

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 2018-089FSJ

BETWEEN

The Oil and Gas Commission

AND

Plateau Pipe Line Ltd.

ADMINISTRATIVE FINDING

Before

Andy Johnson
Vice President, Operations

Representing the Oil and Gas Commission

Ken McLean
Compliance & Enforcement Officer

Representing Plateau Pipe Line Ltd.

John Stevenson
Senior Manager, Projects and Lands

Decision Date:

April 29, 2021

Introduction

1. On June 6, 2018, and August 25, 2018, Pembina Pipeline Corporation reported level 1 incidents at two stream crossings on their Plateau Pipe Line Ltd. (**Plateau**) pipeline construction project.
2. On July 24, 2018, the BC Oil and Gas Commission (**Commission**) discovered an incident at another stream crossing on the same pipeline.
3. A contravention report (**Report**) was sent to me on November 12, 2020, alleging that Plateau contravened section 12 of the *Environmental Protection and Management Regulation* (**EPMR**) and section 3(1) of the *Pipeline Regulation* (**PR**).
4. On December 15, 2020, the Commission sent Plateau a letter and copy of the Report. The letter informed Plateau that the Commission was considering making a finding that Plateau contravened section 12 of the EPMR and section 3(1) of the PR.
5. The letter informed Plateau 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**).
6. Plateau provided a response in a letter dated February 22, 2021 (**Response**).
7. Pursuant to my delegated authority under section 62 and 63 of the OGAA, I will be making a determination regarding whether Plateau contravened section 12 of the EPMR and/or 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

8. Section 12 of the EPMR states that a person who carries out an oil and gas activity on an operating area must ensure that the oil and gas activity does not result in any deleterious materials being deposited into a stream, wetland or lake.
9. Under section 1(2)(e) of the OGAA, “oil and gas activity” is defined as including the construction or operation of a pipeline.
10. 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;
11. 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 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000. Section 6(1) of the APR provides that a person who contravenes section 3(1) of the PR 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 Act, 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 Act or the regulations if the person demonstrates to the satisfaction of the Commission that the person exercised due diligence to prevent the contravention.
14. Section 63(1) states that, if the Commission finds that a person contravened a provision of the Act 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

15. Plateau is a subsidiary of Pembina Pipeline Corporation (**Pembina**).
16. In 2017 Plateau completed construction of a 147km long pipeline expansion (**Pipeline**) from an area northwest of Wonowon to Taylor called the Northeast BC Expansion Project (**Pipeline Project**).
17. The Commission authorized the construction and operation of the Pipeline Project by way of six permits for each of six sections. Among those, the Commission issued a permit for section 2 (**Section 2**) under application determination number 100084422 and a permit for section 3 (**Section 3**) under application determination number 100084421, each on December 21, 2016. Two of the alleged contraventions occurred on Section 2 and one alleged contravention occurred on Section 3.
18. On June 6, 2018, Pembina reported a level 1 incident, involving their Pipeline construction and stream crossing WC61 located at Section 3 of the Pipeline Project. Pembina's 'Section 3 Watercourse Crossings' table lists WC61 as an S4 Class stream. This incident was described as a slope failure resulting in sedimentation into an

unnamed stream at KP 54 (**Mile 93 Event**). The Mile 93 Event was given BCOGC Incident number 47483069.

19. On June 7, 2018, Commission staff inspected the area where the Mile 93 Event occurred and noted a large slide had occurred and encroached into a stream.
20. From June 6 to 18, 2018, Pembina representatives monitored the slope failure and developed a corrective action plan. During this time, excessively wet conditions prevented access to the slope failure. The slope failure also continued to migrate downslope.
21. On June 18, 2018, Pembina constructed access to the south side of WC61, with a free span bridge and temporary erosion and sedimentation control (**ESC**) measures. On June 21, 2018, a dipnet fish salvage was completed by the Pembina environment team, which observed no fish within the isolation dam.
22. According to Pembina's submitted Post Incident Report for the Mile 93 Event dated June 29, 2018, the temporary ESC measures were functioning and in good condition and no sedimentation issues were identified.
23. On July 24, 2018, Commission staff inspected the area and observed the installed measures at the site of the Mile 93 Event. At this time Commission staff also inspected another location at Section 2 of the Pipeline Project that had been observed during a previous helicopter inspection by Commission staff. During the July 24, 2018, inspection, it was noted by Commission staff that despite erosion control measures, some erosion had occurred on a slope above an unnamed waterway, later confirmed by Commission staff to be stream WC17 at or near KP 25.5 (**Gundy Event**).
24. On July 31, 2018, the Commission issued General Order 2018- 013 to Plateau requiring it to control water runoff and submit a plan for remediation of stream WC17 following the Gundy Event.
25. On August 3, 2018, Pembina submitted a letter to the Commission outlining temporary remediation measures and on August 10, 2018, Pembina submitted a plan to remediate the S6 stream at WC17. This plan was reviewed and endorsed by a qualified professional.
26. On November 8, 2018, the Commission terminated General Order 2018-013.
27. On August 25, 2018, Pembina reported a level 1 incident regarding a major rain event that caused erosion resulting in sedimentation being deposited into a nearby fish bearing watercourse at KP 20.96 located at Section 2 of the Pipeline Project (**Shoofly Event**). Pembina's 'Gundy and Shoofly stream crossing list' (contained at appendix 24 of the Report) refers to this stream as WC14 and indicates it is classified as a S3 stream.

Issues

28. The issues I will decide are:

Section 12 of the EPMR:

- Did Plateau fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did Plateau exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Was any noncompliance due to an officially induced error?
- Did Plateau contravene section 12 of the EPMR?

Section 3(1) of the PR:

- Did Plateau fail to design, construct, operate or maintain the Pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?
- Did Plateau exercise due diligence to design, construct, operate or maintain the Pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?
- Was any noncompliance due to an officially induced error?
- Did Plateau contravene section 3(1) of the PR?

Section 63 of the OGAA:

- If Plateau is found to have contravened section 12 of the EPMR and/or section 3(1) of the PR what, if any, administrative penalty to impose?

Did Plateau fail to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?

29. The Commission's Environmental and Protection Management Guideline defines "deleterious material" as including materials that could cause harm or damage to the environment or habitat. The BC Fish-stream Crossing Guidebook specifically identifies sediment as a deleterious material.
30. In the Response, Plateau does not appear to dispute that deleterious material, namely sedimentation, was deposited into a stream or waterbody.
31. Further, I find that photographs contained in the Report provide compelling evidence of deposition of deleterious materials into a stream, including WC61.
32. I also note that the details submitted by Plateau regarding the level 1 incident at the Mile 93 site indicate "approximately 2M3 of sediment entered a stream nearby."

33. Based on the information contained in the Report and the Response, I find that Plateau failed to ensure that an oil and gas activity did not cause deleterious material to be deposited into a stream, namely WC61 during the Mile 93 Event.
34. Given my finding regarding the Mile 93 Event, it is not necessary for me to make findings regarding whether Plateau also failed to ensure that oil and gas activity did not cause deleterious material to be deposited into a stream, wetland or lake in relation to the Gundy Event or Shoofly Event.

Did Plateau exercise due diligence to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland or lake?

35. Pursuant to section 62(5) of the OGAA, I may not find that Plateau contravened section 12 of the EPMR if Plateau demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Plateau has demonstrated that it took all reasonable steps to prevent the contravention. Plateau 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. In its Response, Plateau submits that it exercised due diligence, including to prevent the contravention in relation to the Mile 93 Event, by developing and implementing specific policies and procedures specific to controlling erosion and sedimentation which included a comprehensive Environmental Protection Plan (**EPP**) with ESC measures, designs, and specifications.
37. On June 7, 2018, Commission staff visited the Mile 93 site and observed that a large slide had occurred on an unnamed S4 stream. They noted that at the top of the hill, temporary workspace had intercepted surface runoff and diverted it onto the pipeline right of way. They also noted that there was no evidence of water bars other than one before the temporary workspace and at the top of the hill. A reasonable step that Plateau could have taken was to install diversion berms on the slope to manage water.
38. Plateau has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

39. In reviewing both the Response and the Report I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did Plateau contravene section 12 of the EPMR?

40. I find that Plateau has failed to comply with section 12 of the EPMR. I am not satisfied that Plateau exercised due diligence to prevent the contravention. As such, I find that Plateau contravened section 12 of the EPMR.

Did Plateau fail to design, construct, operate or maintain the Pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?

41. Under the PR, "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.

42. CSA Z662, section 6.2.1.1 (Clearing, grading and ground disturbances) provides that disturbed areas shall be maintained in a condition that adequately controls environmental degradation.
43. CSA Z662, section 6.2.9 (Clean-up and restoration) provides, in part, that disturbed areas shall be restored to a stabilized condition and maintained to control erosion.
44. Based on the information contained in the both the Report and the Response I find that Plateau did not restore a disturbed area to a stabilized condition and/or maintain a disturbed area to control erosion as required by CSA Z662, section 6.2.9. Particularly, in my view, Pembina's Environmental Inspection Daily Report dated June 7, 2018 provides clear evidence of the failure to restore a disturbed area, namely at the site of the Gundy Event, to a stabilized condition and/or to maintain a disturbed area to control erosion.
45. I decline to make a finding regarding whether Plateau met section 6.2.1.1 of CSA Z662.

Did Plateau exercise due diligence to design, construct, operate or maintain the Pipeline in accordance with section 6.2.1.1 and/or section 6.2.9 of CSA Z662?

46. In the Response on behalf of Plateau, Pembina outlines the elements of a 'Proper System Developed' as a part of their due diligence defense. According to the Response, this proper system is composed of an overarching Health, Safety, and Environment Policy (**HSE Policy**) and a specific EPP developed for the Pipeline Project to ensure that the commitments in the HSE Policy were attained.
47. The EPP for the Pipeline Project was completed in 2016 prior to construction of the project – this document is meant to cover all environmental aspects of the Pipeline Project including measures to control erosion and manage surface water. Upon review of the Response including attached documents and appendices, I find that there were appropriate policies and procedures to address and control erosion.
48. However, on review of all the evidence including photographs and site inspection commentary of Commission field staff, I am not convinced that reasonable steps were taken to ensure the relevant policies and procedures were implemented effectively on the ground.
49. The Response states that specific to each section of pipeline, "Plateau assessed the natural features along the pipeline and implemented the appropriate ESC measures, in accordance with the design models listed in Appendix "L" of the EPP." I note that the design models listed in Appendix "L" of the EPP include a typical drawing titled 'Diversion Berms and Cross Ditches' with notes, which provide guidance regarding appropriate materials for constructing these berms and suggest that highly erodible material should not be used.
50. Although the Response claims that diversion berms were "appropriately installed", the Report indicates that inspections by Commission staff of the Gundy site in July and August 2018 showed that no installed geotextile or sandbags were used to construct the cross berms. The notes and photographs taken by the Commission Compliance and Enforcement Officer during inspection of the Gundy site indicate that the material selected was highly erodible. This information is not contested nor explained by the Response. A reasonable step that Plateau could have taken was to use less erodible material or sandbags for their diversion berms as specified in the relevant EPP.

51. Based on the above, I am not convinced that Plateau exercised due diligence to prevent the contravention.

Was any noncompliance due to an officially induced error?

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

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

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

If Plateau is found to have contravened section 12 of the EPMR and/or section 3(1) of the PR what, if any, administrative penalty to impose?

54. 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.
55. There have been no prior contraventions by Plateau or administrative penalties imposed on Plateau. Plateau was issued three previous orders.
56. The gravity and magnitude of the contraventions are considered moderate given the extent of the sedimentation and erosion.
57. There was no harm to others as a result of the contraventions.
58. The contraventions were not repeated but were continuous until such times as the relevant pipeline right of way areas in relation to each of the Mile 93 Event and Gundy Events were remediated to stop further erosion and sedimentation from occurring.
59. There is no evidence to suggest that the contraventions were deliberate.
60. I find no evidence to indicate that Plateau gained any significant economic benefit from the contraventions.

Conclusion

61. In consideration of the foregoing, I have found that Plateau contravened sections 12 of the EPMR and 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 \$40,000 for contravention of section 12 of the EPMR and section 3(1) of the PR.



Andy Johnson
Vice President, Operations
Oil and Gas Commission

April 29, 2021
Dated