

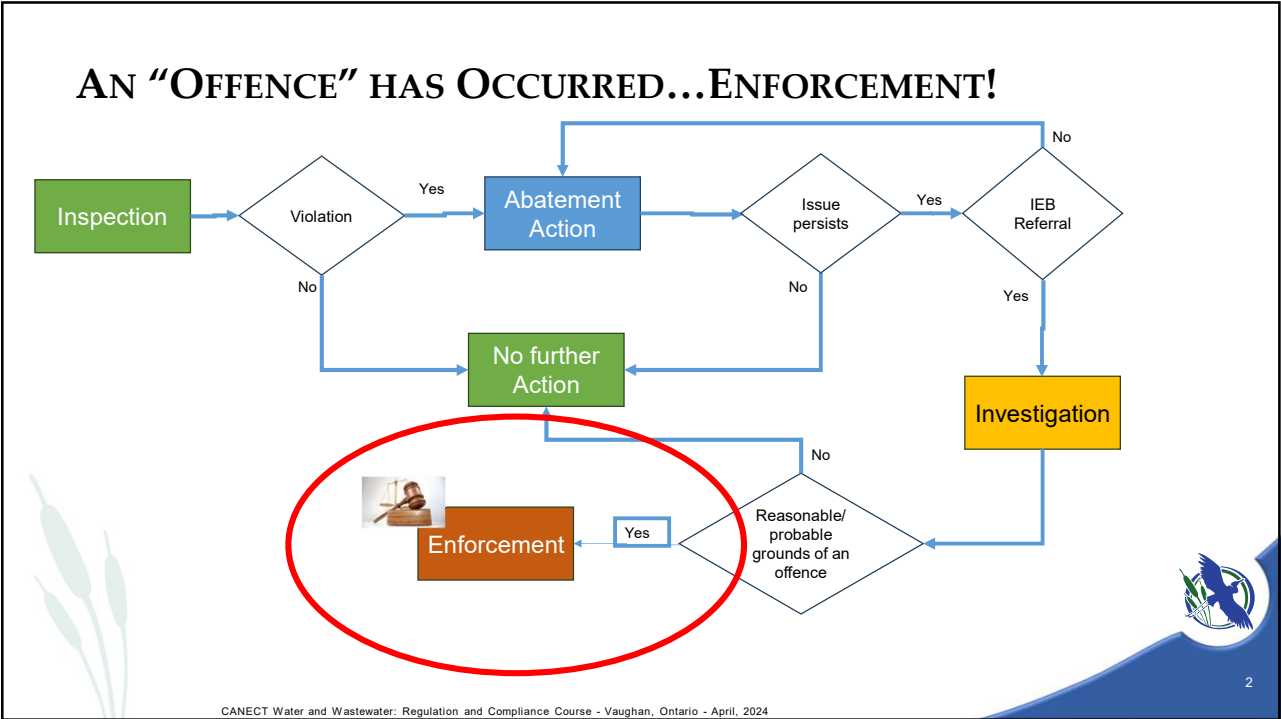


# ENFORCEMENT

CANECT WATER & WASTEWATER: REGULATION AND COMPLIANCE COURSE  
VAUGHAN, ONTARIO APRIL, 2024



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# ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

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FEDERAL OFFENCES




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## FEDERAL KEY ENVIRONMENTAL LEGISLATION



- Canadian Environmental Protection Act (CEPA)
  - Pollution Prevention (Waste and toxic substances)
- Fisheries Act
  - Conservation and protection of Fish Resources




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# CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)




## ENFORCEMENT MEASURES

More Serious

- **WARNINGS** - to return to compliance
- **DIRECTIONS** - to deal with or to prevent illegal releases of regulated substances
- **TICKETS** - for offences such as failure to submit written reports
- **ORDERS** – various types (prohibition, protection compliance orders to put an immediate stop to illegal activity, to prevent a violation from occurring or to require action to be taken)
- **INJUNCTIONS**
- **PROSECUTION**
- **ENVIRONMENTAL PROTECTION ALTERNATIVE MEASURES (EPAM)**






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# CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)




## PROSECUTION

Contravenes  
certain section  
of the Act


Contravenes a  
federal permit  
or agreement

Provides false  
information

Contravenes  
an Order



Charges can be laid **within 2 years** of the day of the offence, or of the date on which evidence of the offence first came to the attention of a Director



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## CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

**LIABILITY ON CONVICTION – CONTRAVENTIONS OF THE ACT - LESS SERIOUS**

	Corporation	“Small Revenue” Corporation	Individual
<b>First offence</b>	\$500,000	\$250,000	\$100,000
<b>Subsequent offences</b>	\$1,000,000	\$500,000	\$200,000
<b>Jail Terms</b>	-	-	-

CEPA 272(1)

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## CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

**LIABILITY ON CONVICTION – CONTRAVENTIONS OF THE ACT - SERIOUS**

	Corporation	“Small Revenue” Corporation	Individual
<b>First offence</b>	\$500,000 (minimum) to \$6,000,000	\$75,000 (minimum) to \$4,000,000	\$15,000 (minimum) to \$1,000,000
<b>Subsequent offences</b>	\$1,000,000 (minimum) to \$12,000,000	\$150,000 (minimum) to \$8,000,000	\$30,000 (minimum) to \$2,000,000
<b>Jail Terms</b>	-	-	Up to 3 years


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## CANADIAN ENVIRONMENTAL PROTECTION ACT (CEPA)

LIABILITY ON CONVICTION – CONTRAVENTIONS OF REGULATIONS UNDER THE ACT



	Individual or Corporation
First offence	Per regulations
Subsequent offences	\$200,000
Jail Terms	3 years




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## FEDERAL FISHERIES ACT


ENFORCEMENT MEASURES






More Serious

- **WARNINGS** - to return to compliance
- **DIRECTIONS** - to deal with or to prevent illegal releases of regulated substances
- **TICKETS** - for offences such as failure to submit written reports
- **ORDERS**
- **INJUNCTIONS**
- **PROSECUTION**






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## FEDERAL FISHERIES ACT




### PROSECUTION

Resulted in risk of harm to fish or fish habitat


Resulted in harmful alteration, disruption or destruction of fish habitat (not authorized by the Minister of Fisheries and Oceans)

Contravene a warning

Previous conviction




Charges can be laid **within 2 years** of the day of the offence, or of the date on which evidence of the offence first came to the attention of a Minister of Fisheries and Oceans



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## FEDERAL FISHERIES ACT



### LIABILITY ON CONVICTION


	Corporation or individual
<b>First offence</b>	\$100,000 - \$200,000
<b>Subsequent offences</b>	\$200,000 - 500,000
<b>Jail Terms</b>	1 - 2 years

- Each day is a separate offence



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# ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

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## PROVINCIAL OFFENCES



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## DETERMINING AN APPROPRIATE ABATEMENT AND/OR ENFORCEMENT TOOL

### Stage 1

- Is the incident a violation or does it have potential for adverse health/environmental impacts?
  - Violation → Abatement action or enforcement
  - Potential adverse effect → Preventive Measures

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## DETERMINING AN APPROPRIATE ABATEMENT AND/OR ENFORCEMENT TOOL



### Stage 2

- Evaluating the incident
  - Health/Env. Consequences
  - Compliance History
  - Site/case specific considerations

Informed Judgment Matrix (IJM)	Health/Environmental Consequences					
	1. Administrative	2. Minor Environmental	3. Minor Health	4. Medium Environmental	5. Major Environmental	6. Medium/Major Health
A. No history / Good Compliance History	Compliance Category I		Compliance Category II			
B. Previous Violation (unrelated)	Compliance Category I					
C. Previous Violation (related)	Compliance Category II					
D. Ongoing Violation Not Resolved Despite Ministry Directions	Compliance Category III				Compliance Category III	
E. Previous Significant Convictions or Environmental Penalty Orders						
F. Obstruction/ False Information**	Compliance Category III					

### Stage 3

- Determine Compliance Category



## ABATEMENT TOOLS FOR THE MECP



1. Education/outreach
2. Issue/amend authorizing docs
3. Notice of Violation
4. Abatement Plans
5. Control Documents (orders)
6. Environmental Penalty Orders
7. Suspend/Revoke/Refuse Authorizing documents
8. Program Approvals
9. Investigations and Enforcement Branch (IEB) Referral

### COMPLIANCE SPECTRUM










# ENVIRONMENTAL PROSECUTION

ONTARIO ENVIRONMENTAL PROTECTION ACT AND  
ONTARIO WATER RESOURCES ACT



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## PROVINCIAL OFFENCES

**ONTARIO ENVIRONMENTAL PROTECTION ACT (EPA)**


194. (1) Every **director or officer** of a corporation has a duty to take **all reasonable care** to prevent the corporation from,

- (a) discharging or causing or permitting the discharge of a contaminant, in contravention of,
  - (i) this Act or the regulations, or
  - (ii) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this Act;
- (b) failing to notify the Ministry of a discharge of a contaminant, in contravention of...
- ...
- (e) failing to install, maintain, operate, replace or alter any equipment or other thing, in contravention of a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this Act; or
- (f) contravening an order under this Act



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## PROVINCIAL OFFENCES

### ONTARIO WATER RESOURCES ACT (OWRA)

116. (1) Every director or officer of a corporation has a duty to take **all reasonable care** to prevent the corporation from,


- (a) discharging or causing or permitting the discharge of any material, in contravention of,
  - (i) this Act or the regulations, or
  - (ii) a licence, permit or approval under this Act;
- (b) failing to notify the Ministry of a discharge of any material, in contravention of...
- ...
- (d) failing to install, maintain, operate, replace or alter any equipment or other thing, in contravention of a licence, permit or approval under this Act; or
- (e) contravening an order, direction, notice or report under this Act



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## PROVINCIAL OFFENCES


### ONTARIO ENVIRONMENTAL PROTECTION ACT (EPA)

#### Onus

(2.1) If a director or officer of a corporation is charged with an offence under subsection (2) in connection with a specific contravention of the corporation, the **director or officer has the onus**, in the trial of the offence, of proving that he or she carried out the duty under subsection (1) in connection with that contravention. *(i.e. all reasonable care)*

#### Liability to conviction


(3) A director or officer of a corporation is liable to conviction under this section **whether or not the corporation** has been prosecuted or convicted



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## PROVINCIAL OFFENCES


### ONTARIO WATER RESOURCES ACT (OWRA)

**Onus**

(2.1) If a director or officer of a corporation is charged with an offence under subsection (2) in connection with a specific contravention of the corporation, the **director or officer has the onus**, in the trial of the offence, of proving that he or she carried out the duty under subsection (1) in connection with that contravention. **(i.e. all reasonable care)**


**Liability to conviction**

(3) A director or officer of a corporation is liable to conviction under this section **whether or not the** corporation has been prosecuted or convicted.



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## EPA AND OWRA (PROVINCIAL) PROSECUTION

### GENERAL OFFENCES


	Corporation	Individual
First offence	\$250,000	\$50,000
Subsequent offences	\$500,000	\$100,000
Jail Terms	N/A	Up to 1 year



EPA: Ontario Environmental Protection Act  
OWRA: Ontario Water Resources Act

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## PROVINCIAL PROSECUTION

### MORE SERIOUS OFFENCES


**Examples:**

- Poses a risk to an adverse effect
- Failure to comply with an order
- Obstruction of a provincial officer
- Failure to comply with an approval or permit
- May pose a risk of impairment of the quality of water
- Providing false information to a provincial officer



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## EPA AND OWRA (PROVINCIAL) PROSECUTION


### MORE SERIOUS OFFENCES

	Corporation		Individual	
	Not less than	Not more than	Not less than	Not more than
<b>First offence</b>	\$25,000	\$6M	\$5,000	\$4M
<b>Second offence</b>	\$50,000	\$10M	\$10,000	\$6M
<b>Subsequent offences</b>	\$100,000	\$10M	\$20,000	\$6M
<b>Jail Terms</b>	N/A		N/A	Up to 5 years




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# ENVIRONMENTAL PENALTIES LEGISLATION OVERVIEW "EPS"

O. REG. 222/07 AND O. REG. 223/07



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## APPLICABLE REGULATIONS

- Enabled under:
  - Environmental Protection Act (EPA) and
  - Ontario Water Resources Act (OWRA)
  
- 2 new regulations:
  - O. Reg. 222/07 under the EPA:
    - Environmental Penalties Regulation
  - O. Reg. 223/07 under the OWRA:
    - Environmental Penalties Regulation

**Almost Identical**


- EPs cannot be issued under any other legislation




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## WHAT IS AN ENVIRONMENTAL PENALTY?



- Monetary penalties that CAN be imposed by MECP when a facility “violates” *certain regulations*
- Up to \$100,000 per day per violation
- Not necessarily issued for all violations – at the discretion of the MECP Director




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## WHAT IS AN ENVIRONMENTAL PENALTY?




- EPs are “absolute liability”
  - No Due Diligence Defense!
- A contravention for which an EP is issued can ALSO be referred for Investigation which may result in prosecution
  - Double Jeopardy
- Paying an EP is not an admission of guilt for the purposes of prosecution
- EPs will be posted on the internet for public scrutiny



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## WHO DO EPS APPLY TO?

### REGULATION PERSONS

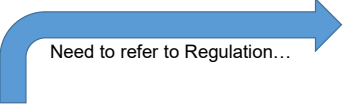
**From the EPA:**

“regulated person” means,


(a) a person who belongs to a class of persons prescribed by the regulations and who holds or is required to hold,

- (i) a certificate of approval, provisional certificate of approval, certificate of property use, license or permit under this Act, or
- (ii) an approval, license or permit under the Ontario Water Resources Act, or

(b) a corporation that belongs to a class of corporations prescribed by the regulations




Need to refer to Regulation...



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## WHO DO EPS APPLY TO?

### REGULATION PERSONS – CONT'D:

**From O. Reg. 222/07 (EP Reg)**

3. (1) For the purposes of clause (a) of the definition of “regulated person” in subsection 1 (1) of the Act, a prescribed class of persons is persons who **own** or **operate** a plant that,

- (a) Is listed in Table 1
- (b) **was** described in section 3 of Ontario Regulation 560/94 (Effluent Monitoring and Effluent Limits — Metal Mining Sector), made under the Act, **as it read immediately before it was revoked**, as a plant to which that regulation applied;




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## WHO DO EPs APPLY TO?

REGULATION PERSONS – CONT'D:

### From O. Reg. 222/07 (EP Reg)

3 (c) Discharges sewage, other than stormwater, to a surface watercourse or to a sewage works that is privately owned and is in specified sectors - examples:


- Organic and inorganic chemical
- Industrial minerals
- Electric power
- Pulp and paper
- Petroleum
- Metal casting
- Iron and steel manufacturing



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## WHEN DOES THE MECP ISSUE EPs?

Only specific contraventions related to water and land are subject to EPs, including:


- Spills
- **Limit exceedances**
- Failure to report unlawful discharges
- Failure to restore the natural environment
- Non-compliance with requirements in an ECA
  - Conditions of operation, record keeping, sampling, constructing works, etc
- Failure to comply with specific types of orders



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## WHEN DOES THE MECP ISSUE EPs?

- NOT automatic
- Compliance guideline for MECP staff to decide what “compliance tool” to use from their “tool box”:
  - “Tickets”\*
  - Warning Letter/violation notice
  - Orders (Prov. officer or Director)
  - EPs
  - Investigation/charges


*\* Ticket cannot be issued for a violation that is the subject of an EP.*



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## WHEN DOES THE MECP ISSUE EPs?

Questions MECP asks when making abatement decision:

- Is there public concern about the incident?
- Did the company disclose the incident voluntarily?
- Did the company co-operate?
- How swiftly did the company respond to the incident?
- What resources did the company expend responding to the incident?
- Was the incident the result of gross negligence and/or deliberate actions by a company?


**SUBJECTIVE**  
= Good relationship with MECP goes a long way!



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## MAGNITUDE OF EPS

- Cannot exceed \$100,000 per day per contravention
- Failure to report contraventions – multi-day penalty cannot exceed \$100,000
- Administrative Penalties cannot exceed lesser of:
  - \$60,000, or
  - value of penalty calculated up to 180 days



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## CALCULATION OF ENVIRONMENTAL PENALTIES



[REFER TO GUIDANCE DOCUMENT](#)

*Guideline for Implementing Environmental Penalties (Ontario Regulations 222/07 and 223/07)*



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## CALCULATION OF EPs

### GRAVITY/SEVERITY (TYPE AND CONSEQUENCE)

Type of Consequence	Type of Contravention		
	Type 1	Type 2	Type 3
Less Serious	\$1,000 - \$2,500	\$10,000 - \$15,000	\$15,000 - \$25,000
Serious	\$2,500 - \$5,000	\$20,000 - \$30,000	\$30,000 - \$50,000
Very Serious	\$5,000 - \$10,000	\$40,000 - \$60,000	\$60,000 - \$100,000

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## CALCULATION OF EPs

### GRAVITY COMPONENT (CONT'D)

- Refer to “Code of Toxic Substances” – if toxic, **increase by 35%** of gravity component
  - Hydrocarbons (gas, oil) are considered Toxic
  
- Multi-day component
  - Gravity x number of days (max \$100,000)

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## CALCULATION OF EPs

### DOWNWARD MODIFIERS

- Gravity component can be reduced based on:
  - Prevention measures – ▼20%
  - Mitigative measures – ▼10%
  - Implementation of an EMS that is ISO 14001 equivalent (prior to incident) – ▼5%



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## CALCULATION OF EPs

### MONETARY BENEFIT COMPONENT

- Only considered when:
  - Benefit accrued is clearly linked to legal requirement
  - Calculated benefit >\$300
- Avoided Costs
  - Conducting a sample on a particular date
  - Failing to conduct annual training required by reg.
- Delayed Costs
  - Not installing a pH meter
  - Not developing a spill prevention/contingency plan
- Calculated by MECP



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## EXAMPLE OF EP CALCULATION

### Example:

- Spill of hydraulic fluid onto a paved road (did not reach water)
- Not reported to MECP until 8 days later



EP for Spill



EP Late Report

**Total potential EP for Spill =  
\$83,795**



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## EP TIMELINES

- MECP has **1 year** to issue an EP
- “Notice of Intent” to issue EP could be received within a few days
- Type/complexity of incident will determine how quickly a final EP will be issued



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**BLUE HERON**  
ENVIRONMENTAL

## QUESTIONS?

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