



Canadian Food
Inspection Agency

Agence canadienne
d'inspection des aliments

Atlantic Area Record of Decision

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| Decision to be Taken | Atlantic Enforcement and Investigation Services (EIS) Manager to determine whether a Notice of Violation with Penalty should be withdrawn after the regulated party appealed the NoV before the Canada Agricultural Review Tribunal (CART) for the file 2021AT0028. |
| Summary of Situation | <p>On or about December 31, 2020, the EIS received an email from the NB Department of Justice and Public Safety advising us that a cow had fallen from a moving vehicle. The file was assigned to an Investigation Specialist with EIS-Atlantic.</p> <p>Both the CFIA and the RCMP were involved at first. They proceeded to jointly interview the relevant parties. Following the initial interviews, the RCMP decided not to proceed with their investigation as there was no indication of <u>criminal negligence</u> per the <i>Criminal Code</i>.</p> <p>The lead Investigator proceeded with his investigation from an administrative standpoint. The Lead Investigator and an Assisting Investigator both collected evidence pertaining to this file.</p> <p>On March 25, 2021, the Lead Investigator signed his first recommendation, in which he recommended simply closing the file. Multiple discussions between the lead Investigator and the EIS Acting Manager occurred following this recommendation.</p> <p style="text-align: right;">The</p> <p>Acting Manager decided it was not required.</p> <p>On April 16, 2021, the Lead Investigator issued a second recommendation, in which he recommended issuing a NoV with Warning to the female individual. This recommendation was not approved by the Acting Manager. In his comments, the Acting Manager commented that it was "clear that both" individuals of interest in this case "indicated that they did not exercise caution" and consequentially, he was "directing the investigator to issue an NoV with Penalty" to the male individual.</p> <p>After receiving these comments, there were <u>lengthy and contradicting</u> exchanges between the Lead Investigator and the Acting Manager. The Lead Investigator asked to recuse himself from the file; the Acting Manager accepted the recusal and took over ownership and responsibility for the file.</p> <p>On May 6, 2021, the Acting Manager issued both NoVs (Warning to the female individual and Penalty to the male individual) himself. On May 18, 2021, EIS received a request for review by the CART for both NoVs.</p> |



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| | On November 8, 2021, the female individual withdrew her request for review by the CART. The male individual maintained his request for review. |
| Regulatory Authorities | <p><u>Safe Food for Canadians Regulations</u></p> <p><i>150 (1) No person shall load, confine or transport an animal, or cause one to be loaded, confined or transported, in a conveyance or container unless the conveyance and the container, if the animal is in a container, are designed, constructed, equipped, maintained and used to prevent the animal's suffering, injury or death and the conveyance and the container, if the animal is in a container, meet the following conditions:</i></p> <p>(b) they prevent the animal's escape;</p> |
| Policy and Procedure References | <ul style="list-style-type: none"> Enforcement and Investigation https://merlin.cfia-acia.inspection.gc.ca/about-us/branches/operations/enforcement-and-investigation/eng/1490906701923/1490906701924 Referring non-compliance for potential enforcement through issuance of an administrative monetary penalty (AMP) RDIMS 11625483 |
| Considerations | <ul style="list-style-type: none"> Multiple inconsistencies and conflicting opinions were exchanged between the Lead Investigator and the Acting Manager over the span of two months. In these exchanges, they discuss conflicting point of views, conflicting interpretations of CART decisions, different interpretations of internal policies and the Lead Investigator states that and wants to include other groups (and Upper Management) into making this decision, which was refused by the Acting Manager. Despite saying he was not asking the Lead Investigator to change the outcome of his recommendation, in his last email to the Lead Investigator, the Acting Manager finished his email by stating that he was directing the Lead Investigator to issue a NoV/W to the female individual and a NoV/P to the male individual. He also mentions that choosing not to do so would be interpreted as refusing to comply with the management. <ul style="list-style-type: none"> The Acting Manager gave his directives without taking part in the evidence-collection process and without being involved in the investigation. On November 3, 2021, Counsel James Stuckey |



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| | <ul style="list-style-type: none"> Despite the CFIA and the individuals of concern having agreed to proceed by way of written submissions, the male individual later requested that the hearing be held in person in Moncton, which was agreed to by the CART. <u>Both the Lead Investigator and the Assisting Investigator expressed that they would be attending the CART hearing in person and would be requesting to be heard on record regarding this matter, should the hearing proceed. This means that the risks and uncertainties associated with oral testimony would be present if this matter proceeds.</u> |
| Decision Taken with Rationale | Given the risks and issues listed above, we recommend that the Notice of Violation with Penalty issued to the individual of concern be withdrawn. As such, there will be no hearing on December 14, 2022 before the CART. |
| Consulted with: (name, title and date) | <p>Marc Bernier, Senior Director – Atlantic Operations – March 25, 2022; November 1, 2022</p> <p>James Stuckey, Counsel, Legal Services – January 21, March 25, 2021; November 1, 2022</p> <p>Monique Brand, Counsel, Legal Services – January 21, March 25, 2021; November 1, 2022</p> <p>Sarah Kanhai, Counsel, Legal Services – January 21, March 25, 2021</p> |
| Decision Taken by: (name, title and date) | Al Goguen, EIS Manager - Atlantic – November 1, 2022 |
| Decision Received by: (name, title and date) | James Stuckey – November 1, 2022 Canadian Agricultural Review Tribunal – November 8, 2022 |
| Next Steps: | NIL |
| Update: | NIL |