

Administrative Penalty Director’s Decision

Named Party: Cancen Oil Processors Inc. **BA Code:** A214

File No. 2023-055

Preliminary Penalty Assessment

Contraventions Identified	Preliminary Assessment Amount (Base Penalty Table + Factors, [\$5000 max total]) x Day/Part of Day	Total
Contravention 1	\$105 000	\$105 000
Total Preliminary Assessment:		\$105 000

Director’s Decision Summary

On November 26, 2024, I, Tammy Loiselle, Director, Emissions, Compliance, Support & Safety, Regulatory Compliance, for the Alberta Energy Regulator (AER), spoke with Keith Talbot, President for Cancen Oil Processors Inc. (Cancen) to discuss the Preliminary Administrative Penalty Assessment (PA). Mr. Talbot agreed to a meeting in person, requesting a date of January 15, 2025, to discuss the investigation findings and PA. I agreed to the meeting date and the PA was emailed to Cancen on November 27, 2024. Mr. Talbot requested two meeting reschedules, which the AER accommodated, resulting in an electronic meeting occurring on January 29, 2025.

On January 29, 2025, at 11:07 a.m. Cancen provided a written submission. At 1:30 p.m. I, Tammy Loiselle, Director, for the AER, along with AER subject-matter experts, met with Cancen representatives Mr. Talbot and Mr. Guskjolen.

The purpose of the meeting was to review the facts on which the PA was based, how the PA was calculated, and provide an opportunity for Cancen to share with the AER any relevant information not previously submitted to be considered prior to making a final decision.

The PA identified the following contravention and penalty assessment.

CONTRAVENTION 1

On or about March 1, 2023, and on a continuous basis, in the Province of Alberta, Cancen Oil Processors Inc. has been in contravention of an Environmental Protection Order, thereby contravening section 227(i) of the *Environmental Protection and Enhancement Act (EPEA)*.

<i>Administrative Penalty Regulation (EPEA)</i>				
BASE PENALTY TABLE				
Type of Contravention				
Potential For Adverse Effect		Major	Moderate	Minor
	Major	5000	3500	2500
	Moderate	3500	2500	1500
	Minor to None	2500	1500	1000

Type of Contravention: Major

The primary purpose of *EPEA* is the protection of the environment and the requirements within are meant to ensure that activities undertaken pursuant to the Act are conducted in a manner that mitigates risks, or prevents adverse effects, to the environment. Section 112 of *EPEA* sets out the duty, for all persons responsible, to take remedial actions because of a release. It is a general duty of care and exists to prevent adverse effect or further adverse effect. Not fulfilling this duty may result, as it did in this case, in the issuance of an Environmental Protection Order (EPO) under section 113 of *EPEA*, that Cancen Oil Processors Inc. also failed to comply with regarding remedial actions.

The context of a release, or even the possibility of a release, may necessitate the issuance of an EPO to create unique, time-bound requirements. It is a tailored response, issued directly to the person responsible, providing AER oversight and setting clear requirements to manage the release and address adverse effects, including remediation and restoration. Not complying with an EPO is assessed as “Major” as it directly jeopardizes AER regulatory oversight and stands in direct opposition against the primary purpose of *EPEA*.

Potential for Adverse Effect: Moderate

The investigation revealed certain specifics about the release such as that it had subsequently flowed into an on-lease man-made water runoff pond and contained petroleum hydrocarbons, ethylene glycol, monoethanolamine, and other deleterious materials. The release also requires the remediation of approximately 7000 tonnes of soil which could be achieved through thermal treatment. This is typically an on-site process where the soil can be returned and not disposed or replaced. As such, it appears that any actual adverse effects are minor.

However, this portion of the assessment, while considering the context of the release and any actual adverse effects, pertains to the potential for adverse effect in relation to not complying with an EPO. An EPO is issued for the express purpose of preventing an adverse effect or further adverse effect. By not complying with the EPO, the potential for an adverse effect only increases. For example, released substances could migrate off-lease through the groundwater thereby increasing the extent of the release

and any affects. Accordingly, the potential for adverse effect is assessed as “Moderate” in this case.

Base Penalty Table Amount: \$3500

Factors Applicable to this Contravention

Factor from above	Amount Varied	Description/Comments
(a)	+\$1000	Orders, such as Environmental Protection Orders, are a substantial tool in the AER’s regulatory scheme and its objective of environmentally responsible development and regulating the protection of the environment. Contravening an Environmental Protection Order directly impacts the regulatory scheme (\$500 added) and its objective (\$500 added).
(b)	+\$500	Cancen was aware of the need to address the release before the order was issued and was aware of the Environmental Protection Order requirements concerning remediation but did not take actions to manage the issue (e.g., request time extensions to the order’s due dates) or comply prior to the March 1, 2023, due date.
(e)	+\$500	Cancen was issued an administrative penalty in 2021 for noncompliances connected to its other waste management facility (\$500 is added for history of noncompliance).
(f)	+\$500	\$500 is applied as Cancen derived an economic benefit for not complying with the conditions of the Environmental Protection Order. This is not an assessment of the economic benefit amount; it is a recognition that an economic benefit was derived from the contravention.
(g)	See below	See Daily Application and Factor (G) Variance, below

Factor Adjusted Amount (\$5000 maximum): \$5000¹

¹ Under section 3(2) of the *Administrative Penalty Regulation* the AER may increase or decrease the amount of an administrative penalty after considering certain factors. However, per section 3(3) of the *Administrative Penalty Regulation* the maximum amount cannot exceed \$5000 for each day or part of a day on which a contravention occurs or continues.

Given the above, the amount of the administrative penalty associated with the relevant contravention cannot be increased over \$5000. The assessment of the factors and factor variance will remain as part of the preliminary assessment as the evidence supports the increased amounts described in the factors table.

Daily Application and Factor (G) Variance

Section 237(2) of *EPEA* states that “A notice of administrative penalty may require the person to whom it is directed to pay...(a) a daily amount for each day or part of a day on which the contravention occurs or continues;”.

The regulatory purpose of an administrative penalty is to promote compliance and deter noncompliance. To achieve these goals, the amount of the administrative penalty must be sufficient while still being proportionate to the contravention.

In this matter, while the actual impact of the release appears to be on a smaller, localized scale, Cancen contravened, and continues to contravene, an EPO. In considering the contravention against the impact, an administrative penalty restricted to the amount of the base penalty is not proportional and not sufficient to achieve the regulatory goals of compliance and deterrence. Similarly, if strict daily application was applied for each day or part of a day, a disproportionately large response would result.

Given this, the AER finds it appropriate and reasonable in this matter to apply a daily penalty but also exercise its discretion and apply section 3(2)(g) of the *Administrative Penalty Regulation* to reduce the penalty to a more proportional amount, calculated as a representative monthly amount. The AER is satisfied that the penalty assessed balances the administrative penalty’s deterrence value, both to Cancen and industry in general, and is proportionate with the contravention.

Given that the contravention continues, the end month used is November 2024 as that is the timeframe the AER contacted Cancen in respect of this penalty. The contravention occurred on March 1, 2023, resulting in a total of 21 months (March 2023 to November 2024, inclusive). Accordingly, the administrative penalty is decreased to the more proportionate amount, calculated as a representative monthly amount by multiplying the 21 months by the factor adjusted amount, above, as follows:

Calculated Preliminary Assessment Amount: \$5000 x 21 months = \$105 000

Discussion

At the January 29, 2025, meeting an AER investigator summarized the investigation’s findings and an AER senior compliance assurance specialist summarized the PA calculation, including the base penalty and variance factors.

Cancen did not have questions related to the investigation's findings, but Mr. Talbot had a question concerning variance factor (e), believing that the previous administrative penalty was resolved. It was explained that the previous administrative penalty was paid but that factor (e) relates to history of noncompliance, with the previous administrative penalty demonstrating a history of noncompliance related to Cancen's oilfield waste management operations.

Cancen was offered the opportunity to provide further or new information, including in relation to their written submission. Cancen indicated they had further conversations with an insurance company and that their goal was to clean up the site (i.e., New Sarepta site at 14-10-050-22W4M). Cancen mentioned actions they were taking regarding the site (e.g., keeping site in good shape, snowplowing to limit runoff, use of cameras to monitor site, May 2025 plans to address product in a tank, and indicating intent to remediate through digging up and removing the contaminated soil). I questioned Mr. Talbot whether this information had been provided to the statutory decision-maker for the EPO, and he confirmed it had not. Mr. Talbot expressed some surprise that they were not fulfilling the conditions of the order and Mr. Guskjolen indicated he did not realize there were timelines associated with managing the release. Cancen indicated their intent to start working on the site on May 1, 2025, and stated that there may be contamination under their secondary containment. Mr. Talbot indicated that Cancen had the money to either pay the penalty or remediate the release, but not both.

I, Tammy Loiselle, thanked them for their information and written submission and stated that they give the information regarding managing the release to the statutory decision-maker for the EPO as that still needs to be complied with.

Cancen's January 29, 2025, written submission contains information on the status of the New Sarepta site, remediation efforts at other Cancen sites, banking and deposit information with the AER, and a New Sarepta remediation action plan for May 1, 2025. The written submission also provided additional contextual information relating to the New Sarepta site, unrelated to the subject contravention.

Final Penalty Decision

I, Tammy Loiselle, Director, for the AER, have fully considered all of the information collected in the investigation, verbal submission presented to me by Cancen in the January 29, 2025, meeting, and January 29, 2025, written submission sent to me from Cancen.

I am of the opinion that the contravention described above did occur (and continues) and is supported by the evidence.

I find that there was a lack of due diligence as the investigation revealed that Cancen was made aware of certain risks for leaving fluids in out of service tanks (April 13, 2022) and was issued a Notice of Noncompliance for not containing the spill (August 5, 2022), an EPO (February 15, 2023) to address the release including requiring a Remediation Action Plan (RAP), and a breach of order letter (March 9, 2023)

for failure to submit and implement a RAP. Cancen was aware of the requirements to contain and remediate but did not take practical steps or pursue viable alternatives to comply or address the release.

Cancen did not dispute the investigation findings and their statements in the January 29, 2025, meeting further confirm that Cancen continues to remain in noncompliance with the EPO.

Cancen's January 29, 2025, written submission contains information on a remediation action plan for May 1, 2025. The fact that this information needs to be, but has not yet been, shared with the statutory decision-maker for the EPO further confirms that contravention of the EPO continues.

I find the total base penalty amount and the applied variance factors in the PA reasonable, and they remain the same.

FINAL PENALTY ASSESSMENT: \$105 000

ECONOMIC BENEFIT ASSESSMENT

Preliminary Economic Benefit Assessment

Economic Benefit Analysis - Parameters	
Mobilization of equipment - \$100 000.00	\$ 100,000.00
Demobilization of equipment - \$100 000.00	\$ 100,000.00
Thermal treatment of 7000 Tonnes of soil @ \$290.00/T	\$ 2,030,000.00
The total estimated cost for remediation \$2 230 000.00	\$ 2,230,000.00
Interest rate - 5%	0.05
Non-compliance period (March 2023 - November 2024) 21mths/1.75yrs	1.75

Economic Benefit Analysis - Calculation	
Present Value in November 2024	\$ 2,428,768.58
Economic Benefit	\$ 198,768.58

Preliminary Economic Benefit Assessment: \$198 768.58

Director's Decision Summary

On November 26, 2024, I, Tammy Loiselle, Director, Emissions, Compliance, Support & Safety, Regulatory Compliance, for the Alberta Energy Regulator (AER), spoke with Keith Talbot, President for Cancen Oil Processors Inc. (Cancen) to discuss the Preliminary Administrative Penalty Assessment (PA). Mr. Talbot agreed to a meeting in person, requesting a date of January 15, 2025, to discuss the investigation findings and PA. I agreed to the meeting date and the PA was emailed to Cancen on November 27, 2024. Mr. Talbot requested two meeting reschedules, which the AER accommodated, resulting in an electronic meeting occurring on January 29, 2025.

On January 29, 2025, at 11:07 a.m. Cancen provided a written submission. At 1:30 p.m. I, Tammy Loiselle, Director, for the AER, along with AER subject-matter experts, met with Cancen representatives Mr. Talbot and Mr. Guskjolen.

The purpose of the meeting was to review the facts on which the PA was based, how the PA was calculated, and provide an opportunity for Cancen to share with the AER any relevant information not previously submitted to be considered prior to making a final decision.

The PA identified the following contravention and related economic benefit assessment.

CONTRAVENTION 1

On or about March 1, 2023, and on a continuous basis, in the Province of Alberta, Cancen Oil Processors Inc. has been in contravention of an Environmental Protection Order, thereby contravening section 227(i) of the *Environmental Protection and Enhancement Act (EPEA)*.

ECONOMIC BENEFIT FROM FAILING TO COMPLY WITH AN ENVIRONMENTAL PROTECTION ORDER

Cancen obtained a February 9, 2023, quote from Nelson Environmental for remediating the New Serapta Site in the amount of \$2 230 000.00 (+/- 15%).

METHODOLOGY

Complying with legislation requires a commitment of financial resources. Economic benefit, or the proceeds derived directly or indirectly from a contravention, represents the financial gains from avoiding or delaying these expenditures. The economic benefit portion of an administrative penalty is intended to ensure that a regulated party does not have an economic incentive to avoid compliance, and that the regulated party is deterred from future noncompliance.

In this case, the type of economic benefit resulting from the failure to submit and implement a Remedial Action Plan in accordance with the EPO is **Delayed costs**.

Delayed costs refers to a noncompliance in the past where an expenditure of funds in the present **can** correct the noncompliance; therefore, the costs of compliance were merely delayed, specifically, the time value of money (interest) from the time of first noncompliance until the date compliance is achieved (noncompliance resolved) through the expenditure of these funds.

These costs are said to be only delayed because investments in the present are able to be incurred as costs to abate the past noncompliance. However, delayed costs assessments do not include the actual cost to abate the noncompliance. It is the interest (using compound interest) on the delayed costs that the regulated party received (and should not have) when they failed to comply with the condition on time that should be assessed.

CALCULATION

The investigation revealed that:

1. Cancen had, and has, access to capital (e.g., WM 198 and its disposal well have been active since April 2017) during the time period the costs were delayed,
2. The time period the costs were delayed by not complying with the EPO is March 1, 2023, to present, and continuing – for calculation purposes the end date is November 2024 for a total of 21 months or 1.75 years, and
3. The February 9, 2023, total estimated cost for remediation provided by Nelson Environmental for remediating the New Serapta Site was \$2 230 000.00 (+/- 15%).

In consulting with an AER Senior Economist, and per the AER’s internal Economic Benefit Assessment Guide a conservative interest rate of 5 per cent is appropriate, resulting in the following calculation from an AER Economist.

Economic Benefit Analysis - Parameters	
Mobilization of equipment - \$100 000.00	\$ 100,000.00
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The total estimated cost for remediation \$2 230 000.00	\$ 2,230,000.00
Interest rate - 5%	0.05
Non-compliance period (March 2023 - November 2024) 21mths/1.75yrs	1.75

Economic Benefit Analysis - Calculation	
Present Value in November 2024	\$ 2,428,768.58
Economic Benefit	\$ 198,768.58

Interpretation - By delaying the payment by 21 months, Cancen has an economic benefit of \$198,768.58, potentially earning returns or reducing costs in the interim.

Discussion

At the January 29, 2025, meeting an AER investigator summarized the investigation’s findings regarding the economic benefit and an AER senior compliance assurance specialist summarized the economic benefit calculation.

Cancen did not have questions related to the investigation’s findings or calculation.

Cancen was offered the opportunity to provide further or new information, including in relation to their written submission. Cancen indicated they had further conversations with an insurance company and that their goal was to clean up the site. Cancen mentioned actions they were taking regarding the site (e.g., keeping site in good shape, snowplowing to limit runoff, use of cameras to monitor site, May 2025 plans to address product in a tank, and indicating intent to remediate through digging up and removing the contaminated soil). Mr. Talbot expressed some surprise that they were not fulfilling the conditions of the order and Mr. Guskjolen indicated he did not realize there were timelines associated with managing the release. Cancen indicated their intent to start working on the site on May 1, 2025, and stated that there may be contamination under their secondary containment. Mr. Talbot indicated that Cancen had the money to either pay the penalty or remediate the release, but not both.

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Final Decision on Economic Benefit

I, Tammy Loiselle, Director, for the AER, have fully considered all of the information collected in the investigation, verbal submission presented to me by Cancen in the January 29, 2025, meeting, and January 29, 2025, written submission sent to me from Cancen.

Per the **Final Penalty Decision** section, above, the finding that Cancen contravened section 227(i) of the *Environmental Protection and Enhancement Act*, by not complying with the terms and conditions of an EPO, has been established.

Cancen did not dispute the investigation findings and their statements in the January 29, 2025, meeting further confirm that Cancen continues to remain in noncompliance with the EPO.

Cancen's January 29, 2025, written submission contains information on a remediation action plan for May 1, 2025. The fact that this information needs to be, but has not yet been, shared with the statutory decision-maker for the EPO further confirms that contravention of the EPO continues.

In deciding on applying an amount for economic benefit consideration is given to:

1. The necessity in deterring similar contraventions for regulated parties operating in the same regulated sphere;
2. Will it remove the economic benefit that resulted from the contravention; and
3. Will it educate the regulated party to encourage future compliance (deterred from future contravention and ensuring no economic incentive to avoid compliance).

In connection with the facts of the investigation, I find the application of an economic benefit meets all the above considerations.

I find that Cancen has derived an economic benefit directly or indirectly as result of the contravention described above. I find the economic benefit amount calculated in the PA reasonable, reflecting a fair assessment of the economic benefit derived from the contravention, and remains the same.

FINAL ECONOMIC BENEFIT ASSESSMENT: \$198 768.65

FINAL ADMINISTRATIVE PENALTY ASSESSMENT [Final Penalty Assessment + Final Economic Benefit Assessment]: **\$303 768.58**

Date: February 18, 2025

< original signed by >

Director's Signature: _____
Tammy Loiselle, Director, Emissions, Compliance, Support & Safety, Regulatory Compliance, AER