

# ENVIRONMENTAL VIOLATIONS: BC Case Illustrates Sentencing Factors in Action



When a company is convicted of an environmental violation and the court is deciding its sentence, the court must generally consider certain factors spelled out either in the environmental laws or in 'case law' that is, the sentences imposed by courts in other cases.

Sentencing factors fall into two basic categories:

- **Aggravating factors**, which weigh in favour of a harsher sentence, such as extensive damage was done to the environment or the company committed the offence intentionally or recklessly; and
- **Mitigating factors**, which weight in favour of a lighter sentence, such as the company's attempts to comply with the law and its remorse and acceptance of responsibility.

Here's a look at a case from BC that illustrates how courts balance these factors in determining the appropriate sentence for a company convicted of environmental offences. By understanding these factors and how courts use them, you can help put your company in the best possible position for sentencing. (For an in-depth look at the law on sentencing,

see '[Environmental Violations: What Factors Can Impact Your Company's Sentence](#)'')

## **Pulp Mill Penalized \$150,000 for Spill**

A mixture of dilute weak black liquor and weak black liquor soap (a by-product of the digestion of wood chips) overflowed a pulp mill's tank, spilled into its main sewer line and entered its effluent treatment system, compromising the system's effectiveness. Some also spilled onto a roadway and entered the nearby Columbia River. As a result, the mill was charged with violating the *Fisheries Act* and *Environmental Management Act* as well as its permit requirements as to its spill ponds.

The BC Provincial Court ruled that the company had exercised due diligence as to the spill pond charges but convicted it on the remaining charges. At sentencing, the court looked at the following factors:

**Criminality of the conduct.** Although the violations weren't the result of intentional misconduct, they weren't near misses as the company tried to portray them.

**The extent of the company's attempts to comply with environmental law.** The company had been having problems with its effluent treatment system and was struggling to deal with them but it was trying, noted the court.

**The nature of the environment.** The mill sat right alongside the Columbia River, which was an environmentally sensitive area. While the mill's operations benefit by the river's proximity, the nearness also imposes both a legal and moral duty on the company to take care to avoid harming the river and the life in it, said the court.

**The damage done to the environment.** Although there was no ascertainable harm to the environment, there was the potential for substantial harm. And the absence of harm is a neutral

factor on environmental sentencing, explained the court.

**The company's remorse.** The court said there was little dispute that the company was remorseful. It immediately reported the spill and cooperated with the MOE's investigation. It also instituted additional practices and procedures to avoid a recurrence of the offences, particularly by invoking an interim spill pond reclamation plan. And company representatives were present throughout the trial and at sentencing.

**The company's size.** The company was part of a multi-national corporation that, among other things, ran pulp mills and had considerable assets.

**Any profits realized from the offence.** There was no evidence the company profited from the violations.

**Any prior record of environmental violations.** The company didn't have a record of environmental violations. But it did have a history of exceeding the effluent limits of its permit.

Based on the above, the court fined the company \$30,000, ordered it to pay \$120,000 to the Habitat Conservation Trust Fund and required it to publish and maintain on its website for a year the fact that it was convicted of three violations of the *EMA*.

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[\*R. v. Zellstoff Celgar LP\*](#), [2012] BCPC 295 (CanLII), July 25, 2012