

IN THE MATTER OF A CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT* [SBC 2008 c. 36]
before the OIL AND GAS COMMISSION
Case File 2019-04

BETWEEN

The Oil and Gas Commission

AND

Coastal GasLink Pipeline Ltd.

ADMINISTRATIVE FINDING

Before

Andy Johnson
Vice President, Operations

Representing the Oil and Gas Commission

Michaela Rhees
Compliance & Enforcement Officer

Representing Coastal GasLink Pipeline Ltd.

Matthew Ducharme
Senior Legal Counsel

Decision Date:

October 22, 2021

Introduction

1. On July 31, 2019, the BC Oil and Gas Commission (Commission) received a self-disclosure from TC Energy stating a 50m wide by 600m length portion of a Right of Way permitted to Coastal GasLink Pipeline Ltd. was cleared without the completion of an Archeological Impact Assessment (AIA). TC Energy is permitted in British Columbia to operate as Coastal GasLink Ltd. and I will refer to it as CGL throughout this decision.
2. A contravention report (Report) was sent to me on October 19, 2020, alleging that CGL failed to comply with a condition of a permit and therefore contravened section 21(b)(ii) of the Oil and Gas Activities Act (OGAA).
3. On December 2, 2020, the Commission sent CGL a letter and copy of the Report. The letter informed CGL that the Commission was considering making a finding that CGL contravened section 21(b)(ii) of the OGAA.
4. The letter informed CGL of its opportunity to be heard in oral form and that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA. CGL was also requested to provide the names of any persons providing evidence on behalf of CGL and invited to provide any written submissions and supporting documents in advance of the oral opportunity to be heard.
5. On March 26, 2021, CGL and the Commission provided me with an Agreed Statement of Facts (ASOF) in respect of the alleged contravention.
6. On April 7, 2021, CGL provided a written submission and confirmed that CGL was not submitting any additional exhibits beyond those already submitted as part of the ASOF.
7. An Oral Hearing (Hearing) was conducted on April 21, 2021. In addition to their respective representatives, CGL's Team Lead, Regulatory, and the Commission's Manager, Heritage Conservation Program also attended the hearing.
8. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether CGL contravened section 21(b)(ii) 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, the Response and the information provided in the Hearing. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

9. Section 21(b)(ii) of the OGAA states:

21 Subject to section 23, a person must not carry out an oil and gas activity unless

(b) the person carries out the oil and gas activity in compliance with

(ii) a permit issued to the person, if any, and
10. Condition 69 of Coastal Gas Links Pipeline Permit (Section 8) issued November 5, 2018, states:

“An Archaeological Impact Assessment (AIA) must be completed for all pipeline right of way and work space prior to the commencement of construction activities”

11. Maximum penalties for specific violations are set by regulation. Section 2(1) of the Administrative Penalties Regulation provides that a person who contravenes section 21 of the OGAA is liable to an administrative penalty not exceeding \$500,000.
12. 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 OGAA, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
13. Section 62(5) of the OGAA states 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 the person 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.
14. 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:
 - previous contraventions by, administrative penalties imposed on, or orders issued to the person;
 - the gravity and magnitude of the contravention;
 - the extent of harm to others resulting from the contravention;
 - whether the contravention was repeated or continuous;
 - whether the contravention was deliberate;
 - any economic benefit derived by the person from the contravention;
 - the person’s efforts to prevent and correct the contravention; and
 - other prescribed matters.

Background

15. On November 5, 2018, CGL was issued a permit for Section 8 of the CGL Pipeline (Pipeline permit).
16. Condition 69 of the Pipeline permit states:

69. An Archaeological Impact Assessment (AIA) must be completed for all pipeline right of way and work space areas prior to commencement of construction activities.

17. On January 2, 2019, a Notice of Construction Start (NCS) was submitted to the Commission to begin construction on segment 1 and segment 2 of section 8 of the CGL pipeline project 23852 (Project).
18. July 31, 2019, the Commission was notified, via self-disclosure from TC Energy, of a 50m wide by 600m length portion of a Right of Way permitted to Coastal GasLink Pipeline Ltd. was cleared without the completion of an Archeological Impact Assessment. The self-disclosure identified that the portion was located between

s18

Issues

19. The issues I will decide are:

Section 21(b)(ii) of OGAA

- Did CGL fail to comply with Pipeline permit condition #69 to ensure an Archeological Impact Assessment was completed for all pipeline right of way and work space areas prior to construction activities?
- Did CGL exercise due diligence to adhere to section 21(b)(ii) of OGAA?
- Was any noncompliance due to an officially induced error?
- Did CGL contravene section 21(b)(ii) of the OGAA?
- If CGL is found to have contravened section 21(b)(ii) of the OGAA what if any, administrative penalty to impose?

Did CGL fail to comply with Pipeline permit condition #69 to ensure an Archeological Impact Assessment was completed for all pipeline right of way and work space areas prior to construction activities?

20. The ASOF submitted by CGL and the Commission acknowledges that CGL engaged a third party, Roy Northern, to conduct an AIA. An AIA report was submitted to the BC Archaeology Branch on December 17th, 2018. This version of the AIA included the assessment for the area noted as s18 This includes the portion located between identified in CGL's subsequent self-disclosure.
21. On January 2, 2019, CGL submitted a NCS to the Commission to begin construction for two segments of the pipeline right of way, including areas within the portion located between s18 In April 2019, CGL began construction on these segments.
22. Following a review by the BC Archaeology Branch, Roy Northern resubmitted the AIA to the BC Archaeology Branch on March 11, 2019, and again on March 18, 2019. The ASOF acknowledges that these subsequent versions revise the western edge of the

area covered by the AIA to exclude an area of approximately 600 metres in length and 50 meters in width located between s18

23. Despite these subsequent revisions, the initial AIA completed by Roy Northern on behalf of CGL refers to an assessment that includes the area in question. I was not presented with any evidence that would suggest the initial AIA report included the area in question in error or was not assessed by Roy Northern on behalf of CGL. Therefore, I am not satisfied that there is sufficient evidence before me to establish that CGL failed to comply with Pipeline permit condition #69.

Did CGL exercise due diligence to adhere to section 21(b)(ii)?

24. Given my conclusion that CGL did not fail to comply with the Pipeline permit, I do not need to determine whether CGL demonstrated due diligence.

Was any noncompliance due to an officially induced error?

25. Similarly, I do not need to determine whether any noncompliance was due to an officially induced error.

Did CGL contravene section 21(b)(ii) of the OGAA?

26. I find that there is insufficient evidence to suggest that CGL did not meet the required permit condition.

Conclusion

27. In consideration of the foregoing, I have found that CGL has not contravened section 21(b)(ii) of the OGAA.



Andy Johnson
Vice President, Operations
Oil and Gas Commission

Dated: October 22, 2021