

November 17, 2020

Can. American Enterprises Ltd.  
126 – 7475 135 Street  
Surrey, BC V3W 0M8

**Can American Enterprises Ltd. (CTC Decision No. 12/2020) – Decision Notice Supplemental**

**A. Overview**

1. In Decision 12/2020, I found Can. American Enterprises Ltd. (“Can American”) in breach of the *Container Trucking Act* (the “Act”), including for failure to pay its independent operators (“I/Os”) the minimum rates. I ordered Can American to calculate the amounts owing to each of its I/Os from April 1, 2019 to present using the methodology provided by the OBCCTC auditor, to provide its calculations to the OBCCTC auditor by no later than October 14, 2020, and to pay the amounts owing to its I/Os between March 1, 2020 and present. I also proposed a \$10,000.00 administrative fine. Can American responded to Decision 12/2020 but did not comply with my order.
2. After having considered Can American’s submissions, I remained of the opinion that Can American was in breach of the *Act* and that an administrative penalty of \$10,000.00 was appropriate. In Decision Notice 12/2020, I ordered Can American to pay the administrative fine within 30 days of its receipt of the Decision Notice.
3. I also ordered Can American to calculate the amounts owing to each of its I/Os from April 1, 2019 to present using the methodology provided by the OBCCTC auditor, to provide its calculations to the OBCCTC auditor by no later than November 13, 2020, and to pay the amounts owing to its I/Os within 30 days of the OBCCTC’s confirmation of its calculations. I proposed, pursuant to s. 34(2) of the *Act*, to suspend Can American’s licence effective November 13, 2020 and until such time as it complied with my order if it did not either provide the OBCCTC auditor with the calculations as ordered or respond to the proposed licence suspension by November 13, 2020.
4. Can American did not provide the calculations as ordered or respond to the proposed licence suspension by November 13, 2020. Can American’s lawyer has instead advised by letter dated November 13, 2020 that it intends to “exercise its right to judicially review the audit process and the subsequent orders, including the auditor’s report and [the Commissioner’s] decision not to consider the payment structure on ‘meets or exceeds’ test...applied in CNTL’s case.” By letter dated November 16, 2020, Can American’s counsel has advised that there has been some delay in filing the judicial review due to issues arising from Covid-19 but that he is hopeful that it will be filed within a matter of days.
5. Can American has also asked that I refrain from suspending its licence and from imposing the administrative fine until its anticipated judicial review has been heard and determined.

6. I will not refrain from suspending Can American's licence. Can American has not complied with orders of the Commissioner and is continuing to operate with a container trucking services licence while in violation of the *Act*. Additionally, Can American has failed to follow the process set out in the *Act* for challenging a proposed penalty. Can American's actions are damaging to the integrity of the container trucking industry. Its refusals to comply with the minimum rate requirements, with my orders, and with the process set out in the *Act* all undermine the authority of the Container Trucking Commissioner and the Commissioner's ability to ensure compliance with the minimum rate requirements through audit and investigations and hold licensees responsible for the payment of compliant rates to drivers.
7. I have previously stated that the stability of the Lower Mainland drayage sector is derived, in part, from confidence in the industry that licensees are following the rules and the Commissioner is enforcing them. Agreeing to refrain from imposing the licence suspension order in these circumstances would destabilize the industry, erode confidence in the Commissioner's audits and signal to licensees that the Commissioner is not serious about enforcement.
8. I order that Can American's licence is suspended effective November 30, 2020 until such time as it has provided the required calculations to the OBCCTC auditor or for a period of one month, whichever is shorter. I make this order pursuant to s. 34(3) of the *Act*. I make it effective November 30, 2020 rather than immediately in recognition of the particular circumstances here (delays with respect to Covid-19) and the time Can American may need to prepare for the licence suspension and/or apply for a stay from the courts if and when it files its judicial review.
9. Can American may request a reconsideration of its licence suspension by filing a Notice of Reconsideration not more than 30 days after its receipt of this Supplemental Decision Notice. A Notice of Reconsideration must be:
  - a. made in writing;
  - b. identify the decision for which a reconsideration is requested;
  - c. state why the decision should be changed;
  - d. state the outcome requested;
  - e. include the name, an address for delivery, and telephone number of the applicant and, if the applicant is represented by counsel, include the full name, address for delivery and telephone number of the applicant's counsel; and
  - f. signed by the applicant or the applicant's counsel.
10. Can American has also asked that I suspend the imposition of \$10,000.00 administrative fine proposed in Decision 12/2020 and ordered in Decision Notice 12/2020 until its judicial review has been decided. I will not do so for the same reasons I will not refrain from suspending its licence. As set out in Decision Notice 12/2020, Can American has until November 30, 2020 to apply for reconsideration of the administrative fine.

11. Despite the filing of a Notice of Reconsideration, and subject to s. 39(2) of the *Act*, both the order suspending Can American's licence and the \$10,000.00 administrative fine remain in effect until the reconsideration application is determined.

This order will be published on the Commissioner's website.

Dated at Vancouver, B.C., this 17<sup>th</sup> day of November, 2020.

A handwritten signature in blue ink, appearing to read 'Michael Crawford', is written above a horizontal line.

Michael Crawford, Commissioner