



Issue Date: April 30, 2020
Citation: *JJM Construction Ltd v. Canada (Environment and Climate Change)*, 2020 EPTC 2
EPTC Case Nos.: 0014-2020 and 0015-2020
Case Name: *JJM Construction Ltd v. Canada (Environment and Climate Change)*
Applicants: JJM Construction Ltd.
Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review 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. 124(1) and 125(1) of the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33.

Heard: April 23, 2020 by telephone conference call

Appearances:

Parties

JJM Construction Ltd.

Minister of Environment and
Climate Change Canada

Representatives

Craig Archibald

Calvin Leung

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Background

[1] This Decision disposes of a request by JJM Construction Ltd. (“Applicant”) to the Environmental Protection Tribunal of Canada (“Tribunal”) for a review of two Administrative Monetary Penalties (“AMPs”) issued by Environment and Climate Change Canada (“ECCC”) on March 13, 2020.

[2] The AMPs were issued by ECCC Enforcement Officer Calvin Leung to the Applicant 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. 124(1) and 125(1) of the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 (“CEPA”).

[3] The Applicant submitted its request for a review to the Tribunal on March 27, 2019 under s. 15 of EVAMPA.

[4] Shortly after the request was filed, the parties advised the Tribunal that they had reached consensus that the AMPs should be cancelled. A hearing was convened on April 23, 2020 by telephone conference call for the purpose of confirming the parties’ intentions and giving effect to their proposed resolution of this proceeding.

[5] For the reasons set out below, the AMPs are cancelled.

Issue

[6] The issue is whether the two AMPs should be cancelled.

Relevant Legislation and Procedural Framework

[7] The most relevant provisions of EVAMPA are:

16. At any time before a request for a review in respect of a notice of violation is received by the Chief Review Officer, a person designated under paragraph 6(b) may cancel the notice of violation or correct an error in it.

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.

21. The review officer or panel shall render their determination in writing within 30 days after the day on which the review is completed and, without delay, provide the Minister and the person, ship or vessel to which the determination relates with a copy of the determination and reasons. (Emphasis added)

[8] The above sections of EVAMPA provide the statutory authority and procedural framework for the cancellation decision in this case.

[9] First, s. 16 does not require intervention or a decision from the Tribunal for an ECCC enforcement officer to cancel or correct a notice of violation if the cancellation or correction occurs before the request for review is received by the Chief Review Officer of the Tribunal. By necessary implication, if the enforcement officer proposes to cancel or correct a notice of violation after the request for review was received, the Tribunal is required to determine whether a violation occurred under s. 20(1). Second, the Minister carries the burden to produce evidence establishing that the person named in the AMP notice of violation committed the violation on the civil standard of proof, according to s. 20(2). Third, the Tribunal is then required to render a written determination as set out in s. 21.

[10] If the Minister calls no evidence to prove the violation occurred and upon which the AMP is based, then the Tribunal cannot uphold the AMP. In such event, the Tribunal must render a decision cancelling the AMP and a substantive analysis of the information giving rise to the AMP is, therefore, unnecessary.

Analysis and Findings

[11] During the hearing, representatives for both parties confirmed their request that the AMPs issued by Officer Leung be cancelled. The Minister's representative then elected to call no evidence to support the alleged violations. As a result, there was no case for JJM Construction Ltd. to meet and no reason to proceed further with the hearing. The parties were advised that the AMPs would be cancelled with a written decision to follow.

[12] By design and with consent, there is no evidence upon which I could find that the violations described in AMP numbers 8500-8526 and 8500-8527 occurred. Consequently, the AMPs cannot be upheld.

Decision

[13] The AMPs are cancelled.

AMPs Cancelled

“Leslie Belloc-Pinder”

LESLIE BELLOC-PINDER
REVIEW OFFICER