



Environmental Concerns an Issue for Construction Managers



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A recent sentencing under the federal *Fisheries Act* brings home the many, often competing, responsibilities faced by construction managers, even in relation to medium scale construction projects. Environmental liability, rarely the first issue of concern to construction contractors, is a growing area of risk.

Clark Builders was contracted by the Royal Glenora Club as “construction manager” in relation to the building of an indoor pool facility adjacent to the Club’s existing facility. The facility is located in Edmonton’s River Valley, in very close proximity to the North Saskatchewan River.

In 2008, during the planning stages for the pool addition, it was determined that an EPCOR water main would need to be relocated so as to not interfere with the foundation of the addition. The architects of the pool addition provided EPCOR with two sets of plans, only one of which showed the below grade water storage tank planned for the pool addition. EPCOR used the plan, which did not show the below grade tank, to design and relocate the water main. Unfortunately, none of the parties who reviewed the relocation plan noted that the proposed new location for the water main would not be outside the overall footprint of the pool addition.

The water main was relocated as indicated on the EPCOR relocation plan, with as-built drawings provided to Clark Builders in April 2009.

The subcontractor hired by Clark Builders for the drilling and installation of the concrete pilings for the foundation of the pool addition commenced

drilling in late July 2009. However, the relocated water main had not been staked.

The drilling subcontractor drilled at the marked pile location and subsequently punctured the relocated water main, releasing approximately 3,000 litres per second of chlorinated water. Before the water main could be shut down, between 8 and 12 million litres of chlorinated water had entered the North Saskatchewan River.

Based on testing done after the incident, the level of chlorine was 3,900 times greater than the Canadian Water Quality Guideline for the protection of freshwater life and was likely lethal to fish which may have encountered the water released from the water main.

Clark Builders was subsequently charged under section 36(3) of the *Fisheries Act* for depositing or permitting the deposit of a deleterious substance in water frequented by fish. Clark Builders pled guilty and was ordered to pay a fine of \$15,000 and \$270,000 into the Environmental Damages Fund, administered by Environment Canada.

In the result, it probably would have not made any difference if Clark Builders was the general contractor rather than the construction manager. This incident occurred due to a series of small, understandable oversights by a number of parties.

The seemingly remote risk of environmental liability shows that contractors must remain vigilant over every aspect of the project, because as the old saying goes: the devil is in the details. And as far as general contractors and construction managers are concerned, this case illustrates another old saying: the buck stops here.

This update is a general overview of the subject matter and cannot be regarded as legal advice. For construction advice please contact [Corbin Devlin](#) in Edmonton, or [Jim Lebo](#) in Calgary, or any member of our [Construction Industry Group](#).