Review Decision R-2024-05

In the matter of a request for review under section 70 of the *Energy Resource Activities Act* of Administrative Finding 2022-0030 issued to Canadian Natural Resources Ltd.

Decision Date: May 26, 2025

Introduction

[1] Canadian Natural Resources Ltd. ("**CNRL**") has requested a review of the administrative monetary penalty ("**AMP**") attached to a finding of contravention issued by a British Columbia Energy Regulator ("**BCER**") official (the "**Official**") to CNRL on December 9, 2024 (the "**Contravention Decision**").

[2] The Contravention Decision held that CNRL contravened section 15.2 and 15.3(2)(a) of the Energy Resource Road Regulation ("**ERRR**") but determined that there was insufficient evidence to establish a contravention of section 11(b)(i) of the Environmental Protection and Management Regulation. An AMP of $75,000 was imposed as a result of the contraventions.

[3] AMPs are issued pursuant to section 63(1) of the *Energy Resource Activities Act* ("**ERAA**"). Prior to issuing an AMP, the decision maker must consider the factors set out in section 63(2) of the ERAA.

[4] CNRL disputes the application of one of the enumerated factors set out in section 63(2) and the amount of the AMP. CNRL does not dispute the finding of contravention under sections 15.2 and 15.3(2)(a).

[5] The Commissioner of the BCER has designated me as the review official for the purpose of reviewing the AMP.

[6] Section 71(1)(a) of the ERAA gives me the power to confirm, vary or rescind the official's finding of contravention and the AMP.

[7] I have reviewed all the materials provided by the Parties.

Issues

[8] The issue before me is whether the AMP should be confirmed, varied or rescinded.

Background

[9] In the winter of 2021/2022, CNRL constructed a snow fill crossing across each of an S2, S3, and S4 stream to access its well site located at a-001-I/094-B-15.

[10] Inspectors with the BC Oil and Gas Commission, now the BCER, conducted three inspections of the snow fill crossings. The inspectors determined that the snow fill crossings had not been removed prior to spring freshet.

[11] A report detailing these circumstances (the "**Contravention Report**") was provided to the Official on October 10, 2023, for a decision pursuant to section 62 of the ERAA. The Official gave CNRL an opportunity to be heard to the Contravention Report and CNRL provided a response on April 1, 2024 (the "**Response**").

[12] After considering the Contravention Report and the Response, the Official concluded in the Contravention Decision that CNRL failed to remove a snow fill contrary to section 15.2 of the ERRR and used an unpermitted road to access a-001-I/094-B-15 contrary to section 15.3(2)(a) of the ERRR. The Official held that there was insufficient evidence to establish that CNRL failed to ensure the snow fill did not prevent the movement of fish.

[13] Section 63 of the ERAA requires that a decision maker consider the following factors prior to imposing an AMP:

> (a) previous contraventions by, administrative penalties imposed on or orders issued to
> (i) the person,
> (ii) if the person is an individual, a corporation for which the individual is or was an officer, director or agent, and
> (iii) if the person is a corporation, an individual who is or was an officer, director or agent of the corporation;
> (b) the gravity and magnitude of the contravention;
> (c) the extent of the 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;
> (h) any other matters prescribed by the Lieutenant Governor in Council.

[14] The Contravention Decision identified six previous findings of contravention and seventeen previous orders issued to CNRL.

[15] In considering these findings of contravention and orders, the Contravention Decision states the following with respect to the finding of contravention of section 15.2 of the ERRR:

> 43. I recognize that all but one contravention decision is unrelated in nature to this contravention and that no previous orders are related. Those orders and other contraventions will not be considered for the purposes of my decision.
>
> 44. I note that there is a similar pattern of behavior by CNRL in this decision and that of case file 2017-057. In both cases, CNRL admitted to not having a proactive policy, procedure or program in place to effectively manage energy activities in ensuring it meets all regulatory requirements. Rather, CNRL relied on notices from internal field staff or the BCER to identify issues prior to managing them. This is not a reasonable approach to regulatory compliance. Given that the decision for case file 2017-057 was issued in 2018, it would have been

> reasonable to see CNRL take further steps to proactively manage its energy activities. I find this pattern of using the Regulator as its compliance verification process aggravating.

[16] The Contravention Decision includes a nearly identical statement with respect to the finding of contravention under section 15.3(2)(a) of the ERRR:

> 72. I recognize that all but one contravention decision is unrelated in nature to this contravention and that no previous orders are related. Those orders and other contraventions will not be considered for the purposes of my decision.
>
> 73. I note that there is a similar pattern of behavior by CNRL in this decision and that of case file 2017-057. In both cases CNRL admitted to not having a proactive policy, procedure or program in place to effectively manage energy activities in ensuring they meet all regulatory requirements. Rather, it relied on the BCER to identify issues prior to managing them. Given that the decision for case file 2017-057 was issued in 2018, it would have been reasonable to see CNRL take further steps to proactively manage its energy activities. I find this pattern of using the Regulator as its compliance verification process to be aggravating.

[17] CNRL argues that the Official improperly applied and weighed the factor set out in section 63(2)(a) and, as a result, the penalty imposed was disproportionately high.

Analysis

[18] CNRL identified the application of section 63(2)(a) as the basis for its request for review. I will focus my attention on this provision.[1]

Position of CNRL

[19] CNRL submits that the Official erred in their conclusion that the 2017-057 proceeding was similar in nature and disputes a number of conclusions that the Official made in coming to this conclusion.

[20] CRNL submits that the Official erred in concluding that CNRL made an admission in the 2017-057 proceeding to "not having a proactive policy, procedure or program" or relying on the BCER to identify issues before managing them.

[21] It also submits evidence that CNRL says disproves these admissions including its record in winter access road removal, management tools and overall compliance history. CNRL submits that this demonstrates a sufficient level of responsiveness to the requirement to remove snow fills.

[22] CNRL also argues that the Official unreasonably concluded that CNRL should have implemented the necessary policies and procedures to prevent the present contraventions based on the 2017-057 proceeding. CNRL submits that this cannot be an

[1] CNRL's argument identifies an error with respect to the decision-maker's treatment of CNRL's previous contravention. This factor is set out in section 63(2)(a) of ERAA. While CNRL's submission refers to section 63(2)(d), I have considered this a typographical error.

aggravating factor given that appropriate policies and procedures would be a complete due diligence defence.

Position of the BCER Official

[23] In response, the Official notes that the evidence regarding CNRL's record of snow fill removal, management tools, general compliance history, and 2022 record of winter access road removal was not information provided to the Official at the time of their decision.

[24] The Official argues that the decision maker in the 2017-057 proceeding found that CNRL did not have a policy, procedure or program. In the current proceeding, the Official notes that CNRL did not provide any evidence of a policy of procedure for the construction, maintenance, and removal of snow fills when asked by the investigating officer.

[25] The Official submits that the present contravention and the 2017-057 proceeding both demonstrate a failure by CNRL to identify a policy, procedure or program that would have prevented or efficiently discovered the non-compliance. Each case demonstrates a reactive approach to regulatory road compliance. Although not identical, the Official submits that this demonstrates a similar pattern of behaviour that justified an increase in the penalty based on the previous contravention.

Discussion

[26] In Review Decision R-2024-01, the Review Official noted that when considering previous orders and contraventions for the purposes of section 63(2)(a), the details of the previous orders and contraventions are important and will go to weight. A short history of non-compliance that includes a recent contravention of a similar nature is likely to be more aggravating that a lengthy, but unrelated, compliance history.

[27] Although I am not bound by this decision, I find this conclusion persuasive.

[28] The Official reviewed previous orders and findings of contravention issued to CNRL and considered that the 2017-057 was the only proceeding related to the current proceeding. The Official found that there was a "similar pattern of behaviour" in the current proceeding and the 2017-057 proceeding demonstrating a reactive approach to regulatory road compliance. Accordingly, the Official held that he could consider the previous finding of contravention as an aggravating factor in assessing the penalty amount.

[29] CNRL challenges the Officials' decision to rely on the previous contravention in several respects. When considering a previous contravention, I agree with the Official that the contravention must be similar, but not identical to, the current contravention (see, for example, *Interfor Corporation v. Government of British Columbia* 2025 BCFAC 2, at para. 269, discussing the same factor under the *Forest and Range Practices Act*).

[30] I will address each CNRL's arguments that the 2017-057 was not of a similar nature below.

Mischaracterized Admissions

[31] CNRL submits that it did not admit in the 2017-057 proceeding to "not having a proactive policy, procedure or program" or that it relied on the regulator to identify issues related to road maintenance.

[32] In the 2017-057 proceeding, the decision-maker found that a lack of appropriate maintenance of the road prism, ditches and culverts led to significant silt deposits in a stream. The decision maker stated that "CNRL confirms that it does not have a formal inspection program in place and does not maintain any records of road inspections because the regulations in British Columbia do not require it." The decision maker in that proceeding identified the expected benefits of a policy, procedure or program for road inspection.

[33] While I accept CNRL's observation that the decision in 2017-057 does not identify an admission on CNRL's part that it relied on notices from the Regulator, the decision explains that CNRL confirmed that it had no road inspection program in place to manage its regulatory road compliance obligations. CNRL now points to operational expenditures made in 2017 in relation to road maintenance to demonstrate its proactive approach. I do not accept that expenditures themselves demonstrate the existence of any policy, procedure or program to address road maintenance. In any event, this review is not an opportunity to challenge findings made in a previous contravention proceeding.

[34] Moreover, while the Official does state that CNRL relied on the Regulator as part of its compliance approach, when read as a whole, it is clear that the Official did not find that CNRL *only* relied on notices from the BCER. As part of the Official's finding, the Official also noted that in the absence of any formal inspection program, the only way for CNRL could be informed of its regulatory obligations with respect to its road network was through its field staff *or* the BCER.

[35] In the present matter, the Contravention Report cites CNRL's response to a request from the investigating officer in which an employee stated that "CNRL has no formal road inspection process, there is no written documents for inspection, no checklist… There is no road inspection program in BC and the Oil and Gas Regulations have no requirements for one."

[36] Accordingly, I do not find that the Official mischaracterized CNRL's submissions or the 2017-057 determination. I find the Official's conclusion that there was a similar approach to regulatory road compliance whereby CNRL failed to adopt policies and procedures to address its obligations consistent with the Contravention Report and the 2017-057 determination. Rather, both contraventions demonstrate that CNRL relied on informal procedures, including through the BCER, to address road maintenance obligations.

Existing Processes

[37] CNRL argues that the Response provided evidence that demonstrates that the two proceedings do not show a similar pattern of behaviour because CNRL provided evidence

of existing processes to ensure the removal of “practically all” winter roads, including snow fills.

[38] CNRL does not identify any specific document, policy or procedure referenced in the Response. Instead, CNRL provides new information in this review proceeding related to its overall removal of winter access roads in 2022 “and other years”, its general compliance history including with industry averages and a specific application to manage surface operations.

[39] As the Official notes, this was not information that was before the Official at the time of their decision. In any event, I am not satisfied that this information refutes the Official’s conclusion that CNRL did not have a policy, procedure or program to proactively manage its compliance for road activities at the time of the contravention. Procedural information regarding the removal of winter access roads submitted with the review request is dated January 9, 2025, and so is not relevant to an evaluation of the reasonableness of a penalty determination that was made in 2024. Moreover, a single management tool for “surface operations” and overall inspection compliance rates is not evidence of a policy, procedure or program specific to road activities and more specifically, the removal of snow fills.

The Need for Policies and Procedures

[40] CNRL also challenges the finding on the basis that the Official improperly concluded that CNRL should have implemented all policies and procedures to avoid any future contraventions based on the 2017-057 proceeding. CNRL argues that the current proceeding did not require formal procedures due to the low risk of non-compliance or a low risk to public safety or the environment. If no such requirement existed, then there can be no similar pattern of behaviour.

[41] I accept CNRL’s general statement that some work carried out as part of energy resource development may not need formal procedures due to low risk of non-compliance or low risk to public safety or the environment. However, the operation of energy resource roads carries potential for serious risk to public safety and the environment. Therefore, having a formalized inspection and compliance management program for roads is to be expected, especially for a company such as CNRL that maintains in excess of 1000km of roads.

[42] In the 2017-057 proceeding, lack of appropriate maintenance of the road prism, ditches and culverts led to significant silt deposits in a stream and the decision maker in that case explicitly communicated the expected benefits of a policy, procedure or program for road inspection. Inspections carried out under such a program would have noted the issues with the snow fills in the 2022 case. Such programs are comprehensive in their scope of compliance verification for the subject activity. It is reasonable to expect that such a program would have caught the snow fill issue.

[43] In any event, CNRL now appears to accept that some additional procedures are necessary by noting that it “has learned from this experience” and developed a new procedure to address snowfall installation and removal.

[44] Other Factual Differences

[45] CNRL also argues that the Official did not fully consider evidence provided by CNRL in the response that demonstrates differences between the 2017-057 and current proceedings. Specifically, CNRL states that evidence relating to ownership of the road, difficulties in obtaining a road permit after the 2013 requirement and CNRL's new processes using new technology were not fully considered.

[46] I disagree. While the Official did not specify matters related to road ownership and the difficulty of obtaining road permits in the decision, the Official acknowledged the lengthy timeframe that CNRL has had to comply with the ERRR and the BCER's existing process to facilitate the transfer of non-status roads to an ERAA permitted road. Based on a complete review of the decision, I am satisfied that the Official fully considered these matters in the decision.

[47] In any event, as previously noted, when considering a previous contravention, it must be similar, but not identical to, the current contravention.

Due Diligence

[48] Finally, CNRL argues that the Official cannot consider the absence of policies or procedures to address the contravention as an aggravating factor because, had they existed, this would have constituted a full due diligence deference. In essence, CNRL argues that the lack of formal policies and procedures will be an aggravating factor in any subsequent finding of contravention where due diligence is not found to be a defence to the matter.

[49] In my view, CNRL mischaracterizes the Official's finding. The Official found the existence of a similar contravention an aggravating factor, not the absence of policies or procedures themselves. The failure of CNRL to take steps to implement policies and procedures related to regulatory road compliance was relied on to identify the similarities between the contraventions, such that the previous contravention could be considered under section 63(2)(a).

[50] Moreover, a due diligence defence may be raised based on many factors, beyond the existence of policies and procedures. Even if there was a similar gap in policies and procedures between two offences, a due diligence defence would still be available to CNRL. Accordingly, I do not find any merit to this argument.

Decision

[51] When considering a previous contravention, I agree with the Official that the contravention must be similar, but not identical to, the current contravention.

[52] In my view, both the 2017-057 proceeding and the current contravention demonstrate a reactive approach to road maintenance without sufficient programs or procedures to address CNRL's regulatory obligations. Although not identical, they are similar in that they both demonstrate CNRL's failure to address its obligations to road maintenance.

[53] Accordingly, I am satisfied that it was appropriate for the Official to consider the previous finding of contravention in 2017-057 as an aggravating factor when establishing a penalty.

[54] For these reasons, the penalty amounts determined are confirmed.

Patrick Smook
Vice President, Compliance & Operations
BC Energy Regulator