

ONTARIO: DRAFT ENVIRONMENTAL PENALTY REGULATIONS RELEASED FOR PUBLIC COMMENT

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The draft regulations and guidance documents have been posted on the Environmental Registry (http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/RA06E0013.htm) and are available for public review and comment until January 12, 2007.

In the November 2004 and May 2005 issues of *EnviroNotes*, we summarized the unproclaimed environmental penalty (EP) provisions contained in Bill 133. The MOE proposes to bring the regulations into force in two phases. In phase one, anticipated for the spring of 2007, EP orders will be issued in relation to unlawful discharges to water or land. The second phase, anticipated for late in 2008, will permit the issue of EP orders for violations relating to constructing works, conditions of operation, sampling, reporting and record keeping. All of the violations subject to enforcement via EP orders will be restricted to activity regulated through the Municipal Industrial Strategy for Abatement (MISA), with the possibility of expansion into other sectors later.

The draft regulations set out the manner in which the amount of an environmental penalty should be calculated. It is proposed that the penalty amount will be a function of the benefit accruing to the offender and the gravity of the violation. Violations involving toxic substances will be considered more serious. Toxic substances will include those listed in Schedule I under the federal *Environmental Protection Act* in addition to those which meet the “ecological” and the “human health” criteria used by Environment Canada and Health Canada under the Domestic Substances List.

The draft regulations provide for the reduction in the size of the penalty if the offender took steps to prevent and/or mitigate the violation and its impacts or it had in place an environmental management system at the time of the violation. Also included are the mechanics of settlement agreements by which a regulated person can obtain a reduction in the size of a penalty if it takes steps to minimize the risk of a future discharge of a contaminant.