



# **Penn West Petroleum Ltd.**

**Appeal of ERCB High Risk  
Enforcement Action 2**

**August 11, 2009**

**ENERGY RESOURCES CONSERVATION BOARD**

Decision 2009-041: Penn West Petroleum Ltd., Appeal of ERCB High Risk Enforcement Action 2

August 11, 2009

Published by

Energy Resources Conservation Board  
640 – 5 Avenue SW  
Calgary, Alberta  
T2P 3G4

Telephone: 403-297-8311  
Fax: 403-297-7040  
E-mail: [infoservices@ercb.ca](mailto:infoservices@ercb.ca)  
Web site: [www.ercb.ca](http://www.ercb.ca)

## CONTENTS

1	Decision .....	1
2	Introduction.....	1
3	Appeal to the Board .....	2
4	Submissions of the Parties .....	2
	4.1 Views of Penn West .....	2
	4.2 Views of ERCB Staff .....	2
5	Issues.....	3
6	Reasons for Decision .....	3



# ENERGY RESOURCES CONSERVATION BOARD

---

Calgary Alberta

## BOARD MEMBER REPORT ON PENN WEST PETROLEUM LTD.

Decision 2009-041

## APPEAL OF ERCB HIGH RISK ENFORCEMENT ACTION 2 Application No. 1617005

---

### 1 DECISION

Having considered the evidence and submissions from all parties, the Board Member hereby denies the appeal by Penn West Petroleum Ltd. (Penn West) of the decision of Energy Resources Conservation Board (ERCB/Board) Enforcement Advisor dated March 19, 2009, to deny Penn West's appeal of ERCB High Risk Enforcement Action 2 dated November 5, 2008, issued by the ERCB against Penn West.

### 2 INTRODUCTION

Under Section 2 of ERCB *Directive 019: ERCB Compliance Assurance—Enforcement*, licensees are responsible for compliance with ERCB requirements and processes. Section 20 of the *Pipeline Regulation*, AR 91/2005, requires that unless otherwise authorized by the Board and subject to subsection (3), the minimum earth cover for any pipeline must at all times be the greater of the minimum earth cover specified in *Canadian Standards Association (CSA) Z662-07: Oil and Gas Pipeline Systems* and 0.8 metres in places other than within the right-of-way of a highway or road. Regarding the minimum earth cover, Table 4.9 of *CSA Z662-07* states that “water crossing for normal excavation is 1.2‡ meters.”

In September 2007, Penn West acquired operatorship of the pipeline located at Legal Subdivision 10, Section 14, Township 71, Range 4, West of the 5th Meridian, from Canetic Resources Inc. (Canetic). On April 30, 2008, the subject pipeline failed and released produced fluids into the Otawau River as a result of ice in the river breaking up. Penn West responded to the incident and reported that the pipeline failed because of fatigue cracking of the metal adjacent to a girth weld. The pipeline was shut in as a result of the failure.

Staff of the ERCB's St. Albert Field Centre completed an investigation of the incident on November 4, 2008. On November 5, 2008, the ERCB issued to Penn West a High Risk Enforcement Action 2 for unsatisfactory depth of cover and failure to conduct the required right-of-way surveillance. Subsequently, following a meeting with Penn West on November 20, 2008, ERCB staff rescinded the High Risk Enforcement Action in relation to the right-of-way.

On December 2, 2008, Penn West appealed the enforcement action relating to the minimum depth of cover to the ERCB Corporate Compliance Branch. Penn West submitted that the depth of cover enforcement was not appropriate because at the time of construction the subject pipeline met the requirements. Penn West also submitted that it did not have an opportunity to do right-of-way surveillance when the pipeline was not covered with snow. Penn West also submitted that aerial surveillance of the field was conducted immediately after assuming operatorship of the pipeline from Canetic and no evidence of exposed pipe was identified during that process.

By decision dated March 19, 2009, ERCB Enforcement Advisor Kevin Pilger denied Penn West's appeal. The enforcement advisor noted that licensees must maintain the minimum earth cover in accordance with *CSA Z662-07*. The enforcement advisor found this to be a mandatory requirement that must be maintained for the life of the pipeline.

### **3 APPEAL TO THE BOARD**

By letter dated April 2, 2009, Penn West appealed the decision to the Board.

M. J. Bruni, Q.C., Board Member, was assigned to make a decision on this appeal based on the written submissions of the parties.

### **4 SUBMISSIONS OF THE PARTIES**

#### **4.1 Views of Penn West**

Penn West submitted that the depth-of-cover requirement was not clearly prescribed. Penn West also submitted that the ERCB failed to issue the enforcement action in a timely manner, as there was more than a six-month delay between investigating the incident and issuing the enforcement action. Penn West also submitted that the enforcement action was unduly harsh in comparison to the June 2008 exposure of a pipeline operated by Pembina Pipelines (Pembina), in relation to which the ERCB did not issue enforcement action, as the exposure was determined to be an "Act of God."

Penn West made further submissions by letter dated May 26, 2009. Penn West submitted that there was not a reasonable opportunity to perform a water-crossing inspection or depth-of-cover survey or to contact a hydrologist and that there was no indication of a depth-of-cover issue until the failure occurred in April 2008. Penn West submitted that there was a lack of clarity from ERCB St. Albert Field Centre staff as to how or why its inspection process may be inadequate. Penn West submitted that two months from the date of last submission was an unreasonable amount of time to render a decision. Penn West submitted that it had given special considerations to its pipelines in the area by increasing its right-of-way surveillance from annual to weekly patrols. Penn West requested that the Board address the issue of inconsistent application of the regulations in light of its failure to take enforcement action in relation to the June 2008 Pembina pipeline incident.

#### **4.2 Views of ERCB Staff**

ERCB staff provided written submissions dated May 7, 2009. ERCB staff submitted that Penn West had adequate time during September and October 2007, when water levels would normally be lowest, to conduct water-crossing inspections to confirm depth of cover before the failure occurred on April 30, 2008. ERCB staff submitted that depth-of-cover requirements were clearly prescribed by subsection 20(1) of the *Pipeline Regulation*, Clause 4.11.1 of *CSA Z662-07*, and ERCB *Directive 066: Requirements and Procedures for Pipelines*.

ERCB staff submitted that there was no undue delay in the issuance of the enforcement action. The incident occurred on April 30, 2008, following which the ERCB issued a letter to Penn West

on May 28, 2008, and Penn West was given until June 27, 2008, to respond. Penn West requested and was granted an extension to July 31, 2008. By letter dated August 21, 2008, ERCB staff requested additional information and gave a deadline of September 2, 2008, to provide same. Penn West requested and was granted an extension to September 5, 2008. Following receipt of further information from Penn West, ERCB staff reviewed all information related to the incident and issued the enforcement action on November 5, 2008. ERCB staff submitted that it took two months to issue the enforcement action following receipt of all information requested from Penn West and that this was not an unreasonable period of time.

In relation to the lack of enforcement action taken in connection with the June 2008 Pembina pipeline incident, ERCB staff submitted that St. Albert Field Centre staff could not comment on an investigation conducted by another Field Centre.

## **5 ISSUES**

The Board Member considers the sole issue in this matter to be whether or not Penn West's appeal should be allowed and the decision set aside.

In reaching his decision as contained in this report, the Board Member has considered all relevant materials constituting the record of this proceeding, including the evidence, argument, and submissions provided by Penn West and ERCB staff. Accordingly, references in this report to specific parts of the record are intended to assist the reader in understanding the Board Member's reasoning relating to a particular matter and should not be taken as an indication that the Board Member did not consider all relevant portions of the record with respect to that matter.

## **6 REASONS FOR DECISION**

The Board Member finds that the following actions and inactions on the part of Penn West contributed to its failure to prevent the pipeline failure that is the subject of the enforcement action:

- 1) Wrongfully assuming that conducting depth-of-cover inspections within one year of acquiring operatorship of the pipeline was adequate: By its own admission, Penn West had no historical data, baseline, or benchmarking to determine the average snowfall or river characteristics. This strongly suggests that it may have been prudent and advisable for Penn West to conduct depth-of-cover inspections much sooner than one year from assuming operatorship of the pipeline from Canetic. Any assumptions about the adequacy of inspections of facilities acquired from another operator in the absence of salient information about the pipelines and surrounding terrain were made at Penn West's own risk.
- 2) Not conducting depth-of-cover inspections of the pipeline during the late summer/early fall of 2007 when Penn West had ample time to do so prior to the incident in April 2008.

The Board Member notes that Section 20 of *Directive 066* and Section 20 of the *Pipeline Regulation* require operators to maintain a minimum depth-of-cover over pipelines, as prescribed in *CSA Z662-07*, at all times. We therefore do not accept Penn West's assertion that the depth-of-cover requirements are not clearly prescribed. On the contrary, they are explicitly prescribed.

The ERCB does not mandate or specify the minimum period between depth-of-cover inspections. ERCB *Bulletin 2009-12: Surveillance and Inspection of Pipeline Water Crossings* states that a licensee must be able to demonstrate why its inspection interval is appropriate.

The Board Member considered Penn West's assertions that it has afforded special consideration to its pipelines in the Mitsue Field, given the number of pipelines that have water crossings and the terrain in the area. With respect, this is exactly what is expected of Penn West in the circumstances, especially where the facilities have been acquired from another operator and Penn West lacked information about the geography and snow cover in the area.

The Board Member also considered Penn West's submission that the enforcement action was unduly harsh given that the ERCB did not take enforcement action against Pembina in relation to the June 2008 incident involving its pipeline. The Board Member notes that each incident is reviewed on its own facts, and ERCB staff determination of whether enforcement action is warranted is made on a case-by-case basis. The failure of Penn West's pipeline in this instance was reviewed on its facts and ERCB staff concluded that the enforcement action was appropriate. The Board Member accepts this conclusion.

The Board Member also considered additional criteria in determining whether to grant Penn West's appeal. In particular, in addition to considering whether ERCB staff erred in law or exceeded their jurisdiction in connection with this matter, the Board Member also considered whether

- the licensee was in technical compliance with ERCB requirements;
- ERCB staff or some other governmental body contributed to the noncompliance; and
- the noncompliance was not risk assessed or was assigned an improper risk assessment and/or improper risk level.

The Board Member finds that ERCB staff have not erred in law or exceeded their jurisdiction in issuing the enforcement action or in rendering the decision. Penn West is not in technical compliance with ERCB requirements, neither the ERCB nor any other body contributed to the noncompliance, and the noncompliance was properly risk assessed in the circumstances. As such, the Board Member can find no basis on which to grant Penn West's appeal.

Based on the foregoing, the Board Member hereby denies Penn West's appeal of the decision.

Dated in Calgary, Alberta, on August 11, 2009.

**ENERGY RESOURCES CONSERVATION BOARD**

M. J. Bruni, Q.C.  
Board Member