



Issue Date: November 24, 2022

Citation: *Gra Ham Energy Limited v. Canada (Environment and Climate Change)*, 2022 EPTC 11

EPTC Case Nos.: 0079-2021, 0080-2021, 0081-2021 and 0082-2021

Case Name: *Gra Ham Energy Limited v. Canada (Environment and Climate Change)*

Applicant: Gra Ham Energy Limited

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under section 15 of the *Environmental Violations Administrative Penalties Act*, SC 2009, c 14, s 126 of Administrative Monetary Penalties issued under section 7 of that Act for violation of sections 30 and 33 of the *Renewable Fuels Regulations*, sections 5(1) and 5(2) of the *Sulphur in Diesel Fuel Regulations*, and section 4 of the *Fuels Information Regulations*, No. 1, made under the *Canadian Environmental Protection Act*, 1999, SC, 1999, c 33.

Heard: October 28, 2022 (by videoconference)

Appearances:

Parties

Gra Ham Energy Limited

Minister of Environment and
Climate Change Canada

Counsel/Representative

Jane Graham

James Stuckey

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Overview

[1] In writing and during telephone conversations with corporate officers, Gra Ham Energy Limited (“the Applicant”) was reminded of its reporting obligations pursuant to the [Sulphur in Diesel Fuel Regulations](#), [Fuels Information Regulations, No. 1](#), and [Renewable Fuels Regulations](#) (“the Regulations”). Despite these reminders, the Applicant failed to provide the required reports on a timely basis. As a result, four Notices of Violation (“NOVs”) were issued by an enforcement officer on November 18, 2021.

[2] The Applicant asks that the Environmental Protection Tribunal of Canada (“the Tribunal”) review and overturn the notices, or at least reduce the amount of the cumulative monetary penalty imposed, because the penalty is significant and unexpected challenges or circumstances outside its control resulted in it being unable to meet its reporting obligations.

[3] The enforcement officer's authority to impose the administrative monetary penalties (“AMPs”) set out in the NOVs comes from the [Environmental Violations Administrative Monetary Penalties Regulations](#) (the “EVAMP Regulations”). The Tribunal’s power to review the AMPs is limited to specific circumstances described in the [Environmental Violations Administrative Monetary Penalties Act](#) (“the Act”).

[4] According to the Act, even if the Applicant can demonstrate a lack of intent or good faith which might indicate due diligence, the Tribunal cannot set aside or reduce the penalties. In this case, the Applicant has not provided evidence it has a valid defence which might be available in limited circumstances which do not exist here.

[5] For the following reasons, the Applicant’s review is dismissed, and the NOVs are upheld.

Facts

[6] The Applicant is a small family-owned oil company which carries on business in or near St. Mary’s, Ontario. Its operations were negatively impacted when the global Covid-19 pandemic began in 2020 and continued into 2021. This was due, at least in part, to the required relocation of staff and resultant breakdowns in communication and information management.

[7] The Applicant admits it failed to provide four reports on time as required by the Regulations. The evidence establishes that the Applicant was late with more than four reports in 2020; however, only four NOVs were issued.

[8] In January 2021, the Applicant was provided with an information package related to its obligation to submit 12-hour notification of import forms related to sulphur in fuel. In April 2021, the Applicant received an email reminder that it had failed to submit a sulphur in diesel fuel report following its February 2021 registration report. The required report was not filed until mid-May. The Applicant was also late filing two renewable fuels reports due in May and June, respectively.

[9] Also in April 2021, a representative of Gra Ham Energy Limited sought information about importing gasoline into Canada and advised that the company had already imported 400 cubic meters of gasoline (the threshold limit that triggers reporting). Despite this occurrence and being aware of the reporting requirement, the Applicant did not file a fuel information report. It was still outstanding at the time the related NOV was issued in November 2021.

[10] The Applicant submitted its request for review of all four NOVs on December 14, 2021. In addition to experiencing pandemic-related complications, the Applicant submitted it was short staffed and two different people were involved in completing the various required schedules. The Applicant requested that the “penalties totaling \$4000 be waived for this past year” and stated it had made “careful notes” to avoid being late with reports in the future.

Procedure

[11] The parties discussed and set deadlines for filing material and agreed that oral arguments would be presented during a videoconference. The Respondent provided written submissions and supporting documents, and the Applicant filed nothing beyond its initial request for review. The Applicant’s decision to file no material was not prejudicial to its position given there was no dispute on the facts giving rise to the NOVs.

[12] The hearing occurred on October 28, 2022, and the decision was reserved.

Issues

[13] The issues are:

- (a) Whether the Applicant’s operational challenges which resulted in its failure to file required reports constitutes a defence to the imposition of the administrative monetary penalties; and
- (b) If a defence is not available, whether the amounts of the administrative monetary penalties have been correctly calculated or can be reduced.

Analysis

Violation

[14] In this case, the facts of the violations of the Regulations are not in dispute. The records speak for themselves, and the Applicant acknowledges it failed to file the reports and schedules on or before the deadline dates. As a result, the Applicant faces the imposition of an administrative monetary penalty.

[15] The Applicant's representative who also actively works with the company apologized for the reporting tardiness and failures but noted the \$4000 cumulative financial penalty imposed by the AMPs was unexpected and onerous. She offered that had the company been aware it might face such a sanction in January 2021, it would have "tried harder", presumably by keeping more meticulous records and submitting all reports on time.

[16] This is a common but vexing response to environmental protection measures which are intended to have the broadest possible application. While an individual infraction, considered on its own, can be characterized as insignificant, the cumulative impact of every infraction is enormous and leads directly to the environmental harm Canada seeks to address and minimize. For that reason, while the position of the Applicant is understandable, waiving or reducing sanctions against it is neither possible nor advisable since doing so would undermine the entire statutory regime.

[17] Because "protection of the environment is essential to the well-being of Canadians", the primary purpose of the [Canadian Environmental Protection Act, 1999, S.C., c.33](#) is to "prevent pollution and to protect the environment and human health in order to contribute to sustainable development". The Regulations the Applicant breached in this case contribute to this goal by requiring participants in the energy sector to be transparent and accountable in the way they import, handle, distribute, and use fuel. Accurate and timely reporting of such activities, including when they involve emissions such as sulphur and/or greenhouse gasses, is a necessary tool in pollution control.

[18] Thus, the Applicant's violations are more than mere record keeping errors considering overarching objectives of Canada's environmental protection legislation. The Supreme Court of Canada has described environmental legislation as serving a "public purpose of superordinate importance... (and) one of the major challenges of our time"¹. The absolute liability regime applicable in this case underscores Parliament's commitment to meeting this challenge.

¹ [R. v. Hydro-Québec, \[1997\] 3 S.C.R. 213](#) at para 123.

[19] That the Tribunal has little power to impede enforcement of the statutory regime is also consistent with superordinate importance of environmental protection. It is now well established by the Tribunal's case law that the Tribunal's role is limited to determining whether the violations have, in fact, occurred and then determining whether the amount of the AMPs have been correctly calculated. The Tribunal has no power to review or interfere with the environmental officers' discretion to issue the NOV's in the first place.² Further, the limited common law defences available to Applicants before this Tribunal relate to a legal finding about whether a violation actually occurred and not to an explanation provided afterward. Further, the Tribunal has no jurisdiction to vary the amount of the penalties imposed because the scale has been established by the EVAMP Regulations and must be applied by the officers without variation.

[20] In this case, the Applicant clearly committed the alleged violations.

Penalty

[21] Contravention of the Regulations listed in the NOV's issued against the Applicant are type A violations according to Schedule 1, Part 5 of the [Environmental Violations Administrative Monetary Penalties Regulations](#).

[22] The baseline type A violation penalty for a corporation is \$1000. No amount was added for an aggravating factor in any of the four Notices, despite the Applicant's relatively short history of non-compliance in the past. Thus, the Applicant received the minimum penalty for each NOV.

[23] The evidence clearly establishes there is no error in the calculation of the administrative monetary penalties imposed on the Applicant.

² [Hoang v. Canada \(Environment and Climate Change\), 2019 EPTC 2](#); and, [Fontaine v. Canada \(Environment and Climate Change\), 2020 EPTC 5](#)

Decision

[24] The request for review is dismissed. Notices of violation N8300-2878, N8300-2879, N8300-2880, and N8300-2881 are therefore upheld.

Review Dismissed

“Leslie Belloc-Pinder”

LESLIE BELLOC-PINDER
REVIEW OFFICER