PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. The Town of Trenton*, 2024 NSPC 23

Date: 20240215
Docket: 8639545
Registry: Pictou

Between:

His Majesty the King

v.

The Town of Trenton

DECISION ON SENTENCE

Judge:	The Honourable Judge Bryna Hatt
Heard:	December 19, 2023, in Pictou, Nova Scotia
Decision:	February 15, 2024
Charge:	Sections 36(3) and 40(2) of the *Fisheries Act*
Counsel:	Paul Adams, for the Public Prosecution Service of Canada Richard Norman, for the Town of Trenton

By the Court:

[1] The Town of Trenton pleaded guilty to depositing or permitting the deposit of a deleterious substance, namely, untreated sewage effluent, into Lowden Brook, water that is frequented by fish, contrary to 36(3) of the *Fisheries Act*, and did thereby commit a violation under section 40(2) of the *Fisheries Act*.

Agreed Statement of Facts

[2] The Parties filed an Agreement Statement of Facts with the Court. In particular, the parties acknowledge the following facts:

- The Town of Trenton is a municipality pursuant to the *Municipal Government Act*, 1998, c. 18, s. 1 ("*MGA*"). The Town consists of approximately 2500 people.
- The Town is the owner, operator, and entity responsible for its municipal infrastructure, including the underground sewer and water system, which includes the sewer pipe on Park Road/ Bruce Street, which runs through a manhole (hereafter "Park Street Manhole").
- The Park Street Manhole has an outfall overflow pipe that discharges into a ditch, which runs approximately 325m into Lowden Brook.
- Following a complaint from a resident of sewer odour, the Town did a video inspection of the Park Road sewer pipe on October 12, 2017, and

found a blockage in the pipe, causing untreated sewage to back up in the Park Street Manhole and to be discharged through the outfall pipe.

- The Town took no action to remove the blockage or stop the discharge of the untreated sewage into the overflow thereby discharging into Lowden Brook. The Town created a plan to replace the entire sewer system but did not implement this plan. The Town did not report this to *Environment and Climate Change Canada*, as required by section 38(5) of the *Fisheries Act*.
- On October 30, 2019, *Environment and Climate Change Canada* (hereafter "ECCC") received a complaint from a local property owner of a strong sewer odour around Lowden Brook.
- On November 20, 2019, ECCC did an onsite inspection and observed the outfall pipe discharging a significant volume of what appeared to be untreated sewage. The sewage was observed to flow out the outfall, down the ditch, and into Lowden Brook. ECCC notified the Town CAO that day and collected samples of the untreated sewage for chemistry and microbiology analysis.
- Lab analysis of the samples revealed high levels of total coliforms and E.Coli, which is indicative of untreated sewage.
- The ECCC Enforcement Officers did a follow up inspection on December 2, 2019, where a significant volume of untreated sewage was again observed flowing from the outfall pipe, along the ditch, and depositing into Lowden Brook. Enforcement officers again collected samples and sent them for analysis.
- The laboratory results revealed toxicity concentrations acutely lethal to fish, constituting a "deleterious substance" under section 34(1) of the

Fisheries Act. On December 20, 2019, the ECCC issued an Inspector's Direction to the Town pursuant to section 38 (7.1) of the *Fisheries Act*, requiring the Town to take all reasonable measures to prevent the ongoing discharge of the sewage into Lowden Brook.

- In early January 2020, the Town replaced the pipe and discovered a large blockage in the existing pipe that was causing the back up into the Park Street Manhole and to discharge through the outfall.
- By January 3, 2020, the replacement of the pipe was completed at a cost of $20,000, which appeared to correct the issue. The Town also undertook to regularly inspect the outfall.
- The actual volume of untreated sewage deposited into Lowden Brook is unknown; however, the parties agree it was substantial.
- Lowden Brook is a tributary to the East River. The East River has populations of or is used by many fish species, including Atlantic Salmon.
- Lowden Brook feeds into the East River and is used as a recreational fishing location.
- No dead fish were observed and there were no other indications of environmental harm to fish habitats.

[3] The Agreed Statement of Facts provides that the ECCC Enforcement Officers estimated a percentage of the discharge pipe outfall and used that to estimate the total volume of untreated sewage. There was no expert evidence provided for this calculation, only estimates from observations on two dates.

[4] The parties do not agree on the amount of untreated sewage that the Town released into Lowden Brook. The Crown relies on an estimate based on the observations of the Enforcement Officers and extrapolates this figure over time. The Defence does not agree with this approach and is only willing to acknowledge that it was a "substantial volume".

Positions of the Parties

[5] The Court had the benefit of fulsome submissions from the Crown and the Defence. The Crown seeks a fine in the amount of $350,000 and a section 79.2 order compelling the Town to participate in training, education, environmental monitoring, and testing.

[6] The Defence takes no issue with the proposed section 79.2 order but argues that a $350,000 fine would be financially devasting to the Town. The Defence suggests that a $30,000 fine is more appropriate in the circumstances.

[7] The Defence also argues that the Court should not impose a sentence pursuant to section 40(2)(b) (ii) of the *Fisheries Act*, where the statutory sentencing range is a minimum of $100,000 to a maximum of $4,000,000.

[8] Rather, the Defence suggests that the Town should be considered a small revenue corporation and sentenced pursuant to section 40(2)(b)(iii) of the *Fisheries Act* where the statutory sentencing range is a minimum of $25,000 to a maximum of $2,000,000. The definition of a small revenue corporation is set out in section 40 (2.1) as a corporation that has a gross revenue of not more than $5,000,000 in the 12 months preceding the date the subject matter of the proceeding arose.

[9] In determining the Town's gross revenue, the Defence argues that only the operating gross revenue of the Town should be considered as all other monies are funding specific to projects or programs. For instance, water revenues can only be used by the Water Utility, which is a separate entity, and infrastructure funding can only be used for an approved project. The Town does not have the ability to divert these funds for other purposes.

[10] In support of its submissions on the Town's finances and means of income, the Defence filed two affidavits: Brenda MacKay (Auditor); and Alanna Grover (Town CAO). Both Ms. MacKay and Ms. Grover were subject to cross-examination on their respective affidavits at the sentencing hearing. Ms. Grover was not the CAO at the time of these offences.

[11] The Court has also had the benefit of Community Impact Statements from members of the public describing the negative effect the smell has had on their use and enjoyment of their respective properties. The individuals also speak of how this incident has undermined community trust in the Town of Trenton.

Small Revenue Corporation

[12] Counsel did not provide case law on the interpretation of section 40(2.1) of the *Fisheries Act* with respect to the determination of gross revenue. This may be due to the fact that most of the sentencing cases law relate to for-profit corporations, where gross revenue in sales or services is more readily ascertainable. In relation to the Town, it is argued by the Defence that gross revenue must be determined based within the structure and organization of the Town and its revenue sources.

[13] The affidavit of Ms. MacKay affixes schedules of the budgets and the consolidated statements of financial operations prepared by Grant Thornton. At page 3 of Appendix A of her affidavit, the consolidated statements reveal a revenue for the fiscal year from April 1, 2017, to March 31, 2018, of over $5.9 million. This amount includes water rates and dedicated project funds.

[14] Page 5 of Appendix B of Ms. MacKay's affidavit sets out a revenue of $4.2 million for the fiscal year from April 1, 2019, to March 31, 2020. This amount also includes water rates and dedicated project funds.

[15] However, the Town argues that the water rates and dedicated project funds, such as capital contributions and grants, are not gross revenue. The Town argues that these amounts are not revenue the Town has in its general operations, nor are they monies the Town has the ability or authority to divert for other purposes. Rather, the Town receives this funding from a third party only for a dedicated purpose or program.

[16] By way of contrast, the general operation revenue, which includes tax revenue and income from other sources, is revenue that the Town controls and directs. In 2017-2018 and 2018-2019, the general operational revenue was approximately $3.2 million per fiscal year.

[17] The distinct statutory sentencing framework for small revenue corporations recognizes that smaller revenue entities do not have the same ability to pay as compared to larger revenue entities. This buttresses the concepts of deterrence and proportionality in the assessment of a fit and proper sentence.

[18] Gross revenue is commonly considered to be the total amount of sales recognized for a reporting period, prior to any deductions. It is a reflection, primarily in a corporate or business structure, of the gross amount of realized sales or services provided by the entity.

[19] In the case of the Town of Trenton, however, monies flow in from various sources. One stream of funds comes from non-sales or service-related revenue through dedicated funding for projects. The Town does not have the authority to use, control, or direct these funds for any other purpose, including any operational objectives. A second stream of funds comes from water revenues which are controlled and directed by a separate entity from the Town. The remaining revenue comes from property taxes and other income streams that the Town does direct and control. Having regard to these unique considerations, it is appropriate that gross revenue should determined based on funds that the Town has the authority to direct and control - prior to deductions.

[20] Based on the evidence before the Court, including the cross-examination of Ms. MacKay and Ms. Grover, I accept that the Town does not have authority over, or access to, all of the funds that it receives. More specifically, water rates are controlled by a separate entity, and grants and capital contributions are already dedicated to specific projects. As such, for the purposes of section 40(2.1), I find

that the determination of what constitutes gross revenue only encompasses the general operating revenue sources. For the relevant time, the Town's gross operating revenue was approximately $3.2 million - well below the $5m cap for classification as a small revenue corporation. I find that the Town is a small revenue corporation within the meaning of the *Fisheries Act* for the purpose of sentencing.

Sentencing Objectives and Principles

[21] The primary sentencing objectives for *Fisheries Act* offences are summarized in *R. v. Schafhauser*, 2017 BCSC 2287, at paragraph 11:

> The *Fisheries Act* is regulatory legislation designed to protect and preserve a valuable resource and any contravention of it must be taken seriously. Accordingly, the predominant sentencing consideration must be deterrence, both specifically of the accused and generally of other members of the public who are inclined to act in the same manner. Penalties must be sufficiently severe to communicate to the accused that there is a high risk associated with their illegal activities both for the resource they are affecting and to themselves for their conduct… [citations omitted]

[22] Determining "a just and appropriate sentence is a delicate art" which requires the careful balancing of "the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community" (*R. v. M. (C.A.)*, [1996] S.C.J. No. 28, at para. 91). An appropriate

sentence cannot be determined in isolation. Regard must also be had to all the circumstances of the offence and the offender (*R. v. Nasogaluak*, 2010 SCC 6, at para. 44; *R. v. Naugle*, 2011 NSCA 33, at para. 45).

[23] One of the leading cases providing guidance to courts in Canada in determining an appropriate sentence for environmental offences is *R. v. Terroco Industries Ltd*, 2005 ABCA 141. The facts in that case differ significantly from those before this Court, but the applicable principles are sound and have been applied consistently across the country (see, for example, *R. v. Brown*, 2010 BCCA 225).

[24] The guiding principles identified in *Terroco Industries Ltd* involve a consideration of: (1) culpability; (2) prior record and past involvement with the authorities; (3) acceptance of responsibility; (4) damage/harm; and (5) deterrence.

Culpability

[25] The mental element for the offence charged is due diligence. Culpability is assessed on a sliding scale. The degree of culpability ranges from what could be characterized as a near miss of due diligence to a deliberate intention to commit the offence.

[26] The evidence before the Court places the actions of the Town at the more serious end of the sliding scale of culpability. The Town did not intentionally plan to discharge untreated sewage into Lowden Brook. However, the Town's actions are a far cry from a case of a near miss or a simple lack of due diligence.

[27] The Town became aware of the issue of a blockage and overflow into the Park Street Manhole in 2017. The Town took no remedial action and did not comply with its obligations to file a report to the ECCC.

[28] On November 20, 2019, Enforcement Officers advised the Town of the untreated sewage being discharged into Lowden Brook following an inspection. Again, the Town took no action to address the problem until it received an Inspector's Direction on December 20, 2019. Only then did the Town complete the necessary repair work over two days in early January of 2020.

[29] The Town has accepted responsibility but argues that the Town Council was not aware of this issue back in 2017. This may be so. However, the CAO at the time was aware of the problem according to the Agreed Statement of Facts. The CAO is the key employee of the Council. The powers of the CAO and the CAO's relationship with the Council are set out in sections 28 to 30 of the *MGA*. It is not appropriate to distinguish between the awareness of the CAO and that of Council

so as to mitigate punishment. To do so would be to offend the purpose and principles of sentencing, and particularly, the principles that guide the sentencing of environmental offences.

[30] The Town did not take proper, timely, or appropriate action to investigate or remediate against the harm on its own accord. Instead, it took no action until directed to do so by an environmental inspector. Again, it was only upon receipt of the Inspector's Direction on December 20, 2019, that the Town acted quickly to resolve the problem and finally did so by January 3, 2020.

[31] What keeps this matter from classification in the highest end of culpability is that the Town did not intend or deliberately plan to discharge the sewage, and that the Town did not try to conceal the effluent or to mislead environmental inspectors. On the contrary, the Agreed Statement of Facts reflects that when the ECCC became involved the Town was cooperative and forthcoming throughout.

Prior Record and Past Involvement with the Authorities

[32] The Town does not have a record under the *Fisheries Act* nor any prior involvement with the ECCC authorities.

Acceptance of Responsibility

[33] The Town has taken responsibility for the offences, having pleaded guilty at an early opportunity. In doing so, the Town has given up its right to a trial. The Court acknowledges the savings in time and expense in an era of scarce judicial resources.

[34] The Agreed Statement of Facts reflects that the Town, without reservation, cooperated with the inspection process and was candid about what it had and had not done. The Town was both forthcoming and accountable with respect to its actions.

[35] The Town has completed the necessary repairs to the pipe, correcting the discharge of the effluent. These repairs cost the Town approximately $20,000.

[36] It is further noted in the affidavit of Ms. Grover that the Town has since applied for, and received, funding in the amount of $324,600 from the Sustainable Services Growth Fund for the purpose of improving the sewer infrastructure in the vicinity of Lowden Brook. Further, the Town has secured funds in excess of $1,000,000 through Federal, Provincial, and Municipal programs in support of an infrastructure project for storm and sewer separation.

Damage or Harm

[37] There is no dispute that the untreated sewage was a “deleterious substance” as defined in the *Fisheries Act*. The Court must now consider the extent of the harm flowing from the release of the sewage into Lowden Brook.

[38] Harm, and the potential for harm, are scientific concepts, but proof of them is a legal concept. In this case, there is no expert evidence before the Court of specific harm. There is no evidence of damage to the fish habitat, nor evidence of any dead fish. That said, the Agreed Statement of Facts refers to toxicity test results which establish that the effluent was acutely lethal to fish.

[39] The parties also agree that a “substantial” volume of a deleterious substance was released into Lowden Brook. However, the term “substantial” lacks precision and context. The Crown argues that the Town – as a conservative estimate - discharged 50 million ~~of~~ litres of effluent based on the aforementioned observations on two different days. The Town does not agree with these figures, conceding only that it discharged a “substantial volume” of effluent.

[40] The Court accepts there was a level of harm, albeit not one that is readily ascertainable in substance or significance. As such, while it is a serious factor for the Court to consider, it does not have the further aggravating nature of a specific or quantifiable harm or damage.

Deterrence

[41] Deterrence has two forms, specific and general. General deterrence is directed towards the public at large. Specific deterrence is focused on the individual offender. General deterrence is of central importance in environmental protection cases, including related offences under the *Fisheries Act*. The Court's emphasis on general deterrence reflects the critical need to protect our environment, required and needed by all living things, and recognizes that acts of degradation by one may have a larger impact on our habitat. As Judge Phillips stated in the 1989 unreported case of *R. v. Shamrock Chemicals Ltd*., as helpfully cited by Judge Leaman in *R. v. Domatar* [1998] O.J. No. 6408 (C.J.), at para. 8:

> Activities that contribute incrementally to the gradual deterioration of the environment, even when they cause no discernible direct harm to human interest, should be treated seriously. Each actor must bear his share of the responsibility for the ultimate harm if there is to be an effective deterrent to an eventual destruction which will harm human interests.

[42] The words of the Ontario Court of Appeal also reflect the concept of general deterrence when addressing the proper fine to be imposed in environmental cases. Justice Blair, speaking for a unanimous Court in *R v. Cotton Felts Ltd*, [1982] O.J. No. 178, stated at paragraph 22:

> …Without being harsh, the fine must be substantial enough to warn others that the offence will not be tolerated. It must not appear to be a mere license fee for illegal activity.

[43] What is deemed to be too harsh of a fine or, in the alternative, what appears to be the equivalent of a mere license fee, has an element of subjectivity based on the means of the offender. For instance, a fine that would cripple a small revenue corporation could be seen as the cost of doing business for a larger corporation. Even with the distinction between a corporation and a small revenue corporation under the *Fisheries Act*, there remains a wide range of potential gross revenues that are captured withing each category, along with a broad range of fines that the Court may impose.

[44] It is for this reason that the circumstances of the offender must also be considered to craft a proportionate punishment.

[45] The offender is a Town - not a for-profit corporation - and is included in the definition of municipality under the *MGA.* The purpose of a municipality under section 9 (a) of the *MGA*, reads:

a. The purposes of a municipality are to

(a) provide good government;

(b) provide services, facilities and other things that, in the opinion of the council, are necessary or desirable for all or part of the municipality; and

(c) develop and maintain safe and viable communities.

[46] The evidence from Ms. MacKay and Ms. Grover establishes that the primary source of Town revenue is its tax base and funding from other levels of government for programs and services.

[47] The Town's financial reserves, which it requires for unexpected operational expenses such as budget deficits, emergencies, or unexpected repairs, did not exist prior to 2021. Further, the Town's financial reserves have continued to grow since that time through increased property taxes, one-off grants, the receipt of unpaid property taxes from prior years, and a general reduction in expenses for recreation activities during COVID. The Town argues that the majority of these events have been one-time windfalls that will not exist moving forward.

[48] The Town's operational reserve as of March 31, 2023, was approximately $830,000. However, both Ms. Grover and Ms. MacKay provided evidence that the Town is still considered high risk even with its operational reserve. More specifically, Ms. Grover's affidavit attaches a letter from the Department of Municipal Affairs and Housing addressing this issue and outlining other indicators of financial concern for the Town. Furthermore, the evidence establishes that the Town has virtually no capital reserves.

[49] The Town states it will have to use the operating reserve to pay any fine imposed, and that the depletion of the reserve will bring the Town below threshold sustainability according to numerous indicators of financial concern. Furthermore, the Town states that it must maintain a balanced budget pursuant to the *MGA*. The Town also advises that raising property taxes is the only way for it to increase its revenues to make up for any shortfalls in the budget or the reserves. The Town notes that it already imposes the highest property taxes in Pictou County.

[50] Unlike a for-profit corporation or business, the Town has a mandate not to make a profit but to provide public services to its residents and property owners. This does not delineate a separate sentencing test for towns, but the Court must consider the offender and its circumstances in determining a fit and proper sentence.

[51] This in no way detracts from the significance of the harm, the importance of protecting the environment, or the need for deterrence. Rather, the Court must consider what is the appropriate amount of the fine that is required to meet these objectives, while also considering proportionality as it relates to the circumstances of the offender.

[52] The Town does not have profits to pay the fine, rather, it has a reserve fund to draw upon. The consequence of drawing upon the reserve fund to pay a fine is to reduce the emergency funds available, to jeopardize the ability of the Town to respond to unexpected expenditures, and, by extension, to negatively impact the residents and taxpayers of Trenton who are also victims of the offence. These circumstances are unique when compared to the corporate caselaw provided.

[53] I have carefully reviewed all of the cases provided by counsel.

[54] The cases from the Defence included *R v. 100 Mile House,* [1993] B.C.J. No. 2848 (P.C.), *R v. Dawson City,* 2003 YKTC 16, and *R v. Iqualuit,* 2002 NUCJ 1. I note that Parliament elevated the range of potential fines for these offences in 2013 and that each of these cases pre-date the legislative amendments. The Defence argues that with a percentage equivalency to the new fine thresholds, the cases provide a current range of $32,000 to $70,000.

[55] The Crown offered a range of post-2013 cases, the majority of which involved for-profit corporations. None of the cases appeared to address small revenue corporations. With varying degrees of effluent discharge, harm, and other case-specific factual circumstances, the Courts imposed fines ranging from $200,000 to $500,000.

[56] The Crown also referred to an unreported decision from the Alberta Provincial Court dating back to July of 2014, *R v. Alberta Capital Region Wastewater Commission,* that involved a municipal type entity. However, there is no written decision, only the Agreed Statement of Facts and the Sentencing Order for a $200,000 fine. The materials do not provide any analysis, the positions of the parties, nor is there a discussion of the range of potential punishments. It appears that the Court may have accepted a joint recommendation. This information alone is of limited value in the present circumstances.

[57] A more recent sentencing decision from this jurisdiction is *R v. Northern Pulp Nova Scotia,* 2016 NSPC 29. The case involved a for-profit corporation that released 47 million litres of deleterious effluent into the East River as a result of a break in a pipeline running between a pulp mill and an effluent treatment facility. The company did take remedial action to contain the effluent following the rupture and repaired the pipe. The Court ordered a $225,000 fine.

[58] I do not accept that the mere extrapolation of the sentence ranges in the pre-2013 case law can be simply applied moving forward by adopting a percentage-based analysis. For instance, the Defence has argued that a pre-2013 fine was 2% of the maximum before and is therefore equivalent to 2% of the higher thresholds post-2013.

[59] It is agreed by the Crown and the Defence that the 2013 *Fisheries Act* fine increases were a clear signal from Parliament to emphasize the paramountcy of environmental protection, the prevention of harm, and deterrence. When fines are increased with the aim to emphasize the importance of protection and prevention, the elevation of the potential penalties represents more than a simple percentage increase. Rather, it represents a clear message by Parliament to significantly increase the magnitude of the penalty for the offence. As such, I am not convinced that the range calculation provided by the Defence provides a current snapshot of the appropriate range of penalties.

[60] In fairness to the Crown and the Defence, I recognize that there does not appear to be sentencing case law involving not for-profit or municipal entities for this offence post-2013.

Amount of Fine

[61] To review, the Crown has provided a large amount of case law that primarily relates to for-profit corporations in support of its position for a $350,000 fine. I have already described why these cases are distinguishable.

[62] The Court is concerned with protecting and preserving the environment, and with deterring offenders. However, the effort to deter is not abstract and must also

be considered in the context of the offender's culpability and circumstances. The principles of sentencing demand this. In this case, a fine of $350,000 would be unduly harsh and disproportionate. It would impact the Town's ability to provide services, to respond to unexpected repairs or emergency operations, and require the Town to increase its revenue which either means a reduction in services and programs or an increase in taxes, or both. This will have a further negative impact on the Town's residents and taxpayers, who in this case, are also some of the victims of the offences.

[63] Likewise, the Town's position of $30,000 falls short of a fit sentence. It does not adequately address culpability, deterrence, the sentencing objectives, or the purpose of the *Fisheries Act.*

[64] The Town has a high degree of culpability. That being said, the Town does not have a prior record and it was cooperative throughout, demonstrating a full acceptance of responsibility. No volume of effluent has been identified with any precision, although it was acknowledged to be "substantial". No precise or ascertainable harm has been identified in relation to the environment or the local fish populations. The Court does recognize that the absence of evidence of exact harm does not translate into no harm caused by the release of effluent.

[65] Even so, the Town's financial means are not akin to a for-profit corporation and are limited. The Town has provided evidence of its financial restraints, its limited reserves, and the negative consequences for the Town and the public it is mandated to serve if those reserves are depleted.

[66] The Court also has evidence from the Community Impact Statements describing the negative consequences that this incident has had on residents, including the reduced enjoyment of their respective properties and the recreational area. The residents also speak of the breakdown in trust between some of community members and the Town. A resulting lack of trust and faith in the municipal unit by the persons it serves is significant and has a deterring effect. It is a relationship that will take time and effort to rebuild.

[67] I have considered that the Town has spent $20,000 to correct the issue. Furthermore, I recognize that the Town has secured over $300,000 in funding to upgrade the sewer in the vicinity of Lowden Brook, in addition to infrastructure funding of over $1m to complete further upgrades and sustainability projects in relation to the Town's storm water and sewer system.

Conclusion

[68] I find that based on the above sentencing principles, a fit and proper sentence is:

(a) A fine in the amount of $100,000. This represents a significant penalty for the Town of Trenton and addresses both specific and general deterrence.

(b) The Town shall have 3 years from the dates of the Order to pay this fine.

(c) The fine is to be credited to the Environmental Damages Fund and used for purposes related to the conservation and protection of fish or fish habitat or the restoration of fish habitat. It is recommended that the fine be used by the Fund for the said purposes in the East River and Lowden Brook water system, in Pictou County, Nova Scotia.

(d) A section 79.2 order under the *Fisheries Act* with the following conditions:

1. (a) Chief Administrative Officer (CAO), or delegate, shall give to all elected officials (mayor and council) a copy of *Fisheries Act* provisions, namely **Fish and Fish Habitat Protection and Pollution Prevention**; offences and

penalty provisions within the said Protection and Pollution provisions, and, sections 79.2, 79.4 to 79.6 of the said *Act*.

(b) Within 10 days of the signing of the Order, the CAO or delegate shall provide written confirmation of having complied with clause 1(a) to ECCC c/o Enforcement Officer Zack Branscombe.

2. (a) Within 90 days of the signing of the Order, the Town of Trenton, at its expense, shall require the following designated positions to participate in third party training on the federal *Fisheries Act* **Fish and Fish Habitat Protection and Pollution Prevention provisions**, related legislative requirements and penalties, spill response, reporting and notification requirements, and clean-up of sewage and other pollutants:

(i) The CAO, Public Works Superintendent, Manager of Water Utility, Town Engineer; and,

(ii) Town of Trenton employees, contracted and casual workers employed in the Public Works and Water Utility

departments. On completion of the said training, the participants must pass a test prepared by the third-party trainer.

(b) Prior to such training, ECCC must review and approve the proposed training program and test.

(c) Within 14 days of completion of the requirements set out in clause 2(a), the third-party trainer shall provide a written report to ECCC c/o Enforcement Officer Zack Branscombe.

3. (a) At the expense of the Town of Trenton, employees, contracted and casual workers in the Public Works and Water Utility departments shall be trained by an independent 3rd party to properly collect, store and transport effluent samples taken from prescribed locations to an accredited laboratory. Training completion must be within 90 days of the signing of the Order.

(b) Within 5 days of completing the training described in clause 3(a) and continuing throughout the 18 months

following the signing of the Order, trained employees or workers shall from the prescribed locations identified in clause 3(c):

(i) Collect effluent samples once per month at least 10 days apart and arrange analysis of those samples for the following:

- CBOD matter
- Total Suspended Solids
- Total Ammonia
- pH
- Field Temperature
- Total Coliforms and E. coli

(ii) Collect effluent samples once per quarter at least 60 days apart and arrange analysis of those samples for acute lethality to Rainbow Trout in accordance with Reference Method EPS 1/RM/13 using the procedure set out in section 5 or 6 of that Method.

(iii) Analysis shall be carried out by a facility whose accreditation includes the analytical method of the parameters to be analysed.

(iv) Within 2 working days of the final report of the analysis results being prepared, the accredited laboratory shall send the report by way of an agreed means to the Town of Trenton's CAO and ECCC c/o Enforcement Officer Zack Branscombe.

(c) The prescribed locations for collecting effluent samples are:

(i) the end of pipe outfall located behind the residence at 25 Bruce Street, at approximate coordinates 45.6228 – 62.6370.

(ii) the downstream end of the culvert under the driveway at 312 North Main Street, Trenton, NS, at approximate coordinates 45.6250 – 62.6370.

(d) In the event of weather conditions that impede adequate sample collection during any of the collection periods described in clause 3(b):

(i) Repeated attempts must be made to collect samples at the prescribed outfall and culvert locations. When samples can be taken from only one location during the described collection period, sampling compliance is deemed complete.

(ii) When samples cannot be collected from either location after repeated attempts, then before the end of that collection period ECCC c/o Zack Branscombe must be notified.

(iii) Collection efforts must be documented by employees or workers assigned to collect the samples.

4. Within 2 months of the signing of this Order, and every 4 months thereafter for the duration of this Order, the Town of Trenton shall publish on its website and in its newsletter, *Trenton Talk*, contact information for Town officials responsible for wastewater and storm water systems that includes afterhours contact information for emergencies related to such systems.

5. Within 3 month of the signing of this Order, the Town of Trenton shall publish on its website and in its newsletter, *Trenton Talk*, a copy of the signed court Order and an article that includes detailing the facts that led to sentencing, acknowledging the importance of *Fisheries Act* compliance, and identifying the environmental risks associated with non-compliance. Prior to publication, ECCC shall review the article for accuracy and completeness, and agree to its content.

Bryna Hatt, JPC