

Review Decision R-2023-04

In the matter of a request for review under section 70 of the *Energy Resource Activities Act* of Administrative Finding 2021-0190 issued to Ovintiv Canada ULC

Decision Date: August 20, 2024

Introduction

- [1] This matter involves a request for review of a finding of contravention (the “**Administrative Finding**”) made by the BC Energy Regulator (“**Regulator**”) on November 24, 2023.
- [2] The Administrative Finding included:
 - (a) a finding of contravention under section 62 of the *Energy Resource Activities Act* (“**ERAA**”) that Ovintiv Canada ULC (“**Ovintiv**”) failed to prevent spillage per section 37(1)(a) of the ERAA; and
 - (b) a second finding of contravention under section 62 of the ERAA section 62 that Ovintiv failed to immediately respond to an emergency in accordance with its emergency response plan per section 11(1)(a) of the *Emergency Management Regulation* (“**EMR**”) under the ERAA.
- [3] The Regulator consequently imposed an administrative penalty on Ovintiv in the amount of \$20,000 under section 63 of the ERAA (the “**Administrative Penalty**”).
- [4] On December 21, 2023, Ovintiv submitted a request for review of the Administrative Finding specifically in relation to the Regulator’s second finding of contravention under section 11(1)(a) of the EMR.
- [5] Ovintiv’s request for review submitted that the finding Ovintiv failed to respond to the emergency in accordance with its ERP is based on a mistake of fact. Ovintiv requested that the Regulator reverse its finding that Ovintiv contravened section 11(1)(a) of the EMR and adjust the quantum of the Administrative Penalty accordingly. In the alternative, Ovintiv requested that should the Regulator maintain the finding regarding the alleged contravention, that the Regulator vary the Administrative Finding of facts.
- [6] Pursuant to section 70(6) of the ERAA, on receipt of the request for review, payment of the Administrative Penalty was stayed.
- [7] I have authority to review the Administrative Finding and Administrative Penalty under section 70 of the ERAA through my designation as the review official for this review by the Commissioner of the Regulator. I have confirmed that the Administrative Finding and Administrative Penalty are subject to review as they are each a “determination” and Ovintiv is an “eligible person” as defined in section 69 of the ERAA, and the request for review was submitted within the 30 day time limit specified in section 70(3) of the ERAA. Section 71 of the ERAA gives me the power to confirm, vary or rescind the Administrative Finding and/or Administrative Penalty.
- [8] Pursuant to section 70(7) of the ERAA, I conducted a written review hearing in this matter. For the

purposes of the review, Ovintiv and the Regulator submitted an Agreed Statement of Facts on February 13, 2024. Ovintiv provided written submissions by way of supplemental response on February 28, 2024 and March 4, 2024. The Regulator official provided reply materials on March 13, 2024, relying on the Regulator’s Contravention Report dated July 2022, the submissions of Ovintiv dated August 28, 2023, made in response to the opportunity to be heard prior to the issuance of the Administrative Finding, the Agreed Statement of Facts dated February 13, 2024 and the Administrative Finding.

[9] I have reviewed all the materials provided and referenced by the parties for the purposes of this review.

Background

[10] The following facts are not in dispute.

[11] Ovintiv is the permit holder for WA# 37143 (the “Well”) located at C 16-23-077-14.

[12] On November 19, 2021, at 14:08, there was an uncontrolled release of hydrocarbons during a workover operation on the Well (the “Incident”).

[13] The applicable Emergency Response Plan for the site at the time of the Incident was the “British Columbia Core Field Supplements Emergency Response Plan” updated June 26, 2021 (the “ERP”).

[14] Ovintiv’s Incident Commander initially categorized the Incident as a Level 3 Emergency according to the Regulator’s Incident Classification Matrix.

[15] The Well was brought under control at 14:43 and the Incident Commander was advised of the same at that time.

[16] The Regulator was notified of the Incident at 15:15 when a compliance and enforcement officer attended at the Well site.

[17] The two residents within the Emergency Planning Zone were notified of the Incident by the end of day on November 19, 2021.

Analysis

[18] The determinative issue in this review is whether the finding that Ovintiv failed to respond to the emergency in accordance with its ERP was a mistake of fact.

[19] Section 11(1)(a) of the EMR provides that when an emergency occurs, a permit holder must immediately respond to the emergency in accordance with the permit holder’s plan.

[20] There is no dispute that Ovintiv’s ERP includes the following statement in several places:

Escalate, Downgrade or Stand-Down Levels of Emergency:

As the emergency is brought under control, the decision **to downgrade the level and/or stand down the emergency** will be based on air monitoring readings in consultation with the Incident

Commander and the applicable government regulator. [emphasis added]

[21] The ERP includes a Glossary of Terms including definitions relevant to this matter as follows:

Emergency

A present or imminent event outside the scope of normal operations that requires prompt coordination of resources to protect the health, safety, and welfare of people and to limit damage to property and the environment.

Emergency Operations Centre (EOC)

An Emergency Operations Centre is a designated facility in a suitable location (i.e. head office, regional office, etc.) established by the permit holder to support Incident Command and to manage the larger aspects of an emergency. In a high-impact emergency, there may be a number of EOCs established to support the response. They may include the Incident Command Post, regional and corporate EOCs, a municipal EOC (MEOC), and the provincial government EOC (POC).

Incident Commander

Manages the overall response to emergency incidents. The Incident Commander is responsible for: developing objectives, strategies and tactics that guide the response; assigning personnel to fill necessary positions; ensuring the safety of all personnel; keeping internal and external stakeholders updated; coordinating with other response agencies.

Incident

An unexpected occurrence or event that requires action by emergency personnel to prevent or minimize the impacts on people, property, and the environment.

Incident classification

A system that examines the risk level to members of the public following an incident and assigns a level of emergency based on the consequence of the incident and the likelihood of the incident escalating.

Level 1 Emergency

There is no immediate danger to the public or environment as no H2S has been released; the emergency is confined to the lease or company property.

Level 2 Emergency

There is potential risk to the public or environment, as the emergency could extend beyond company property. However, control is still possible.

Level 3 Emergency

An immediate danger to the public or environment exists; control of the situation has been lost.

[22] Ovintiv has submitted that:

1. At 14:43, the Incident Commander, while still in transit to the EOC, received notice that the Well had been brought under control and that there was no potential for additional impact beyond the site.

2. The EOC had not been fully mobilized as of 14:43. As the Incident occurred outside of Ovintiv's business hours, office personnel had to travel to the EOC at Ovintiv's Calgary office to be fully mobilized.
3. Upon receiving the call at 14:43, the Incident Commander made immediate calls to notify personnel who in the process of mobilizing to the EOC that they need not travel to the EOC. Ovintiv described this process as standing down the EOC in its prior submissions to the Regulator.

[23] The Regulator has submitted that "by 14:43 Ovintiv no longer considered the Incident an emergency and, by standing down the EOC and moving notification to its Land and Community Relations Team (as opposed to following ERP procedures)", Ovintiv "had stood down the emergency without consulting with the [Regulator]."

[24] The Regulator's reply submission highlights the following passage from Ovintiv's written submission dated August 28, 2023, made in response to the opportunity to be heard prior to the issuance of the Administrative Finding:

As any emergency had been resolved before a communications command was established in accordance with the ERP, Ovintiv's Land and Community Relations Team assumed conduct of communication regarding the Incident with local residents after 14:43. Ovintiv's community relations process differed significantly from the public protection measures under the ERP, as the purpose of such communications was no longer to facilitate public protection given that the emergency had been resolved and there was no risk to the public. Communications with residents required internal approvals and took place at a slower pace than would have occurred [sic] ERP procedures, again due to the fact that there was no longer any emergency or any risk to the public.

[25] Ovintiv submits that it stood down the mobilization of its EOC in Calgary, not the incident response itself. According to Ovintiv, "[t]his direction from the Incident Commander was limited to personnel who had not yet been mobilized to the incident response team; it did not stand down or downgrade the incident response then underway."

[26] The wording in the ERP that guides Ovintiv's emergency response activity states that "the decision to downgrade the level and/or stand down the emergency will be based ...in consultation with the applicable government regulator". In this case I accept that the Regulator was the applicable regulator for the Incident.

[27] The Regulator submits that the earliest time that Ovintiv could have consulted with the Regulator regarding the Incident was when the Regulator was notified of the Incident at 15:15.

[28] I note no evidence of any consultation with the Regulator prior to the calls to stand down mobilization of the EOC at 14:43.

[29] I accept Ovintiv's claim that standing down the mobilization of the EOC was not equivalent in these circumstances to standing down the incident response. The evidence suggests that following notification to personnel that they need not travel to the EOC, Ovintiv staff continued to maintain an

active presence responding to the Incident on site, which I accept as fact. In my view, this continued response is inconsistent with a position that the emergency had been stood down or resolved at that point in time.

- [30] On balance and based on all the material before me, it is evident that standing down the mobilization of the EOC reflected a change to the emergency status involving a downgrading of the Incident by Ovintiv. Although the direction may have been “limited to personnel who had not yet been mobilized to the incident response team” as submitted by Ovintiv, I do not find tenable Ovintiv’s submission that “it did not ... downgrade the incident response then underway.” Rather, based on Ovintiv’s submissions, this direction entailed that personnel who were then in the process of mobilizing to the EOC were notified that they need not travel to the EOC. Moreover, based on Ovintiv’s submissions, its Land and Community Relations Team assumed conduct of any communication regarding the Incident with local residents after 14:43.
- [31] In addition, I note that while Ovintiv initially categorized the Incident as a Level 3 Emergency, the Permit Holder Post Incident Report submitted by Ovintiv does not include a third party analysis (required for Level 2 and 3 Emergencies). In my view, this information is further evidence that Ovintiv downgraded the level of the emergency.
- [32] I conclude that in the circumstances of this case, Ovintiv made a decision to decision to downgrade the level of an emergency without consulting with the Regulator, contrary to a plain read of Ovintiv’s ERP.
- [33] I note the concern expressed by Ovintiv that an “overly technical interpretation of the ERP advanced in the Administrative Finding may result in a less efficient and effective response to a future emergency”.
- [34] Based on the parties’ submissions, both Ovintiv and the Regulator agree that in this case a phone call to the Regulator would have sufficed to complete consultation with the Regulator regarding downgrading or standing down the emergency. I do not accept that a requirement for such consultation in the circumstances would have a negative effect on the efficiency and effectiveness of Ovintiv’s response to an emergency. To the contrary, my interpretation is consistent with the purpose of emergency response to effectively protect the public and environment in an integrated manner.

Decision

- [35] Based on the foregoing, I vary the finding the Administrative Finding of fact that Ovintiv did not consult the Regulator before standing down the Incident, to clarify on the facts that Ovintiv downgraded the level of the Incident without consulting with the Regulator, contrary to Ovintiv’s ERP.
- [36] Accordingly, I confirm the conclusion in the Administrative Finding that Ovintiv failed to respond to the emergency in accordance with its ERP, as required by section 11(1)(a) of the EMR.

[37] Based on the foregoing, I see no justification to adjust the Administrative Penalty, which I confirm.



Andy Johnson
Executive Vice President, Safety and Compliance
BC Energy Regulator