



Issue Date: September 3, 2021
Citation: *Ritchie Bros. Auctioneers (Canada) Ltd. v. Canada (Environment and Climate Change)*, 2021 EPTC 8
EPTC Case Nos.: 0022-2021, 0023-2021, 0024-2021, 0025-2021 and 0026-2021
Case Name: *Ritchie Bros. Auctioneers (Canada) Ltd. v. Canada (Environment and Climate Change)*
Applicant: Ritchie Bros. Auctioneers (Canada) Ltd.
Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Penalties Act*, S.C. 2009, c. 14, s. 126 of Administrative Monetary Penalties issued under section 7 of that Act for violations of subsection 19(1) of the *Off-Road Compression-Ignition Engine Emission Regulations*, SOR/2005-32, made under the *Canadian Environmental Protection Act, 1999*, S.C., 1999, c.33.

Heard: In writing

Appearances:

Parties

Counsel/Representative

Ritchie Bros. Auctioneers (Canada) Ltd.

Rachelle Tilden

Minister of Environment and
Climate Change Canada

Jason Gilead

DECISION DELIVERED BY:

HEATHER GIBBS

Background

[1] On June 15, 2021 the Environmental Protection Tribunal of Canada (“EPTC”) received a request from Ritchie Bros. Auctioneers (Canada) Ltd. (“Ritchie Bros.”) to review five Notices of Violation (“NOVs”) issued to it by Environment and Climate Change Canada (“ECCC”) on May 12, 2021. The request for review is three days late and Ritchie Bros. is requesting that the EPTC extend the timeframe and accept the request.

Legislative Framework

[2] Section 15 of the *Environmental Violations Administrative Monetary Penalties Act* S.C. 2009, c. 14 (“*EVAMPA*”) states that: “A person, ship or vessel that is served with a notice of violation may, within 30 days after the day on which the notice is served, 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.”

[3] Section 15 of *EVAMPA* therefore gives some discretion to the Chief Review Officer to provide for a longer period. It does not, however, give any direction on how that discretion should be exercised.

[4] Section 3.1 of the Tribunals’ Draft Rules of Procedure reflects the statutory 30-day period for requesting a review but is also silent regarding factors to consider in determining whether or not to exercise this discretion.

Submissions

[5] Counsel for Ritchie Bros., Rachelle Tilden, acknowledges that the request for review was late, but notes it was only late by three days and states there was no intention to delay any processes. She submits that the basis for the request for review did not become known to Ritchie Bros. until after the 30-day time was expired, in that it became aware that other parties had received and paid notices of violation for importing the same materials. The request for review is based on the definition of “importer”. Ms. Tilden states:

...my request is for a review on the basis that the ECCC has resolved this matter by properly identifying the importer for the engines in question and by having received payments for the fines issued. Because this information was not known within the 30 day period, the request for a review on this basis was delayed.

[6] ECCC opposes an extension of time for requesting a review in this case. ECCC submits that the deadlines enacted in the administrative monetary penalty regime are established to be fair to all parties involved, and the Tribunal should only exercise its discretion to entertain late appeals where fairness requires it.

[7] This submission reflects the purpose of *EVAMPA*, found in s. 3:

3 The purpose of this Act 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 the Environmental Acts.

Tribunal's Findings

[8] The Tribunal notes that the request to extend the deadline to file a request for review of these NOVs does not raise any issues of fairness. For example, there is no allegation of inadequate notice to Ritchie Bros. of the 30-day request period, nor is this a case of a self-represented party unfamiliar with the law. Ms. Tilden does not deny that Ritchie Bros. was aware of its right to ask for a review within 30 days. Indeed, according to the submissions by ECCC, the Enforcement Officer has been corresponding directly with Ms. Tilden since April 27, 2021, several weeks before the NOVs were issued. Ritchie Bros. could have asked the Tribunal to review the NOVs on the basis that it disagreed with ECCC's interpretation of "importer" during the 30-day window. That further information came to light later which Ritchie Bros. believes bolsters its claim does not change the available time frame in which it could have asked for a review.

[9] While a three-day delay is not lengthy, the Tribunal finds that the length of the delay is not the most important element in exercising its discretion to extend the 30-day deadline, but rather the reason for the delay. The framework set out in *EVAMPA* is designed for efficiency and fairness to all parties. In this case the Tribunal finds that no fairness grounds were raised in the explanation for the delay, nor are there any exceptional circumstances. This is therefore not an appropriate case for the Tribunal to exercise its discretion to extend the deadline.

Decision

[10] The Tribunal dismisses the request for review and closes its file.

Review Dismissed

"Heather Gibbs"

HEATHER GIBBS
CHIEF REVIEW OFFICER