

## Chronic Non-Compliance Earns Cement-Maker Substantial Environmental Fines

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*On December 4, 2015<sup>1</sup>, Essroc Canada Inc. was fined a total of \$200,000, plus a victim surcharge of \$50,000, for discharging dust into the natural environment and failing to notify the Ministry of the Environment and Climate Change (“MOECC”) of the discharge, both contrary to the Environmental Protection Act (EPA).<sup>2</sup> The size of the fine surprised a number of observers unfamiliar with the back story. While the MOECC is often willing to work with a company for years to bring its environmental performance into compliance, the MOECC’s patience is not inexhaustible.*

Essroc operates a large cement manufacturing facility near the town of Picton in Prince Edward County, Ontario. Between 2003 and 2011, neighbouring residents notified the MOECC some 27 times about ongoing dust emissions from the facility. In addition to instances of dust coating homes and cars, complainants reported a number of “catastrophic occurrences” at the facility, including an ash cloud “that looked like a volcano had erupted.”<sup>3</sup> MOECC reports document these adverse effects as far as five to eight kilometres downwind from the facility.

In July 2011, an application for investigation was filed under the *Environmental Bill of Rights*, alleging numerous contraventions of section 14 of the *EPA* and section 45 of O. Reg. 419/04 (Local Air Quality), and further alleging that the MOECC had failed to adequately enforce the regulatory requirements imposed on Essroc.<sup>4 5</sup>

<sup>1</sup> Decision released December 4, 2015 by the Ontario Court of Justice in Picton

<sup>2</sup> “Picton Cement Manufacturer Fined \$200,000 For Discharge Violations,” MOECC Court Bulletin, December 4, 2015, available at: <https://news.ontario.ca/ene/en/2015/12/picton-cement-manufacturer-fined-200000-for-discharge-violations.html>

<sup>3</sup> “MOE Failure to Stop Fugitive Dust Emissions from Cement Facility,” Environmental Commissioner of Ontario, article from the ECO’s 2011/12 Annual Report, available at: [http://www.ecoissues.ca/MOE\\_Failure\\_to\\_Stop\\_Fugitive\\_Dust\\_Emissions\\_from\\_Cement\\_Facility](http://www.ecoissues.ca/MOE_Failure_to_Stop_Fugitive_Dust_Emissions_from_Cement_Facility)

<sup>4</sup> EBR Application for Investigation, EBRO File: 11EBR002.1, available at <http://eco.on.ca/wp-content/uploads/2015/03/12011002concluded.pdf>

<sup>5</sup> “Investigation of Dust Emissions Emitted by Essroc Cement Manufacturing Facility (Investigation Undertaken by MOE),” as reported in the Supplement to the ECO’s 2011/2012 Annual Report, at <http://eco.on.ca/wp-content/uploads/2015/03/2011-12-AR-Supp.pdf>

A subsequent Ministry investigation confirmed that dust emissions were having an adverse effect, namely the loss of enjoyment of normal property use and the potential to damage the property. The company responded to a number of complaints – sometimes as directed by the Ministry, sometimes in response to a complainant – by cleaning difficult-to-remove cement dust from affected cars, boats, outdoor furniture, windows and other contaminated property.

The company's protracted efforts to solve its dust problems even attracted the scrutiny of the Environmental Commissioner of Ontario in his 2011/2012 annual report<sup>6</sup> and, again, in his 2013/2014 report.<sup>7</sup> The Commissioner castigated the Ministry for failing to take a tougher stance and unleash its Investigations and Enforcement Branch (IEB) on Essroc. The Commissioner was "deeply disturbed by what appears to be an exceedingly slow and weak response by MOE in the face of a facility's chronic non-compliance with environmental laws and regulations."

In response to the growing complaints, MOECC staff from the Belleville Area office imposed a series of requirements – escalating from an initial voluntary approach to a mandatory one, including a non-appealable Section 27.1 Notice and several other compulsory compliance tools – in order to control stack and fugitive dust emissions. The company currently operates under several Environmental Compliance Approvals, which regulate all air emissions from the site.

The most recent fine relates to an incident that occurred during the morning and early afternoon of April 5, 2013. While Essroc did notify the MOECC of visible emissions discharged to the natural environment, the report to the MOECC Spills Action Centre was made approximately 3½ hours after the incident began and complete information about the event was not reported until that evening.

This appears to be the fourth major environment-related fine levied against the firm in recent years. In 2009, Essroc was convicted of two violations and fined \$17,000.<sup>8</sup> In 2011 Essroc pleaded guilty to an environmental charge and was fined \$100,000.<sup>9 10</sup> The following year, Essroc was charged with 11 violations. While several charges were dropped, Essroc eventually pled guilty to three counts of discharging dust into the environment likely to have an adverse effect and one count of emitting excessive noise. On that occasion, it was fined \$350,000, plus a victim surcharge of \$87,500.<sup>11</sup>

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<sup>6</sup> See footnote 3, above.

<sup>7</sup> "MOE Compliance: Spare the Rod, Spoil the Environment," Environmental Commissioner of Ontario, article from the ECO's 2013/14 Annual Report, available at:

[http://www.ecoissues.ca/MOE\\_Compliance:\\_Spare\\_the\\_Rod%2c\\_Spoil\\_the\\_Environment](http://www.ecoissues.ca/MOE_Compliance:_Spare_the_Rod%2c_Spoil_the_Environment)

<sup>8</sup> "Company Fined \$17,000 for Jumping Gun on C of A," Environmental Compliance Insider, December 2009, available at: <https://ohsinsider.com/wp-content/uploads/2015/08/Dec-09.pdf>

<sup>9</sup> "Essroc Canada Inc. Fined \$100,000 For Cement Wash Water Discharge," Regional Associations Information Network, reprinted MOE Court Bulletin, August 9, 2011, available at:

<http://www.regionalassociations.org/ArticlesDB/ArticleView.aspx?articleId=32941>

<sup>10</sup> "Essroc fined over \$350K," Quinte News, April 17, 2015, available at:

<http://www.quinteneews.com/2015/04/essroc-fined-over-350k-public-meeting-set/85251/>

<sup>11</sup> "Picton Company Fined \$350,000 For Discharge Violations," MOECC Court Bulletin, April 10, 2015, available at: <http://news.ontario.ca/ene/en/2015/04/picton-company-fined-350000-for-discharge-violations.html>

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