

Violation Tickets for Engineers? - The new system of Administrative Monetary Penalties under the Canada Shipping Act 2001 is here.

The *Canada Shipping Act 2001* ("CSA 2001"), which came into force on July 1, 2007, replaced the former *Canada Shipping Act* and brought with it many important changes to the law. One important change was the implementation of the Administrative Monetary Penalty ("AMP") system, a system of ticketing and fines akin to motor vehicle traffic tickets that legislators hope will make enforcement of the *CSA 2001* and regulations more effective by encouraging engineers and vessel owners to modify behavior without the time and expense of prosecuting offenders in court. Under the new system individual engineers will face fines of up to \$5,000 as a result of tickets issued on the spot for infractions such as failing to have or maintain safety equipment, inadequate documentation, improperly trained crew or inadequate watches, and oil pollution.

An AMP is a fine which results from the issuance of a ticket (formally known as a "Notice of Violation") that can be given by a designated authority for breaches of various sections of the *CSA 2001*, its regulations, as well as Directions given under the legislation (such as the Direction of a Marine Safety Inspector). A Notice of Violation will typically arise where infractions are discovered during spot-checks or scheduled inspections of vessels and their crew. The amount of the fine under the AMP will vary with the type of offence, the severity of the circumstances, and the engineer's or owner's history of compliance. Fines for individual engineers will be a maximum of \$5,000 per contravention. One event, however, can result in multiple contraventions, and therefore multiple fines.

The issuance of an AMP is not automatic. If an inspector finds a contravention they may first give the alleged offender a warning. Alternatively, the inspector may ask that the offender enter into an "Assurance of Compliance". An Assurance of Compliance is essentially a written promise to do something, such as correct a behavior or situation that is an offence under the Act. The Assurance of Compliance gives the offender an opportunity to correct the problem without an AMP being issued. However, if the Assurance of Compliance is breached the AMP is issued automatically and the fine under the AMP is doubled. Importantly, just because the AMP regulation provides that a particular contravention can result in an Assurance of Compliance, or an AMP, does not mean that the responsible authority cannot decide to

prosecute the offender in criminal court instead. The option is the Crown's, and their decision will depend on whether the contravention was committed willfully, how serious it was, and whether it was a repeat offence.

The *CSA 2001* contemplates that there will be a publically accessible record of all violations and penalties as they relate to individuals and vessels. As such, engineers should have some concern as to what effect this new record of violations may have on their employment or contract opportunities. Employers may search this record in deciding whether to hire an engineer, or a charterer may search the record before agreeing to hire the engineer's vessel. Keeping a clean record is obviously important.

You can dispute an AMP but you must do so within 30 days of receiving the ticket. You can also dispute the facts of which an Assurance of Compliance is based, but this must be done within 48 hours of signing the Assurance (disputing the facts may be important because once an Assurance is signed the party has essentially admitted to alleged facts and these go on their record).

AMPs are disputed by filing a notice of dispute with the Transportation Appeal Tribunal of Canada ("TATC"). A single TATC Review Officer will hold a hearing (like a disputed traffic ticket results in the court holding a trial) where the enforcement officer will have to prove that the violation or default of an Assurance has occurred. The alleged offender will be given the opportunity to defend themselves by showing the alleged offence did not occur. The prosecutor must only prove the offence on the balance of probabilities (essentially 51% or greater likelihood the alleged wrong occurred), rather than the former, more stringent, burden of "beyond reasonable doubt". This is a significant change that will increase the likelihood of the engineer being held liable. The TATC has the authority to reduce the amount of the fine provided the revised amount does not fall below a minimum set by the regulations.

The general AMP regulations and an initial list of offences and fines were released in November of 2007 but are not anticipated to take effect until May of 2008 when it is expected they will be published in the Canada Gazette. The new AMP system is here to stay and engineers are best protected by understanding it.

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