

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The BC OIL and GAS COMMISSION
Case File 2021-0024

BETWEEN

The BC Oil and Gas Commission

AND

Alcan Fluid Disposal Ltd. and Ron Baker, Director Alcan Fluid Disposal Ltd.

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Andy Johnson

Representing the BC Oil and Gas
Commission

R.A. Workman, Manager, Enforcement

Representing Alcan Fluid Disposal Ltd.

Ron Baker, President and Director

Decision Date

October 6, 2021

Introduction:

1. On March 15, 2021, the BC Oil and Gas Commission (Commission) issued General Order 2021-024-01 (the Order) to Alcan Fluid Disposal Inc. (Alcan) under section 49(1)(d) of the *Oil and Gas Activities Act* (OGAA). The Order required Alcan to conduct a tabletop or functional exercise and to submit updated emergency response plans (ERP), including the core ERP and the supplemental ERP for the Kyklo and Evie fields.
2. A Contravention Report (the Report) was sent to me on June 21, 2021, alleging that Alcan and Mr. Ron Baker (Mr. Baker) as director contravened section 82 of the *Oil and Gas Activities Act* (OGAA).
3. On August 18, 2021, the Commission sent Alcan and Mr. Baker a letter and the Report informing them that the Commission was considering making a finding that they contravened section 82 of the OGAA. The letter informed Alcan and Mr. Baker of their opportunity to be heard in written form and advised that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA.
4. Mr. Baker provided a response in a letter dated September 10, 2021 (the Response).
5. The Commissioner of the Oil and Gas Commission has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether Alcan and/or Mr. Baker contravened section 82 of the OGAA, whether to impose an administrative penalty under section 63 of the OGAA; and the amount of the penalty, if any. I have reviewed the Report and the Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 82 of the OGAA states that a person to whom an order under this Act applies must comply with the order.
7. Maximum penalties for specific violations are set by regulation. Section 2(1) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 82 of the OGAA in relation to an order issued under section 49 of the OGAA is liable to an administrative penalty not exceeding \$500,000.
8. Section 62(1) of the OGAA states that, after providing an opportunity to be heard to a person who is alleged to have contravened a provision of the Act, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
9. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
10. Section 62(5) of the OGAA states, in part, that the Commission may not find that a person has contravened a provision of the OGAA or the regulations if the person demonstrates to

the satisfaction of the Commission that they exercised due diligence to prevent the contravention or if the person's actions relevant to the provision were the result of an officially induced error.

11. Section 63(1) states that, if the Commission finds that a person contravened a provision of the OGAA or its regulations, the Commission may impose an administrative penalty. Section 63(2) of the OGAA sets out the factors that must be considered when determining whether to impose an administrative penalty under section 63(1) and the amount of the penalty. These include:
 - (a) previous contraventions by, administrative penalties imposed on, or orders issued to the person;
 - (b) the gravity and magnitude of the contravention;
 - (c) the extent of 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; and
 - (h) other prescribed matters.

Background

12. Alcan is an incorporated company registered to operate in British Columbia with two directors, Ron and Karen Baker. Alcan is the permit holder for two wells, one in the Kyklo field and another in the Evie field. Both wells are currently inactive.
13. On November 3, 2020, the Commission provided Alcan with a written reminder of a permit holder's obligation to conduct exercises in accordance with section 4 of the Emergency Management Regulation. The correspondence noted that Alcan was 30 or more days overdue for the exercise for the wells in the Kyklo and Evie Fields. The correspondence was addressed to the attention of Mr. Baker.
14. On December 11, 2020, Mr. Baker advised that the exercise was scheduled for January 29, 2021. Mr. Baker advised on January 25, 2021, that Alcan had cancelled their exercise.
15. On March 16, 2021, the Commission issued General Order 2021-0024-01 requiring Alcan complete a tabletop or functional exercise for the Kyklo and Evie fields exercise on or before May 31, 2021. The Order also required Alcan submit an updated ERP on or before April 30, 2021.
16. Alcan did not submit an updated ERP or hold an exercise.
17. In its Response, Mr. Baker states on behalf of Alcan, that Alcan will not be submitting an ERP or holding an exercise and that MNP has been appointed as Receivers for the company.

Issues to be Decided

18. The issues which I will decide are:

Section 82 of the OGAA:

- Did Alcan fail to comply with an order issued under section 49 of the OGAA?
- Did Alcan exercise due diligence in its efforts to comply with the Order?
- Was any noncompliance due to an officially induced error?
- Did Alcan contravene section 82 of the OGAA?
- If Alcan contravened section 82 of the OGAA, did Mr. Baker authorize, permit or acquiesce in the contravention?
- Did Mr. Baker exercise due diligence to comply with the order?
- Was any noncompliance due to an officially induced error?
- Did Mr. Baker contravene section 82 of the OGAA?

Section 63 of the OGAA:

- If Alcan and/or Mr. Baker are found to have contravened section 82 of the OGAA what if any, administrative penalty to impose?

Did Alcan fail to comply with an order issued under section 49 of the OGAA?

19. The Report alleges that Alcan failed to comply with the Order requirements.
20. The Response from Mr. Baker on behalf of Alcan acknowledges that Alcan did not hold a functional or tabletop exercise or submit an updated ERP. The Response goes on to state that Mr. Baker “is not capable of re-doing the ERP exercises nor of holding any form of exercise.”
21. Therefore, I find Alcan failed to comply with an order issued under section 49 of the OGAA and thereby did not comply with section 82 of the OGAA.

Did Alcan exercise due diligence in its efforts to comply with the Order?

22. Pursuant to section 62(5) of the OGAA, I may not find that Alcan contravened section 82 of the OGAA if Alcan demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Alcan has demonstrated that it took all reasonable steps to prevent the contravention. Alcan is not required to show that it took all possible or imaginable steps to avoid the contravention. The standard is not one of perfection, but rather of a reasonable person in similar circumstances.

23. Alcan has not raised the defense of due diligence. Regardless, I must still consider whether Alcan demonstrated due diligence by its actions.
24. The Response states that Alcan did not hold an exercise or submit an updated ERP, nor does it plan to. Alcan has failed to satisfy me that it took all reasonable steps to prevent the contravention.
25. Therefore, I find insufficient evidence has been presented in the Report or the Response to support a due diligence defense.

Was any noncompliance due to an officially induced error?

26. I have no evidence before me of an officially induced error.

Did Alcan contravene section 82 of the OGAA?

27. I find that Alcan has failed to comply with an order issued under section 49(1)(d) and thereby section 82 of the OGAA.

If Alcan contravened section 82 of the OGAA, did Mr. Baker authorize, permit or acquiesced in the contravention?

28. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (a), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
29. I must decide if Mr. Baker authorized, permitted or acquiesced in the contravention. For the purpose of this decision, I consider “authorized” to be the appropriate term. Authorized, by definition, means to give official permission for or approval.
30. Mr. Baker is listed as a director of Alcan and has been the main point of contact in discussions regarding the obligation to conduct a tabletop or functional exercise and to submit an updated ERP. Mr. Baker had knowledge of the Order and the requirements in it. He also acknowledges he is familiar with regulatory requirements in his Response but declined to perform the required obligations on behalf of Alcan. Therefore, I find evidence of that Mr. Baker authorized the contravention.

Did Mr. Baker exercise due diligence to comply with the Order?

31. As discussed above, Alcan has failed to satisfy me it took all reasonable steps to prevent the contravention. For the same reasons, Mr. Baker has failed to satisfy me that he took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

32. I have no evidence before me of officially induced error.

Did Mr. Baker contravene section 82 of the OGAA?

33. I find that Mr. Baker has failed to comply with an order issued under section 49(1)(d) and thereby section 82 of the OGAA.

If Alcan and/or Mr. Baker are found to have contravened section 82 of the OGAA what if any, administrative penalty is to be imposed?

34. Section 63 of the OGAA sets out factors that the Commission must take into consideration when determining whether or not to impose an administrative penalty. In the following paragraphs, I consider the applicability of those factors to this contravention.
35. There have been no previous contraventions or administrative penalties issued to Alcan or Mr. Baker.
36. The gravity and magnitude are deemed low based on the inactive status of the wells. There has been no harm to others or the environment resulting from the contravention.
37. The contravention was not repeated but is continuous and is ongoing.
38. The contravention was deliberate as evidenced by Mr. Baker's authorization as director.
39. There was minor economic benefit by not spending funds to perform the required exercise and to update the EPR.

Conclusion

40. I have found Alcan and Mr. Baker each contravened section 82 of the OGAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$2,000 on Alcan and an administrative penalty of \$2,000 on Mr. Baker.



Andy Johnson
Vice President, Operations
BC Oil and Gas Commission

Date: October 6, 2021