

## Community Information

# BILL 133

Bill 133 – *Environmental Enforcement Statute Law Amendment Act* – was passed by the Ontario Legislature on June 9, 2005. The bill became law following extensive consultations with industry stakeholders, environmentalists, health professionals, community leaders and the general public.

### **What does Bill 133 do?**

Bill 133 is legislation that protects the environment. It will encourage companies to take action to prevent spills and allows the Ministry of the Environment to impose environmental penalties on companies responsible for spills.

Bill 133 sends a message to companies that are environmental underperformers that compliance is the bare minimum of acceptability in Ontario.

Bill 133 strengthens the protections provided by the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA). The bill provides communities with an effective cost recovery tool to ensure that they are not the ones paying for the consequences of a spill.

The legislation creates a special community fund to be used for environmental clean ups following a spill.

The bill ensures that companies with poor environmental business practices do not get an unfair economic advantage from non-compliance.

Ontario encourages companies that are environmental leaders to go beyond current environmental compliance and use new approaches to protect our environment and the health of our communities.

### **What is the difference between an environmental penalty and a fine?**

The primary purpose of an environmental penalty (EP) is compliance.

Through amendments to the *Environmental Protection Act* and *Ontario Water Resources Act*, EPs give ministry directors the authority to impose financial penalties within a few days of a spill.

EPs allow ministry officials to respond directly to an environmental violation without having to resort to the court process. Unlike a fine which is a form of punishment, an environmental penalty is an abatement tool to induce regulated facilities to respond swiftly to violations and to take actions to prevent their recurrence.

Fines, on the other hand, are handed down by a court after a successful prosecution. Under Bill 133 prosecution remains available to deter serious pollution incidents and chronic offenders.

The government intends, by regulation, to apply environmental penalties only to those facilities that are part of the nine industrial sectors regulated by the *Municipal-Industrial Strategy for Abatement* (MISA) regulations.

PIBS 5153e

### **How do EPs affect where you live?**

If a community's water supply is affected by a spill, the clean up costs must be paid by the company that causes the problem. That has always been the law and still is.

Environmental penalties collected from companies that spill will be placed in a special account to be used for community environmental purposes only. This could include compensation to those who incurred costs or expenses or suffered other losses as a result of a spill.

### **How large are the penalties?**

Bill 133 imposes EPs of up to \$100,000 per day for companies responsible for spills.

### **EPs are used in many jurisdictions**

While new to the province, compliance tools similar to Ontario's EPs are widely and successfully used to promote environmental compliance in other jurisdictions. Civil or administrative penalties are part of the law in the United States, under federal environmental protection laws like the Clean Air Act and under state laws, and they exist in other Canadian jurisdictions. In fact, many countries around the world use civil penalties for effective environmental compliance and enforcement.

### **Bill 133 allows for due process. Any person who receives a penalty has the right to appeal the order to the Environmental Review Tribunal.**

Where an appeal is related to an unlawful spill, Bill 133 places the onus on the appellant to prove that the spill did not cause or could not have caused an adverse effect.

Reverse onus is justified because if an appellant is responsible for using contaminants at its facility, they are also in the best position to demonstrate to the Tribunal that their discharge did not violate applicable legal requirements.

The amount of penalties will vary, depending on the seriousness of the incident, whether best efforts had been used to prevent the incident, whether it was accidental, and what actions have been taken or will be taken to mitigate the environmental impacts and prevent any recurrences. Factors for determining penalty amounts and the details of the

penalty assessment scheme will be set out in regulations.

### **Absolute liability for EP violations**

It does not matter whether a pollution incident was deliberate or accidental. The fact that a company was exercising due diligence will not be considered a factor in a defense. Due diligence will however be factored into the amount of a penalty.

### **The amount of the EP may be reduced or eliminated entirely under a settlement agreement entered into by the ministry and the violator**

This gives Ministry of the Environment directors the flexibility to work with violators to reach a satisfactory and mutually-agreed upon resolution of the incident. Bill 133 provides the authority to reduce or even cancel a penalty where the director and a regulated person have entered into a settlement agreement.

### **New municipal powers to recover reasonable costs incurred when dealing with a spill**

Currently, municipalities (like other parties) who incur costs as a result of a spill must seek compensation from the responsible parties through a court action. Now, Bill 133 gives municipalities the authority to issue orders directly to the responsible companies so that it can recover the costs it incurs in dealing with a spill. Bill 133 will allow a municipality to save time and avoid costs associated with a court action.

### **New fine structure if an offender is prosecuted**

Bill 133 amends the *Environmental Protection Act* and the *Ontario Water Resources Act* to establish a new two-tier fine structure for contravention of acts.

General offences fall under Tier 1, while some specific and more serious offences are placed in Tier 2. Tier 2 offences include violations of the general prohibition against pollution and failing to notify the ministry of a spill.

Tier 1 maximum fines for corporations will increase to \$250,000 a day and \$500,000 a day for a subsequent conviction.

The maximum fines for corporations convicted of a Tier 2 offence would be \$6,000,000 for a first conviction and \$10,000,000 for each subsequent conviction.

**Minimum fines & higher fines for repeat offenders**

Minimum fines for corporations convicted of Tier 2 offences would be \$25,000 for a first conviction, \$50,000 for a second conviction, \$100,000 for each subsequent conviction.

**Sentencing for environmental offences**

Bill 133 sets out sentencing guidelines to provide guidance to the courts and signal that environmental offences are serious and should be treated accordingly.

**Responsibilities of corporate directors and officers**

Bill 133 broadens the scope of responsibilities for corporate directors and officers so that they are now required to take all reasonable steps to ensure the corporation complies with specific important requirements such as preventing unlawful discharges, notifying the Ministry of spills and cleaning up after a spill.

**New requirements for plans to prevent future pollution:**

Spill contingency/prevention plans can now be required from any industry designated by regulation.

For more information check the Ministry of the Environment's website at [www.ene.gov.on.ca](http://www.ene.gov.on.ca) or contact:

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