Environmental Protection Tribunal of Canada

Tribunal de la protection de l'environnement du Canada

Issue Date: June 21, 2019

Citation: *ArcelorMittal Canada Inc. v. Canada (Environment and Climate Change),* 2019 EPTC 4

EPTC Case Nos.: 0029-2018, 0030-2018, 0031-2018 and 0032-2018

Case Names: *ArcelorMittal Canada Inc. v. Canada (Environment and Climate Change)* (0031-2018 and 0032-2018);
ArcelorMittal Dofasco MP Inc. v. Canada (Environment and Climate Change) (0029-2018 and 0030-2018)

Applicants: ArcelorMittal Canada Inc. and ArcelorMittal Dofasco MP Inc.

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Reviews commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 ("EVAMPA") of Administrative Monetary Penalties issued under s. 7 of EVAMPA for violations of s. 11(5)(a) and s. 11(5)(b) of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2005-149, made under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33

Heard: In writing

Appearances:

Parties	**Counsel**
ArcelorMittal Canada Inc. and ArcelorMittal Dofasco MP Inc.	Daniel Richer
Minister of Environment and Climate Change Canada	Adam Gilani

DECISION DELIVERED BY: **JERRY. V DEMARCO**

Background

[1] This Decision disposes of requests by the Applicants, ArcelorMittal Canada Inc. ("AMC") and ArcelorMittal Dofasco MP Inc. ("AMD"), to the Environmental Protection Tribunal of Canada ("Tribunal") for reviews of four Administrative Monetary Penalties ("AMPs") issued by Environment and Climate Change Canada ("ECCC") on September 4, 2018.

[2] AMP numbers 8300-2001 and 8300-2002 were issued to AMD. AMP numbers 8300-2003 and 8300-2004 were issued to AMC. They were issued by ECCC Enforcement Officer Douglas Laing to the Applicants under s. 7 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 ("EVAMPA") in respect of alleged violations of s. 11(5)(a) and s. 11(5)(b) of the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, SOR/2005-149 ("Hazardous Waste Regulations"), made under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 ("CEPA").

[3] The Applicants submitted their request for a review to the Tribunal on September 25, 2018 under s. 15 of EVAMPA.

[4] The hearing was conducted in writing according to an agreed statement of facts, exhibits and written submissions. The Applicants were represented by Counsel, Daniel Richer. ECCC was represented by Counsel, Adam Gilani.

[5] In overview, the parties agreed that the operating entity, ArcelorMittal Dofasco G.P. ("G.P.") committed violations of the Hazardous Waste Regulations. G.P. is a partnership of the Applicants, AMC and AMD. AMC owns 99.99% of G.P. and AMD owns 0.01% of G.P. No AMP was issued to G.P. The main question is whether the partners are liable for the AMPs issued to them.

[6] ECCC submits that the AMC and AMD are corporations carrying on business through an operating partnership (i.e., G.P.). ECCC states that a partnership (or firm) is not a "person" under EVAMPA and, therefore, ECCC may not issue AMPs against it. However, ECCC states that it may proceed against G.P.'s partners. ECCC submits that "it is sufficient proof that a person has committed a violation if it is established that an agent of that person has committed the violation". ECCC submits that the "actions of the firm or another partner bind every person in the partnership".

[7] The Applicants admit that G.P. committed violations and that the baseline amount of $1,000 per violation is the correct amount under EVAMPA's regulations. They submit, however, that there were two violations (not four) and that the individual corporate Applicants (i.e., the partners) did not commit the violations. They submit that ECCC misinterprets the applicable legislation in proposing that a partnership cannot be the subject of an AMP. The Applicants state that the legislation and ECCC's past treatment of G.P. demonstrate that the G.P. partnership is the "proper party" or "proper entity" to be issued an AMP. They state that the practice of issuing AMPs "against each partner in a partnership instead of the partnership could lead to results that are both

inappropriate and administratively untenable". They also state that the issuance of four AMPs for what amounts to only two violations means that the total amount of the AMPs is incorrect.

[8] For the reasons set out below, the AMPs are upheld and the reviews are dismissed.

Issues

[9] The issues are: 1) whether ECCC has established the elements of violations of s. 11(5)(a) and s. 11(5)(b) of the Hazardous Waste Regulations by each Applicant, and 2) if so, whether the amounts of the AMPs should be changed. The main sub-issue relates to whether each partner of G.P. can be subject to AMPs for G.P.'s violations.

Relevant Legislation and Regulations

[10] The most relevant provisions of EVAMPA are:

> 7. Every person, ship or vessel that contravenes or fails to comply with a provision, order, direction, obligation or condition designated by regulations made under paragraph 5(1)(a) commits a violation and is liable to an administrative monetary penalty of an amount to be determined in accordance with the regulations.
>
> 9(1). In any proceedings under this Act against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee or agent or mandatary of the person, whether or not the agent or mandatary has been proceeded against in accordance with this Act.
>
> 20(1). After giving the person, ship or vessel that requested the review and the Minister reasonable notice orally or in writing of a hearing and allowing a reasonable opportunity in the circumstances for the person, ship or vessel and the Minister to make oral representations, the review officer or panel conducting the review shall determine whether the person, ship or vessel committed a violation.
>
> (2) The Minister has the burden of establishing, on a balance of probabilities, that the person, ship or vessel committed the violation.
>
> (3) If the review officer or panel determines that the penalty for the violation was not determined in accordance with the regulations, the review officer or panel shall correct the amount of the penalty.

[11] The most relevant provisions of the Hazardous Waste Regulations are:

> 11(5). The exporter must ensure that
>
> (a) every authorized carrier that transports the hazardous waste or hazardous recyclable material completes Part B of the movement document; and
>
> (b) the foreign receiver completes Part C of the movement document, unless the exporter is authorized to do so on the foreign receiver's behalf under the contract referred to in paragraph 9(f).

Discussion

Facts

[12] The parties agree to the relevant facts as set out in the Agreed Statement of Facts and the exhibits appended to it. The most pertinent facts set out in those documents are as follows.

[13] G.P. is a general partnership with two corporate partners: AMC and AMD. AMC owns 99.99% of G.P. and AMD owns the remaining 0.01%. AMC also owns 100% of AMD and, therefore, effectively owns 100% of G.P.

[14] G.P. is an operating entity that is located at 1330 Burlington Street East in Hamilton, Ontario. AMC and AMD are non-operating entities with the same corporate address as G.P.

[15] G.P. is a steel manufacturing company that ships hazardous recyclable material to the United States. G.P.'s business name is registered under Ontario's *Business Names Act*, RSO 1990, c B.17. The registration of this business name refers to AMC and AMD as the registrants and lists an individual from AMC as the person authorizing the registration of G.P.'s business name. Similarly, G.P.'s master business license lists G.P. as a business name and AMC and AMD as the legal names of a general partnership that has two partners. AMC and AMD are incorporated and have corporation numbers under the *Canada Business Corporations Act*, RSC 1985, c C-44.

[16] On February 2, 2017, ECCC enforcement staff issued a written warning to G.P. for violations of sections 11(1), 11(5) and 13 of the Hazardous Waste Regulations.

[17] On August 27, 2018, ECCC enforcement staff attended at G.P. and conducted an inspection of hazardous material movement documents under a permit issued to G.P. by ECCC. ECCC identified two movement documents that did not comply with the Hazardous Waste Regulations.

[18] On August 28, 2018, ECCC enforcement staff identified contraventions of s. 11(5)(a) and s. 11(5)(b) of the Hazardous Waste Regulations, whereby G.P. failed to complete the movement documents as prescribed.

[19] On September 4, 2018, ECCC enforcement staff issued and served four notices of violation (in respect of two movement documents), each for the applicable baseline amount of $1,000 set out in EVAMPA's regulations. AMP number 8300-2001 was issued to AMD for a breach of s. 11(5)(a) of the Hazardous Waste Regulations and AMP number 8300-2002 was issued to AMD for a breach of s. 11(5)(b). AMP numbers 8300-2003 and 8300-2004 were issued to AMC for the same violations.

[20] The AMPs issued to AMC and AMD for a violation of s. 11(5)(a) of the Hazardous Waste Regulations relate to movement document YH54272-8. Enforcement Officer Laing indicated on both notices of violation that he "found Part B, Box 26 incomplete" because it was "missing the name of the authorized person". Under the heading for "Violator information… Legal name of individual, other person, ship or vessel", he listed AMC on one notice and AMD on the other. In the "Other relevant facts" portion of the AMC notice, he referred to having inspected "ArcelorMittal Canada Inc. doing business as ArcelorMittal Dofasco G.P." For the same portion of the AMD notice, he referred to "ArcelorMittal Dofasco MP Inc. doing business as ArcelorMittal Dofasco G.P.".

[21] The AMPs issued to AMC and AMD for a violation of s. 11(5)(b) of the Hazardous Waste Regulations relate to movement document YH54225-6. Enforcement Officer Laing indicated on both notices of violation that he "found Part C, Box 31 incomplete" because it was "missing the quantity received". In all other pertinent respects, these notices use the same wording as the s. 11(5)(a) notices discussed above.

[22] There is no dispute that the two violations occurred or that the correct amount for a "Type A" violation by someone other than an individual person is $1,000 under EVAMPA's regulations. The questions in this proceeding relate to whether none, one or both of the named Applicants (i.e., the partners) committed violations and whether the total amount of the AMPs is correct given that there were only two administrative violations involved.

ECCC's Submissions

[23] ECCC states that the only issue is: "if a violation that is the subject of an administrative monetary penalty is established by [ECCC] against a partnership (a "firm"), does the enforcement officer(s) have the authority to issue a notice of violation for the same violation to all persons who are partners of the firm". Later in its submissions, ECCC frames the issue as: "where it is established that a violation is committed by a partnership (a "firm"), whether the individual partners carrying on business in the name of the firm are considered to have committed the violation".

[24] ECCC notes that the Applicants do not dispute that G.P. "through its employees or agents did commit a violation as described in the notices of violation". Sections 7 and 20 (among others) of EVAMPA refer to "person, ship or vessel". In this case, only the

word “person” is relevant. ECCC states that none of EVAMPA, its regulations, CEPA or the Hazardous Waste Regulations defines “person”. ECCC notes that the *Interpretation Act*, RSC 1985, c I-21 contains the following definitions:

> corporation does not include a partnership that is considered to be a separate legal entity under provincial law; (*personne morale*)
>
> person, or any word or expression descriptive of a person, includes a corporation; (*personne*).

[25] Relying on Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, ON: LexisNexis Canada, 2014), ECCC submits that the above definitions apply to all federal legislation, subject to evidence to the contrary in a particular enactment. ECCC states that the relevant federal enactments in this case “do not provide any explicit definitions that differ or detract from the *Interpretation Act* definitions, nor do they contain any explicit or implicit evidence to demonstrate that the Acts choose to depart from the definitions”. ECCC submits:

> Read together, the definition of “person” and “corporation” make it clear that where the word “person” appears in a federal enactment it refers to all persons, including corporations; and further, that partnerships are not considered corporations. As a result, a partnership is not a “person” for the purposes of this legislative scheme.

[26] Relying on s. 9(1) of EVAMPA, ECCC submits “that a contravention by an employee or agent of a person is sufficient proof to demonstrate that the person committed a violation” and that the employees and agents of G.P. are employees and agents of the two partners. ECCC also notes that s. 9(1) of EVAMPA “provides that a violation is established against a person whether the agent of that person through whom the liability of the person is established is proceeded against or not”. In other words, according to ECCC, it is not necessary to name G.P. in an AMP in order to proceed against each partner by virtue of s. 9(1).

[27] The exhibits to the Agreed Statement of Facts demonstrate that G.P. is a partnership carrying on business and registered in the Province of Ontario. Its two recorded partners are federal corporations (AMC and AMD). Given that G.P. is registered in Ontario, ECCC relies on the following provisions of Ontario’s *Partnerships Act*, RSO 1990, c P.5:

> 6. Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member, bind the firm and the other partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner.

> 7. An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by a person thereto authorized, whether a partner or not, is binding on the firm and all the partners, but this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments. [emphasis added by ECCC]

[28] ECCC states that the *Partnerships Act* "provides that each partner is an agent of the firm and that each partner is an agent of every other partner" and that "the acts of the firm bind every partner and the acts of every partner, in the course of carrying on business in the usual way of the firm, binds every other partner". Because of this statutory agency relationship, ECCC submits that G.P.'s violations are violations committed by each partner for the purposes of liability under EVAMPA.

[29] Relying on *McCormick v Fasken Martin DuMoulin LLP*, 2014 SCC 39, ECCC submits that the "conventional understanding of a partnership is that, in most circumstances, the law ignores the firm and looks to the partners composing it". Here, ECCC states that the admission of the violations by G.P. is proof of violations by each partner of G.P. ECCC also submits that the partnership is not a "person" and that liability flows to all of the partners. Specifically, ECCC submits:

> that the violation committed by an employee or agent of the partnership, imposes a liability on the person who is the [principal], and the partnership not being a "person" within the meaning of the legislation, the liability flows to all the partners of the firm by operation of the law of partnerships.

Therefore, ECCC states that it could proceed against each partner where a firm (G.P.) is in contravention of a provision that is subject to AMPs under EVAMPA.

[30] ECCC submits that the Tribunal should reject the requests for review and declare that "pursuant to EVAMPA, where a partnership commits a violation, the Minister may proceed against every partner of a firm".

Applicants' Submissions

[31] The Applicants state that the issues are whether: 1) the Applicants contravened the CEPA Regulations; and 2) the amount of the AMPs imposed in respect of the agreed upon violations is in accordance with the EVAMPA Regulations.

[32] The Applicants note that it is G.P. that holds the export permits to ship hazardous recyclable material to the United States. They note that Enforcement Officer Laing's written warning was issued to G.P. specifically as the alleged violator. Similarly, Mr. Laing referred to G.P. as the "Company" and "Permit Holder" on the inspection form related to his August 27, 2018 inspection. Nevertheless, the Applicants note, the AMPs are directed to the partner companies and not to the partnership itself. The Applicants believe that the AMPs should have been issued to G.P., in which case there would be a total of two rather than four AMPs.

[33] The Applicants point out that the definition of “person” in the *Interpretation Act* is “non-exhaustive” and “does not exclude partnerships”. They state that including corporations in the definition of a person does not mean that partnerships are excluded. They state that the definition does not prevent G.P. from being considered a person “where appropriate”. They state that ECCC is not prevented from imposing an AMP against a partnership.

[34] The Applicants point out that ECCC issued export permits to G.P. under s. 185(1)(b)(i) of CEPA and that this section includes the wording “no person shall” export hazardous waste except after receiving a permit. The Applicants state that this demonstrates that ECCC has determined that G.P. “has enough legal personality to be issued a permit in its own name and that "person", as it appears in subsection 185(1) of the CEPA, includes [G.P.]”.

[35] The Applicants also note that the provisions of the Hazardous Waste Regulations giving rise to the AMPs in this case are directed to the activities of the “exporter”. While “exporter” is not defined, the Applicants state that this term “clearly means the holder of an export permit issued under paragraph 185(1)(b) of CEPA, as is apparent by the use of the term "export permit" in the above-quoted sections of the CEPA Regulations and the definition of "permit" in section 4 of the CEPA Regulation”. The Applicants state that G.P. is necessarily the exporter under the Hazardous Waste Regulations because: 1) G.P. is the export permit holder as set out in permit number 18/00106/EXP and in Officer Laing’s inspection form, and 2) neither Applicant holds an export permit (and as such are prohibited from engaging in the export activities in question). Consequently, the Applicants submit that G.P. is the entity against which any AMPs should be issued for violations of s. 11(5)(a) and s. 11(5)(b) of the Hazardous Waste Regulations.

[36] The Applicants submit that ECCC’s history of dealing with G.P. as a distinct legal entity is consistent with the applicable legislation and that imposing AMPs against the partners was inconsistent with the legislation and ECCC’s past actions. The Applicants state that ECCC’s discovery of the violations should have led to AMPs against G.P. rather than the partners.

[37] In positing that the holding partners responsible is “inappropriate and administratively untenable”, the Applicants state that they do not hold export permits and should not be held responsible in their own right. They also state that the proceeding against each partner multiplied the liability contemplated by EVAMPA’s regulations simply because of G.P.’s organizational structure rather than any increased culpability.

[38] The Applicants state that the “multiplication of liability based solely on organizational structure is contrary to the totality principle” (see: *R v Khawaja*, 2012 SCC 69 at para 126). They also rely on *Alberta (Health Services) v Bhanji*, 2017 ABCA 126 at para 61:

> The prosecution may choose to charge everyone involved to affix the stigma of conviction on them for future reference. Individual offending conduct may sometimes be sufficient to transcend the general level of culpability of the offence that can be attached to others charged. But the fact of there being one corporate party in one situation, three (corporate and human) parties in another situation and five (corporate and human) parties in yet another, where all the base-line conduct is the same, does not demand a corresponding mathematical enhancement of the sanction merely because of the number of people that the prosecution may choose to charge.

[39] The Applicants recognize that *Alberta (Health Services)* involved a different context, but they believe that the decision is instructive because ECCC "has not suggested, nor could it demonstrate, that … the AMPs were imposed against the Applicants on account of some level of culpability warranting a penalty greater than the baseline penalty mandated by the EVAMPA Regulations. In the present case, four AMPs were imposed in respect of two violations of the CEPA regulations merely because of [G.P.]'s organizational structure". The Applicants add that ECCC's interpretation would mean that a partnership involving 100 partners could give rise to 100 AMPs for one administrative violation.

[40] The Applicants submit that ECCC has overstated the elements of partnership law. They state that AMPs cannot be issued to each partner when a partnership commits a violation. They state that the "conventional understanding" of a partnership set out in *McCormick v. Fasken Martineau DuMoulin LLP* with respect to "obligations, debts and liabilities" does not mean that ECCC "can look behind a duly permitted exporter for the purpose of issuing NOVs and imposing AMPs pursuant to EVAMPA, which not only entail a financial penalty but also establish a history of non-compliance". The Applicants "admit that they are responsible for satisfying the financial obligations connected to AMPs imposed on [G.P.]" but that "they should not be held responsible in their own right, financially and otherwise, for [G.P.'s] contraventions".

[41] In the alternative, the Applicants submit that, if the Tribunal determines that ECCC was entitled to look behind G.P. to its partners in imposing AMPs, then it should only be AMC and not AMD that is responsible because AMC ultimately owns 100% of G.P. through its partnership share and its ownership of AMD.

[42] With regard to the total amount of the AMPs, the Applicants state:

> By imposing AMPs on each of the Applicants for both violations of the CEPA Regulations identified in the Investigation, the Respondent doubled the amount of the penalty provided for in the EVAMPA Regulations associated with the violations from $1,000 per violation to $2,000 per violation. This imposition is not authorized by the EVAMPA Regulations; it is also contrary to the aforementioned totality principle. The Respondent is only entitled to impose AMPs equalling $2,000 in the aggregate in respect of the violations identified in the Investigation.

[43] The Applicants also state that the Tribunal cannot grant the declaratory relief being sought by ECCC as such a power is not set out in EVAMPA.

Analysis and Findings

Introduction

[44] The facts of the violations by G.P. and the calculation of the amount ($1,000 per violation) of the AMPs are not in dispute (save for the fact that the Applicants submit that the total amount of the penalties should only be half of what was imposed because there were only two violations).

[45] The issues to be determined in this proceeding have been characterized differently by the parties. The Tribunal finds that the starting point for defining the issues is the wording of EVAMPA itself and thus follows the Applicants' characterization of the issues. Under s. 20(1), the Tribunal is tasked with determining whether the person named in an AMP notice committed a violation. The burden of proof is on ECCC. Thus, in this case, the Tribunal must determine whether ECCC has established the elements of a violation of s. 11(5)(a) and s. 11(5)(b) of the Hazardous Waste Regulations by each Applicant. If so, the Tribunal must then determine whether the AMP amounts were calculated correctly. The main sub-issue relates to whether each partner of G.P. can be subject to an AMP for violations committed by G.P. Strictly speaking, it is not necessary to determine whether ECCC has the "authority" to issue an AMP against a partnership itself as the partnership was not the subject of any of the four AMPs. It is also not necessary to determine if it would have been preferable for ECCC to issue the AMPs only against one partner or only against G.P. The questions the Tribunal is tasked with answering under EVAMPA are whether AMC and AMD committed violations and whether the AMP amounts are correct.

Issue 1: Did the Partners Commit Violations?

[46] The Applicants admit that G.P. contravened the Hazardous Waste Regulations "in its capacity as exporter under a duly issued permit for the export of hazardous recyclable materials". They believe that G.P. should have been the properly named party to the AMP and that, in such case, there would be two rather than four AMPs. The Applicants state the neither Applicant itself committed a violation. Alternatively, the Applicants state that AMD, which is owned by AMC and which owns only 0.01% of G.P., did not commit a violation. Thus, if one can look behind the partnership to the partners, then only partner (i.e., AMC) committed a violation.

[47] Because it is admitted that the operating entity (G.P.) committed the violations, the question is whether none, one or both of the Applicants (the partners) also committed the violations given their legal relationship/ownership of G.P.

[48] ECCC relies on various sections of EVAMPA and Ontario's *Partnerships Act* in support of its argument that the partners were properly named in the AMPs. Section 9(1) of EVAMPA states:

> 9(1). In any proceedings under this Act against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee or agent or mandatary of the person, whether or not the agent or mandatary has been proceeded against in accordance with this Act.

[49] In this case at hand, AMC and AMD are the "persons" against whom the AMP proceedings relating to violations were initiated by ECCC. It is clear that AMC and AMD are agents of G.P. under the *Partnerships Act*. However, G.P. is not "a person" against whom the AMP proceedings were initiated. The AMPs are directed to the partners only, not the partnership. Therefore, s. 9(1) of EVAMPA, read on its own in light of the fact that the partners are agents of G.P., does not conclusively answer the question of whether the partners are liable for the violation committed by G.P.

[50] As G.P. is a general partnership in the Province of Ontario, the provisions of that province's *Partnerships Act* also apply. That legislation uses the terms "firm" and "partnership". Guidance on the meaning of those terms is found in the *Partnerships Act*:

> **Partnership**
>
> 2. Partnership is the relation that subsists between persons carrying on a business in common with a view to profit, but the relation between the members of a company or association that is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act.
>
> **Meaning of "firm"**
>
> 5. Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm name.

[51] The term "person", which is used in the *Partnerships Act*, is not defined in that Act, but is defined in Ontario's *Legislation Act*, 2006, S.O. 2006, c. 21, Sch. F, s. 87. Like the federal definition, the Ontario definition of a person is non-exhaustive and includes a corporation. The wording of s. 2 and s. 5 of the *Partnerships Act* implies that persons and partnerships are different things under that Act and that persons refers to the partners rather than the partnership itself.

[52] Section 6 of the *Partnerships Act* (reproduced in the summary of ECCC's submissions above) speaks to the partners being agents of the firm. This addresses an issue similar to the one addressed above in relation to s. 9(1) of EVAMPA; that is, that AMC and AMD are agents of G.P. and the actions of the partners bind the firm. In this case, the proceedings are against the partners, not the partnership, so s. 6 of the

Partnerships Act, read on its own in light of the fact that the partners are agents of G.P., also does not conclusively answer the question of whether AMC and AMD are liable for the violation committed by G.P.

[53] To better address the question at hand here, the Tribunal must, within the specific context of EVAMPA's wording, examine the nature of partnerships and in particular the liability of partners for the acts of the partnership and/or the lability of partners for the acts of the employees of the partnership. The Tribunal accepts the "conventional view of a partnership" as a "collection of partners, rather than a distinct legal entity separate from the parties who are its members" (*McCormick v. Fasken Martineau DuMoulin LLP* at para. 30). The Tribunal sees nothing in the *Partnerships Act* that goes against that "conventional view". In Ontario, the liability of partners for the actions of a partnership is reinforced by s. 7 of the *Partnerships Act*, which states that an act or instrument relating to the business of the firm "is binding on the firm and all the partners".

[54] Section 9 of EVAMPA provides that violations by agents or mandataries of a person render that person liable to AMPs. Therefore, to the extent that the non-operating "persons" under s. 9(1) of EVAMPA (i.e., AMC and AMD) have given the operating G.P. entity (via a partnership with its own registered business name) a power or mandate to conduct business on behalf of the incorporated partners (who are the registrants of the G.P. business name), then the acts done by G.P. bind the partners for the purposes of EVAMPA. The fact that ECCC has listed G.P. (and thus implicitly considered it a "person" at that point in time) on the export permit and other documents does not affect the Tribunal's findings here, as its conclusions emanate from the legal relationships involved in partnerships and the wording of EVAMPA as opposed to the practices of ECCC in issuing documents to G.P. The same conclusion would be reached regardless of whether G.P. is named on the export permit or the partners are named, given the legal relationship between the partners and the firm and the wording of s. 9(1) of EVAMPA. It is also not necessary to determine whether G.P., the named permit holder, is the only entity to be considered an "exporter" under the Hazardous Waste Regulations or whether it is a "person" under EVAMPA. Regardless of the wording on the export permit, the partners are liable in law because of the specific wording of s. 9(1) of EVAMPA and the legal relationship involved in the general partnership structure.

[55] A similar conclusion is reached once the analysis extends to the actual individual employees who improperly completed the movement documents. The agreed statement of facts refers to the partners as "non-operating entities" that share the same address as the operating partnership. Thus, from the perspective of the operation itself, the employees who completed the documents are employees of the operating entity G.P. Thus, as submitted by ECCC, to the extent that the actual violations (i.e., failing to complete the movement documents properly) were committed by individual persons working for G.P., such persons are effectively also employees or agents of the partners (i.e., the legal corporate entities that created the partnership). Therefore, violations

committed by employees or agents of G.P. are also sufficient proof to demonstrate that the partners committed violations as per the wording of s. 9(1) of EVAMPA.

[56] Viewed through either of the above lenses, the Tribunal concludes that ECCC has demonstrated, under s. 9(1) of EVAMPA, "sufficient proof of the violation" by AMC and AMD, as legally incorporated persons who are partners. These partners are "persons" considered to have committed violations because of the actions committed by the G.P. partnership itself (an agent or mandatary of the partners) or by G.P.'s employees who are effectively employees of the partners. In light of the above conclusions of sufficient proof of violations by the partners under s. 9(1) of EVAMPA, it is not necessary to reach a conclusion as to whether the partners could also be considered directly liable for the commission of the violations under s. 7 of EVAMPA. Proof under s. 9(1) of EVAMPA is sufficient.

[57] The Tribunal adds that it does not agree with the Applicants that the Tribunal is to determine in this proceeding who the "proper" party or entity for an AMP is. ECCC issues AMPs and the Tribunal determines in a review hearing whether the actual persons named in the AMPs committed violations under sections 7 to 9 of EVAMPA. There may be several options open to an ECCC enforcement officer in a given case (e.g., individual(s) only, other person(s) such as corporation(s) only, corporation(s) plus director(s), corporation(s) plus agent(s) or employee(s), etc.). The Tribunal does not revisit the choices of enforcement officers in deciding to whom AMPs will be issued. Of course, if an AMP is issued to a person that did not commit a violation, then the Tribunal will grant such a review. However, it will not substitute its decision for the enforcement officer's exercise of discretion in issuing AMPs to those who fall within the ambit of persons who have committed violations under EVAMPA. If a person named in an AMP committed the violation, then the AMP will stand (subject only to the amount being corrected if needed under s. 20(3)).

[58] The Tribunal now turns to the Applicants' alternative argument that, if partners can be liable for violations by a partnership, then only AMC should be liable since it effectively owns all of G.P. by owning 99.9% of G.P. and owning all of AMD (which in turn owns 0.01% of G.P.). While the Tribunal understands the practical effect of the organizational structure that has been adopted for G.P.'s operations, there is nothing in EVAMPA or the *Partnerships Act* that would allow the Tribunal to conclude that AMD has not committed a violation simply because of the ownership structure employed here. Under s. 9(1) of EVAMPA, all partners are liable for the actions of the partnership and the partnership's employees. AMD, like AMC, is a partner in G.P. There is no provision in EVAMPA that permits the Tribunal to select just one partner to be subject to an AMP when ECCC originally subjected both partners to AMPs. This "two AMPs for each administrative violation" scenario may not have been anticipated when the organizational structure for G.P. was designed but the Tribunal has not been provided with any legal basis to uphold the violation only in respect of one partner and not the other.

[59] The Tribunal understands the Applicants' concerns that, because of these two AMPs being upheld by the Tribunal, both partners will now be considered to have a history of non-compliance. As well, two AMPs may be issued by ECCC each time G.P. commits an administrative violation. However, there is nothing under EVAMPA that the Tribunal can legally rely on to address these results in the practical ways proposed by the Applicants. Absent a change to the corporate structure used for G.P., a change to the applicable law, or a change in ECCC enforcement staff decision-making regarding whether to name all partners in AMPs, the situation will remain as it is.

[60] The Tribunal adds that it reaches the above conclusions as required steps in carrying out its mandate under s. 20(1) of EVAMPA (i.e., determining whether each person named in the AMPs committed a violation) and not as basis to issue a "declaration" as requested by ECCC. The Tribunal reaches legal and factual conclusions in order to carry out its statutory role but these conclusions do not need to be in a form similar to "declarations" issued by courts. What the Tribunal is mandated to do is to determine whether violations were committed by the persons named in AMPs and whether penalty amounts were calculated in accordance with EVAMPA's regulations.

[61] As the question in this case relates to whether the partners named in the AMPs are properly subject to those AMPs, it is not necessary to address the question of whether ECCC could have or should have issued AMPs to G.P. instead of (or possibly even in addition to) AMC and AMD. The Tribunal, therefore, declines to answer the question posed by ECCC as to whether G.P. is a "person" under EVAMPA. Should a partnership be issued an AMP in the future and challenge that AMP before the Tribunal on the basis that a partnership is not a person under EVAMPA and the *Interpretation Act*, then the Tribunal will seek more detailed submissions on that question of interpretation (including, for example, submissions on the different definitions of "person" used in the *Interpretation Act*, which does not make specific reference to partnerships, and the *Canada Business Corporations Act*, which does). Here, the Tribunal is only mandated under EVAMPA to determine whether AMC and AMD committed violations, as they were the two entities named in the AMPs.

[62] To conclude on this issue, ECCC has discharged its burden of establishing that both partners committed the violations at issue here.

Issue 2: Were the AMP Amounts Determined Correctly?

[63] The Tribunal now turns to the question of the AMP amounts. With regard to the Applicants' submissions on the "totality principle" and its reliance on the reasoning in *Alberta (Health Services) v Bhanji*, the Tribunal finds that the Tribunal, in carrying out its EVAMPA role, is not in the same position as a sentencing court. While the Tribunal understands the rationale for the Applicants' submissions regarding the effect of ECCC simultaneously proceeding against two entities for one administrative violation, the Tribunal must stay within its statutory role under EVAMPA and its regulations.

[64] EVAMPA states:

> 7. Every person… that contravenes or fails to comply with a provision… designated by regulations made under paragraph 5(1)(a) commits a violation and is liable to an administrative monetary penalty of an amount to be determined in accordance with the regulations.
>
> 20(3). If the review officer… determines that the penalty for the violation was not determined in accordance with the regulations, the review officer or panel shall correct the amount of the penalty. [emphasis added]

[65] EVAMPA's regulations (*Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109) provide:

> 4. The amount of the penalty for each violation is to be determined by the formula
>
> **W + X + Y + Z**
>
> where
>
> **W** is the baseline penalty amount determined under section 5…
>
> 5. The baseline penalty amount for a violation is the amount set out in column 3 of Schedule 4 that corresponds to the category of the violator and the type of violation committed as set out in columns 1 and 2, respectively, of that Schedule. [emphasis added]

[66] Because of the wording of EVAMPA and its regulations, once ECCC has demonstrated that persons (i.e., both AMC and AMD) have committed violations, the Tribunal cannot change the amounts of the AMPs unless the amounts require correction to accord with the wording and formula set out in the regulations. Notably, neither EVAMPA nor its regulations give the Tribunal the jurisdiction to consider principles used by sentencing courts, fairness or equity as reasons to alter the amounts of AMPs. Once the facts show that a person committed a violation that is the subject of an AMP, s. 4 and s. 5 of EVAMPA's regulations dictate that the minimum amount of the AMP will be the baseline amount set out in EVAMPA's regulations. In this case, $1,000 per AMP is the minimum for the specific violations at issue here as per Schedule 4 of EVAMPA's regulations. There is no statutory authority for the Tribunal, in instances where two or more persons are simultaneously liable for one administrative violation, to reduce the total amount for all violators to the amount that would have applied if there had been only one violator. This result would apply in cases such as this where two partners are both legally liable for the violations committed by the partnership or, for example, where an individual corporate director and a corporation were both issued AMPs for one violation. All those who committed a violation and who receive an AMP from ECCC will have to pay the AMP amount set out in EVAMPA's regulations.

[67] EVAMPA and its regulations simply do not provide the flexibility or discretion for the Tribunal to consider additional factors, including those principles relied upon by the

Applicants here, in calculating the appropriate AMP amounts. Once the violations are made out, the Tribunal ensures that the calculations of the AMP amounts were done correctly in the manner set out in the regulations. Here, the baseline amount of $1,000 per AMP is the correct amount and the Tribunal cannot forgive two of the four AMPs or reduce two of the four AMP amounts to $0 because only two actual administrative violations occurred (i.e., two movement documents were not completed properly). Both partners are liable as violators under the applicable law and, therefore, both partners must pay the applicable AMP amounts set by regulation.

[68] To conclude on this issue, AMP amounts under EVAMPA are not akin to discretionary sentences resulting from prosecutions. They are administrative penalties that are calculated according to a specific formula set out in EVAMPA's regulations and the Tribunal must follow those regulations in carrying out its mandate under s. 20(3) of EVAMPA.

Conclusion

[69] ECCC has discharged its burden under s. 20(2) of EVAMPA by demonstrating, on a balance of probabilities that violations of s. 11(5)(a) and s. 11(5)(b) of the Hazardous Waste Regulations were committed by AMC and AMD. As well, the AMPs were calculated correctly in accordance with the AMP Regulations.

Decision

[70] The AMPs are upheld and the reviews are dismissed.

Reviews Dismissed

"Jerry V. DeMarco"

JERRY V. DEMARCO
CHIEF REVIEW OFFICER