

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 2017-114FSJ

BETWEEN

The BC Oil and Gas Commission

AND

TAQA North Ltd.

AND

Saguaro Resources Ltd.

ADMINISTRATIVE FINDING

Before Vice President, Operations, Lance Ollenberger

Representing the BC Oil and Gas Commission:

Compliance & Enforcement Officer, Ken McLean

Representing TAQA North Ltd:

Regulatory Coordinator, Laura Hughes

Representing Saguaro Resources Ltd.:

Vice President, Drilling & Construction, Jason Hager

Decision Date

September 13, 2019

Introduction:

1. On April 28, 2017, the BC Oil and Gas Commission (Commission) received a complaint that there was heavily silted water flowing off North TAQA Road, PDR 222 (the Road) and into Coal Creek. The Commission inspected the Road and subsequently issued General Order 2017-009 (the Order) to TAQA North Limited (TAQA). Through further investigation, it was determined that Saguaro Resources Ltd. (Saguaro) was the main user of the Road at the time the Order was issued.
2. A Contravention Report (the Report) dated September 2018 was sent to me alleging that: TAQA contravened section 13(1)(a) of the *Oil and Gas Road Regulation* (OGRR) and/or section 12 of the *Environmental Protection and Management Regulation* (EPMR); and that Saguaro contravened section 12 of the EPMR.
3. On October 29, 2018, a letter and a copy of the Report were sent to TAQA informing it that the Commission was considering making a finding of contravention pursuant to section 13(1)(a) of the OGRR and/or section 12 of the EPMR. The letter informed TAQA 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 *Oil and Gas Activities Act* (OGAA). TAQA provided a response in a letter dated December 20, 2018 (the TAQA Response).
4. On October 29, 2018, a letter and a copy of the Report were sent to Saguaro informing it that the Commission was considering making a finding of contravention pursuant to section 12 of the EPMR. The letter informed Saguaro 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. Saguaro provided a response in a letter dated November 30, 2018 (the Saguaro Response).
5. The Commissioner of the BC 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 TAQA contravened section 13(1)(a) of the OGRR and/or section 12 of the EPMR; whether Saguaro contravened section 12 of the EPMR; whether to impose an administrative penalty under section 63 of the OGAA to TAQA and/or Saguaro; and the amount of the penalties, if any. I have reviewed the Report, the TAQA Response and the Saguaro Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 13(1)(a) of the OGRR states that a road permit holder must ensure that road surface and slope drainage systems, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping, are functional.
7. Maximum penalties for specific violations are set by regulation. Section 8(1) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 13(1)(a) of the OGRR is liable to an administrative penalty not exceeding \$250,000.
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. Section 3 of the APR provides that a person who contravenes section 12 of the EPMR is liable to an administrative penalty not exceeding \$500,000.
10. 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.
11. Section 62(4) of the OGAA states that if a person contravenes a provision referred to in subsection (1), any other person who (a) is directly or indirectly responsible for the act or omission that constitutes the contravention, and (b) is a contractor, employee or agent of the person or of another person described in paragraph (a) also contravenes the provision.
12. 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.
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:
 - (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

14. TAQA is an extra-provincial company operating in British Columbia and is the permit holder for PDR 222. On April 28, 2017, a complaint was submitted to the Commission indicating that muddy ditch water was flowing off the Road and into Coal Creek at the kilometer 4 bridge. Commission personnel were dispatched to investigate, however the inspector was unable to reach the location of the complaint due to ongoing road maintenance and impassable road conditions.
15. On May 2, 2017, Commission staff were able to reach the bridge at approximately kilometer 4.6 where conditions were observed and photographed, confirming sediment was flowing from the Road into Coal Creek. Subsequent investigation and communications with both Saguaro and TAQA indicated that Saguaro was the primary heavy user of the Road at that time for its operations.
16. On May 4, 2017, the Commission issued General Order 2017-019 to TAQA requiring it, on or before May 5, 2017, to conduct remedial works to minimize sediment that was flowing into Coal Creek at the bridge crossing located at approximately kilometer 4.6 of the Road; ensure that road drainage systems, including drainage structures, culverts, and ditches were functional, from kilometer 2.6 to kilometer 5.6 of the Road; and, commission an independent environmental monitor to observe all remedial works with the aim of ensuring that further sediment is not allowed to enter Coal Creek as a result of such remedial works. The Order further required that TAQA, on

or before June 3, 2017, ensure that road drainage systems including drainage structures, culverts, and ditches were functional from kilometer 0 to kilometer 2.6 and from kilometer 4.6 to kilometer 7 of the Road.

17. On May 10, 2017, TAQA requested an extension of the Order deadline to May 31, 2017 to allow for more time to execute its compliance plan. The Commission granted the extension and the Order was amended on May 12, 2017. A follow-up inspection of the Road was conducted on June 8, 2017 and determined the Order requirements had been satisfied. The Order was terminated on June 12, 2017.

Issues

18. The issues which I will decide are:

Section 13(1)(a) of the OGRR:

- Did TAQA fail to ensure that road surfaces and slope drainage systems, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping were functional?
- Did TAQA exercise due diligence to ensure that road surfaces and slope drainage systems, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping were functional?
- Did TAQA contravene section 13(1)(a) of the OGRR?

Section 12 of the EPMR:

- Did TAQA fail to ensure that the oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did TAQA exercise due diligence to ensure that the oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did TAQA contravene section 12 of the EPMR?
- If TAQA contravened section 12 of the EPMR, was Saguario, as a road user, (a) directly or indirectly responsible for the act or omission that constituted the contravention and (b) a contractor, employee or agent of TAQA?
- Did Saguario fail to ensure that the oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did Saguario exercise due diligence to ensure that the oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake?
- Did Saguario contravene section 12 of the EPMR?

Section 63 of the OGAA:

- If TAQA is found to have contravened section 13(1)(a) of the OGRR and/or section 12 of the EPMR what if any, administrative penalty to impose?
- If Saguario is found to have contravened section 12 of the EPMR what if any, administrative penalty to impose?

Section 13(1)(a) of the OGRR:

Did TAQA fail to ensure that road surfaces and slope drainage systems, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping were functional?

19. On May 2, 2017, during the initial inspection of the Road, it was noted that deleterious material was being deposited at the bridge directly into Coal Creek. The Road was heavily damaged and there were large amounts of mud and silt on the bridge deck and creek banks. Sedimentation was flowing down the ditch line into Coal Creek and the inspection, along with photographic evidence, shows there were no erosion controls or measures in place to prevent the material from entering the creek. This resulted in the Commission issuing the Order on May 4, 2017.
20. On May 17, 2017, an aerial inspection was conducted that observed a lack of water control which allowed water to run down the Road and off either side of the approach into the creek. The silt fencing had been installed inadequately so that sedimentation continued to flow down the banks into the creek. Culverts and ditches were still not functioning in order to stop the flow of water. TAQA had not satisfied the Order requirements despite providing notification in a voicemail received on May 9, 2017 stating “have cleared ‘big ticket item’ – sediment going into creek” and in a letter dated May 10, 2017 to the Commission indicating that the sedimentation had been stopped.
21. On May 31, 2017, TAQA provided a summary of remedial works to the Commission indicating it had completed the necessary actions to address the ongoing road maintenance issues. Remedial actions included removal of the material adjacent to the creek and contributing to the sedimentation; the Road was graded and ditches built properly; coconut matting and siltation logs were installed; siltation fencing was installed; and, culverts and ditches were deemed operational or replaced. TAQA hired an environmental consultant company to provide representation and monitoring to it for the development and installation of a long-term erosion and sediment control program. The Commission confirmed that TAQA satisfied the amended Order requirements during an inspection conducted on June 8, 2017 and subsequently terminated the Order on June 12, 2017.
22. I find TAQA failed to ensure that road surfaces and slope drainage system, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping were functional between April 29 and May 31, 2017.

Did TAQA exercise due diligence to ensure that road surfaces and slope drainage systems, including inlets, drainage structures, ditches, culverts, bridges, road crowning, insloping and outsloping were functional?

23. Pursuant to section 62(5) of the OGAA, I may not find that TAQA contravened section 13(1)(a) of the OGRR if TAQA demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether TAQA has demonstrated that it took all reasonable steps to prevent the contravention. TAQA 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.
24. TAQA has not presented me with any evidence in the TAQA Response to demonstrate that it exercised due diligence to ensure that road surfaces and slope drainage systems, including inlets, drainage structure, ditches, culverts, bridges, road crowning, insloping and outsloping were functional. However, in TAQA’s letter to the Commission dated May 10, 2017 in response to the

issuance of the Order, it states that TAQA issued correspondence to Saguaro expressing concern regarding damage to the Road and issued a Road Ban Notice dated March 25, 2017 (Road Ban). TAQA maintains that Saguaro continued to use the Road despite the Road Ban and caused damage to the Road, the consequent washout and deposit of sedimentation into Coal Creek.

25. It is reasonable to expect that in addition to emailing the Road Ban to users, TAQA would have hired security to monitor usage of the Road at various points to ensure the ban was enforced or alternatively temporarily closed the Road to address the maintenance issues and repairs. In addition, a reasonable step that TAQA could have taken was to implement a formal road inspection program with scheduled routine inspections of the Road to monitor and proactively identify any issues or damage to the Road.
26. TAQA has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did TAQA contravene section 13(1)(a) of the OGRR?

27. I find that TAQA has failed to comply with section 13(1)(a) of the OGRR. I am not satisfied that TAQA exercised due diligence to prevent the contravention. As such, I find that TAQA contravened section 13(1)(a) of the OGRR.

Section 12 of the EPMR:

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

28. TAQA is the permit holder for the Road. For the purposes of the OGAA, the construction or maintenance of a prescribed road is included in the definition of an “oil and gas activity”. In turn, Section 2 of the OGRR prescribes oil and gas roads (including the Road) for the purposes of the definition oil and gas activity. “Operating area” is defined in the OGAA as an area identified in a permit within which a permit holder is permitted to carry out an oil and gas activity.
29. In the course of inspections conducted by Commission staff on May 2 and 17, 2017, it was noted there was sedimentation running down the banks and directly into the creek. The culverts and ditches were not functioning properly which contributed to the movement of silt and water into Coal Creek. There were no effective erosion control or mitigative measures in place to reduce the run-off and flow of deleterious material. Mud and silt were being pushed over the bank from the Road creating build-ups of material adjacent to the creek.
30. In the TAQA Response, it states that Coal Creek is prone to high levels of sediment and that additional amounts of deleterious material would only increase the existing concentrations of sediment in the creek. It maintains that at the time of the inspections the level and flow of water in the creek would have been more elevated than normal as they were conducted during the spring run-off period and that extra sediment would not have made any significant impacts including any effects to the spawning migrations of the Arctic Grayling.
31. TAQA does not dispute that deleterious material was deposited into Coal Creek from the Road, however TAQA states that the concentration and turbidity in the creek were already high and the lack of visible difference in colour or clarity both upstream and downstream suggest that the contribution was minimal. The evidence before me demonstrates that deleterious materials were deposited along the banks and into the creek from the Road, irrespective of any pre-existing concentration of sediment in the creek.

32. Therefore, I find that TAQA failed to ensure that an oil and gas activity did not result in any deleterious materials being deposited into a stream, wetland, or lake between April 29 and May 5, 2017.

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

33. TAQA has not raised the defense of due diligence in respect to section 12 of the EPMR. Nonetheless, I must still consider whether TAQA demonstrated due diligence by their actions to ensure deleterious materials were not deposited into Coal Creek. TAQA acknowledges that sediment entered the creek but it suggests that because high concentrations of sediment already existed in the creek, any additional introduction of sedimentation would have been distributed along the length of the creek and would have had minimal impacts.
34. TAQA has not presented me any evidence to establish that it had adequate erosion and sediment control measures in place. One reasonable step TAQA could have taken would have been to increase maintenance on the Road to ensure that culverts, ditches and the road crown were functioning properly to minimize the possibility of run-off and flow into the creek. Further erosion control and mitigation measures could have been put in place, including but not limited to the installation of silt fencing, erosion-control matting, riprap, and functional drainage controls such as cross drain culverts, ditch blocks or breach berms.
35. TAQA has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did TAQA contravene section 12 of the EPMR?

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

If TAQA contravened section 12 of the EPMR, was Saguaro, as a road user, (a) directly or indirectly responsible for the act or omission that constituted the contravention and (b) a contractor, employee or agent of TAQA?

37. Section 62(4) of the OGAA provides that if a person contravenes a provision of, among other things, the Act or the regulations, any other person who (a) is directly or indirectly responsible for the act or omission that constitutes the contravention, and (b) is a contractor, employee or agent of the person or of an other person described in paragraph (a) also contravenes the provision. As per above, I have found that TAQA contravened section 12(1) of the EPMR. In the Saguaro Response, Saguaro acknowledges that it was a heavy road user at the time of the alleged contravention.
38. Based on my review of the evidence, Saguaro was not a contractor, employee or agent of TAQA as prescribed under section 62(4) of the OGAA; and therefore, this provision is not satisfied. As section 62(4)(b) is not met, there is no need to determine whether Saguaro was directly or indirectly responsible for the act of omission that constituted the contravention pursuant to section 62(4)(a) of the OGAA.

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

39. In its Response, Saguaro states that it supplied TAQA considerable financial contributions to support the use and maintenance of the Road to ensure compliance with industry and regulatory standards. Based on the evidence, it has not been established that Saguaro was conducting an oil and gas activity (including the construction or maintenance of a prescribed road) on the operating area that resulted in deleterious materials being deposited into a stream, wetland or lake.
40. Therefore, I find that Saguaro did not fail to ensure that the oil and gas activity on an operating area did not result in any deleterious materials being deposited into a stream, wetland or lake.

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

41. Given the foregoing, there is no need to determine whether Saguaro demonstrated due diligence.

Did Saguaro contravene section 12 of the EPMR?

42. I find that Saguaro did not contravene section 12 of the EPMR.

Section 63 of the OGAA:

If TAQA is found to have contravened section 13(1)(a) of the OGRR and/or section 12 of the EPMR what if any, administrative penalty to impose?

43. 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.
44. There have been no previous contraventions or administrative penalties and three previous orders issued to TAQA.
45. The gravity and magnitude was moderate due to the lack of maintenance of the Road and the damaging impacts to the environment and on the creek.
46. There was no harm to others as a result of this contravention; however, the lack of maintenance resulted in a safety issue to users and was impassable when the Enforcement Officer attempted to conduct an inspection.
47. The contravention was not repeated but was continuous from April 29 to May 31, 2017 when all remedial works had been completed and the amended Order was terminated
48. The contravention was deliberate as TAQA was aware that Saguaro was continuing to use the Road and cause damage despite the Road Ban.
49. TAQA did derive some economic benefit, as it did not expend the funds necessary to ensure it had a comprehensive inspection program and proper erosion and mitigation strategies in place along with regularly scheduled maintenance.

50. TAQA did exert efforts to correct the contravention once the Order was issued. TAQA did conduct the remedial works necessary to meet the requirements of the Order and hired an environmental consultant to inspect and assess the Coal Creek bridge crossing and provide recommendations on additional erosion and sedimentation controls.

Conclusion

51. In consideration of the foregoing, I have found that Saguaro did not contravene section 12 of the EPMR. I find that TAQA contravened section 13(1)(a) of the OGRR and section 12 of the EPMR. I am imposing an administrative penalty of \$20,000.



Lance Ollenberger
Vice President, Operations
BC Oil & Gas Commission

Date: September 13, 2019