

Does the Government Need a Statute to Sue You for Environmental Damage?



The principal source of government authority to impose fines and other penalties on companies that harm the environment are statutes covering the particular environmental damage involved, like the *Fisheries Act*, which bans deposit of deleterious substances into fish-populated waters. But what happens when environmental damages fall between the cracks of these various statutes?

Situation

A British Columbia logging company with a licence to harvest timber carelessly starts a fire that burns 1,500 hectares of public forest, much of it in designated Environmentally Sensitive Areas (ESAs) protected from logging. After the fire, the government seeks to cut its economic losses by harvesting and selling off salvageable timber from the burned-out areas at reduced prices. It also implements a rehabilitation program to restore the forest. The government wants to sue but there are no statutes making the company responsible for these damages.

Question

For which, if any, of the following can the Crown sue the logging company?

1. The government's costs in fighting the fire and restoring the forest.
2. The revenues the government lost on sales of timber as a result of the fire.
3. Damages for environmental harm to the public.
4. All of the above.

Answer

1. The Crown can sue the company for all of the losses listed above, even though there's no statute specifically authorizing it to do so.

Explanation

This scenario, which is based on a Canadian Supreme Court case referred to as the Stone Creek Fire ruling after the environmental disaster that spurred it ([*British Columbia v. Canadian Forest Products Ltd.*](#), 2004 SCC 38 (CanLII), [2004] 2 SCR 74), shows that environmental law isn't based entirely on statutes and regulations. The government also has legal remedies under what's called the common law. Unlike statutes, which are enacted by legislatures, the common law is made by judges one case at a time. Each case serves as a precedent for future cases. And in the environmental realm, common law packs a powerful punch.

Why Wrong Answers Are Wrong

A is the wrong answer but a correct statement. Even the logging company didn't dispute that the government could recover its cost in fighting the fire. It also agreed to

pay the costs of cleaning up and rehabilitating the forest.
Total price tag: \$3,575,000.

B is also the wrong answer but a correct statement. The government can sue in its capacity as the owner of the land for the economic value of the natural resources the fire destroyed. The issue in this case wasn't whether the government had a right to sue but how much it actually lost as a result of the fire.

C is the wrong answer but an accurate statement. The government may, in fact, sue in common law for environmental damages. The logging company argued that such a right had to be specifically mentioned in a statute. But the Court disagreed. "Our common future, that of every Canadian community, depends on a healthy environment," the Court said. In suing the logging company for damages, the "government is fulfilling its duty to protect the environment and the public's interest in it."