



**Issue Date:** June 2, 2020  
**Citation:** *Deep River (Town) v. Canada (Environment and Climate Change)*, 2020 EPTC 3  
**EPTC Case No.:** 0016-2019  
**Case Name:** *Deep River (Town) v. Canada (Environment and Climate Change)*  
**Applicants:** Corporation of the Town of Deep River  
**Respondent:** Minister of Environment and Climate Change Canada

**Subject of proceeding:** Review commenced under section 15 of the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 (“EVAMPA”) of an Administrative Monetary Penalty issued under section 7 of EVAMPA for a violation of paragraph 28(2) of the *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations*, SOR/2008-197, enacted under the *Canadian Environmental Protection Act 1999*, SC 1999, c 33.

**Appearances:**

**Parties**

**Representatives**

Corporation of the Town of  
Deep River

Sean Patterson

Minister of Environment and  
Climate Change Canada

Jennifer Clarke

**ORDER DELIVERED BY:**

**PAUL DALY**

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## **Preliminary Issue**

[1] This Order is in relation to a preliminary issue concerning the time limits for issuing and serving a Notice of Violation (“NOV”) under the *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126 (“EVAMPA”) and *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 (“EVAMPA Regulations”). The Applicant, the Corporation of the Town of Deep River (“Town”), has requested a review by the Environmental Protection Tribunal of Canada (“Tribunal”) of a NOV issued against it by the Minister of Environment and Climate Change (“Minister”). The NOV relates to an alleged infringement of the *Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations*, SOR/2008-197 (“Storage Tank Regulations”) made under the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 and has the effect of imposing a \$1000 Administrative Monetary Penalty on the Town.

[2] The Town maintains that by the time NOV was served, it was in compliance with all relevant regulatory requirements. At a Pre-hearing Conference held by telephone on February 19, 2020, the parties agreed that the Tribunal would address as a preliminary issue whether the violation alleged in the NOV occurred before or after the legally relevant date of the NOV. As will be explained, the Town’s arguments on the preliminary issue are not persuasive. For the reasons set out below, the Tribunal concludes that a NOV can be issued and served at any point up to two years after a violation, even if the recipient of the NOV is, by then, in perfect compliance with the law.

[3] Some of the parties’ submissions in relation to the preliminary issue have touched on whether the Town actually violated the Storage Tank Regulations. But this Order, on a preliminary issue, does not come to any conclusions about whether the Town violated the Storage Tank Regulations. The Tribunal has been asked by the parties to rule on this preliminary issue, to clear the ground for a resolution of this matter, and has not yet reached the stage of determining whether a violation was, in fact, committed. Accordingly, the Tribunal has not taken any of these submissions into account in making this Order.

## **Background**

[4] On August 2, 2019, Enforcement Officer Hartman issued a NOV to the Town for failing to register its Storage Tank System as required by art. 28(2) of the Storage Tank Regulations. The Date of Violation noted in the NOV is April 3, 2019.

[5] On August 7, 2019, the Town received, by courier, the NOV.

[6] On August 9, 2019, the Town registered the Storage Tank System in the Federal Identification Registry for Storage Tank Systems (FIRSTS), bringing itself into compliance with art. 28(2) of the Storage Tank Regulations.

[7] The NOV, in Section G – Date of Effective Service, states, “In the case of service by registered mail/courier, service is considered effective on (YYYY-MM-DD)” and the date indicated is August 12, 2019.

## **Issue**

[8] The issue is whether the violation alleged in the NOV occurred before or after the legally relevant date of the NOV.

[9] To put the issue in plain language, does the fact that the Town registered its Storage Tank System (on August 9) after the NOV was issued (on August 2) but before the Date of Effective Service of the NOV (on August 12) mean that the Town is not liable to pay the Administrative Monetary Penalty of \$1000?

## **Discussion**

### *The Town’s Submissions*

[10] The Town is of the view that there was no regulatory violation in this case as the Town had the fuel tank in question registered prior to the effective date which was clearly indicated on the NOV.

[11] The Town notes that the effective date of service was August 12, whereas it registered its Storage Tank System on August 9. The Town also notes that the Minister has control of the form of the NOV, which undermines any argument that the date the NOV was issued – August 2 – should prevail over the Date of Effective Service – August 12. The Town suggests that the upshot of the Minister’s position is that the NOV might as well read “Service is considered effective on (YYYY-MM-DD) or date of receipt, whichever is sooner”.

[12] The Town also states that it will continue to act in good faith to ensure that all applicable environmental laws are followed and do its best to protect both the environment and the community.

### *ECCC’s Submissions*

[13] The Minister argues that the only legally relevant date for the purposes of the resolution of this preliminary issue is the date of the alleged regulatory violation – in this case, April 3, 2019. As there is a two-year time limit for issuing NOVs, the NOV in this matter was clearly issued and served well within the applicable time limit.

[14] Having laid out the relevant statutory and regulatory provisions, the Minister explains why the date of issuance was August 2 and the Effective Date of Service was August 12. The Minister refers to art. 9(3)(a) of the EVAMPA Regulations:

<p>In the absence of an acknowledgement of service or a certificate of service, service is considered effective,</p> <p>(a) in the case of service by registered mail or courier, on the 10th day after the day on which the notice is sent, as indicated on the receipt issued by the postal or courier service...</p>	<p>En l'absence d'accusé de réception ou de certificat de signification, la signification prend effet à l'une des dates suivantes :</p> <p>a) dans le cas d'une copie transmise par courrier recommandé ou par service de messagerie, le dixième jour suivant la date indiquée sur le récépissé du bureau de poste ou du service de messagerie</p>
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[15] In the Minister's view, because the NOV in this case was issued on August 2, the Effective Date of Service therefore had to be August 12.

[16] The Minister also observes that the Effective Date of Service is the date used to calculate the time the person believed to have committed the violation has to request a review of a NOV to the Chief Review Officer, consistent with s. 15 of the EVAMPA.

[17] Ultimately, the Minister submits, the date of issuance of a NOV and the Effective Date of Service of a NOV have no bearing on the date the violation occurred, because, as a matter of logic, the violation will always occur before the issuance and effective service of a NOV.

*Response of the Town*

[18] In response, the Town makes four further points. The first three of these relate to whether a violation of the Storage Tank Regulations was committed and whether the Town and the Minister have acted in good faith in ensuring compliance with the Storage Tank Regulations. These points are not relevant to the resolution of this preliminary issue.

[19] The Town reiterates its reliance on Section G on the Notice of Violation, which is titled "*Date Service Effective*", and states this can only be interpreted that to mean that the NOV is not effective until that date.

**Analysis and Findings**

[20] Based on the text, purpose and context of the EVAMPA and the EVAMPA Regulations, there is no need to debate whether August 2, August 7 or August 12 is the relevant date. As the Minister observes, the alleged date of the violation is April 3, 2019. This does not mean there was a violation on April 3, 2019 – the Minister has not yet proved there was – but this date can be used for the purposes of resolving this preliminary issue. As such, the Minister was plainly well within the time limit for issuing a

NOV in respect of the alleged violation, regardless of whether August 2, August 7 or August 12 is identified as the relevant date.

[21] The Minister cites to s. 14 of the EVAMPA in support of the proposition that a NOV may be issued up to two years after the day on which the subject matter of the violation arises:

No notice of violation in respect of a violation may be issued more than two years after the day on which the subject matter of the violation arises.	Le délai dans lequel le procès-verbal peut être dressé est de deux ans à compter de la perpétration de la violation.
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[22] Both the English and French versions of this provision are clear. There is a two-year time limit for issuing Notices of Violation. Plainly, the Minister acted within the two-year time limit in this matter.

[23] Moreover, the Minister observes that under s. 12 of the EVAMPA a violation that continues on more than one day is a separate violation for each day on which it was committed:

A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.	Il est compté une violation distincte pour chacun des jours au cours desquels se commet ou se continue la violation.
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[24] A violation of the type alleged against the Town – an omission to register a storage tank – is an ongoing violation. The clock starts again every morning. Although it is not necessary to decide this point in this case – because the Minister plainly acted within the time limit – the implication is that the two-year period would run from the last date of non-compliance. That the Town registered its Storage Tank System shortly after the NOV was issued would be of no relevance to the Town’s compliance with the Storage Tank Regulations prior to the date of registration.

[25] Why then does the NOV make a distinction between the date of issuance and the effective date of service? The Minister persuasively explains this distinction by reference to the surrounding context, specifically, art. 9(3)(a) of the EVAMPA Regulations and s. 15 of the EVAMPA.

[26] The EVAMPA Regulations provide in art. 9(3)(a) (quoted above in the “Discussions” section) that service of a NOV becomes effective 10 days after the issuing of a NOV. The significance of the Effective Date of Service is that it starts the

clock running on the 30-day period within which the recipient of a NOV may request a review by the Chief Review Officer. This period is set out in s. 15 of the EVAMPA:

<p>A person, ship or vessel that is served with a notice of violation may, <i>within 30 days after the day on which the notice is served</i>, or within any longer period that the Chief Review Officer allows, make a request to the Chief Review Officer for a review of the penalty or the facts of the alleged violation, or both.</p>	<p>L'auteur présumé de la violation peut, <i>dans les trente jours suivant la signification</i> d'un procès-verbal ou dans le délai supérieur que le réviseur-chef peut accorder, saisir le réviseur-chef d'une demande de révision du montant de la pénalité ou des faits quant à la violation présumée, ou des deux.</p>
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[27] Accordingly, the difference between the date a NOV was *issued* and the date a NOV was *served* follows from the EVAMPA and the EVAMPA Regulations.

[28] The distinction between *issuing* and *serving* NOVs ensures fairness by preserving the 30-day period in which the recipient of a NOV may request a review. This does not begin when a NOV is issued but when it is served. Notice, in this regard, that s. 16 of the EVAMPA provides that a NOV may be cancelled (or an error in a NOV corrected) at any time before a request for a review is received by the Tribunal. That is, the *service* of a NOV opens up a time period of up to 30 days within which the Minister and a recipient of a NOV can resolve their differences without Tribunal involvement. Making such a window available is consistent with the purpose of the EVAMPA, set out in s. 3, which is to establish as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of environmental legislation and regulations.

[29] In this matter, given that the alleged violation occurred on April 3, 2019 and the NOV was issued and served in early August of the same year, there is no doubt that the Minister issued and served the NOV in a timely manner.

[30] If this matter proceeds to a hearing, the Minister will have to demonstrate on the balance of probabilities – that it is more likely than not – that the alleged violation occurred and had not been cured before the NOV was issued and served. The Town will be able to dispute the alleged violation and raise defences, though of course the Tribunal's role in adjudicating reviews is strictly limited by the EVAMPA and the EVAMPA Regulations (see especially *Hoang v. Canada (Environment and Climate Change)*, 2019 EPTC 2).

[31] For the purposes of resolving this preliminary issue it has not been necessary to consider whether the two-year time limit in relation to NOVs expires on the date the NOV is issued, the date of effective service of the NOV or some other date. Whatever

the relevant date, the Minister has acted in a timely manner. It is nonetheless worth observing that s. 14 of EVAMPA, which contains the two-year time limit, refers to the *issuing* of a NOV, not the *service* of a NOV, suggesting that a NOV must be issued (but not served) before the time limit expires.

[32] Based on the foregoing analysis, my finding is that the violation alleged in the NOV occurred before the NOV was issued and served. Moreover, based on the date of the alleged violation of the Storage Tank Regulations the NOV was issued and served within the two-year time limit set out in EVAMPA.

### **Order**

[33] The Review Officer directs the Applicant to notify the Tribunal within two weeks of the issuance of this order whether it wishes to proceed further with this request for review or whether it wishes to withdraw the request to review. If the Applicant elects to continue with this request for review, the Tribunal will contact the parties with further procedural directions. If the Applicant elects to withdraw this request for review, the Tribunal will close its file.

*Procedural direction given*

"Paul Daly"  
PAUL DALY  
REVIEW OFFICER