

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 2018-078

BETWEEN

The BC Oil and Gas Commission

AND

1116331 BC Ltd. and Sandy Loutitt

ADMINISTRATIVE FINDING

Before Vice President, Operations, Lance Ollenberger

Representing the BC Oil and Gas Commission Compliance & Enforcement Officer, Jordan Wilson

Representing Sandy Loutitt Borden Ladner Gervais LLP, Rick Williams

Decision Date September 17, 2019

Introduction:

1. On June 21, 2018 the BC Oil and Gas Commission (Commission) issued General Order 2018-011 (the Order) to 1116331 BC Ltd. (1116331) under section 49(1)(a) of the *Oil and Gas Activities Act* (OGAA) to submit a certificate of insurance and implement and maintain a 24 hour emergency number on or before July 6, 2018. On June 28, 2018, the Commission issued an amendment pursuant to section 78(2)(a) of the OGAA to amend the Order to refer to section 49(1)(d) of the OGAA.
2. A Contravention Report (the Report) dated December 2018 was sent to me alleging that 1116331 and Mr. Sandy Loutitt (Mr. Loutitt) as director contravened section 82 of the OGAA.
3. On December 19, 2018, the Commission sent 1116331 and Mr. Loutitt letters and the Report informing them that the Commission was considering making a finding that they contravened section 82 of the OGAA. The letter informed 1116331 and Mr. Loutitt of their 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. Mr. Loutitt provided a response in a letter dated February 28, 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 1116331 and/or Mr. Loutitt 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(1) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 82 of the OGAA in relation to an order issued under section 49 of the OGAA is liable to an administrative penalty not exceeding \$500,000.
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 Act, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
9. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
10. 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.
11. 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

12. 1116331 is an incorporated company registered to operate in British Columbia with a sole director, Sandy Loutitt. 1116331 is the permit holder for two wells and one pipeline, and the holder of three licences of occupation (LOCs).
13. On June 21, 2018, the Commission issued the Order requiring 1116331 to submit a certificate of insurance to meet the requirements of the LOCs. The Order also required 1116331 to implement and maintain a 24 hour emergency number in accordance with the *Emergency Management Regulation* (EMR). 1116331 was required to comply with the Order requirements by July 6, 2018.

Issues

14. The issues which I will decide are:
 - Did 1116331 fail to comply with the Order?
 - Did 1116331 exercise due diligence to comply with the Order?
 - If 1116331 contravened section 82 of the OGAA did Mr. Loutitt authorize, permit or acquiesce in the contravention?
 - Did Mr. Loutitt exercise due diligence to comply with the Order?
 - If 1116331 and/or Mr. Loutitt are found to have contravened section 82 of the OGAA what if any, administrative penalty to impose?

Did 1116331 fail to comply with the Order?

15. The Report alleges that 1116331 failed to comply with the Order requirements by the deadline of July 6, 2018. Item 1 of the Order required 1116331 to submit a valid certificate of insurance to the compliance and enforcement mailbox. According to the Report, the Commission did not receive a certificate of insurance by July 6, 2018 as required by the Order, nor had the Commission received a certificate of insurance as of the date of the Report. The Response, on behalf of Mr. Loutitt as director of 1116331, acknowledges that 1116331 has not secured insurance. Based on the undisputed evidence before me, I find that 1116331 has not provided a certificate of insurance as required by the Order.
16. Item 2 of the Order required 1116331 to implement and maintain a 24-hour emergency number. The Report alleges that on September 25, 2018 Commission staff made two attempts to reach the emergency number on file and no contact was established except for a text message reply stating "Sorry, I can't talk right now"; however, no further communications were received.

17. The Response submits that “if this was a real emergency the caller would have indicated such”. Further the Response submits that the evidence shows that Commission staff were contacted within less than a minute of the call, and that there is no evidence that the phone line was not “functional”.
18. I do not accept that a text message reply indicating that Mr. Loutitt was unavailable for communication shows that the line was functional for communication during an emergency. Moreover, I find that the submission that in a “real emergency” the caller would have indicated as such is mere speculation.
19. Therefore, I find that 1116331 failed to comply with the Order.

Did 1116331 exercise due diligence to comply with the Order?

20. Pursuant to section 62(5) of the OGAA, I may not find that 1116331 contravened section 82 of the OGAA if 1116331 demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether 1116331 has demonstrated that it took all reasonable steps to prevent the contravention. 1116331 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. The Response submits that Mr. Loutitt “made all reasonable efforts to ensure the Company did not contravene the Order”. According to the Response, Mr. Loutitt took all reasonable steps including using his personal phone without compensation or reimbursement from the company to ensure an active phone line was maintained. In this particular circumstance, given the outstanding issues in the Order contained no immediate risk to the environment or others, a reasonable action Mr. Loutitt on behalf of 1116331 could have taken would have been to proactively contact C&E to discuss the Order requirements and what options were available to him to satisfy the obligations. Additionally, a reasonable step that could be taken would have been to implement a separate dedicated 24 hour emergency line to eliminate any potential confusion with non-emergency calls.
22. The Response states that Mr. Loutitt has made efforts, though unsuccessfully, to acquire additional financing to allow the company to maintain insurance. The Response goes on to state “Mr. Loutitt on behalf of the Company approached potential buyers to acquire the Oil and Gas Assets as an exploration play at a price of \$1.00. However, due to the drop in commodity prices he was unable to find a willing buyer. He then made (and continues to make) efforts to sell the onsite equipment.” There has been no evidence presented to me to substantiate these statements nor to demonstrate that Mr. Loutitt on behalf of 1116331 acted duly diligent. In my view, it has not been established that decisive, prompt and continuing action has been taken and it is unacceptable to disregard legislative and regulatory compliance requirements based on financial issues. The expectation is that a company would ensure it is equipped and has the financial capability to meet its regulatory obligations as an oil and gas permit holder in British Columbia. 1116331 has not established that it took any steps to access additional resources to meet its responsibilities.
23. 1116331 has failed to satisfy me that it took all reasonable steps to prevent the contravention.

If 1116331 contravened section 82 of the OGAA, did Mr. Loutitt authorize, permit or acquiesced in the contravention?

24. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
25. I must decide if Mr. Loutitt authorized, permitted or acquiesced in the contravention. For the purpose of this decision, I consider acquiesced to be the appropriate term. Acquiesced, by definition, means to accept or consent to something without protest, by silence or omitting to object. Mr. Loutitt is listed as the sole director of 1116331 and has been the main point of contact for the Commission in discussions regarding its assets. As the sole director, Mr. Loutitt has responsibility for ensuring that 1116331 is in compliance with all legislated requirements and is meeting its regulatory obligations. Mr. Loutitt had requisite knowledge of the alleged corporate contravention and the ability to influence the actions of 1116331 (through action or inaction). Further, Mr. Loutitt was the alter ego of 1116331 and represented its sole directing mind. Moreover, he has acknowledged in his Response that he used his own personal cell phone for business purposes, which I find is evidence of his acquiescence.
26. Mr. Loutitt had knowledge of the Order as evidenced by his telephone conversation with Commission staff on June 26, 2018; however, there is no evidence before me that Mr. Loutitt made efforts to respond to the Commission regarding the Order. I note that the Response submits that “there were (and are) no financial resources that could be applied to ensure compliance” and that therefore “it cannot be said that Mr. Loutitt authorized, permitted or acquiesced in the contravention”. Regardless of whether or not 1116331 lacked financial resources, I do not accept Mr. Loutitt’s statement that it was impossible for Mr. Loutitt as director to have 1116331 comply. Mr. Loutitt has not provided any specific evidence to substantiate that steps that were taken to acquire additional financing to comply with the Order.
27. For the above reasons, I find that Mr. Loutitt acquiesced in the contravention.

Did Mr. Loutitt exercise due diligence to comply with the Order?

28. As discussed above, 1116331 has failed to satisfy me that it took all reasonable steps to prevent the contravention. For the same reasons, Mr. Loutitt has failed to satisfy me that he took all reasonable steps to prevent the contravention.

If 1116331 and/or Mr. Loutitt are found to have contravened section 82 of the OGAA what if any, administrative penalty is to be imposed?

29. 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.
30. There have been no previous contraventions by, administrative penalties imposed on, or orders issued to 1116331 or Mr. Loutitt.
31. The contravention did not result in any threat to environment, human health or public safety, therefore, the gravity and magnitude of the contravention are deemed low.

32. There has been no harm to others.
33. The contravention was not repeated but is continuous until compliance is obtained and the Order is terminated.
34. The contravention was deliberate as evidenced by Mr. Loutitt's acquiescence as the sole directing mind of 1116331.
35. 1116331 did benefit economically from the contravention by not expending funds for insurance and ensuring an effective 24 hour emergency line was functioning. It has not been established that the economic benefit flowed through to Mr. Loutitt.
36. 1116331 and Mr. Loutitt made limited efforts, by using a personal cell phone, to comply with the Order and correct the contraventions.

Conclusion

37. I have found 1116331 and Mr. Loutitt contravened section 82 of the OGAA. Based on the above discussion of the various factors set out in section 63(2), I find that a monetary penalty is not appropriate in this situation.



Lance Ollenberger
Vice President, Operations
BC Oil and Gas Commission

Date: September 17, 2019