

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 2018-010DC

BETWEEN

The Oil and Gas Commission

AND

Ovintiv Canada ULC

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ADMINISTRATIVE FINDING

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Before

Andrew Johnson  
Vice President, Operations

Representing the Oil and Gas Commission

Ken McLean  
Compliance & Enforcement Officer

Representing Ovintiv Canada ULC

Daron Naffin  
Bennett Jones LLP

Decision Date:

April 16, 2021

## Introduction

1. On May 3, 2018, the BC Oil and Gas Commission (Commission) received a complaint from a landowner regarding erosion for an Encana Corporation. Encana Corporation now operates in British Columbia as Oventiv Canada ULC and I will refer to Encana Corporation/Oventiv Canada ULC as Oventiv throughout this decision.
2. The contravention report (Report) was sent to me on January 5, 2021, alleging that Oventiv contravened section 3(1) of the Pipeline Regulation (PR).
3. On January 20, 2021, the Commission sent Oventiv a letter and copy of the Report. The letter informed Oventiv that the Commission was considering making a finding that Oventiv contravened section 3(1) of the PR.
4. The letter informed Oventiv of its opportunity to be heard in written form and that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the *Oil and Gas Activities Act* (OGAA).
5. Oventiv provided a response in a letter dated February 19, 2021 (Response).
6. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether Oventiv contravened section 3(1) of the PR; 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

7. Section 3(1) of the PR states:
  - (1) Subject to subsection (2), a pipeline permit holder must not design, construct, operate or maintain any of the following except in accordance with CSA Z662:
    - (a) the pipeline that is the subject of the permit;
8. Section 1(1) of the PR states that “CSA Z662” means the standard published by the Canadian Standards Association as CSA Z662, Oil and Gas Pipeline Systems, as amended from time to time.
9. Section 6.2.9 of CSA states that, “Disturbed areas shall be restored to a stabilized condition and maintained to control erosion. Consideration shall be given to the state of the environment prior to its disturbance and to future access requirements.”
10. Maximum penalties for specific violations are set by regulation. Section 2(1) of the Administrative Penalties Regulation provides that a person who contravenes section 3(1) of the PR is liable to an administrative penalty not exceeding \$500,000.
11. 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.

12. 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.
13. 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**

14. Ovintiv was issued a Pipeline Permit on August 12, 2016, with the project number 23902. Pipeline construction began in March 2017 and was completed by September 25, 2017.
15. The subject pipeline is located at W1/2 4-80-17 W6M, which is private land owned by s.22 (the Landowners).
16. Ovintiv commissioned EDI Environmental Dynamics Inc. to create a Schedule "A" Assessment dated January 2016.
17. Ovintiv completed the final construction clean-up at the end of September 2017.
18. On May 3, 2018, the Commission received a complaint from the Landowners that erosion was having an impact on their land.
19. On May 3, 2018, Commission staff inspected the pipeline right of way (ROW) and noted erosion occurring on a piece of land between a TransCanada Pipeline ROW and the Ovintiv pipeline ROW (the Off-ROW Lands). The enforcement officer further noted that both the Ovintiv pipeline ROW and the Off-ROW Lands were without vegetation or sediment controls in place.

20. On May 15, 2018, a field visit was conducted by two Commission specialists – Dr. Suzan Lapp (Hydrologist) and Taher Morsi (Environmental Management). Dr. Lapp's conclusion was that it was reasonable to believe that the Ovintiv pipeline ROW had an impact on erosion that took place downstream on the Off-ROW Lands.
21. The Landowners advised that they did not seed or harvest the Off-ROW Lands due to the adjacent pipeline construction and the extra work that would be required to farm this piece of land.
22. On September 25, 2018, a Commission enforcement officer and Dr. Lapp visited the site and noted "erosion originating from Canola Field moving across Ovintiv R/W and causing erosion of s.22 lands between Ovintiv and Transcanada pipeline. Viewed three sites where erosion has caused deep and wide cuts thru through the soil."
23. On September 24, 2018, Ovintiv submitted a plan to reseed the Ovintiv ROW in 2019 and to conduct the reclamation work.
24. On May 26, 2020, Dr. Lapp provided her final report to the Commission enforcement officer on her findings with respect to the erosion. The report noted that the spring of 2018 had above average snowfall and a rapid snowmelt. In summary the report concluded that based on field visits, drone maps, reports, and photos the erosion experienced on the Off-ROW Lands was due to the absence of erosion control measures and improper compaction along the Ovintiv ROW.

## Issues

25. The issues I will decide are:
  - Did Ovintiv design, construct, operate and maintain its pipeline in accordance with section 6.2.9 of CSA Z662?
  - Did Ovintiv exercise due diligence to adhere to section 6.2.9 of CSA Z662?
  - Was any noncompliance due to an officially induced error?
  - Did Ovintiv contravene section 3(1) of the PR?
  - If Ovintiv is found to have contravened section 3(1) of the PR what if any, administrative penalty to impose?

### Did Ovintiv design, construct, operate and maintain its pipeline in accordance with section 6.2.9 of CSA Z662?

26. Section 6.2.9 of CSA Z662 requires that permit holders restore disturbed areas to a stabilized condition and maintain those areas to control erosion. The Report alleges that Ovintiv failed to maintain its disturbed areas to control erosion.
27. There is no dispute in the evidence submitted that erosion occurred in the Off-ROW Lands. Further, although there is some dispute about what other causes may have contributed to the erosion, I find that there is sufficient evidence that Ovintiv's actions or inactions in maintaining its ROW resulted in a failure to control erosion in the Off-ROW

Lands. I do not need to determine that Orintiv was the sole cause of the erosion to find that they did not comply with section 6.2.9 of CSA and consequently 3(1) of the PR.

28. In paragraph 15 of its Response, Orintiv stated that in fall of 2017, after construction was complete, it "...re-established the natural contours of the ROW, and reclaimed the ROW to tie-in surface soils with the adjacent control soils." Further, "Orintiv determined in the Fall of 2017 that no additional erosion or sedimentation controls were necessary to prevent erosion on the ROW".
29. Dr. Lapp's report noted that the land on the Orintiv ROW was more compact than the surrounding farmland which allowed for surface water to more easily cross that area. She concluded that the erosion was "due to the absence of erosion control measures and improper compaction along the Encana RoW."
30. Encana acknowledged in a September 20, 2018, email that "the lack of vegetative cover on the surface of the unseeded Right-of-way (ROW) may have contributed to the ease in which surface water crossed the recently reclaimed RoW and deposited onto the landowners unseeded area (Non-ROW) between the two pipeline ROW's".
31. I find that the lack of vegetative cover on Orintiv's ROW, the compaction of the soils on Orintiv's ROW and the absence of any other erosion or sedimentation controls did contribute to the erosion on the Off-ROW Lands. I found Dr. Lapp's opinion persuasive as her conclusions were supported by information provided by Orintiv, including its Schedule "A" Assessment, which noted the need for standard erosion control measures to be employed, and the September 20, 2018, email.
32. Orintiv submits in the Response that section 3(1) of the PR must be considered within the "specific statutory and regulatory framework governing surface land restoration and reclamation". It is Orintiv's responsibility as a permit holder to comply with all legislation and regulations that are applicable to it, including section 3(1) of the PR, and, by extension, CSA Z662. The requirements of Schedule "A" and the other legislative provisions are in addition to the requirements of section 3(1) of the PR and not alternatives.
33. I note that the Response also argues that section 6.2.9 only relates to controlling erosion on disturbed areas (i.e. the ROW). This is not my interpretation of the section. Although the requirements for restoring and maintaining relate to the "disturbed area", erosion relating to Orintiv's activities must be controlled regardless of whether it is on or off of "disturbed areas" (ROW).
34. The Response also submits that section 6.2.9 of CSA Z662 does not impose any timelines for compliance and therefore I should consider other requirements relating to restoration and reclamation. In my view, the wording of section 6.2.9 means that erosion must always be controlled – from the start of construction right through to operation and beyond.

Did Orintiv exercise due diligence to adhere to section 6.2.9 of CSA Z662?

35. Pursuant to section 62(5) of the OGAA, I may not find that Orintiv contravened section 3(1) of the PR if Orintiv demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Orintiv has demonstrated that it took all reasonable steps to prevent the contravention. Orintiv 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.

36. Ovintiv's Response outlines that its "typical approach to fall reclamation is to identify areas where erosion during spring snowmelt may be a concern, and install appropriate erosion control measures necessary to control expected snowmelt and overland flow." Ovintiv determined in the Fall of 2017 that no additional erosion or sediment control were required to prevent erosion. This is in contrast to Dr. Lapp's opinion that "erosion control measures such as straw bales or silt fences should have been installed within natural drainage".
37. I note that the Schedule "A" Assessment also contemplated that erosion control measures would be necessary. Page 8 states that, "Standard erosion control measures should be employed during construction. The exact location and extent of these erosion and surface water control measures will have to be determined during the construction of the project. These erosion control measures should also be closely monitored until reclamation has been achieved."
38. In its response Ovintiv suggests that the extreme weather in the spring of 2018 might have exacerbated the erosion should they have installed straw bales or silt fences but agrees that in normal conditions these measures generally limit erosion by slowing down water.
39. Regardless of the unexpected rain in spring of 2018, in my opinion it would have been reasonable to take some additional erosion control measures rather than simply relying on Ovintiv's standard practice of re-establishing vegetative cover as soon as possible after construction. Ovintiv acknowledges that in normal conditions, measures such as straw bales or silt fences generally limit erosion. It is reasonable to me therefore that some of these measures would have been used.
40. Another action Ovintiv could have taken would be to visit the recently constructed areas during break-up to verify that there were no erosion concerns and that additional intervention was not necessary, especially during a time of extreme weather. I find no evidence to suggest that any proactive follow-up had occurred until the Commission made Ovintiv aware of the landowners' concern. Again, the Schedule "A" Assessment provided that close monitoring of the erosion control measures would be necessary until reclamation has been achieved.
41. Ovintiv has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

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

Did Ovintiv contravene section 3(1) of the PR?

43. I find that Ovintiv has failed to comply with section 3(1) of the PR by failing to comply to section 6.2.9 of CSA Z662.

If Ovintiv is found to have contravened section 3(1) of the PR what if any, administrative penalty to impose?

44. 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 these contraventions.
45. There have been no prior contraventions by Ovintiv.
46. The gravity and magnitude of the contravention is considered moderate due to the impact to the Off-ROW Lands.
47. There was no injury or harm to others as a result of the contravention.
48. The contravention was not repeated but was continuous until the erosion was addressed.
49. There is no evidence to suggest that the contravention was deliberate.
50. There is insufficient evidence to indicate that Ovintiv gained any significant economic benefit from the contravention.

**Conclusion**

51. In consideration of the foregoing, I have found that Ovintiv contravened section 3(1) of the PR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$20,000 for contravention of section 3(1) of the PR.



Andy Johnson  
Vice President, Operations  
Oil and Gas Commission

Dated: April 16, 2021