In the Provincial Court of Alberta

Citation: R v Dockman, 2017 ABPC 310

Date: 20171212
Docket: 150100550P1
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Michael Louis Dockman

Accused

Reasons for Sentencing of the Honourable Judge W. J. Cummings

Introduction

[1] An owner/operator of a water treatment plant providing drinking water to a community of residential acreages is sentenced to fines in the global amount of $49,000 allocated on six counts after being found to have contravened various provisions of an Enforcement Order issued under the authority of the ***Environmental Protection and Enhancement*** **Act**, R.S.A. 2000, c. E - 12 as amended ("***EPEA***").

[2] The sentencing framework specific to environmental offences set out in ***R v Terroco Industries Limited***, 2005 ABCA 141(CanLII), ("***Terroco***") is considered and applied. The principle of totality as it applies to sentences constituting fines in regulatory matters as set out in ***Alberta (Health Services) v Bhanji***, 2017 ABCA 126 (CanLII), ("***Bhanji***") is also considered.

Convictions

[3] This is the Court's sentencing following Michael Louis Dockman being found guilty (***R v Dockman***, 2017 ABPC 112) on six counts following contraventions of various provisions of an Enforcement Order issued under the authority of the ***EPEA*** under which he was operating a water treatment plant, (the "Waterworks System") servicing various residents occupying residential acreage properties in the Sharp Hill subdivision located in the vicinity of Airdrie, Alberta, (the "Sharp Hill residents"). All offences are characterized as regulatory, strict liability offences.

[4] The Court may refer to Mr. Dockman by his surname for ease of reference in this sentencing and not out of disrespect.

[5] Convictions resulted following Dockman's contraventions of the Enforcement Order as alleged on the information, as follows:

> On count 1, by providing water through the Waterworks System which did not meet required fluoride concentrations on at least seventy-seven (77) occasions between June 1st, 2013 and January 17th, 2014.
>
> On count 2, by providing water through the Waterworks System that did not meet required pH limits constituting at least one hundred and fifty-nine (159) contraventions between June 1st, 2013 and January 17th, 2014.
>
> On counts 3 and 4 by failing to comply with monitoring frequencies for one or both of fluoride and pH respectively constituting sixty-four (64) contraventions between June, 2013 to and including January, 2014.
>
> On count 5, by failing to submit any of the required electronic information to Leslie Miller's e-mail address between July 12th, 2013 and January 20th, 2014.
>
> On count 6, by failing to report contraventions of the Enforcement Order by telephone between June 1st, 2013 and January 20th, 2014.

[6] The Crown proceeds by way of summary conviction procedure.

Dockman's circumstances

[7] No pre-sentence reports were tendered in evidence but Mr. Dockman's counsel, Mr Anderson, provided the Court with a brief description of some of Dockman's personal circumstances.

[8] Dockman has no criminal record or convictions under the ***EPEA***, facts which the Crown confirms.

[9] Dockman is 61 years old, married and he and his wife have raised seven children. He is currently a university student having recently completed undergraduate studies and in September, 2017, commenced graduate studies which he plans to have completed in the next one to two years.

Dockman's related financial circumstances

[10] On unconfirmed information supplied to him by Mr. Dockman, Mr. Anderson initially advised that Dockman's university education was being financed largely on student loans and that he had not filed income tax returns for at least five or six years. Again, on unconfirmed information supplied to him by Dockman, Mr. Anderson advised Dockman's businesses had

been adversely affected by the 2008 recession and as a result, the subject water treatment facility had to be supported financially by Dockman's other business ventures. Mr. Anderson also relayed Dockman's contention that his ability to pay fines following these convictions was limited.

[11] The Crown questioned Mr. Dockman's broad assertions (but not counsel's assistance in advancing them) and Dockman in turn, chose to disclose both his personal and corporate finances by way of *viva voce* evidence within the sentencing hearing. In the course of that evidence, Dockman tendered two, self-prepared asset and liability statements in evidence, one relating to his personal financial position, (Exhibit S-1), and the other, to his business finances, (Exhibit S-2), both of which I will address in sequence.

Dockman's business statement

[12] Mr. Dockman accounts for the value of the Waterworks System, as follows:

[13] He attributes an asset value to the water wells, treatment plant, distribution system, reservoir, office building and furniture and effects to a value of something over $4,130,000. He also represents there are no liabilities resting against those assets.

[14] Dockman then significantly discounts the aggregate value of those assets, in the following ways:

[15] Without providing any details or support, he notes at least three various pieces of litigation, one of which apparently alleges significant damage to some part of his assets brought about by some Sharp Hill residents, and two others where he alleges theft of other significant parts of his assets brought about by one or more of those residents.

[16] As I understand his computations, he accounts for the aggregate asset value of $4,130,000, as follows:

i. Raw water wells and treatment equipment valued at $1,000,000 (which he maintains have been damaged by a few Sharp Hill residents).

ii. Potable Water distribution system assets valued at $3,000,000 (which he maintains have been stolen by some of the same residents, a theft which has apparently been dealt with in some undisclosed court proceeding).

iii. Assets comprising furniture and effects valued at a further $30,000 (which he maintains have been stolen by some of the same residents).

iv. He now claims he has possession of an office building valued at $100,000 (which he maintains had previously been stolen by some of the same residents, but which has now been returned to his possession).

[17] Overall, he approximates assets valued at $4,030,000 have either been stolen by residents or have been damaged by them and thereby rendered unusable. He deducts that amount from the overall $4,130,000 asset value, leaving the net worth of his water utility business to be $100,000.

[18] He then applies that $100,000 value as an asset on his personal net worth statement and in doing so, specifically notes the value of his water utility business as being "greatly undervalued".

[19] Given that comment, the negative personal net worth Mr. Dockman eventually arrives upon in his personal net worth statement (see paragraphs 21-23 below) is directly dependent on how much his water utility business is undervalued. He provides no foundation by way of expert opinion, valuation, asset appraisal, audit or litigation support which might assist the Court in assessing his asset value calculations. All considered, the Court is left only with Mr. Dockman's unsubstantiated opinions concerning the value of the business, which Dockman himself concedes is manifestly undervalued.

[20] Overall, the reliability of Mr. Dockman's business statement is questionable.

Dockman's personal statement

[21] Mr. Dockman's personal net worth statement also remains open to question. Dockman accounts for his personal net worth, as follows:

[22] Dockman first adds the value of a car, cash and personal effects to his $100,000 business value calculation to arrive at an aggregate value of his personal assets of $108,000.

[23] He then discloses personal liabilities of $70,000 for Income Tax, $50,000 for credit cards, $60,000 for student loans and $30,000 for legal fees, totalling $210,000. He then deducts his $108,000 personal asset calculation from his total personal liabilities to arrive at a negative personal net worth of $102,000.

[24] All of these personal liability calculations are unsupported and are open to question, for these various reasons:

[25] First, Mr. Dockman discloses a precise amount of income tax liability in the amount of $70,000, but I question how he knows that with any degree of certainty given his testimony that he has not filed income tax returns for several years. His actual tax liability would only be known after filing the necessary tax returns with the taxing authority and then, in turn, receiving the taxing authority's resulting tax assessment. Granted, the amount of tax liability he refers to may constitute his own rough estimate, but if it does, he did nothing to disclose that fact in either his personal asset and liability statement nor in his *viva voce* evidence.

[26] It also seems to me the quantum of tax liability Mr. Dockman refers to would arise from an income considerably higher than one might expect of a student apparently living largely on student loans, as he suggests.

[27] Second, he discloses credit card debt, but provides no related particulars or support.

[28] Third, in the course of Mr. Dockman addressing his student loan indebtedness, Dockman tendered a collection of student loan "Application Summaries" (contained in Exhibit S-4) as had been prepared and submitted by him to the Alberta Student Aid authorities in the course of him applying for student loans through his undergraduate and current post graduate studies at the University of Alberta.

[29] These application forms all pose a question concerning the applicant's total income requiring that information be extracted "from line 150" of a particular year's tax return. Dockman responded to the question on four separate student loan application forms by holding out income amounts as had purportedly been extracted from his 2012, 2013, 2014 and 2015 tax returns.

[30] But that, of course, is difficult to reconcile given Dockman's admission that he has not filed tax returns for a number of years. He prefers to explain these entries as constituting estimated income, not actual amounts extracted from his tax returns. In doing so, he maintains he received direction from unidentified departmental student financing advisors at the time he first started full-time university attendance informing him it was permissible for him to answer the question using only estimated income. Even had he received that sort of advice, Dockman did nothing to explain the obvious inaccuracies in his responses on the face of the application forms nor identify the source of his verbal permission to complete the questions in this manner.

[31] Dockman's approach to completing these various applications in this fashion seems deficient, careless and imprecise and leaves me questioning whether there are other areas within his financial disclosure which might also be left open to question on a similar basis.

[32] Dockman also referred to a share buyout concerning a numbered company (which he refers to as "Legacy") as was conducted between himself and Mr. McMullin where he indicates he accrued cash from that sale in the amount of $27,000 payable to him in equal installments over an eighteen month period, concluding in March of 2017. Dockman testified he did not see these amounts to constitute income, but rather cash from "the sale of shares". Despite that qualification, I note none of these various amounts were included either as income or as "other resources available to me" as required on the various student loan application summaries submitted by him to Alberta government student loan authorities. As I understand the timing of these various student loan applications, at least some of the Legacy payments would have preceded his student loan applications and may then have fairly constituted "other resources" available to him at the time and arguably, should have been disclosed.

[33] Fourth, Dockman identifies a liability of $30,000 for legal fees on his personal statement and does so on the basis that his business statement discloses his involvement in ongoing litigation with Sharp Hill residents concerning his water treatment plant on at least three fronts. If I am to believe anything concerning Dockman's contentions concerning his limited income, I question how he has been able to fund the magnitude of the litigation he describes, continue to incur professional fees in this prosecution, and be left only with the reasonably limited liability for professional fees he refers to on his personal statement.

[34] Further, Mr. Dockman testified (and his bookkeeper confirms) that it was necessary for him to support the operation of the Sharp Hill treatment plant using cash from his other ventures. Dockman, however, does nothing in the context of his net worth statement to provide any related disclosure to assist with understanding how this might affect his personal financial status.

[35] Dockman's bookkeeper represents in a letter authored by her (Exhibit S-3) that continual financial losses required Dockman to personally (and not some other person or entity) provide the plant with "extra money" from his other business interests to keep the system operating.

[36] Some obvious questions then arise: which of Dockman's ventures funded these contributions, how much was advanced by them to him personally, what is the current state of those other ventures financial health, and what arrangements have been made between them for repayment? It seems to me this indebtedness should have been disclosed by Dockman, even if none of those ventures have any financial ability to undertake repayment.

[37] All of this adds to my concern there is very good reason to question the entirety of Dockman's overall assessment of his net worth.

[38] Dockman also testified late in his direct examination that he had been working about twenty (20) hours a week as a contractor for a department of the Federal Government while he was registered in his university graduate program. Whether or not his current income is limited by virtue of his attendance at university, his overall net worth using his own asset value assessment does not seem as desperate as he suggests.

[39] I have considered Mr. Dockman's testimony concerning his financial position, but I am not at all convinced it provides me with any sort of a reliable basis to conclude he is simply an impecunious university student with little income and no recoverable assets, financing his education largely on student loans resulting in him having little, or no ability to pay large fines, as he has maintained throughout this sentencing.

[40] I also can't help but notice Dockman himself takes the position that a fit global sentence in this case would be somewhere in the range of $12,000 to $18,000 (see paragraph 60 below). Given that submission, a reasonable inference might be that Dockman himself has a high degree of confidence he has the ability to pay fines from some unidentified source in at least that range, despite what he says about his overall financial condition.

[41] I refer to ***R v Great White Holdings Ltd.***, 2005 ABCA 188 (CanLII), an Alberta Court of Appeal sentencing appeal concerning fines imposed after trial for fraud and the monetary component of an order made under the ***Wildlife Act,*** R.S.A. 2000, c. W-10. Even though the facts in that case are clearly distinguishable to those in the case at bar, the Court made specific reference to the part an offender's financial position might play in sentencing. The Court held the following at paragraph 21:

> "In my view, the wealth or poverty of the convicted person or company can be a relevant factor in limiting or not limiting the size of the penalty, but it cannot impose a floor. In other words, the prime consideration is the proportion of the

> penalty to the gravity of the offence (and the offender's previous record). Limited assets or income in some circumstances (which we need not detail in this appeal) may help to reduce the monetary penalty. But great wealth does not justify a penalty disproportionate to the gravity of the offence (and the offender's previous record): ***R v Fairburn*** (1980) 2 Cr. App. R (S.) 315 (C.A.)."

[42] I remain entirely skeptical Mr. Dockman's description of his difficulties surrounding his financial circumstances but even if I were not, those circumstances would constitute only one of other factors at play in arriving at a fit sentence in this case and would not, on their own account, determine the outcome.

Victim Impact Statements

[43] Given the overlapping application of pertinent provisions ***Criminal Code*** to these proceedings as provided for under section 3 of the ***Provincial Offences Procedure Act***, R.S.A. 2000, c. P-34 ("***POPA***")[1], section 722(1) of the ***Criminal Code*** requires the Court take into account victim impact statements prepared by victims of these offences describing the harm done or loss they have suffered. The section limits the content of any such statement to a description of "...the physical or emotional harm, property damage or economic loss suffered by the victim as a result of the commission of the offence as well and the impact of the offence on the victim".

[44] Eight (8) such statements were entered in evidence, seven (7) of which were signed by individual residents along with one additional statement containing a common message signed on behalf of the "Sharp Hill Residents Association" which appended a collection of twenty-seven (27) counterpart signatures or acknowledgements, a few of which purported to be signed on behalf of more than one individual.

[45] Both Crown and Defence agree these statements contain information which may not be in conformity with the parameters set out in the section and make a joint application for the Court to consider the statements under the provisions of section 722(8) of the ***Criminal Code*** by taking into account such portions of the individual statements it considers relevant, and disregard any other portions.

[46] The Court is mindful that Mr. Dockman and the Sharp Hill residents share a lengthy history which has evolved over many years. The Court is also mindful that not every facet of that history is under scrutiny in these proceedings, but only those which relate to the facts and issues which are now properly before it. It follows that the effects of any persisting disagreements between Dockman and any of the Sharp Hill residents which fall outside the purview of Dockman's commission of these offences ought not to be considered by the Court under section 722.

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[1] In ***R v Dockman***, 2017 ABPC 112 at para 113, this Court commented as follows: "*POPA* governs procedure for contravention of provincial enactments. Section 3 provides that except to the extent that they are inconsistent with *POPA*, the provisions of the *Criminal Code* that are applicable to summary convictions and related proceedings apply in respect of every matter to which *POPA* applies."

[47] The Court has read and considered all of these statements in that context and without naming individual victims or reciting their specific comments, the Court extracts the following relevant themes running through the various statements:

Physical or emotional harm/impact of the offences on the victim

[48] Residents expressed disappointment, anger, stress, frustration, inconvenience and exasperation in not being able to trust the safety of their community's potable water supply and in having interruptions in their supply of water, some lengthy.

[49] Residents complained the potential for serious health risks required the installation of additional sanitization equipment to provide basic water safety.

[50] One resident complained of suffering severe skin reactions as a direct result of the water supplied by Dockman's treatment system.

[51] Residents expressed an overriding concern relating to the effects of unknowingly consuming unsafe water, (particularly from the harmful effects of incorrect fluoride levels), and the potential, current and long-term negative effects on the system's users, particularly children and expectant mothers.

Property Damage

[52] One resident complained the lack of water from Dockman's treatment system caused the failure of a boiler and pump systems on his property which resulted in repair expenses.

Economic Loss

[53] Residents complained of the following financial costs: costs associated with the installation of boiler and pump systems, temporary tanks and pumps; costs associated with removing Dockman's restrictive covenants protecting his exclusive right to supply water to the community; legal fees; costs associated with connections to an alternate water utility and potential reclamation costs required to secure and deal with Dockman's inactive treatment facility.

[54] Residents complained of the indefinite termination of the water supply requiring the purchase of additional water tanks, pumps, heaters and the purchase of transported potable water.

[55] Concerns were also expressed over material, adverse effects on the market value of each of these acreages resulting from problems associated with Dockman's treatment system.

Mr. Dockman's comments

[56] Mr. Dockman was invited to address the Court on completion of sentencing submissions as provided for under the provisions of section 726 of the ***Criminal Code***. In doing so, Mr. Dockman maintained there were aspects of the Enforcement Order he complied with, offered

multiple reasons why he was not able to comply with others and blamed the actions of either Alberta Environment or his former customers for the operational and financial problems he faced. In summary, he maintained he did his best to handle what he saw to be an untenable Enforcement Order.

Issue

[57] The issue in this case is what constitutes a fit sentence. There is no joint submission or joint recommendation before the Court.

Parties positions on sentence

Crown

[58] The Crown seeks a global fine in the range of $41,000-$59,000 plus a 15% victim fine surcharge, allocated as follows:

> On count 1, for contravening fluoride limits, a fine in the range of $7,000-$10,000;
>
> On count 2, for contravening pH limits, a fine in the range of $7,000-$10,000;
>
> On count 3, for contravening pH monitoring frequencies, a fine in the range of $5,000 $7,000;
>
> On count 4, for contravening fluoride monitoring frequency, a fine in the range of $5,000-$7,000;
>
> On count 5, for failing to submit monitoring records, a fine in the range of $7,000-$10,000; and
>
> On count 6, for failing to report contraventions, a fine in the range of $10,000-$15,000.

[59] The Crown also seeks a section 234(1)(a) ***EPEA*** order prohibiting Mr. Dockman from operating or being employed by, or holding a controlling interest in, any organization which operates a facility for the treatment or distribution of both potable water or wastewater for a period of three (3) years from the date of the order.

Defence

[60] Defence submits a global fine in the range of $12,000 to $18,000 plus Provincial surcharges constitutes a fit sentence.

[61] Defence concedes an order under section 234(1)(a) of the ***EPEA*** is warranted, but disagrees the prohibition should extend to the treatment or distribution of wastewater. They also argue a reasonable restriction would be limited to a period of two (2) years.

Law

[62] Section 2(j) of the ***EPEA*** identifies the purpose of the ***EPEA*** is to support and promote the protection, enhancement and wise use of the environment while recognizing, (among several other factors), the important role of comprehensive and responsive action in administering the ***EPEA***.

[63] Sections 227(g) and 228(2)(a) of the ***EPEA***, (when read together), render an individual who contravenes an Enforcement Order liable to a fine of not more than $50,000.

[64] Section 231 of the ***EPEA*** renders an offender liable for each day contraventions under the ***EPEA*** continue.

[65] Section 234 of the ***EPEA*** allows the Court to impose various forms of orders having regard to the nature and circumstances of the offence.

[66] Section 234(1)(a) allows for an order (in addition to any other penalty that may be imposed) prohibiting an offender from doing anything which might result in a continuation or repetition of the offence, having regard to the nature of the offence and the circumstances of its commission.

[67] Parliament has codified the principles of sentencing under section 718 of the ***Criminal Code***. In doing so, Parliament has said the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: denunciation, deterrence, separation of the offender from society where necessary, rehabilitation, reparations for harm done and promotion of a sense of responsibility in offenders.

[68] Section 718.2(a) of the ***Criminal Code*** allows a sentencing court to increase or reduce a sentence to account for any aggravating and mitigating factors.

[69] In addition to the aggravating and mitigating factors, sections 718.2(b) and (c) directs a court to take into the account the following:

> (i) similar sentences should be imposed on similar offenders for similar offences committed in similar circumstances, the so-called parity principle; and
> (ii) where consecutive sentences are imposed, the combined sentences should not be unduly long or harsh, the so-called totality principle.

The Totality Concept/Multiple Fines

[70] The principle of totality is potentially engaged in this sentencing given the convictions on all six counts.

[71] I refer to ***Bhanji***, a recent Alberta Court of Appeal sentence appeal which focussed on how the totality principle applies when the sentence consists entirely of fines under Provincial legislation, not periods of incarceration imposed under the ***Criminal Code***. That case is clearly distinguishable on its facts knowing it applied to housing standard offences under Public Health legislation, but the discussion concerning the application of the totality principle in relation to fines imposed in relation to regulatory offences still has application to this case.

[72] At paragraph 41, the Court identified four forms of totality which were seen essentially as reflections of the key principle of proportionality. The object is to reach a global sentence that is adequately responsive to the total culpability of the offences, allocated in a way that reflects the culpability of the offender.

[73] "Common-law" totality applies to situations of multiple offences characterized as elements of a single transaction which, in reality, constitute a single event with multiple features citing ***R v May***, 2012 ABCA 213 (CanLII) ("***May***"). This aspect of the totality concept recognizes an offender may commit one or more offences in a single transaction and an accurate reflection of the gravity of the offence may involve sentences running concurrently.

[74] Concurrent sentences are not available when the sentence consists of multiple fines, such that once appropriate sentences for each offence are determined, there is effectively no ability to take one "last look" to assess whether the global sentence is unduly long or harsh and at the same time, maintain the objective of proportionality. When the intended global sentence is excessive, the reduction of individual sentences is available, but the technique of making consecutive sentences concurrent is not.

[75] Other techniques must be looked to. The ultimate objective is to identify a sentence that is proportionate. By way of example, a sentence could be set for the most serious offence, with moderated fines for the others. Alternatively, one could view violations of a particular type to constitute one transaction and other types, separate transactions. The concept of a "bulk discount" can still be controlled in a manner that is consistent with both proportionality and totality and there is no need to attribute a "free ride" for multiple offences.

[76] "Statutory totality" permits restraint under section 718.2(c) such that where consecutive sentences are imposed; combined sentences should not be unduly long or harsh. Statutory totality serves to reduce combined sentences for multiple offences even where each individual sentence meets the test for proportionality. Citing ***May*** when employing this section, the Court is balancing proportionality and restraint and requires a last look at the package of consecutive sentences and needs to adjust them if the total effect is unduly long or harsh brought about not because the total was above the normal range for most serious offence, but because it exceeds what is appropriate given the overall culpability of the offender.

[77] The concept of a sentence being "long and harsh" when used in the context of the ***Criminal Code*** is directed at imprisonment, but the concept still applies in a modified form to regulatory offences. As a result, it is not sufficient to suggest that a harsh and excessive penalty is the risk one takes when committing multiple separate provincial offences.

[78] "Multi-count totality" addresses situations where a single transaction is separated into as many multiple charges for discrete offences as possible in an attempt to work around the maximum sentence available for a particular breach.

[79] Multi-count totality does not have application in this case. Six separate contraventions of the Enforcement Order were identified in this case each with their own results and I do not see there to have been an attempt to work around the maximum sentence applicable to any one of those contraventions by charging six offences.

[80] "Multi-party totality" arises where regulatory statutes make numerous people concurrently responsible for the same act. This has no application to this case knowing Dockman is the sole offender before the Court.

[81] As I understand the Alberta Court of Appeal's characterizations, "statutory" totality is of most relevance to this case. Even though Dockman did not commit more than one offence arising out of one transaction, (which might give rise to the need for the application of "common-law" totality), there are still features of that approach which are of assistance in arriving at a proportionate sentence in this case.

Sentencing Environmental Protection matters

[82] These offences arise out of contraventions the ***EPEA***, a very specific piece of legislation dealing with the important issue of environmental protection. In that regard, I refer to the Alberta Court of Appeal's unanimous decision in ***Terroco*** as has been relied upon by the Crown in this case.

[83] ***Terroco*** was a sentence appeal involving ***EPEA*** and ***Dangerous Goods Transportation and Handling Act***, R.S.A. 1998, c. D-3.5, strict liability contraventions resulting from improper mixing and handling of substances by a corporation engaged in trucking gases, acids and solutions. The ***EPEA*** offence arose by a driver incorrectly mixing two products in a tank on a container truck producing a gas which escaped from a valve into the atmosphere. Another driver in the area was exposed to the gas which resulted in injury to his respiratory system and required medical treatment, time off work and was left with residual lung problems. No clean up was required and no other injuries resulted as a consequence of the gas having escaped into the atmosphere.

[84] At paragraph 16, (when speaking of both offences), the Court held that when due diligence has been raised as a defence, the facts of the case must be assessed at the time of sentencing to determine the gravamen of the offence and whether the circumstances constitute a due diligence "near miss" or something more serious.

[85] The maximum fine Terroco faced as a corporate offender for the ***EPEA*** offence was $500,000. The Court of Appeal upheld the summary conviction appeal where the fine had been increased from $50,000 to $150,000, and in doing so, the Court took into account the corporation's financial strength as a mid-level corporation with large revenues.

[86] At paragraph 34, Ritter JA, was careful to point out that although leave to appeal was granted on the question of which general sentencing principles were to be applied, the reasons in ***Terroco*** were restricted to a discussion of the general principles that had a role to play in that specific appeal. At the same time at paragraphs 34 to 65, inclusive, the Court set out and analyzed the applicable general principles at play on those particular facts.

[87] In doing so, however, the learned Justice adopted Morrow J.'s wording in ***R v Kenaston Drilling (Arctic) Ltd.*** (1973), 1973 CanLII 1297 (NWT SC), 41 DLR (3d) 252, commenting that sentencing principles for environmental offences required "a special approach".

[88] ***Terroco*** appears to be the most current Alberta appellate decision concerning sentencing environmental matters. Mr. Anderson, however, draws my attention to ***R v Van Waters & Rogers Ltd.***, 1998 ABPC 55 (CanLII), ("***Van Waters & Rogers***") which I note was decided some time before ***Terroco***. In ***Van Waters & Rogers***, my learned colleague Fradsham PCJ, dealt with a guilty plea by a corporation after releasing a contaminant into the environment under what was then section 98(2) of the ***EPEA***. The spill occurred at the offender's branch plant by an employee accidentally reversing a hose connection to a rail tank car resulting in the spill of a noxious substance on the ground which eventually reached the City of Calgary's storm sewer system. A considerable containment and cleanup response was required and a City of Calgary employee suffered physical effects.

[89] In sentencing the offender to a fine of $80,000, Judge Fradsham also carefully set out a number of factors which he saw to be necessary when sentencing an environmental case, some of which I note were applied by the Alberta Court of Appeal in ***Terroco***.

[90] I recognize ***Terroco*** is distinguishable to the facts in this case and is therefore not strictly binding on this Court as a result. That case involved a corporation responsible for one environmental contamination contrary to the ***EPEA***, not an individual having ownership and control of the operation of a water treatment plant being sentenced for multiple monitoring and reporting contraventions under an ***EPEA*** Enforcement Order, as is Mr. Dockman.

[91] As I read the Court's comments in ***Terroco***, they do not serve to limit the considerations it identified in sentencing environmental matters solely to cases involving environmental spills. Until it does, and with respect to my learned colleague's reasons in ***Van Waters & Rogers***, I regard ***Terroco*** as persuasive by having generally defined the "special approach" needed to sentence environmentally related offences, these offences included. The considerations set out in ***Terroco*** ought to be applied in this case.

[92] ***Terroco*** was also decided prior to the Alberta Court of Appeal's decision in ***R v Arcand***, 2010 ABCA 363 (CanLII), ("***Arcand***") and the Supreme Court's decision in ***R v Ipeelee***, 2012 SCC 13, [2012] 1 SCR 433, ("***Ipeelee***") and others.

[93] Given the general application of the ***Criminal Code*** to these proceedings, it becomes necessary to identify the fundamental and underlying principle of sentencing as is contained in section 718.1.

[94] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, the so-called "proportionality principle". In ***Arcand***, the Alberta Court of Appeal re-emphasized the priority this principle maintains in the realm of all other sentencing principles.

[95] In ***Ipeelee***, at paragraphs 37 - 38, the Supreme Court referred to the purpose of the principle as being firstly; to promote justice for victims and ensure public confidence in the justice system and secondly; to ensure a sentence does not exceed what is appropriate given the moral blameworthiness of the offender. In that sense, the principle serves a limiting or restraining function. Despite the constraints imposed by the principle, trial judges enjoy a broad discretion in the sentencing process and sentencing is a highly individualized process. Sentencing judges must be able to tailor sentences to the circumstances of the particular offence and to those of the particular offender.

The *Terroco* factors

[96] The sentencing factors specific to environmental offences relevant to this case are identified in ***Terroco*** at paragraphs 34 to 65, and are summarized as follows:

1. Culpability

[97] Culpability should be a dominant factor in sentencing environmental offences. The degree of carelessness is a factor and offences which involve recklessness will call for more severe penalties than those which simply constitute due diligence "near misses".

[98] When determining the degree of culpability in cases involving contamination, the failure to take simple and inexpensive steps to avoid an unwanted consequence prior to the event is an aggravating factor. Reasonable foreseeability impacts the sentence. If the danger is obvious rather than obscure, the failure to take simple, inexpensive steps to avoid a consequence demonstrates a higher level of culpability and is an aggravating factor.

[99] In my view, the same broad principle holds true in this case relative these compliance and reporting breaches, even though these facts do not relate to an environmental contamination.

[100] An important factor in determining a fit sentence requires an assessment of what actually occurred so as to place the offender on a sliding scale of culpability. Due diligence can then be assessed on that sliding scale, the more diligent the offender, the lower the range of a fit sentence, the less diligent, the higher the range.

2. Prior record/past involvement with authorities

[101] The offender's record can be aggravating such that it may indicate the offender is more concerned about profit than compliance. Non-compliance with prior warnings can also be aggravating factor.

3. Acceptance of Responsibility/Remorse

[102] An early guilty plea to an environmental offence is a mitigating factor recognizing that investigating and prosecuting these offences is often substantial. An offender who sees no error is more prone to re-offend than one who recognizes guilt and takes responsibility. The decision to proceed to trial is a neutral factor and is not aggravating, recognizing the right to trial is fundamental.

[103] Prior convictions for the same or similar offences can also affect the degree of remorse and acceptance of responsibility shown by the offender.

[104] Post conduct changes in practices can show the offender has learned from his experience and can demonstrate remorse and acceptance of responsibility.

4. Damage/Harm

[105] The existence, potential, duration and degree of harm occasioned to persons, property and the environment are all factors to be considered. The greater the potential for harm, the greater the warranted penalty. If actual harm is established, that is an aggravating factor especially when harm is a readily foreseeable consequence of the underlying action: ***R v Goodstoney***, 1999 ABCA 110 (CanLII). Actual harm and injury constitute aggravating factors, but lack of actual injury is a neutral factor and is not mitigating.

[106] The potential for harm is relevant. The greater the potential for harm informed by the probability of risk, the greater the penalty.

5. Deterrence

[107] A key component of sentences for breaches of environmental protection statutes should be specific and general deterrence. The ***EPEA*** constitutes a code of environmental conduct and enforcement aimed at protecting valuable resources, human health and the well-being of society. The ***EPEA***'s enforcement calls for a significant element of specific deterrence. Maximum fines available to sentencing judges are high because they constitute a message from the Legislature that it does not view low or nominal fines as meeting the goals of the statute.

[108] When considering specific deterrence, judges should consider many of the factors already outlined. For example, the degree of remorse speaks to the need for specific deterrence. An offender who takes responsibility for his actions and cooperates with authorities is different than one who acted to increase his culpability.

[109] The form of the penalty has the advantage of affecting the public image of the offender, especially when they are large corporations with substantial assets.

[110] The full range of sentencing options under environmental legislation should be considered. There should be no possibility of financial gain as result of contraventions. The size

and profitability of the transaction which resulted in a breach and whether it was part of an ongoing series of breaches should be considered.

[111] Specific deterrence may be achieved by issuing a lesser fine to address an isolated breach by a person with limited means.

[112] The penalty imposed should have a deterrent effect on others in the same industry who may risk offending. What will be a severe fine to one offender may be a pittance for another. The penalty must be more than a slap on the wrist, but less than a fatal blow.

[113] If the offender considers the potential fine as a mere cost of doing business, or if he was warned by authorities but persisted in illegal activities, and shows a pattern of doing so, both constitute serious aggravating factors.

[114] While this sentencing does not involve a corporate offender, in ***Terroco*** at paragraph 62 the Court drew a comparison in the range in sentencing an individual and large corporations. Sentencing a corporation which, for example, purposely ignores safety concerns in pursuit of its own economic interests, is only fit if the fine is substantially greater than if the offender is a sole proprietor and the defence of due diligence amounted only to a "near miss".

[115] Often breaches will arise out of shortcuts or perceived cost-effective approaches taken by the offender. At paragraph 63, the Court held that shortcuts are to be discouraged both specifically with respect to the offender and generally with respect to the industry at large. A fit sentence should consider both the offence and the offender. The message should be that it is cheaper to comply than to offend, and that message must be meaningful to the offender in order to secure and hold their attention.

[116] At paragraph 64, the Court rejected the approach of fixing a formula in sentencing breaches involving environmental spills based on an offender's revenues.

[117] At paragraph 65, the Court went on to say it considered it impossible to establish any form of guidelines in sentencing ***EPEA*** offences. Offences under the statute may be committed in almost an infinite variety of ways. Offences can range from circumstances where due diligence constituted a near miss to those involving intentional conduct. Like offences for like offenders should attract similar sentences and the range of sentence should not be so large as to be disparate.

[118] I refer also to ***Castonguay Blasting Ltd. v Ontario (Environment)***, 2013 SCC 52, [2013] 3 SCR 232, ("***Castonguay***"), a case where the accused did not report discharge of a contaminant under environmental protection legislation after rock debris was propelled in the air resulting in damage. At paragraphs 18 and 19, the Supreme Court identified the purpose of reporting under the relevant ***EPA*** legislation was to allow the Ministry of Environment, and not the offender, to be the one who decides what further steps, if any, are required following reporting. The statute places both the obligation to investigate and the decision about what steps were necessary with the Ministry, not the offender. Notification provides a Ministry with an opportunity to conduct a timely inspection and make a determination of the steps needed for remedial action.

Alberta Provincial Court *EPEA* sentencing decisions

[119] Mr. Roginski for the Crown has also provided me with the following additional six Alberta Provincial Court ***EPEA*** sentencing decisions, five of which are unreported. Where published reasons or transcripts were not available, Mr. Roginski included a summary of the respective charges, penalties and reasons relative to those cases in the Crown's written submissions in this case.

[120] In ***R v West*** 2001 CarswellAlta 1174 (ABPC), ("***West***") a joint submission following a guilty plea to one count of providing false information under the ***EPEA*** attracted a custodial sentence of one day in custody plus 500 hours of community service. Analytical records for the Banff Water Treatment Plant for three months in 1997 and one month in 1998 were falsified by the offender in relation to suspended solids before submitting the records to the Town of Banff. Had the correct records been used, there would have been approval violations through those months. The practical negative result was the release of wastewater into the Bow River with high solid levels but with no evidence of actual harm.

[121] In ***R v Lyckman*** (07 February 2006), Lethbridge 041398702P1 (Alta. P.C.), ("***Lyckman***") a joint submission following a guilty plea to one count of knowingly providing false information under the ***EPEA*** attracted a three month conditional sentence followed by one year probation in relation to an offender who operated a town drinking water system. Inspection by the Regulator disclosed exceedances. Records kept by the operator were provided to the Regulator's inspectors and bore irregularities in the manner of recording but showed no exceedances. The accused admitted falsifying records to hide exceedances. The town was put on a boil water advisory until the water met regulatory requirements but there was no evidence of harm.

[122] In ***R v McCabe*** (22 May 2009), Fort McMurray 080153158P1 (Alta. P.C.), ("***McCabe***") a guilty plea in a contested sentencing under the ***EPEA*** attracted a twelve (12) month conditional sentence and a three year probationary term for an offender who admitted to knowingly providing false information, failing to report approval contraventions and knowingly contravening a wastewater approval. The offender was the director and guiding mind of a company operating a wastewater treatment plant under an Alberta Environment operating approval for a Fort McMurray oil field camp. McCabe knew of excesses over the approval limit but did not report them to the Regulator, falsified data to hide approval contraventions, tampered with samples to falsify compliances and directed staff to do the same.

[123] In ***R v Singh*** (17 October 2014), Okotoks 140387341P1 (Alta. P.C.), ("***Singh***") a joint submission following a guilty plea attracted a $7,500 fine for an offender employed by a corporation holding an approval which provided for wastewater limits. On three occasions, the offender tampered with wastewater monitoring samples by injecting substances to reduce phosphorus in those samples. The samples were sent for analysis as if they were genuine which gave the appearance of compliance with the approval limits. There was no environmental harm and the offender admitted falsification of the samples when confronted by his employer.

[124] In ***R v Wallace*** (01 March 2016), Calgary 150273928P1 (Alta. P.C.), ("***Wallace***") a joint submission following a guilty plea attracted a $10,000 fine on one count of contravening an

approval condition under the ***EPEA***. The offender was employed as a supervisor at a wastewater treatment facility. Daily analysis showed exceedances over approval limits. On two occasions, the offender directed operators to turn off a sampler while a suspect piece of equipment was discharging into the effluent stream. There was no evidence of actual harm.

[125] In ***R v Mantai*** (10 February 2017), Calgary 150273928P1 (Alta. P.C.), ("***Mantai***") a conviction under the ***EPEA*** following trial on one count of contravening an approval condition and one count of providing false or misleading information to the Director attracted fines of $5,000 on each count. Mantai was the lead operator at a wastewater treatment facility and had been supervised by Wallace, the offender sentenced in ***Wallace***. Mantai directed a junior operator to shut off equipment which resulted in the creation of false records which would have been submitted to the Regulator but for discovery of contraventions. There was no evidence of actual harm. A fifteen (15) month section 234(1) Order prohibiting sole charge of a wastewater treatment facility followed.

[126] All sentences but ***Mantai*** originated from guilty pleas, some by way of joint submission.

[127] The most serious cases, ***McCabe***, ***Lyckman*** and ***West***, involved forms of dishonesty through active attempts by offenders to mislead or falsify records and resulted in various length gaol sentences.

[128] ***McCabe***, ***Mantai***, ***Wallace***, ***Singh*** and ***West*** involved contraventions concerning wastewater, not the more serious circumstances involving drinking water regulatory contraventions, as was the case here.

[129] ***McCabe***, ***Lyckman*** and ***Wallace*** involved offenders who maintained sole control or were responsible for the directing a plant's operations.

[130] ***Wallace*** and ***Singh*** involved treatment plant employees.

[131] The range of sentences in all of these cases went from a period of incarceration to fines ranging from $5,000 to $10,000 per count.

[132] ***West*** is the only case where the record indicates how the circumstances of the offender were assessed. The Court found the offender suffered disgrace in the community and in his profession; lost the value of seven years of training to become wastewater treatment certified, the suspension of the temporary right to right to re-apply for that certification and suffered a reduction in income. All of these were seen to be significant deterrents. The Court found his moral culpability was not high such that he did not set out to profit from illegality. For that reason, he was seen to be much further down the scale than someone who set out to realize dishonest profits.

[133] All of these cases are distinguishable to these facts here, but if I could identify any one common denominator running through them, (excluding those cases involving falsifications where incarceration resulted), these cases suggest the highest fines are reserved for those

offenders who supervise or operate drinking water (as opposed to wastewater) treatment facilities.

[134] Mr. Dockman, of course, wore both of those hats. He both owned and operated this facility, all of which is aggravating to his sentence.

Analysis

[135] The Court's analysis in this case in respect of the various factors set out in ***Terroco*** follows:

Culpability

[136] Mr. Dockman knew the Enforcement Order's contents and knew how contraventions under it might occur, but yet multiple contraventions under the Order went unreported in a timely manner and some, not at all. Dockman was not entitled to pick and choose which specific conditions of the Enforcement Order he would abide by and was expected to take all reasonable measures to ensure compliance with the entirety of its provisions. He, however, failed to demonstrate due diligence in relation to any of the contraventions set out in all six counts.

[137] The following constitutes a brief summary of the Court's findings at trial relative to contraventions specific to each count.

Count 1-Fluoride Limits

[138] The terms of the Enforcement Order required provision of water through the waterworks system that met prescribed fluoride limits. Dockman became responsible for providing water through the system that did not meet those limits and numerous monthly contraventions of those limits arose. Monitoring results for the period commencing June 1, 2013 to and including January 17, 2014 demonstrated at least seventy-seven (77) entries which fell outside specified fluoride concentration limits and some, considerably outside those limits.

[139] Due diligence by Dockman had to be specific to the fluoride contraventions occurring under the terms of Order. There was no evidence Dockman had taken any steps specific to those contraventions over the course of the Enforcement Order to ensure compliance with those limits and due diligence was not established.

Count 2-pH limits

[140] As with fluoride limits, the terms of the Enforcement Order required provision of water through the system that met pH treated water limits. Dockman became responsible for providing water through the waterworks system that did not meet those limits and as with fluoride limits, numerous monthly contraventions arose. Monitoring results for the months commencing June 1, 2013 to and including January 17, 2014 demonstrated at least one hundred fifty-nine (159) results which fell outside specified pH limits.

[141] As with fluoride limits, due diligence by Dockman had to be specific to the pH contraventions occurring under the terms of Order, but due diligence had not been established.

Count 3-Failing to comply with Monitoring Frequencies for Fluoride in treated water

Count 4-Failing to comply with Monitoring Frequencies for pH in treated water

[142] The Court found sixty-four (64) contraventions of the monitoring frequencies mandated by the Enforcement Order for one or both of fluoride or pH during the term of the Enforcement Order between June 1, 2013 and January 20, 2014. The Court also found overall that Dockman's efforts to comply with the Enforcement Order's monitoring frequency requirements using the resources he identified, his own efforts included, did not amount to due diligence.

Count 5-Failure to submit electronic information under clause 5 of the Enforcement Order

[143] Dockman contravened Clause 5 of the Enforcement Order between July 12, 2013 and January 20, 2014 by failing to submit information electronically and in writing to a specified e-mail address, that being analytical results, the name of the certified operator, a summary of incidents requiring reporting and a summary of any operational problems.

[144] The Court found Dockman effectively took no steps to comply with this requirement, and in fact, simply ignored the requirement. Overall, there was no evidence of due diligence in relation to his obligations to report these specific matters.

Count 6-Failure to immediately report contraventions of the Enforcement Order by telephone

[145] Dockman contravened Clause 9 of the Enforcement Order between July 1, 2013 and January 20, 2014 on multiple occasions, by failing to immediately report any contravention of any of the Enforcement Order by telephone, which included failing to report to the Director's specific phone number or to a phone number connected to an Alberta government call centre. These failures encompassed reporting contraventions for pH and fluoride concentration limits as well as the complete absence of reporting those incidents as required to be sent by e-mail as referenced in count 5. There was no evidence of Dockman's corresponding due diligence in relation to those requirements.

Categories of offences

[146] As ***Bhanji*** suggests, if possible, it would be useful to categorize these offences to assist with identifying Mr. Dockman's culpability.

The first category

[147] Counts 1 and 2 constitute offences where either fluoride or pH water content limits fell outside specified limits, and from that perspective, each constitute separate transactions. Each count involved either fluoride or pH limits and are equally serious from their individual perspectives. Count 2 involved the greater number of identified contraventions, but the individual nature of the substances involved, not necessarily the arithmetical count, is of most concern in directing the enquiry concerning Dockman's culpability in relation to each transaction. From that perspective, both counts should attract the same penalties within the category.

The second category

[148] Counts 3 and 4 constitute separate transactions involving numerous contraventions of monitoring frequencies for two different substances (fluoride and pH) but which arose more or less at the same time. Accordingly, they also should attract the same penalties within the category.

The third category

[149] Counts 5 and 6 constitute separate transactions which strike at the heart of Dockman's obligations under the Enforcement Order and constitute the most serious category of all of these offences. They represent a severance of the necessary lines of communication with Alberta Environment on two fronts as was required of Dockman under the Enforcement Order, compromising both the fundamentals of how the reporting system was intended to work and the Regulator's overall ability to respond to problems associated with the plant's water production.

[150] It is no less serious not to have communicated with the Regulator by e-mail as referenced in count 5, than it was not to have communicated with them by telephone as referenced in count 6. In my view, the gravity of both offences are equivalent.

1. Where do these offences lie on the Terroco scale of culpability?

[151] The purpose of Dockman's reporting under the Enforcement Order was to allow the Regulator to determine what investigative and remedial steps, if any, might be required following his reporting. From a public safety perspective, without acting in full compliance with the Order, the Regulator's ability to become aware of, and properly react to possible contraventions in the operation of this plant had been significantly compromised.

[152] Mr. Dockman was not a novice in the operation of water treatment plants, far from it. He had more than eleven years operational experience with this plant and three or more prior years of experience with an unrelated water co-op.

[153] I emphasize one very important common aspect to all of these contraventions: they all relate to the treatment of an entire acreage community's drinking water supply. The nature and sheer number of contraventions running through these individual counts over a period of seven

or eight months near the end of Mr. Dockman's eleven year tenure with this plant leads me to conclude this goes well beyond mere sporadic carelessness. Mr. Dockman unquestionably should have known better. All of this is aggravating to his eventual sentence.

[154] There is no suggestion Dockman acted to either actively falsify records or mislead the Regulator, actions which might have immediately placed him at the highest end of the culpability scale.

[155] But even then, Mr. Dockman's departure from the requirements placed upon him under various provisions of the Enforcement Order constituted much more than just a few trifling "near misses" as characterized in ***Terroco***. The contraventions identified on each count stand on their own merits, but their cumulative effect is of considerable concern to the Court. The collection of these contraventions over time amounts to a pervasive, continuing and serious systemic failure in the operation of this water treatment plant by a very experienced owner and operator.

[156] Overall, these contraventions fall much closer to recklessness than they do near misses. Mr. Dockman's blameworthiness on the sliding scale of culpability referred to in ***Terroco*** is nearer the top end of the scale than the bottom, a factor which is clearly aggravating to the ultimate sentence on all six counts.

2. Prior Record and Past Involvement with the Authorities

[157] The Crown confirms Mr. Dockman does not have a record for prior environmental or criminal offences nor have I been provided any evidence he has been subject to any prior warnings or sanctions by Alberta Environment. An aggravating factor may have arisen had Mr. Dockman possessed a record, but in my view, the absence of a record constitutes a neutral, not a mitigating factor in this sentencing.

3. Acceptance of Responsibility/Remorse

[158] Mr. Dockman chose to proceed to trial as was his right, but in doing so, he precluded the possibility of a guilty plea which, given the nature and complexity of this prosecution, would have implicitly demonstrated him to have accepted some level of responsibility for these events and would have provided mitigation on sentencing. As it stands, the absence of a guilty plea constitutes a neutral factor in this sentencing: (***Terroco*** at paragraph 39)

[159] Beyond this, I have considerable difficulty in identifying other specific factors which might demonstrate Mr. Dockman's comprehension of the gravity of these offences and a willingness to take responsibility for them. In fact, much to the contrary.

[160] Dockman seemed to want to blame others for the situations he found himself in. He ignored or turned a blind eye to the need to preserve his own business records suggesting the Crown should somehow bear some of that responsibility. He blamed his subordinates for the contraventions, Mr. Mantucci particularly. He blamed Alberta Environment for their laxity in enforcing compliance with the Enforcement Order and for allegedly pressuring him into

continued operation of the facility, neither of which were proven at trial. It does not mitigate Dockman's sentence by him now attempting to attribute blame to others or point to times where he made attempts to, or partially complied with the Enforcement Order. All of this is aggravating to the ultimate sentence.

[161] As I understand one of Mr. Dockman's submissions, he argues Alberta Environment effectively usurped his ability to control the plant's operation by their imposition of the Enforcement Order. To the contrary, Alberta Environment tried to assist him with the continued operation of the plant through the placement of the Enforcement Order and subsequent Amended Enforcement Order. This Court ultimately found Dockman solely to have been in complete control of this facility and to have a continuing personal obligation under the authority of those Orders to undertake full compliance with their terms.

[162] I have also considered Mr. Dockman's submission about him telling Mr. Knaus, an Alberta Environment compliance manager, about his desire to shut the plant down. The reality is that even after that conversation, Dockman continued operating the plant and in fact, elected to do this from a distance after making the decision to move to Edmonton to attend university.

[163] Dockman could not have it both ways. On one hand, he had the opportunity to take steps to limit the Regulator's, his customers and his own personal risk by taking active, affirmative and immediate steps to terminate his operation of the plant with both his customers and the Regulator's co-operation. On the other, he could have continued operating the plant from a distance knowing he had the necessary financial ability, support persons and other tangible resources to fulfill his obligations both to the Regulator under the terms of the Enforcement Order, and to his customers. The fact is that he chose a half-measure by continuing to operate on the basis of his own perception there might be some continuing value in doing so, but without having the necessary resources in place. In doing so, he compromised his obligations to both the Regulator and to his customers. All of this constitutes an aggravating factor on sentencing.

[164] Mr. Dockman's comments after being invited to address the Court on completion of sentencing are telling. Having now heard those comments, I find it remarkable he concentrated on blaming others and how he personally had been adversely affected throughout these events but expressed no concern and in fact, said nothing at all about how the Sharp Hill residents he served had been affected. The Court is left to infer he takes no responsibility for his actions and remains unrepentant.

[165] Mr. Dockman has gone no where near convincing me he either understands the gravity of the responsibility imposed upon him in his operation of this facility or the extent of his responsibility for these offences. That is a significant aggravating factor and speaks directly to the need for specific deterrence in this case.

4. Damage/Harm

[166] I recognize this case involves contraventions under an Enforcement Order and does not involve environmental contamination or actual harm to persons or property. The absence of proven harm therefore is a neutral factor and cannot constitute a mitigating factor in Mr. Dockman's favour: (***Terroco*** at paragraph 47).

[167] Even though no proven harm resulted from any of these contraventions, this does not mean to say the potential for contamination as a direct consequence of these contraventions had been removed.

[168] There are good reasons why the Enforcement Order included detailed reporting requirements concerning fluoride and pH, a few of which were addressed at trial. Had there been no health risks associated with the water supplied by this plant, presumably Alberta Environment would not have required any related monitoring or reporting whatsoever by Dockman, but that clearly was not the case.

[169] Both counsel draw my attention to Mr. Janzen's evidence concerning regulation of fluoride and pH levels. Briefly, fluoride is regulated because there is an optimal dose of fluoride prescribed by the applicable Canadian Water Quality Guidelines. PH is regulated because it can influence the formation of potentially harmful disinfection by-products in drinking water.

[170] The occupants of the acreages being supplied water from Mr. Dockman's water treatment plant are, indeed, a trusting group. They assumed the safety of their drinking water supply would not be compromised by them relying upon a privately operated water distribution plant. They relied on Mr. Dockman to diligently comply with the Regulator's requirements in the operation of the plant to avoid any of the related risks, and its apparent considerable concern for their own safety arose as a result of Dockman's management and operation of the plant.

[171] My learned colleague, Jacques PCJ, makes some interesting and valid comments about the role of those who operate treatment plants in ***McCabe*** at lines 3 to 23 inclusive at page 41 of the May 22, 2009 transcript, as follows:

> "The gravity of environmental violations is something which society is taking increasing cognizance of in recent years, and rightly so. Where it comes to environmental violations that potentially affect human health, the seriousness is even greater. In our day-to-day lives, we tend to take for granted the clean bacteriologically safe world we live in. You turn on the tap, out comes clean, drinkable water. You flush your toilet, and it is taken care of at the treatment plant before it can harm anybody downstream.
>
> But, we must not forget that this situation, prevalent in developed countries throughout the 20th and 21st century, did not just happen. Not much more than a century ago, Cholera and Typhoid Fever killed people by the millions, even in the most developed of nations. In countries less fortunate than our own, it is still happening today. ***Which means that people who operate Treatment Plants hold in our society a position as serious as that of a physician in the maintenance of our health and well-being."*** (emphasis mine)

[172] The potential for harm is a relevant consideration on sentencing and in part, is informed by the probability of risk, the nature of the product and the likely magnitude of damage if the risk materializes: (***Terroco*** at paragraph 48).

[173] It is fortunate that large scale physical harm did not befall members of this acreage community as a result of Dockman's contraventions. The potential magnitude aside, the threat of harm to this community through their water supply persisted over the entire time Dockman failed to comply with his obligations under the Enforcement Order.

[174] Dockman incurred very serious obligations under the Enforcement Order meant to forestall those risks from occurring. The likely magnitude of damage following Dockman's contraventions cannot be determined, but had even one community member's health been adversely affected by contaminated water from this facility following these contraventions, it is entirely probable more would have followed.

[175] The threat of harm to this community through their water supply over the period of Dockman's contraventions is clearly an aggravating factor in this sentencing.

5. Deterrence

[176] Deterrence can be general which is designed to send a message to members of society that if they conduct themselves in this particular fashion, they will be subject to penal sanctions. Specific deterrence directs a message to Mr. Dockman that if he conducts himself in a particular manner he should expect to receive, and will receive, punishment for that conduct.

[177] ***Terroco*** cautions that breaches often will arise out of shortcuts or cost cutting measures. Mr. Dockman admits he was having financial difficulty keeping this facility going and was, out of necessity, having to shore it up financially with funds from his other business ventures. He also admits to terminating a professional manager's service and retaining two inexperienced individuals in their place to help reduce monthly costs, one, a family member, Mr. Mantucci and one other, Ms. Godlien. Those measures were admittedly designed to cut costs and, as I see it, were symptomatic of a facility which was struggling financially.

[178] Realistically, this would not have been the case throughout the prior history of the plant. I can reasonably infer Dockman would not have operated this plant for eleven years had it been a losing proposition over that entire time. His bookkeeper's letter of September 16, 2017, (Exhibit S-3), suggests Dockman operated with a negative net income over the period 2009 to 2014, but did not identify the extent of those losses. But even had those losses been proven at trial, (which they were not), it is entirely fair to infer Dockman ran an acceptable profit over some period of his operations, given the length of his tenure and knowing also that he had instituted a regime of restrictive covenants on all of the owners' certificates of titles effectively providing him with a monopoly in the supply of the community's drinking water.

[179] Whatever risks were associated with Dockman's operation of the system, without sufficient operating capital those risks had been placed at the feet of the community he served. Just as contraventions ought not to be instigated by the expectation of financial gain by an operator, so too should they not result by allowing a drinking water treatment plant to remain

undercapitalized. I am prepared to infer Dockman's under capitalization of the plant was one of the contributing causes giving rise to the various Enforcement Order contraventions. It was foreseeable these financial measures would reduce the plant's efficiency and would lead to unwanted consequences. All of this demonstrates a higher level of culpability and constitutes an aggravating factor in this sentencing.

[180] The Supreme Court in ***Castonguay*** affirmed the principle that prompt reporting is essential for timely engagement of the Regulator to ensure an appropriate response based on the risk as it is presented. That principle resonates loudly throughout this sentencing. Mr. Janzen testified at trial that self-reporting is fundamental to the regulation of drinking water and wastewater and is the bedrock upon which the whole regulatory system is built upon. He was of the view that an operator of a treatment plant must take full responsibility to report problems to allow the Regulator to respond appropriately.

[181] Mr. Dockman effectively assumed the responsibility of being the Regulator's "eyes and ears" in safeguarding the safety of these various acreages owners water supply. His failure to monitor and report severely limited the Regulator's ability to manage the associated risks and undermined the integrity of the regulatory scheme under which this plant operated.

[182] Overall, I have no doubt the circumstances of this sentencing requires the legitimate application of the sentencing principle of deterrence, both general and specific.

Are there other mitigating factors?

[183] Mr. Dockman maintains the following individual factors should mitigate his sentence:

1. He was co-operative with Alberta Environment through-out the course of their investigation following him being charged. Even if he was, that co-operation carries little weight. The fact is that Dockman was anything but co-operative with fulfilling his obligations under the Enforcement Order, all of which overshadows any of his subsequent actions with the Regulator.

2. He trucked potable water in for his customers, but in my view, that is symptomatic of a failing water treatment plant, not a factor which should somehow mitigate his sentence.

3. He voluntarily ceased providing irrigation water but in my view, that did nothing to address the larger non-compliance problems concerning his obligations relating to potable drinking water.

4. Dockman claims he has refrained from operating a water treatment system since January 2014, but in my view, it would have been imprudent for him to have done so given his history of non-compliance with this system.

5. Dockman characterizes the evidence as showing him to have been persistent with his attempts to comply with the Enforcement Order and that he voluntarily reported any non-compliance. These assertions run contrary to this Court's findings at trial concerning the absence of Mr. Dockman's due diligence.

6. Dockman claims, (through submissions by counsel), that his reputation in the industry has been destroyed as a result of his operation of this plant, but I have seen no related evidence to that effect.

7. Dockman asserts that his Sharp Hill pipelines have somehow been converted to other uses and that he has been confronted or assaulted within the Sharp Hill community. While Dockman testified at trial (and now in this sentencing) as to the theft of portions of his plant by certain Sharp Hill residents, there is no reliable evidence before the Court which might allow me to make any related findings.

[184] In my respectful view, none of the above factors stand in mitigation.

Range of sentence

[185] I have considered the sentencing requirements under the ***EPEA***, the factors set out in ***Terroco*** and other case law referred to, the principle of proportionality and the other applicable principles of sentencing set forth in the ***Criminal Code*** and the related case law, including the aggravating and mitigating factors relevant to this case. I have also considered the parties submissions as to the range of sentence.

[186] None of these offences, alone or within their respective classifications, invite incarceration as in ***McCabe***, or ***Lyckman***. Before applying the principle of totality, in my view, the range of sentences in the case at bar falls near, (or in the case of counts 5 and 6, even exceeds), the top end of the range of fines found in the Provincial Court cases previously cited.

[187] I see the following specific range of sentences applicable to each count in this case to be as follows:

On count 1, for contravening fluoride limits, a fine in the range of $7,000-$10,000;

On count 2, for contravening pH limits, a fine in the range of $7,000-$10,000;

On count 3, for contravening pH monitoring frequencies, a fine in the range of $5,000-$8,000;

On count 4, for contravening fluoride monitoring frequency, a fine in the range of $5,000-$8,000;

On count 5, for failing to submit monitoring records, a fine in the range of $10,000-$15,000; and

On count 6, for failing to report contraventions, a fine in the range of $10,000-$15,000.

[188] Within those ranges, (and before any consideration for the totality principle), all counts might reasonably attract sentences at or above the mid points of their respective ranges as follows: counts 1 and 2, fines in the amount of $9,000 each, counts 3 and 4, fines in the amount of $7,000 each and counts 5 and 6, fines in the amount of $14,000 each.

[189] If I were to impose those respective fines, the combined global sentence would constitute fines in the amount of $60,000.

Totality

[190] The objective continues to be to reach a global sentence which is adequately responsive to Mr. Dockman's total culpability for these offences and in doing so, I must attempt to balance both proportionality and restraint.

[191] Even if each fine meets the test of proportionality, the principle of totality requires I take one last look back at the package of fines before sentences are imposed and adjust them if the total effect is unduly harsh or excessive.

[192] The most serious of these offences are found in the third category encompassing counts 5 and 6. Those counts should attract the heaviest fines and any adjustments needed to accommodate the totality principle should come largely through adjustments on the sentences being considered on the remaining counts.

Sentences

[193] After applying the principle of totality and all of the other applicable principles at play in this case, I sentence Michael Louis Dockman to fines totalling the sum of $49,000 in the following amounts on the following counts:

On count 1, a fine in the amount of $7,000;

On count 2, a fine in the amount of $7,000;

On count 3, a fine in the amount of $5,000;

On count 4, a fine in the amount of $5,000;

On count 5, a fine in the amount of $12,500; and

On count 6, a fine in the amount of $12,500.

[194] A 15% provincial fine surcharge will be added to the amount of each respective fine on each respective count.

Default

[195] The ***EPEA*** does not provide for incarceration in the event of default, but section 7(2) of ***POPA*** addresses the issue. It provides that in the event an enactment does not provide for imprisonment in the event of default of a fine, the Court may, in default of payment, order the offender be imprisoned for a period of not more than six months.

[196] Given the nature and overall seriousness of these offences and knowing they arise from contraventions of an Enforcement Order issued under the authority of Alberta's environmental protection legislation, there must be a built-in imperative for Mr. Dockman to pay these fines in a timely fashion. The Court is of the view that incarceration, (as opposed to judgment), must result in the event Mr. Dockman defaults in payment of these amounts.

[197] Accordingly, should Mr. Dockman be in default of payment of any of the fines or surcharges on any one count, this Court orders he be incarcerated for a period of twenty (25) days on each count where payment of the related fine or surcharge remains in default, all such days to be served consecutively.

[198] Counsel will address the Court on the issue of Mr. Dockman's time to pay these fines and provincial fine surcharges following counsel's receipt of these written reasons. The time to pay as then ordered will form part of this sentence.

Section 234(1) *EPEA* Order

[199] Concerning the Crown's application under section 234(1) of the ***EPEA***, the Court has considered the nature and gravity of these offences, the circumstances surrounding their commission and the potential for the harm which might have resulted from Mr. Dockman's operation of this plant. The Court remains concerned about Mr. Dockman's ability to operate a treatment plant in compliance with regulatory requirements.

[200] Moreover, Mr. Dockman has not demonstrated he accepts responsibility for these offences. Adopting the reasoning in ***Terroco*** at paragraph 39, Mr. Dockman appears to see no personal error in his commission of these offences and it follows he may be more prone to re-offend if he were to return to the business of water treatment too early.

[201] The public interest must be protected by this Court ensuring Mr. Dockman not elect to return to the business of treating either drinking or wastewater for an extended period of time. I include the treatment of wastewater fully expecting that particular business presents its own unique risks to the public if it is not managed as the Regulator requires.

[202] Accordingly, I prohibit Michael Louis Dockman from operating, being employed by or holding a controlling interest in any organization which operates a facility for the treatment or

distribution of either drinking water or wastewater for a period of three (3) years from today. I will endorse an appropriate form of Order once its form and content has been consented to by counsel. Absent that consent, either party shall have leave to apply to this Court to settle its form and content.

[203] I thank counsel for their helpful oral and written submissions throughout.

Heard on the 19th day of May 2017,
the 8th day of August 2017,
and the 29th day of September, 2017.

Dated at the City of Calgary, Alberta this 12th day of December, 2017.

W. J. Cummings
A Judge of the Provincial Court of Alberta

Appearances:

Mr. P. Roginski
for the Crown

Mr. J. C. Anderson
for the Accused