

IN THE MATTER of a CONTRAVENTION  
of the *ENERGY RESOURCE ACTIVITIES ACT*

[SBC 2008] Chapter 36

before

The BRITISH COLUMBIA ENERGY REGULATOR

Case File 2022-0030

BETWEEN

The British Columbia Energy Regulator

AND

Canadian Natural Resources Ltd.

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ADMINISTRATIVE FINDING

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Before

Dax Bourke, Executive Director, Compliance &  
Enforcement,

Representing the British Columbia Energy  
Regulator (formerly the Oil and Gas  
Commission)

Ken McLean, Compliance & Enforcement Officer

Representing Canadian Natural Resources Ltd.

Bill Clapperton, Vice President, Regulatory,  
Stakeholder & Environment Affairs

Decision Date

December 9, 2024

## **Introduction**

1. In the winter of 2021/2022 Canadian Natural Resources Ltd. (CNRL) conducted work on well authority 21805 (WA 21805) located on the a-001-I/094-B-15 well site.
2. To access the site, CNRL constructed a snow fill crossing across each of an S2, S3, and S4 stream.
3. On March 24, April 7 and May 4, 2022, BC Oil and Gas Commission (now the BC Energy Regulator (Regulator)) Compliance and Enforcement Officers (Officers) inspected the three snow fill crossings.
4. On May 4, 2022, the inspection showed that the snow fill crossings had not been removed prior to spring freshet as the S2 was flowing with the snow fill being partially washed away. The S3 and S4 streams were also starting to flow but were backed up by the snow fills being left in place.
5. A Contravention Report (the Report) was sent to me on October 10, 2023, alleging that CNRL contravened section 15.2 of the Energy Resource Road Regulation (ERRR) and/or section 15.3(2)(a) of the ERRR and/or Section 11(b)(i) of the Environmental Protection and Management Regulation (EPMR).
6. The Regulator sent CNRL a letter and the Report on February 15, 2024, informing CNRL that I was considering making a finding that it contravened section 15.2 of the ERRR and/or section 15.3 (2)(a) of the ERRR and/or Section 11(b)(i) of the EPMR. The letter informed CNRL of its opportunity to be heard in written form and advised that a finding of contravention could result in the Regulator imposing an administrative penalty in accordance with section 63 of the ERAA.
7. CNRL provided a response in a letter dated April 1, 2024 (the Response).
8. The Commissioner of the BC Energy Regulator has delegated me authority under sections 62 and 63 of the ERAA. I will be making a determination with regards to: whether CNRL contravened section 15.2 of the ERRR and/or section 15.3(2)(a) of the ERRR and/or Section 11(b)(i) of the EPMR; whether to impose an administrative penalty under section 63 of the ERAA; 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**

9. Section 15.2 of the ERRR states that a road permit holder must remove snow fill stream crossings from the energy resource road before the spring freshet.
10. Maximum penalties for specific violations are set by regulation. Section 8(2) of the Administrative Penalties Regulation (APR) provides that a person who contravenes section 15.2 of the ERRR is liable to an administrative penalty not exceeding \$250,000.

11. Section 15.3(2)(a) of the ERRR states that a road permit holder must not use an oil and gas road unless there is a permit for the road.
12. Section 8(1) of the APR provides that a person who contravenes section 15.3(2)(a) of the ERRR is liable to an administrative penalty not exceeding \$500,000.
13. Section 11(b)(i) of the EPMR states that a person who carries out an energy resource activity on an operating area must, for each crossing of a stream, wetland and lake, ensure the crossing does not prevent fish movement.
14. Section 3 of the APR provides that a person who contravenes section 11(b)(i) of the EPMR is liable to an administrative penalty not exceeding \$500,000.
15. Section 62(1) of the ERAA 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 Regulator may find that the person has contravened the provision.
16. Section 62(5) of the ERAA states, in part, that the Regulator may not find that a person has contravened a provision of the ERAA or the regulations if the person demonstrates to the satisfaction of the Regulator that they exercised due diligence to prevent the contravention or if the actions were the result of officially induced error.
17. Section 63(1) states that, if the Regulator finds that a person contravened a provision of the ERAA or its regulations, the Regulator may impose an administrative penalty. Section 63(2) of the ERAA 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**

18. CNRL is the permit holder for well site a-001-I/094-B-15, WA 21805.
19. In the winter of 2021/2022 CNRL accessed the a-001-I/094-B-15 well site to conduct wireline and surface casing vent work on WA 21805.
20. To access the a-001-I/094-B-15 well site, CNRL constructed a snow fill crossing within each of an S2, S3, and S4 stream.

21. On March 24, 2022, Officers inspected the three snow fill crossings on the access to a-001-1/094-B-15. The Officers observed that water was not flowing at the time, but there was evidence of melt in the area including surface water on the ice and snow melting on the banks.
22. On April 7, 2022, the Officers conducted a follow up on the crossings and observed that the snow fills were still in place. The Officers noted evidence of spring freshet due to water flowing in the three streams and surrounding snow and ice beginning to melt. Officers identified a tunnel to have formed in the snow fill on the S2 with water flowing through, indicating that the tunnel was preventing fish passage as it was small and filled with debris from the snow fill.
23. On May 4, 2022, the Officers conducted a follow up on the crossings and noted the snow fill in the S2 was partially washed away by the flowing stream. There was no evidence indicating that equipment had been in the area to remove the fill. The Officers also indicated that the S3 and S4 were starting to flow but were backed up by the snow fills that had not been removed.

## **Issues**

24. The issues which I will decide are:

### Section 15.2 of the ERRR:

- Did CNRL ensure the snow fills were removed before spring freshet?
- Did CNRL exercise due diligence in its efforts to remove the snow fills?
- Was any noncompliance due to an officially induced error?
- Did CNRL contravene section 15.2 of the ERRR?
- If CNRL is found to have contravened section 15.2 of the ERRR what if any, administrative penalty to impose?

### Section 15.3(2)(a) of the ERRR:

- Did CNRL use an unpermitted road?
- Did CNRL exercise due diligence in its efforts ensure the road had a permit?
- Was any noncompliance due to an officially induced error?
- Did CNRL contravene section 15.3(2)(a) of the ERRR?
- If CNRL is found to have contravened section 15.3(2)(a) of the ERRR what if any, administrative penalty to impose?

### Section 11(b)(i) of the EPMR:

- Did CNRL ensure the crossing did not prevent the movement of fish?
- Did CNRL exercise due diligence in its efforts to ensure the crossing did not prevent the movement of fish?
- Was any noncompliance due to an officially induced error?
- Did CNRL contravene section 11(b)(i) of the EPMR?
- If CNRL is found to have contravened section 11(b)(i) of the EPMR what if any, administrative penalty to impose?

## **Section 15.2 of the ERRR:**

### **Did CNRL ensure the snow fill was removed before spring freshet?**

25. The Report indicates that all three snow fills were located on the access road to the CNRL well site a-001-I/094-B-15.
26. Appendix 11 of the Report includes a survey plan titled 'Survey Plan access to the A-99-E/94-B-16 well site.' This survey plan shows that the S3 and S4 stream impacts referenced in the Report are located on the A-99-E/94-B-16 access.
27. The Report only identifies the well site and access for a-001-I/094-B-15 which includes the S2 stream; therefore, my decision will be limited to the impacts on the a-001/094-B-15 access.
28. The Regulator conducted three inspections between March 24 and May 4, 2022, checking to see that CNRL removed the snow fill crossing prior to spring freshet.
29. As evident by the pictures provided as part of the Report, the inspection on May 4, 2022, found the snow fill within the S2 stream as being partially washed away with no evidence that the snow fill was removed by equipment.
30. In its Response, CNRL does not dispute the snow fill was not removed prior to spring freshet.
31. Based on the Report and the Response, I find that CNRL failed to remove the snow fill prior to spring freshet.

### **Did CNRL exercise due diligence in its efforts to ensure the snow fill was removed before spring freshet?**

32. Pursuant to section 62(5) of the ERAA, I may not find that CNRL contravened section 15.2 of the ERRR if CNRL demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether CNRL has demonstrated that it took all reasonable steps to prevent the contravention. CNRL 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.
33. CNRL does not offer a defense of due diligence. Regardless, I must consider whether CNRL demonstrated due diligence in its actions.
34. In the Response, CNRL states that it annually builds and removes approximately 600 snow fills in northeast British Columbia.
35. The Report indicates that at the time of discovery in March 2022 CNRL did not have a current policy or procedure for the construction, maintenance, and removal of snow fills.
36. The Response argues that if the Regulator had notified CNRL of the snow fills remaining in place it would have been able to remove them.

37. I recognize that typically the BCER advises permit holders where a non-compliance is found and that did not occur in this instance. However, it is not the role of the Regulator to act as the compliance verification process for industry in ensuring that all regulatory requirements are met. Rather, given the large amount of snow fills constructed annually, it would have been reasonable for CNRL to have a mechanism in place to track the location and status of snow fill installations.
38. Thus, CNRL has failed to satisfy me that they took all reasonable steps to prevent the contravention.

Was any noncompliance due to an officially induced error?

39. In reviewing both the Response and the Report, I find no evidence to suggest any officially induced error in relation to this noncompliance.

Did CNRL contravene section 15.2 of the ERRR?

40. I find that CNRL contravened section 15.2 of the ERRR.

If CNRL is found to have contravened section 15.2 of the ERRR what if any, administrative penalty is to be imposed?

41. Section 63 of the ERAA sets out factors that the Regulator 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.
42. CNRL has had six previous findings of contravention and has been issued seventeen previous Orders.

Contraventions

Case File Number	Decision Date
2014-023	6/Jan/2016
2017-057	27/Jun/2018
2017-004	8/Oct/2019
2019-092	29/Aug/2022
2022-0137	17/Apr/2024
2021-0194	9/Feb/2024

Orders

Order Number	Issue Date
2013-08	30/May/2013
2013-28	15/Nov/2013
2014-010	6/Jun/2014
2014-012	15/Sep/2014
2015-005	21/Apr/2015
2015-007	29/Apr/2015
2015-009	8/May/2015
2015-033	9/Oct/2015
2017-005	3/Mar/2017
2017-006	15/Mar/2017
2017-007	15/Mar/2017
2017-010	7/Apr/2017
2018-019	6/Nov/2018
2018-022	30/Nov/2018
2019-012	2/Oct/2019

2021-0056	30/Apr/2021
2023-0031	16/Mar/2023

43. I recognize that all but one contravention decision is unrelated in nature to this contravention and that no previous orders are related. Those orders and other contraventions will not be considered for the purposes of my decision.
44. I note that there is a similar pattern of behavior by CNRL in this decision and that of case file 2017-057. In both cases, CNRL admitted to not having a proactive policy, procedure or program in place to effectively manage energy activities in ensuring it meets all regulatory requirements. Rather, CNRL relied on notices from internal field staff or the BCER to identify issues prior to managing them. This is not a reasonable approach to regulatory compliance. Given that the decision for case file 2017-057 was issued in 2018, it would have been reasonable to see CNRL take further steps to proactively manage its energy activities. I find this pattern of using the Regulator as its compliance verification process aggravating.
45. Regarding the gravity and magnitude of the contravention, for the purposes of this decision I consider “gravity” to involve a consideration of CNRL’s actions that gave rise to the contravention while “magnitude” refers to any resulting damage from the contravention.
46. With respect to gravity, CNRL had no mechanism in place to ensure that its snow fills were removed prior to freshet. This suggests that it had little regard for the importance of the regulatory requirement and was waiting for non-compliances to be identified by the BCER as opposed to taking a proactive approach to managing its regulatory requirements. This approach to compliance is troubling. The non-compliance was not deliberate, but it was the inevitable result of CNRL’s approach. I consider the gravity to be moderate as CNRL did not remove an impact to the land base as required by regulation.
47. The magnitude of the contravention was restricted to a single location on the land base. There was no evidence provided as part of the Report indicating any damage to the environment. I consider the magnitude of the contravention to be low.
48. There is no evidence to suggest harm to others as a result of the contraventions.
49. The contravention was not repeated but was continuous during the period of freshet until the snow fill melted and was washed downstream.
50. There is no evidence demonstrating that the contraventions were deliberate.
51. There was insufficient evidence to indicate that CNRL gained economic benefit as a result of the contravention.
52. CNRL did not show any efforts to prevent the contravention from happening as at the time of discovery CNRL did not have a current policy or procedure for the construction, maintenance, and removal of snow fills. The Response does indicate that CNRL is adopting new practices

that will help avoid future contraventions. In my view, the practices that are being adopted are basic procedures that should have been in place prior to the contravention.

53. I have found CNRL contravened section 15.2 of the Energy Resource Road Regulation. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$50,000. I note that this decision is the second in which CNRL has used the defense of relying on the Regulator to act as their compliance verification process. The reliance on the Regulator is an additional aggravating factor to the contravention and as such, an increased administrative monetary penalty (AMP) is warranted to achieve deterrence. This penalty amount is in line with a similar decision where Procyon Energy Corp. 2023-0101 was issued an AMP of \$45,000 for failing to remove energy infrastructure from the land base as required by regulation.

**Section 15.3(2)(a) of the ERRR:**

Did CNRL use an unpermitted road?

54. The Report states CNRL does not have a valid permit to access wellsite a-001-I/094-B-15. The original permit issued allowed for the construction of an access road to the wellsite.
55. The requirement to obtain a road permit was established in June 2013 when the Oil and Gas Road Regulation (OGRR), now the Energy Resource Road Regulation, was brought into effect.
56. The Regulator developed a process for non-status roads, roads initially authorized in conjunction with the well authority under the *Petroleum and Natural Gas Act* (PNG) but not tenured, to obtain a road permit. This process was communicated to industry in 2013 through industry bulletins.
57. No evidence was provided as part of the Response which showed that CNRL took the appropriate steps to obtain a road permit.
58. CNRL does not dispute the fact of not having an energy resource road permit for the access to a-001-/094-B-15.
59. Based on the Report and the Response, I find CNRL did not have a valid permit for the access road.

Did CNRL exercise due diligence in its efforts to operate a permitted road?

60. Pursuant to section 62(5) of the ERAA, I may not find that CNRL contravened section 15.3(2)(a) of the ERRR if CNRL demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether CNRL has demonstrated that it took all reasonable steps to prevent the contravention. CNRL 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.



61. In the Response CNRL stated that it had no ability through economically reasonable means to identify unpermitted roads in its extensive portfolio.
62. This decision relates to the a-001-I/094-B-15 access road, not the entirety of CNRL's road portfolio.
63. Considering CNRL had to mobilize resources to conduct work on WA 21805, it would have been reasonable to have also included a review of the location to ensure that CNRL had the required permits and authorizations to conduct the work while meeting all other required regulations.
64. The BCER has an established process to facilitate the transfer of non-status roads to an ERAA permitted road which is outlined in Chapter 4.5 of the Oil and Gas Activity Application Manual, Completing Road Activity Details, Historical Submission: Road.
65. Given that the OGRR, now the ERRR, came into effect in 2013 it would have been reasonable for CNRL to have the mechanisms in place to show how road compliance was being proactively managed rather than, as indicated in the Response, *'to await these problems to be identified through inspections, reclamation certificate applications or otherwise and then promptly apply for a transition permit at that point in time.'*
66. I recognize that CNRL has a large asset profile; however, as a permit holder CNRL is responsible for ensuring that it has the resources available to meet regulatory obligations.
67. CNRL has failed to satisfy me that it took all reasonable steps to prevent the contravention.
- Was any noncompliance due to an officially induced error?
68. In reviewing both the Response and the Report, I find no evidence to suggest any officially induced error in relation to this non-compliance.
- Did CNRL contravene section 15.3(2)(a) of the ERRR?
69. I find that CNRL has failed to comply with section 15.3(2)(a) of the ERRR. As such, I find that CNRL contravened section 15.3(2)(a) of the ERRR.
- If CNRL is found to have contravened section 15.3(2)(a) of the ERRR, what if any, administrative penalty is to be imposed?
70. Section 63 of the ERAA sets out factors that the Regulator 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.

71. CNRL has had six previous findings of contravention and has been issued sixteen previous Orders.

Contraventions		Orders	
Case File Number	Decision Date	Order Number	Issue Date
2014-023	6/Jan/2016	2013-08	30/May/2013
2017-057	27/Jun/2018	2013-28	15/Nov/2013
2017-004	8/Oct/2019	2014-010	6/Jun/2014
2019-092	29/Aug/2022	2014-012	15/Sep/2014
2022-0137	17/Apr/2024	2015-005	21/Apr/2015
2021-0194	9/Feb/2024	2015-007	29/Apr/2015
		2015-009	8/May/2015
		2015-033	9/Oct/2015
		2017-005	3/Mar/2017
		2017-006	15/Mar/2017
		2017-007	15/Mar/2017
		2017-010	7/Apr/2017
		2018-019	6/Nov/2018
		2018-022	30/Nov/2018
		2019-012	2/Oct/2019
		2021-0056	30/Apr/2021
		2023-0031	16/Mar/2023

72. I recognize that all but one contravention decision is unrelated in nature to this contravention and that no previous orders are related. Those orders and other contraventions will not be considered for the purposes of my decision.
73. I note that there is a similar pattern of behavior by CNRL in this decision and that of case file 2017-057. In both cases CNRL admitted to not having a proactive policy, procedure or program in place to effectively manage energy activities in ensuring they meet all regulatory requirements. Rather, it relied on the BCER to identify issues prior to managing them. Given that the decision for case file 2017-057 was issued in 2018, it would have been reasonable to see CNRL take further steps to proactively manage its energy activities. I find this pattern of using the Regulator as its compliance verification process to be aggravating.
74. The gravity of the contravention shows that CNRL had no administrative mechanism in place to ensure that it had a valid road permit in place. The requirement to have a road permit is not new, having been brought into effect in 2013, coupled with the approach of relying on the Regulator to identify non-status roads, it suggests that CNRL had little regard for the importance of the regulatory requirement. Again, the non-compliance was not deliberate, but it was the inevitable result of CNRL's approach. Given the administrative nature of the non-compliance I consider the gravity to be low.
75. The magnitude of the contravention was restricted to a single road segment on the land base. There was no evidence provided as part of the Report which showed any damage to the environment. I consider the magnitude of the contravention to be low.

76. There is no evidence to suggest harm to others as a result of the contravention.
77. The contravention was not repeated or continuous as the use of the road was to facilitate a onetime access to conduct work on WA 21805.
78. No evidence was provided as part of the Report demonstrating that the contravention was deliberate.
79. There was insufficient evidence to indicate that CNRL gained economic benefit as a result of the contravention.
80. CNRL did not show any efforts to prevent the contravention from happening. As indicated in the Response, its management method for non-status roads was to wait to be notified by the Regulator then apply for transition permits. The Response does indicate that CNRL is adopting new practices that will help avoid future contraventions. In my view, the practices that are being adopted are basic procedures that should have been in place prior to the contravention.
81. I have found CNRL contravened section 15.3(2)(a) of the Energy Resource Road Regulation. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$25,000. While the discussion of the factors in relation to the 15.2 count set out above are similar, a smaller penalty is appropriate given the administrative nature of the contravention and the resulting lower gravity.

**Section 11(b)(i) of the EPMR:**

**Did CNRL ensure the snow fill did not prevent the movement of fish?**

82. To access the a-001-I/094-B-15 well site, CNRL constructed a snow fill crossing within an S2, S3, and S4 stream.
83. Appendix 11 of the Report includes a survey plan titled 'Survey Plan access to the A-99-E/94-B-16 well site.' This survey plan shows that the S3 and S4 stream impacts referenced in the Report are located on the A-99-E/94-B-16 access.
84. The Report only identifies the well site and access for a-001-I/094-B-15 which includes the S2 stream; therefore, my decision will be limited to the impacts on S2 stream.
85. As part of the Response, CNRL included the Golder Associates Stream Crossing Assessment of the a-001-I/094-B-16 lease and access (Golder Assessment), which identified Arctic grayling as being the only fish of concern.
86. The Report outlines the connectivity of the S2 stream to the Cameron River with no visible barriers to fish passage. As the Cameron River is known to support Arctic grayling it was implied that the S2 stream contained suitable seasonal rearing habitat for Arctic grayling

87. The Report provides images of the snow fill crossing still being in place on April 7, 2022, with the stream flowing both upstream and downstream of the fill, through a visible tunnel. It was noted by the Officers that the tunnel was preventing fish passage as it was small and filled with debris.
88. It is unclear through the photos and the description of the blocked tunnel, provided as part of the Report, the extent of blockage of the tunnel and whether that blockage prevented the movement of fish. Additionally, the report did not provide any evidence which may have indicated the presence of fish or that their movement upstream was prevented due to the presence of the snow fill at the time of inspection.
89. Therefore, there is insufficient evidence to make a determination that the snow fill prevented the movement of fish.

### **Conclusion**

90. I have found CNRL contravened sections 15.2 and 15.3(2)(a) of the Energy Resource Road Regulation. Based on the above discussion of the various factors set out in section 63(2), I am imposing a total administrative penalty of \$75,000.
91. There was insufficient evidence to determine if CNRL had contravened section 11(b)(i) of the Environmental Protection and Management Regulation.



Dax Bourke  
Executive Director, Compliance & Enforcement  
BC Energy Regulator

Date: December 9, 2024