

TAB 4



## **The Six-Minute Environmental Lawyer 2014**

### **Directors' and Officers' Liability for Environmental Orders and Penalties – Table of Citations and Precedents**

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**Mark Madras, C.S., *Gowling Lafleur Henderson LLP***

October 22, 2014

## **Directors' and Officers' Liability for Environmental Orders and Penalties**

### **Table of Citations**

#### **Environmental Statutes**

##### **Federal:**

*Canadian Environmental Protection Act, 1999*, SC 1999, c 33, ss 95, 212, 235, and 280

*Fisheries Act*, RSC, 1985, c F-14, ss 38, 42, 78.2 and 80

*Transportation of Dangerous Goods Act, 1992*, SC 1992, c 34, ss 18, 19, and 39

##### **Provincial (Ontario):**

*Environmental Protection Act*, RSO 1990, Chapter E 19, ss 7, 8, 17, 18, 43, 44, 93, 97, 99, 124, 157.1(1), 192 and 194

*Ontario Water Resources Act*, RSO 1990, Chapter O.40, ss 16.1(1), 32, 33.1 (not yet proclaimed into force), 84, 92, 112.1, and 116

*Toxics Reduction Act, 2009*, SO 2009, Chapter 19, ss 27, 30 (not yet proclaimed into force), 31, and 44(6)

##### **Municipal:**

City of Toronto, by-law, *Toronto Municipal Code, Chapter 681, Sewers*, ss 681-9, 681-14, 681-14.1, 681-14.2

#### **Cases**

*Baker v Director, Ministry of the Environment* (Feb 15, 2013), 2013 CarswellOnt 1931, reasons at 2013 CarswellOnt 6508 (OERT)

*Baker v Director, Ministry of the Environment* (Oct 13, 2013) 2013 CarswellOnt 15791 (OERT)

*Baker v Director, Ministry of the Environment* (Dec 2, 2013), 2013 CarswellOnt 18030 (OERT)

*Caltex Petroleum Inc. v Ontario (Director, Ministry of Environment & Energy)*, 1995 CarswellOnt 5348 (OEAB)

*Currie v Ontario (Director, Ministry of the Environment)*, 60 CELR (3) 91, 2011 CarswellOnt 5580 (OERT)

*General Chemical Canada Ltd., Re*, 2007 ONCA 600

*General Chemical Canada Ltd. v Director, Minister of Environment* (2008), 07-122 (OERT)

*General Chemical Industrial Products Inc. v Ontario (Director, Ministry of the Environment)*, 2009 CarswellOnt 1077 (OERT)

*Northstar Aerospace Inc., Re*, 2013 ONCA 600, 2013 CarswellOnt 13653

*R v Varnicolor Chemical Ltd.* (1992), 9 CELR (NS) 176 (Ont Prov Div)

*R v Shamrock Chemicals Ltd.* (1989), 4 CELR (NS) 315, 1989 CarswellOnt 209 (Ont Dis Ct)

*R v Henneberry*, 2009 NSSC 95, 2009 CarswellNS 176

*R v Rogo Forming Ltd.*, [1980] OJ No 3938, 1980 CarswellOnt 1423 (ONCJ Prov Div)

*R v Bata Industries Ltd.* (1992), 9 OR (3d) 329 (Prov Div), sentence varied on appeal (1993), 14 OR (3d) 354 (Gen Div) varied (1995) 25 OR (5d) 321 (ONCA)

*R v Sinclair's Landing Inc.*, 99 WCB (3d) 39, 2011 CarswellOnt 15507 (ONCJ)

*Re 724597 Ontario Ltd.* (1994), EAB File 00270.AI, 13 CELR (NS) 257, 1994 CarswellOnt 333 (OEAB), affirmed (1995) 19 CELR (NS) 137, 26 OR (3d) 423, 1995 CarswellOnt 977 (Div Ct)

1A



Ontario

Ministry of the  
Environment

Ministère de  
l'Environnement

## Provincial Officer's Order

Environmental Protection Act, R.S.O. 1990, c.E 19 (EPA)  
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)  
Pesticides Act, R.S.O. 1990, c. P11 (PA)  
Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)  
Nutrient Management Act, 2002, S.O. 2002, c.4

Order Number  
1670-73VRQJ

Incident Report No.  
6318-6VCRJ8

To:

[REDACTED]

[REDACTED]

Site:

[REDACTED]

Pursuant to my authority under EPA Section 157, I order you to do the following:

### Work Ordered

**Item No. 1**

**Compliance Date** 2007/08/01

The company is to be registered in the Ministry's HWIN system as generator of waste for all subject waste on site.

**Item No. 2**

**Compliance Date** 2007/08/01

The company is to provide a subject waste storage report to the North Bay office of the Ministry of Environment for all waste on site.

**Item No. 3**

**Compliance Date** 2007/10/01

All off-spec product on-site, including the material in barrels/drums and within storage tanks 18 and 19 is to be removed from the site.

**Item No. 4**

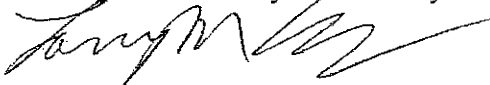
**Compliance Date** 2007/10/01

All waste including; photographic materials and unknown materials in building number 4 "silver building", hydrochloric acid in building number 5 "cold storage", the lab chemicals in building number 8, copper and iron baring material in building number 9, the copper etchant on the second floor of building number 10, copper baring material in building number 10, and the garbage in building number 12 "substation" is to be disposed of at approved waste disposal site(s).

- A. While this Order is in effect, a copy or copies of this order shall be posted in a conspicuous place.
- B. While this Order is in effect, report in writing, to the District or Area office, any significant changes of operation, emission, ownership, tenancy or other legal status of the facility or operation.

This Order is being issued for the reasons set out in the annexed Provincial Officers Report which forms part of this Order.

Issued at North Bay this 8th day of June, 2007.



Larry McCormack  
Badge No: 514  
North Bay Area Office  
Tel: (705) 497-6938



Ontario

Ministry of  
the Environment

Ministère de  
l'Environnement

## Provincial Officer's Report

Order Number  
1670-73VRQJ

[REDACTED]

[REDACTED]

### Site

[REDACTED]

### Observations

On 2007/06/06, I visited the above site(s) and made the following observations:  
Site visit was undertaken with [REDACTED] who advises he is only on-site 5 hrs/week and will no longer be working as of next week. During the visit barrels containing unidentified liquid were noted to be stored outside without containment. [REDACTED] advises that most of the barrels have been emptied into 2 storage tanks within containment area number 19. However, some 200 barrels remain outside. Many of these barrels show signs of damage and staining of the soil around them is evident.

Additional barrels of unknown and waste materials are stored around the site. Many barrels are in decrepit condition with partial or complete failure. The buildings on site provide little protection from the elements as they are unheated, with leaking roofs, and many have windows and doors missing. Further, the site is equipped with an underdrain system which discharges to a ditch which ultimately discharges to the [REDACTED] River.

The following building numbers are as described in the drawing by [REDACTED] Sept. 20, 1996 [REDACTED] and named per on-site personnel.

Building Number 4 "silver building" barrels of solid waste are stored.

Building Number 5 "cold storage" barrels of hydrochloric acid are stored.

Building Number 8 lab chemicals/reagents are stored.

Building Number 9 contains copper and iron baring material in open barrels. This material is highly oxidized and on-site personnel advise it could not be used in the circuit and is waste. Many of these barrels have filled with rainwater which has become contaminated.

Building Number 10 has copper etchant stored on the second floor. These containers are corroded with many failing.

Building Number 10 on the main floor also contains copper baring material.

Building Number 11 "carpenter shop" outside are five 45 gallon drums identified as containing solutions from laboratory building. Suspected to be mercury contaminated ferrous chloride which originally was stored in the laboratory.

Building Number 12 "substation" contains what appears to be mostly commercial/domestic type waste generated from current dismantling operations at the site.

As above, within containment area 19 two tanks contain off-spec product.

Within containment area number 18 the green tank contains material pumped out of containment area 19 from leaking tanks.

Further to this site visit, an inspection of the facility was undertaken by Mr. Frank Driscoll of this office on November 4, 2006 in the presence of [REDACTED] acting on behalf of [REDACTED] the registered owner of the property. The inspection report and covering letter was sent to [REDACTED] the attention of [REDACTED]. The inspection report required;

1. That all subject waste stored on site be registered per Ontario Regulation 347 by December 15, 2006. This has not been done.
2. Ensure that all waste are identified and stored in an environmental secure manner by December 15, 2006. This has not been done.
3. Advise the Ministry of the whereabouts of drums of waste ferric sulfate containing mercury that were previously stored in the laboratory by November 30, 2006. This has not been done.
4. Dispose of all subject wastes at an approved waste disposal site(s) and process all remaining copper etchant by September 15, 2007. Compliance pending.
5. Submit monthly progress reports by the 15 of each month following December 15, 2006. This has not been done

It is my opinion that the given the lack of voluntary compliance by the company the continued storage of any waste at this facility constitutes an undue risk to the natural environment and should be removed. Further, due to the decrepit nature of the buildings and many containers, the lack of on-site personnel, the underdrain system discharging to the [REDACTED] River and the lack of any on-site processing it is my opinion that all material including liquid and solid raw materials, saleable product, and off-spec product should be removed from the site.

Offence(s)

Suspected Violation(s)/Offence(s):

Act - Regulation - Section,  
Description

{General Offence}

1) EPA - Reg. 347 - 18(11),

Subject to ss. 18(14.1), every generator who transfers subject waste to a waste transportation system shall orally report to the Director or transferred subject waste that the generator is not able, within four weeks, to confirm was delivered to the intended receiving facility or to another receiving facility approved to accept the waste.

{186(1)}

2) EPA - Reg. 347 - 18 (1)(b),

Every generator who operates a waste generation facility that is involved in the production, collection, handling or storage of subject waste shall, on or before February 15 in each year, submit an annual Generator Registration Report to the Director in respect of each waste generation facility operated by the generator.

{186(1)}

3) EPA - Reg. 347 - 18(10),

When any subject waste is retained at a waste generation facility for a period longer than three months, the generator, unless there is a disposal site certificate of approval or provisional certificate of approval in respect of the facility, shall submit a report to the Regional Director of the Ministry within five business days after the three month period which report shall comply with the Manual and shall include the name and waste number of the waste, the quantity involved, the manner in which it is stored, the reasons for the retention and the anticipated date and manner of disposal of the waste.

{186(1)}

4) EPA - 194 (1),

Every director or officer of a corporation that engages in an activity that may result in the discharge of a contaminant into the natural environment contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.

{186 (1)}



Larry McCormack

Provincial Officer

Badge Number: 514

Date: 2007/06/08

District Office: North Bay Area Office





# INFORMATION DÉNONCIATION

ONTARIO COURT OF JUSTICE  
COUR DE JUSTICE DE L'ONTARIO  
PROVINCE OF ONTARIO  
PROVINCE DE L'ONTARIO  
North Region

Under Section 23 of the *Provincial Offences Act*  
En vertu de l'article 23 de la *Loi sur les infractions provinciales*

Form / Formule 105  
*Courts of Justice Act*  
Loi sur les tribunaux judiciaires

R.R.O. / L.R.O. 1990  
O.Reg. / Règl. de l'Ont. O. 200

This is the information of Chris Ducharme  
Dénonciation déposée par

of Ministry of the Environment  
de

Provincial Officer  
(occupation / profession)

I have reasonable and probable grounds to believe and do believe that / J'ai des motifs raisonnables de croire et je crois effectivement que

[REDACTED]  
(name / nom)

during the period beginning on or about / pendant la période débutant le ou vers le 16th day of / jour de February, yr. / an 2007 and  
ending on or about / et terminant le ou vers le 25th day of / jour de September, yr. / an 2007,

at [REDACTED]  
à (location / lieu)

did commit the offence of  
a commis l'infraction de

☐ failing to submit an annual Generator Registration Report to the Director, on or before February 15, 2007,

Sec.18 (1)(b) of Regulation 347 as amended, made under the  
contrary to Environmental Protection Act, R.S.O. 1990, c. E.19, as amended section 186(1) of the said Act.  
contrairement à (au) article

2) AND FURTHER THAT, [REDACTED] during the period beginning on or about August 2, 2007 and  
ending on or about October 5, 2007 at [REDACTED] did commit the offence of failing to comply with  
item 1 of Provincial Officer Order number 1670-73VRQJ, by failing to register in the Ministry's HWIN system as a generator of waste for  
all subject waste on site by August 1, 2007, contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as  
amended, thereby committing an offence under the said Act.

3) AND FURTHER THAT, [REDACTED] during the period beginning on or about August 2, 2007 and  
ending on or about February 19, 2008 at [REDACTED] did commit the offence of failing to comply with  
item 2 of Provincial Officer Order number 1670-73VRQJ, by failing to provide a subject waste storage report to the North Bay Area  
Office of the Ministry of the Environment for all waste on site by August 1, 2007, contrary to Sec.186 (2) of the *Environmental Protection*  
*Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under the said Act.

4) AND FURTHER THAT, [REDACTED] during the period beginning on or about October 2, 2007 and  
ending on or about October 5, 2007 at [REDACTED] did commit the offence of failing to comply with  
item 3 of Provincial Officer Order number 1670-73VRQJ, by failing to remove all off-spec product on site, including the material in  
barrels/drums and within storage tanks 18 and 19 by October 1, 2007, contrary to Sec.186 (2) of the *Environmental Protection Act*,  
R.S.O. 1990, c. E.19, as amended, thereby committing an offence under the said Act.

5) AND FURTHER THAT, [REDACTED] during the period beginning on or about October 2, 2007 and  
ending on or about October 5, 2007 at [REDACTED] did commit the offence of failing to comply with  
item 4 of Provincial Officer Order number 1670-73VRQJ, by failing to dispose of all waste including photographic materials and  
unknown materials in building number 4 "silver building", hydrochloric acid in building number 5 "cold storage", copper bearing material  
in building number 10, and the garbage in building number 12 "substation" at approved waste disposal site(s) by October 1, 2007,  
contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under  
the said Act.



ONTARIO COURT OF JUSTICE  
NORTHERN REGION

BETWEEN:

HER MAJESTY THE QUEEN

Prosecutor

- and -

[REDACTED]

Defendants

ORDER

Made under Section 190  
of the *Environmental Protection Act*,  
R.S.O. 1990, c. E.19, as amended ("Act")

ON THE APPLICATION this day of the Prosecutor, Her Majesty the Queen, and with consent of the Defendants:

AND UPON THE CONVICTION of the Defendants on the 14<sup>th</sup> day of September, 2012 in the Ontario Court of Justice at North Bay, for the offence, occurring on or about February 16, 2007 and ending on or about September 25, 2007 at [REDACTED], of failing to submit an annual Generator Registration Report to the Director, on or before February 15, 2007, contrary to s. 18(1)(b) of Regulation 347, as amended, made under the Act, thereby committing an offence under s. 186(1) of the Act.

AND UPON THE CONVICTION of the Defendants on the 14<sup>th</sup> day of September, 2012 in the Ontario Court of Justice at North Bay, for the offence, occurring on or about August 2, 2007 and ending on or about October 5, 2007 at [REDACTED], of failing to comply with Item No. 1 of Provincial Officer Order No. 1670-73VRQJ by failing to register in the Ministry's HWIN system as a generator for waste for all subject waste on site by August 1, 2007, contrary to s.186(2) of the Act, thereby committing an offence under the Act.

AND UPON THE CONVICTION of the Defendants on the 14<sup>th</sup> day of September, 2012 in the Ontario Court of Justice at North Bay, for the offence, occurring on or about August 2, 2007 and ending on or about February 19, 2008, at [REDACTED], of failing to comply with Item No. 2 of Provincial Officer Order No. 1670-73VRQJ by failing to provide a subject waste storage report to the North Bay Area Office of the Ministry of the Environment for all waste on site by August 1, 2007 contrary to s.186(2) of the Act, thereby committing an offence under the Act.

AND UPON THE CONVICTION of the Defendants on the 14<sup>th</sup> day of September, 2012 in the Ontario Court of Justice at North Bay, for the offence, occurring on or about October 2, 2007 and ending on or about October 5, 2006, at [REDACTED] of failing to comply with Item No. 3 of Provincial Officer Order No. 1670-73VRQJ by failing to remove all off-spec product on site, including the material in barrels/drums and within storage tanks 18 and 19 by October 1, 2007, contrary to s. 186(2) of the Act, thereby committing an offence under the Act.

AND UPON THE CONVICTION of the Defendants on the 14<sup>th</sup> day of September, 2012 in the Ontario Court of Justice at North Bay, for the offence, occurring on or about October 2, 2007 and ending on or about October 5, 2006, at [REDACTED] of failing to comply with Item No. 4 of Provincial Officer Order No. 1670-73VRQJ by failing dispose of all waste including photographic materials and unknown materials in building number 4 "silver building", hydrochloric acid in building number 5 "cold storage", copper bearing materials in building number 10, and the garbage in building number 12 "substation" at approved waste disposal sites(s) by October, 2007, contrary to s. 186(2) of the Act, thereby committing an offence under the Act.

THIS COURT ORDERS THAT:

1. [REDACTED] shall process, remove and/or dispose of all copper and silver bearing materials stored at [REDACTED], locally known as [REDACTED] (hereinafter "the Site") to a facility licensed to accept and /or process such material for recycling or disposal by **December 15, 2012**;
2. [REDACTED] shall remove and dispose of all waste at the Site including but not limited to: used filter bags, laboratory chemicals, waste oils and lubricants to a facility licensed to accept the waste by **December 15, 2012**;
3. [REDACTED] shall process all remaining liquid material at the Site and have the processed material removed to a facility licensed to utilize or accept the material for recycling or disposal by **June 30, 2013**;
4. [REDACTED] shall remove and dispose of all residual material generated from the processing of the liquid material at the Site to a facility licensed to accept them for recycling or disposal by **June 30, 2013**; and

5. [REDACTED] shall dispose of all other subject waste materials which are not listed in items #1, #2, #3 and #4 of this Order to a facility licensed to accept them for recycling or disposal by June 30, 2013.

ORDERED at North Bay, this 14<sup>th</sup> day of September, 2012

  
Justice of the Peace

SAMPLE



4

INFORMATION  
DÉNONCIATION

ONTARIO COURT OF JUSTICE  
COUR DE JUSTICE DE L'ONTARIO  
PROVINCE OF ONTARIO  
PROVINCE DE L'ONTARIO  
North East Region

Under Section 23 of the *Provincial Offences Act*  
En vertu de l'article 23 de la *Loi sur les infractions provinciales*

Form / Formule 105  
Courts of Justice Act  
Loi sur les tribunaux judiciaires

R.R.O. / L.R.O. 1990  
O.Reg. / Règl. de l'Ont. O. 200

This is the information of Angela Allen  
Dénonciation déposée par

of Ministry of the Environment  
de

Provincial Officer  
(occupation / profession)

I have reasonable and probable grounds to believe and do believe that / J'ai des motifs raisonnables de croire et je crois effectivement que

[REDACTED]

1) during the period beginning on or about December 16, 2012 and ending on or about July 3, 2013 at [REDACTED] locally known as the [REDACTED] in the Province of Ontario did commit the offence of failing to comply with a court order under this Act, to wit, by failing to process, remove and/or dispose of all copper and silver bearing materials stored at the [REDACTED] to a licensed facility, as ordered by item # 1 of the Order issued by Justice of the Peace Kitlar on September 14, 2012 at North Bay contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under Sec. 186(2) of the said Act.

2) AND FURTHER THAT, [REDACTED] during the period beginning on or about December 16, 2012 and ending on or about July 3, 2013 at [REDACTED] locally known as the [REDACTED] did commit the offence of failing to comply with a court order under this Act, to wit, by failing to remove and dispose of all waste at the [REDACTED] including, but not limited to, used filter bags, laboratory chemicals, waste oils and lubricants to a licensed facility, as ordered by item #2 of the Order issued by Justice of the Peace Kitlar on September 14, 2012 in North Bay contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under Sec. <186(2) of the said Act.

3) AND FURTHER THAT, [REDACTED] during the period beginning on or about July 1, 2013 and ending on or about July 3, 2013 at [REDACTED] locally known as the [REDACTED] in the Province of Ontario did commit the offence of failing to comply with a court order under this Act, to wit, failing to process all remaining liquid material and have the processed material removed from the Cobalt Refinery site to a licensed facility, as ordered by item # 3 of the Order issued by Justice of the Peace Kitlar on September 14, 2012 in North Bay contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under Sec. 186(2) of the said Act.

4) AND FURTHER THAT, [REDACTED] during the period beginning on or about July 1, 2013 and ending on or about July 3, 2013 at [REDACTED] locally known as the [REDACTED] commit the offence of failing to comply with a court order under this Act, to wit, failing to remove and dispose of all residual material generated from the processing of the liquid material at the [REDACTED] to a licensed facility, as ordered by item #4 of the Order issued by Justice of the Peace Kitlar on September 14, 2012 in North Bay contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under Sec. 186(2) of the said Act.

5) AND FURTHER THAT, [REDACTED] during the period beginning on or about July 1, 2013 and ending on or about July 3, 2013 at [REDACTED] locally known as the [REDACTED] the Province of Ontario did commit the offence of failing to comply with a court order under this Act, to wit, disposing of all other subject waste materials which are not listed in items #1, #2, #3 and #4 of the court order to a licensed facility, as ordered by item #5 of the Order issued by Justice of the Peace Kitlar on September 14, 2012 in North Bay contrary to Sec.186 (2) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, thereby committing an offence under Sec. 186(2) of the said Act.