

Canadian Natural Resources Limited

Regulatory Appeal of Administrative Penalty

August 7, 2025

Alberta Energy Regulator

Decision 2025 ABAER 007: Canadian Natural Resources Limited, Regulatory Appeal of Administrative Penalty

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2025 ABAER 007

Canadian Natural Resources Limited Regulatory Appeal of Administrative Penalty

Decision

[1] Having considered all of the evidence carefully, the Alberta Energy Regulator (AER) confirms the decision of the AER Regulatory Compliance Branch to issue an administrative penalty of \$278 000 to Canadian Natural Resources Limited on July 11, 2024, for failure to store a hazardous substance in a manner that ensured that the hazardous substance did not directly or indirectly come into contact with any animals, contrary to section 155 of the *Environmental Protection and Enhancement Act (EPEA)*.

[2] In reaching this decision, we, the AER hearing panel presiding over this proceeding, considered all relevant materials properly before us, including each party's evidence and argument. Accordingly, references in this decision to specific portions of the evidence are intended to assist the reader in understanding our reasoning on a particular matter and do not mean that we did not consider all relevant portions of the evidence.

Introduction

Background

[3] Canadian Natural is the operator of the Horizon Oil Sands Processing Plant and Mine, an oil sands mining project approximately 60 kilometres north of Fort McMurray, Alberta. The project includes an external tailings facility used to store treated oil sands tailings. The location relevant to the penalty is a portion of the facility referred to as the Tar River Valley, at Legal Subdivision 10, Section 31, Township 96, Range 12, West of the 4th Meridian.

[4] Canadian Natural deposited 2 248 641 cubic metres of non-segregating tailings that included bitumen in the Tar River Valley between January 20, 2021, and February 12, 2021. Bitumen has known toxicity to wildlife and is considered a hazardous substance under *EPEA*.

[5] After the ice melted around April 2021, water levels increased in the valley, and land in the valley became disconnected from the shore. This resulted in the emergence of a non-vegetated island in the valley that reconnected with the shore when water levels decreased in May 2021. Canadian Natural reported that no bird nests were established on the island in 2021.

[6] When ice on the valley melted again in April 2022, water levels rose and resulted in the re-emergence of the island. Large flocks of gulls showed interest in the island in mid-May 2022, and

Canadian Natural undertook unsuccessful bird hazing operations from May 11 to 15, 2022. Poor weather prevented Canadian Natural from safely accessing the valley and island from May 16 to 20, 2022. On May 21, 2022, Canadian Natural's bird deterrent contractors identified 271 California Gull nests and 1 Canada Goose nest on the island.

[7] On June 7, 2022, Canadian Natural notified the AER about the island's formation and the presence of nests on the island. This written notification included details about numbers of birds, nests, and anticipated hatchlings, but no immediate risk to the birds was reported. Canadian Natural also advised the AER of a range of mitigation measures it was implementing.

[8] On July 12, 2022, Canadian Natural notified the AER that it had discovered 60–70 oiled California Gull chicks in the Tar River Valley. Between July 12, 2022, and August 4, 2022, Canadian Natural reported over 400 avian mortalities, of which 202 were oiled; the oilings were identified to have occurred on 13 days. Canadian Natural attempted various mitigation measures during that period. In September 2022 after birds had left the island, Canadian Natural mechanically removed the island from the Tar River Valley.

[9] Following an investigation, AER Regulatory Compliance issued Canadian Natural a preliminary administrative penalty assessment of \$380 000 on May 30, 2024. AER Regulatory Compliance and Canadian Natural met on June 10, 2024, to discuss the investigation findings and the preliminary assessment. Canadian Natural provided information at that meeting and a written submission to AER Regulatory Compliance on June 20, 2024. AER Regulatory Compliance considered the meeting discussion and written submission and issued the notice of administrative penalty, which included a final penalty assessment of \$278 000, to Canadian Natural on July 11, 2024.

Regulatory Framework

[10] The AER's mandate under the *Responsible Energy Development Act (REDA)* is to provide for the efficient, safe, orderly, and environmentally responsible development of energy and mineral resources in Alberta and, for energy resource activities, to regulate environmental protection in accordance with specified enactments, such as *EPEA*.

[11] In response to Canadian Natural's contravention of section 155 of *EPEA* (section 155 regulates storing and handling of hazardous substances and is addressed in detail later in this decision), AER Regulatory Compliance issued the penalty to Canadian Natural in accordance with section 237 of *EPEA* and the *Administrative Penalty Regulation*.

[12] Under section 237 of *EPEA* and the *Administrative Penalty Regulation*, the AER may require a person who has contravened section 155 to pay an administrative penalty in relation to the contravention. Section 237(1) of *EPEA* requires the AER to issue that person a written notice of the administrative penalty that sets out the penalty amount. The AER assesses the total penalty amount by applying criteria

in section 3(1) of the *Administrative Penalty Regulation* to determine a base penalty amount and considering factors under section 3(2) of that regulation that may be applied to increase or decrease the base penalty amount. Under section 237(2)(a) of *EPEA*, an administrative penalty may include a daily amount for each day or part of a day on which the contravention occurs and continues.

[13] On August 9, 2024, the AER received a request for a regulatory appeal from Canadian Natural concerning the AER's decision to issue the penalty to Canadian Natural. The AER subsequently determined that the legislative tests for a regulatory appeal had been met and granted Canadian Natural's request for a regulatory appeal of the penalty on December 20, 2024.

[14] The hearing commissioners constituting this hearing panel are authorized under section 12 of *REDA* to conduct hearings of regulatory appeals and make decisions in the name and on behalf of the AER.

[15] The AER held a public hearing for this proceeding before hearing commissioners C.L.F. Chiasson (presiding), A.R. MacPherson, and B.A. Zaitlin. We received written evidence and submissions from the parties from May 6 through June 3, 2025, and heard online closing arguments and closed the hearing on June 18, 2025. Hearing participants are listed in appendix 1.

[16] Under section 41(2) of *REDA*, our responsibility is to determine whether to confirm, vary, suspend, or revoke the AER's decision to issue the penalty to Canadian Natural. In its submissions and argument, Canadian Natural indicated that it was only appealing the amount of the penalty and asked that we vary the penalty by reducing it from \$278 000 to \$46 750. As such, we do not need to consider whether to suspend or revoke the penalty. In this proceeding we are only considering whether to vary or confirm the penalty amount.

[17] In a regulatory appeal, the onus of proof is on the requester, who must provide evidence that supports their position on the balance of probabilities. That is, the requester must bring sufficiently clear, convincing, and cogent evidence to satisfy the balance of probabilities test to succeed in the regulatory appeal. In this case, Canadian Natural is the requester and bears the onus of presenting sufficiently clear, convincing, and cogent evidence to persuade us to vary the penalty amount.

Issues

Section 31(2) of the *Alberta Energy Regulator Rules of Practice* requires the AER to identify the matters or issues to be considered in a regulatory appeal. On April 1, 2025, we determined that this regulatory appeal would determine whether the administrative penalty should be confirmed, varied, suspended, or revoked, considering the following:

- Was the administrative penalty issued within the limitation period prescribed by the applicable legislation?

- Should changes be made to the calculation of the amount of the administrative penalty, including calculation of a daily amount for each day or part of a day on which the contravention occurred and continued and application of factors to increase or decrease the amount from the base penalty amount provided in the *Administrative Penalty Regulation*?

[18] As mentioned above, Canadian Natural indicated that its regulatory appeal was challenging only the amount of the penalty. Canadian Natural also stated that it accepted responsibility for the incident and was not advancing a due diligence defence. We have interpreted this to mean that Canadian Natural does not dispute that it contravened section 155 of *EPEA* nor that the penalty is valid and was validly issued to it.

[19] Canadian Natural structured its submissions about the penalty amount in three sections to address the hearing issues. We have used these three sections to make our determinations and structure this hearing decision, as set out below:

- Interpretation and application of section 155 of *EPEA*
- *Administrative Penalty Regulation* limitation period
- Application of factors in *Administrative Penalty Regulation*

Background – Penalty Calculation

[20] On May 30, 2024, AER Regulatory Compliance issued the preliminary assessment to Canadian Natural. In calculating the preliminary assessment, it began by determining the base penalty amount in accordance with section 3(1) of the *Administrative Penalty Regulation*, excerpted below.

BASE PENALTY TABLE				
Type of Contravention				
		Major	Moderate	Minor
Potential	Major	\$5000	\$3500	\$2500
for	Moderate	3500	2500	1500
Adverse	Minor to	2500	1500	1000
Effect	None			

[21] AER Regulatory Compliance assessed the type of contravention as “major,” referring to *EPEA*’s purpose and the importance of preventing and mitigating the environmental impact of energy resource activities. It indicated that the requirement to ensure that a hazardous substance does not contact animals is fundamental to achieving *EPEA*’s purpose, and the risk to the environment is greatly increased if timely and appropriate action is not taken.

[22] AER Regulatory Compliance also assessed the potential for adverse effect as “major.” It discussed Canadian Natural’s initial identification of the island in spring 2021 and subsequent failure to

eliminate the island or manage the area's water level to prevent the island's re-emergence in 2022. It considered that the area contains bitumen, a substance with known toxicity to wildlife, and the serious, often fatal, effects of bitumen on birds.

[23] Using these findings and the table from section 3(1) of the *Administrative Penalty Regulation*, AER Regulatory Compliance established a base penalty amount of \$5000. It then relied on section 237(2)(a) of *EPEA*, which allows for a daily penalty amount for each day or part of a day on which a contravention occurs and continues. AER Regulatory Compliance determined that the contravention began May 21, 2022, when Canadian Natural first noticed bird nests on the island, and continued until August 4, 2022, when the California Gull chicks became flight capable and left the island. It imposed the base penalty for those days: $\$5000 \times 76 \text{ days} = \$380\,000$.

[24] Once a base penalty has been determined, the AER may then increase or decrease it by applying factors from section 3(2) of the *Administrative Penalty Regulation*. AER Regulatory Compliance considered those factors and determined that their application should result in a \$1000 increase to the preliminary assessment. However, under section 3(3) of the *Administrative Penalty Regulation*, the maximum daily amount of a penalty cannot exceed \$5000, so the preliminary assessment amount remained at \$380 000.

[25] In determining the final penalty amount, AER Regulatory Compliance considered the discussion from the June 10, 2024, meeting with Canadian Natural and Canadian Natural's written submission about the contravention, investigation, and preliminary assessment. AER Regulatory Compliance reduced the penalty amount by \$102 000 to \$278 000 in the notice of administrative penalty issued July 11, 2024. The base penalty amount of \$5000 did not change, nor did the daily calculation for an ongoing contravention.

[26] When it revisited the factors, AER Regulatory Compliance made small reductions totalling \$2000 based on mitigation steps that Canadian Natural had taken to address the contravention and prevent future occurrences. The most significant reduction was by \$100 000, based on what AER Regulatory Compliance considered Canadian Natural's good faith effort at containment in installing a temporary perimeter fence around the Tar River Valley to limit effects on wildlife, including preventing predators from flushing birds into the tailings. The \$100 000 reduction was based on a calculation of \$5000 per day for 20 days, based on the time between July 16, 2022, when the fence was installed, and August 4, 2022, when the last chicks became flight capable.

Interpretation and Application of Section 155 of *EPEA*

[27] Section 155 of *EPEA* is labelled "Storage and Handling" and states: "A person who keeps, stores or transports a hazardous substance or pesticide shall do so in a manner that ensures that the hazardous substance or pesticide does not directly or indirectly come into contact with or contaminate any animals, plants, food or drink."

Parties' Positions

[28] In the notice of administrative penalty, AER Regulatory Compliance stated that the section 155 contravention occurred because Canadian Natural “did not take all reasonable steps to prevent wildlife from coming into contact with the process affected water and bitumen, minimize the bird nesting habitat, minimize habituation of birds....” AER Regulatory Compliance indicated that the island’s presence was the most important factor related to the contravention, as well as Canadian Natural not taking all reasonable steps after it ought to have realized its bird deterrents and hazing were inadequate and after the birds had nested on the island.

[29] Canadian Natural submitted that AER Regulatory Compliance incorrectly interpreted section 155 of *EPEA*, resulting in improper calculation of the penalty. As mentioned above, AER Regulatory Compliance imposed the penalty on the basis that the contravention began on May 21, 2022, when Canadian Natural first noticed bird nests on the island, and continued to August 4, 2022, when all chicks were flight capable and birds began leaving the island.

[30] Canadian Natural suggested that an essential element of an offence under section 155 is that a hazardous substance must actually come into contact with or contaminate an animal and relied on the Alberta Provincial Court’s interpretation in *R v Syncrude*, 2010 ABPC 229 (Syncrude judgement). It submitted that the notice of administrative penalty placed undue weight on the word “ensure” in section 155 and failed to sufficiently consider the remainder of that section. Canadian Natural disputed that section 155 should be read expansively or given a fair, large, or liberal interpretation. It submitted that section 155 and the related penalty provisions should be narrowly and strictly interpreted and cited cases in support of such an interpretation for statutory penalties.

[31] Canadian Natural took issue with statements in the notice of administrative penalty that “the evidence supports an inference that once the birds were nested on the island, it was likely or inevitable that they would come into contact with process affected water and bitumen, thus [Canadian Natural] did not ensure that animals would not come into contact with a hazardous substance.” It argued that section 155 is written in the present tense and does not contemplate liability for potential future or past contact between animals and hazardous substances, and contrasted it with section 110 of *EPEA*, which imposes a duty to report a substance release that “may cause, is causing or has caused an adverse effect...” Canadian Natural suggested this difference indicates a legislative intent that these provisions should be interpreted differently. It also argued that, based on this interpretation, the earliest the contravention could have commenced was July 12, 2022, the first day an oiled bird was discovered, and that the contraventions could only have occurred on 13 days on which bird oilings occurred.

[32] Canadian Natural contended that a contravention of section 155 requires both the storage element and the contact or contamination element. Based on this, its position was that both elements were present on only 13 days when Canadian Natural identified oiled birds rather than the 76 days assessed by AER

Regulatory Compliance, and that the theoretical maximum penalty it could receive is \$65 000 (\$5000 × 13 days).

[33] AER Regulatory Compliance submitted that we should be guided by the *Interpretation Act* and relevant case law in interpreting section 155. The *Interpretation Act* applies to all Alberta enactments, unless a contrary intention is expressed in that act or the enactment being interpreted. Section 10 of the *Interpretation Act* states: “An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.”

[34] AER Regulatory Compliance stated that nothing in the *Interpretation Act* or *EPEA* shows an intent contrary to the interpretation guidance provided in the *Interpretation Act*. It also stated that the purposes in section 2 of *EPEA* and *REDA* provisions addressing interaction with other legislation and the AER’s mandate, support a legislative intention to construe *EPEA* as remedial and to give *EPEA* a liberal interpretation.

[35] AER Regulatory Compliance suggested Supreme Court of Canada jurisprudence we should consider in reviewing this matter’s legislative framework. It cited the approach to statutory interpretation from *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 (*Rizzo Shoes*), that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament.” It also noted the Supreme Court’s statement from *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, that an administrative decision maker must interpret legislation in a manner consistent with the text, context, and purpose and considering the statutory scheme, and that it is the decision maker’s responsibility to discern meaning and legislative intent.

[36] AER Regulatory Compliance indicated that to issue the penalty, the elements of the contravention that had to be proven for each day or part of a day on which the contravention occurred and continued were as follows:

- Canadian Natural is a “person” who keeps, stores, or transports a hazardous substance.
- Canadian Natural did not keep, store, or transport the hazardous substance in a manner that ensured that the hazardous substance does not directly or indirectly come into contact with or contaminate any animals, plants, food, or drink.

[37] It submitted that unsafe storage of a hazardous substance is the core of this contravention and that Canadian Natural contravened section 155 by failing to store bitumen in a safe manner. AER Regulatory Compliance contended that once the presence of oiled birds showed that the manner of storage was not safe, it was “the number of days that [Canadian Natural] stored a hazardous substance in a manner that did not ensure that birds would remain unoiled that make up the days on which this continuing contravention should accrue penalty amounts.”

[38] AER Regulatory Compliance contended that Canadian Natural did not provide us with the full context of how the Provincial Court considered and interpreted section 155 in *R v Syncrude*, and that the Provincial Court did not conclude that it is an essential element of a section 155 offence that an animal must come into contact with or be contaminated by the hazardous substance. AER Regulatory Compliance referred to *R v Syncrude*, 2010 ABPC 154 (Syncrude non-suit ruling), an interlocutory decision that dismissed a non-suit application by the defendant in the same prosecution. In the Syncrude non-suit ruling, the defendant argued that section 155 applies only where a hazardous substance comes to an animal and not where an animal comes to a hazardous substance. The Provincial Court applied the statutory interpretation approach from *Rizzo Shoes* in considering the grammatical and ordinary meaning of section 155 and found that the offence could be established by evidence that a hazardous substance came into contact with an animal. AER Regulatory Compliance noted that the Provincial Court indicated that there is another basis for a section 155 offence, if the accused fails to ensure that the hazardous substance does not contaminate any animals.

[39] AER Regulatory Compliance stated that Canadian Natural failed to ensure that animals would not come into contact with the hazardous substance bitumen because it did not eliminate the island, which was a step it could have taken. It noted that Canadian Natural had established a history of island removal practices at its Horizon oil sands project and participated in a report with other oil sands operators under the Oil Sands Bird Contact Monitoring Program that provided multiple examples of other oil sands mines demonstrating the importance of timely island removal in reducing the attractiveness of their tailings facilities to birds.

Analysis

[40] Canadian Natural argued that the penalty was incorrectly calculated because AER Regulatory Compliance misinterpreted section 155 of *EPEA*. It submitted that a narrow and strict interpretation should be used in relation to a statutory penalty and that actual contact between the birds and bitumen was an essential element of the contravention in this case, which should limit the penalty to only those days where Canadian Natural identified oiled birds.

[41] In considering the interpretive guidance cited to us by both parties, we are not persuaded by the cases that Canadian Natural suggested would support a narrow and strict interpretation of section 155 and found none of them relevant to this proceeding. In *Dekker v C.E.P.*, [2011] Alta. L.R.B.R. LD-011 (Alberta Labour Relations Board), the proposition cited by Canadian Natural was part of the submissions before that board and not part of the board's decision. *R v ASL Paving Ltd.*, [1995] AWLD 430 (ABCA), the main Alberta case Canadian Natural cited, pre-dated the Supreme Court's guidance in *Rizzo Shoes* and dealt with resolving interpretation of an ambiguous provision, which is not the interpretive point in contention before us.

[42] We find that Canadian Natural's very precise focus on direct contact between a hazardous substance and an animal as an essential element of a section 155 contravention is not supported by the grammatical and ordinary meaning of section 155, considering the legislative context of both *EPEA* and *REDA*.

[43] *EPEA* is a broad act regulating environmental protection across a wide range of activities and circumstances that can occur in our province. Section 2 of *EPEA* states that the act's purpose "is to support and promote the protection, enhancement and wise use of the environment," and sets out a range of principles underlying the purpose. Some of these principles that are relevant to this proceeding are as follows:

- Protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society.
- The need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning.
- The importance of preventing and mitigating the environmental impact of development and of government policies, programs, and decisions.
- The important role of comprehensive and responsive action in administering *EPEA*.

[44] Section 2.1 of *EPEA* provides that in reading *EPEA* and applying it to energy resource activities, we must do so in conjunction with *REDA*. Under *REDA*, the AER's mandate is to provide for the efficient, safe, orderly, and environmentally responsible development of energy and mineral resources in Alberta. We find that *EPEA* and *REDA* together are intended to be remedial in nature and should be interpreted in a fair, large, and liberal manner.

[45] Section 155 of *EPEA* regulates the storing and handling of hazardous substances. While Canadian Natural focused specifically on the element of direct contact, it did not dispute section 155's purpose.

[46] The Merriam-Webster Online Dictionary defines manner as "a mode of procedure or way of acting." It provides the following definition for ensure: "to make sure, certain, or safe." We interpret these terms as speaking to the "how" of storage of hazardous substances. We referred to the plain dictionary meaning of "ensure" because the parties had sufficient disagreement about its meaning in section 155. Canadian Natural suggested that it related to direct contact between a hazardous substance and animals, as well as being relevant to due diligence defences to section 155 contraventions. AER Regulatory Compliance submitted that Canadian Natural failed to ensure that animals would not come into contact with bitumen because it did not eliminate the island.

[47] Section 155 further states "...that the hazardous substance or pesticide does not *directly or indirectly* come into contact with or contaminate any animals, plants, food or drink." [emphasis added]

We find that the inclusion of “directly or indirectly” indicates a legislative intention that section 155 be applied broadly. If direct contact with a hazardous substance is an essential element of a section 155 contravention, the phrase “directly or indirectly” would not be needed. The legislature could simply have said “come into contact” without needing qualifying language.

[48] During closing argument, we asked Canadian Natural how we should interpret “directly or indirectly” as part of section 155, noting that it was not addressed by the Provincial Court in either of the Syncrude decisions. Canadian Natural indicated that in this case, the direct contact portion would be relevant because there were incidents of the hazardous substance directly contacting animals. It further stated that the language of section 155 is trying to be broad, to capture all scenarios no matter how a hazardous substance or contaminating substance comes into contact with a plant or animal.

[49] We find that section 155 is intended to be broadly interpreted to require persons storing and handling hazardous substances do so in a way that protects animals from direct or indirect contact with and contamination from such substances. In this proceeding, the evidence is clear and uncontested that bitumen has toxic and usually deadly effects on birds. To apply Canadian Natural’s suggested interpretation to section 155 would result in a contravention only when birds are damaged and likely to die. We find this inconsistent with and unsupportable by section 155’s ordinary meaning and the remedial nature of both *EPEA* and *REDA*.

[50] Both parties confirmed to us that the Syncrude non-suit ruling and Syncrude judgement are the only court decisions that have addressed section 155. We note that the Provincial Court applied the statutory interpretation guidance from both *Rizzo Shoes* and the *Interpretation Act* and considered the grammatical and ordinary meaning of section 155 in the Syncrude non-suit ruling. In that decision, the Provincial Court also considered *EPEA*’s purpose and found that the narrow interpretation proposed by the defendant would be inconsistent with *EPEA*’s purpose and defeat the legislature’s stated intention. The Provincial Court stated: “If the section did not prevent individuals or corporations from storing hazardous substances in a manner that allowed animals to come to the substances, it is difficult to see how the section could promote the protection of the environment, the integrity of ecosystems and environmentally responsible growth or mitigate the environmental impact of development” (2010 ABPC 154, para 15). In the Syncrude judgement and its consideration of proof of the offence, the Provincial Court applied its interpretation of section 155 from the Syncrude non-suit ruling.

[51] We found the Provincial Court’s approach in the Syncrude decisions to statutory interpretation useful and followed the same approach above. However, we did not find the Provincial Court’s specific findings regarding interpretation of contact relevant to this proceeding. Though both proceedings involved birds and tailings ponds, the Syncrude prosecution dealt with a one-time, one-day event of migrating birds landing on a tailings pond to rest and dying from bitumen contact. This proceeding involved birds nesting, hatching, living, and dying during more than two months on an island that had intermittently appeared over two years in a tailings facility. The evidence was that bitumen, the island,

and birds were all present throughout the time AER Regulatory Compliance assessed as the contravention period. The findings in the Syncrude decisions were made specifically in response to due diligence and related defences raised by the defendant. Canadian Natural did not pursue a due diligence defence in this proceeding.

[52] We are not persuaded by Canadian Natural’s submissions and arguments proposing a narrow interpretation of section 155 and dismiss its request that the number of days of contravention be reduced from the 76 days assessed in the penalty to the 13 days that Canadian Natural identified birds were oiled.

Administrative Penalty Regulation Limitation Period

[53] Section 2(3) of the *Administrative Penalty Regulation* addresses timing of a notice of administrative penalty. It states: “A notice of administrative penalty may not be issued more than 2 years after the later of (a) the date on which the contravention to which the notice relates occurred, or (b) the date on which evidence of the contravention first came to the notice of the Director.”

[54] Also relevant to this discussion is section 237 of *EPEA*, which enables the AER to assess a daily penalty amount for “each day or part of a day on which the contravention occurs and continues.”

Parties’ Positions

[55] AER Regulatory Compliance issued the notice of administrative penalty to Canadian Natural on July 11, 2024. The notice of administrative penalty indicated that the contravention began May 21, 2022, and continued until August 4, 2022, and that the AER became aware of the contravention on July 12, 2022.

[56] Canadian Natural submitted that some portions of the penalty were issued beyond the applicable limitation period under section 2(3) of the *Administrative Penalty Regulation*. It stated that if a broad interpretation of section 155 were correct (which it disputed) and the contravention began on May 21, 2022, when birds’ nests were discovered on the island, then AER Regulatory Compliance had knowledge of the nesting on June 7, 2022 when Canadian Natural reported the presence of the island and the birds’ nests, and the limitation period would have commenced no later than June 7, 2022. Alternatively, Canadian Natural submitted that the limitation period correctly began to run on July 12, 2022, when the first bird oilings occurred, as the earliest day that the essential elements of the offence could be made out.

[57] Canadian Natural contended that in either event, portions of the penalty assessed for days prior to July 11, 2022, are limitation barred. This is because either birds being oiled, the essential element of the offence, had not yet occurred, or AER Regulatory Compliance missed the limitation period by waiting until July 11, 2024, to issue the notice of administrative penalty, though notice was provided to it on June 7, 2022. Canadian Natural submitted that this scenario would result in a maximum potential penalty

for 25 days, from July 11 to August 4, 2022, which would total \$125 000 ($\5000×25 days) and could be reduced by applying the factors in section 3(2) of the *Administrative Penalty Regulation*.

[58] AER Regulatory Compliance submitted that the notice of administrative penalty was issued based on the “date on which evidence of the contravention first came to the notice of the Director,” in accordance with section 2(3)(b) of the *Administrative Penalty Regulation*. It stated this date was July 12, 2022, when Canadian Natural first notified the AER that oiled California Gull chicks were observed in the Tar River Valley, and that the notice of administrative penalty was issued on July 11, 2024, which was within two years of July 12, 2022.

[59] AER Regulatory Compliance also contended that the contravention was a continuous one, so the penalty would have been issued in time until two years from the date that the contravention was rectified. It submitted that these positions provide a complete answer to the issue of whether the penalty was issued within the limitation set in section 2(3) of the *Administrative Penalty Regulation*. AER Regulatory Compliance also submitted that section 2(3) of the *Administrative Penalty Regulation* only creates a procedural deadline for issuing a notice of an administrative penalty and does not serve to grant immunity to an offence.

Analysis

[60] We find that Canadian Natural’s submissions regarding calculation of a limitation period based on a narrow interpretation of section 155 of *EPEA* cannot stand, due to our finding above rejecting that narrow interpretation. That finding supports that the contravention occurred from May 21, 2022, to August 4, 2022, as stated in the notice of administrative penalty.

[61] Canadian Natural stated in closing argument that it objected to characterizing the contravention as continuous, but it provided no submissions or evidence to that effect in its written submissions. We questioned both parties on this point during closing argument. They agreed that it was a minor point, and we determined that we did not need further submissions on the matter. We note that most of Canadian Natural’s submissions on revised calculation of the penalty were premised on the contravention being treated as continuous, albeit for a reduced period.

[62] We note that Canadian Natural’s submissions seemed to focus on what might be the earliest occurrence of either of the limitation elements set out in section 2(3) of the *Administrative Penalty Regulation*. However, section 2(3) provides that a notice of administrative penalty may not be issued more than two years after the later of the date on which the contravention occurred or the date on which evidence of the contravention first came to the AER’s notice. Because our findings support that the contravention occurred from May 21, 2022, to August 4, 2022, as stated in the notice of administrative penalty, we find that the penalty was issued within the time limits provided by section 2(3) of the

Administrative Penalty Regulation, as AER Regulatory Compliance issued the notice of administrative penalty on July 11, 2024, less than two years after August 4, 2022, the last day of the contravention.

[63] For these reasons, we are not persuaded by Canadian Natural’s submissions that a portion of the penalty is limitation barred, and we need not decide whether section 2(3) of the *Administrative Penalty Regulation* is only procedural. We dismiss Canadian Natural’s request that we adjust the penalty based on limitations considerations and confirm that the penalty was issued within the timeframe provided by the *Administrative Penalty Regulation*.

Application of Factors in the *Administrative Penalty Regulation*

[64] As discussed above, section 3 of the *Administrative Penalty Regulation* establishes the process and criteria for determining the amount of an administrative penalty. After a base penalty amount is established, which may include assessing a daily amount if a contravention is continuous, the AER may increase or decrease the base penalty on considering the factors in section 3(2):

- a) The importance to the regulatory scheme of compliance with the provision;
- b) The degree of wilfulness or negligence in the contravention;
- c) Whether or not there was any mitigation relating to the contravention;
- d) Whether or not steps have been taken to prevent reoccurrence of the contravention;
- e) Whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
- f) Whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention;
- g) Any other factors that, in the opinion of the Director, are relevant.

Parties’ Positions

[65] As discussed above, in the notice of administrative penalty, the penalty was calculated on a base penalty assessment of \$5000 per day for 76 days (May 21, 2022 – August 4, 2022), totalling \$380 000. AER Regulatory Compliance applied a reduction of \$2000 after considering factors (a)–(d), considering deterrent and mitigative measures attempted by Canadian Natural. It chose not to apply factors (e) and (f). AER Regulatory Compliance applied a further reduction of \$100 000 under factor (g) to recognize what it considered a good faith effort by Canadian Natural to limit deleterious effects on wildlife by installing a perimeter snow fence around the Tar River Valley. This resulted in a final penalty assessment of \$278 000.

[66] Canadian Natural submitted that we should reduce the penalty to \$46 750. It suggested that we should consider the \$100 000 reduction made in the notice of administrative penalty, which it stated was

more than a 25% variance from the preliminary assessment of \$380 000 and reduce the base daily amount of \$5000 by 25% to \$3750 for each day an offence is found to have occurred, based on factor (g).

Canadian Natural referred to AER Regulatory Compliance's consideration of a good faith measure in making the \$100 000 reduction and contended that the base penalty should be reduced due to Canadian Natural's good faith and mitigation measures in response to the incident. Canadian Natural submitted that this reduced daily base amount then be applied for the 13 days when it identified that birds were oiled. It also stated that it did not seek to change the \$2000 reduction applied by AER Regulatory Compliance under factors (a)–(d) and asked us to confirm that reduction.

[67] Alternatively, Canadian Natural submitted that if we accept the interpretation of section 155 of *EPEA* as applied in the notice of administrative penalty and find that the offence occurred on days when oilings did not occur, we should apply a 25% reduction to the base penalty amount for any days on which a contravention occurred and apply the \$2000 reduction under factors (a)–(d) made by AER Regulatory Compliance in the notice of administrative penalty.

[68] AER Regulatory Compliance submitted that the penalty amount is appropriate and should not be changed. It requested that if we decide to vary the penalty, we review the factors in section 3(2) of the *Administrative Penalty Regulation* and apply them to the varied penalty in a new (*de novo*) fashion. AER Regulatory Compliance contended that such a review should consider sentencing principles and Canadian Natural's size and financial capabilities.

Analysis

[69] Because we earlier confirmed the interpretation of section 155 of *EPEA* applied in the notice of administrative penalty, we only need to consider Canadian Natural's alternative argument for penalty reduction. As both parties considered the \$2000 reduction made under factors (a)–(d) acceptable, we confirm that reduction. We are left to address Canadian Natural's contention that we should apply a 25% reduction to the daily base penalty amount for any days on which the contravention occurred, to recognize Canadian Natural's good faith and mitigation measures.

[70] We are not persuaded by Canadian Natural's submission. In arriving at the final penalty assessment of \$278 000, AER Regulatory Compliance considered Canadian Natural's good faith and mitigation measures when it applied reductions totalling \$102 000. In making a \$2000 reduction under factors (a)–(d), which we have confirmed, AER Regulatory Compliance considered Canadian Natural's mitigation measures, including placement and relocation of booms in the Tar River Valley to manage bitumen movement and reduce oiling risk; placing additional land-based deterrents near the external tailings facility to encourage flight-capable birds towards a nearby lake; and installation of snow fencing around the Tar River Valley perimeter. In making the \$100 000 reduction, AER Regulatory Compliance also relied on the snow fencing installation in reaching its conclusion that Canadian Natural demonstrated a good faith effort to limit deleterious effects on wildlife.

[71] In effect, Canadian Natural had the benefit of the snow fencing installation being considered and applied twice by AER Regulatory Compliance when it made the final penalty assessment of \$278 000. We are not persuaded that the circumstances of this contravention, including response actions taken by Canadian Natural, merit further reductions to the penalty based on good faith and mitigation. We believe that the re-emergence of the island in 2022 and Canadian Natural's failure to remove it before birds nested on it in May 2022 were the key elements of this contravention, as indicated in the notice of administrative penalty, and that this stands against any further reduction of the penalty. We also note AER Regulatory Compliance's submission that the penalty is appropriate and should not be changed.

[72] We therefore dismiss Canadian Natural's request to further reduce the penalty and confirm the final penalty assessment of \$278 000 in the notice of administrative penalty.

Conclusion

[73] The AER granted Canadian Natural this regulatory appeal of its decision to issue an administrative penalty of \$278 000 for contravening section 155 of *EPEA* by failing to store a hazardous substance in a manner that ensured that the hazardous substance did not directly or indirectly come into contact with any animals. Canadian Natural advocated that we should vary the penalty by reducing it from \$278 000 to \$46 750. As requester, Canadian Natural had the onus to persuade us, on the balance of probabilities, that we should vary the penalty.

[74] We made our determination based on Canadian Natural's iteration of the hearing issues that we set in April 2025:

- Interpretation and application of section 155 of *EPEA*
- *Administrative Penalty Regulation* limitation period
- Application of factors in *Administrative Penalty Regulation*

[75] None of Canadian Natural's arguments about these issues persuaded us to vary the penalty amount.

[76] The key aspect of our decision was the application of section 155 of *EPEA* to this proceeding's facts. Considering relevant case law and legislative guidance in reviewing the regulatory framework, we were not convinced that Canadian Natural's proposed narrow interpretation was in keeping with the remedial nature of both *EPEA* and *REDA* and the AER's mandate to regulate environmentally responsible development of energy resources. We accept that this administrative penalty is consistent with the regulatory framework in pursuing environmental protection as part of energy development.

[77] Having carefully considered all the evidence and submissions, we confirm the AER's decision to issue the administrative penalty of \$278 000 to Canadian Natural Resources Limited on July 11, 2024, for

failure to store a hazardous substance in a manner that ensured that the hazardous substance did not directly or indirectly come into contact with any animals, contrary to section 155 of *EPEA*.

Dated in Calgary, Alberta, on August 7, 2025.

Alberta Energy Regulator

Cindy L.F. Chiasson, LLB
Presiding Hearing Commissioner

Andrew MacPherson, PEng.
Hearing Commissioner

Brian A. Zaitlin, PhD, PGeol, CPG
Hearing Commissioner

Appendix 1 Hearing Participants

Principals and Representatives
(Abbreviations used in report)

Witnesses

Canadian Natural Resources Limited
S. Parker
A. Mann

AER Regulatory Compliance Branch
G. Wong

Alberta Energy Regulator staff
S. Gibbons, AER Counsel
M. Lavelle, AER Counsel
T. Wheaton
N. Hymers
A. Stanislavski
R. Borth
