

BC Adopts New Environmental Spill Preparedness & Response Regime



On June 15, 2015, the BC government announced plans to proceed with developing and implementing a world-leading spill preparedness and response regime. After consultations, on Feb. 29, 2016, the government introduced amendments to the *Environmental Management Act* (EMA) to provide the legal foundation to establish such a regime. And on May 19, 2016, Bill 21, the *Environmental Management Amendment Act, 2016* got Royal Assent. Here's a look at the key elements of BC's new spill regime.

NEW REGIME

Key Dates: Although the bill got Royal Assent on May 19, 2016, it isn't yet in effect. In addition, some of the details for implementing the new regime will need to be spelled out in regulations, which haven't yet been issued.

Who's Impacted: The regime's general requirements apply to a 'regulated person,' which is defined as:

- 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
- A person referred to above whose employee, under the person's direction, has possession, charge or control of a prescribed substance in prescribed quantities.

In addition, persons who aren't regulated persons may be required to provide certain information if, in the course of operating an industry, trade or business, they have possession, charge or control of a substance that a director believes may, if spilled, cause an adverse impact to the environment, human health or infrastructure.

Key Elements: The regime has three key elements:

Preparedness. The regime covers three types of spill response plans:

- *Contingency plans:* Regulated persons must adopt a spill contingency plan; review, test and update the plan; make it available to employees; and ensure that it demonstrate the persons' ability to effectively respond to a spill. The regulations may also require spill contingency plans to be published. And if a spill occurs, the regulated person must ensure that the spill contingency plan is implemented to the extent the plan is applicable.
- *Geographic response plans:* The minister may designate an area for the purpose of developing a geographic response plan if the minister believes

that such a plan will help in minimizing the effects of a spill on a body of water, a sensitive ecosystem or a culturally sensitive or archaeologically, socially, economically or historically significant site in the area, or in increasing the efficiency of spill response in that area. In a designated area, one or more regulated persons called 'plan leaders' may be required to prepare a geographic response plan, which addresses matters such as:

- Archeologically, socially, economically or historically significant sites in the area,
 - Locations of potential response staging sites,
 - Locations and profiles of the biological and other resources that could be affected by a spill, including threatened and endangered species, important or unique animal, fish or plant habitat, areas of human habitation and recreational activities, and water and agricultural resources,
 - Locations of key infrastructure,
 - Tactics for addressing spills and impacts of spills in the area, including, without limitation, collection techniques, and
 - A time limit for completing the proposed plan.
- *Area response plans*: The province will certify organizations as 'preparedness and response organizations' (PROs) if they're capable of dealing with spills and their impacts within a specified area. To become fully certified, PROs must prepare and publish a response plan for their designated areas. They must also review, update, test and republish their area response plan, which must include information on spill response procedures and strategies, including:
 - Available equipment and other resources,
 - Where the equipment and resources can be obtained,
 - Other logistical information, and
 - Any other required information.

Reporting and response. Bill 21 defines 'spill' as the introduction into the environment of a substance or thing that has the potential to cause adverse effects to the environment, human health or infrastructure. But note that the regime's requirements apply to actual spills as well as the imminent risk of a spill.

Any person who has possession, charge or control of a substance or thing when a spill of the substance or thing occurs is a 'responsible person' as to the spill and thus must report the spill (or the imminent risk of a spill). The responsible person must also respond to the spill or imminent risk of a spill by ensuring that the actions necessary to address the threat or hazard caused by the spill are taken, which may include:

- Assessing, monitoring and preventing the threat or hazard caused by the spill;
- Stabilizing, containing, removing and cleaning up the spill;
- Identifying and evaluating the immediate risks to and impacts on the environment, human health or infrastructure;
- Identifying and evaluating the long term impacts of the spill; and
- Taking steps to resolve or mitigate those immediate and long term impacts.

Recovery. A director may order the responsible party for a spill to submit a recovery plan to resolve or mitigate the impacts of a spill. If a director

believes that the impacts of a spill on the environment can't be restored or that it isn't safe to undertake restoration activities at the site, the director may order the responsible person to take mitigation measures elsewhere or to pay to an environmental non-profit organization an amount equal to what it would be liable to pay if restoration was achievable.

ANALYSIS

BC's new spill preparedness and response regime was developed based on certain principles, including polluter pays. That is, companies that spill or pose the risk of having a spill should be responsible for the costs associated with preparing for and responding to that spill. In addition, the requirements for planning and preparedness will be based on a defined threshold to be developed in the regulations, which will consider persistence, toxicity and volume. The goal is for the new regime to provide both clarity and certainty for spillers, consider public and First Nations expectations, and maximize the protection of the environment.