

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 2017-004

BETWEEN

The BC Oil and Gas Commission

AND

Canadian Natural Resources Limited

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ADMINISTRATIVE FINDING

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Before Vice President, Operations, Lance Ollenberger

Representing the BC Oil and Gas Commission Oil and Gas Operations Officer, Hack Waldon

Representing Canadian Natural Resources Limited Director, Asset Integrity, Anthony Merle AND Senior Vice President, Safety, Risk Management & Innovation, Pamela McIntyre

Decision Date October 8, 2019

## **Introduction**

1. On February 23, 2017 Canadian Natural Resources Limited's (CNRL's) pipeline located between D-49-C/094-H-10 and B-030-C/094-H-10 (the Pipeline) failed, spilling emulsion onto the ground which continued to flow along the pipeline right-of-way and towards a creek.
2. On January 19, 2019 a Contravention Report (the Report) was sent to me alleging that CNRL contravened sections 7(1)(a) and/or 3(1)(a) of the *Pipeline Regulation* (PR) and/or section 37(1)(a) of the *Oil and Gas Activities Act* (OGAA).
3. The BC Oil and Gas Commission (Commission) sent CNRL a letter and the Report on February 22, 2019 informing CNRL that I was considering making a finding that it contravened sections 7(1)(a) and/or 3(1)(a) of the PR and/or section 37(1)(a) of the OGAA. The letter informed CNRL 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. On April 4, 2019, CNRL requested an extension to provide a submission response. The Commission granted an extension to April 30, 2019.
5. CNRL provided a response in a letter dated April 30, 2019 (the Response).
6. 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 CNRL contravened sections 7(1)(a) and/or 3(1)(a) of the PR and/or section 37(1)(a) 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 CNRL's Response. In making a determination, I rely on these documents, and the applicable legislation.

## **Applicable Legislation**

7. Section 7(1)(a) of the PR states that a pipeline permit holder must not operate a pipeline approved by a permit unless the holder has prepared a pipeline integrity management program for the pipeline that complies with CSA Z662 and Annex N of CSA Z662.
8. Maximum penalties for specific violations are set by regulation. Section 6(2) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 7(1)(a) of the PR is liable to an administrative penalty not exceeding \$250,000.
9. Section 3(1)(a) of the PR states that 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 the pipeline that is subject to the permit.
10. Section 6(1) of the APR provides that a person who contravenes section 3(1)(a) of the PR is liable to an administrative penalty not exceeding \$500,000.
11. 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.

12. Section 2(1) of the APR provides that a person who contravenes section 3(1)(a) of the PR is liable to an administrative penalty not exceeding \$500,000.
13. Section 1 of OGAA states that “spillage” means petroleum, natural gas, oil, solids or other substances escaping, leaking or spilling from (a) a pipeline, well, shot hole, flow line, or facility, or (b) any source apparently associated with any of those substances.
14. 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.
15. 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.
16. 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**

17. On February 23, 2017 an operator for CNRL discovered steam rising along a pipeline right-of-way and went to investigate, finding a pipeline failure. The rupture resulted in a spillage of emulsion onto the ground which subsequently flowed along the pipeline right-of-way and towards a creek. CNRL isolated a segment of the Pipeline and bled down approximately 2.5 kilometers of pipe. Crews and equipment were dispatched to the Pipeline site to initiate clean-up efforts.
18. CNRL immediately engaged an environmental contractor to assist with mitigation efforts and environmental impacts. A supervisor was put in place to manage the repairs to the Pipeline and spill response activities at the site. Berms were constructed to prevent the migration of contaminants, trenches were dug to allow liquids to collect for removal, and excavation and disposal of soils along the pipeline right-of-way was completed.
19. On February 28, 2017, Commission personnel visited the site and spoke to CNRL staff. The inspector was advised that the spill had not reached the creek and that the total area of contamination extended approximately 150 meters downslope from the Pipeline break. The cause of the failure was not known, but remedial actions and analysis were going to continue. The Commission initiated an investigation into the incident at that time.

20. Soil and surface water monitoring and assessment was implemented until the quality met the applicable standards and negative impacts were eliminated. The failed section of the Pipeline was identified and removed to be sent out for analysis. Investigation and result findings were finalized in a report issued March 17, 2017. Full remediation and clean-up of the site was completed and a final environmental report submitted to the Commission in August 2017.

### **Issues**

21. The issues which I will decide are:

#### Section 7(1)(a) of the PR:

- Did CNRL fail to operate a pipeline approved by the permit without a prepared integrity management program for the pipeline that complied with CSA Z662 and Annex N of the CSA Z662?
- Did CNRL exercise due diligence to operate a pipeline approved by the permit without a prepared integrity management program for the pipeline that complied with CSA Z662 and Annex N of the CSA Z662?
- Did CNRL contravene section 7(1)(a) of the PR?

#### Section 3(1)(a) of the PR:

- Did CNRL fail to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?
- Did CNRL exercise due diligence to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?
- Did CNRL contravene section 3(1)(a) of the PR?

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

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

If CNRL is found to have contravened sections 7(1)(a) and/or 3(1)(a) of the PR and/or section 37(1)(a) of the OGAA what if any, administrative penalty to impose?

#### **Section 7(1)(a) of the PR:**

Did CNRL fail to operate a pipeline approved by the permit without a prepared integrity management program for the pipeline that complied with CSA Z662 and Annex N of the CSA Z662?

22. The Report alleges that CNRL failed to comply with section 7(1)(a) of the PR which states that a pipeline permit holder must not operate a pipeline approved by a permit unless the holder has prepared a pipeline integrity management program for that pipeline that complies with CSA Z662 and Annex N. CNRL provided a copy of its Pipeline Operations and Maintenance Integrity Manual (the Manual) and upon review I am not satisfied that it fails to comply with the requirements set out in the CSA Z662 and Annex N.
23. Therefore, I find that CNRL did not fail to operate a pipeline approved by the permit without a prepared integrity management program for the pipeline that complied with CSA Z662 and Annex N of the CSA Z662.

Did CNRL exercise due diligence to operate a pipeline approved by the permit with an integrity management program for the pipeline that complied with CSA Z662 and Annex N of the CSA Z662?

24. Given the foregoing, there is no need to determine whether CNRL demonstrated due diligence.

Did CNRL contravene section 7(1)(a) of the OGAA?

25. I find that CNRL did not contravene section 7(1)(a) of the PR.

**Section 3(1)(a) of the PR:**

Did CNRL fail to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?

26. Clause 9.10.2 of the CSA Z662 provides that if a pipeline is considered to be susceptible to internal corrosion, in accordance with Clause 9.10.1, operating companies shall implement and maintain programs to mitigate internal corrosion. Consideration of methods to control internal corrosion should include, among other things, continuous internal coating or lining.
27. I find that CNRL did not implement and maintain a proper internal corrosion control program for the Pipeline, which was susceptible to internal corrosion, as required under Clause 9.10.2 of the CSA Z662. Rather, CNRL operated the Pipeline on the basis that it had a liner despite the fact that the Pipeline did not. Further, CNRL personnel indicated that there was information available indicating that the Pipeline did not have a liner installed.
28. I find CNRL failed to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit.

Did CNRL exercise due diligence to design, construct, operate or maintain in accordance with CSA Z662 the pipeline that is subject to the permit?

29. CNRL has presented no evidence to demonstrate it exercised due diligence but recognized that further actions should have been executed to prevent the incident. Therefore, section 62(5) does not apply.

Did CNRL contravene section 3(1)(a) of the PR?

30. I find that CNRL has failed to comply with section 3(1)(a) of the PR. I am not satisfied that CNRL exercised due diligence to prevent the contravention. As such, I find that CNRL contravened section 3(1)(a) of the PR.

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

Did CNRL fail to prevent spillage?

31. CNRL reported the spill to the Commission on February 23, 2017. Commission staff attended the site on February 28, 2017, and spoke with CNRL contractors regarding the Pipeline failure and observed the spill and clean-up efforts. The pipeline break resulted in a spillage of emulsion from the Pipeline which then travelled along the pipeline right-of-way and pooled in a low lying area a short distance from a creek.

32. Therefore, I find that CNRL failed to prevent spillage.

Did CNRL exercise due diligence to prevent spillage?

33. As noted above, CNRL has not raised a defense of due diligence with respect to section 37(1)(a) of the OGAA and conceded further measures should have been taken to prevent the incident from occurring. I concur and find that section 62(5) is not applicable.

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

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

If CNRL is found to have contravened sections 7(1)(a) and/or 3(1)(a) of the PR and/or section 37(1)(a) of the OGAA what if any, administrative penalty is to be imposed?

35. 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.

36. CNRL has had one previous contravention decision, no administrative penalties imposed at the time of this contravention, and eight previous orders issued.

37. The contraventions were of moderate gravity and magnitude. CNRL operated the Pipeline since 2012 without adequate corrosion controls. The incident involved a spill of approximately 200 cubic meters of fluid and required contaminated materials be removed; however CNRL's immediate response prevented the possibility of greater impacts and avoided sustained environmental effects.

38. The contraventions did not result in any harm to others.

39. The contravention was not repeated but continuous in that CNRL continued to operate the Pipeline with an insufficient corrosion control plan in place since acquisition of the asset. The Pipeline failure and spillage were remediated and resolved quickly once discovered, although it is unclear from the evidence or CNRL's response as to how long the spill was active.

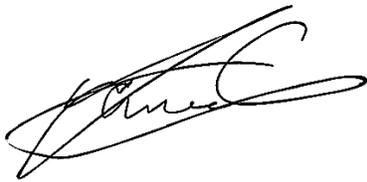
40. There is no evidence to show the contraventions were deliberate.

41. There is no evidence to indicate that CNRL derived an economic benefit. I give no weight to the expenditure of funds for clean-up and remediation, as these funds would not have been spent had the spill not occurred.

42. CNRL took prompt measures to contain and control the incident as soon as the Pipeline failure and spillage was discovered. CNRL's swift corrective actions limited the impacts of the spill and effectively remediated the site. CNRL has subsequently implemented several changes including improvements to its risk management framework, processes surrounding assessments, and formal sign-off procedures for pipelines to ensure similar incidents do not occur in the future.

## Conclusion

43. In its Response, CNRL submits that the Kienapple Principle requires that the Commission assess only one administrative penalty. For the purpose of this decision, it is not necessary for me to make a determination as to whether the Kienapple principle applies as I am imposing only one penalty in the circumstances.
44. I have found that CNRL did not contravene section 7(1)(a) of the PR. However, I have found that CNRL contravened section 3(1)(a) of the PR and section 37(1)(a) 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 \$17,500.



Lance Ollenberger  
Vice President, Operations  
BC Oil and Gas Commission

Date: October 8, 2019