrying out an energy resource activity without a permit. Section 21 provides a person must only carry out an energy resource activity if they have a permit or an order that allows them to do so. I understand from the relief requested by Harvest, that since I determined it is carrying out an unpermitted energy resource activity, it would like me to vary the Order to allow it to continue to use the Hose. I do not view this as an appropriate remedy in the circumstances. Harvest submitted its plan to the BCER and was specifically advised by BCER staff of the following:

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<sup>2</sup> Page 2 of the Harvest Submission, for example.

<sup>3</sup> Page 3 of the Review Request.

<sup>4</sup> See the May 26, 2025 Release Update Report.

<sup>5</sup> Page 5 of the BCER Submission.

The update provided mentions that the recovered contaminated water is being pumped from Pad 47 a distance of 3.2 km to the plant via lay flat hose. This is not an authorized pipeline or acceptable practice. Acceptable options to transfer the contaminated water from pad 47 to the plant include trucking the fluids or obtaining a permit from the BCER for an above ground pipeline that complies with CSA Z662.

Harvest was told its plan was not compliant and that other options were available. It continued with its plan regardless. Requesting a review of an order issued due to a choice to proceed in non-compliance with ERAA is not an appropriate avenue for achieving compliance. This is not a situation where Harvest has demonstrated an emergent situation exists that cannot be addressed by a method compliant with ERAA and the regulations. These enactments are in place, in part, to ensure protection of the environment.

## **Decision**

- [26] The BCER issued Harvest an Order requiring it to cease using the Hose as part of its remediation efforts on the basis Harvest was engaging in an energy resource activity without a permit as required by section 21 of ERAA. Harvest requested a review of the Order on the grounds 1) it was either not carrying out an energy resource activity or 2) if it was carrying out an energy resource activity, it should be allowed to continue to do so to address a spillage incident.
- [27] After reviewing all the materials before me, I agree with the BCER decision maker that Harvest was carrying out an energy resource activity without a permit and was out of compliance with section 21 of ERAA. I am also satisfied it would be inappropriate in the circumstances to vary the order to allow Harvest to continue operating without a permit.
- [28] For the above reasons, the Order is confirmed, and Harvest is required to cease using the Hose.



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