



MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents



ENVIRONOTES!

May 2005

Environmental Solutions
for Business

BILL 133 LIKELY TO BE AMENDED

Bruce McMeekin
Markham
905.415.6791
mcmeeekin@millerthomson.ca



There have been a number of recent developments on Bill 133 (on which we reported last fall).

Not surprisingly, the Bill ran into steep opposition from industry concerned with the plan to expand the scope of directors' and officers' liability and the proposed introduction of environmental penalties which would not permit due diligence/all reasonable care as a defence.

In response, the Minister of the Environment released the Report of the Environmental SWAT Team in March 2005 concerning the SWAT Team's Sarnia Inspection Sweep. After a number of chemical spills into the St. Clair River, the Minister directed SWAT to conduct a comprehensive series of inspections of industrial and petro-chemical facilities operating in the Sarnia area. The sweep began in February 2004 and focused on the inspection of areas with the potential for future spills that could pose risks to the natural environment. Thirty-five facilities were inspected, and thirty-four of the thirty-five were found to be in non-compliance, with deficiencies which included:

- No spill contingency and/or spill prevention plans;
- Not having a Certificate of Approval for waste water collection and treatment works or air emission control equipment;
- Altering equipment, systems, processes or structures contrary to the existing certificates of approval; and
- Improper chemical handling, storage and identification.

A number of provincial officer's orders were issued to address these deficiencies. Some matters were referred to the Ministry's Investigation and Enforcement Branch for possible follow-up enforcement action.

The Minister was quick to link the Report and its results to Bill 133. In a speech to the Ontario Chamber of Commerce at its annual meeting in Sarnia on April 30, the Minister made reference to the proposed environmental penalty provisions in Bill 133 as one of a number of avenues the provincial government is pursuing towards the objective of better industrial pollution prevention.

As a further response to industry concerns, the government took the unusual step, prior to second reading, of scheduling the Bill for hearings before the Standing Committee on the Legislative Assembly. In her opening remarks to the Committee on May 12, the Minister stated that the government intended to table amendments to the Bill that will provide for the following:

- Only directors, not inspecting provincial officers, will be able to issue environmental penalties;
- Environmental penalties will be imposed only on corporations and not individuals;

Inside

Bill 133 Likely To Be Amended

Contaminated Sites - Inheriting
the Sins of the Past Through
Amalgamation

Canada's Kyoto Plan

A Green 2005 Federal Budget

Ontario Ministry of the
Environment Releases for
Public Comment its Proposed
Draft General Air Pollution
Regulation

Ontario's Review of the
Environmental Regime

- Payment of an environmental penalty will not be admissible in a prosecution as an admission of guilt;
- Spill prevention/remediation will be considered a mitigating factor as to the size of an environmental penalty;
- Payment of an environmental penalty should be considered a mitigating factor on the size of fine imposed in a prosecution; and
- Some industries will be required to prepare spill contingency prevention plans.

The government does not intend to introduce amendments that will permit reasonable care as a full defence on the merits of a notice requiring payment of an environmental penalty. It will be a relevant consideration only to the size or quantum of the penalty.

We understand that motions to amend the Bill will be brought forward very shortly and that the government intends to enact the Bill before the legislature rises in June for its summer recess.

We will report shortly on the details of the amended legislation.