



ENVIRONMENTAL LAW

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Significant increase in penalties under new environmental act



On June 18, 2009, the federal government enacted sweeping new legislation, the Environmental Enforcement Act, which significantly increases the potential penalties faced by businesses and individuals that are convicted of an environmental offence. The omnibus legislation amends nine federal statutes, including the Canadian Environmental Protection Act and the Migratory Birds Convention Act.

As a result of this increase in penalties, all businesses need to ensure that they have adequate up-to-date training and safety programs in place to prevent environmental incidents, as well as appropriate response plans, should an incident take place.

The failure to take such measures just became much costlier. For the first time, the

act imposes minimum mandatory fines for an environmental offence. It also significantly raises the maximum fines that the Crown may impose. These fines do not include any remediation costs that a business may be responsible for in responding to an environmental incident.

For corporations with gross revenues exceeding \$5 million, the minimum fines are \$100,000 (summary conviction offences) and \$500,000 (indictable offences), and the maximum fines are \$4 million (summary conviction offences) and \$6 million (indictable offences).

Small corporations with gross revenues of under \$5 million face minimum fines of \$25,000 (summary conviction offences) or \$75,000 (indictable offences) and maximum fines of \$2 million

(summary conviction offences) or \$4 million (indictable offences).

Where an offender has a prior conviction for a “substantially similar offence”

The new act more than doubles the limitation period for summary conviction offences resulting in possible charges for events that occurred years earlier

under any federal or provincial environmental statute, these fines can be doubled. This means that under the new regime, the maximum fine that can be imposed for

an environmental offence is now \$12 million.

The legislation also introduces an administrative monetary penalty system for certain less serious (or “ticketable”) violations. While the potential maximum fine that may be imposed by way of a ticket is significant – up to \$25,000 – the act does not provide an accused with a due diligence defence with regard to these offences.

Continuing offences that take place for longer than one day could also result in the new penalties being imposed on a daily basis, doubling on the second and subsequent days. This could result in very high penalties being imposed, even without resorting to the maximum penalties provided for in the act.

The new act also more than doubles the limitation

period for summary conviction offences to five years from two, resulting in possible charges for events that occurred years earlier.

In another important new development, corporate offenders must now report their convictions to shareholders, and their names will appear on a public registry of environmental offenders for at least five years.

To implement the increased enforcement and penalty provisions of the act, Ottawa hired 106 new enforcement officers, a 50 per cent increase from present levels.

The significant increase in potential penalties under the new act is evident upon consideration of one recent case. Last year, **J.D. Irving** pleaded guilty last year to violating the Migratory Birds Convention Act by destroying eight great

blue heron nests during logging operations in New Brunswick and was fined a total of \$60,000. Under the new act, the company would likely face an initial fine of at least \$100,000 for a summary conviction offence, plus additional penalties for any aggravating factors, plus the possibility of an additional payment order to a conservation fund.

The new mandatory minimum and maximum penalties imposed by the act, and the significance of a first conviction in determining the fine for a later offence, mean that early legal advice will be critical for those facing investigation or prosecution ■

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