

Reporting Hazardous Spills: What Are Your Legal Obligations?



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 the last three 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 five inches of gravel and dirt below the discoloration. Problem solved, right?

Don't you wish it was that easy! What you're looking at is an environmental incident—the release of a hazardous substance (which, for simplicity's sake, we'll refer to collectively as “spills”) True, it's not the Exxon-Valdez. But even a minor spill like an oil leak from a truck can trigger important obligations under environmental statutes. At a minimum, you must investigate the spill to determine what damage it caused—whether the oil contaminated the soil, seeped into the groundwater, migrated off the site or has the potential to cause any of these adverse effects. In most provinces, you must also report the spill to the Ministry of the Environment or another government agency set up to handle spills of hazardous substances in your province.

Meeting these obligations is tricky. The problem, lawyers tell

the Insider is that many companies don't know when the obligation to report a spill kicks in or how to handle it when it does. To make things even more confusing, spill reporting obligations vary from province to province. The Insider will explain the fundamentals of spill reporting, as well as the province-specific variations with which you need to be familiar to ensure compliance.

What's At Stake

Every province and territory requires persons involved in spills of hazardous substances and environmental contaminants to report those spills as soon as possible. As we'll see later, some provinces limit this obligation to only spills that actually harm the environment. Other provinces require reports only when the amount spilled reaches a certain limit. In addition, the rules vary in terms of which parties must report.

But there's one thing that's true in all places: Failing to report a spill right away (or at all) can get you into a boatload of legal trouble. It can lead to fines and other penalties. Reporting requirements are strictly enforced and backed by significant penalties, even when the spill involve appears to be a minor one.

Example: An employee for a chemical blending company in Ontario spilled about 112 kg of a product containing hydrogen peroxide while pumping it from a truck to an on-site holding tank. The fluid spilled onto the surrounding gravel. The company reacted immediately to contain the spill and clean it up by diluting it with water. But the company didn't notify the Ministry of Environment about the spill until two days after the incident. When the Ministry found out about the spill, it fined the company \$25,000 for failing to report it on time as required (by Sec. 92(1)(a) of) the ON Environmental Protection Act [Brenntag Canada].

Many environmental statutes provide for large fines against organizations that commit reporting violations. Penalties typically range from \$100,000 to \$500,000 per offence. The risk of penalties in Ontario is particularly great. Under Bill 133, which was adopted last year, the government can impose an environmental penalty of up to \$100,000 per day on certain entities that fail to report spills—even if the spill doesn't have an adverse affect on the environment.

Nor is the risk of liability and fines limited to organizations. The individuals within the organization can also be penalized if they were involved in the reporting violation. For example, in Alberta, individuals who don't report a spill on time can be fined up to \$100,000 and sentenced to up to one year in jail.

THE LAW OF SPILL REPORTING

The law of spill reporting is very complex. For one thing, there is no single spill reporting law. Instead, spill reporting obligations are generally included in 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. So you have to understand the reporting requirements under every law that applies to your industry. "We spend a lot of our time providing clients with advice on their reporting obligations," notes Toronto environmental lawyer Mark Madras.

The chart on page x touches on the key spill reporting requirements contained in the laws of all 14 Canadian jurisdictions; there's also a list on page x of the agency that you must report to if a spill occurs. Obviously, the Insider can't analyze in detail the specific spill reporting obligations under the environmental law of each province. What we can do is show you an approach to use to understand spill

reporting obligations on your own.

The 5 `W''s of Spill Reporting Laws

To ensure compliance with any particular spill reporting law, you need to determine the five "W's" of the law:

1. Who Must Report a Spill?

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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: All jurisdictions say that a person must report a spill if it had custody and control of the substance just before the spill occurred;
- Cause or permit: In some provinces and territories, such as AB, ON and YK, reporting extends not just to those who had custody and control but also to persons who caused or permitted the release;
- Property owner: At least one province (ON), requires the person whose property is affected to report a spill; and
- Observe: Some provinces, like BC, require anyone who observes a spill to report it if it hasn't been reported already. If you don't report it, a police officer or other public official who has knowledge of the spill must.

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

2. Which Spills Must Be Reported?

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All provinces and territories require reporting of spills and releases that have a harmful effect on the environment. But some provinces 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 gasses, regardless of the amount that's actually spilled or released. But spills of other products – for example, particular types of oil, poisonous substances, and wastes – only need to be reported if the amount spilled is greater than a particular amount, say 5 litres or kilograms.
- **Extent of Damage:** Most provinces 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 the AB Environmental Protection & Enhancement Act, only require the reporting of spills that harm or might harm the environment.
- **Actual Occurrence:** Federal law and NT require organizations to report what are called “potential” spills. In other words, you might have to report activities that could lead to spills.

Authorization: Some provinces, including BC, NS and PEI, 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 authorized by the company's discharge permit.

3. Where Do You Report the Spill?

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Every province has an “emergency spill hotline” that you can call to report a spill. Many provinces and territories, including AB, NL, and YK, 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. (For a list of contacts to notify in each province, see the box on page x.)

4. When Must You Report?

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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. The discharge kills large amounts of fish as well as more than 100 ducks and other waterfowl. The mill reports the spill to the Ministry of Environment within four hours. Although that might sound like prompt reporting, the company is fined with failure to report the spill on time under (Sec. 30(2) of) the Ontario Water Resources Act [Dofasco Inc.].

5. What You Must Report

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When you call in a spill, you'll probably be asked for the following information:

- 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
- Name of person in charge of contaminant at time of spill

But you may not always know all of this information at the time you call to report a release. The truth is that it doesn't matter.

Bottom Line: If you delay your report to get more information, you will be fined.

Conclusion

Spill reporting is a serious matter that can result in significant fines and even jail time if it's not handled correctly. The most important thing you need to know is that spills must be reported immediately, even if you don't have all the information about the spill or how it's going to be contained and cleaned up. Next month, we'll give you a model reporting policy that you can implement in your organization to make sure spills are reported properly.

INSIDER SOURCE

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SHOW YOUR LAWYER

Brenntag Canada, Ontario MOE News Release, May 17, 2006

Dofasco Inc., Ontario MOE News Release, Feb. 16, 2005

Who to Contact About a Spill

The chart below lists the names and numbers of individuals you're required to notify about hazardous spills or environmental contaminants at your company. Keep the information for your jurisdiction handy so you can report spills immediately.

Province/Territory	Contact
Federal	Environment Canada: 416-346-1971. Also notify any member of the public that might be adversely affected by release.
Alberta	Alberta Environment: 1-800-222-6514. Also contact owner of spilled substance, person having control of substance, your employer, and any other person who may be directly affected by the release.
British Columbia	Provincial Emergency Program: 800-664-3456 or 800-387-5956.
Manitoba	Manitoba Department of Environment and Workplace Safety and Health: 204-944-4888 or local police or fire department.
New Brunswick	Department of Environment: 800-565-1633 and Provincial Mobile Communications Centre: 506-453-7171.

Province/Territory	Contact
Newfoundland and Labrador	Department of Environment: 800-563-9089. Also contact owner of substance, person having care, management or control of substance, and other persons who are directly affected by the release.
Northwest Territories and Nunavut	Spill Report Line: 867-920-8130.
Nova Scotia	Environmental Emergencies Reporting Centre: 800-565-1633.
Ontario	Spills Action Centre: 800-268-6060. Also contact municipality where spill occurred and owner or person having control of pollutant.
Prince Edward Island	Environmental Emergencies: 800-563-1633.
Québec	Québec Environment Ministry: 800-363-4735.
Saskatchewan	Department of Environmental Protection: 800-667-3505. Also contact property owner where spill occurred and owner of pollutant.
Yukon	Yukon Spills Centre: 800-889-8852. Also contact owner or person in charge of spilled substance, members of public who may be adversely affected by spill.

FEDERAL

Actual and potential releases of toxic substances identified in statute (Canadian Environmental Protection Act, §95 and Schedule 1); Abnormal releases of any substance which is or may become deleterious to fish or fish habitat (Fisheries Act, § 38(4)); Releases and imminent releases of dangerous goods or

radiation greater than quantity listed in statute (Transportation of Dangerous Goods Act, §18 and Schedule).

ALBERTA

All releases that: (a) have caused, are causing, or may cause adverse effect on environment, (b) exceed otherwise approved limits, or (c) are into groundwater or surface water body (Environmental Protection and Enhancement Act, § 110).

BRITISH COLUMBIA

Unauthorized releases of polluting substances introduced into environment in amounts greater than those listed in regulations (Environmental Management Act, § 79; Spill Reporting Regulations Schedule).

MANITOBA

Releases of contaminants in quantities greater than those listed in regulations (Environmental Accident Reporting Regulation, §§ 2 and 3).

NEW BRUNSWICK

Releases of any contaminant that may, directly or indirectly, result in water pollution (Water Quality Regulations, § 11(2)); Releases or leaks involving petroleum products (Petroleum Product Storage and Handling Regulations, § 43).

NEWFOUNDLAND/LABRADOR

Release of substances that have caused, are causing or may cause adverse affect on environment (Environmental Protection Act, § 8).

NORTHWEST TERRITORIES/NUNAVUT

Spills and potential spills of contaminants in quantities listed in regulations (Spill Contingency Planning and Reporting Regulations, § 9 and Schedule B).

NOVA SCOTIA

Unauthorized releases of contaminants listed in regulations if quantity released is greater than pre-determined level (Emergency Spill Regulations, § 6 and Schedule A).

ONTARIO

(1) All unusual discharges into natural environment that cause or are likely to cause an adverse affect (except discharges of animal waste disposed of in accordance with normal farming practices) and (2) All spills of pollutants, regardless of affect on environment (Environmental Protection Act, §§ 15 and 92); All unusual discharges into water or that may impair water quality (Water Resources Act, § 30(2)).

PRINCE EDWARD ISLAND

All unauthorized discharges of contaminants into environment (Environmental Protection Act, § 21).

QUÉBEC

Releases of all hazardous materials into environment (Hazardous Materials Regulations, § 9).

SASKATCHEWAN

Unusual discharges of pollutants in quantities listed in regulations (Environmental Spill Control Regulations, §§ 2, 4 and Appendix).

YUKON

Abnormal releases in excess of an amount specified in regulations (Spills Regulations, § 3 and Appendix).