Ontario Proposes to Increase Administrative Monetary Penalties for Environmental Offences

The price of environmental violations may soon be going up in Ontario.

Like just about all other costs, the price of committing environmental offences in Ontario is about to increase. Newly proposed regulations would enable the provincial Ministry of Environment, Conservation and Parks (MOE) to impose administrative monetary penalties (AMPs) of not only greater amounts but also a wider range of environmental violations.

AMPs for Environmental Violations

Environmental fines and penalties are usually part of the sentence a defendant receives after pleading guilty or being convicted at trial of violating environmental law. But as with OHS laws, several jurisdictions have adopted legislation allowing the government to also impose AMPs for certain environmental violations. This puts companies in a tricky legal position because legal defences like due diligence that can be used at trial aren't a defence against AMPs. In other words, merely committing an offence justifies the imposition of AMPs, regardless of whether a company used due diligence to prevent the offence and comply with the law.

Ontario is among the provinces where AMPs can be imposed for environmental violations, specifically for violations of the *Environmental Protection Act* (EPA) and *Ontario Water Resources Act* (OWRA). In determining the AMP amount, the MOE considers 5 key factors:

- **A base penalty** or minimum amount based on the type of violation and its gravity, that is, 'less serious,' 'serious' or 'very serious';
- **Aggravating factors** including a history of environmental violations and significant environmental damage;
- **Continuing offences,** or the number of days the violation occurred over;
- **Mitigating factors** like taking immediate measures to contain the environmental damage and having a clean environmental record and/or strong

environmental management program; and

- **The profit factor,** or whether the company derived an economic benefit as a result of the violation.

There are also caps on the maximum amounts of an AMP for a particular kind of offence.

The Proposed Ontario AMPs Regulation

In January 2022, the MOE issued a proposal to broaden the use of AMPs for environmental violations in the province. Specifically, the proposal would authorize the MOE to dish out AMPs for not only EPA and OWRA offences but also violations of 3 other environmental laws, including the:

- *Nutrient Management Act, 2022*;
- *Pesticides Act*; and
- *Safe Drinking Water Act, 2022*.

Under the proposal, the MOE could impose AMPs on **any** person, corporation or individual, including an officer, director, employee or agent of a company that causes or is responsible for the violation for up to one year from the time it first becomes aware of the violation. The MOE may also increase both the base and maximum AMP amounts.

Legislation	Minimum Base Penalty per Violation	Maximum Penalty per Violation
Environmental Protection Act	$500 to $60,000	*Current: $100,000 per day *Proposed: $200,000 per day
Ontario Water Resources Act	$500 to $8,000	*Current: $100,000 per day *Proposed: $200,000 per day
Pesticides Act	$500 to $1,500	$100,000
Safe Drinking Water Act, 2002	$500 to $1,500	$100,000
Nutrient Management Act, 2002	$500 to $1,500	$10,000

Under the proposal, economic benefit from the violation would not only dictate a higher AMP but also the benefit amount would be added to the AMP total.

Takeaway

At this point, the proposed AMPs scheme is just that'a proposal. To become law, the MOE must create an actual draft regulation, publish it for public consultation and make revisions to account for the comments. Much can happen between now and finalization of an official regulation. And there's no way of knowing for certain what the provisions of such a final rule would look like. However, one thing is clear: if the MOE's proposal does go through, AMPs for environmental violations in Ontario will be handed out on a more frequent basis and in higher amounts.