



February 21, 2025

HAP Enterprises Ltd.
7954 Webster Road
Delta, BC V4G 1G6

Commissioner's Decision
HAP Enterprises Ltd. (CTC Decision No 05/2025)
(Application for Reconsideration of CTC Decision No.07/2024)

Introduction

1. On July 23, 2024, the Office of the BC Container Trucking Commissioner ("OBCCTC") received an application from HAP Enterprises Ltd. ("HAP") pursuant to section 38 of the *Container Trucking Act* ("Act") seeking reconsideration of a June 28, 2024 Decision Notice (CTC Decision No. 07/2024) imposing an \$8,000 administrative penalty which has been paid.

Commissioner's Decision and Decision Notice

2. On May 21, 2024, in [HAP Enterprises Ltd.](#) (CTC Decision No. 07/2024) ("Decision") and on June 18, 2024 in [HAP Enterprises Ltd.](#) (CTC Decision No. 07/2024 -- Supplemental Decision) ("Supplemental Decision"), I found that HAP was in breach of section 6.3 of its CTS license when it contracted out container SMCU450407¹ ("Impugned Container #1") to be moved between facilities on May 9, 2023 and was in breach of sections 6.15 and 6.16 when it moved containers EITU1827403 ("Impugned Container #2) and CMAU9276539 ("Impugned Container #3) on January 29 and 30, 2024 respectively. I also found that HAP had failed to identify the hourly rate on the wage statement provided to one of its drivers for the pay period of May 1-15, 2023 as required by Appendix D of its licence. I proposed an administrative penalty of \$8,000.00.
3. On June 28, 2024, I considered HAP's response to the Decision and Supplemental Decision and issued an \$8,000 administrative fine ("Decision Notice").
4. The Decision, Supplemental Decision, and the Decision Notice were published on or around June 18, 2024.

Request for Reconsideration

5. Regarding the movement of container Impugned Container #1, HAP maintains that it sub-contracted KAPA Logistics Ltd. ("KAPA"), its "related entity" and a non-licensee, to move

¹ In paragraph 85 and 86 of the Commissioner Decision, I incorrectly identified the container as GESU6746666 instead of SMCU45407 as correctly identified in paragraph 103 and 104.

“deconsolidated freight” from its Lower Mainland yard to a customer in Abbotsford and that such work is “non-CTS” work and therefore it did not subcontract container trucking services work to a non-licensed company. HAP also states that KAPA’s use of the Impugned Container #1 that was “laying in the yard” was inadvertent and should not attract a monetary penalty.

6. HAP disagrees with the Commissioner’s interpretation of “facility” and relies on its earlier submissions that the movement of Impugned Containers #2 and #3 between two parking yards owned and operated by a licensee does not require a tagged truck. In the alternative, HAP argues that an administrative penalty should not be issued as it was unaware that tagged trucks were required to move containers within “close proximity” and will take steps to ensure that untagged trucks are not used for similar moves. Furthermore, HAP alleges that other licensees move containers between their yards using untagged trucks and an industry advisory would be more appropriate.
7. Finally, HAP disagrees that it was uncooperative and caused delays in the investigation and argues that the delays were in fact caused by the OBCCTC with the result that HAP was constrained to bring a judicial review “just to have this investigation move forward and then have its November Tag Application finally determined.”

Reconsideration

8. HAP does not dispute that it failed to keep records as required by its licence. This infraction was also considered when imposing the administrative penalty.
9. I am not persuaded that the administrative penalty should be reduced or eliminated because HAP disagrees with the Commissioner’s interpretations of “container” or “facility.” There does not appear to be any dispute that any of Impugned Containers #1-3 can and do transit through marine terminals.² However, HAP continues to argue that the definition of “container” – and thereby “container trucking services” – depends on the container’s contents and whether the container transited through a marine terminal on that specific route. HAP’s argument that Impugned Container #1 was used to move “deconsolidated freight” and was not used for the marine transportation of goods does not affect my analysis for the same reasons that the term “less than load” is not a trump card (Decision paragraphs 74-75). The contents of a container do not assist in defining a “container” or “container trucking services”; the movement of empty containers by a truck is captured by the *Act*.³
10. Whether a container (empty or otherwise) transits through a marine terminal on a specific occasion is not determinative of either a “container” or “container trucking services.” “Container” moves between “facilities” (i.e. off-dock trips) do not transit through a marine terminal⁴ and are captured under the legislative scheme.

² At paragraph 7 of the Decision Notice, I note Impugned Container #1 had transited through Fraser Surrey Docks for another customer and was used on May 9, 2024 to move unrelated goods to another customer in Abbotsford.

³ See Pro West Trucking Ltd. (CTC Decision No. 22/2017); Sunlover Holding Co. Ltd. (CTC Decision No. 16/2017); Simard Westlink Inc. (CTC Decision No 15/2023).

⁴ See March 22, 2024 OBCCTC Industry Advisory “Rail Yards and Containers” summarizing prior decisions and bulletins.

11. Regarding HAP's use of the term "non-CTS" work, I generally understand licensees using it to be suggesting that the *Act, Regulation* and/or the CTS license does not apply to the particular container movement in question. However, "container trucking services" are performed anytime a "container" is moved by a truck, whether within a facility, on-dock, off-dock or long haul. Companies who provide "container trucking services" requiring access to marine terminals ("on dock") and within the Lower Mainland (as defined by the *Regulation*) require a CTS license and are subject to the *Act, Regulation*, and the license.⁵
12. As stated at paragraphs 7 - 8 of the Supplemental Decision, Impugned Container #1 is a "container" that was moved by a truck and KAPA was therefore performing "container trucking services." HAP had the contract with the customer that required moving the "container" between at least two facilities in the Lower Mainland and HAP contracted out that container trucking services work to KAPA. The fact that HAP or KAPA used a "container" that was "laying empty" in its yard to move the goods does not change the fact that a "container" was used to move the goods by truck as part of HAP's contract. I do not accept HAP's submissions that this arrangement was "non-CTS" work.
13. HAP's argument that the penalty should be set aside because KAPA's use of a "container" that was "laying empty" was inadvertent does not change the fact that HAP violated section 6.3 of its CTS license. As discussed at paragraph 26 of the Supplemental Decision, contracting out container trucking services to unlicensed companies – including Related Persons – interferes with the ability of the OBCCTC to manage trucks and ensure drivers are paid the regulated rate and is serious misconduct that has resulted in administrative penalties for other licensees.
14. HAP's repetition of its arguments that "parking yards" are not "facilities" does not change my findings at paragraph 4 of the Decision Notice. I am also not persuaded that there is some overall misapprehension on industry's part as to whether moving containers between facilities requires a tagged truck and there is no question that a "facility" includes a place where a container is parked. A bulletin issued on April 17, 2020 and an industry advisory issued on May 18, 2022 both reminded licensees that all container moves between facilities require the use of tagged trucks and made no exemptions for facilities in "close proximity" to one another. In Pro West Trucking Ltd. (CTC Decision No. 08/2023), which predates the dates Impugned Container #2 and #3 were parked, I found that a place where a container was "parked" was a "facility."⁶
15. It must also be remembered that this container movement was brought to the attention of the OBCCTC through a complaint. In any event, if there is any misapprehension on the part of industry, the Decision and Supplemental Decision should remedy that.
16. HAP also repeats its prior submissions that the OBCCTC delayed its investigation. HAP also continues to deny it was uncooperative and argues both should negate the need for an administrative fine. No matter how much HAP tries to paint the picture, it does not seriously challenge any of the facts found in paragraphs 12 and 13 of the Decision Notice which itemize

⁵ See KD Truckline Ltd. (CTC Decision No. 11/2024) – Commissioner Decision, paragraph 63.

⁶ Paragraphs 81 and 82

the delays it caused. I remain of the view that HAP was not co-operative and was largely responsible for the delays it now claims denied it a speedy resolution.

Conclusion

17. For these reasons, I confirm my decision to impose a \$8,000.00 administrative penalty and hereby dismiss HAP's application for reconsideration of the Decision Notice.
18. This reconsideration decision will be published on the OBCCTC website (www.obcctc.ca).

Dated at Vancouver, BC, this 21st day of February 2025.

A handwritten signature in blue ink, appearing to read "Glen MacInnes". The signature is written in a cursive, flowing style.

Glen MacInnes
Commissioner