

Company Fined \$185,000 under the *Fisheries Act* for Discharge to Municipal Drain

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On November 6, 2014, the Alberta Provincial Court ordered Norellco Contractors Ltd. (Norellco) to pay \$185,000 after Norellco pleaded guilty to one count under the Fisheries Act.ⁱ This case is significant in that it represents a sizable contribution to the Environmental Damages Fund, shows that chlorinated water can be considered a contaminant and is a reminder of the multiple jurisdictions that cover discharges to water.

Jurisdiction

In Canada, municipal, provincial and federal levels of government have overlapping responsibilities for managing discharges to water.

- ♦ **Provinces**—Provincial governments regulate discharges to waters within provincial boundaries.ⁱⁱ This can include discharges to both artificial and intermittent watercourses.ⁱⁱⁱ
- ♦ **Municipalities**—Municipalities have authority to enact sewer-use by-laws to regulate the quality and quantity of substances discharged into their sewer systems.^{iv} A violation of a municipal sewer-use by-law can result in an inspection by local by-law enforcement officers, compliance program action or prosecution.
- ♦ **Federal**—At the federal level, the *Fisheries Act* prohibits discharges of any “deleterious substances” into waters frequented by fish.^v The federal government has jurisdiction to prosecute discharges into sewers when that discharge ultimately impacts Canadian fisheries waters.

A discharge into sewers could be subject to compliance action under municipal by-laws. A discharge into sewers could be subject to provincial government prosecution when that discharge then flows into waters within provincial boundaries, or depending on the definition of water in the legislation, portions of municipal storm sewer systems. The same discharge could also be subject to federal government prosecution when that discharge flows into waters frequented by fish.

The Case

On November 6, 2014, Norellco pleaded guilty to an offence under the *Fisheries Act* for releasing chlorinated water into local sewer drains. The drains led to the Sturgeon River, which is home to a number of fish species. The company was ordered to pay \$185,000 and \$180,000 of that penalty was credited toward the Environmental Damages Fund to promote the proper management and protection of fish and fish habitat in Alberta.

We find three significant aspects of this penalty:

- 1 It underlines the multiple jurisdictions that regulate and protect water. Here, the discharge was to a municipal drain which resulted in federal charges.
- 2 It is significant because of the size of the contribution to the Environmental Damages Fund (\$180,000 of \$185,000).
- 3 Many may not realize that chlorinated water (including potable drinking water) may be considered a contaminant when discharged into water.

Please contact [Julie Abouchar](mailto:jabouchar@willmsshier.com) for more information about identifying, minimizing and mitigating environmental liability for discharges into water.

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ⁱ Environment Canada Enforcement Notifications, “[Norelco ordered to pay \\$185,000 for releasing chlorinated water into the Sturgeon River](https://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=04C547D3-1)” (November 19, 2014). Online: <https://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=04C547D3-1>. Note: this case has yet to be reported.

ⁱⁱ See for example, under the *Ontario Water Resources Act*, section 1: “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak.” Also, under Alberta’s *Environmental Protection and Enhancement Act*, section 1: “release” includes to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place and exhaust.”

ⁱⁱⁱ See for example, under the *Ontario Water Resources Act*, section 1: “waters” means a well, lake, river, pond, spring, stream, reservoir, artificial watercourse, intermittent watercourse, ground water or other water or watercourse”. Also, under Alberta’s *Environmental Protection and Enhancement Act*, section 1: “water” means all water on or under the surface of the ground”, and under Alberta’s *Water Act*, section 1: “water” means all water on or under the surface of the ground, whether in liquid or solid state”.

^{iv} See for example, Ontario’s *Municipal Act, 2001*, section 11 and Alberta’s *Municipal Government Act*, section 7.

^v See *Fisheries Act*, section 36(3).