

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The OIL AND GAS COMMISSION
Case File 2020-1103

BETWEEN

The Oil and Gas Commission

AND

Tervita Corporation

ADMINISTRATIVE FINDING

Before

Vice President, Compliance Operations,
Andy Johnson

Representing the Oil and Gas
Commission

Michaela Rhees, Compliance and
Enforcement Officer

Representing Tervita Corporation

Greg Filipchuk, Vice-President, Operations for
Secure Energy Services Inc.

Decision Date

October 4, 2021

Introduction/Background:

1. On or about October 23, 2020, the BC Oil and Gas Commission (Commission) discovered through its records, that hydraulic fracture stimulation was done on Tervita Corporation (Tervita) well authorization (WA) 30428 at location A08-31-81-17. Condition 2 (l) of Order 14-02-012 Amendment #1, required that no hydraulic fracture stimulation occur without prior Commission approval. On November 6, 2019, the Commission provided its approval to Tervita for a stimulation but made its approval conditional on a hydraulic isolation temperature log being conducted following fracture stimulation and prior to the resumption of disposal operation. Tervita confirmed a hydraulic isolation temperature log was not completed prior to the resumption of disposal operations.
2. On May 5, 2021, a Contravention Report (the Report) was sent to me. The Report alleged that Tervita failed to comply with an order issued under section 75 of the *Oil and Gas Activities Act* (OGAA) thereby contravening section 82 of the OGAA.
3. On August 17, 2021, a letter and the Report were sent to Secure Energy Services Inc. (Secure), on behalf of Tervita. The letter informed Tervita that I was considering making a finding that it had contravened section 82 of the OGAA by failing to comply with an order issued under section 75 of the OGAA. The letter informed Tervita of its 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. Secure provided a response on behalf of Tervita in a letter dated September 7, 2021 (the Response). The Response advised that Tervita and Secure amalgamated subsequent to the alleged contravention. This amalgamation has not yet been approved by the Commission.
5. Pursuant to my delegated authority under sections 62 and 63 of the OGAA, I will be making a determination regarding whether Tervita 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(5) of the *Administrative Penalties Regulation* (APR) states that a person who contravenes an order issued under the Act not referred to in subsection (1) or (3) is liable to an administrative penalty not exceeding \$20,000.
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 OGAA, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
9. 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.

10. 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.

Issues to be Decided

11. The issues which I will decide are:

Section 82 of the OGAA:

- Did Tervita fail to comply with an order issued under section 75 of the OGAA and thereby contravene section 82 of the OGAA?
- Did Tervita exercise due diligence in its efforts to comply with the Order?
- Was any noncompliance the result of officially induced error?
- Did Tervita contravene section 82 of the OGAA?
- If Tervita is found to have contravened section 82 of the OGAA what if any, administrative penalty to impose?

Section 82 of the OGAA:

Did Tervita fail to comply with an order issued under section 75 of the OGAA and thereby contravene section 82 of the OGAA?

12. Tervita acknowledges in the Response that it neglected to perform a hydraulic isolation temperature log prior to resuming disposal operations in accordance with the requirements of the section 75 order. I have reviewed the evidence with respect to the alleged contravention and the information provided in the Response and have concluded that Tervita failed to comply with an order issued under section 75 of the OGAA and thereby did not comply with section 82 of the OGAA.

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

13. Pursuant to section 62(5) of the OGAA, I may not find that Tervita contravened section 82 of the OGAA if Tervita demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Tervita has demonstrated that it took all reasonable steps to prevent the contravention. Tervita 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.

14. Tervita has not raised the defense of due diligence. Regardless, I must still consider whether Tervita demonstrated due diligence by its actions during the incident in question.
15. I find insufficient evidence has been presented in the Report or the Response to support a due diligence defense. I would have expected that procedures, like those identified in the Corrective Action Plan, attached as Appendix 1 to the Response, would have been in place prior to the occurrence of the contravention.
16. Therefore, Tervita has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Was any noncompliance the result of officially induced error?

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

Did Tervita contravene section 82 of the OGAA?

18. I find that Tervita has failed to comply with an order issued under section 75 and thereby section 82 of the OGAA.

If Tervita is found to have contravened section 82 of the OGAA what if any, administrative penalty is to be imposed?

19. Tervita has no previous contraventions that are relevant to this decision.
20. The gravity and magnitude of the contravention are deemed moderate based on the risk associated with resuming disposal prior to running a hydraulic isolation temperature log, specifically the risk of disposal fluids going into a non-approved formation which could impact the environment or reserves.
21. There was no harm to others as a result of the contravention.
22. The contravention was continuous between December 12, 2019 and October 28, 2020.
23. The contravention was not deliberate.
24. I conclude that there was a minor economic benefit to continued injection rather than ceasing injection and completing the required hydraulic isolation temperature log.
25. Tervita responded quickly to correct the contravention once informed of the Order condition and have subsequently made changes to its regulatory tracking and reporting sheet to ensure future compliance.

Conclusion

26. Based on the above, I find that a penalty of \$10,000 for contravention of section 82 is appropriate.

A handwritten signature in blue ink that reads "Andy Johnson". The signature is written in a cursive style with a large, looped 'J'.

Andy Johnson
Vice President, Compliance Operations
BC Oil and Gas Commission

Date: October 4, 2021