



ENVIRONMENTAL ASSESSMENT OFFICE:
DECISION - DETERMINATION OF ADMINISTRATIVE PENALTY
EAC NO: E14-03
PROJECT NAME: Coastal GasLink Pipeline Project

PART ONE: THE CONTRAVENTION

Party

Coastal GasLink Pipeline Ltd. (CGL)

Contravention or Failure

Failure to comply with order reference EN2020-011 (Attachment 1), issued under Section 53(1) of the *Environmental Assessment Act* (2018) (the Act)

Order EN2020-011 includes clause 1, which requires CGL to:

Control the risk of sediment transport to Environmentally Sensitive Receptors by implementing the following:

- Stabilize exposed surface material and subsoil during and after Project works where potential for erosion exists;
- Plan and install erosion and sediment control measures before, during and after Project works; and,
- Maintain these measures during and after Project works to ensure they continue to function as intended.

Date of Contravention or Failure

CGL failed to comply with EN2020-011 on the following dates:

- February 16, 2022
- February 17, 2022
- February 18, 2022

Executive Director's Summary

Coastal GasLink Pipeline Ltd. is a company registered in British Columbia (BC) that is currently constructing the Coastal GasLink Pipeline Project (Project). The Project was subject to an environmental assessment pursuant to the Act and regulations. Environmental Assessment Certificate (EAC) #E14-03 (Appendix 1) was issued to Coastal GasLink Pipeline Ltd. on October 23, 2014. Schedule B to EAC #E14-03 (Appendix 2) included Condition 26 which requires the

holder to develop and implement an Environmental Management Plan (EMP) in accordance with Section 25 and Appendix 2A of the Application (Appendix 3). The EMP (Appendix 4) contains requirements to avoid or reduce adverse effects through the use of erosion and sediment control measures noting also that Appendix C.7 (Soil Erosion Contingency Plan) of the EMP specifically states “If wind or water erosion is evident during the construction phase of the Project, all necessary Contractor equipment and personnel will be made available to control the erosion.”

From October 19 to 23, 2020 and on November 2, 2020 Environmental Assessment Office Compliance and Enforcement Officers (EAO C&E) inspected the Project against the EAC requirements. As a result of the confirmed noncompliances with Condition 26 that were observed during this inspection of the Project, EAO C&E issued Enforcement Order EN2020-011 (Order) to CGL on December 8, 2020.

From October February 16 to 18, 2022, EAO C&E conducted an inspection of the Project against requirements of the EAC and the Order. EAO C&E identified that an Administrative Penalty would be recommended to a Decision Maker as a result of the findings.

On August 8, 2022 the EAO issued a Notice Prior to Determination of Administrative Penalty (Notice) (ENVA-30050-25/CGLP-21). On October 7, 2022 CGL provided a single written submission in response to the Notice as the opportunity to be heard (OTBH).

In the OTBH (Appendix 5), CGL submitted information that outlined several points for consideration regarding the nature of the non-compliances in relation to project requirements as well as the basis for this administrative penalty This information has been incorporated into the decision document and final calculated amount.

Reasons for Decision

I have considered all of the information submitted, including the written submission by CGL. My evaluation has included a consideration of matters listed in Section 2(1) of the Administrative Penalties (*Environmental Assessment Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

Administrative penalties are monetary penalties imposed on individuals or companies who do not comply with the legal requirements of the Act, its regulations or a requirement of an order made under the Act. The standard of proof for proving liability and issuing an administrative penalty is a “balance of probabilities”.

I have decided to issue this administrative penalty based on CGL’s non-compliance with the Order, though I acknowledge that CGL’s conduct in this case is also contrary to Condition 26 of the EAC, as described in IR2022-007.

An Order under Section 53 of the Act allows EAO C&E to clearly identify the action(s) required to prevent, remedy or cease non-compliance(s) for projects with EACs. The Order was issued in response to CGL’s confirmed non-compliance with Condition 26 with respect to its failure to implement erosion and sediment control measures. The Order directs CGL to control the risk of sediment being transported to environmentally sensitive receptors by stabilizing exposed

surface material, installing erosion and sediment control measures and ensuring the measures would continue to function as intended.

In its OTBH, CGL argues that there is no evidence that it contravened the requirements of the Order. The evidence submitted by EAO C&E in IR2022-007 (Appendix 6) as well as CGL's response to IR2022-007 (Appendix 7) stating that "the appropriate erosion and sediment control mitigation has been installed as of March 17, 2022" for the affected sites provide a clear indication that it is more likely than not that the non-compliances occurred on the dates specified (February 16 to 18, 2022).

Further, EAO C&E have consistently identified non-compliance with Condition 26 and the Order based on the presence of erosion and sediment transport at Project sites, including the most recent IR2022-007 which is the primary basis for the AP. At no time prior to this AP has CGL disputed that it contravened Condition 26 and the Order as identified by EAO C&E

CGL also maintains in its response that the presence of erosion and sediment transport does not indicate that it failed to comply with the Order. While I agree with CGL it is reasonable to expect that some effects may occur, I am not satisfied that CGL took all reasonable care to prevent the contraventions. Many of the examples CGL has given are just their obligations under the Order and Condition 26.

While the compliance history is not considered as a factor in determining the base amount itself, I would note that these are issues that EAO has repeatedly found non-compliance with requirements relating to erosion and sediment control since 2019 and which have been the subject of 2 previous administrative penalties. The regulatory requirements for erosion and sediment control are clear and the fact that CGL quickly remediated the sites at issue here is evidence that due diligence was not exercised. In other words, a reasonable person in CGL's position (even more so given previous compliance history) would have taken those remediation actions in advance to prevent a contravention.

CGL in its response argues that EAO did not take into account BCs approved water quality guidelines in assessing the effects of the contraventions. It is important to note that an Environmental Assessment Certificate is a legally binding authorization that is provided with a unique set of requirements that are put in place for individual projects. As noted in Penalty Assessment Form (Attachment 3) In March of 2014 CGL submitted an Application for an EAC to the EAO in March of 2014, the Application identified impacts to fish, fish habitat, wetlands, and water quality caused by soil erosion and sediment transport as potential adverse effects of the Project, and proposed measures to mitigate these effects within a proposed Environmental Management Plan.

During the environmental assessment conducted for the Project, which included a review of the Application, concerns regarding adverse impacts to fish and fish habitat, water quality, and wetland function were identified by members of the public, Indigenous nations, and technical experts on the working group and documented in the Assessment Report (Appendix 8).

Environmental Assessments are undertaken to prevent or reduce significant adverse effects – not wait to act until effects have occurred, as such Ministers considered the potential adverse effects and mitigations for those effects presented in the Application and developed during the

environmental assessment, as summarized in the Assessment Report, when determining whether or not to issue an EAC for the Project.

The failure to meet the requirements of Enforcement Order EN2020-011 resulted in observed adverse effects to water quality, wetlands and fish habitat, and potential adverse effects to fish and other aquatic life. These findings are supported specifically with photo evidence as well as written observations outlined in the inspection details of IR2022-007. This is further supported by photo evidence provided by CGL in its response to IR2022-07 showing side by side comparisons and written observations of the sediment laden water before and then after remedial measures were put in place and running clear or no longer flowing into the receptors.

CGL also brought forward arguments that CGL exercised due diligence to prevent the contraventions, supported by actions including (but not limited to) installing mitigation and controls, funding the Independent Erosion and Sediment Control Auditor, employing a Certified Professional in Erosion and Sediment Control to develop and approve a Site Specific Erosion and Sediment Control Plan for each Location identified in the AP.

While I disagree with CGL that exercised due diligence to prevent a contravention of Condition 26 and the Order, as discussed above, I do find the arguments brought forth by CGL show that the company has taken some subsequent steps to meet the requirements of Condition 26 and the Order which I have taken into consideration in factors h) and i) in the Penalty Assessment Form

CGL has also argued that an administrative penalty should not be imposed because of the Compliance Agreement between the Minister and CGL under s. 55 of the Act. The Compliance Agreement (Appendix 9) applies only to "Identified Areas", which are Project sites where grubbing and stripping activities had not yet occurred as of the date of the Agreement (July 2022). The Identified Areas are listed by kilometer point range in Schedule B of the Agreement. The Identified Areas do not include any of sites included in this administrative penalty.

Section 3.2(2) expressly states that the Compliance Agreement does not cover CGL's non-compliances at sites other than Identified Areas. As a result, the Compliance Agreement does not apply to the sites included in this administrative penalty. However, I have considered CGL's willingness to enter into the Compliance Agreement under factor i) of the Penalty Assessment Form.

Based upon the information provided in the OTBH I have adusted the potential adverse effect down to moderate, due to indications that the effects observed to occur at multiple sites were within a Kilometre Point (KP) range of under 20 kilometres and were able to be remedied within a reasonable time, this along with my decision to apply the penalty to the Order only has resulted in a revision to the base penalty amount,

The amount assessed against factor c) has been increased as consideration for compliance history is now fully considered under this factor and removed from section j) in order "to eliminate double counting" as noted by CGL in the OTBH.

Revisions have been inserted in *italics* and deletions are indicated with a ~~strikethrough~~ (See Penalty Assessment Form). Given the additional information provided and re-evaluation of the penalty assessment, the total penalty has been reduced.

Due Date and Payment

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Corporate Services, Attn: Accounts Receivable, Environmental Assessment Office, 2nd Floor 837 Yates St PO Box 9426 Stn Prov Govt Victoria, BC V8W 9V1. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received in the 30 calendar day period, interest will be charged at 3% + prime lending rate of the principal banker to the Province per month and the amount payable is recoverable as a debt due to the government.

Appendices

See Table 4 in Attachment 2 – Penalty Assessment Form

Date this 18th day of January 2023.