

Overview of B.C.'s New Spill Reporting Regulation

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On October 30, 2017 the B.C. Ministry of Environment and Climate Change Strategy repealed the Spill Reporting Regulation, B.C. Reg. 376/2008 (the “Old Regulation”) and replaced it with the Spill Reporting Regulation (Ministerial Order No. M329) (the “New Regulation”). The New Regulation, which is currently in effect, expands the circumstances in which spill reports must be provided to the Province and increases the information which must be contained within such spill reports. Any person who has possession, charge or control of a substance listed in the Schedule to the New Regulation (including any substance that can cause pollution) should ensure they are familiar with their obligations under the New Regulation.

The Old Regulation

Under the Old Regulation, a person who had possession, charge or control of a listed substance when it was spilled in an amount equal to or greater than the amount specified in the Schedule to the Old Regulation, was obligated to provide a spill report to the Provincial Emergency Program immediately after the spill occurred. The spill report was required to include, among other things, the contact information of the person who caused the spill, the location and time of the spill, the type and quantity of the substance spilled, the cause and effect of the spill, and the details of spill response actions. In addition, where a spill occurred, the person who had possession, charge or control of the listed substance when it was spilled was required to take all reasonable and practical steps to stop, contain and minimize the effects of the spill.

The New Regulation

Under the New Regulation, the triggers for reporting a spill, and the information which must be provided to the Province in connection with a spill, have been substantially altered. We first define the key terms below, then summarize the main features.

Key Definitions

In the New Regulation:

“emergency response completion date” means the date on which all of the following criteria are met:

1. the incident command post is disestablished;
2. the source of the spill is under control and is neither spilling nor at imminent risk of spilling;
3. emergency actions to stabilize, contain and remove the spill have been taken;
4. the waste removed from the spill site has been received at a facility for disposal or received for transportation to a facility for disposal;
5. if applicable, all notices respecting evacuation from the spill site have been expired or rescinded; and
6. all equipment, personnel and other resources used in emergency spill response actions have been removed from the spill site, other than equipment, personnel or other resources required for sampling, testing, monitoring or assessing at the spill site, or recovery or restoration of the spill site.

"regulated person" means

1. a person who, in the course of operating an industry, trade or business, has possession, charge or control of a prescribed substance in prescribed quantities, or
2. a person referred to in paragraph (a) whose employee, under the person's direction, has possession, charge or control of a prescribed substance in prescribed quantities;

"responsible person" means a person who has possession, charge or control of a substance or thing when a spill of the substance or thing occurs or is at imminent risk of occurring;

"spill" means the introduction into the environment, other than as authorized under the Environmental Management Act and whether intentional or unintentional, of a substance or thing that has the potential to cause adverse effects to the environment, human health or infrastructure.

Triggers for Reporting a Spill

Under the New Regulation:

1. If a spill of a listed substance (i.e. a substance listed in the Schedule to the New Regulation) other than natural gas occurs or is at imminent risk of occurring, and **the spill enters or is likely to enter a “body of water” in any amount, a responsible person must immediately report the spill to the Provincial Emergency Program. A “body of water” includes a stream, an aquifer, fish habitat, and any naturally formed pool of water or ditch that could drain or empty directly into a stream, an aquifer, or fish habitat.**
2. If a spill of a listed substance other than natural gas occurs or is at imminent risk of occurring in an amount equal to or greater than the amount specified for the listed substance in the Schedule to the New Regulation, a responsible person must immediately report the spill to the Provincial Emergency Program.

3. If a break in a pipeline or fitting operated above 100 psi results in a sudden and uncontrolled spill of 10 kg or more of natural gas, a responsible person must immediately report the spill to the Provincial Emergency Program.

Reporting Requirements

Under the New Regulation, the spill report to the Provincial Emergency Program must include information similar to that required under the Old Regulation (e.g. the contact information of the person who caused the spill, the location and time of the spill, the type and quantity of the substance spilled, the cause and adverse effects of the spill, and the details of proposed spill response actions). However, under the New Regulation, a responsible person for a spill (other than a person who holds a permit to carry out an oil or gas activity to which the Emergency Management Regulation, B.C. Reg. 204/2013 applies) may be required to provide a “lessons-learned report” to a director and, in relation to a spill that occurs on or after October 30, 2018, will be required to provide periodic spill reports and an “end-of-spill” report to the B.C. Minister of Environment and Climate Change Strategy (the “Minister”).

1. Lessons-Learned Report

Under the New Regulation, a director may order a responsible person to submit a lessons-learned report to the director within six months after the emergency response completion date for the spill. A lessons-learned report must include:

- a description of the effectiveness of the spill response actions;
- a description of actions taken to prevent future spills and improve response to future spills;
- responses to any specific questions the director asks in the order; and
- if the responsible entity for the spill is a regulated person:
 - a description of any changes that the person intends to make to the **person’s spill contingency plan to improve response to future spills**;
 - if the spill occurred in a geographic response area, a description of any changes that the person considers should be made to the related geographic response plan to improve response to future spills, and
 - if spill response actions were carried out by a PRO (a preparedness and response organization that holds a PRO certificate), a description of any **changes that the person considers should be made to the PRO’s area response plan to improve response to future spills**.

2. Periodic Spill Reports

Under the New Regulation, a person responsible for a spill that occurs on or after October 30, 2018 must submit written reports on the spill to the Minister until the emergency response completion date for the spill. These reports must be submitted: as soon as practical on request of the Minister; at least once every 30 days after the date the spill began, and; at any time the responsible person has reason to believe that information included in prior reports submitted by the responsible person was or has become inaccurate or incomplete. These reports must include, to the extent practicable, the information required in an end-of-spill report (discussed below).

3. End-of-Spill Report

Under the New Regulation, a person responsible for a spill that occurs on or after October 30, 2018 must submit an end-of-spill report to the Minister within 30 days after the emergency response completion date for the spill. The end-of-spill report must include the information provided in the initial spill report to the Provincial Emergency Program, as well as:

- a description of the circumstances, cause and adverse effects of the spill;
- details of spill response actions;
- an explanation of how and where waste from the spill was disposed of;
- a copy of data from and reports of sampling, testing, monitoring and assessing carried out during spill response actions;
- a map of the spill site and the area surrounding the spill and photographs of the spill; and
- the names of agencies on the scene and the names of other persons or agencies advised about the spill.

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