



***Environmental Regulatory
Update: Carbon Tax, Contaminated
Site Regulations and Spill Response***

Presented by:
Scott R. Marcus



ALEXANDER
HOLBURN
ALEXANDER HOLBURN BEAUDIN + LANG LLP

Carbon Tax: In BC

Greenhouse Gas Reduction Targets Act, SBC 2007, c. 42:

- 2 (1) The following targets are established for the purpose of reducing BC greenhouse gas emissions:
- (a) by 2020 and for each subsequent calendar year, BC greenhouse gas emissions will be at least 33% less than the level of those emissions in 2007;
 - (b) by 2050 and for each subsequent calendar year, BC greenhouse gas emissions will be at least 80% less than the level of those emissions in 2007.

Carbon Tax: In BC

- In 2008, the carbon tax was implemented at \$10 per tonne
- In 2012, the price of carbon reached \$30 per tonne
- In 2015, the BC Government Appointed Panel recommended a \$10 per tonne increase in 2018 and for the scope of the tax to be expanded to include previously excluded emissions
- In August 2016, the Government released its Climate Leadership Plan, which did not include any plans to increase the carbon tax

Carbon Tax: Outside BC

- Alberta: carbon levy and performance-based emissions system
- Ontario and Quebec: cap-and-trade system
- Current carbon pricing regimes cover approximately 80 percent of Canadian economy

Carbon Tax:

- Pan-Canadian Pricing on Carbon Pollution:
 - In October 2016, the Government of Canada announced a plan for all Canadian jurisdictions to have carbon pricing in place by 2018.
 - Provinces and territories will have flexibility in deciding how they implement carbon pricing: they can put a direct price on carbon pollution or they can adopt a cap-and-trade system.
 - **Target:** Emissions in 2030 to be 30% lower than emissions in 2005.

Carbon Tax:



YOUR PERSPECTIVE
OUR FOCUS™

▪ Pan-Canadian Pricing on Carbon Pollution:

- The price should start at a minimum of \$10 per tonne in 2018 and rise by \$10 a year to reach \$50 per tonne in 2022.
- Provinces and territories choosing a cap-and-trade system will need to reduce the number of greenhouse gas emission permits they make available to businesses. The number of pollution permits will decrease every year, based on both emission cuts through to 2022 (equal or greater to what would be achieved by a direct price) and a 2030 target equal or greater to Canada's.
- The Government of Canada will impose pricing if provinces and territories fail to act by 2018.

Carbon Tax:

- December 9, 2016 First Minister's issue joint communiqué:

“Pricing carbon pollution is an efficient way to reduce GHG emissions, drive innovation, and encourage people and businesses to pollute less. It is a core element of the Framework and governments will work together on its implementation.”

- Saskatchewan refused to adopt Pan-Canadian Framework

Contaminated Site Regulations:



YOUR PERSPECTIVE
OUR FOCUS™

- *Contaminated Sites Regulation*, B.C. Reg. 375/96
 - Stage 10 Amendments come into effect on **November 1, 2017**

Contaminated Site Regulation Amendments:



YOUR PERSPECTIVE
OUR FOCUS™

- All existing soil, water and vapour standards will be updated to reflect contemporary science;
- Schedule 7 relating to unique soil standards which triggers Contaminated Soil Relocation Agreements is eliminated
- Provides different soil standards for high and low density residential use

Contaminated Site Regulation Amendments



YOUR PERSPECTIVE
OUR FOCUS™

- Sets two tiers of soil standards for Wildlands:
 - Natural Wildlands (i.e. wildland areas protected under specific statutes for their high conservation value); and
 - Reverted Wildlands (wildlands lacking designated statutory protection including land previously used for industrial uses, which have or will revert to wildlands land use);
- Establish a regulatory commitment to an ongoing five year fixed cycle of review to ensure CSR standards are regularly assessed and updated;

Contaminated Site Regulation Amendments



YOUR PERSPECTIVE
OUR FOCUS™

- Some legal implications:
 - No grandfathering provision
 - Soil Reallocation Agreements will still be required notwithstanding elimination of Schedule 7
 - Vapour standards will be relaxed for parkades, allowing for numerical certificates of compliance in some circumstances where only risk based were previously an option.

Spill Preparedness and Response



YOUR PERSPECTIVE
OUR FOCUS™

- Bill 21 – 2016 *Environmental Management Amendment Act*, 2016 enacted.
- Section 4 of the Bill adds Division 2.1 to Part 7 of the *EMA*.
- Not yet in force.

Division 2.1 Spill Preparedness, Response and Recovery



YOUR PERSPECTIVE
OUR FOCUS™

- **“Regulated Person”** means
 - (a) 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
 - (b) 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;
- **Ministry’s First Proposal for Thresholds:**
 - 10,000L transported by rail or truck
 - 50,000L at a fixed facility, and any prescribe substance transported by pipeline of a kilometre or more.

Spill Preparedness and Response in BC, Proposed Amendments to the Environmental Management Act and Proposed Regulations, BC Ministry of Environment

Spill Contingency Plans

- S. 91.11 (1) A regulated person must ensure that
- (a) on or before the prescribed date, the regulated person has a spill contingency plan that complies with the regulations,
 - (b) the spill contingency plan is reviewed, updated and tested in the prescribed manner and at the prescribed frequency,
 - (c) the spill contingency plan is made available to employees of the regulated person in accordance with the regulations,
 - (d) the spill contingency plan demonstrates that the regulated person has the capability to effectively respond to a spill, and
 - (e) if required by the regulations, the spill contingency plan is published in accordance with the regulations.

Spill Contingency Plans

Section 91.11

- (2) Before a spill contingency plan is prepared a risk assessment must be carried out
- (3) Records pertaining to the plan must be maintained for a prescribed period of time
- (4) A regulated person must implement the plan if a spill occurs (if applicable)
- (5) A director can order that a contingency plan be produced for review
- (6) Upon review, a director may order that the plan be amended

Spill Response Reporting

- **"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;
- **91.2 (1)** A responsible person in relation to a spill must, in accordance with the regulations,
 - (a) report the prescribed information about the spill to the prescribed persons in the prescribed time and manner,
 - (b) provide any information to an officer that the officer requests respecting response activities in relation to the spill, and

Spill Response Timing

- **91.2** (1) A responsible person in relation to a spill must, in accordance with the regulations,
 - (c) ensure that persons with the skills, experience, resources and equipment necessary to properly deal with the spill
 - (i) arrive at the spill site, sites affected by the spill and prescribed sites associated with the spill within the prescribed period after the spill, and
 - (ii) implement an incident command system in the prescribed time and manner.

Spill Response Director Discretion



YOUR PERSPECTIVE
OUR FOCUS™

- **91.2 (3)** If a director is satisfied on reasonable grounds that compliance with the regulations is not sufficient to fully deal with the adverse effects of a spill on the environment, human health or infrastructure, the director may order the responsible person to take specified spill response actions that the director considers are necessary or advisable in addition to the regulatory requirements.

Spill Response Recovery Plan



YOUR PERSPECTIVE
OUR FOCUS™

- **91.2(4)** A director may order a responsible person in relation to a spill to prepare, in accordance with the regulations, and submit to the director, in the time and manner specified by the director, a recovery plan, or an amended recovery plan, to resolve or mitigate the impacts of the spill.

Spill Response Certificate of Recovery



YOUR PERSPECTIVE
OUR FOCUS™

- **91.3** If a director is satisfied on the basis of a report under section 91.2 (6) (c) *[responsible persons – spill response]* that an approved recovery plan has been carried out, the director may issue to the responsible person a certificate to that effect.

Preparedness and Response Organizations



YOUR PERSPECTIVE
OUR FOCUS™

- **"preparedness and response organization"** means an organization that provides or intends to provide spill preparedness and response services in British Columbia;
- **"conditional PRO"** means a preparedness and response organization that holds a conditional PRO certificate;
- **"PRO"** means a preparedness and response organization that holds a PRO certificate;

Preparedness and Response Organizations



YOUR PERSPECTIVE
OUR FOCUS™

Section 91.41:

(1) The minister may issue a conditional PRO certificate to a preparedness and response organization that demonstrates the capacity to be fully capable and intends to be fully capable to, within the period and the area specified by the minister to:

- (a) promptly and capably deal with spills and the impacts of spills within that area, including having access to the necessary equipment, personnel and other resources, and
- (b) perform prescribed duties given under this Part to a regulated person or a PRO.

(2) The minister may issue a PRO certificate to the conditional PRO or, on the minister's own initiative, the minister may, at the expiry of a conditional PRO certificate, revoke the conditional PRO certificate.

Preparedness and Response Organizations



YOUR PERSPECTIVE
OUR FOCUS™

Area response plans

91.51 (1) A conditional PRO that wishes to be certified as a PRO must prepare, and publish, in accordance with the regulations and in the time specified by the minister, a response plan for the area designated in its conditional PRO certificate.

(2) A PRO, in accordance with the regulations, must review, update, test and republish an area response plan prepared under subsection (1).

Preparedness and Response Organizations



YOUR PERSPECTIVE
OUR FOCUS™

91.51 (3) Subject to the regulations, an area response plan must include information respecting spill response procedures and strategies, including, without limitation,

- (a) available equipment and other resources,
- (b) where the equipment and resources can be obtained,
- (c) other logistical information, and
- (d) prescribed information respecting prescribed matters.

***Environmental Regulatory
Update: Carbon Tax, Contaminated
Site Regulations and Spill Response***

Thank you.

Questions?



**ALEXANDER
HOLBURN**
ALEXANDER HOLBURN BEAUDIN + LANG LLP