

**DEPOSITS OF DELETERIOUS SUBSTANCES
IN THE SAINT LAWRENCE RIVER
OPPOSITE THE TECHNOPARC SITE**

Commission for Environmental Cooperation

Response to submission SEM-03-005



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For the Government of Canada

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INTRODUCTION

On August 14, 2003, the Waterkeeper Alliance and the Lake Ontario Waterkeeper, in partnership with the Société pour vaincre la pollution (SVP), the Environmental Bureau of Investigation, and the Upper St. Lawrence Riverkeeper - Save the River! presented a submission to the Secretariat of the Commission for Environmental Cooperation (SEM-03-005). This submission alleges that Canada is failing to enforce section 36(3) of the *Fisheries Act* concerning the deposits into the Saint Lawrence River of deleterious substances, particularly polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs). The submitters assert that these substances are being released from the Technoparc site owned by the city of Montreal. Their allegations are largely based on information they have obtained through observation, sampling and analysis of the open water in the river opposite the Technoparc site.

The Secretariat concluded that the submission SEM-03-005 met the criteria set out in Article 14 of the *North American Agreement on Environmental Cooperation* (NAAEC). In accordance with section 2 of the same article, it determined on September 15, 2003, that submission SEM-03-005 merits a response from Canada. As a result, in accordance with section 3 of Article 14, Canada has 30 days, or in exceptional circumstances and on notification to the Secretariat, 60 days in which to provide a response to the Secretariat.

This document represents Canada's response to the Secretariat. The first chapter describes the role of the Department of the Environment (Environment Canada) in the administration of provisions relating to pollution prevention in the *Fisheries Act*. Chapter two deals with the background of the sector comprising the Technoparc site and a brief description of the sector. The information provided in these two chapters forms the context for the department's actions described in chapter three. These actions related to administrative procedure allow the department to ensure that fish and their habitat are protected within the shortest time possible.

1. ENFORCEMENT OF THE *FISHERIES ACT*

The *Fisheries Act*¹ is the most significant federal law in terms of fisheries. The Act also contains a criminal process related to pollution of waters frequented by fish. It has proven to be one of the federal government's main intervention tools for protecting fisheries resources in Canada.

1.1 Environment Canada's responsibility for administration of the *Fisheries Act*

The federal Minister of Fisheries and Oceans has legislative responsibility for the *Fisheries Act*. However, in 1978, the Prime Minister assigned to the Minister of the Environment the responsibility for administering the provisions of the *Fisheries Act* relating to pollution prevention. A memorandum of understanding signed by the two departments in 1985 spells out the responsibility assigned to Environment Canada. This responsibility includes, among others, promotion and enforcement of a general prohibition to immerse or to deposit a deleterious substance in water frequented by fish.

1.2 Provisions related to pollution prevention in the *Fisheries Act*

Provisions related to pollution prevention are found in sections 34 to 42.1 of the *Fisheries Act* along with provisions for protection of fish habitat. These provisions include subsection 36(3) of the Act, which is a general prohibition of immersion or discharge of a deleterious substance in water frequented by fish that is not otherwise authorized by regulation.²

Contravention of subsection 36(3) is punishable on conviction by a fine and/or imprisonment.³ Separate offences are counted for each day during which an infraction is committed or continued.⁴ The limitation period for institution of proceedings by way of summary conviction in respect of an offence under the Act is two years after the time when the Minister became aware of the subject matter of the proceedings.⁵ Proceedings may be instituted by a public department or a private party. In the latter case, the private party is entitled to half of the fine imposed on the polluter.⁶

¹ *The Fisheries Act*, R.S.C. (1985), Ch. F-14 (hereafter called "F.A.")

² F.A., section 36(4)

³ F.A., section 40(2)

⁴ F.A., section 78(1)

⁵ F.A., section 82(1)

⁶ *Fisheries Regulations (general provisions)*, section 62(1)

1.3 Administration of provisions relating to pollution prevention

Environment Canada's responsibility for administration of provisions relating to pollution prevention of the *Fisheries Act* is the promotion and enforcement of these provisions. The department has two programs to meet this responsibility: a promotion program and an enforcement program.

In order to respect basic principals of fairness, predictability and consistency, the department has framed administration of the two approaches in a policy on compliance and enforcement of the Act.⁷ The two approaches are complementary in achieving the department's primary objective: to prevent pollution of water frequented by fish through compliance with the *Fisheries Act*.

1.3.1 Compliance promotion program

The compliance promotion program involves many activities intended to promote compliance, including but not limited to education and information, consultation on proposed regulations, development of guidelines and the provision of technical advice on means of achieving compliance. These different activities consist in taking administrative measures such as production of various materials dealing with the Act and the review of new projects with the aim of providing technical advice on means of achieving compliance.

1.3.2 Law enforcement program

The law enforcement program includes two main activities, inspections and investigations, with the objective of requiring compliance with the Act through recourse to administrative and legal measures of law enforcement.

An inspection consists of a verification of compliance with the Act, while an investigation is sometimes undertaken when there are reasonable grounds for believing that an infraction of the Act has been committed. An investigation is conducted, either to gather additional information that will allow a choice of the appropriate law enforcement measure, or to seek proof of the infraction and additional information surrounding the infraction to support legal action, when the measure being considered is a penalty imposed by a court.

When an infraction is discovered, the department may use the measures provided for in the *Fisheries Act* to require compliance or to deter repeat offences.

⁷ *Compliance and Enforcement Policy – Habitat Protection and Pollution Prevention Provisions – Fisheries Act*, Environment Canada, November 2001.

The law enforcement measures provided for by the *Fisheries Act* in the case of an infraction are an inspector's direction,⁸ a Minister's order,⁹ an injunction,¹⁰ recovery of costs as the result of prosecution,¹¹ and a penalty imposed by the court on summary conviction.¹² Not all of these measures may be available for each infraction. Each of these measures may be used only in the particular situation provided for in the *Fisheries Act*.

The department also has the administrative option of issuing a warning as a law enforcement measure.

The choice of measure is made in accordance with the Act and based on an assessment of the criteria set out in the Compliance and Enforcement Policy for the Act. The three criteria for assessment of an infraction and the circumstances in order to choose the appropriate law enforcement measure are the nature of the infraction, the effectiveness of the measure to oblige compliance by the alleged violator or to deter re-offending, and consistency in enforcement.

In assessing the nature of the infraction, the law enforcement officer may take the following factors into account: the severity of real or potential damage to fish habitat, to the fishery resource or the risk associated with human use of fish; whether the alleged violator acted with deliberate intent; whether the infraction is a repeated occurrence and whether the alleged violator attempted to conceal information. The effectiveness criteria of the measure that may be taken is aimed at ensuring that violators comply with the *Fisheries Act* within the shortest time possible and that violations are not repeated. Factors that are assessed include the alleged violator's history of compliance with the *Fisheries Act*, his or her willingness and diligence in cooperating, and measures taken by other government authorities dealing with the infraction.

When the infraction and related circumstances have been assessed according to these criteria, the measure chosen will be the measure that will secure compliance within the shortest time possible, or if the infraction has already been corrected, the measure that will best serve to deter a reoccurrence.

In the light of the intended measure, the department has the responsibility of taking that measure, of making a recommendation to ministers or making a recommendation to the Department of Justice. In the latter case, the Department of Justice must also assess certain criteria before deciding to begin judicial proceedings.

⁸ F.A., section 38(6)

⁹ F.A., section 37(2)

¹⁰ F.A., section 40(4)

¹¹ F.A., section 42(2)

¹² F.A., section 40

2. DESCRIPTION OF THE SECTOR COMPRISING THE TECHNOPARC SITE

This chapter describes the sector in the urban area southeast of the Island of Montreal, between the Champlain and Victoria Bridges, in which the Technoparc site is located.

2.1 History of the creation of the sector between the Victoria and Champlain Bridges¹³

Between 1864 and 1888, the city of Montreal acquired land, including two sites from a religious community, with a view to establishing a dump at the south end of Ash Street in Pointe-Saint-Charles.

In 1925, noting the southern progression of the Pointe-Saint-Charles dump, the Harbour Commission (Société du Port de Montréal) authorized the city of Montreal to dump garbage on its swampy lands and to do so up to the water limits.

Figure 1 is an aerial photo of the sector in 1930 with a projection of future lands that would be formed in the riverbed by the garbage backfill.

Figure 1: Aerial photograph from 1930¹⁴

¹³ This history is taken from the Environment Canada Investigation Report, April 22, 2003.

¹⁴ Taken from document referred to in footnote 16.

In 1937, the city of Montreal ceded the site located on Saint-Gabriel pier at the southern end of Ash Street to Canadian National Railways (CN), which built a new switching yard bounded on the southeast by the Butler line. Later, large-capacity above ground storage tanks were installed there.

Built on the riverbed, the dump (in its post-1937 extension) continued to be used for landfill until its closing in 1966. From four to 12 metres of household and industrial waste along with dry material had been dumped in the area.

In 1966, the land that now forms the Technoparc was leveled and covered with a thin coat of gravel to serve as a parking area for the Universal Exposition of 1967 (EXPO '67). At that point, problems related to the production of gas by decomposing organic matter were encountered for the first time.

At the same time, the Bonaventure Autoroute was developed using large quantities of external landfill dumped directly on the riverbed, between the Victoria and Champlain Bridges. This work continued for several years.

The land was not used after EXPO '67. In 1976, the federal Department of Transport decided to install a short-takeoff and landing (STOL) airport with a terminal, parking area and fuel storage tanks. After operation of that site was abandoned, around 1977, and the final infrastructure dismantling in 1991, a backfill layer was added to the surface on the northern part of the site.

In 1984, construction of the Via Rail maintenance centre at Pointe-Saint-Charles began in the southwest part of the site that is now the Technoparc. Part of the site had also been used for storage of granular material and as a snow dump during the winter of 1985.

2.2 Hydrogeology

The geology of the sector, which was used as a dump for nearly a hundred years, is characterized by superficial deposits of man-made landfill material mixed with household and industrial waste.

The southern limit of the former dump is the Bonaventure Autoroute erected in 1966 that seems to have been preceded by a dump belt dike, of unknown composition. Landfill materials of the Autoroute are not well documented, however it appears to have been made with stone particles in a matrix of sand, silt and gravel, with demolition material.

The hydrogeological state of the sector is complex, given the wide variety of material forming the sector. Since the degree of permeability of the materials making up the base is variable, underground water moves slowly and at varying rates.

2.3 Soil and underground water contamination

Environment Canada has conducted site characterization studies over the years, as have different owners of the land in the sector under study, which is the land previously used as a dump. The various existing studies show contamination by different substances often known to be harmful and that the contamination is present on the Technoparc site as well as adjacent lands.

A study report prepared in 1990 for Environment Canada and the Quebec Department of the Environment¹⁵ shows that the soil and water of the sector are contaminated by many substances, and some of them at a significant level. The report mentions that many soil measurements have been carried out. A total of 67 samples were taken and 33 physicochemical parameters were analyzed. Zinc, nickel, silver, cadmium, arsenic, phenols, PAHs and PCBs were detected. The presence of ethylbenzene, benzene, toluene, styrene, xylene, PAHs, chlorophenols, and methylene chloride was detected in underground and surface water based on 44 samples that were analyzed for 75 physicochemical parameters. The study revealed a wide variation in the concentrations of contaminants measured over the whole of the sector. This variability indicated a heterogeneous dispersal of contaminants.

CN conducted its own studies and in 1996 installed a system for recovery of floating hydrocarbons in the underground water at the southern limit of its land.

A study by SNC-Lavalin in March 2002 for the city of Montreal¹⁶ confirmed the presence of a significant concentration of PAHs and PCBs in some of the observation wells located near the banks of the Saint Lawrence River. The SNC-Lavalin study also showed the presence of PCBs in a high number of the wells throughout the Technoparc site.

During the summer of 2002, the city of Montreal conducted an ecotoxicological study with the participation of Environment Canada.¹⁷ The study concluded that an analysis of underground water samples were harmful and represent a lethal and sub-lethal effect on fish.

2.4 Real estate property

The Technoparc site, the central reference point for the sector under review, has an area of 456,057m² and was sold to the city of Montreal in August 1989 by Her Majesty in right of Quebec (Government of Quebec) and the Montreal Port Corporation (legal representative of Her Majesty in right of Canada). The site consists of 30 separate lots.

¹⁵ *Statistical analysis of characterization data from garbage disposal sites, December 1990.*

¹⁶ *Interception and recovery of floating hydrocarbon phase project – Technoparc, complementary characterization, March 2002.*

¹⁷ *Ecotoxicological assessment of toxicity of underground water samples at Technoparc (Montréal), January 2003.*

Today, the city of Montreal holds documentary title to 24 of the 30 lots that comprise the Technoparc site. The city of Montreal sold:

- In September 1989, 1 lot to Teleglobe Canada Inc.
- In November 1995, 1 lot to Bell Mobility Cellular Inc.
- In June 1999 and in March 2002, a total of 3 lots to the Cité du cinéma (MEL) inc.
- In June 1999, 1 lot to Société immobilière Parctech inc.

The land immediately north of the Technoparc is used by CN as a switching yard.

Regarding the land immediately south of the Technoparc site, on which are located the Bonaventure Autoroute and connecting land between the Autoroute and the river, one part belongs to the Quebec Department of the Environment. The ownership of the other part is unknown.

2.5 Deposits in the Saint Lawrence River

Deposits in the river, characterized by a floating hydrocarbon phase, located at the eastern end of the sector under study, are contaminated by PCBs, among others. Booms are now in place to recover the contaminated oil film to the extent possible.

3. PROCEDURE FOLLOWED BY ENVIRONMENT CANADA

Environment Canada is concerned about the deposits in the Saint Lawrence River between the Victoria and Champlain Bridges. Its main objective is protection of the environment. The department has acted and continues to take action to resolve this problem.

3.1 Environment Canada interventions

To date, the department has employed two approaches to resolving the problem of deposits in the river. One approach consists of promotion of the *Fisheries Act* by acting as a technical adviser and the other approach is by law enforcement. The two approaches are mutually inclusive in achieving the objective of protecting the environment with the result that they reinforce each other.

3.1.1 Compliance promotion program

Since 1998, the scientific staff of Environment Canada's compliance promotion program has been increasingly concerned by deposits of substances in the Saint Lawrence River bordering on the Bonaventure Autoroute between the Victoria and Champlain Bridges.

In October 1998, a meeting took place between Environment Canada and the Quebec Department of the Environment to discuss the problem and possible plans for its resolution. Discussion also took place at that meeting about involving the city of Montreal in an action plan.

In September 1999, the city of Montreal informed Environment Canada that an engineering firm had been commissioned to conduct complementary environmental characterization studies and to prepare a design for containing and recovering floating hydrocarbon phases at the Technoparc site.

In January 2002, Environment Canada was informed of the possible construction of a containment and recovery system for floating hydrocarbon phases at the Technoparc by the city of Montreal. In April 2002, the department expressed its concern about the capacity of the system to contain contamination in a dissolved phase in the underground water.

During the summer of 2002, Environment Canada participated in a toxicological study of a dissolved phase of the underground water to measure the harmful and lethal and sub-lethal effects on fish. The results of the study were reported in January 2003.

In 2003, discussions continued between the Quebec Department of the Environment, Environment Canada and the city of Montreal to find an overall solution to the problem. Other interested parties, namely the owners of other sites in the contaminated sector took part in the meetings.

3.1.2. Law enforcement program

In August 1991, following receipt of information from a representative of the Port of Montreal Corporation concerning an oil film on the Saint Lawrence River under the Victoria Bridge, Environment Canada conducted an inspection and took an open water sample. Since the source of the pollution was unknown, Environment Canada incurred the cost of installing an oil containment system in the river. Soon after, CN decided to take charge of the operation. Subsequently, CN and the city of Montreal agreed on cost sharing to maintain booms at locations where deposits were observed and on recovery of hydrocarbons. In 1996, CN withdrew its contribution from the operation for the purpose of working on recovery of floating hydrocarbons on the surface of underground water along the limits of its property.

In October 1998, departmental inspectors went to the Technoparc site to conduct an inspection. In November 1998, a warning was sent to the city of Montreal for an infraction of section 36(3) of the *Fisheries Act*. The warning resulted from the poor condition of the booms and the cessation of oil pumping.

Between October 1998 and August 2003, Environment Canada made 20 visual inspections of the booms installed in the river. During three of those inspections, the inspectors asked the city of Montreal to correct the situation, in particular to add absorbent pads and to replace or adjust the booms. Environment Canada makes regular inspections of the city of Montreal's operations and ensures that installed retaining and hydrocarbon recovery devices are operational.

April 11, 2002, the Société pour vaincre la pollution (SVP) and the Environmental Bureau of Investigation (EBI) presented an official request for an investigation to the Environmental Protection Branch (EPB) of Environment Canada. The applicants alleged that the Technoparc site was releasing harmful substances into the Saint Lawrence River.

3.2 Investigation

Following the April 11, 2002 request from SVP and EBI, Environment Canada decided to conduct an investigation for an infraction of section 36(3) of the *Fisheries Act* resulting from deposits of deleterious substances in the Saint Lawrence River opposite the Technoparc site. By letter dated April 22, 2002, the department informed the applicants that an investigation was being conducted.

The investigation was carried out with the aim of finding evidence for each of the factors constituting an infraction and for information concerning the infraction, which are essential to support possible legal proceedings. The purpose of any legal action is the imposing of a criminal penalty by a court on one or more offenders responsible for the infraction.

The elements constituting an infraction of section 36(3) that the Crown must prove beyond a reasonable doubt are as follows:

- that a substance was immersed or deposited in the water, or in some other place if a risk exists that the substance resulting from its immersion or deposit may penetrate the water;
- that the water is frequented by fish;
- that the substance is deleterious;
- that there is no regulation authorizing an exemption from the prohibition;
- that one or more persons are responsible for or have allowed the deposit or immersion.

The investigation consisted of an exhaustive search of the different existing studies in the department on the soil and underground water contamination of the sector making up the Technoparc site. Information was also collected on departmental actions regarding deposits in the river at that location. As part of the investigation, consultations took place with departmental personnel involved as technical advisers to various parties in the sector to whom the deposits might be attributed. Finally, a search of title documents was made in the Montréal land register of the land registry office, and in documents of the Quebec Ministry of Natural Resources to trace the history of the transfer of title documents and to identify current title owners in the sector comprising the Technoparc.

Analysis of the information relating to evidence collected during the investigation led to the conclusion that the department could prove that in fact there were deposits of substances in the river, that the Saint Lawrence River is water frequented by fish, that the substances deposited are deleterious and that there is no regulation for exemption from section 36(3) of the *Fisheries Act* for the deposits in question.

However, proof for the fifth element constituting an infraction of 36(3), the person or persons responsible for the deposits, is more problematic. In fact, the information collected showed that the different lands forming the study sector are contaminated by many pollutants resulting from diverse activities (household and industrial waste burial site, installation of petroleum product tanks and of liquid residue lagoons, snow dumping, and dump for material of unknown origin). Moreover, the hydrogeology of the sector is made complex by the nature of the fill and waste buried there. While the owners of the different lots forming what was previously the dump are now known, there is not sufficient proof to attribute the fact that the contaminants deposited in the river come directly from the Technoparc site, from one of the sites of other owners or from all these sites.

3.3. Conclusion of the investigation

Having failed to establish sufficient proof of the infraction covered by section 36(3) of the *Fisheries Act*, an overriding condition for successful pursuit of legal proceedings, the department decided to close the investigation.

For these reasons, the department sent notice of the closing of the investigation to the applicants by letter dated April 24, 2003, and has decided to continue its interventions with the different parties potentially responsible for the deposits in the river to find a lasting solution to this environmental problem.

CONCLUSION

Environment Canada is responsible for the administration of the provisions of the *Fisheries Act* relating to pollution prevention. The department's main objective is the protection of the environment. Administration of these provisions includes promotion and enforcement of the Act.

The case of the deposit of harmful substances in the Saint Lawrence River opposite the Technoparc site is of concern to the department, which has acted and continues to take action to resolve this environmental problem.

The department has enforced section 36(3) of the *Fisheries Act*, which prohibits the deposit of harmful substances in water frequented by fish, by carrying out many inspections and by issuing a warning. These activities were conducted under the *Fisheries Act* and its enforcement policy.

Regular monitoring of the floating phase recovery operations in the river has led to requests to correct deficiencies in the operation. The department recognizes however that the booms and pumping of hydrocarbons are not a permanent solution and do not solve the overall problem.

Environment Canada conducted an investigation that would allow consideration of legal proceedings so that protection of the environment through compliance with the *Fisheries Act* could be achieved in the shortest time possible.

The investigation included an exhaustive analysis of all available information on the Technoparc site and adjoining land to develop a clear picture of the diverse activities that have contributed to the soil contamination and the complexity of the hydrological system of the whole of the sector. However, this investigation did not produce sufficient evidence to assign criminal responsibility to one or more offenders. The harmful substances escaping into the river could be coming from the Technoparc site, from an adjoining site or from all the sites.

Following an assessment of the criteria of the enforcement policy for the *Fisheries Act*, the department decided not to continue its investigation and instead to continue its efforts with the different parties potentially responsible for the contamination in order to find a lasting solution to this environmental problem.

The response of the Government of Canada to submission SEM-03-005 includes information concerning the administration of section 36(3) of the *Fisheries Act* and a statement of Environment Canada's interventions intended to assist in understanding the questions raised by the authors of the submission. The Government of Canada is confident that this response will allow the Secretariat to carry out its mandate under Article 15(1) of the NAAEC.

ANNEX 1

Environment Canada clarification of certain statements by the authors of submission SEM-030-005

II.8 “government officials in the proper application of the Act. A stated principle is that ‘fair, predictable, and consistent enforcement govern application of the law, and responses by enforcement personnel to alleged violations.’ The Compliance and Enforcement Policy is intended to ensure that violators will comply with the *Fisheries Act* within the shortest possible time, that violations are not repeated and that all available enforcement tools are used. The range of responses to alleged violations is: warnings, direction by Fishery Inspectors, orders by the Minister, injunctions and prosecutions.”

Environment Canada’s *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act* is a general orientation document intended to inform Canadians of the decision-making framework of the Department of Fisheries and Oceans and the Department of the Environment in terms of the promotion and enforcement of provisions relating to the protection of fish habitat and pollution prevention. This framework provides for a fair, predictable and consistent administration of the Act. The Policy sets out the measures that Environment Canada can take to promote compliance with the Act and those that it may take to enforce the Act. If an infraction occurs, the choice of measure to be applied is based on assessment of three criteria: the nature of the infraction, the effectiveness of the measure to oblige compliance as quickly as possible and to deter re-offending, and consistency in enforcement.

III.A “The Montréal Technoparc site is one of Quebec’s largest hazardous waste sites...”

The Technoparc site is part of a sector that used to be a household and industrial waste burial site. It has been the location of and the neighbour of sites where many types of activities have also contributed to the contamination of the Technoparc soil and neighbouring land. By the nature of their foundations, underground water moves according to a complex hydrogeological system, with the result that information concerning the source of substances deposited in the river does not exist.

III.B “...investigators took samples of discharges from the Technoparc site....”

Samples of open water in the river show that, in fact, there are deposits of substances. Moreover, analysis of these samples reveals that the substances deposited, PCBs and PAHs, are harmful to fish and their habitat. However, this sampling by itself cannot provide proof of one of the essential elements of an infraction of section 36(3) of the *Fisheries Act*: who is or are the offender(s)? In fact, all of the activities that have taken place in the sector have probably contributed to contamination of the Technoparc soil and the adjoining land. It is also probable that the contaminants that have been deposited in the river originated from the contamination produced by all those activities, by several of them or by a single activity. Since it is not possible to make the link between the activities that led to the contamination responsible for the deposits in the river, it is necessary to determine who has authority over the contaminants that are escaping from the contaminated land or lands. This is a very complex determination in view of the hydrogeological system of the sector. Thus, it is difficult to prove that the contaminants deposited in the river are coming from the site belonging to the city of Montreal, from adjoining lands, or from all of these lands.

III.B “After spotting a continuous 400-metre long oil slick discharging from the site, Daniel Green of SVP called Environment Canada. He spoke with Stephan Grelon, told him of the slick and of the fact that there was no effective containment in place. Mr. Grelon informed Mr. Green that he would make an incident report and call back with the report number. The investigators did not receive that number.”

In fact, Mr. Green did telephone Environment Canada in the afternoon of January 20, 2002. He spoke to Stéphane Grenon and informed him of his observations. Mr. Grenon went to the site in the early afternoon and did not observe any traces of hydrocarbons. An incident report was entered into the department’s internal National Environmental Emergencies System

V.2 “...it is the purpose of a criminal investigation to establish the identity of the accused where the evidence of an offence exists.”

The purpose of a criminal investigation of an infraction of strict responsibility, such as provided for in section 36(3) of the *Fisheries Act*, is to collect sufficient evidence on each of the elements constituting an infraction, and information surrounding the infraction, where there are reasonable grounds for believing that an infraction has occurred. If the law enforcement measure being considered by the department is a criminal penalty imposed by a court, the evidence is assessed by the Attorney General of Canada who also considers the public interest in deciding whether to begin legal proceedings.

V.4 “Now that the Ministry has ended their investigation without denying or confirming that an offence is indeed being committed, the Submitters’ ability to bring forward a private prosecution is in question; both regarding the period of limitations, which s.82(1) of the Act indicates is two years for summary offences under the *Fisheries Act*; and the strength of the brief before a Justice of the Peace given that the Ministry has not affirmed the severity of the situation.”

The department ended its investigation by informing the parties that it did not have sufficient proof that the physical source of the deposits was the Technoparc or other sites. The limitation period for the *Fisheries Act* is set out in section 82(1). In the case of an infraction punishable on summary conviction, the limitation is two years after the time when the Minister became aware of the elements constituting the infraction. Under section 78(1), a separate offence is counted for each day during which an infraction is committed or continued. Under those provisions, it would not be too late to begin criminal proceedings. Clearly, such a statement is theoretical as long as the place or places from which the deposits in the river originate are not known.