

Releases of Dangerous Goods: Don't Forget Your OHS Reporting Duties



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Spills of hazardous substances may trigger reporting requirements under environmental and transportation of dangerous goods laws. But they may also trigger reporting requirements under the OHS laws. And complying with one set of reporting requirements doesn't absolve you of the duty to comply with the other.

For example, the federal *Transportation of Dangerous Goods Regulation* (TDGR) requires the reporting of an accidental release of dangerous goods from a means of containment under certain conditions. According to the *Transportation of Dangerous Goods Act* (TDGA), "dangerous goods" includes such as substances as explosives, gases, flammable and combustible liquids, nuclear substances and corrosives.

The *TDGR* clarifies the reporting procedure by stating exactly who must make the report and to whom, depending on the province or territory in which the incident occurs. The initial obligation falls on the person(s) with possession of the dangerous goods at the time of the incident, who must report it to the appropriate government authority (as set out in the *TDGR*) and the person's employer, among others. The employer is then responsible for a follow-up report to the Director General within thirty days from the date of the incident.

The reporting procedures under the *TGDA* and the *TGDR* are thorough and involved. However, following them may not completely exhaust all reporting obligations that may arise after an incident involving the transportation of dangerous goods. The OHS laws may apply as well, imposing their own reporting procedures, which, if not met, could lead to a possible charge and fine.

Every OHS law in Canada has its own "incident" reporting scheme. The laws differ in terms of what types of incidents require a formal report to the OHS authorities, separate and apart from any requirement imposed by the *TGDR*.

In some jurisdictions, the mere release of a dangerous good or hazardous substance is enough to require a report to OHS authorities, regardless of whether anyone was injured. In others, the reporting requirement may be triggered by the release of a dangerous good or hazardous substance only in the

event of an injury or specific kind of damage. It's this distinction that makes it easy to understand how an employer might overlook the obligation under OHS laws to report an incident that involves the release of a dangerous substance, especially when there are no injuries at all.

For example, Manitoba's *Workplace Safety and Health Regulation* (WSHR) requires an employer to report to the Director or a safety and health officer a "serious accident," which is defined to include "an uncontrolled spill or escape of a hazardous substance." As such, in Manitoba, an incident that triggers a responsibility to report under the *TGDR* is also likely to trigger further reporting responsibilities under the *WSHR*. The same is likely true in BC, NT, NU and YT as well.

But the situation may be different in Alberta, for example, depending on the circumstances arising from the incident involving the dangerous substance. Alberta's *OHS Act* states that an accident must be reported if any injury or accident results in:

- Death;
- A worker's being admitted to a hospital for more than two days;
- An unplanned or uncontrolled explosion, fire or flood that causes a serious injury or that has the potential for causing a serious injury;
- The collapse or upset of a crane, derrick or hoist; or
- The collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure.

Notably, Alberta's reporting requirements makes no specific reference to an uncontrolled spill of a hazardous substance or anything similar. So although there's always the possibility that an incident that results in the accidental release of dangerous goods could result in a worker's death, unlike other jurisdictions, the fact that a dangerous substance has escaped or spilled is not enough *on its own* to require a report under Alberta OHS law.

Similarly, Québec's OHS laws similarly don't refer specifically to the release of dangerous goods alone as a reportable incident. But an employer must make a report if there's material damage valued at \$150,000 or more. Thus, if an incident involving the release of dangerous goods during transport caused damage in excess of \$150,000, you'd have to report it to the OHS authorities.

These are just a few examples of how the release of dangerous goods may trigger reporting requirements to OHS authorities in addition to the reporting requirements under the dangerous goods laws. This chart spells out the OHS reporting requirements in your jurisdiction that might apply in the event of an incident involving the release of dangerous goods or hazardous substances.

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OHS Insider Resources

For more information on the reporting requirements for incidents covered by the TDGA, see "Incident Response: How to Comply with the TDGA Incident Reporting Requirements." And for more on the reporting requirements under the OHS laws, see "The Duty to Report: What Kinds of Workplace Incidents Must You Report'"