Environmental Protection Tribunal of Canada

Tribunal de la protection de l'environnement du Canada

Issue Date:	November 2, 2021
Citation:	*Prilik v. Canada (Environment and Climate Change)*, 2021 EPTC 12
EPTC Case Nos.:	0011-2021 and 0012-2021
Case Names:	*Prilik v. Canada (Environment and Climate Change) (0011-2021);* *MTZ Equipment Ltd. v. Canada (Environment and Climate Change) (0012-2021)*
Applicants:	Arie Prilik and MTZ Equipment 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*, S.C. 2009, c. 14, s. 126 of Administrative Monetary Penalties issued under s. 7 of EVAMPA for a violation of paragraph 13(2)(d) 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**
Arie Prilik and MTZ Equipment Ltd.	Arie Prilik
Minister of Environment and Climate Change Canada	Samantha Pillon

DECISION DELIVERED BY: **PAUL MULDOON**

Introduction

[1] The company involved in this review sold a tractor to a U.S. purchaser and that same tractor was later imported back into Canada to be sold to a purchaser in Western Canada. The tractor had an engine that was no longer permitted to be imported pursuant to Canadian environmental law, which resulted in the issuance of notices of violation against the company and one of its directors. Both the company and the director seek a review of those notices on various grounds. In this decision, the notices are confirmed.

Background

[2] This Decision is in response to a request for review by MTZ Equipment Ltd. and Arie Prilik ("Applicants") to the Environmental Protection Tribunal of Canada ("Tribunal") for a review of an Administrative Monetary Penalty ("AMP") issued by Environment and Climate Change Canada ("ECCC") on March 16, 2021 with an amended notice issued on March 17, 2021.

[3] The AMPs were issued by ECCC Enforcement Officer Tom Petrovic to the Applicants under s. 7 of the *Environmental Violations Administrative Monetary Penalties Act*[1] ("EVAMPA") in respect of an alleged violation of section 153(1)(a) of the *Canadian Environmental Protection Act, 1999*[2] ("CEPA") and paragraph 13(2)(d) of the *Off-Road Compression-Ignition Engine Emission Regulations*[3] *("Engine Regulations")* enacted under the CEPA.

[4] ECCC, in its submissions, noted that the *Engine Regulations* were repealed on June 4, 2021. However, the ECCC notes that the *Engine Regulations* continue to apply pursuant to s. 54 of the *Off-road Compression-Ignition (Mobile and Stationary) and Large Spark-Ignition Engine Emission Regulations*.[4]

[5] The Applicants submitted their requests for a review to the Chief Review Officer on March 16, 2021 and March 17, 2021 under s. 15 of the EVAMPA.

[6] The hearing was conducted in writing. ECCC was represented by Counsel Samantha Pillon. The Applicant Arie Prilik represented himself and MTZ Equipment Ltd. ("MTZ"). The Applicants' submissions focused mainly on the matters that they assumed the U.S. and Canadian regulations were similar, there would be a hardship on the business if the AMP had to be paid and that the amended notice to MTZ issued on March 17, 2021 cancelled the notice issued on March 16, 2021.

[1] S.C. 2009, c. 14, s. 126.
[2] S.C. 1999, c. 33.
[3] SOR/2005-32, ss 2(c), 2.1(b)
[4] SOR/2020-258

[7] For the reasons set out below, the Tribunal finds that the AMPs should be upheld and the review should be dismissed.

Issues

[8] The issues are:

a. Whether the ECCC has established the elements of a violation under s. 153(1)(a) of the CEPA?

b. If so, whether the amount of the AMP should be changed; and

c. whether any of the Applicants submissions in their requests for review invalidate the notices of violation.

Relevant Legislation and Regulations

[9] The most relevant provisions of the 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.
>
> **11(1)** A person, ship or vessel named in a notice of violation does not have a defence by reason that the person or, in the case of a ship or vessel, its owner, operator, master or chief engineer
>
> **(a)** exercised due diligence to prevent the violation; or
>
> **(b)** reasonably and honestly believed in the existence of facts that, if true, would exonerate the person, ship or vessel.
>
> **(2)** Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an Environmental Act applies in respect of a violation to the extent that it is not inconsistent 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.

22 If the review officer or panel determines that a person, ship or vessel has committed a violation, the person, ship or vessel is liable for the amount of the penalty as set out in the decision

[10] The most relevant provisions of the *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109 ("EVAMP Regulations") are:

4(1) 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;

X is the history of non-compliance amount, if any, as determined under section 6;

Y is the environmental harm amount, if any, as determined under section 7; and

Z is the economic gain amount, if any, as determined under section 8.

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.

[11] The relevant provisions of the *Canadian Environmental Protection Act* are:

153 (1) No company shall apply a national emissions mark to any vehicle, engine or equipment, sell any vehicle, engine or equipment to which a national emissions mark has been applied or import any vehicle, engine or equipment unless

(a) the vehicle, engine or equipment conforms to the standards prescribed for vehicles, engines or equipment of its class at the time its main assembly or manufacture was completed;

…

(2) Except as otherwise provided by the regulations, subsection (1) does not apply with respect to the application of a national emissions mark or an importation referred to in that subsection if the requirements under that subsection are met before the vehicle, engine or equipment leaves the possession or control of the company and, in the case of a vehicle, before the vehicle is presented for registration under the laws of a province or an aboriginal government.

[12] The relevant provisions of the *Engine Regulations* (with the full provisions outlined in Appendix A) are:

> **13(1)** This section applies to an engine for which a company elects to apply a standard set out in subsection (2), hereinafter referred to as a transition engine, that:
>
> …
>
> **(2)** Instead of the standards referred to in sections 9 to 11, a company may elect to apply one or more of the following standards to transition engines that fall within the following gross power categories if, in the case of an engine referred to in paragraph (1)(a), the engine is installed in Canada during the applicable time period for that standard or, in the case of an engine referred to in paragraph (1)(b), the engine is imported before the end of that same time period:
>
> …
>
> **(d)** in the case of transition engines that have a gross power of 56 kW to less than 75 kW,

Agreed Statement of Facts

[13] The parties agree to the main relevant facts as set out in a document dated June 21, 2021 and can be summarized as follows.

[14] Arie Prilik is the director of MTZ which is located in Thornhill, Ontario. MTZ specializes in the distribution and sale of agricultural tractors manufactured by Minsk Tractor Works in Minsk, Belarus.

[15] Enforcement Officers from ECCC are responsible for enforcing environmental protection legislation, including CEPA and its regulations, amongst them the *Engine Regulations*.

[16] On April 2, 2020, MTZ imported into Canada a tractor fitted with a transition engine. The tractor, a 2013 model, with number MTZ 020.4#090C00599 and its engine, with a model year no earlier than 2013, is a Tier 3 engine (#805373). Initially, the tractor was imported into Canada in or about May 2013. The tractor was sold to a dealer in the U.S. in or about February 2014 before being resold and shipped to Canada on April 2, 2020.

[17] The label affected to the tractor engine that was provided to the Transportation Division on August 28, 2020 noted the tractor engine family was _BSML4.75062, a Tier 3 family according to the Non-Road Compression Ignition engines (NRCI) with 62kW of power. According to the regulations, the period for allowing the importation of 2012 and later model engines that meet Tier 3 emission standards in the 56 to the less than 75 kW power category expired on December 31, 2018.

[18] MTZ sold the tractor in Western Canada and can no longer track its whereabouts.

[19] MTZ was issued an AMP in the past on October 25, 2019 under the CEPA and its regulations.

The Applicants' Submissions

[20] The Applicants' submissions can be summarized as follows. They submit that:

a. The tractor in question cannot be located since initially being contacted by ECCC in September 2020 because the dealer who helped facilitate the sale had passed away in August 2020 and there is no information as to the location of the tractor, although it is assumed it is in Manitoba or Saskatchewan. There is no centralized government tractor registration to assist in locating the tractor.

b. The impact to the environment is miniscule as the engine in question is a 77 hp farm tractor with a relatively new and clean Tier 3 motor;

c. While technically a violation may have occurred, it would not be just to try and chase the Applicants on this issue in that the matter "fell between the cracks" of complicated regulations. It is generally accepted that Canadian environmental regulations are generally similar to U.S. regulations and the tractor was legal to operate in the U.S., and hence, it was logical to assume that it would have been legal to operate in Canada, otherwise Canadian farmers would be at a disadvantage from the U.S. farmers.

d. The tractor was lawfully imported from Europe to Canada around 2013 and if it had remained in Canada, it would have been lawful to have it kept operating in Canada. The facts of this matter is that rather than remaining in Canada, the tractor was sold to a U.S. purchaser and then brought back to Canada and sold again.

e. The law should not be selective in that hundreds of used U.S. tractors are purchased by Canadian farmers annually and imported to Canada without issue although many of those used U.S. tractors do not meet Tier 4 regulations and the same applies to many used U.S. vehicles that are being imported into Canada. The farmer that purchased the tractor had opted for a relatively clear Tier 4 MTZ tractor which represents a net gain for the Canadian environment.

f. The COVID-19 pandemic has been disastrous to MTZ with sales down 60% in 2020 compared to 2019 and any additional financial stress may cause the company to close and lay off the remaining staff. The company is in a

precarious situation as 2018 was disastrous and the company carries almost $1 million in net losses and hence a $13,400 fine would be a huge hardship for the company; and

g. The amended / changing notices create extra inconvenience and unnecessary work for us, including duplicate printing and postage, which is not good for the environment. The amended / changing notices is another testimony to the sloppy work done by some of the compliance officers, who may be motivated to produce more notices of violation instead of seeking justice or do what is truly better for the environment. The amended / changing notice presumably automatically cancels previously issued Notice of Violation # 8300-2855. The notice of violation produced after a request for review has been sent should not be valid.

ECCC's Submissions

[21] ECCC submits that the Applicants are in violation of paragraph 153(1)(a) because that section prohibits the importation of an engine outside of the standards outlined in the *Engine Regulations*. The engine that was imported falls outside those engines allowed to be imported in the *Engine Regulations*. The ECCC, therefore, submits that MTZ's importation of the tractor engine on April 2, 2020 contravenes CEPA and the enforcement officer properly issued a notice of violation against MTZ.

[22] Similarly, ECCC submits that a director of a corporation can be issued a notice of violation in addition to the corporation itself and thus, the notice of violation issued to MTZ's director for the same violation was properly issued.

[23] The ECCC submits that a violation of paragraph 153 (1)(a) of CEPA is a B type violation and that they have correctly used the formula under section 4(1) of the AMP Regulations for calculating an AMP for a B type of violation. The ECCC states that the baseline amount for individual, that is, Mr. Prilik as the director of MTZ, was correctly issued in the amount of $400 while the $13,000 for MTZ was the correct amount for the AMP as it the assessment include the aggravating factors of a history of non-compliance, environmental harm and economic gain.

[24] ECCC submits that the AMP issued in the amount of $400 for Mr. Prilik, as the director of MTZ, is the correct baseline amount for an individual who committed a type B violation.

[25] ECCC submits that the AMP in the of amount of $13,000.00 issued for MTZ is correct considering the aggravating factors of a history of non-compliance, environmental harm, and economic gain. ECCC submits that the fact that MTZ was issued an AMP within the past five years for a violation of the same section of CEPA establishes a history of non-compliance.

[26] ECCC submits that the Applicants' submission that the release from the engine in question is "minimal" is not relevant because the importation of an engine after the cut-off period means that the Applicants are introducing an engine after the importation cut-off period that is releasing hydrocarbons and other chemicals beyond the established standard and is further contributing to harm. The ECCC submits that neither CEPA nor the *Engine Regulations* stipulate a threshold release of emission before establishing a violation.

[27] The ECCC further submits that the economic gain factor applies because the Applicants admitted that the tractor was sold somewhere in Western Canada, and therefore an economic gain was realized as a result of the importation. ECCC submits that the enforcement officer does not have to look beyond the transition itself to assess whether a "net" or "permanent" economic gain was achieved.

[28] ECCC submits that, with these considerations in mind and considering the amounts stated in Schedule 4 of the *Engine Regulations*, the amount of $13,000 for MTZ is correct.

[29] ECCC submits that the Tribunal does not have jurisdiction to hear the defences and arguments raised in the Applicant's two requests for review. ECCC submits that the Tribunal can only determine whether a violation has occurred and whether the penalty was correctly calculated. It further submits that the defences of exercising due diligence and having a reasonable and honest belief in the existence of facts that if true would exonerate the Applicants, are not permissible defences. ECCC submits that the Tribunal does not have the authority to change the amount of the penalty except to ensure its compliance under the wording of the EVAMPA and AMP Regulations. Further the ECCC submits that the term "fairness" in section 3 of the EVAMPA is the fairness of having the facts of the violation reviewed and the fairness of the AMP fairly calculated.

[30] ECCC submits that the Tribunal does not have the jurisdiction to review an enforcement officer's discretionary decision to issue a notice of violation with an AMP over one of the other options open to the officer, such as issuing a warning. ECCC submits that, while being sympathetic that the pandemic has had an impact on the Applicants' business viability, the Applicants did commit a violation and the penalty imposed was correctly calculated pursuant to the EVAMPA and the EVAMP Regulations.

[31] ECCC also submits that the fact that the tractor was previously imported into Canada on an earlier date or lawfully imported into another country does not suggest the Canadian regime is unfair, nor are these arguments reviewable by the Tribunal. Additionally, the reasons why the enforcement officer chose to issue the penalties in this case is not reviewable by the Tribunal.

[32] ECCC states that the EVAMPA permits the enforcement officer to cancel or amend a notice of violation any time before a request for review is received by the Tribunal. The amended notice of violation was sent to the Applicants one day after the initial notice and

only changed the violation number. ECCC submits that whether the Tribunal relies on the first notice of violation or the amended notice will not change the ultimate outcome of the review. Any inconvenience or extra work undertaken by the Applicants because of this amendment is negligible.

Analysis and Findings

General Principles

[33] Under s. 20 of the EVAMPA, Review Officers are to determine whether a violation was committed and whether the AMP was calculated properly. The burden is on ECCC to demonstrate on a balance of probabilities that the elements of the violation are present. Section 11 of the EVAMPA provides that defences related to "mistake of fact" and "due diligence" cannot be relied upon. With respect to the amount of the AMP, the Tribunal is to determine whether the amount was calculated correctly in accordance with the formula and elements set out in sections 4 to 8 of the AMP Regulations.

Issue No. 1: Whether the ECCC has established the elements of a violation of s. 153(1)(a) of the CEPA

[34] The basic legislative structure is that a violation of subsection 153(1)(a) of CEPA occurs when a company imports an engine outside of the standards outlined in the *Engine Regulations*.

[35] Paragraph 13(2)(d) of the *Engine Regulations* provides specific direction with respect to the importation of a transition engine. It states that importation of a transition engine is allowed where the engine:

a. is a Tier 3 engine with standards set out in paragraph 10(1)(a) of the *Engine Regulations*;

b. is an engine model dated later than 2011 or before 2006;

c. has power between 56 kW and less than 75 kW; and

d. is imported into Canada prior to or on December 31, 2018.

[36] The Notice of Violation with respect to MTZ outlines the facts it relied upon to justify the issuance of the Notice:

> MTZ Equipment Ltd. is a company that specializes in the distribution and sale of agricultural tractors manufactured by Minsk Tractor Works in Minsk, Belarus. On April 2, 2020 MTZ Equipment Ltd. imported a tractor fitted with a transition engine. The label that is affixed to the engine was provided to Transportation Division on August 28, 2020. Based on the engine family provided on the engine label and according to the NRCI the engine is Tier 3 transition engine. The time-frame allowing the importation of 2012 and later model year engines that meet Tier 3

emission standards in the 56 to less than 75 kW power category expired on December 31, 2018.

[37] In the Agreed Statement of Facts, outlined above, the Applicants admit that on April 2, 2020 a tractor was imported. The tractor was a 2013 model, with number MTZ 020.4#090C00599 and its engine, with a model year no earlier than 2013, is a Tier 3 engine (#805373). This tractor was initially imported into Canada in or about May 2013 and sold to a dealer in the US in or about February 2014, and then resold and shipped to Canada on April 2, 2020. The Applicants admit that the label affected to the tractor engine that was provided to the Transportation Division August 28, 2020 noted the tractor engine family to be _BSML4.75062, a Tier 3 family according to the Non-Road Compression Ignition engines (NRCI) with 62kW of power.

[38] When reviewing the engine specifications with section 13(2) of the *Engines Regulations*, therefore, the Tribunal finds that the engine is Tier 3 engine that is an engine model dated later than 2011 (that is, it is a 2013 engine model) and has a power between 56kW and less than 75kW (that is, it has 62 kW power). It finds that, contrary to 13(2)(d), it was imported after December 31, 2018 (that is, it was imported on April 2, 2020).

[39] The Tribunal therefore finds that the transition engine imported into Canada by MTZ Equipment does not meet the requirements of paragraph 13(2)(d) and hence, the elements of a violation of section 153(1)(a) have been established.

Issue No. 2: Whether the amount of the AMP should be changed

[40] For the following reasons, the Tribunal finds that the AMP is correctly calculated. The Applicants have not contested the calculation of the AMP amounts.

[41] In terms of general principles, section 4(1) of the EVAMP Regulations provides the formula for calculating an AMP for an A, B, or C type of violation:

Base line + history of non-compliance + environmental harm + economic gain

[42] AMP calculations include a base line amount, which is determined based on the type of violation committed and whether the violator is an individual or a corporation. An AMP cannot be issued below the baseline amount.[5] The other components in the calculation, whether there is a history of non-compliance, environmental harm and economical gain must meet the criteria set out in the EVAMP Regulations before they can be added to the AMP calculation.[6]

[5] *Hoang v. Canada (Environment and Climate Change)*, 2019 EPTC 2, at para. 23.
[6] EVAMP Regulations, ss. 6-8.

[43] With respect to Mr. Prilik, the alleged violation is a Type B violation. The baseline amount for a person who commits a Type B violation is $400. Therefore, for Mr. Prilik, as the director of MTZ, this is the correct baseline.

[44] The total amount of the AMP issued to MTZ was $13,000. This amount includes the baseline amount in addition to the aggravating factors (a) a history of non-compliance, (b) environmental harm and (c) economic gain.

[45] In terms of the non-compliance factor, the Applicants admitted that MTZ has been previously issued an AMP for a violation of CEPA and the *Engine Regulations* on October 25, 2019. Under the EVAMP Regulations, the enforcement officer is to take into account a violation within the five years preceding the commission of a violation relating to any Division of Part 7 of CEPA or any regulations enacted under that statute. Hence, the Tribunal finds that this component has been correct.

[46] With respect to the environmental harm component, the Tribunal agrees with the ECCC's submissions that, by importing an engine after the deadline for importation of such engines, MTZ "…is introducing an engine that is releasing hydrocarbons and other chemicals beyond the established standard and further contributing to environmental harm."[7] The Tribunal does not find compelling the Applicants' submission that such incremental emissions are minimal because the cumulative effect of emissions if deadlines for all such engines were to be extended could be significant. By not interpreting the plain language of the regulation, the Tribunal finds that the purpose of the CEPA would be frustrated. The regulations state that their purpose is to "reduce emissions of hydrocarbons, oxides of nitrogen, particulate matter and carbon monoxide from engines by establishing emission limits for those substances or combinations of those substances."[8] The Tribunal agrees with the ECCC's submissions that neither CEPA nor the *Engine Regulations* mentions any threshold release of emissions as a precondition for the issuance of an AMP.

[47] With respect to the economic gain component, the Applicants admitted that MTZ sold the tractor with the engine mentioned in the AMP. The sale of the tractor is sufficient to meet this component. I agree with the analysis of this Tribunal in a previous case:[9]

> …The provision simply asks whether the "violation has resulted in economic gain to the violator, including an avoided financial cost". Clearly, when a sale to a customer takes place without the proper permits, this is a type of economic gain because, at the time of the violation, the sale either has resulted in revenue to the seller or has given rise to an account receivable to the Applicant. Whether such an economic gain lasts after a violation is uncovered and compliance and

[7] ECCC submissions, at para. 26.
[8] Engine Regulations, s. 2(a).
[9] *1952157 Ontario Inc. v. Canada (Environment and Climate Change)*, 2019 EPTC 5 at para 47.

enforcement actions and review proceedings take place does not alter the fact that an economic gain has resulted from the violation at the time of the violation.

[48] Accordingly, the Tribunal finds that the enforcement officer was correct in finding that MTZ realized an economic gain as a result of the importation.

Issue No. 3: Whether the notices of violation are invalid

[49] The Tribunal has reviewed the Applicants' submissions and finds that none of the submissions provide the basis to change its findings that the elements of the violation have been established or that the fine was not calculated properly.

[50] The Applicants' submission that the tractor cannot be located after it was purchased by someone in Western Canada is not relevant. The Tribunal has found that the elements of the violation is the importation of the engine and that fact has been admitted.

[51] The Tribunal has already addressed the Applicants' submission that the impact of the importation on the environment is minimal when discussing the calculation for the AMP.

[52] The Applicants submitted that in their understanding, "Canadian environmental regulations are U.S. regulations" and thus it was logical that the engine would be legal to operate in Canada. However, section 11(1)(b) of the EVAMPA states that it is not a defence if one reasonably and honestly believes in the existence of facts that, if true, would exonerate the person. Therefore, even if the Applicants believed that U.S. and Canadian regulations were the same, this mistaken belief is not a defence to the violation.

[53] The Applicants' submission that if the tractor had not been shipped to the U.S. and then imported to Canada, and rather would have remained in Canada, is likewise not a defence to the violation. According to the agreed facts, the tractor was imported into Canada on April 2, 2020. The prior history of the tractor is not relevant.

[54] Similarly, the Applicants' submission that hundreds of U.S. tractors are purchased by Canadian farmers annually and imported into Canada without issue is a matter outside the purview of the Tribunal. Even if these allegations are true, the Tribunal is not given the authority under the EVAMPA to determine whether enforcement actions should be carried out or an officer's discretion should be exercised in one instance or another.

[55] The Tribunal recognizes the imposition of an AMP may have a financial impact on the Applicants, and especially during a pandemic, where the impact may be even more severe. However, the Tribunal has no jurisdiction to consider this factor in its review of the AMP.

[56] The Tribunal now turns to the question of the amended notice of violation. The Applicants submit that the Amended Notice of Violation for MTZ, dated March 17, 2021, issued the day after the original notice, cancels the original one. The Notice with respect to Mr. Prilik is not in issue.

[57] In order to provide context to the Applicants' submission, the relevant timeline and facts can be outlined as follows:

- Two notices of violation were served on the Applicants on March 16, 2021. One Notice was served on Mr. Prilik (No. 8300-2856) and one Notice served on MTZ (No. 8300-2855);
- The Applicants immediately responded with a request for review with respect to both notices;
- On March 17, 2021, ECCC served an "amended" notice on MTZ (8300-2587), with the amended Notice changing only one item, the violation no. from 8300-2856 to 8300-2587; and
- The Applicants responded on the same day submitting that notice no. 8300-2587 should cancel notice no. 8300-2855 owing to the wording in s. 16 of the EVAMPA. They further submit that "Based on that, and previously submitted objections, we are kindly asking you to cancel the NOV, or reduce them to minimum acceptable."

[58] ECCC submits that the amended notice was issued one day after the original notice was issued and it only amended the violation number, an administrative matter. ECCC submits that section 16 only contemplates substantive changes because otherwise it would frustrate the ability to organize and manage files.

[59] The Tribunal finds that ECCC's amended notice served on March 17, 2021 to MTZ does not invalidate the Notice served the previous day and that there is no breach of procedural fairness in these circumstances.

[60] Section 16 of the EVAMPA reads as follows:

> **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.

[61] The Applicant raises an interesting issue with respect to the interpretation of s. 16 of the EVAMPA. However, the Tribunal in this review finds that it does not have to decide the issue based on the interpretation of s. 16. The Tribunal finds that, even if the Applicants are correct and the "amended" notice to MTZ cancelled the notice served the day before, the notice filed on March 17, 2021 is still valid. Pursuant to s. 16, a request for review of a notice of violation may prevent the ECCC from amending the notice after the Chief Review Officer received a request for review. However, as a general rule, there

is no impediment that prevents ECCC from issuing further new notices for violations. As noted, even if the earlier Notice served on MTZ was cancelled, a new notice was served and the Applicants responded to it "based on their previous submitted objections."[10]

[62] In the present case, the Tribunal finds that there is no breach of procedural fairness. The notice served on March 17, 2021 was served one day after the original notice and, to re-iterate, the only change was the notice number. There were no other changes to the notice. The Applicants were aware of ECCC's position on the violation and had been in communication with ECCC for a considerable time before the notices were issued. The amendment or new notice had no substantive effect on the submissions made in the Applicants' request for review and, in fact, the Applicants re-iterated their same objections to both the prior and subsequent one.

[63] The Tribunal is cognizant that the amended notice did provide an inconvenience to the Applicants. However, the Tribunal finds that there was no serious prejudice to the Applicants pertaining to the merits of their submissions because the Applicants confirmed to the Tribunal that their submissions applied equally to the amended or new notice.

Conclusion

[64] ECCC has discharged its burden under s. 20(2) of the EVAMPA by demonstrating, on a balance of probabilities, that a violation of s. 153(1)(a) of CEPA occurred. As well, the AMP was calculated correctly in accordance with the EVAMP Regulations. Notice of Violations 8300-2856 and 8300-2587 were properly before the Tribunal for review.

Decision

[65] The AMPs are upheld and the review is dismissed.

Review dismissed

"Paul Muldoon"

PAUL MULDOON
REVIEW OFFICER

[10] In *BGIS O&M Solutions Inc. v. Canada (Environment and Climate Change)*, 2021 EPTC 9, at para. 85-87, the Tribunal suggested that efficient and expeditious ways should be sought to address errors in the Notices of Violation.

Appendix A

***Off-Road Compression-Ignition Engine Emission Regulations*, SOR/2005-32, ss. 13(1), 13(2)(a)-(d) [Engine Regulations]**

Transition Engines

13 (1) This section applies to an engine for which a company elects to apply a standard set out in subsection (2), hereinafter referred to as a transition engine, that

(a) is imported into or manufactured in Canada for the purpose of being installed in or on a machine; or

(b) is installed in or on a machine that is imported into Canada.

(2) Instead of the standards referred to in sections 9 to 11, a company may elect to apply one or more of the following standards to transition engines that fall within the following gross power categories if, in the case of an engine referred to in paragraph (1)(a), the engine is installed in Canada during the applicable time period for that standard or, in the case of an engine referred to in paragraph (1)(b), the engine is imported before the end of that same time period:

(a) in the case of transition engines that have a gross power of less than 19 kW, until December 31, 2014, the standards for Tier 2 engines set out in CFR 89 as referred to in paragraph 10(1)(a);

(b) in the case of transition engines that have a gross power of 19 kW to less than 37 kW,

(i) until December 31, 2014, the standards for Tier 2 engines set out in CFR 89 as referred to in paragraph 10(1)(a), and

(ii) until December 31, 2018, the standards for interim Tier 4 engines set out in Table 2 to section 102, subpart B, of CFR 1039;

(c) in the case of transition engines that have a gross power of 37 kW to less than 56 kW,

(i) until December 31, 2014, the standards for Tier 2 engines set out in CFR 89 as referred to in paragraph 10(1)(a), and

(ii) until December 31, 2018, the standards for interim Tier 4 engines set out in Table 3 to section 102, subpart B, of CFR 1039;

(d) in the case of transition engines that have a gross power of 56 kW to less than 75 kW,