

Hazardous Spills Reporting – Compliance Game Plan



You've just discovered an oil slick under one of your trucks. It looks like an oil leak. The truck has been sitting in a gravel lot for at least 3 days. Your mechanic reports that the leak is no more than 24-hours-old. And the discoloration left by the leak appears relatively confined. So, you patch up the leak and clean up the slick by shoveling away the about four to 5 inches of gravel and dirt below the discoloration. Problem solved, right'

If only it were that easy! What you're looking at is an environmental incident—the release of a hazardous substance into the environment (which, for simplicity's sake, we'll refer to collectively as "spills") Sure, it's not the *Exxon-Valdez*. But even a minor spill can trigger important obligations under environmental laws. At a minimum, you must investigate the spill to determine what damage it caused. You must also report the spill to the Ministry of the Environment or other designated government agency in your jurisdiction.

Here's a look at the fundamentals of spill reporting and a game plan to ensure compliance.

The Law of Spills Reporting

All jurisdictions require persons involved in spills of hazardous substances and environmental contaminants to report those spills as soon as possible. Environmental statutes provide for large fines against organizations that commit reporting violations, with penalties ranging from \$100,000 to \$500,000 per offence. In Ontario, there are additional penalties of up to \$100,000 per day for certain entities that fail to report spills, even if the spill doesn't have an adverse effect on the environment. Individuals within the organization can also be penalized if they were involved in the reporting violation.

Spill reporting law is very complex because it's spread out across a number of different provincial environmental laws such as Environmental Protection, Transportation of Dangerous Goods, Fisheries and Clean Water Acts. There are also special reporting obligations under federal law.

5-Step Compliance Game Plan

The key to compliance is to implement a spills response and reporting policy that provides for determining the 5 essential “W’s” of proper reporting:

1. Who Must Report a Spill

The duty to report the spill of a hazardous substance or environmental contaminant depends on the individual or organization’s (which from now on, we’ll refer to collectively as “person”) role in the spill:

- **Custody and control:** Any person that had custody and control of the substance just before the spill occurred must report;
- **Cause or permit:** Most jurisdictions extend reporting duties to persons who caused or permitted the release;
- **Property owner:** A few jurisdictions, including ON, NT and NU, require the person whose property is affected to report a spill; and
- **Observe:** Several jurisdictions require a person who observes a spill to report it if it hasn’t already been reported.

Bottom line: If you know about an unreported spill at your company, you should report it.

2. Which Spills Must Be Reported

While all jurisdictions require reporting of spills and releases that have a harmful effect on the environment, some limit or expand the duty depending on factors such as:

- **Nature & Amount of Contaminant:** In BC, NS, NWT, SK and YK, companies must report the release of all explosives, infectious substances and corrosive compressed gases, regardless of the amount that’s actually spilled or released. But spills of other products, such as particular types of oil, poisonous substances, and wastes, need only be reported if the amount spilled is greater than a stated amount, say 5 litres or kilograms.
- **Extent of Damage:** Most jurisdictions require the reporting of all spills regardless of whether they’ve been contained or do actual damage to the environment. But some laws, such as the *Federal Fisheries Act* and *AB Environmental Protection & Enhancement Act*, only require the reporting of spills that harm or might harm the environment.
- **Actual Occurrence:** Federal, BC, NT and NU laws require reporting of what are called “potential” spills, that is, activities that could lead to spills.
- **Authorization:** Some jurisdictions, including BC, NS, PEI and the 3 territories, specifically limit reporting requirements to “unauthorized discharges.” In other words, the reporting obligation kicks in only if and when the amount spilled exceeds the amount permitted by the regulations or the company’s discharge permit or licence.

3. Where to Report the Spill

Every jurisdiction has an “emergency spill hotline” that you can call to report a spill. Many also require you to file a written report within a set period of time, usually by a week after the spill. The kicker is that reporting a spill to

the government doesn't always end the matter. In many cases, you must also report the spill to the local police, the property owner and any neighbouring property owners or others in the surrounding area who might be directly affected by the spill.

4. When You Must Report

Spills must be reported immediately after they occur, even if you don't yet know the extent of the damage and/or haven't cleaned them up yet. In fact, reporting a spill late can be just as serious an offence as not reporting at all. **Example:** An Ontario steel mill spills a significant amount of oil into a storm sewer that discharges into the Hamilton Harbour, killing fish and more than 100 ducks and other waterfowl. The mill reports the spill to the MOE within 4 hours. Although that might sound prompt, the company is fined for not reporting on time under (Sec. 30(2) of) the *Ontario Water Resources Act* [*Dofasco Inc.*].

5. What You Must Report

Spill reports typically must list the following information—to the extent it's known or can be reasonably determined:

- Date, time, and location of spill;
- Type of contaminant spilled and quantity;
- Cause of spill;
- Area affected by spill;
- Whether spill is continuing or has stopped;
- Action taken to clean up and dispose of contaminant; and
- Name of person in charge of contaminant at time of spill.

Bottom Line: You may not always know all of this information at the time you call to report a release. But if you delay your report to get more information, you'll likely be fined, lawyers warn.