

British Columbia's New Spill Reporting and Response Regime

Presented to the Environmental Manager's Association

Vancouver, January 18, 2018

Janice Walton

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Impetus For Change

In response to concerns around the potential impacts of spills from proposed Gateway and TransMountain pipelines, Liberal government promises to implement a world class spill preparedness and response regime



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Previous EMA Requirements

EMA s. 79: Spill Prevention and Reporting

- Provides authority for Minister to order investigations, contingency planning and implementation, construction of works, or any other measure considered necessary to prevent or abate escape or spill of substance
- If a polluting substance is spilled into the environment [other than is allowed under the EMA s . 6 or 31] the person who had possession, charge or control of the substance or waste immediately before the spill, must immediately report the spill in accordance with the regulations

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Previous EMA Requirements

Spill Reporting Regulation, BC Reg 263/90 [now repealed]

- Required reports to be made to Provincial Emergency Program (PEP)
- Established list of substances and threshold amounts above which a report was required
- Set out a list of information which was required to be reported to PEP
- Required actions be taken to stop, contain and minimise the effects of a spill
- Had no requirements for written reports or impact assessment
 - frequently requested or ordered by the MoE
 - Many EMA permits have written reporting requirements

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EMA and Regulatory Amendments

Bill 21, *Environmental Management Amendment Act, 2016*

- Introduced February 29, 2016
- Passed May 10, 2016 (SBC 2016, c 20)
- To come into force by regulation

Intentions Paper, April 5, 2016

- setting out broad concepts of what regulations would include

Consultation period followed (and continues)

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EMA and Regulatory Amendments

October 13, 2017

One Order in Council and two Ministerial Orders deposited (OIC 2017/392, MO 2017/328 & 329)

All were effective as of October 30, 2017

Three regulations registered:

- *Spill Reporting Regulation*, BC Reg 187/2017
- *Spill Preparedness, Response and Recovery Regulation*, BC Reg 185/2017
- *Spill Contingency Planning Regulation*, BC Reg 186/2017

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EMA and Regulatory Amendments

October 13, 2017 – [continued]

Two older regulations repealed:

- *Spill Reporting Regulation*, BC Reg 263/90
- *Spill Cost Recovery Regulation*, BC Reg 250/98

Bill 21 amendments brought into force

- Except repeal of s. 79 of the EMA

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EMA Amendments – Key Provisions

New provision:

Part 7, Division 2.1: **Spill Preparedness, Response and Recovery**

ss. 91.1 to 91.71

Creates two new categories of “persons”:

- Regulated persons
- Responsible persons
 - this category is NOT the same as responsible person under Part 4 of the EMA and CSR

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Regulated Persons

EMA

“Regulated Person”: Person who, in the course of conducting an industry trade or business, has possession, charge or control of a prescribed substance in prescribed quantities

Spill Preparedness, Response and Recovery Regulation

- S. 2: prescribes type and quantity of substances which defines entities as “regulated persons”
- Regulated persons are those who transport listed substances
 - through a pipeline (any quantity);
 - by railway or highway ($\geq 10,000$ litres)
 - Listed substances: aviation fuel, bunker fuel, crude oil or dilute bitumen, diesel fuel, gasoline, heating fuel, kerosene, petroleum distillates
 - some exceptions (e.g. in a fuel tank, on a facility that uses substances)

Thus – at the moment, only entities transport these substances are caught by the requirements for “regulated persons”.

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Regulated Persons

Spill contingency planning (s. 91.11)

- carry out risk assessments (for spills of prescribed substances) prior to preparing spill contingency plans
- have spill contingency plans that comply with the regulations
- keep records in accordance with the regulations
- prepare prescribed reports
- ensure employees receive prescribed training and engage in spill response training exercises and drills
- if a spill occurs, implement the spill contingency plan

Can be ordered to provide plans and records to the Director who can order the plan be amended or tested

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Regulated Persons

Spill Preparedness, Response and Recovery Regulation

- prescribes who is a regulated person (per last slide)
- sets deadlines for preparation of spill contingency plans (April 30 and October 30, 2018)
- permit holders to which *Emergency Management Regulation* under the *Oil and Gas Activities Act* applies are exempted from requirement for contingency planning
- establishes record keeping requirements

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Regulated Persons

Spill Contingency Planning Regulation:

Sets out contents and requirements for spill contingency plans:

- hazard assessments
- spill response planning map
- equipment, personnel and other resources
- incident command system
- human health and safety
- communications procedures
- waste management
- protection of wildlife
- spill response procedures
- training
- requirements for reviewing and updating plan
- testing requirements
- provision of plan to employees
- record keeping

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Regulated Persons

- Minister can designate an area for the purpose of the development of a geographic response plans
 - Details of what these contain set out in EMA s. 91.31
- Regulated persons can be ordered to prepare, test, update and pay for geographic response plans
- Establishes the framework for preparedness and response organisations (PRO)
- LGIC can, by regulation, require regulated persons to enter into arrangements with a PRO to meet their obligations in the EMA

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Responsible Persons

EMA

“**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 this 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

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Responsible Persons

Spill Reporting

91.2(1)(a) Requires responsible persons [in relation to a spill] to report prescribed information to prescribed persons in the prescribed time and manner

Spill Reporting Regulation

Section 2: Reportable spills: applies the *Spill Reporting Regulation* to spills of listed substances:

1. if the quantity is, or likely to be, equal or greater than the listed quantity for the substance.
 - This is essentially the same as the previous system under the old SPR: if you spill a listed substance at or above the threshold quantity in the Schedule in the SPR, you have a duty to report
 - List of substances and corresponding quantities is the same as the list in the older version of the SPR
2. any quantity of a listed substance that enters, or is likely to enter, a body of water (stream, aquifer or fish habitat as defined in *Water Sustainability Act*)

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Responsible Persons

Spill Reporting (cont.)

Spill Reporting Regulation: initial verbal report (s. 4)

Call Provincial Emergency Program (PEP)

- contact information for person making the report, the responsible person and the owner of the substance
- date, time and location of the spill
- description of the spill site and surrounding area
- type and quantity spilled
- description of the circumstances, cause and adverse effects of the spill
- details of actions taken to comply with EMA s. 91.2(2) (see slides below)
- names of government agencies (all levels including FNs) at the spill site
- names of persons and government agencies advised of the spill

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Responsible Persons

Spill Reporting (cont.)

Spill Reporting Regulation: written reports s. 5 and 6

For spills that occur on or after October 30, 2018

- submit a written report
 - as soon as practicable on request of the Minister
 - at least once every 30 days after the spill began **and**
 - at any time information previously reported is determined to be inaccurate
- submit an end-of-spill report 30 days after the emergency response completion date
- written reports must be made in the manner specified by the Minister and must include information contained in s. 6 of the SPR – this is an extensive list

Authorises the Director to also order a lessons-learned report

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Responsible Persons

Spill Response

EMA s. 91.2(1)

Requires responsible persons to (in accordance with the regulations)

- provide any information an officer requests respecting response activities
- ensure you persons with the skills, experience, resources and equipment necessary to properly deal with a spill arrive at a site within a prescribed period after a spill, and
- implement an incident command system

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Responsible Persons

Spill Response (cont.)

EMA s. 91.2(2)

Subject to the regulations, responsible persons must:

- assess, monitor and prevent the continuation of any threats or hazards caused by the spill
- stabilize, contain, remove and clean up the spill
- identify the immediate risks to the environment, human health or infrastructure and take proactive actions in relation to the spill and to protect infrastructure and protect, recover and restore the environment
- identify and evaluate long-term impacts of the spill
- take steps to resolve or mitigate immediate and long-term impacts

Director can order other specified spill response actions

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Responsible Persons

Recovery Planning

- Authorises Director to order a responsible person to prepare and carry out a recovery plan to resolve or mitigate the impacts of a spill
- Includes requirement for final report once the recovery process is completed
- Director may approve or amend the recovery plan
- *Spill Contingency Planning Regulation* establishes information requirements for recovery plan and final report on recovery process
- If impacts cannot be restored at the site the Director can order the recovery plan provide for mitigation measures to be taken elsewhere to compensate for the damage **or** payment to a third party of an amount the Director considers equivalent to the amount restoration would have cost

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Other powers

- Provides the authority for the government to carry out spill response
- Costs incurred by the government are a debt due to the government by the responsible person and the owner of the substance
- EMA contains process for recovery of the government's costs

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Reminder regarding *Fisheries Act* requirements

Fisheries Act – amended in 2012

- s. 38(4) notify of serious harm to fish
- s. 38(5) notify of deposit of deleterious substance
- s. 38(6) take corrective measures
- s. 38(7) provide a written report as soon as feasible after the occurrence

- *Deposit Out of the Normal Course of Events Notification Regulations*, SOR/2011-91 (not in line with 2012 amendments)
 - prescribes PEP for reporting under the *Fisheries Act*

- *Canada-British Columbia Environmental Occurrences Notification Agreement*

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Any questions?

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