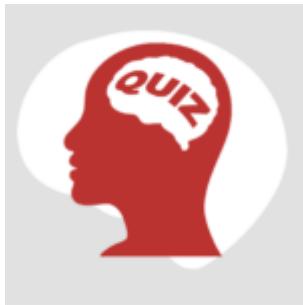


# Can Local Environmental Laws Impose Restrictions Not Required by Provincial Rules?



There are 3 layers of environmental law regulating air emissions in Canada: federal, provincial, and municipal/local. While the conflict between federal and provincial environmental regulatory authority has attracted major controversy and litigation (especially in Alberta, Saskatchewan, and Manitoba) the interplay between provincial and local environmental law tends to fly under the radar. This relative lack of attention belies the significance of the impact on companies in the real world, especially when local environmental rules are more stringent than province-wide standards. The following case illustrates the legal principles that govern these situations.

## Situation

As in many provinces, BC allows municipalities to issue or deny permits for activities that have potential impacts on local environmental conditions. So, when a large nursery in BC switches to wood-fired boilers to heat its greenhouses as a less expensive alternative to natural gas, it must apply to the District Director of the Greater Vancouver Regional District (GVRD) for a permit. The GVRD issues a permit for the boilers but imposes stricter particulate emissions restrictions than required by provincial standards—at the

time, a maximum of 40 mg/m<sup>3</sup> initially, later reduced to 20 mg/m<sup>3</sup>, versus 180 mg/m<sup>3</sup> under BC environmental law.

## Question

**Must the nursery comply with the local GVRD emissions standard?**

- A. No, because local environmental standards can't deviate from provincial standards.
- B. Yes, because municipalities can impose stricter environmental restrictions.
- C. No, because the local standard conflicts with and contradicts the provincial rule.
- D. Yes, because municipalities have absolute control over local activities affecting the environment.

## Answer

**B. Municipalities in BC can impose stricter emissions rules so the nursery must comply with the GVRD standard.**

## Explanation

Rule of thumb: Provincial environmental requirements are minimum standards that local governments must at least meet and may exceed. In this case, the Environmental Appeal Board (EAB) initially ruled that the GVRD had exceeded its authority in imposing stricter permit conditions. But the BC Supreme Court overturned the EAB's decision and reinstated the permit. The provincial law that gave the GVRD authority to regulate air emissions within its boundaries clearly contemplated overlap between GVRD bylaws and provincial regulations, the court explained. Thus, it was reasonable to expect that the GVRD might impose more restrictive limits on the discharge of air contaminants within its boundaries [[Greater Vancouver \(Regional District\) v. Darvonda Nurseries Ltd., \[2008\] BCSC](#)

1251 (CanLII)].

Although this is a BC case, the same principles apply in most other parts of Canada where municipal and local governments have authority to establish their own bylaws in environmental activities that overlap provincial laws. Otherwise, there would be no point in granting these special powers to local authorities.

## Why Wrong Answers Are Wrong

**A is wrong** because local environmental laws can deviate from provincial standards, as long as they don't fall below the province-wide standard. The key is the specific terms of the provincial law delegating the authority to the local government. As the *Darvonda* court explained in this case, the BC law "seems to recognize that the GVRD is best able to assess its own needs when regulating air quality in an area with a high concentration of businesses in close proximity to dense residential areas and large institutions, such as schools and hospitals." Having power to impose "further restrictions or conditions" is an essential part to serving those local needs.

**C is wrong** because while the permit's standard differs from, it doesn't conflict with the provincial standard. A conflict between laws exists when one law requires or authorizes something that another law forbids making it impossible to comply with both laws at the same time. Thus, as in *Darvonda*, when a provincial and local law serve the same purpose but vary in stringency, compliance can be ensured by following the stricter law.

**D is wrong** because municipalities do not have absolute authority over local environmental matters. Such authority comes from provincial law but can be delegated to local governments as in the *Darvonda* case.