

Majority of Northern Environmental Prosecutions Resulting in Fines are Under Fisheries Act

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Since 2000, nearly all of the environmental charges and fines that companies have faced in the North have been brought under the federal *Fisheries Act*.¹ Most charges resulted from the deposition of harmful substances into water frequented by fish. The fines for these offences ranged from \$1,000 to \$75,000 per charge, exclusive of additional financial penalties, which ranged from \$25,000 to \$425,000.

There are several principles of sentencing that are unique to the North. Northern companies should ensure that they are operating in compliance with the *Fisheries Act* to maintain a good environmental record and avoid financial penalty.

Northwest Territories

Three corporations have been charged and fined for releasing harmful substances into water frequented by fish in the NWT since 2000, contrary to the *Fisheries Act*, s. 36(3):

- ♦ In 2011, Imperial Oil Resources NWT Ltd. was charged with releasing NALCO 7390, an anti-corrosive agent, into the Mackenzie River. Imperial Oil was fined \$5,000 with an additional penalty of \$155,000 to be used to promote the conservation and protection of fish and fish habitat in the NWT.²
- ♦ In 2011, Northwest Territories Power Corp. was charged when vegetation, earth, and permafrost soils were released into Strutt Lake after a dyke breached at its hydroelectric station reservoir.³ The company was fined \$25,000 with an additional penalty of \$425,000 to be spent on the conservation and protection of fish and habitat in the NWT.⁴ The fine reflects the fact that (1) damage was caused to fish and fish habitat, (2) a smaller fine would have not have deterred the company from offending again because of its large net income, (3) the company took quick action to respond to the deposition, and (4) the company was committed to dealing with the offence, as evidenced by CEO's presence at the company's hearing.

¹ RSC, 1985, c F-14 [Fisheries Act].

² Note that the defendant was also charged with violating a condition of its water license under the NWT Waters Act, s. 40(2)(a) and fined an additional \$25,000 under that Act. Environment Canada, online: <https://ec.gc.ca/alef-ewe/default.asp?lang=En&n=1A5C10D4-1>; Imperial Oil Resources NWT Ltd., in the Prosecution and Defence of Environmental Offences, by Stanley D. Berger and Johnathan Myers, 2011 Carswell 225.

³ R. v Northwest Territories Power Corp. 2011 CarswellNWT 7.

⁴ Pursuant to the Fisheries Act, s. 72.2(f).

- ◆ In 2000, the Yellowknives Dene First Nation band corporation was charged when it deposited construction waste on the shoreline of Back Bay on Great Slave Lake.⁵ The band corporation was ultimately fined \$63,000. The fine reflects the court's disapproval at the "calculated risk" taken by the band corporation in dumping the waste for expedience and convenience.⁶

The Yellowknives Dene First Nation band corporation was also charged with altering, disrupting and destroying fish habitat, contrary to under the *Fisheries Act*, s. 35(1).

Nunavut

In Nunavut, three corporations have been charged and fined under the *Fisheries Act*, s. 36(3) since 2000:

- ◆ In 2013, Hope Bay Mining Ltd. and Orbit Garant Drilling Inc. were charged with releasing drill cuttings, mud and brine on an ongoing basis from a drill rig connected to Stickleback Lake and Spyder Lake.⁷ The companies were each fined \$75,000 to be directed to the Environmental Damages Fund.
- ◆ In 2003, Teck Cominco Metals Ltd. deposited fuel oil into fish bearing water of the Crozier Strait while transferring the oil between tanks.⁸ The company was fined \$5,000 with an additional penalty of \$25,000 to be directed to the conservation of fish and fish habitat in Nunavut.
- ◆ In 2002, the City of Iqaluit was charged when raw sewage was discharged from the City's lift stations into the Koojesse inlet.⁹ The City was fined a total of \$100,000 to be directed partially to the conservation and protection of fish and fish habitat in Nunavut, and partially to operational improvements for the City sewage system to prevent future offences.

Most recently, in 2017, Agnico Eagle Metals was charged under the *Fisheries Act*, s. 38(4) for failing to notify an inspector following the deposition of tailings from the Meadowbank Gold Mine into an adjacent water body that resulted in serious harm to fish.¹⁰ The company was fined \$50,000 and added to the Environmental Offenders Registry.

⁵ R v Beaulieu 2000 CarswellNWT 3; R v Beaulieu 2001 CarswellNWT 47, 2001 NWTSC 46 [Beaulieu]; R v Yellowknives Dene First Nation 2000 CarswellNWT 22, 2000 NWTTC 2 [Dene First Nation].

⁶ Beaulieu and Dene First Nation.

⁷ Environment Canada, online <https://ec.gc.ca/alef-ewe/default.asp?lang=En&n=379285AA-1>.

⁸ R v Teck Cominco Metals Ltd. 2003 Carswell 94; R v Teck Cominco Metals Ltd 2003 NUCJ 5 [Teck].

⁹ R. v Iqaluit (City) 2002 CarswellNun 1, 2002 NUCJ 1 [Iqaluit].

¹⁰ Environment Canada, online <https://ec.gc.ca/alef-ewe/default.asp?lang=En&n=92AC672E-1>.

Environmental Sentencing Principles in the North

There are several principles of sentencing that are unique to the North. When determining the size of a fine, or whether to divert fine/penalties into conservation projects¹¹, Northern courts often consider and balance the following principles:

- ◆ Environmental damage can have greater significance in the North due to the fragile northern environment.¹² Environmental penalties should reflect the risk of persistent damage and the fact that reclamation is more expensive in the north.¹³
- ◆ Northern environments have social, cultural, and spiritual value to Indigenous groups in the North. Impact to Indigenous interests in the environment may be taken as an aggravating circumstance in sentencing.¹⁴
- ◆ Resource development is important to the Northern economy and good corporate citizens should be encouraged to operate in the North. Financial penalties should not be disproportionate to those in the south, after making allowances for the northern context.¹⁵

What Does This Mean For Companies Operating In The North?

- i. Sentencing considerations are different in the North, with additional aggravating factors.
- ii. For parties operating in the North, it is important to ensure steps are taken to prevent spills, discharges, or deposits to waters containing fish or fish habitat. Due diligence practices may need to be heightened to recognize Northern environmental realities and sensitivities.
- iii. Fines in the North are lower than for similar offences in the provinces.

The Crown and Courts may also seek additional payments towards the Environmental Damages Fund or other environmental or remediation projects depending.

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¹¹ See Fisheries Act, s. 40(6), all fines received for the commission of offences under the Fisheries Act are credited to the Environmental Damages Fund (EDF) and used for purposes related to conservation and protection of fish or fish habitat or the restoration of fish habitat, or for administering the EDF.

¹² Teck at para 74.

¹³ Iqaluit at para 8-9.

¹⁴ Iqaluit at para 8-9; R v Kenaston Drilling (Arctic) Ltd. 1973 CarswellNWT 20, [1973] NWTJ No 1 at para 12.

¹⁵ Teck at para 90.