

# Federal Government Passes New Environmental Legislation

June 27, 2017

Federal government passes a number of environmental regulations and orders as part of the third and final stage of implementing the Environmental Enforcement Act.

Readers of the BLG Environmental News will recall when the Federal government introduced the Environmental Enforcement Act in 2009. As reported in the BLG Environmental News in 2009, the Environmental Enforcement Act introduced stringent new fines and sentencing provisions to various federal environmental legislation, and introduced Administrative Monetary Penalties. The implementation of the Environmental Enforcement Act has taken place in stages, and most of the sentencing provisions were brought into force in 2012. This month, the federal government passed a number of environmental regulations and orders as part of the third and final stage of implementing the Environmental Enforcement Act. In particular, new fine levels and Administrative Monetary Penalties are now in force.

## **Order Fixing July 12, 2017 as the day on which Certain Provisions of the Act Come into Force**

Order Fixing July 12, 2017 as the day on which Certain Provisions of the Act Come into Force brings into force a number of sections of the Environmental Enforcement Act, which will introduce new fine regimes and sentencing provisions to the Canada Wildlife Act, the Migratory Birds Convention Act, 1994, and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.

The new fine regimes will provide fine ranges applicable to different categories of offenders, such as individuals, corporations, small-revenue corporations, other persons, and vessels. Minimum fines are being introduced, and existing maximum fines are being increased for offences that cause direct harm or the risk of direct harm to the environment or for providing authorities with false or misleading information. The new fine regimes also establish double fines for repeat offences.

The new sentencing regimes will codify a stronger set of sentencing principles under each Act and will provide a list of aggravating factors for the court to consider when sentencing offenders.

The Order represents the culmination of a nearly decade-long process of strengthening Canada's environmental enforcement laws. The Environment Enforcement Act, which amended nine environmental statutes, was first assented to in 2009. Implementation of the Act has taken place in three stages: most of the Act was brought into force by Order in Council in 2010 (stage one), and the fine and sentence provisions related to Canadian Environmental Protection Act, 1999 came into force in 2012 (stage two). This Order brings into force the remaining sections of the Environmental Protection Act and is one half of the third and final stage of implementing the Act.

## **Environmental Violations Administrative Monetary Penalties Regulations**

The other half of the third and final stage of implementing the Environmental Enforcement Act occurred through passing of the Environmental Violations Administrative Monetary Penalties Regulations (the "AMP Regulations"). The Environmental Enforcement Act first brought the Environmental Violations Administrative Monetary Penalties Act ("EVAMPA") into force in 2010. EVAMPA introduced the administrative monetary penalty ("AMP"), which is a penalty that an authority may issue for not complying with legislated environmental requirements. They are intended to supplement existing enforcement measures, as one cannot be subject to both an AMP and any additional prosecution for committing the same offence. Although EVAMPA was brought into force in 2010, regulations were needed before AMPs could be used by authorities. The AMP Regulations filled that lacuna when it came into force on June 2, 2017.

The AMP Regulations establish which environmental offences under the following six Acts may be enforced by way of an AMP:

- Antarctic Environmental Protection Act
- Canada Wildlife Act
- Canadian Environmental Protection Act, 1999, Parts 7 and 9
- International River Improvements Act
- Migratory Birds Convention Act, 1994
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act

Most offences under these Acts are subject to AMPs, with the exception being mens rea offences that require the offender to "knowingly" or "wilfully" commit the offence.

The AMP Regulations provide a formula used to calculate the penalty amount for a given situation. The baseline amount of the AMP is determined by two factors: the category of offence (Type A, B, or C violation, based on the severity of the offence) and the category of violator (whether the offender is an individual versus "any other person", such as a corporation or vessel). No discretion exists to vary the baseline amount of an AMP. Once the baseline amount is determined, the enforcement officer may increase the penalty amount by considering aggravating factors, such as any history of non-compliance, the degree of environmental harm, and whether there was economic gain. The AMP Regulations provide that the penalty cannot exceed \$5,000 for a single offence caused by an individual or \$25,000 when caused by "any other person". The regulations also provide for aggregating penalties, as a violation committed over successive days will constitute a separate violation for each day on which the offence continues to be committed.

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