

Odour in Environmental Law

November 19, 2014

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Overview

- Case studies
- How much is too much?
- But they let it happen...



Odours can lead to:

- Prosecution
 - Adverse effect
 - Spill
- Orders
- Lawsuits
- Approvals problems...

Neighbours and Complaints

- Enforcement usually complaint-driven
 - Many complaints
 - Many prosecutions
- Toughest part of environmental law?

Your neighbours say

This? Or...



This?



Commander Business Furniture

- Small family company in mixed area
- Couldn't pay \$1.2M for fume incinerator, but did everything else, met MOE standards
- Angry neighbours
- Convicted
- \$20,000 fine in 1992

PSC Industrial

- Odour from waste oil processor
 - Thermal oxidizer broke down for a few minutes
- Guilty pleas to breaching CofA:
 - Failed to record complaint
 - Failed to submit report to MOE
 - Failed to ensure staff trained
 - \$35,000 fine in 2005

R. v. CCL Industries

- Odour from manufacturer
- 8 months, numerous complaints
- Some equipment, no CofA
- \$100,000 fine in 2008

BP Canada Energy

- 10 minute vapour plume from natural gas liquids plant
- Headaches, sore throats, nausea
- Guilty plea
- \$800,000 plus VFS
 - = \$1 million, 2009

Universal Resource Recovery

- 2013
- Odour from composting
- Tried hard to comply
- Spent \$35 million
- Gave up and closed
- Still fined \$160,000 plus VFS

Other organics prosecutions

- Municipal organics diversion programs:
 - Toronto, Orangeville, Sault Ste. Marie, Guelph, Niagara
- Halton Recycling: \$155,000
- Oakridge Terra: \$25,000
- Courtice Auto Wreckers: \$25,000

R. v. Amaizeingly Green (2009)

- Odour from ethanol plant WWTP
- One summer week, 52 complaints
- Voluntary temporary shutdown
- \$2 million in improvements
- \$650,000 into a security account
- \$300,000 fine (plus VFS)

Not just prosecution

- *Moore v Smith Construction*
- Small Claims Court:
- Noise and odour from asphalt plant at quarry
 - “obnoxious”, “brutal”, “awful”, “really really bad”, “living hell”
- Damages \$14,700 for two months

Renewing approvals

- X Co. on long standing industrial site
- Routine permit renewal
- Stymied by planned condo tower next door
- Problems now, worse later?

How much is too much?

- Really tricky
- Lots of government discretion
- Do your neighbours like you?



Key Obligations

- Don't pollute
- Get all the right permits
- Report, report, report
 - Is it a “spill”?



Don't Pollute

- Discharges - e.g. EPA S. 14 - No person shall
 - *discharge...or cause or permit the discharge of*
 - *a contaminant*
 - *into the natural environment, that*
 - *causes or may cause*
 - *an adverse effect.*

What Is Pollution?

- “Contaminant”, s.1
- Anything with potential for adverse effect
 - Solid (e.g., dust, smoke, flyrock)
 - Liquid (e.g., wash water)
 - Gas
 - Vibration
 - Noise
 - Odour

Adverse Effect

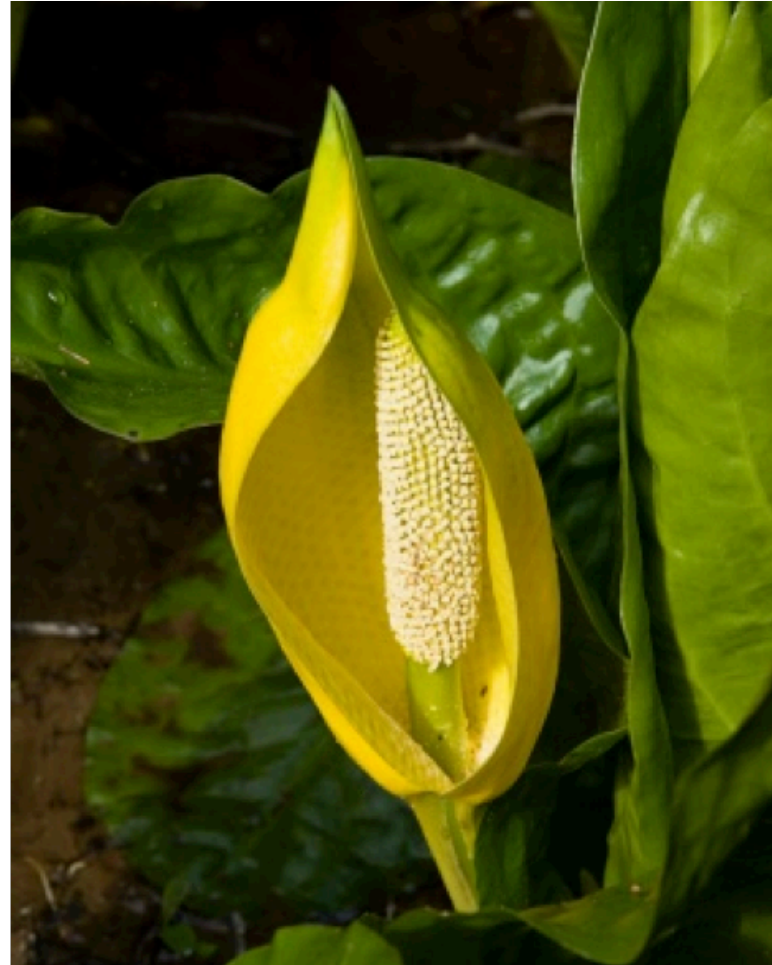
- Impairment, injury, damage, harm
- **Interference with normal use of property**
 - Had to go inside, close windows
- **Material discomfort**
 - Subjective, can be temporary

Odour Perception

- Containment
- Weather
 - wind speed / direction
 - air stability / inversions
- Time of day
- Terrain
- Distance...

Highly Subjective

- Mental
- Physical
- Emotional
 - It stinks but
 - Natural
 - Pretty



What Else Don't They Like?

- Leaking trucks
- Blowing trash
- Traffic
- Missed pickups
- Rude driver
- etc., etc.

Pyke v. Tri-Gro

- “[T]he human nose is a very sensitive and a very subjective instrument.”
- Expert witness explained:
 - The establishment of effective odour control measures is complicated by the fact that there is an absence of a direct relationship between the concentration and perceived intensity of odours for humans.
 - A considerable reduction in concentration of the odour-producing chemical(s) may be required in order to provide a recognizable change in perceived odour intensity.

Is it all subjective?

- “Adverse effect”
 - Human variation
 - Sensitivity x 1000
 - Repeated exposure
 - Time of day
 - Health effects?
 - Environmental variation
- Objective credibility?

Odour Units

- Objective benchmarks?
- Widely used, but
 - Scientifically reliable enough to be a legally enforceable condition in an approval?
- Not according to BC Environmental Appeal Board

West Coast Reduction v GVRD

- “Stop the stink” campaign
 - “The notion that odour units can be used as an indicator of an environmental “smell” is simply too flawed to be used as a method of determining compliance, and is therefore not suitable for determining whether the environment is adequately protected”

Any better ideas?

- Not yet, so we keep using them...



Orgaworld ECA appeal

- Orgaworld accepted 1 OU limit
- MOE refused ECA, doubted whether Orgaworld could meet 1 OU reliably
- ERT ordered MOE to issue ECA

But they let it happen

- We were here first
- Where did the buffer zone go?
- Why would anyone put a condo there?
- Isn't it their fault?

New buildings

- Who should pay for odour mitigation on new buildings near existing odour sources?
- The Planning Act struggle

Conclusion

- Odours have major consequences
- Unhappy neighbours usually mean odour is too much
- Even if you were there first

Don't miss our blog

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