

Review Decision R-2025-01

In the matter of a request for review under section 70 of the *Energy Resource Activities Act* of General Order 2023-0129-02 issued to Harvest Operations Corp.

Decision Date: August 27, 2025

Introduction

- [1] Harvest Operations Corp. (“**Harvest**”) has requested a review of General Order 2023-0129-02 issued to it on May 30, 2025 (the “**Order**”). The Order was issued pursuant to section 49(1)(e)(ii) of the *Energy Resource Activities Act* (“**ERAA**”).
- [2] The Order required Harvest to, among other things, remove certain materials from its B-064-H/095-I-9 location (the “**Site**”).
- [3] Harvest contends that it is permitted to dispose of the material at the Site and that allowing it to continue to use the Site to store the material is appropriate.
- [4] The Commissioner of the BCER has designated me as the review official for the purpose of reviewing the Order.

Background

- [5] The Order required Harvest to:
 - a. Cease storing any contaminated environmental media having substances that exceed industrial land use concentrations under the Contaminated Sites Regulation (CSR) at B-064-H/095-I-9 (the Site), also known as “Kebel’s Keep”, and remove all such contaminated environmental media to a waste management facility as defined in section 1 of the Environmental Management Act (EMA) by June 30, 2025.
 - b. Provide a report to the British Columbia Energy Regulator (BCER), detailing completion of Item 1 including volumes removed, location removed to and photographs of the Site once all contaminated environmental media has been removed, by e-mail to C&E@bc-er.ca by July 4, 2025.
 - c. Complete a detailed site investigation overseen by a qualified professional as defined in the CSR, as described in section 59 (1) & (2) of the CSR, of the Site by August 15, 2025.
 - d. Provide a report, prepared by a qualified professional as defined in the CSR, as described in section 59 (3) of the CSR, of the detailed site investigation completed under Item 3 by e-mail to C&E@bc-er.ca by September 15, 2025.

- [6] The Order was issued pursuant to section 49(1)(e)(ii) 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
- (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.

- [7] On June 5, 2025, Harvest requested a review of the Order under section 70 of ERAA.
- [8] Section 71(1)(a) of the ERAA gives me the power to confirm, vary or rescind the Order.
- [9] On June 24, 2025, I sent a letter to the BCER and Harvest, acknowledging the review request, and asking questions of both parties.
- [10] Requested information was submitted by both parties prior to the July 15th deadline. In its submission, Harvest requested the opportunity to review and respond to the BCER's submissions. This request was granted, and Harvest's reply submissions were received on July 31st (the "**Reply Submissions**").
- [11] In conducting this review, I rely on the Order, applicable legislation and regulations and the submissions from the parties.

Issue

- [12] The issue before me is whether the Order should be confirmed, varied or rescinded.

Analysis

- [13] At paragraph vii of the reasons in the Order, the decision maker concluded, "...this order is necessary to protect the environment". Protection of the environment is a ground on which a decision maker can issue an order pursuant to section 49(1)(e). I will focus my analysis on whether the decision maker's conclusion that the issuance of the Order was necessary to protect the environment was appropriate in the circumstances.
- [14] The 'contaminated environmental media' described in the Order is saturated organic soil that was excavated from the site of a pipeline spill after a separate order (2023-0129-01) was issued to Harvest to remediate the spill site.
- [15] I am satisfied that there are elevated levels of sodium and chlorides in the subject soil.
- [16] Section 41(1) of the Contaminated Sites Regulation ("**CSR**") expands the definition of "waste" found in the *Environmental Management Act* ("**EMA**") to include:

- 41** (1) For the purposes of the definition of "waste" in section 1 (1) of the Act, a soil is prescribed as waste in relation to a receiving site if
 - (a)the concentration of any substance in the soil is greater than
 - (i)the generic numerical soil standard applicable to the receiving site, or
 - (ii)the lowest value of the matrix numerical soil standards applicable to the receiving site, or
 - (b)the concentration of any substance in vapour emissions from the soil is greater than the generic numerical vapour standard applicable to the receiving site.

- [17] The generic numerical soil standards are set out in Schedule 3.1 of the CSR. Schedule 3.1 concentration limits are based on the land usage. Following Harvest's reply submissions dated July 31, 2025, there is agreement between the BCER and Harvest that the industrial land use standards under Schedule 3.1 are applicable.
- [18] Matrices 8 and 32 of Schedule 3.1 identify that the values for the protection of soil invertebrates and plants for Industrial land use are 2500mg/kg for chloride ion and 1000mg/kg for sodium ion.
- [19] Harvest's submission of June 5th identifies chloride ion and sodium ion levels in the subject soil at 3240mg/l and 1410mg/l, respectively.
- [20] The BCER's submission of July 15th asserts that since 1L of water weighs roughly 1 kg, these contaminants are present in the subject soil at 3240 mg/kg and 1410mg/kg, above the identified industrial land use standard for the Site. Harvest does not take issue with the conversions presented by the BCER in its Reply Submissions.
- [21] I accept that the concentrations of chloride and sodium exceed the industrial land use standards for the protection of soil invertebrates and plants set out in Schedule 3.1.
- [22] Protocol 28-2016 Standards Derivation Methods provides that soils exceeding industrial land use standard are expected to have a measurable effect on approximately 50% of soil invertebrates and plants.
- [23] Exceedance of these scientifically derived standards demonstrates a risk to the environment that is not theoretical or remote. I am satisfied that an order to protect the environment from this risk is appropriate.
- [24] Harvest takes the position that the license of occupation that it holds for the Site enables it to store the material. Confirmation that Harvest holds all necessary permissions to dispose of the material at the Site would be a reasonable basis on which to vary or rescind the Order.
- [25] There is no disagreement between the parties that Harvest holds a licence of occupation under the *Land Act* to operate a "Land Farm."
- [26] In its submissions, the BCER refers to Protocol 15 and the definition of "land farming" which involves reducing concentrations of hydrocarbon constituents in soil through biodegradation. The BCER submits that the material at issue here is not appropriate for land farming because it contains sodium and chloride which are not hydrocarbon constituents. In its Reply Submissions, Harvest acknowledges that the activities it was undertaking at the Site do "not strictly conform to the landfarming definition."
- [27] In addition, since the soil exceeds the industrial land use standard for the Site, it constitutes "waste" under the CSR and EMA. Section 6 of EMA prohibits the discharge of waste into the environment unless it is done in accordance with the legislation.

- [28] Harvest argues that it did not “dispose” of the materials at the Site but rather the material is merely being stored on a fully lined and contained pad.
- [29] I accept that Harvest intends to recover the materials at a later date. However, the Site is not a licensed waste management facility and Harvest does not hold an EMA permit or approval to discharge or store the waste at the Site. Holding tenure under the *Land Act* to use Crown land does not entitle Harvest to disregard other requirements that apply to its usage of the land. Disposal or storage of waste is a highly regulated activity because of the potential risk to the environment it poses.
- [30] I am satisfied that Harvest does not have appropriate authorization under EMA to dispose of or store the material at the Site.
- [31] While I accept that the material has been placed upon a liner at the site, the Regulator has not had the opportunity to assess the adequacy of environmental risk mitigation (liners or any other mitigations) measures at the site. Moreover, photo evidence shows tears in the liner that is intended to isolate contamination from the surrounding environment. Thus, I am satisfied that there is a risk to the environment posed by the storage of the materials at the site.

Decision

- [32] As discussed above, disposal or storage of the material at the Site is a risk to the environment. Harvest has not demonstrated that it holds permits that would allow it to store the material at the Site. I am satisfied that it was reasonable for the decision maker to issue the Order for the protection of the environment.
- [33] For the above reasons, the Order is confirmed.

A handwritten signature in black ink, appearing to read 'Patrick Smook', with a stylized flourish at the end.

Patrick Smook
Vice President, Compliance & Operations
BC Energy Regulator