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Feds imposing new *Environmental Enforcement Act* fines against dry cleaners

Environment Canada wasted no time in using its new regulatory powers under the *Environmental Enforcement Act*. Dry cleaners across Canada were shocked to learn that a dry cleaning business was fined \$60,000 for offences under the *Canadian Environmental Protection Act, 1999*. The dry cleaner was also required to publish an announcement about the offence and fine.

The harsh sentence imposed on a first-time offender is a wake-up call to all dry cleaners about the new regulatory environment.

Environmental enforcement provisions under the *Environmental Violations Administrative Monetary Penalties Act* and the *Environmental Enforcement Act* include mandatory minimum fines and increased maximum fines. Offences will attract minimum penalties of \$25,000 per count for a small business. The new legislation affects dry cleaners Canada wide.

THE NEW LEGISLATION

On June 22, 2012, the *Environmental Enforcement Act* (the *EEA*) became the centre-piece of the new federal enforcement strategy, amending nine existing environmental statutes administered by Environment Canada and Parks Canada. Of interest to dry cleaners are the amendments to the *Canadian Environmental Protection Act, 1999* (*CEPA 1999*) and environmental penalties under the *Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulations* (the *Tetrachloroethylene Regulation*). Of particular significance to dry cleaners are sections 3, 4, 5, 7 and 10 of the *Tetrachloroethylene Regulation*.

The *EEA* also created the *Environmental Violations Administrative Monetary Penalties Act* (the *EVAMPA*). The *EVAMPA* provides Environment Canada with authority to issue Administrative Monetary Penalties, similar to parking tickets, for offences that would not usually have been pursued in the past because of the high cost to prosecute.

THE NEW FINE SCHEME

A range of hefty fines for individuals, small dry cleaning corporations and large dry cleaning corporations found guilty of designated offences under *CEPA 1999* and the *Tetrachloroethylene Regulation* came into effect June 22, 2012. The following table summarizes the new fine scheme under *CEPA 1999*.

All fines doubled for second and subsequent offences.

In addition to the new schedule of fines, several other *CEPA 1999* amendments are in force:

- If a person or business convicted of an offence acquired any property, benefit or advantage, the Court shall order the offender to pay an additional fine in an amount equal to the Court's estimation of the value of that property, benefit or advantage;
- A corporation convicted of an offence may be ordered to notify its shareholders (in the manner and within the time directed by the Court) of the facts relating to the

New Fine Scheme under the *Environmental Enforcement Act*

OFFENDER	TYPE OF OFFENCE	SUMMARY		INDICTMENT	
		Minimum	Maximum	Minimum	Maximum
Individuals	Most serious offences	\$5,000	\$300,000	\$15,000	\$1 M
	Other offences	N/A	\$25,000	N/A	\$100,000
Small corporations & ships under 7,500 tonnes	Most serious offences	\$25,000	\$2 M	\$75,000	\$4 M
	Other offences	N/A	\$50,000	N/A	\$250,000
Corporations & ships over 7,500 tonnes	Most serious offences	\$100,000	\$4 M	\$500,000	\$6 M
	Other offences	N/A	\$250,000	N/A	\$500,000

Source: Canada, Environment Canada.

offence and the punishment imposed;

- Upon conviction, directors and officers of corporations would be subject to the same penalties as 'individuals' under the Act; and
- The limitation period for Environment Canada to institute summary proceedings has been extended from two to five years.

THE NEW REALITY FOR DRY CLEANERS

Environment Canada is demonstrating that it will seek large fines and other measures from the Court for contraventions of *CEPA 1999* and the *Tetrachloroethylene Regulation* against dry cleaners, whether or not there are major environmental impacts such as a spill.

Two counts of improper containment of waste water and

residue resulted in a fine of \$60,000 under the new fine scheme. Failing to have an adequately sized overflow pan or not having tetrachloroethylene impermeable drain plugs readily accessible may draw similar penalties.

A warning about a deficiency, subsequently not heeded, can be considered by the Court in imposing a fine or other penalty. In instances where the minimum fine would cause undue financial hardship, the Court has discretion to impose a lesser amount.

All dry cleaners should take a few minutes to refresh their memories about the requirements for their operations under *CEPA 1999*, the *Tetrachloroethylene Regulation*, provincial laws and municipal by-laws.

Sections of the *Tetrachloroethylene Regulation* that are affected by the new *EVAMPA*, and that could attract large fines and other penalties for dry cleaners include:

Section 3. No person shall use a spotting agent that contains tetrachloroethylene for commercial or institutional dry cleaning purposes.

Section 4. No person shall use tetrachloroethylene for dry cleaning unless the tetrachloroethylene, waste water and residue are stored in closed containers at all times, except when access is required for operation or maintenance.

Section 5. No person shall sell tetrachloroethylene to the owner or operator of a dry cleaning machine or use tetrachloroethylene for dry cleaning unless the dry cleaning machine:

- (a) uses the same drum for the washing, extraction, drying and aeration cycles;
- (b) has an integral refrigerated condenser that recovers tetrachloroethylene vapour in the recirculated air from the drum of the machine;
- (c) prevents tetrachloroethylene vapour in the drum from being vented into the atmosphere during the washing, extraction, drying and aeration cycles;
- (d) has an integral tetrachloroethylene-water separator that recovers tetrachloroethylene from waste water;
- (e) has a manufacturer's design rating for tetrachloroethylene consumption equal to or less than 10 kg or 6.2 L of tetrachloroethylene per 1,000 kg of clothing cleaned or, alternatively, was installed or in use prior to August 1, 2003; and
- (f) is operated within a dry cleaning facility that is equipped with:

- (i) a tetrachloroethylene-impermeable secondary containment system encompassing at least the entire surface under each dry cleaning machine, tank or other container containing tetrachloroethylene, waste water or residue and capable of containing at least 110% of the capacity of the largest tank or container within the containment system; and

- (ii) tetrachloroethylene-resistant drain plugs that are readily available to seal all floor drains into which tetrachloroethylene, waste water or residue may flow in the event of a spill.

Section 7. Despite section 5, no person shall use tetrachloroethylene in a self-service dry cleaning machine.

Section 10. No person shall transfer tetrachloroethylene into a dry cleaning machine, tank or other container at a facility where a dry cleaning machine is used unless a closed direct-coupled delivery system is used during the transfer process that prevents the release of tetrachloroethylene.

Environment Canada is making use of the new fines under the *EEA* and *EVAMPA*.

Protect yourself and your business by re-familiarizing yourself with all the laws and regulations applicable to your operation. ■

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CREATED EQUAL

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