

# EMERGENCY RESPONSE: How to Comply with Spill Reporting Requirements



Naturally, you should try to prevent spills of hazardous substances in the course of your operations. But when such spills occur despite your best efforts, you must act quickly to minimize the impact on the environment, workers and others. In addition to taking steps to contain the spill and clean it up, you may also be required to report it. And failing to do so can result in fines for environmental offences. For example, two residents complained to a campground's manager about liquid sewage continuously flowing from the campground's holding tank and pooling around their residences. But the campground never reported these spills. As a result, the campground and manager pleaded guilty to environmental violations. The court fined the campground \$25,000 and the manager \$5,000 [*Bay Meadows Park Inc. and David M. Harrington*, Ontario Govt. News Release, Aug. 7, 2015]. So here's a look at the key elements of the spill reporting requirements under the main environmental laws across Canada. (And for more on handling workplace spills from a chemical engineer's perspective, watch this webinar recording.)

## Defining Our Terms

The environmental laws use terms such as "spill," "release" and "discharge." But because these terms are all defined similarly, we'll use the term "spill" throughout. The laws also use the terms "substances," "contaminants" and "pollutants" for the materials covered by the spill reporting requirements. We'll use the term "substances" for such materials.

Also, this article focuses on the spill reporting requirements under the general environmental laws only. But a spill of a hazardous substance may also trigger reporting requirements under other law, which we don't discuss here. For example, if a worker is injured due to the spill, you may be required to report it under the OHS laws. And if the spill occurs while the substances are being transported by rail or truck, reporting requirements under the transportation of dangerous goods laws may be triggered.

## 5 KEY ELEMENTS OF REPORTING REQUIREMENTS

The spill reporting requirements under the environmental laws typically have several key elements, all of which you must understand so you'll know when a spill triggers these requirements and how to report it properly. These key elements include the following:

### 1. The Kinds of Spills that Must Be Reported

The environmental laws typically require the reporting of unauthorized releases of:

- Substances that may cause, are causing or have caused an "adverse effect" that is, damage to the environment;
- Designated substances, that is, substances specifically listed in the spill reporting requirements; and
- Substances in amounts, concentrations, levels or rates of release in excess of those set by regulation or permit.

Note that although the reporting requirements in some jurisdictions are only triggered when the spill exceeds designated threshold amounts, in other jurisdictions you must report *all* spills covered by your jurisdiction's environmental laws even if you think those spills are too small to harm the environment. Failing to report what you consider to be a minor spill can lead to liability for not only any harm caused by the spill but also violation of the reporting requirements.

*Example:* A Quebec company didn't report a petroleum spill and was charged with violating the reporting requirements. The company argued that the quantity spilled was too small to justify notifying the MOE. The court disagreed, ruling that *any* accidental release of hazardous materials into the environment must be reported, regardless of the amount released. That is, there was no threshold below which companies were exempted from the reporting requirements. Even small spills could have serious consequences. In this case, although the exact amount spilled couldn't be determined, 100 cubic metres of contaminated soil had to be removed as a result of it, noted the court. So even if the spill was "small," its impact wasn't [*Procureur general c. Transport Doucet & Fils Mistassini Inc.*, [2007] QCCQ 12761 (CanLII), Dec. 6, 2007].

In addition, cleaning up a spill doesn't eliminate the need to report it. You should report all spills covered by your jurisdiction's reporting requirements, regardless of any remediation efforts you've taken. The government needs to know a spill occurred so that it can determine whether the environment was harmed and any environmental laws were violated. And it needs to ensure that your cleanup was adequate. Deciding not to report a spill because you've already cleaned it up can be costly.

*Example:* An Ontario company delivered a pesticide to a farm supply retailer. While unloading the truck, the driver noticed that pesticide had spilled onto the ground. Staff from both companies contained and cleaned the spill area. But neither company reported it to the MOE. The companies pleaded guilty to having control of a pollutant that was spilled and failing to promptly notify the MOE. The delivery company was fined \$75,000 and the retailer \$25,000 [*Scotland Agromart Ltd. and Summerville Custom Spraying Ltd.*, Ontario Govt. News Release, March 21, 2011].

## 2. Who's Required to Make the Report

You'll generally be required to report a spill if you:

- Own or have possession, charge, management or control over the substance spilled; or
- Cause, allow, contribute to or are responsible for the spill.

It's important to note that you're required to report not only spills you're actually aware of but also those that you *should* know about. So be sure to train workers to report *all* spills to their supervisor or the EHS coordinator so the company can determine what steps to take, including whether the spill needs to be reported externally (see, Model Spill Response and Reporting Policy).

In addition, workers themselves may be required to report a spill depending on the circumstances. And a worker who fails to make such a report may be held personally liable

*Example:* A truck driver hauling a load turned into a fuel station, where he parked his truck so he could sleep. While he slept, the truck leaked 100-200 litres of diesel fuel onto the ground under the cab. When the driver awoke and exited the cab, he noticed the fuel, inspected the truck for the source of the leak, placed his hand on the stain and smelled it. He then got back into the truck and drove away. But he didn't report the spill to the MOE, as required. Fuel station staff contained the spill, reported it to the ministry and arranged for professional cleanup. The driver pleaded guilty to failing to report the spill as required by the *Environmental Protection Act*. The court fined him \$8,000 and ordered him to pay \$10,950.07 in restitution for the spill's remediation [Russell Friesen, Ontario Govt. News Release, May 5, 2016].

## 3. To Whom Reports Should Be Made

You must report the spill to the appropriate government agency responsible for enforcing the environmental laws in your local jurisdiction, typically using the spill reporting hotlines created for this specific purpose. In the event that a spill requires reporting under both federal and provincial/territorial law, you may have to report it to two government agencies. But the federal government and several provinces and territories have signed agreements in which one designated organization for each province and territory will receive spill reports on behalf of Environment Canada. So in such jurisdictions, one report to the appropriate local agency will also satisfy the federal reporting requirements.

But your reporting duties may not end with the government. Most jurisdictions also require you to report spills to:

- The owner of the substance or person who controls, manages, cares or is responsible for the substance (if that person isn't you);
- The owners of any property that may be directly affected by the spill, such as the owners of neighbouring land; and
- Anyone else who may be directly affected by the spill.

## 4. When Spills Must Be Reported

A quick response to a spill is essential to prevent or minimize harm to the environment and human health. As a result, the environmental laws generally

require you to report a spill immediately, as soon as possible under the circumstances or as soon as you know or should know about the spill. In short, *promptly* report spills. Any delay 'no matter how short' can result in harm to the environment and liability for your company.

*Example:* A steel mill spilled a significant amount of oil into a storm sewer, which discharged into a harbour. As a result, a large number of fish as well as more than 100 ducks and other waterfowl died. Although the mill reported the spill to the Ontario environmental authorities within four hours, it was still fined for failing to report the spill in a timely way [*Dofasco Inc.*, Ontario Govt. News Release, Feb. 16, 2005].

## **5. The Information Required in a Spill Report**

The information required in a spill report varies by jurisdiction and may be very detailed. But the basic information most spill reports require includes:

- Your name and phone number and the name and number of your company;
- The location and time of the spill;
- A description of the circumstances that led to the spill, such as a leak in a pipe;
- The type and amount of substance spilled;
- A description of the spill site and the surrounding area; and
- Any actions taken or proposed to address or remediate the spill.

### **BOTTOM LINE**

Failing to comply with the reporting requirements for spills of hazardous substances can delay any government response to it and increase the possibility of serious damage to the environment, and harm to workers and the general public. Plus, noncompliance can lead to environmental violations'and hefty fines. So it's important that you understand these key elements of the spill reporting requirements and ensure that your company has mechanisms and procedures in place to comply with them. (And don't forget to register to attend this free webinar on June 29, 2016 to learn more on handling workplace spills from a chemical engineer's perspective.)

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## **Develop a Spill Response Plan So You're Prepared**

One step you should take *before* a hazardous spill occurs is to develop a spill response plan. In fact, the environmental laws may specifically require you to have such plans. But even if there's no specific requirement for such plans in the environmental laws, you should have one anyway. The spill reporting and response requirements can be complicated. And a spill can cause chaos. So you don't want to have to "wing it" and try to figure out how to comply with these requirements while you're also in the middle of dealing with the spill itself.

In short, having a spill response plan that spells out the procedures to be followed in the event of a spill ensures that the company is prepared to properly deal with spills and satisfy all environmental requirements. (Here's a Model Spill Response Plan you can download and adapt.) In contrast, lack of preparation for dealing with a spill is likely to cost the company.

*Example:* While a fisherman was refuelling his boat from diesel fuel tanks on his truck, fuel started to leak from a crack in a pipe. He wrapped a jacket around the crack but it didn't stop the leak. He told his crew to clean up the wharf; he sprayed dish detergent on the fuel in the harbour. He then left without reporting the spill to the harbour master or anyone else. The fisherman pleaded guilty to violating the *Fisheries Act* by releasing diesel fuel into a fish habitat and failing to report a spill. The court fined him \$15,000, which he appealed. The appeals court upheld the fines as reasonable, criticizing the fisherman for being ill-prepared to respond effectively to fuel oil spills and comply with the reporting and other spill-related requirements [*R. v. Bolt*, [2011] NLTD 20 (CanLII), Feb. 4, 2011].[/box]