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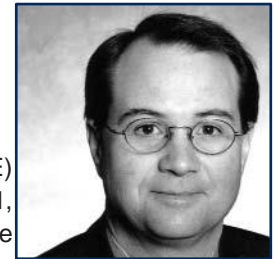
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PHASED IMPLEMENTATION OF ONTARIO ENVIRONMENTAL PENALTIES TO BEGIN AUGUST 1, 2007

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With little fanfare, in June the Ontario Ministry of the Environment (MOE) promulgated Regulations 222/07 and 223/07 which, beginning August 1, will begin the process of adding environmental penalties (EP's) to the MOE's enforcement tool kit.

In previous issues (November 2004, May 2005, and June 2005), we detailed the legislative framework for EP's. Initially, the MOE will only be able to levy EP's against MISA regulated companies and even then only in the case of major violations (spills and discharge exceedences). Beginning December 1, 2008, the MOE will apply EP's to the additional violations set out in Table 2 of the Regulations (contravention of orders, approvals, etc.).

The Regulations include the factors that should be addressed when assessing the amount of an EP:

- the seriousness of the violation
- the monetary benefit, if any, accruing to the offender for non-compliance
- the length of the violation

If the contravention arises from a spill or discharge of a toxic substance, this necessarily compounds the seriousness of the violation in the assessment (by up to 35%). However, preventative and mitigation measures and the use of an EMS at the time of the violation can diminish the seriousness of the offence by up to 35%.

Major violations, such as spills and discharges, are theoretically subject to the \$100,000.00 per day maximum. Other less serious violations such as failing to report a spill are capped at a maximum for \$100,000.00 no matter how many days the failure continues. Minor violations are capped at \$60,000.00 or the amount arising from a 180-day violation, whichever is less.

In the case of minor violations, an EP can be reduced by up to 100% through the use of settlement agreements with the MOE in which the offender would enter into an environmental project to take it to compliance and beyond. Settlement agreements may also be used for major violations but can only reduce the size of the EP by 75%.

Although the EP regulations apply only to the 148 facilities regulated within the nine MISA sectors, there is nothing preventing the MOE in the future from expanding the application of EP's to other regulated industries within Ontario. If EP's provide for an efficient and economical way for enforcement, that is expected by most.

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At the same time the EP Regulations were promulgated, the MOE also released Regulation 224/07 which requires MISA regulated companies to develop and implement spill prevention and contingency plans by September 1, 2008 or the first date the plant is in operation if it is later than September 1, 2008. The MOE also amended its regulation concerning the classification and exemption of spills, formalizing the requirements for spill notification.

With even less fanfare, in May the MOE enacted the *Regulatory Modernization Act* (Bill 69). It provides the framework by which Provincial Officers may be authorized to use the inspection powers in legislation other than that in which they are primarily engaged in enforcing. For example, a duly authorized inspector with the Ministry of Labour may be able to inspect an establishment pursuant to the inspection powers found in the environmental statutes and, in some cases, take steps to address contraventions the inspector observes during the inspection. Regulations are expected later this year which will set out which Ministries may be engaged in the process of "inspector-sharing".

One has to look at the environmental penalty provisions in conjunction with Bill 69. The provincial government is obviously looking for the most cost-effective manner of enforcing its numerous regulatory statutes. If the EPs and "inspector-sharing" work, one can only anticipate to see more of the same in the future.