

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 2018-143

BETWEEN

The BC Oil and Gas Commission

AND

Sanling Energy Ltd.

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Lance Ollenberger

Representing the BC Oil and Gas
Commission

Compliance & Enforcement Officer, Jordan
Wilson

Representing Sanling Energy Ltd.

Chief Operations Officer, Mark Hartzler

Decision Date

October 7, 2019

Introduction:

1. On August 17, 2018 an inspection of Sanling Energy Ltd.'s (Sanling's) facility located at A-90-J/094-J-08 (the Site) was conducted and a spill of a gel-like product was discovered along with approximately 16 deceased migratory birds.
2. A Contravention Report (the Report) was sent to me in January 2019 alleging that Sanling contravened sections 37(1)(a), 37(2)(b) and/or (c) of the *Oil and Gas Activities Act* (OGAA).
3. The BC Oil and Gas Commission (Commission) sent Sanling a letter and the Report on January 17, 2019 informing Sanling that I was considering making a finding that it contravened sections 37(1)(a), 37(2)(b) and/or (c) of the OGAA. The letter informed Sanling 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. Sanling provided a response in a letter received February 19, 2019 (the Response).
5. The Commissioner of the 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 Sanling contravened sections 37(1)(a), 37(2)(b) and/or (c) 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 Sanling's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 37(1)(a) of the OGAA states that a permit holder, an authorization holder and a person carrying out an oil and gas activity must prevent spillage.
7. 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 37(1)(a) of the OGAA is liable to an administrative penalty not exceeding \$500,000.
8. Section 37(2) of the OGAA states that if spillage occurs, a permit holder, an authorization holder or person carrying out an oil and gas activity must promptly do all of the following:
 - (b) contain and eliminate the spillage; and
 - (c) remediate any land or body of water affected by the spillage.
9. Section 2(1) of the APR provides that a person who contravenes section 37(2) of the OGAA 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(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.

12. 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

13. On August 17, 2018, a Commission inspector located a spill of an unidentified substance at the Site, which is permitted to Sanling. There were approximately 16 deceased birds and/or various bird parts found around and on top of the substance. The Commission contacted Sanling requesting that the product be covered to prevent further harm to animals and to allow for samples to be obtained and a determination to be made if further investigation was required.
14. Sanling covered the spill and provided Commission staff the Material Safety Data Sheet (MSDS) for the spilled product, EnerCure. Commission staff forwarded the MSDS to the BC Conservation Officer Service in Fort Nelson and Environment Canada (EC) for further investigation in relation to the dead birds. On September 4, 2018, a representative from EC opened an investigation and attended the Site, took custody of the birds, and photographs for evidence. The EC Officer notified Sanling that the Site could now be cleaned up and the materials disposed of. The Commission subsequently initiated its own investigation into the case.
15. On September 20, 2018, the Commission noted that the spilled EnerCure remained on the Site and advised Sanling that it must be cleaned-up by September 27, 2018, at the latest. On September 28, 2018, the Commission received confirmation from Sanling that the remedial actions had been completed. A follow-up inspection of the facility was conducted by Commission personnel verifying that the clean-up had been completed adequately.

Issues

16. The issues which I will decide are:

Section 37(1)(a) of the OGAA:

- Did Sanling fail to prevent spillage?
- Did Sanling exercise due diligence to prevent spillage?
- Did Sanling contravene section 37(1)(a) of the OGAA?

Section 37(2)(b) of the OGAA:

- Did Sanling fail to promptly contain and eliminate the spillage?
- Did Sanling exercise due diligence to promptly contain and eliminate the spillage?
- Did Sanling contravene section 37(2)(b) of the OGAA?

Section 37(2)(c) of the OGAA:

- Did Sanling fail to promptly remediate any land or body of water affected by the spillage?
- Did Sanling exercise due diligence to promptly remediate any land or body of water affected by the spillage?
- Did Sanling contravene section 37(2)(c) of the OGAA?

If Sanling is found to have contravened sections 37(1)(a), 37(2)(b) and/or (c) of the OGAA what if any, administrative penalty to impose?

Section 37(1)(a) of the OGAA:

Did Sanling fail to prevent spillage?

17. Sanling does not dispute that the EnerCure product was spilled from the meter building and onto the ground between two buildings at the Site. There is ample evidence that demonstrates that spillage of the EnerCure product occurred, including photographs showing a substance on the ground with deceased birds imbedded in it, inspection notes that describe a foreign substance, and the incident reports submitted by Sanling.
18. Sanling's incident report dated August 17, 2018 states that a bag of EnerCure was left in a meter building which was subsequently relocated. The report speculates that the bag of EnerCure tipped over when the building was relocated by Sanling causing the spillage out the door and onto the snow covered ground.
19. A representative from Sanling advised that the EnerCure product was used as a "lost circulation mitigation product in helping kill the wells for safe tubular tripping during the abandonment program". I am satisfied that the spillage of the EnerCure meets the definition of "spillage" in the OGAA and conclude that Sanling failed to prevent spillage.

Did Sanling exercise due diligence to prevent spillage?

20. Pursuant to section 62(5) of the OGAA, I may not find that Sanling contravened section 37(1)(a) of the OGAA if Sanling demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Sanling has demonstrated that it took all reasonable steps to prevent the contravention. Sanling 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.
21. Sanling has not provided any evidence to demonstrate that it exercised due diligence to prevent spillage; however, in its Response states that the spill occurred as a result of Sanling not following its Hazard Assessment, Elimination and Control Policy when the building was relocated.
22. Sanling's incident report dated August 17, 2018 indicates that there was no regular field presence in the area until August since the Site was being abandoned. The relocation of the building occurred on March 29, 2018 according to information provided by Sanling representatives. It is reasonable to expect that Sanling would have had a routine inspection and maintenance program in place to consistently inspect abandoned and suspended sites for any hazards. Additionally it is evident that Sanling did not have the contractor that moved the building conduct a pre-move or post-move inspection of the building at the time it was relocated. A simple walk around of the building would have identified the open door and product prior to it spilling or shortly thereafter.

23. Sanling has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Sanling contravene section 37(1)(a) of the OGAA?

24. I find that Sanling has failed to comply with section 37(1)(a) of the OGAA. I am not satisfied that Sanling exercised due diligence to prevent the contravention. As such, I find that Sanling contravened section 37(1)(a) of the OGAA.

Section 37(2)(b) of the OGAA:

Did Sanling fail to promptly contain and eliminate the spillage?

25. On August 17, 2018, Commission personnel visited the Site and subsequently contacted Sanling to inform it of the spill discovery and advise that the substance should be immediately covered to avoid wildlife contact and ingestion. Sanling complied and indicated it would await permission to begin the clean-up and disposal.

26. On September 4, 2018, Sanling was advised by EC that it had completed its investigation and clean-up could commence. The spill was not promptly remediated and on September 20, 2018, upon noting that the EnerCure remained on Site, the Commission informed Sanling that the spill must be cleaned-up no later than September 27, 2018.

27. Sanling provided the Commission with an environmental report detailing the remedial actions taken to remove and dispose of the spilled product on September 28, 2018. The report identifies that the removal of the product occurred on September 26, 2018. It took Sanling more than three weeks following notification that remedial activities could occur to carry out the appropriate actions. I find that a delay of this nature was not prompt given the report identifies that the remedial actions were completed in one day once initiated.

28. I find Sanling failed to promptly contain and eliminate the spillage.

Did Sanling exercise due diligence to promptly contain and eliminate the spillage?

29. Sanling has not raised the defense of due diligence in respect to section 37(2)(b) of the OGAA. Nevertheless, I must still consider whether Sanling demonstrated due diligence by its actions to promptly contain and eliminate the spillage. In its Response, Sanling acknowledges it is responsible for the environmental impacts resulting from this incident.

30. It is reasonable to expect that Sanling would have immediately initiated corrective actions as soon as it was notified on September 4, 2018 that the Site was cleared for remediation instead of waiting over three weeks to begin efforts to contain and eliminate the spillage.

31. Sanling has failed to satisfy me that it took all reasonable steps to prevent the contravention.

Did Sanling contravene section 37(2)(b) of the OGAA?

32. I find that Sanling contravened section 37(2)(b) of the OGAA.

Section 37(2)(c) of the OGAA:

Did Sanling fail to promptly remediate any land or body of water affected by the spillage?

33. Sanling was advised on September 4, 2018 by EC that it could begin work to remediate the spill. The Commission received an environmental report on September 28, 2018 that identified that the work to remediate the land had been completed on September 26, 2018. Sanling retained vacuum trucks to remove the product from the ground and inside the building and transported the waste material to a disposal facility. It took Sanling over three weeks to take the steps necessary to remediate the land that was affected by the spillage and this was only after being prompted by Commission staff on September 20, 2018. I find that three weeks was not a reasonably prompt response given that the area of land impacted was relatively small and the work was completed within a day once initiated.
34. Therefore, I find that Sanling failed to promptly remediate any land or body of water affected by the spillage.

Did Sanling exercise due diligence to promptly remediate any land of body of water affected by the spillage?

35. Sanling has not presented me with any evidence to demonstrate that it exercised due diligence to promptly remediate any land or body of water affected by the spillage. A reasonable step Sanling could have taken was to perform the immediate remedial action necessary to clean-up the spill and remove the contaminated materials as soon as notified on September 4, 2018. It took Sanling over three weeks to complete the adequate remediation and disposal works at the Site.
36. I find Sanling failed to exercise due diligence in its efforts to promptly remediate any land or body of water affected by the spillage.

Did Sanling contravene section 37(2)(c) of the OGAA?

37. I find that Sanling contravened section 37(2)(c) of the OGAA.

If Sanling is found to have contravened sections 37(1)(a), 37(2)(b) and/or (c) of the OGAA what if any, administrative penalty is to be imposed?

38. 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.
39. There have been no prior contraventions, administrative penalties or orders issued to Sanling.
40. The contravention is of moderate gravity and magnitude due to the environmental impact of the spillage and the resulting death of approximately 16 migratory birds.
41. There was no harm to others as a result of the contravention.
42. The contravention was not repeated or continuous.

43. The contravention was not deliberate but attributed to a lack of due diligence on the part of Sanling to ensure proper procedure was following during the relocation of the meter building.
44. There was no economic benefit derived from the contravention.
45. Sanling initiated the appropriate clean-up efforts following discovery and notification of the spillage by the Commission; however, it took over three weeks to complete the necessary remedial actions.

Conclusion

46. In consideration of the foregoing, I have found that Sanling contravened sections 37(1)(a), 37(2)(b) and (c) of the OGAA. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$12,500.



Lance Ollenberger
Vice President, Operations
BC Oil and Gas Commission

Date: October 7, 2019