



Issue Date: January 20, 2023
Citation: *Hurrelmann v. Canada (Environment and Climate Change)*,
2023 EPTC 4
EPTC Case No: 0013-2022, 0014-2022, 0015-2022 and 0016-2022
Case Name: *Hurrelmann v. Canada (Environment and Climate Change)*
Applicant: Yorek Hurrelmann
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 a violation of section 6(3) of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c. 52.

Heard: January 11, 2023 (by teleconference)

Appearances:

Parties

Counsel/Representative

Yorek Hurrelmann

Self-Represented

Minister of Environment and
Climate Change Canada

Shandel Wilson

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Background

[1] This Decision disposes of a request by Yorek Hurrelmann (“Applicant”) to the Chief Review Officer for a review of four Administrative Monetary Penalties (“AMPs”) issued by Environment and Climate Change Canada (“ECCC”) on July 19, 2022.

[2] The AMPs were issued by Wildlife Officers Martin and Elder to the Applicant under s. 7 of the [Environmental Violations Administrative Monetary Penalties Act](#) (“EVAMPA”) in respect of alleged violations of s. 6(3) of the [Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act](#) (“WAPPRIITA”).

[3] The Applicant submitted its request for review of all four AMPs to the Chief Review Officer on July 25, 2022, under s. 15 of EVAMPA.

[4] The Chief Review Officer appointed me, as a Review Officer, to deal with the review. Prior to a pre-hearing conference set to convene on January 11, 2023, the parties advised the Tribunal’s Registrar that the hearing was no longer required. To that end, the Minister’s counsel filed a proposed Procedural Direction stating the parties had reached consensus that the Minister would not be calling any evidence against the Applicant. Canada, as a result, moved that the “charges set out in the AMPs be dismissed”.

[5] The pre-hearing conference was convened for the purpose of confirming the Minister’s position and to give effect to the parties’ agreement.

[6] The AMPs are hereby cancelled and the statutory basis, procedural requirements, and evidentiary foundation for the following decision are set out below.

Issues

[7] The issue in this case is purely procedural. Once a request for review has been filed, the Environmental Protection Tribunal of Canada (“Tribunal”) must render a decision. If the Minister presents no evidence to establish that the violations occurred, what becomes of the AMPs and request for review?

Relevant Legislation and Procedural Framework

[8] 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.

20 (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)

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

[10] First, s. 16 does not require intervention or an order from the Tribunal to cancel or correct a Notice if the cancellation or correction occurs before the request for review is filed. By necessary implication, if the request for cancellation or correction is made after the request for review is filed, the Tribunal is required to determine whether a violation occurred. Second, the Minister carries the burden to produce evidence establishing the violation occurred on the civil standard of proof, according to s. 20. Third, the Tribunal is then required to render a decision as set out in s. 21.

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

Analysis and Findings

[12] During the pre-hearing conference call convened on January 11, 2023, representatives for both parties confirmed their request that the AMPs should not be upheld. The Minister's counsel confirmed no evidence to support the alleged violations would be presented. As a result, there was no case for the Applicant to meet and no reason to proceed any further with a hearing. I provided the parties with my oral decision that the AMPs would be cancelled and that a written decision would follow shortly.

[13] By design and with consent, there is no evidence upon which I could find that the violations described in AMPs #9400-8301, 9400-8302, 9400-8326 and 9400-8327 occurred.

Consequently, the AMPs cannot be upheld.

Decision

[14] For the foregoing reasons, the AMPs are cancelled.

AMPs Cancelled

"Leslie Belloc-Pinder"
LESLIE BELLOC-PINDER
REVIEW OFFICER