

Review Decision R-2023-01

In the matter of a request for review under section 70 of the *Oil and Gas Activities Act* of General Order 2021-0054-03 issued to Erikson National Energy Inc.

Decision Date: July 13, 2023

Introduction

- [1] This matter involves a request for review of General Order 2021-0054-03 (“**Order**”) issued by the British Columbia Energy Regulator (“**BCER**”) to Erikson National Energy Inc. (“**Erikson**”).
- [2] The Order was issued by an official (“**BCER Official**”) on April 21, 2023 and required Erikson to:
- Remove 10,000 m³ of water from the frac water storage site located at d-024-G/094-P-10 (the “**Site**”) by June 30, 2023;
 - Remove all remaining liquid, sludge and waste residue from the Site and dispose of the materials at approved facilities by July 31, 2023;
 - Complete and submit an environmental site investigation report to the BCER by August 18, 2023, to determine the presence and delineate the extent of any contamination in the soil and groundwater at the Site. The Order requires the report to include analysis for hydrocarbons, salts and metals.
 - If contaminated soils are present at the Site, remove or otherwise remediate those soils to meet the applicable numerical standards under the Contaminated Sites Regulation or to meet risk-based standards acceptable to the BCER, by October 31, 2023.
- [3] I have authority to review the contravention decision under section 70 of the *Oil and Gas Activities Act* (“**OGAA**”) through my designation as the review official for this review by the Commissioner of the BCER. I have confirmed that the Order is subject to review as it is a “determination” and Erikson is an “eligible person” as both are defined in section 69 of OGAA.
- [4] I am also satisfied that the request for review was submitted within the 30-day time limit specified in section 70(3) of OGAA. According to section 49(3)(g) of OGAA, the BCER was required to serve the Order on Erikson, which the BCER did by sending a copy of the Order by electronic mail to Erikson on April 21, 2023, as permitted by section 79(1)(b)(iii) of OGAA. By virtue of section 79(2)(b), Erikson was deemed to have received the Order by April 24, 2023. Erikson’s request for review was submitted on May 23, 2023.
- [5] Section 71 of OGAA gives me the power to confirm, vary or rescind the contravention decision.
- [6] For the purposes of the review, Erikson provided a written submission on June 9, 2023. Following my request for further information and supporting material dated June 14, 2023, Erikson provided an additional submission on June 23, 2023. The BCER official provided reply materials on June 30, 2023. Erikson did not provide a final reply submission.

Background

- [7] Erikson is the current holder of an authorization issued under the *Land Act* to operate a frac water storage pond.
- [8] The Site has been operational since 2012 and is designed to hold approximately 100,000 m³ of fluid. The pond is constructed with two liners with leak detection between the liners. In addition, there are 11 ground water monitoring wells surrounding the Site.
- [9] On March 9, 2016, a previous operator of the Site notified the BCER¹ of a potential leak of the pond liner.
- [10] On December 12, 2016, the BCER issued a General Order pursuant to section 49 of OGAA that required the operator to develop a plan for the removal of the fluids from the pond. A subsequent General Order was issued on February 3, 2017, requiring the operator to remove fluids from the pond, complete an environmental site investigation and removal all contaminated soils.²
- [11] Both General Orders identified that the official was of the opinion that they were necessary to protect the environment.
- [12] On June 1, 2017, the Site was transferred to another operator. On July 14, 2017, the BCER issued a General Order requiring that the operator remove fluids from the pond, complete an environmental site investigation and remove all contaminated soils. The General Order identified that the official was of the opinion that it was necessary to protect the environment.
- [13] On June 10, 2020, the Site was transferred to Erikson. Erikson has been operating the Site since that time.
- [14] On August 26, 2021, the BCER issued a General Order to Erikson requiring Erikson to submit a plan for the removal of all liquid from the Site.
- [15] On April 21, 2023, the BCER issued the Order to Erikson that is the subject of this review.

Issues

The issue to be addressed in this review is whether the timelines in the Order should be extended and if so, whether additional timelines or requirements should be included in the Order.

Position of the Parties

- [16] In its request for review, Erikson submits that the wildfire situation has required the company to divert their resources in the Fort St. John area to manage their fire response and has prevented the company from promptly addressing the Order.

¹ On February 17, 2023, the Oil and Gas Commission was renamed the British Columbia Energy Regulator. References to the Oil and Gas Commission prior to February 17, 2023, are referred to as the BC Energy Regulator.

² Erikson's submissions state that both orders required removal of 50% of the fluid. This is incorrect. The December 12, 2016 General Order did not require any removal of fluid, but a plan for removal of all liquid from the Site by January 31, 2017. The BCER did not deem the plan acceptable and issued the February 3, 2017, General Order. That General Order required the operator to remove 50% of the fluid by May 31, 2017 and all liquid at the Site by July 31, 2017.

- [17] Erikson’s written submissions identify the grounds on which its review is requested. In its written submissions, Erikson states that it requires more time to complete the additional requirements of the Order “in a cost-effective manner given the challenges of the current commodity environment”. In the interim, Erikson submits that the frac pond does not pose a current risk to the environment and is not located nearby a population centre that could be impacted by any contamination from the Site.
- [18] The BCER official submits that no extension or revision of the Order is appropriate. He notes that there has been evidence of fluid leaking from the frac pond into the surrounding environment since 2016 which has been discoverable by all parties prior to the transfer of the permits, including to Erikson. The BCER official further submits that the existing timelines are necessary to ensure that work set out in the Order can be completed before non-frozen ground conditions are established.
- [19] In the event that the Order is adjusted, the BCER Official submits that additional targets for draining of the frac pond should be included in the Order.

Discussion and Analysis

- [20] Erikson submits that additional time to complete the Order is necessary to address resource limitations because of wildfires, to drain the pond in a cost-effective manner and that the additional time will not negatively impact the environment or the public. Subsequent to submitting its request for review, Erikson also experienced the failure of their transfer pump, which has further impeded its ability to comply with the Order.
- [21] Although Erikson provided me with little information on how the wildfires in Northeastern British Columbia have directly affected its ability to comply with the Order in the circumstances, I accept generally that the wildfires have posed challenges to oil and gas operators in the area. Access restrictions and fire suppression activities have undoubtedly impacted day to day operations of operators and the ability to plan accordingly.
- [22] Erikson argues that additional time is reasonable because Erikson “does not believe the frack pond site is a current environmental threat”. Erikson submits that the “average of the monitoring wells are below [Contaminated Sites Regulation] standards and trending downwards” and any exceedances are generally contained to the Site.
- [23] The Order was issued pursuant to section 49(1)(e) of OGAA which states as follows:

(1) An official may issue an order to

...

(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, in the opinion of the official,

(e) the order is necessary

- (i) to mitigate a risk to public safety,
- (ii) to protect the environment, or
- (iii) to promote the conservation of petroleum and natural gas resources.

[24] The Order states that the Commission official is “of the opinion that this order is necessary to protect the environment.”

[25] Erikson accepts that the “2022 Groundwater and Pond Sampling Report (“**Report**”) prepared by Matrix Solutions identifies that water from the pond, between the liners, and under the liners contained concentrations of sodium and chloride that exceed the Contaminated Sites Regulation (“**CSR**”) standards. Further, the Report identifies that water between the liners and under the liners contained concentrations of barium, boron, cobalt, iron, lithium, strontium, and/or benzo[b&j]fluoranthene that exceeded the applicable CSR standards.

[26] The Report also identifies that samples from four groundwater monitoring wells identified sulphate, cobalt and lithium concentrations that exceeded CSR standards.

[27] The Report also concludes that the Site may be located in a groundwater recharge area.

[28] Erikson acknowledges the findings in the Report but submits that there is no risk to the public given that the estimated groundwater velocity would take 28,250 years to reach Fort Nelson, the nearest population centre. Erikson also submits that the exceedances are contained within the Site, except for the samples from four groundwater monitoring wells.

[29] Therefore, given the reduced risk to the public, Erikson submits that the circumstances support a modified timeline for removing the fluids. Specifically, Erikson submits that all liquids should be removed from the Site by October 31, 2023, and an environmental study be completed within 90 days of the removal. Erikson further submits that the removal and remediation of contaminated soils should be “re-negotiated” following these steps given that “financial resources to complete remediation and reclamation are not expected to be available” to Erikson in 2023. Additional time will also allow Erikson to address the failure of its transfer pump in early June, that has prevented ongoing disposal of fluid.

[30] The BCER official issued the Order pursuant to section 49(1)(e) that is, in his opinion, the Order was necessary to protect the environment. I am satisfied that the Report outlines potential contamination from the Site that may impact the groundwater and surrounding environment. Indeed, four groundwater monitoring wells have identified contamination outside the frac pond. This contamination may have adverse effects on the environment, including wildlife and vegetation, that requires a timely response. This is the case regardless of the proximity of the Site to a population centre.

- [31] Further delays in removing the fluid from the pond may increase the contamination of the groundwater and surrounding environment. Although additional time may enable Erikson to develop a more cost-effective approach to removing the fluid, or secure additional funding, Erikson is obligated to take all necessary measures to comply with its regulatory obligations, including orders issued pursuant to section 49 of OGAA, and Erikson must do so regardless of the costs or business practicality.
- [32] Although I accept that Erikson has experienced the failure of its transfer pump, I find that there is insufficient evidence to justify an extension of time to address the failure of the transfer pump. Erikson did not identify any steps that it has taken to secure an alternative mechanism, such as securing another pump to continue disposal, beyond noting some difficulty in locating replacement parts.
- [33] Erikson submitted that I should consider its overall contributions to the economy of the Province of British Columbia, its capital expenditures, and operating losses since acquiring assets in the province.
- [34] I disagree. As noted previously, Erikson should expect that in a highly regulated industry such as the oil and gas sector, to which it voluntarily engages, compliance with those obligations is expected regardless of costs or general financial implications to the company.
- [35] Therefore, I conclude that the requirements of the Order are reasonable in the circumstances, with the exception of an extension of the timelines to address the current wildfire situation.
- [36] The BCER official submitted if I were to determine that an extension to the Order is appropriate, that I include additional targets for draining of the frac pond to ensure that targets can be monitored and that action is being taken in a timely manner.
- [37] I note that Erikson's submissions identify that as of May 22, 2023, while using the transfer pump, it was removing an average of 167 m³ of fluid per day from the frac pond and that a total of 2,721 m³ of fluid had been removed by that date. At that rate of removal, Erikson would not have achieved the requirement to remove 10,000 m³ by June 30, 2023.
- [38] For the reasons set out above, and the fact that Erikson has acknowledged that it has not removed the required amount of fluid by June 30, 2023, as required by the Order, I am satisfied that additional targets are appropriate to ensure that removal of the fluid is proceeding in a timely manner.

Decision

[39] For the reasons provided above, the General Order is varied as follows:

- 1) By July 31, 2023, remove 10,000 m³ of water from the Site.
- 2) By August 31, 2023, remove an additional 40,000 m³ for a total of 50,000 m³ of water from the Site
- 3) By September 30, 2023, remove all remaining liquid, sludge and waste residue from the Site and dispose of the materials at approved facilities.
- 4) By October 20, 2023, complete and submit an environmental site investigation report to the BCER by October 20, 2023, to determine the presence and delineate the extent of any contamination in the soil and groundwater at the Site. The investigation shall include analysis for hydrocarbons, salts and metals. The site investigation report must be submitted electronically to C&E@bc-er.ca.
- 5) By December 15, 2023, if contaminated soils are present at Site, remove or otherwise remediate those soils to meet the applicable numerical standards under the Contaminated Sites Regulation or to meet risk-based standards acceptable to the BCER.



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