

BILL C-16: ENVIRONMENTAL ENFORCEMENT ACT

Penny Becklumb
Industry, Infrastructure and
Resources Division

1 April 2009
Revised 19 June 2009



Library of
Parliament
Bibliothèque
du Parlement

**Parliamentary
Information and
Research Service**

LEGISLATIVE HISTORY OF BILL C-16

HOUSE OF COMMONS

Bill Stage	Date
------------	------

First Reading:	4 March 2009
Second Reading:	25 March 2009
Committee Report:	8 May 2009
Report Stage:	12 May 2009
Third Reading:	13 May 2009

SENATE

Bill Stage	Date
------------	------

First Reading:	14 May 2009
Second Reading:	27 May 2009
Committee Report:	11 June 2009
Report Stage:	
Third Reading:	16 June 2009

Royal Assent: **18 June 2009**

Statutes of Canada **2009, c. 14**

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

CONTENTS

	Page
BACKGROUND	1
DESCRIPTION AND ANALYSIS	3
A. Amendments to Nine Existing Environmental Statutes.....	3
1. Penalties for Environmental Offences	5
2. Additional Provisions Related to Sentencing Environmental Offenders.....	8
a. Disgorging Benefits	8
b. Notifying Shareholders and Others.....	9
c. Directors' and Officers' Liability	9
d. Guidance for Sentencing.....	10
e. Sentencing Principles.....	10
f. Cumulative Fines	11
g. Surrendering and Prohibiting Permits or Licences	11
h. Compensating Aggrieved Persons	11
i. Seizure: Liability of Owner	12
j. Additional Punishments	12
k. Environmental Damages Fund.....	14
l. Procedural Provisions	14
m. Suspended Sentences	15
n. Limitation Period	15
o. Public Registry	15
p. Ministerial Review	16
3. Environmental Protection Compliance Orders	16
a. Review Procedure	17
4. Provisions Relating to Enforcement Officers, Analysts, etc.....	18
a. Designation	18
b. Analysts.....	18
c. Access to Property and Information	18
d. Immunity	19
5. Provisions Related to a Conveyance or Vessel.....	19
a. Directing a Conveyance or Vessel.....	19
b. Prosecuting a Vessel	19
c. Directors and Officers of a Vessel's Owner	20
d. Liability of the Master, Owner, Operator and Chief Engineer of a Vessel	20

	Page
6. Amendments Specific to a Single Act	20
a. <i>Antarctic Environmental Protection Act</i>	20
b. <i>Canada National Parks Act</i>	20
c. <i>Canadian Environmental Protection Act, 1999</i>	24
d. <i>International River Improvements Act</i>	24
e. <i>Migratory Birds Convention Act, 1994</i>	26
f. <i>Saguenay-St. Lawrence Marine Park Act</i>	26
g. <i>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act</i>	27
7. Housekeeping Amendments	28
a. Clarifying Existing Language	28
b. Adjusting the French Version	28
c. Providing for Regulations	29
B. Enactment of the Environmental Violations Administrative Monetary Penalties Act ("EVAMP Act").....	29
1. Provisions.....	29
a. General	29
b. Designating Violations.....	30
c. Proceeding with a Violation.....	30
d. Liability	30
e. Vicarious Liability	31
f. Amount of an AMP.....	31
g. Defences.....	31
h. Timing.....	31
i. Miscellaneous	32
j. Procedure	32
k. Reviews.....	32
C. Coming Into Force	33
COMMENTARY	33
A. Environmental Statutes Not Amended.....	33
B. Increasing Penalties and Strengthening Enforcement.....	34
C. Compliance with International Commitments	37
D. Strict Liability and Terms of Imprisonment	38



CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-16: ENVIRONMENTAL ENFORCEMENT ACT*

BACKGROUND

Bill C-16, An Act to amend certain Acts that relate to the environment and to enact provisions respecting the enforcement of certain Acts that relate to the environment, was introduced in the House of Commons by the Minister of the Environment, the Honourable Jim Prentice, and received first reading on 4 March 2009. It was amended by the Standing Committee on Environment and Sustainable Development **before being** passed in the House of Commons on 13 May 2009. **The Senate did not amend the bill further, but the Standing Committee on Energy, the Environment and Natural Resources made observations.⁽¹⁾ The bill received Royal Assent on 18 June 2009.**

The short title is the Environmental Enforcement Act. The bill amends nine existing environmental statutes administered by Environment Canada and Parks Canada, and it creates a new Act called the Environmental Violations Administrative Monetary Penalties Act.

Bill C-16 makes a number of changes to Canada's environmental enforcement scheme, including establishing minimum penalties and increasing maximum penalties for environmental offences; providing for different fine amounts for individuals, corporations and

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) **Observations carry no legal weight but serve to indicate to the Senate and the government some of the issues that concerned the Senate committee. As noted in a Speaker's ruling from the Senate, "These observations are not a procedurally significant part of [Senate committee] reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation." (Senate, *Journals*, 2nd Session, 37th Parliament, 11 December 2002, p. 412.) The observations relating to Bill C-16 are discussed below in this Legislative Summary and are printed in Senate, Standing Committee on Energy, the Environment and Natural Resources, *Eighth Report*, 2nd Session, 40th Parliament, 11 June 2009, <http://www.parl.gc.ca/40/2/parlbus/commbus/senate/com-e/enrg-e/rep-e/rep08jun09-e.htm>.**

vessels; providing sentencing guidance to courts; and creating administrative monetary penalties for less serious environmental offences.

According to an Environment Canada backgrounder, the rationale for Bill C-16 is that the “current fine structure in many of Canada’s environmental laws is out of date. In the last 20 years, there has been a growing understanding of the extent and severity of the damages that environmental offences can cause, and a corresponding increase in the demand for more severe penalties and fines for infractions.”⁽²⁾ The backgrounder goes on to state that the fines that courts have been imposing for environmental offences generally are “not high enough to act as strong deterrents or to express public denunciation of environmental infractions. ... Some corporate offenders may simply consider low fines as the cost of doing business.”⁽³⁾

Low fines for environmental offences were recently the subject of discussion in connection with a high-profile case. In late April 2008, more than 1,600 ducks on their migration path north died after landing on a Syncrude Canada Ltd. toxic tailings pond near Fort McMurray, Alberta.⁽⁴⁾ Syncrude stated that noise-makers used to scare flocks away from the pond had not yet been deployed because of a spring snowstorm.⁽⁵⁾ The incident drew international attention.⁽⁶⁾ In February 2009, the provincial and federal governments laid charges against Syncrude in connection with the incident. A conviction on the provincial charge and a summary conviction on the federal charge would attract a maximum combined fine of \$800,000.⁽⁷⁾ Environmentalists are reported to have argued that “\$800,000 is a drop in the bucket for a company as large as

(2) Environment Canada, “Backgrounder – Environmental Enforcement Bill: New Penalties and Sentencing Provisions,” rev. 2 March 2009, <http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=20D9CEF0-0991-4A6F-A12E-FC132BDF06CA>.

(3) Ibid.

(4) “Syncrude says duck death toll was 3 times original estimate,” cbcnews.ca, 31 March 2009, <http://www.cbc.ca/canada/edmonton/story/2009/03/31/edm-syncrude-ducks.html?ref=rss>.

(5) The Canadian Press, “Charges in Duck Deaths,” *The Toronto Sun*, 10 February 2009, p. 12.

(6) Gordon Jaremko, “New Eco-Rules Can Shut Oilsands; Regulator Ends Era of Voluntary Action after Duck Deaths on Toxic Waste Ponds,” *Edmonton Journal*, 26 June 2008, p. A1.

(7) Under section 13(1.1) of the federal *Migratory Birds Convention Act, 1994*, the maximum penalty on summary conviction for each offence of depositing, or permitting to be deposited “a substance that is harmful to migratory birds ... in water or an area frequented by migratory birds ...” (section 5.1(1)) is \$300,000 or up to six months’ imprisonment, or both. A conviction on indictment may be punished with a maximum fine of \$1 million or up to three years’ imprisonment, or both. The provincial charge was laid under section 155 of the *Environmental Protection and Enhancement Act*, for which the maximum fine is \$500,000 (section 228(2)).

Syncrude.”⁽⁸⁾ Under the Bill C-16 amendments, the maximum fine on summary conviction for a first offence by a large revenue corporation is \$4 million.⁽⁹⁾

Environmental enforcement was the subject of a study conducted by the House of Commons Standing Committee on Environment and Sustainable Development in 1998. In its report, entitled *Enforcing Canada's Pollution Laws: The Public Interest Must Come First!*⁽¹⁰⁾ the committee made 24 recommendations, including that:

- the minister develop or revise and publish comprehensive enforcement and compliance policies;
- the minister review, and if necessary rewrite, regulations to ensure that they are adequate, up to date and enforceable;
- the minister take the necessary steps to have selected offences designated for the purposes of the ticketing provisions under the *Contraventions Act*; and
- more resources be committed to ensure the proper enforcement of the environmental legislation.

DESCRIPTION AND ANALYSIS

Bill C-16 comprises two distinct parts: it amends nine existing environmental statutes, and it creates a new statute, whose short title is the “Environmental Violations Administrative Monetary Penalties Act.”

A. Amendments to Nine Existing Environmental Statutes

Following are short descriptions of each of the nine existing statutes that Bill C-16 amends.

-
- (8) Frank Landry, “Bucks for Ducks? Syncrude charged with the deaths of 500 birds in its toxic tailings pond,” *The Edmonton Sun*, 10 February 2009, p. 7.
- (9) The maximum combined fine (federal and provincial) available on summary conviction would have been \$4.5 million if the Bill C-16 amendments had been adopted prior to the ducks incident.
- (10) House of Commons, Standing Committee on Environment and Sustainable Development, *Enforcing Canada's Pollution Laws: The Public Interest Must Come First!* Report 3, 1st Session, 36th Parliament, May 1998. Specifically, this report covered enforcement of the *Canadian Environmental Protection Act, 1999* and the pollution provisions of the *Fisheries Act*.

- *Antarctic Environmental Protection Act*⁽¹¹⁾

This is an Act to protect the Antarctic environment, particularly by implementing the Protocol on Environmental Protection to the Antarctic Treaty (signed at Madrid in 1991). The Act sets up a permitting regime giving the minister the power to ensure that an environmental impact assessment is performed before a Canadian expedition, vessel or aircraft undertakes activities in the Antarctic. The Act also creates prohibitions to protect the Antarctic environment and its native species, as well as protected areas, historic sites and monuments.

- *Canada National Marine Conservation Areas Act*⁽¹²⁾

This Act provides for establishing a system of marine conservation areas that are representative of the Atlantic, Arctic and Pacific Oceans, and the Great Lakes.

- *Canada National Parks Act*⁽¹³⁾

This Act provides a procedure for establishing new parks and enlarging old ones. It also enhances protection for wildlife and other park resources; provides for the continuation of traditional resource harvesting activities; fixes the boundaries of communities in parks; and restricts commercial development in those communities.

- *Canada Wildlife Act*⁽¹⁴⁾

Very generally, this Act gives powers to the minister of the Environment to take measures, initiate programs, enter into agreements, and acquire lands in support of wildlife conservation, research, and interpretation. It also empowers the minister to appoint wildlife officers for the purposes of the Act. A regulation under the Act defines and regulates wildlife areas.

- *Canadian Environmental Protection Act, 1999*⁽¹⁵⁾

This Act is the government's main legislative tool for controlling and preventing pollution; controlling toxic substances; and managing waste. It also provides for coordinating federal/provincial/territorial/Aboriginal action on matters respecting the environment; involving

(11) S.C. 2003, c. 20.

(12) S.C. 2002, c. 18.

(13) S.C. 2000, c. 32.

(14) R.S.C. 1985, c. W-9.

(15) S.C. 1999, c. 33.

the public in environmental protection; regulating animate products of biotechnology; and responding to environmental emergencies.

- *International River Improvements Act*⁽¹⁶⁾

This Act provides for regulating the construction, operation and maintenance of dams, obstructions, canals, reservoirs and other such work on rivers which flow from Canada to the United States.

- *Migratory Birds Convention Act, 1994*⁽¹⁷⁾

This Act, which replaced an earlier version, implements the Migratory Birds Convention between Canada and the United States by protecting migratory birds and their nests. It also provides for the establishment of migratory bird sanctuaries.

- *Saguenay-St. Lawrence Marine Park Act*⁽¹⁸⁾

This Act created the Saguenay-St. Lawrence Marine Park and set out the role of the federal government in managing the park in conjunction with the Government of Quebec. The Act implements the 1990 federal–provincial agreement respecting the park and deals with the water column within the park boundaries.

- *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*⁽¹⁹⁾

The purpose of this Act is to protect certain species of animals and plants, particularly by implementing the United Nations Environment Programme *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, and by regulating international and interprovincial trade in animals and plants.

The amendments Bill C-16 makes to the above nine statutes are described below.

1. Penalties for Environmental Offences

In respect of environmental offences, Bill C-16 provides new minimum penalties, increases maximum penalties, and provides different levels of penalties for different classes of

(16) R.S.C. 1985, c. I-20.

(17) S.C. 1994, c. 22.

(18) S.C. 1997, c. 37.

(19) S.C. 1992, c. 52.

offenders (individuals, small and large corporations, and small and large vessels or ships),⁽²⁰⁾ as well as for different types of offences (less and more serious offences).⁽²¹⁾ Table 1 sets out new penalty levels for first offences under all nine amended Acts.⁽²²⁾ Prior to Bill C-16, the statutes amended by the bill included no minimum penalties, and maximum penalties varied widely. For example, the maximum penalty for an individual's first conviction on indictment was \$5,000 under the *Canada National Parks Act*, and was \$1 million and/or three years' imprisonment under three other Acts.⁽²³⁾

Table 1 – New Penalty Levels for Individuals and Corporations

More serious offence	Individual	Indictment	Min. \$15,000
			Max. \$1 million (and/or imprisonment)*
		Summary conviction	Min. \$5,000
			Max. \$300,000 (and/or imprisonment)*
	Large revenue corporation, or vessel or ship of 7,500 tonnes deadweight or over	Indictment	Min. \$500,000
			Max. \$6 million
		Summary conviction	Min. \$100,000
			Max. \$4 million
	Small revenue corporation, or vessel or ship of less than 7,500 tonnes deadweight	Indictment	Min. \$75,000
			Max. \$4 million
		Summary conviction	Min. \$25,000
			Max. \$2 million

(20) The main difference between a vessel and a ship is that the former can be used for navigation on, through or above any water, whereas the latter is used for marine navigation. See the *Antarctic Environmental Protection Act*, clause 2(2), adding new section 2(1); *Migratory Birds Convention Act, 1994*, section 2(1); and *Canadian Environmental Protection Act, 1999*, section 122.

(21) *Antarctic Environmental Protection Act*: clause 12, amending section 50 and adding section 50.1; *Canada National Marine Conservation Areas Act*: clause 24, amending section 24; *Canada National Parks Act*: clause 33, amending section 24; *Canada Wildlife Act*: clause 48, amending section 13; *Canadian Environmental Protection Act, 1999*: clause 72, amending sections 272 to 275; *International River Improvements Act*: clause 93, adding new sections 33 and 34; *Migratory Birds Convention Act, 1994*: clause 102, amending section 13 and adding new section 13.01; *Saguenay-St. Lawrence Marine Park Act*: clause 114, amending sections 20 to 22; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending section 22 and adding new section 22.01.

(22) Penalties relating to vessels are added only to the *Antarctic Environmental Protection Act* (clause 12, adding new sections 50.3 and 50.4) and the *Migratory Birds Convention Act, 1994* (clause 102, adding new sections 13.03 and 13.04); penalties relating to ships are added only to the *Canadian Environmental Protection Act, 1999* (clause 72, adding new sections 272.4 and 272.5).

(23) The *Antarctic Environmental Protection Act*, the *Canadian Environmental Protection Act, 1999*, and the *Migratory Birds Convention Act, 1994*.

Less serious offence	Individual	Indictment	No minimum
			Max. \$100,000
		Summary conviction	No minimum
			Max. \$25,000
	Large revenue corporation, or vessel or ship of 7,500 tonnes deadweight or over	Indictment	No minimum
			Max. \$500,000
		Summary conviction	No minimum
			Max. \$250,000
	Small revenue corporation, or vessel or ship of less than 7,500 tonnes deadweight	Indictment	No minimum
			Max. \$250,000
		Summary conviction	No minimum
			Max. \$50,000

* Possible terms of imprisonment are not included in the *Canada National Marine Conservation Areas Act* or the *Canada National Parks Act*. For the other Acts, maximum possible terms of imprisonment for an individual convicted of a more serious offence are set out in Table 2.

The following three points relate to Table 1:

- A small revenue corporation is a corporation whose annual gross revenues are \$5 million or less.⁽²⁴⁾ Although the term is not used in Bill C-16, “large revenue corporation” used in this legislative summary refers to a person other than an individual or a small revenue corporation.
- All maximum and minimum fines are doubled for subsequent convictions. In respect of both tables 1 and 2, a conviction is deemed to be a subsequent conviction if the offender has been previously convicted of a substantially similar offence under any federal or provincial environmental or wildlife protection Act.⁽²⁵⁾

(24) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.2; *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.1; *Canada National Parks Act*: clause 37, adding new section 27.1; *Canada Wildlife Act*: clause 48, adding new section 13.02; *Canadian Environmental Protection Act, 1999*: clause 72, adding new section 272.3; *International River Improvements Act*: clause 93, adding new section 37; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.02; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.4; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.02.

(25) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.5; *Canada National Marine Conservation Areas Act*: clause 24(3), adding new sections 24(2.2) and (2.3); *Canada National Parks Act*: clause 36(2), amending section 27(3); *Canada Wildlife Act*: clause 48, adding new section 13.03; *Canadian Environmental Protection Act, 1999*: clause 72, adding new section 273.1; *International River Improvements Act*: clause 93, adding new section 36; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.05; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.3; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.03.

- A court may impose a fine that is less than the minimum amount if the minimum fine would cause undue financial hardship. The court must provide reasons for imposing a fine that is less than the minimum.⁽²⁶⁾

Table 2 – Maximum Possible Terms of Imprisonment for Individuals

<i>Antarctic Environmental Protection Act</i>	Indictment	First offence	3 years
		Subsequent offence	5 years
	Summary conviction	First offence	6 months
		Subsequent offence	1 year
<i>Canada Wildlife Act</i> <i>International River Improvements Act</i> <i>Saguenay-St. Lawrence Marine Park Act</i> <i>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act</i>	Indictment	First offence	5 years
		Subsequent offence	5 years
	Summary conviction	First offence	6 months
		Subsequent offence	6 months
<i>Canadian Environmental Protection Act, 1999</i> <i>Migratory Birds Convention Act, 1994</i>	Indictment	First offence	3 years
		Subsequent offence	3 years
	Summary conviction	First offence	6 months
		Subsequent offence	6 months

2. Additional Provisions Related to Sentencing Environmental Offenders

a. Disgorging Benefits⁽²⁷⁾

In addition to the fines set out above, a court must order an offender who benefited from an offence under the Act to pay an additional fine in the estimated amount of the benefit. The additional fine may exceed the maximum amount of the fine that may otherwise be imposed.

(26) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.6; *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.2; *Canada National Parks Act*: clause 37, adding new section 27.2; *Canada Wildlife Act*: clause 48, adding new section 13(5); *Canadian Environmental Protection Act, 1999*: clause 72, adding new section 273; *International River Improvements Act*: clause 93, adding new section 38; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.06; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.5; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22(5).

(27) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.7; *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.3; *Canada National Parks Act*: clause 37, adding new section 27.3; *Canada Wildlife Act*: clause 48, adding new section 13.04; *Canadian Environmental Protection Act, 1999*: clause 72, adding new section 274.1, and clause 84, repealing section 290; *International River Improvements Act*: clause 93, adding new section 39; *Migratory Birds Convention Act, 1994*: clause 102, replacing old section 13(5) with new section 13.07; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.6; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old section 22(5) with new section 22.04.

b. Notifying Shareholders and Others

When a corporation is convicted under the Act, the court must order the corporation to notify its shareholders, in the manner directed, of the facts of the offence and punishment imposed.⁽²⁸⁾

A court may order an offender to notify a person aggrieved by the offence, and/or to publish the facts relating to the commission of the offence and the punishment imposed. If the offender does not publish the information after being so ordered, the minister may do so at the offender's expense.⁽²⁹⁾

c. Directors' and Officers' Liability⁽³⁰⁾

A director, officer, agent or mandatary⁽³¹⁾ of a corporation involved in a corporate offence is liable on conviction to the penalty provided for an individual, even if the corporation is not prosecuted or convicted.

(28) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.8; *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.4; *Canada National Parks Act*: clause 37, adding new section 27.4; *Canada Wildlife Act*: clause 48, adding new section 13.05; *Canadian Environmental Protection Act, 1999*: clause 72, adding new section 274.2; *International River Improvements Act*: clause 93, adding new section 40; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.08; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.7; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.05.

(29) *Antarctic Environmental Protection Act*: clause 17(3), amending sections 66(1)(e) and (f), and clause 17(7), amending section 66(2); *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(i) and (j) and new section 27(1.1); *Canada National Parks Act*: clause 39(4), adding new sections 30(1)(j) and (k), and clause 39(5), adding new section 30(4); *Canada Wildlife Act*: clause 49(1), adding new sections 16(c) and (c.1); *Canadian Environmental Protection Act, 1999*: clause 85(2), amending sections 291(1)(g) and (h), and clause 85(6), amending section 291(2); *International River Improvements Act*: clause 93, adding new section 45(1)(h) and (i); *Migratory Birds Convention Act, 1994*: clause 103(1), amending section 16(1)(c) and adding new section 16(1)(c.1); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(1)(i) and (j) and sections 21.3(4) and (5); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old section 22(6)(c) with new section 22.12(1)(c) and adding new sections 22.12(1)(d) and 22.12(2).

(30) *Antarctic Environmental Protection Act*: clause 12, adding new section 51(1) and (3); *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.5; *Canada National Parks Act*: clause 37, adding new section 27.5; *Canada Wildlife Act*: clause 48, adding new sections 13.06 and 13.07; *Canadian Environmental Protection Act, 1999*: clause 73, amending section 280; *International River Improvements Act*: clause 93, adding new section 41; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.12; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.8.

(31) "Mandatary" is the civil law term meaning "agent."

d. Guidance for Sentencing⁽³²⁾

Bill C-16 explicitly sets out the purposes to be applied by the courts in sentencing those convicted under the legislation: deterrence, denunciation, and restoration, and/or making the offender pay for clean-up. (In the case of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, the third purpose listed above is replaced by the purpose of recovering, if possible, certain species of animals and plants unlawfully traded.)

e. Sentencing Principles⁽³³⁾

The bill also sets out aggravating factors a sentencing judge must consider: the damage caused and its extent, the offender's moral blameworthiness, the offender's profit or intended profit in committing the offence, whether the offender was warned not to commit the offence, the offender's history of non-compliance, and the offender's subsequent conduct. A court must give reasons if it decides not to increase a fine when there are aggravating factors.

(32) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.9, and clause 17(6), amending section 66(1)(n); *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.6; *Canada National Parks Act*: clause 37, adding new section 27.6; *Canada Wildlife Act*: clause 48, adding new section 13.08, and clause 49(2), amending section 16(g); *Canadian Environmental Protection Act, 1999*: clause 81, amending section 287, and clause 85(5), amending section 291(1)(q); *International River Improvements Act*: clause 93, adding new sections 42 and 45(1)(o); *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.09, and clause 103(2), amending section 16(1)(h); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.07 and amending old section 22(6)(h) with new section 22.12(1)(j).

(33) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.91; *Canada National Marine Conservation Areas Act*: clause 25, adding new section 24.7; *Canada National Parks Act*: clause 37, adding new section 27.7; *Canada Wildlife Act*: clause 48, adding new section 13.09; *Canadian Environmental Protection Act, 1999*: clause 81, adding new section 287.1, and clause 85(4), repealing section 291(1)(m); *International River Improvements Act*: clause 93, adding new section 43; *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.1; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.1; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.08.

f. Cumulative Fines⁽³⁴⁾

If an offence involves more than one animal, plant or object, the fine imposed may be the total cumulative fine that would have been imposed if each of the animals, plants, or objects had been the subject of a separate prosecution.

g. Surrendering and Prohibiting Permits or Licences⁽³⁵⁾

A court may order an offender to surrender any permit or licence and prohibit the offender from applying for any new permit or licence for a stated period.

h. Compensating Aggrieved Persons

A court may order an offender to compensate an aggrieved person for loss of or damage to property suffered as a result of the commission of the offence.⁽³⁶⁾ However, the court may not order that compensation be paid to a person who is entitled to make a claim for compensation under the *Marine Liability Act* or the *Arctic Waters Pollution Prevention Act*.⁽³⁷⁾

(34) *Antarctic Environmental Protection Act*: clause 13, adding new section 53.1; *Canada National Marine Conservation Areas Act*: clause 24(3), adding new section 24(2.1); *Canada National Parks Act*: clause 36, amending section 27(1); *Canada Wildlife Act*: clause 48, adding new section 13.12; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 20.2; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old section 22(3) with new section 22.09.

(35) *Antarctic Environmental Protection Act*: clause 17(6), adding new sections 66(1)(o) and (p); *Canada National Marine Conservation Areas Act*: clause 27(1), adding new sections 27(1)(o) and (p); *Canada National Parks Act*: clause 39(4), adding new sections 30(1)(o) and (p); *Canada Wildlife Act*: clause 49(3), adding new section 16(i); *Canadian Environmental Protection Act, 1999*: clause 85(5), adding new sections 291(1)(r) and (s); *International River Improvements Act*: clause 93, adding new sections 45(1)(m) and (n); *Migratory Birds Convention Act, 1994*: clause 103(2), adding new sections 16(1)(i) and (j); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(1)(o) and (p); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new sections 22.12(1)(k) and (l).

(36) *Antarctic Environmental Protection Act*: clause 18, adding new section 66.1; *Canada National Marine Conservation Areas Act*: clause 28, replacing section 28; *Canada National Parks Act*: clause 40, adding new section 31; *International River Improvements Act*: clause 93, adding new section 48; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.6.

(37) *Canada National Marine Conservation Areas Act*: clause 28, adding new section 28.01; *Canada National Parks Act*: clause 40, adding new section 31.01; *Canadian Environmental Protection Act, 1999*: clause 85.1, adding new section 292.1; *Migratory Birds Convention Act, 1994*: clause 104, amending section 17.1(3) and adding new section 17.1(4); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.7.

i. Seizure: Liability of Owner⁽³⁸⁾

In relation to a thing seized under the Act, Bill C-16 imposes joint and several liability⁽³⁹⁾ for all costs of seizure, detention, maintenance, forfeiture, destruction and disposal of the thing (in excess of any proceeds of its disposition) on the person or people who owned, controlled or possessed the thing immediately before it was seized. (In the case of the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, liability may be imposed on the importer or exporter of the thing.)

j. Additional Punishments

Bill C-16 adds or amends additional types of orders that a judge may impose for an environmental offence:⁽⁴⁰⁾

- directing the offender to implement an environmental management system, pollution prevention plan or environmental emergency plan;
- directing an offender to pay the Crown an amount for environmental/wildlife conservation or protection; and
- directing an offender to compensate any person for the cost of any remedial or preventative action.

(38) *Antarctic Environmental Protection Act*: clause 10, adding new section 44.1; *Canada National Marine Conservation Areas Act*: clause 23, adding new section 23.1; *Canada National Parks Act*: clause 32, adding new section 23.1; *Canada Wildlife Act*: clause 46, amending section 11.5; *Canadian Environmental Protection Act, 1999*: clause 59, adding new section 228.1; *Migratory Birds Convention Act, 1994*: clause 99, adding new section 11; *Saguenay-St. Lawrence Marine Park Act*: clause 113, adding new section 19.2; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 119, repealing section 20(2), and clause 120 amending old section 20(2) with new section 20.1.

(39) Solidary liability under civil law.

(40) *Antarctic Environmental Protection Act*: clause 17(2), adding new sections 66(1)(c.1) and (c.2), and clause 17(4), amending section 66(1)(i); *Canada National Marine Conservation Areas Act*: clause 27(1), adding new sections 27(1)(d), (f), (h) and (l); *Canada National Parks Act*: clause 39(2), amending section 30(1)(c), and clause 39(4), adding new sections 30(1)(e), (g) and (i); *Canada Wildlife Act*: clause 49(1), adding new sections 16(b.2), (b.3) and (d); *Canadian Environmental Protection Act, 1999*: section 291(1)(e), unchanged, and clauses 85(2) and 85(3), adding new section 291(1)(f.1) and amending section 291(1)(k), respectively; *International River Improvements Act*: clause 93, adding new sections 45(1)(e), (g) and (k); *Migratory Birds Convention Act, 1994*: clause 103(1), adding new sections 16(1)(b.3) and (b.4) and amending section 16(1)(d); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(1)(d), (f) and (l); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old section 22(6)(d) with new section 22.12(1)(e), and clause 122, adding new section 22.12(1)(h).

Other types of orders a judge might impose include:

- monitoring (or paying for monitoring of) environmental effects of an activity on the resources of a marine conservation area;⁽⁴¹⁾
- requiring periodic environmental audits;⁽⁴²⁾
- requiring an offender to provide information on the offender's activities;⁽⁴³⁾
- directing a person to perform community service;⁽⁴⁴⁾
- directing a person to pay an amount to environmental or other groups to assist in their work in the area;⁽⁴⁵⁾
- requiring an offender to pay an amount for research on protection, conservation or restoration;⁽⁴⁶⁾ and/or

-
- (41) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(e); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(f); *Canada Wildlife Act*: clause 49(1), adding new section 16(b.1); *International River Improvements Act*: clause 93, adding new section 45(1)(d); *Migratory Birds Convention Act, 1994*: clause 103(1), adding new section 16(1)(b.2); *Saguenay-St. Lawrence Marine Park Act*: clause 114 adding new section 21.3(1)(e).
- (42) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(g); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(h); *International River Improvements Act*: clause 93, adding new section 45(1)(f); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.3(1)(g).
- (43) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(k); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(l); *International River Improvements Act*: clause 93, adding new section 45(1)(j); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.3(1)(k).
- (44) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(m); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(m); *International River Improvements Act*: clause 93, adding new section 45(1)(l); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.3(1)(m); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.12(1)(f).
- (45) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(q); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(q); *Canada Wildlife Act*: clause 49(1), adding new section 16(d.3); *International River Improvements Act*: clause 93, adding new section 45(1)(o); *Migratory Birds Convention Act, 1994*: clause 103(1), adding new section 16(1)(b.5); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.3(1)(q); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.12(1)(f.3).
- (46) *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(n); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(n); *Canada Wildlife Act*: clause 49(1), adding new section 16(d.1); *International River Improvements Act*: clause 93, adding new section 45(1)(p); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(1)(h) and (n); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.12(1)(f.1).

- directing an offender to pay an amount to an educational institution, including for scholarships for students enrolled in studies related to the environment.⁽⁴⁷⁾

k. Environmental Damages Fund⁽⁴⁸⁾

Fines collected are credited to the Environmental Damages Fund and used for purposes related to protecting, conserving or restoring the environment or for administering the fund. The court imposing the fine may recommend that all or a portion of the fine credited to the fund be paid to a specified person or organization for a related purpose.

l. Procedural Provisions⁽⁴⁹⁾

Bill C-16 sets out procedural provisions for enforcing orders for recovering costs from an offender, cancelling a permit or licence that was ordered suspended, and limiting the duration of additional punishments to three years, unless the court provides otherwise.

(47) *Antarctic Environmental Protection Act*: clause 17(6), amending section 66(1)(m); *Canada National Marine Conservation Areas Act*: clause 27(1), adding new section 27(1)(r); *Canada National Parks Act*: clause 39(4), adding new section 30(1)(r); *Canada Wildlife Act*: clause 49(1), adding new section 16(d.2); *Canadian Environmental Protection Act, 1999*: clause 85(4.1), amending section 291(1)(p); *International River Improvements Act*: clause 93, adding new section 45(1)(q); *Migratory Birds Convention Act, 1994*: clause 103(1), amending section 16(1)(d.2); *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.3(1)(r); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.12(1)(f.2).

(48) *Antarctic Environmental Protection Act*: clause 19, adding new section 68.1; *Canada National Marine Conservation Areas Act*: clause 26, adding section 26.1; *Canada National Parks Act*: clause 38, adding new section 29.1; *Canada Wildlife Act*: clause 48, adding new section 13.13; *Canadian Environmental Protection Act, 1999*: clause 86, adding new section 294.1; *International River Improvements Act*: clause 93, adding new section 44; *Migratory Birds Convention Act, 1994*: clause 102, amending old section 13(6) with new section 13.2; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 21.2; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new section 22.11.

(49) *Antarctic Environmental Protection Act*: clause 17(7), adding new sections 66(3) to (6); *Canada National Marine Conservation Areas Act*: clause 27(1), adding new sections 27(1.2) to (1.4), and clause 27(2), adding new section 27(4); *Canada National Parks Act*: clause 39(5), adding new sections 30(5) to (8); *Canada Wildlife Act*: clause 50, adding new sections 16.1 to 16.5, and clause 51, adding new section 18.2; *Canadian Environmental Protection Act, 1999*: clause 85(6), amending sections 291(3) and (4) and adding new sections 291(5) and (6), and clause 86, adding new section 294.3; *International River Improvements Act*: clause 93, adding new sections 45(2) to (6); *Migratory Birds Convention Act, 1994*: clause 103(3), adding new sections 16(1.1) to (1.5), and clause 106, adding new section 18.22; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(6) to (8); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new sections 22.12(3) to (6) and 22.16.

m. Suspended Sentences⁽⁵⁰⁾

Bill C-16 amends two Acts to include provisions regarding suspended sentences. If a person is convicted under either Act and receives a suspended sentence, the court may make any of the other orders provided for in the Act (such as compensation, publishing details of the offence, cancelling permits, etc.), as well as a probation order. If the offender does not comply with the orders or is convicted of another offence within three years of the original order, the court may impose the sentence that could have been imposed if the sentence had not been suspended.

All of the other statutes amended by Bill C-16, except for the *International River Improvements Act*, already provide for suspended sentences.

n. Limitation Period⁽⁵¹⁾

Bill C-16 changes the deadline for instituting summary proceedings under the Act from two years after the minister becomes aware of the subject matter of the proceedings, to five years after the subject matter of the proceedings arose, unless the prosecutor and defendant agree to extend that limit.

o. Public Registry⁽⁵²⁾

The minister is required to maintain a public registry containing information, for at least five years, about all corporate convictions for offences under the Act.

(50) *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new sections 21.3(2) and (3); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, adding new sections 22.13 and 22.14.

(51) *Antarctic Environmental Protection Act*: clause 14, amending section 57; *Canada National Marine Conservation Areas Act*: clause 28, amending section 28; *Canada National Parks Act*: clause 40, adding new section 31.1; *Canada Wildlife Act*: clause 51, adding new section 18; *Canadian Environmental Protection Act, 1999*: clause 72, amending section 275; *International River Improvements Act*: clause 93, adding new section 49 (note that previously this Act did not specify any limitation period); *Migratory Birds Convention Act, 1994*: clause 105, amending section 18; *Saguenay-St. Lawrence Marine Park Act*: clause 114, amending section 22; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old sections 22(9) and (10) with new section 22.15.

(52) *Antarctic Environmental Protection Act*: clause 19, adding new section 68.2; *Canada National Marine Conservation Areas Act*: clause 28, adding new section 28.3; *Canada National Parks Act*: clause 40, adding new section 31.3; *Canada Wildlife Act*: clause 51, adding new section 18.1; *Canadian Environmental Protection Act, 1999*: clause 86, adding new section 294.2; *International River Improvements Act*: clause 93, adding new section 50; *Migratory Birds Convention Act, 1994*: clause 106, adding new section 18.21; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 22.2; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 124, adding new section 27.1.

p. Ministerial Review⁽⁵³⁾

Finally, Bill C-16 requires the minister to review the penalty provisions of the Act every 10 years and to table a report in Parliament within a year of undertaking the review.

3. Environmental Protection Compliance Orders

An “environmental protection compliance order”⁽⁵⁴⁾ is a tool for dealing with certain suspected environmental contraventions in progress, or anticipated contraventions, discovered during the course of an inspection or search. Bill C-16 amends the environmental protection compliance order process that was previously found only in the *Canadian Environmental Protection Act, 1999*, and adds that same process to several other Acts.⁽⁵⁵⁾

Under the process, an enforcement officer⁽⁵⁶⁾ may make an order directing a person to take action, or refrain from doing something, to comply with the Act; stop some activity or work for a period; move, unload, or reload a vehicle, vessel or aircraft; and take any other measures an officer considers necessary to facilitate compliance with the order, such as keep records or report periodically to the officer.

Ordinarily, an order must be in written form, but, in exigent circumstances, it may be given orally if followed up in writing within seven days. The bill specifies the contents of such an order (e.g., name of the person affected, relevant statutory provision and facts, measures

(53) *Antarctic Environmental Protection Act*: clause 19, adding new section 68.4; *Canada National Marine Conservation Areas Act*: clause 28, adding new section 28.4; *Canada National Parks Act*: clause 40, adding new section 31.4; *Canada Wildlife Act*: clause 51, adding new section 18.4; *Canadian Environmental Protection Act, 1999*: clause 86, adding new section 294.5; *International River Improvements Act*: clause 93, adding new section 52; *Migratory Birds Convention Act, 1994*: clause 106, adding new section 18.24; *Saguenay-St. Lawrence Marine Park Act*: clause 114, adding new section 22.3; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 125, adding new section 28.1.

(54) Such an order is simply called a “compliance order” under the *Canada Wildlife Act*, the *International River Improvements Act* and the *Migratory Birds Convention Act, 1994*.

(55) *Antarctic Environmental Protection Act*: clause 2(2), adding the new definition to section 2(1), and clause 9, adding new sections 37.02 to 37.12; *Canada Wildlife Act*: clause 41, adding the new definition to section 2(1), and clause 46, adding new sections 11.6 to 11.97; *Canadian Environmental Protection Act, 1999*: clauses 61 to 67, amending various sections between sections 235 and 241; *International River Improvements Act*: clause 89, adding the new definition to section 2, and clause 93, adding new sections 20 to 30; *Migratory Birds Convention Act, 1994*: clause 94, adding the new definition to section 2(1), and clause 100, adding new sections 11.2 and 11.3.

(56) Rather than the term “enforcement officer,” the term “wildlife officer” is used in the *Canada Wildlife Act*, and the term “game officer” is used in the *Migratory Birds Convention Act, 1994*.

to be taken with dates specified, and information about how to have the order reviewed.) An order may be in force for up to 180 days.

Whenever practicable, an officer must give a person notice before issuing an order, and provide the person with an opportunity to make oral representations to the officer. After the order is issued and as long as the person against whom it was issued has not requested a review of the order, the officer may amend the order, cancel it, or extend its duration to a maximum total period of 180 days. However, before making a substantial amendment to the order or extending its duration, the officer must, whenever practicable, give the person notice and an opportunity to make oral representations to the officer.

A person's compliance with an environmental protection compliance order is not a bar to any proceedings against the person in relation to the alleged contravention.

A person's non-compliance with an order allows an officer, or another authorized person, to access a place or property and take measures or do anything reasonable and necessary in the circumstances, at the expense of the person who caused or contributed to the alleged contravention. Provisions are included specifying the procedure and details for the Crown claiming recovery of reasonable costs from such a person.

a. Review Procedure

Bill C-16 also makes amendments to the review procedure followed for a review of an environmental protection compliance order issued under any of the Acts, and which is found in sections 257 to 271 of the *Canadian Environmental Protection Act, 1999*. The amendments allow a review to be conducted by a panel of three review officers (one of whom may be the Chief Review Officer, as appointed under existing section 244(1)), in addition to the options of conducting a review by a single review officer or by the Chief Review Officer alone (clauses 69 and 70, amending sections 257 and 266, respectively). Bill C-16 gives the reviewing officer or panel, as the case may be, 15 days to render a decision, up from the previous five days (clause 70, amending section 266). Provision is made for the Chief Review Officer to make rules for the review of orders under Acts other than the *Canadian Environmental Protection Act, 1999* (clause 71, adding new section 267(2)).

A person against whom an environmental protection compliance order is directed may, within 30 days (or longer if extended), request a review of the order by the Chief Review Officer.

4. Provisions Relating to Enforcement Officers, Analysts, etc.

a. Designation

Bill C-16 provides a new power for the minister to designate public servants (federal, provincial/territorial, municipal/local, or Aboriginal) to enforce measures against offences under the Act or regulations that have been designated contraventions under the *Contraventions Act*.⁽⁵⁷⁾ The minister may specify that a person is designated in respect of certain or all offences under the Act that have been designated contraventions, or certain or all areas or parks under the Act.

b. Analysts

Under two Acts, Bill C-16 creates a new role for analysts, who are designated by the minister.⁽⁵⁸⁾ Persons are prohibited from knowingly making false or misleading statements to analysts, or otherwise wilfully obstructing them, as is the case for officers.⁽⁵⁹⁾ An analyst may accompany an officer who is carrying out an inspection, and, like the officer, the analyst may open containers, inspect things and take samples during the inspection. In court, a document signed by an analyst is admissible in evidence as proof of the statements in the document without the analyst having to attend court. However, the accused must receive a copy of the document in advance and may, with the court's permission, require the analyst to attend court.⁽⁶⁰⁾

c. Access to Property and Information

The bill also provides new powers to officers and analysts to enter onto and pass through private property, and to require cooperation from owners and others in carrying out inspections.⁽⁶¹⁾ Officers and analysts have a new power to require people to provide any

(57) *Canada National Marine Conservation Areas Act*: clause 21, adding section 19.1; *Canada National Parks Act*: clause 30, adding new section 19.1 and amending section 20; *Saguenay-St. Lawrence Marine Park Act*: clause 109, adding new section 13.1.

(58) *Canada Wildlife Act*: clause 42, amending section 11(1), (3) and (6), and clause 43, adding new section 11.1(1.1); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 116(1), amending section 12(1), clause 116(2), amending sections 12(3) and (4), and clause 117, adding section 14(1.1).

(59) The term "wildlife officer" is used in the *Canada Wildlife Act*.

(60) *Canada Wildlife Act*: clause 48, adding new section 13.091; *International River Improvements Act*: clause 93, adding new section 16.1; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 116.1, adding new section 12.1.

(61) *Canada Wildlife Act*: clause 44, adding new sections 11.11 and 11.12; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 118, adding new sections 14.1 and 14.2.

information with respect to the administration of the Act that the officer or analyst may reasonably require.

d. Immunity

Various new provisions provide that enforcement officers, analysts, inspectors, wardens, game officers, and others assisting in ensuring compliance are not liable for anything they do or omit to do in good faith under the Act.⁽⁶²⁾

5. Provisions Related to a Conveyance or Vessel

a. Directing a Conveyance or Vessel

Under various Acts, officers already have the power to stop a conveyance or vessel and have it moved elsewhere for inspection. Bill C-16 gives them the power to direct by what route and in what manner a conveyance or a vessel shall be moved for inspection.⁽⁶³⁾

In addition, a new power permits an officer to simply “direct” a vessel or shipping container to any specified place for the purposes of the Act.⁽⁶⁴⁾

b. Prosecuting a Vessel

Bill C-16 includes procedural provisions for prosecuting a vessel: a direction given to the master or a crew member binds the vessel; summons against a vessel may be served on its authorized representative, master or any officer, or by posting it on the vessel; and in a case where no counsel or representative appears on behalf of a charged vessel, the court nevertheless may proceed with the trial.⁽⁶⁵⁾

(62) *Antarctic Environmental Protection Act*: clause 4, adding new section 29.1, clause 9, adding new section 37.07(3), and clause 11, adding new section 46.1; *Canada National Marine Conservation Areas Act*: clause 21, adding sections 20.1 and 20.2; *Canada National Parks Act*: clause 30, adding new section 20.2; *Canada Wildlife Act*: clause 44, adding new section 11.13; *Canadian Environmental Protection Act, 1999*: clause 53, adding new section 217.1; *International River Improvements Act*: clause 93, adding new section 11; *Migratory Birds Convention Act, 1994*: clause 95, adding new section 6.1; *Saguenay-St. Lawrence Marine Park Act*: clause 109, amending section 14 and adding new section 14.1; *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 116, adding new section 12(5).

(63) *Antarctic Environmental Protection Act*: clauses 5(1) and (2), amending sections 30(7) and 30(8)(a), respectively; *Canada Wildlife Act*: clause 43, amending section 11.1(2); *Canadian Environmental Protection Act, 1999*: clause 54(1), amending section 218(7); *Migratory Birds Convention Act, 1994*: clause 96, amending section 7(2); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 117, amending section 14(2).

(64) *Antarctic Environmental Protection Act*: clause 9, adding new section 37.01; *Canadian Environmental Protection Act, 1999*: clause 54(1), adding new section 218(7.1).

(65) *Antarctic Environmental Protection Act*: clause 12, adding new section 50.92; *Migratory Birds Convention Act, 1994*: clause 102, adding new sections 13.11(1) to (4), and clause 107, repealing section 18.5.

c. Directors and Officers of a Vessel's Owner

A director or officer of a corporation that owns or operates a vessel that commits an offence is liable to conviction as an individual if that person directed or influenced the corporation's policies or activities that resulted in the offence, whether or not the vessel is prosecuted or convicted.⁽⁶⁶⁾

d. Liability of the Master, Owner, Operator and Chief Engineer of a Vessel

Bill C-16 extends liability for a vessel that committed an offence to the master, owner, operator and chief engineer of the vessel if that person was involved in the offence by the vessel.⁽⁶⁷⁾

6. Amendments Specific to a Single Act

a. *Antarctic Environmental Protection Act*

With respect to the *Antarctic Environmental Protection Act*, Bill C-16 adds a new definition of "vessel," which is a boat, ship or craft for use on water, but does not include a fixed platform (clause 2(2), adding a new definition to section 2(1)). The bill extends the application of the Act from Canadian vessels to any vessels in Canada (clause 12, amending section 52). Accordingly, pursuant to the bill, any vessel, not just a Canadian vessel, suspected of committing an offence under the Act may be seized and detained in Canada. When a foreign vessel is detained, its home state must be notified (clause 6, amending section 32(2); clause 7, amending a heading before section 37; clause 8(1), amending section 37(1); and clause 8(2), adding new section 37(7)).

b. *Canada National Parks Act*

Bill C-16 amends the *Canada National Parks Act* to empower both park wardens and enforcement officers to arrest, without a warrant, anyone they find committing an offence under the Act, as well as anyone they believe, on reasonable grounds, has committed or is about to commit an offence under the Act (clause 30, amending section 21). This broadens to some

(66) *Antarctic Environmental Protection Act*: clause 12, adding new sections 51(2) and (3); *Migratory Birds Convention Act, 1994*: clause 102, adding new section 13.13(2).

(67) *Antarctic Environmental Protection Act*: clause 12, amending section 52; *Migratory Birds Convention Act, 1994*: and clause 102, adding new section 13.13(1). The *Antarctic Environmental Protection Act* already extended liability to the master.

degree the powers of the enforcement officer, previously limited to arresting, without warrant, anyone found committing an offence under the Act or believed, on reasonable grounds, to have committed or to be about to commit an offence under section 26 of the Act.⁽⁶⁸⁾ It narrows the powers of the park warden, who had been permitted, in addition to the powers described in Bill C-16, to arrest, without warrant, anyone found committing any offence in a park.

Bill C-16 also introduces new penalties for certain offences under the *Canada National Parks Act*, as set out in Table 3 (clause 34, amending section 25(2); and clause 35, amending sections 26(2) and (4)).

Table 3 – New Penalty Levels for Certain Offences
Under the *Canada National Parks Act*

Trafficking in animals, plants or other naturally occurring objects, taken in or from a park (section 25)	Individual	Indictment	First offence	Min. \$7,500 (No minimum)*
				Max. \$500,000 and/or 1 year (\$25,000 and/or 1 year)*
			Subsequent offence	Min. \$15,000 (No minimum)*
				Max. \$1 million and/or 1 year (\$50,000 and/or 1 year)*
		Summary conviction	First offence	Min. \$4,000 (No minimum)*
				Max. \$225,000 and/or 6 months (\$10,000 and/or 6 months)*
	Subsequent offence		Min. \$8,000 (No minimum)*	
			Max. \$450,000 and/or 6 months (\$20,000 and/or 6 months)*	
	Large revenue corporation	Indictment	First offence	Min. \$400,000
				Max. \$5 million
			Subsequent offence	Min. \$800,000
		Max. \$10 million		
Summary conviction		First offence	Min. \$50,000	
			Max. \$3 million	
	Subsequent offence	Min. \$100,000		
Max. \$6 million				

(68) Section 26 is a prohibition against hunting, trafficking in, or possessing protected wildlife in a park or trafficking in or possessing such wildlife taken from a park.

	Small revenue corporation	Indictment	First offence	Min. \$25,000
				Max. \$3 million
			Subsequent offence	Min. \$50,000
				Max. \$6 million
		Summary conviction	First offence	Min. \$15,000
				Max. \$1.25 million
			Subsequent offence	Min. \$30,000
				Max. \$2.5 million
Hunting protected species in a park; or trafficking in, or possessing, protected species from a park (section 26(1)) – Relates to species in Part 1 of Schedule 3 of the Act	Individual	Indictment	First offence	Min. \$15,000 (No minimum)*
				Max. \$1 million and/or 5 years (\$250,000 and/or 5 years)*
			Subsequent offence	Min. \$30,000 (No minimum)*
				Max. \$2 million and/or 5 years (\$500,000 and/or 5 years)*
		Summary conviction	First offence	Min. \$5,000 (No minimum)*
				Max. \$300,000 and/or 6 months (\$150,000 and/or 6 months)*
			Subsequent offence	Min. \$10,000 (No minimum)*
				Max. \$600,000 and/or 6 months (\$300,000 and/or 6 months)*
	Large revenue corporation	Indictment	First offence	Min. \$500,000
				Max. \$6 million
			Subsequent offence	Min. \$1 million
				Max. \$12 million
		Summary conviction	First offence	Min. \$100,000
				Max. \$4 million
			Subsequent offence	Min. \$200,000
				Max. \$8 million
	Small revenue corporation	Indictment	First offence	Min. \$75,000
				Max. \$4 million
			Subsequent offence	Min. \$150,000
				Max. \$8 million
		Summary conviction	First offence	Min. \$25,000
				Max. \$2 million
			Subsequent offence	Min. \$50,000
				Max. \$4 million

Hunting protected species in a park; or trafficking in, or possessing, protected species from a park (section 26(1)) – Relates to species in Part 2 of Schedule 3 of the Act	Individual	Indictment	First offence	Min. \$10,000 (No minimum)*
				Max. \$750,000 and/or 5 years (\$100,000 and/or 5 years)*
			Subsequent offence	Min. \$20,000 (No minimum)*
				Max. \$1.5 million and/or 5 years (\$200,000 and/or 5 years)*
		Summary conviction	First offence	Min. \$4,500 (No minimum)*
				Max. \$250,000 and/or 6 months (\$50,000 and/or 6 months)*
			Subsequent offence	Min. \$9,000 (No minimum)*
				Max. \$500,000 and/or 6 months (\$100,000 and/or 6 months)*
	Large revenue corporation	Indictment	First offence	Min. \$450,000
				Max. \$5.5 million
			Subsequent offence	Min. \$900,000
				Max. \$11 million
		Summary conviction	First offence	Min. \$75,000
				Max. \$3.5 million
			Subsequent offence	Min. \$150,000
				Max. \$7 million
	Small revenue corporation	Indictment	First offence	Min. \$50,000
				Max. \$3.5 million
			Subsequent offence	Min. \$100,000
				Max. \$7 million
		Summary conviction	First offence	Min. \$20,000
				Max. \$1.5 million
			Subsequent offence	Min. \$40,000
				Max. \$3 million

* Penalties under the existing legislation are enclosed in parentheses.

c. *Canadian Environmental Protection Act, 1999*

Bill C-16 increases the time, under the *Canadian Environmental Protection Act, 1999*, that the minister may detain a vehicle, engine, equipment or component after testing it and without instituting proceedings from 30 to 90 days (clause 52 amending section 159(3)).

In addition to the common penalty levels for more and less serious offences set out in Table 1, Bill C-16 also introduces additional penalty provisions specifically for the offence of failing to comply with a provision of a regulation designated under a new regulatory power. Penalties for this offence include up to three years (indictment) or six months (summary conviction) imprisonment for an individual, but are otherwise left to be set out in the regulations. If a person is convicted for failing to comply with one of the designated regulations, specifically for failing to remit or cancel tradable units, the court may order the person to remit or cancel tradable units. A regulatory power is provided for prescribing the types and the manner of determining the number of tradable units to be remitted or cancelled. (Clause 72, adding new section 272.2.)

Previously, if a ship committed any of certain specified offences under the Act, directors and officers of the ship's corporate owner who were in a position to direct or influence the ship's policies or activities could be held liable. Bill C-16 extends this liability to individual owners of an offending ship, and it modifies it so that only those who actually did direct or influence the ship's policies or activities that resulted in the offence can be held liable (clause 76, amending sections 280.3 and 280.4).

Bill C-16 deletes a statement setting out that, for the purpose of prosecuting a ship for contravening an environmental protection compliance order, the order is deemed to have been given to the ship when given to the master or a crew member of the ship (clause 76, amending section 280.5).

d. *International River Improvements Act*

Bill C-16 adds significant new enforcement provisions to the *International River Improvements Act*. First, it provides new powers to inspect, and to make regulations authorizing the inspection of, improvements exempted from the operation of the Act. Such regulations may specify the purposes for which these inspections may be carried out. (Clause 90(2), adding new section 3(e); and clause 92, adding new section 7(2).)

The bill provides that enforcement officers and analysts may be designated under the Act to conduct such inspections. Enforcement officers may have all the powers of peace officers, or the minister may limit their powers. No person may obstruct an enforcement officer or analyst or hinder the officer or analyst in carrying out her or his functions, or knowingly or negligently provide false or misleading information, samples, or documents. (Clause 93, adding new sections 10, 31 and 32.)

For the purposes of the Act, enforcement officers and analysts, and any persons accompanying them, may enter onto and pass through private property. However, they may not enter a dwelling place without the occupant's consent or without a warrant. New provisions set out the criteria that must be met for a justice to issue a warrant authorizing an enforcement officer to conduct an inspection of a dwelling place, as well as other places. When an enforcement officer is seeking a warrant, notice to the owner of the place may be waived in certain situations. The officer may not use force in executing the warrant unless authorized. Owners and occupants are obliged to provide reasonable assistance and information to enforcement officers and analysts. In addition, enforcement officers are given the power to stop, direct and, for a reasonable time, detain a conveyance for the purposes of the Act. (Clause 93, adding new sections 12, 13(1) to (7) and 16.)

To carry out an inspection, enforcement officers and analysts are given powers to open and examine things, examine computer files, books and records, reproduce records, make copies, take samples and conduct tests or take measurements (clause 93, adding new sections 13(8) to (11) and 14). The minister is empowered, for the purposes of the Act, to require a person to produce any sample taken or any document, or to conduct any tests or take any measurements or samples.

Enforcement officers may exercise powers of search and seizure under section 487 of the *Criminal Code*, or in exigent circumstances, without a warrant. They must return or detain anything seized in accordance with sections 489.1 and 490 of the *Criminal Code*; however, if the owner of a thing seized cannot be ascertained within 30 days, the thing is forfeited to the Crown and may be dealt with as the minister may direct. The owner of the thing seized, the person who had control over it and the person who possessed it immediately before it was seized are jointly and severally, or solidarily, liable for the costs of its seizure, detention, and disposal, less the proceeds of its disposition, if any. (Clause 93, adding new sections 15 and 17 to 19.)

If a contravention of the Act or regulations continues for more than one day, it constitutes a separate offence for each day it continues (clause 93, adding new section 35). The other eight Acts amended by Bill C-16 already include this provision.

Previously, this Act did not contain any punishments other than fines, imprisonment and forfeiture of an international river improvement. Bill C-16 makes this Act more consistent with the others by adding “standard” provisions allowing a court to make orders against a person convicted under the Act (as well as the new provisions set out earlier in this legislative summary). Specifically, a court may make an order:

- prohibiting a person from doing any act that may result in the continuation of an offence, or directing a person to take appropriate action;
- directing a person to post a bond to ensure compliance; and/or
- providing that a seized thing, or its proceeds of disposition, be forfeited, returned, or used to offset an unpaid fine.

(Clause 93, adding new sections 45(1)(a) to (c), 46 and 47.)

e. *Migratory Birds Convention Act, 1994*

To prosecute a vessel for an offence under the *Migratory Birds Convention Act, 1994*, Bill C-16 makes it sufficient to establish that a person on board the vessel committed the offence in question (clause 102, adding new section 13.11(5)).

f. *Saguenay-St. Lawrence Marine Park Act*

Previously, the *Saguenay-St. Lawrence Marine Park Act* included enforcement roles for park wardens (who, within their specific sphere of authority, have the powers of peace officers), enforcement officers and peace officers. Bill C-16 eliminates the role of the peace officer, but changes the definition of “enforcement officer.” Previously, an enforcement officer was an officer or class of officers designated by the minister. Under Bill C-16 an enforcement officer is a person or class of persons employed in federal, provincial, municipal, local, or Aboriginal law enforcement, designated by the minister. Enforcement officers have the power of peace officers, but the minister may limit an enforcement officer’s powers, allowing the officer

to enforce only specified provisions of the Act or regulations. (Clause 108, repealing the definition of “enforcement officer” in section 2 and amending section 13; clauses 112(2) and (3), amending sections 19(2) and (3), respectively; and clause 115, amending section 23.)

Enforcement officers are given the same power as park wardens to arrest a person under the Act without a warrant, in accordance with the *Criminal Code* (clause 111, amending section 18).

The Act already gives search and seizure powers to enforcement officers and park wardens. Bill C-16 further specifies that *Criminal Code* sections 489.1 and 490 apply, relating to the return or detention of a seized thing. If a seized thing is perishable, it may be disposed of or destroyed. Proceeds of disposition must be paid to the owner or other person entitled to possession of the thing, unless proceedings under the Act are commenced within 90 days of the seizure. If ownership of a seized thing cannot be ascertained within 30 days of the seizure, the thing or any proceeds of its disposition are forfeited to the Crown. (Clause 113 adding new section 19.1. See also the amendment under the subheading *Seizure: Liability of Owner*, above.)

An additional punishment that a court may impose on someone convicted under the Act is forfeiture of any seized thing related to the offence. Such a seized thing may be sold and the proceeds used to offset a fine, or it may be dealt with as the minister may direct. If the court does not order forfeiture, a seized thing (or its proceeds of disposition) must be returned to the owner. (Clause 114, adding new sections 21.4 and 21.5.)

g. *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*

The standard sentencing principles Bill C-16 adds to all nine Acts are slightly different in the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*. Bill C-16 does not add to this Act two of the aggravating factors it adds to the other Acts: (i) the person had been warned not to commit the offence and (ii) the person had shown poor conduct after the offence (attempted concealment, failure to mitigate or reduce the risk of reoffending). However, it does include a new aggravating factor not added to the other Acts: “the offence involved a high degree of planning.” (Clause 122, adding new section 22.08.)

7. Housekeeping Amendments

a. Clarifying Existing Language

Bill C-16 amends some existing provisions to clarify the language, adjust it to refer to the updated provisions, or rearrange numbering, without changing the substance of the provision.⁽⁶⁹⁾

b. Adjusting the French Version

Bill C-16 also adjusts the French version of various sections to make them more consistent with the English versions.⁽⁷⁰⁾

(69) *Antarctic Environmental Protection Act*: clause 2(1), amending the definition of “Canadian” in section 2(1)(b), clause 5(3), amending section 30(11), clause 8(2), amending section 37(6), clause 12, amending section 49, and clause 15, extending liability of agent of a corporation to a mandatary of a corporation in section 60; *Canada National Marine Conservation Areas Act*: clause 21, amending section 21; *Canada National Parks Act*: clause 34, amending section 25(1), clause 35, amending sections 26(1), (3) and (6) repealing the definition of “wildlife” in section 26(5), and clause 39(2), amending section 30(1)(b); *Canada Wildlife Act*: clause 47(1), amending section 12(a), and clause 48, amending section 13(3) by enacting section 13.11; *Canadian Environmental Protection Act, 1999*: clause 54(2), amending section 218(11), clauses 55 to 57, amending sections 220(2), 222(2) and 225(1), respectively, clause 58, amending section 226, clause 60, amending section 231, clause 68, amending section 247, clause 72, amending section 274, clause 73, amending section 280(2), clause 74, amending section 280.1(3), clause 75, amending section 280.2(2), clause 77, amending section 281.1(2), clause 78, amending section 282, clause 79, amending section 283, clauses 82 and 83, amending sections 288(2) and 289(2), respectively, clause 87, amending section 296(1)(b), and clause 88, amending section 297; *International River Improvements Act*: clause 90(2), amending section 3(d), clause 91, amending section 4, and clause 93, replacing section 10 with section 51; *Migratory Birds Convention Act, 1994*: clause 102, amending section 13(1.4) with section 13.14 and amending section 13(1.6) with section 13.15, clause 102, updating the numbering on new sections 13.16 to 13.18, clause 102, amending old section 13(4) with new section 13.19, clause 103(2), amending section 16(1)(g), and clause 103(3) amending sections 16(2) and (3); *Saguenay-St. Lawrence Marine Park Act*: clause 112(3), amending section 19(3), clause 114, amending old section 21 with new section 20.1, and clause 114, replacing old sections 20(2)(a), (b), (d) and (e) with new sections 21.3(1)(a), (b), (c) and (q); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 122, amending old section 22(4) with new section 22.1, clause 122, amending old sections 22(6)(a) and (b) with new sections 22.12(1)(a) and (b), clause 122, amending old section 22(6)(f) with new section 22.12(1)(g), clause 122, amending old section 22(6)(g) with new section 22.12(1)(i), and clause 123, amending section 24.

(70) *Antarctic Environmental Protection Act*: clause 3(1), amending section 26(1)(c), and clause 17(1), amending section 66(1)(c); *Canada National Marine Conservation Areas Act*: clause 20(1), amending section 16(1)(a), clause 22, amending sections 23(2) and (3), and clause 24(2), amending section 24(2); *Canada National Parks Act*: clause 31, amending sections 23(2) and (3), clause 39(1), amending section 30(1)(a), and clause 39(4), amending section 30(1)(d); *Canada Wildlife Act*: clause 45, amending section 11.4; *Canadian Environmental Protection Act, 1999*: clause 85(1), amending section 291(1)(d); *International River Improvements Act*: clause 90(1), amending section 3; *Migratory Birds Convention Act, 1994*: clause 97, amending section 8.2, and clause 98, amending section 10.

c. Providing for Regulations

The bill empowers the Governor in Council to make regulations to implement the new provisions created by the bill.⁽⁷¹⁾

B. Enactment of the Environmental Violations
Administrative Monetary Penalties Act
("EVAMP Act")

1. Provisions

a. General

Bill C-16 creates a new statute (the Environmental Violations Administrative Monetary Penalties Act, or "EVAMP Act") to establish a system of administrative monetary penalties for the enforcement of the nine amended Acts, as well as the *Canada Water Act*⁽⁷²⁾ (collectively, "environmental Acts") (clause 126, adding all new sections to the EVAMP Act, as set out below). The stated purpose in establishing this system is to provide an alternative to the penal system and to supplement existing measures to enforce environmental Acts (section 3). Accordingly, proceeding with a matter as a violation under the EVAMP Act precludes prosecuting the same matter as an offence under an environmental Act, and vice versa (section 13). According to the government, administrative monetary penalties "address less serious environmental offences that are often not pursued because of the complexity and high costs of prosecution."⁽⁷³⁾

(71) *Antarctic Environmental Protection Act*: clause 3(2), adding new section 26(1)(j.1), and clause 9, adding new section 37.11; *Canada National Marine Conservation Areas Act*: clause 20(2), adding section 16(1)(n); *Canada National Parks Act*: clause 29, adding new section 16(1)(y); *Canada Wildlife Act*: clause 47(2), adding new section 12(k); *Canadian Environmental Protection Act, 1999*: clause 80, adding new section 286.1; *International River Improvements Act*: clause 90(2), adding new section 3(f); *Migratory Birds Convention Act, 1994*: clause 101, adding new section 12(1)(l); *Saguenay-St. Lawrence Marine Park Act*: clause 110, adding new section 17(m.1); *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*: clause 121, adding new section 21(1)(g.1).

(72) The *Canada Water Act* provides for the "management of the water resources of Canada, including research and the planning and implementation of programs relating to the conservation, development and utilization of water resources." See the full title of the *Canada Water Act*, R.S.C. 1985, and c. C-11, which appears prior to the preamble.

(73) Environment Canada, "Backgrounder – Overview of the Environmental Enforcement Bill," rev. 2 March 2009, <http://www.ec.gc.ca/default.asp?lang=En&n=714D9AAE-1&news=2ADA2898-0852-46C6-97CF-C27DF9FF8D00>.

b. Designating Violations

Not all environmental “offences” may be handled as violations under the EVAMP Act – only those under an environmental Act that have been designated in the regulations (sections 5(1)(a) and 5(2)). As for offences under the *Canadian Environmental Protection Act, 1999*⁽⁷⁴⁾ (and associated regulations), only those arising from parts 7 or 9 may be designated as violations under the EVAMP Act (section 5(3)).

c. Proceeding with a Violation

To proceed with a matter as a violation, a person authorized by the minister (section 6) has a notice of violation served on a person, ship or vessel (collectively, “accused”) reasonably believed to have contravened or failed to comply with a designated requirement (section 7), setting out the administrative monetary penalty (AMP) for the violation (section 10(2)(c)). The minister is empowered to establish the form of notices of violation (section 6), but the notice must include specified information, including the name of the person, vessel or ship; facts of the violation; directions for payment of the AMP; information about the right to request a review; and the consequences of inaction (liability for the AMP) (section 10(2)).

The authorized person who issued a notice may cancel or correct it at any time before a review is requested (section 16).

d. Liability

A director, officer, agent or mandatary of a corporation who was involved in a corporate violation is liable to an AMP, whether or not the corporation is pursued (section 8(1)). Similarly for a ship or vessel that committed a violation, liability to an AMP may be imposed on a director or officer of a corporation that owns or operates the ship or vessel, if that director or officer directed or influenced the corporation’s policies that resulted in the violation (section 8(2)); as well, liability may be imposed on the owner, operator master or chief engineer of the ship or vessel, if that person was involved in the violation (section 8(3)).

(74) Part 7 deals with controlling pollution and managing waste. Part 9 deals with government operations and federal and Aboriginal lands.

e. Vicarious Liability

In a violation proceeding, it is sufficient proof of the violation to establish that it was committed by:

1. an employee, agent or mandatary of the person, when a person is the subject of the proceeding;
2. a crew member or other person on board the ship or vessel, when the master of a ship or vessel is the subject of the proceeding; and
3. a crew member or other person on board the aircraft, when a pilot is the subject of the proceeding;

whether or not the person who actually committed the violation has been proceeded against for the violation (section 9).

f. Amount of an AMP

AMP amounts, or methods for determining AMP amounts, payable for each violation by various types of offenders (individuals, corporations, ships, etc.) are left to be set out in regulations (clause 5(1)(b)). However, the maximum penalty levels are set at \$5,000 for an individual and \$25,000 for any other accused (section 5(4)).

g. Defences

The due diligence defence is not available. Nor is the defence that the accused reasonably and honestly believed in the existence of certain exonerating facts. However, other common law defences are available, to the extent that they are not inconsistent with the EVAMP Act (section 11).

h. Timing

A violation committed or continued on more than one day constitutes a separate offence for each day it is committed or continued (section 12). Violation proceedings may only be started within two years of the alleged violation (section 14).

i. Miscellaneous

Definitions used in the Act are set out (section 2). Regulatory powers are included to provide for serving documents under the Act (section 5(1)(c)), and generally, for carrying out the purposes of the Act (sections 5(1)(d) to (f)). The EVAMP Act is binding on the Crown (section 4). In the absence of evidence to the contrary, a document that appears to be a notice of a violation is presumed authentic (section 29).

j. Procedure

If the accused pays the AMP, that person is considered to have committed the violation and proceedings are ended (section 25).

If the accused neither pays the AMP nor requests a review, that person is considered to have committed the violation and is liable to the AMP (section 26). An AMP may be enforced in court within five years of its becoming payable (sections 27(1) and (2), and 28). AMPs recovered are credited to the Environmental Damages Fund (section 27(3)).

k. Reviews

The review procedure is similar to that set out in the *Canadian Environmental Protection Act, 1999* in respect of environmental protection compliance orders. An accused has 30 days (or longer, if the Chief Review Officer extends the period) to request a review of the AMP or the facts of the alleged violation, or both (section 15). Review may be conducted by a single review officer or a panel of three (“reviewer”) (section 17). The accused and the minister may appear in person or be represented (section 18). The reviewer may summon any witness to give evidence or produce documents or things that the reviewer considers necessary for the review (section 19(1)). Any such summons may be made enforceable as a summons or order of a court (sections 19(2) and (3)). A summoned witness is entitled to fees and allowances applicable in Federal Court (sections 19 (4)).

The reviewer must give the accused and the minister reasonable notice of a hearing and opportunity to make oral representations before determining the matter, in accordance with the regulations (sections 20(1) and (3)). The burden is on the minister to establish that the accused committed the violation on the balance of probabilities (section 20(2)). The reviewer must render a written decision and reasons within 30 days (section 21). If the

reviewer determines the accused committed the violation, the accused is liable to the AMP set out in the decision (section 22). Decisions are final and not subject to appeal, except for judicial review in Federal Court (section 23).

The Chief Review Officer may make rules governing reviews (section 24).

C. Coming Into Force

The provisions of the bill, other than clause 127, will come into force on a day or days to be fixed by order of the Governor in Council (clause 128). Clause 127, which is a coordinating amendment, will come into force when the bill receives Royal Assent.

COMMENTARY

A. Environmental Statutes Not Amended

Bill C-16 does not amend the *Species at Risk Act* (SARA).⁽⁷⁵⁾ When Bill C-16 was introduced, the House of Commons had designated the Standing Committee on Environment and Sustainable Development to conduct a five-year review of SARA, pursuant to section 129 of that Act. An Environment Canada official appearing before the standing committee for the review agreed that Bill C-16 was drafted to exclude amendments to SARA out of deference to the standing committee, which was expected to make recommendations regarding possible changes to SARA.⁽⁷⁶⁾

Bill C-16 also does not amend the *Fisheries Act*.⁽⁷⁷⁾ Appearing before the House of Commons Standing Committee on Environment and Sustainable Development, a representative of Environment Canada explained that the “bill is just dealing with statutes under the power of the Minister of the Environment and parks.”⁽⁷⁸⁾

(75) S.C. 2002, c. 29.

(76) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 2nd Session, 40th Parliament, 10 March 2009, 10:25.

(77) R.S.C. 1985, c. F-14.

(78) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 2nd Session, 40th Parliament, 26 March 2009, 9:50 (Ms. Cynthia Wright, Acting Assistant Deputy Minister, Environmental Stewardship Branch, Department of the Environment.)

B. Increasing Penalties and Strengthening Enforcement

A representative from Environment Canada has suggested that under the existing law, court-imposed fines for environmental offences are often not high enough to achieve the objectives of deterrence and denunciation.⁽⁷⁹⁾ Accordingly, a dominant feature of Bill C-16 is the imposition of new minimum fines and an increase in maximum fines, which set “guide posts” to instruct higher sentences.⁽⁸⁰⁾ When asked what evidence has been gathered suggesting that bigger fines actually do change behaviours, the representative stated:

There are several studies that have focused on corporations and shown that corporate behaviour specifically is affected by penalties. In addition, penalties are commonly known to be an effective deterrent and tool for denunciation at large, either with individuals or corporations.⁽⁸¹⁾

However, it appears that the impact of higher fines is difficult to study in isolation. Rather, as noted by one academic, it is the combination of stiffer penalties and greater enforcement efforts that appears to have “a discernible impact on corporate behaviour. In particular, more vigorous enforcement measures are thought to encourage more conscientious attention to the necessity for environmental compliance.”⁽⁸²⁾ Other reports also support the conclusion that increased enforcement of environmental statutes leads to improved compliance with environmental standards.⁽⁸³⁾ In one study of 46 major Canadian corporations conducted in 1990, senior corporate officials were asked how they would respond in five hypothetical situations that pitted environmentally protective behaviour against significant costs for the company.

(79) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence* (unedited copy), 2nd Session, 40th Parliament, 31 March 2009, 09:35 (Ms. Sarah Cosgrove, Manager, Legislative Advice Section, Department of the Environment).

(80) Ibid.

(81) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 2nd Session, 40th Parliament, 26 March 2009, 09:20 (Ms. Sarah Cosgrove, Manager, Legislative Advice Section, Department of the Environment).

(82) Jamie Benidickson, “Offences, Prosecution, and Penalties,” Chapter 8 in *Environmental Law*, 2nd ed., Irwin Law, Toronto, 2002.

(83) See, for example, DeMarco and Vigod (2007), pp. 85–113; and D.N. Dewees, “The Effect of Environmental Regulation: Mercury and Sulphur Dioxide,” in *Securing Compliance: Seven Case Studies*, ed. M.L. Friedland, University of Toronto Press, Toronto, 1990, pp. 354–91.

The survey indicated that prosecution has a strong, statistically significant impact upon the environmental behaviour of corporations, both in actual, past behaviour and in predictions of future behaviour. Corporations which had been prosecuted reported that they spent more on environmental protection than corporations which had not been prosecuted.⁽⁸⁴⁾

Accordingly, while it would appear that stiffer penalties likely impact behaviour, it is almost certain that greater enforcement efforts, and the prior experience of having been prosecuted, deter potential environmental offenders.

There is evidence suggesting that environmental enforcement has been lacking in the past. When Bill C-16 was introduced, it was reported that according to Environment Canada officials, in 20 years, only one company had been convicted of an indictable offence under the *Canadian Environmental Protection Act, 1999* and its predecessor.⁽⁸⁵⁾

However, enforcement efforts are being stepped up at the same time as Bill C-16 is being considered. Budget 2007 provided \$22 million over two years to Environment Canada for enforcement. Budget 2008 provided a further \$21 million over two years to Environment Canada to “increase the effectiveness of enforcement officers with better forensic laboratory support, data collection, analysis and management systems. Budget 2008 also provide[d] up to \$12 million over two years to Parks Canada for the implementation of an enhanced law enforcement program within Canada’s National Parks.”⁽⁸⁶⁾

When asked in the March 2009 House of Commons committee study of Bill C-16 about these additional funds, a representative from Environment Canada stated the following.

[T]he resources allocated in the 2007 budget provide for a 50% increase in the number of enforcement officers in the country. ... At present, 80 new officers have already been hired and are already at work in the field. A training session for our new wildlife enforcement officers was just completed in early March. A final training session for our officers working in environment will begin in May and end in

(84) Dianne Saxe, “The Impact of Prosecution of Corporations and Their Officers and Directors upon Regulatory Compliance by Corporations,” *Journal of Environmental Law and Practice*, Vol. 1, 1991, p. 100.

(85) Alexander Panetta, “Tories aim to penalize polluters,” *The Kingston Whig-Standard*, 5 March 2009, p. 11, and Juliet O’Neill, “Crackdown on environmental crimes: Bill offers tough penalties, enforcement against polluters, poachers,” *Edmonton Journal*, 5 March 2009, p. A5.

(86) Department of Finance, Budget 2008 – *The Budget Plan*, Chapter 4, “Leadership at Home and Abroad,” <http://www.budget.gc.ca/2008/plan/chap4a-eng.asp>.

early June. At that time there will be a total of 106 new officers operating across the country.⁽⁸⁷⁾

Besides increased fines and associated increased enforcement efforts, other aspects of Bill C-16 are of note. For example, the bill imposes personal liability on directors and officers involved in corporate offences. According to the findings of a 1990 survey of Canadian corporations, this may be an effective strategy for deterrence. That study found the following:

Corporate executives indicated that, if they could be personally prosecuted for environmental offences, they would ensure that their corporations did more to avoid such offences.

The survey indicates that the most effective policy for regulators, with the fewest adverse side effects, would be one of holding corporate executives personally responsible for corporate environmental offences, but only if they could have prevented the commission of the offence and failed to do so.⁽⁸⁸⁾

Another aspect of Bill C-16 to note is new provisions for making facts of an environmental offence and punishment public. Various provisions either require or empower a court to order an offender to notify shareholders or an aggrieved person, and/or publish the facts of an offence and the punishment imposed. The findings of a 2007 study support this approach, concluding that “publicity associated with violating environmental standards has an important deterrence effect as well.”⁽⁸⁹⁾

It seems, then, that increasing penalty levels for environmental offences, imposing personal liability on executives, and requiring public disclosure of the details of environmental offences – all measures found in Bill C-16 – combined with applying adequate enforcement measures are likely to lead to increased environmental compliance.

(87) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 2nd Session, 40th Parliament, 26 March 2009, 09:45 (Mr. Albin Tremblay, Chief Enforcement Officer, Department of the Environment).

(88) Saxe (1991), p. 101.

(89) Jerry V. DeMarco and Toby Vigod, “Smarter Regulation: The Case for Enforcement and Transparency,” *Journal of Environmental Law and Practice*, Vol. 17, 2007, p. 96.

C. Compliance with International Commitments

Members of the shipping industry have questioned whether Bill C-16 is consistent with various international obligations.⁽⁹⁰⁾ In particular, it was asserted that article 230 of the *United Nations Convention on the Law of the Sea* (UNCLOS) would be violated if the master or chief engineer of a foreign vessel were imprisoned, pursuant to provisions enacted by Bill C-16. In response, the government stated that UNCLOS would be respected through proper implementation of the new provisions, and that the Attorney General would not seek imprisonment in a case of the kind referred to in article 230.⁽⁹¹⁾

Representatives of the shipping industry also expressed a concern that certain amendments proposed under Bill C-16 would conflict with the *International Convention on Civil Liability for Oil Pollution Damage, 1992*, which Canada has implemented through the *Marine Liability Act*. In response, the House of Commons Standing Committee on Environment and Sustainable Development amended the bill to expressly stipulate that the *Marine Liability Act* is pre-eminent in relevant situations.

After hearing the concerns of the shipping industry, the Senate Standing Committee on Energy, the Environment and Natural Resources made the following observation:

In recommending passage of this bill without amendment, your committee is relying largely on the testimony of the Honourable Minister that prosecutions under respective Acts will not proceed if such prosecutions would contravene any treaty or international convention to which Canada is a signatory. Your committee will follow prosecutions and sentencing under C-16 with great interest and careful scrutiny.⁽⁹²⁾

(90) House of Commons, Standing Committee on Environment and Sustainable Development, *Evidence*, 2nd Session, 40th Parliament, 30 April 2009, and **Senate, Standing Committee on Energy, the Environment and Natural Resources, *Evidence*, 2nd Session, 40th Parliament, 9 June 2009.**

(91) Cynthia Wright, Acting Assistant Deputy Minister, Environmental Stewardship Branch, Department of the Environment, letter to Mr. James Bezan, Chair of the House of Commons Standing Committee on Environment and Sustainable Development, 4 May 2009.

(92) **Senate, Standing Committee on Energy, the Environment and Natural Resources, *Eighth Report*, 2nd Session, 40th Parliament, 11 June 2009.**

D. Strict Liability and Terms of Imprisonment

A second main concern raised by representatives of the shipping industry relates to the constitutionality of the strict liability regime⁽⁹³⁾ reinforced by Bill C-16, which includes imprisonment as a possible punishment upon conviction for a strict liability offence. Various judgments of the Supreme Court of Canada⁽⁹⁴⁾ support the view that both strict liability and the possibility of receiving a prison sentence upon conviction for a strict liability offence are constitutional, but views differ as to the advisability of implementing such a regime.

Representatives of the shipping industry expressed a specific concern with the strict liability regime, coupled with increased penalties, in the context of the offence of discharging waste into the water.⁽⁹⁵⁾ In response, the Senate Standing Committee on Energy, the Environment and Natural Resources made the following observation:

Ships need to discharge waste as part of their normal operations. Currently, a lack of reception facilities at Canadian ports leaves mariners with no legal means to discharge waste. Recognizing that the provision of reception facilities is crucial for the effective implementation of pollution prevention treaties, the International Maritime Organization strongly encourages port States under the MARPOL Convention⁽⁹⁶⁾ to provide adequate reception facilities. Witnesses appearing before your committee stressed the need for these facilities at Canadian ports, and your committee endorses this view. Strong deterrence measures, absent realistic means of complying with the law, are unreasonable.⁽⁹⁷⁾

(93) Strict liability offences require the Crown to prove that the accused committed a prohibited act (such as discharging a substance into the water), but they do not require that the Crown establish that the accused intended to commit the act, or was negligent or reckless in doing so. An accused proven to have committed the prohibited act may avoid conviction by showing, on the balance of probabilities, that he or she acted reasonably to avoid committing the act (was duly diligent).

(94) *R. v. Wholesale Travel*, [1992] 3 S.C.R. 154; *R. v. Ellis-Don Ltd.*, [1992] 1 S.C.R. 840; *R. v. Martin*, [1992] 1 S.C.R. 838; and *R. v. Rube*, [1992] 3 S.C.R. 159.

(95) See the *Migratory Birds Convention Act, 1994*, s. 5.1, and the *Canadian Environmental Protection Act, 1999*, Part 7, Division 3.

(96) “MARPOL Convention” is the name commonly used to refer to the *International Convention for the Prevention of Pollution from Ships, 1973*, including amendments.

(97) Senate (11 June 2009).