

## *Small Fines; Big Consequences*

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Individuals and corporations considering pleading guilty and paying a small fine instead of appealing a charge should be aware of the hidden costs of their decision. The consequences of second and subsequent environmental offence convictions can be much more onerous.

The following examples from July 2016 illustrate a trend toward smaller fines in exchange for guilty pleas:

Individual or Corporation	Act prosecuted under	Penalty	Time to Pay Fine
Individual	<i>Ontario Water Resources Act</i> , RSO 1990, c O.40 (“OWRA”)	\$1,750 plus a victim fine surcharge of \$437.50 and \$5 for court costs <sup>1</sup>	3 months
Individual	OWRA	\$3,000 plus a victim fine surcharge of \$750 <sup>2</sup>	6 months
Company	<i>Safe Drinking Water Act, 2002</i> , SO 2002, c 32 (“SDWA”)	\$5,500 plus a victim fine surcharge of \$1,375 <sup>3</sup>	12 months
Company	<i>Environmental Protection Act</i> , RSO 1990, c E.19 (“EPA”)	\$9,000 plus a victim fine surcharge of \$2,250 <sup>4</sup>	90 days

<sup>1</sup> Ministry of Environment and Climate Change (“MOECC”), Court Bulletin, “Individual Fined \$5,000 For Well Water Violations” (6 July 2016), online: Ontario <news.ontario.ca>.

<sup>2</sup> MOECC, Court Bulletin, “Company Owner Fined \$3,000 For Well Water Violation” (6 July 2016), online: Ontario <news.ontario.ca>.

<sup>3</sup> MOECC, Court Bulletin, “Company Fined \$5,500 For Water Violations” (6 July 2016), online: Ontario <news.ontario.ca>.

<sup>4</sup> MOECC, Court Bulletin, “Toronto Company Fined \$9,000 For Environmental Violations” (6 July 2016), online: Ontario <news.ontario.ca>.

Individual or Corporation	Act prosecuted under	Penalty	Time to Pay Fine
Company and Company Director	<i>Waste Diversion Act, 2002</i> , SO 2002, c 6 (“WDA”)	<ul style="list-style-type: none"> <li>◆ Company was fined \$25,000 plus a victim fine surcharge of \$6,250</li> <li>◆ Company director was fined \$5,000 plus a victim fine surcharge of \$1,250<sup>5</sup></li> </ul>	2 years for both company and company director.
Company	<i>Pesticides Act</i> , RSO 1990, c P.11	\$3,000 plus a victim fine surcharge of \$750 <sup>6</sup>	12 months
Company	<i>Nutrient Management Act, 2002</i> , SO 2002, c 4	\$4,000 plus a victim fine surcharge of \$1,000 <sup>7</sup>	90 days

These small fines can carry big consequences. Subsequent convictions carry much harsher penalties such as increased fines, imprisonment, and mandatory minimum fines.

Under most environmental statutes, the maximum fine increases significantly for subsequent convictions. For example, under the *OWRA*, a fine for an individual’s first conviction has a \$50,000 maximum. The maximum fine jumps to \$100,000 on subsequent conviction.<sup>8</sup>

Penalties for subsequent convictions can include imprisonment. The *Pesticides Act*, the *OWRA*, the *SDWA*, and the *EPA* allow courts to sentence second time offenders to imprisonment on subsequent conviction.

Mandatory minimum fines are available under the *OWRA* and the *EPA* for a second offence that is a “more serious offence”. For example, under the *EPA*, a corporation convicted of certain offences will face a fine not less than \$50,000 on second and subsequent conviction.<sup>9</sup>

Individuals and corporations should also be aware that previous convictions do not have to be under the same statute to trigger these increased penalties. The *Pesticides Act*, the *Nutrient Management Act*, the *OWRA*, the *SDWA*, and the *EPA* all allow courts to look to convictions under different statutes when determining the number of previous convictions.<sup>10</sup>

<sup>5</sup> MOECC, Court Bulletin, “Toronto Company Fined \$30,000 For Non-compliance” (6 July 2016), online: Ontario < news.ontario.ca>.

<sup>6</sup> MOECC, Court Bulletin, “Lancaster Golf Course Fined \$3,000 For Pesticides Violations” (18 July 2016), online: Ontario < news.ontario.ca>.

<sup>7</sup> MOECC, Court Bulletin, “Farm Fined \$4,000 For Nutrient Management Act Violations” (18 July 2016), online: Ontario < news.ontario.ca>.

<sup>8</sup> *Ontario Water Resource Act*, RSO 1990, c O.40, s 108(1) [*OWRA*].

<sup>9</sup> *Environmental Protection Act*, RSO 1990, c E.19, s 187(4) [*EPA*].

<sup>10</sup> *Pesticides Act*, RSO 1990, c P.11, s 45(4); *Nutrient Management Act, 2002*, SO 2002, c 4, s 48(3); *OWRA*, *supra* note 8 at s 110; *Safe Drinking Water Act, 2002*, SO 2002, c 32, s 144; *EPA*, *supra* note 9 at s 188.

These small penalties for environmental offences place persons facing environmental prosecution in a very difficult situation. The fines are so small that those charged must be very reluctant to bear the expense of an appeal, but the consequences for future charges can be severe.

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