



ENVIRONMENTAL & POLLUTION LIABILITY

Environmental fines and penalties can be costly: Are you prepared?

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Public awareness and concern for the fragility of our natural environment has heightened in recent years. In response, legislation to protect the environment has been introduced at all levels of government in Canada, with fines and penalties for environmental infractions. It is important that business owners be aware of the environmental risks posed by their businesses, given that in some cases the assessment of fines and penalties has been as high as \$300,000.

The list of environmental legislation in Canada is lengthy: the Federal Government has imposed the *Canadian Environmental Protection Act* along with the *Fisheries Act* and *Transportation of Dangerous Goods Act*; the Provinces and Territories each have their own environmental protection acts and clean water acts; and even some municipalities have had environmental powers delegated to them. Businesses that fail to comply with this profusion of regulations may be hit with fines and penalties from each level of government.

But, there is a way that business owners can protect themselves. Did you know that assessed fines and penalties can be covered under a Victor Environmental Liability policy if they result from an insurable claim for third party bodily injury or property damage?

Consider the following Canadian legal cases:

Clark Builders/EPCOR Utilities

The Royal Glenora Club in Edmonton, Alberta, hired Clark Builders to construct a new aquatic centre. During construction, a water main owned by EPCOR utilities, was moved to an area believed to be outside of the proposed building area. The new location, however, was not marked out on the site, and when the piling subcontractor arrived and began drilling for the foundation installation, they struck and ruptured the water main. This led to the discharge of approximately 12 million litres of chlorinated water into the nearby North Saskatchewan River, which is a diverse natural fish habitat. Following the accident, the water in the river was found to contain a chlorine content 3,900 times greater than permissible.

As a result, Clark Builders was charged under section 36(3) of the *Fisheries Act* and ordered to pay a total penalty of \$285,000. This penalty consisted of a \$15,000 fine and \$270,000 payable to the Environmental Damages Fund, which will be used for the purpose of conserving and protecting fish and fish habitat in Alberta.

Norellco Contractors Ltd.

During a water main replacement project in St. Albert, Alberta, employees using a track-hoe inadvertently struck a high-pressure water main pipe. The ruptured pipe caused nearly 90,000 litres of chlorinated drinking water to release into the excavation site, which subsequently overflowed into the nearby Sturgeon River. Approximately one week later, a second water main pipe was struck at the project site by an employee of Norellco Contractors which resulted in a second overflow of chlorinated water into the Sturgeon River. Following the rupture of the second pipe, Environment and Climate Change (previously known as Environment Canada) conducted an investigation and found that water samples taken in the vicinity of the accident had chlorine concentrations that were acutely lethal to fish.

As a result, Norellco Contractors was fined \$185,000, with \$5,000 payable under the *Fisheries Act* and \$180,000 payable to the Environmental Damages Fund.





R. V. Van Waters & Rogers Ltd.

An employee of Van Waters & Rogers, a chemical distributor in Calgary, Alberta, who routinely filled tanker cars for transportation, inadvertently reversed the hoses on some pumping equipment which led to a tanker being overfilled. A total of 18,000 litres of xylene, a chemical solvent, was spilled onto the surrounding property. Some of the spilled xylene was absorbed into the ground, but some also made its way into a nearby catch basin connected to the municipal sewer system. In fact, a city employee detected xylene in the sewer system as far as 18 blocks from the spill site.

Following the accident, Van Waters & Rogers undertook \$70,000 in upgrades to their facility to reduce the risk of future spills from occurring. Notwithstanding this, a fine of \$80,000 was levied against Van Waters & Rogers under section 220(1) of the Alberta Government's *Environmental Protection and Enhancement Act*.

Rentokil Pest Control Canada Ltd.

A public school in Ottawa was experiencing pest control problems and, subsequently, hired Rentokil Pest Control to apply pesticides several times using a variety of products. Approximately 340 students attended the public school, which also housed an on-site daycare. Over a weekend, the pest control company applied two different pesticides in the affected areas. On the following Monday, staff and students reported strong odours as well as itching, watery/itching eyes, sore throats, dizziness and headaches. By Wednesday, the odours persisted. Some students were moved to different areas of the school while the school's staff attempted to increase ventilation. School staff also scrubbed and cleaned the areas where pesticides had been sprayed. Despite these actions, staff and students continued to report symptoms, resulting in closure of the school for a little over 30 days.

Ottawa Public Health was notified and they contacted the Ministry of the Environment and Climate Change. The Ministry determined that Rentokil Pest Control did not apply the pesticide in accordance with the label, which resulted in impairment to the environment, material discomfort and adverse effects to the health of staff and students. Rentokil Pest Control was convicted under the *Pesticides Act*. A fine of \$130,000 plus a victim fine surcharge of \$32,500 was assessed by the Ministry of the Environment and Climate Change against Rentokil Pest Control.

Lessons learned

Victor's Environmental Liability policies will pay for "civil fines, penalties or assessments with respect to CLAIMS for BODILY INJURY or PROPERTY DAMAGE which the INSURED is legally obligated to pay." This is part of the definition of LOSS in our wordings. In either of the examples cited, it is likely that the defendants would have been entitled to coverage for the fines imposed upon them had they been insured with a Victor Environmental Liability policy.

Of course, coverage for government fines and penalties isn't the only reason that a business owner should purchase environmental liability insurance. There are a myriad of complex legal issues, as well as regulatory and contractual requirements that are making environmental liability coverage part of the standard insurance portfolio that any industrial enterprise should carry.

Knowing this, can you afford not to protect your business from the risk of fines and penalties from environmental infractions?

Learn more about our [Environmental & Pollution Liability program](#) or contact one of [our underwriters](#) for assistance.

Visit us at victorinsurance.ca/environmental to learn more.

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