

Legal update

BC expands spill reporting obligations to areas of federal jurisdiction

November 2018 Environmental Law

In the spring of 2016, British Columbia amended the *Environmental Management Act* (EMA) to establish comprehensive requirements for transporters of liquid petroleum products (described as “regulated persons”) concerning spill preparedness, response and recovery, and spill reporting requirements for persons in possession, charge or control of certain substances. These reporting requirements, together with other regulations updating spill reporting, came into effect on October 30, 2017. Additional requirements are set out for spills that occur after October 30, 2018, and are thus now applicable.

Since introducing this scheme, BC has expanded on its interpretation of these requirements. Of note, the province has indicated it expects regulated persons to comply with the requirements for marine spills, which historically are part of the federal government’s jurisdiction over navigation and shipping, which includes navigation in inland waters. The province’s position appears to be part of a larger trend in which the province has sought to extend its jurisdiction in the sphere of marine activities, without apparent resistance from the federal government.

Corporate environmental and spill response management protocols should be reviewed to ensure compliance with these mandatory requirements.

Updated reporting requirements

We previously described the land-based spills regime enacted by BC through the *Spill Contingency Planning Regulation*, the *Spill Preparedness, Response and Recovery Regulation* and the *Spill Reporting Regulation*: see <http://www.nortonrosefulbright.com/knowledge/publications/158205/new-spill-reporting-response-and-recovery-requirements-in-british-columbia>

The full set of reporting requirements for persons responsible for spills under the *Spill Reporting Regulation* are now in effect. In brief, a responsible person must prepare the following written reports:

- (1) an **Initial Report**, to be made if a spill occurs or is at imminent risk of occurring, which must provide information such as the date and time of the spill, a description of the site, and details of any actions taken or proposed regarding spill recovery;
- (2) **Update to Minister Reports**, which update the description of the spill, and must be made at least once every 30 days after a spill begins until an End-of-Spill report is issued;
- (3) an **End-of-Spill Report**, which must be completed within 30 days after the emergency response completion date for the spill. This report must include information such as the responsible person’s contact information, the duration of the spill, adverse effects of the spill, and actions taken in compliance with the EMA; and

(4) a **Lessons-Learned Report**, which answers questions asked by a director under the EMA and includes a description of the spill response effectiveness, and actions taken to prevent future spills and improve spill response. This report need only be written if so ordered by a director under the EMA.

These reports need to be made to Emergency Management BC in accordance with government's instructions: <https://www2.gov.bc.ca/gov/content/environment/air-land-water/spills-environmental-emergencies/report-a-spill>

Marine spill reporting to the province

The regulatory regime differentiates between land-based spills and marine spills. Reporting requirements for a release or imminent risk of release on land depend on whether the substance exceeds amounts prescribed in the *Spill Reporting Regulation*.

In contrast, the reporting requirements for a release, or imminent risk of release, into a body of water are triggered for *any amount* of a prescribed substance. "Body of water" is defined broadly in the *Spill Reporting Regulation*, and includes fish habitat, without distinguishing between coastal and fresh waters. By virtue of provincial government ownership of the waters and submerged lands of significant coastal waters, including between the mainland and Vancouver Island, the province has a role in regulating these areas.

Provincial government publications indicate the province interprets its jurisdiction to include regulation of marine spills within provincial waters. What remains unclear is the extent of that jurisdiction. The province has indicated it intends to regulate spills originating from marine vessels transiting BC's coast. If they do so, then marine vessel operators must add to – and in some cases, arguably duplicate – their current reporting requirements to the Canadian Coast Guard and other agencies under the *Canada Shipping Act*.

There are several recent expanded assertions of provincial government regulation, including into the sphere of marine activities. On April 26, 2018, the province submitted a reference to the BC Court of Appeal concerning proposed regulations that would restrict bitumen from entering BC via federally regulated pipelines and railways. On October 1, 2018, Technical Safety BC announced it will be administering the provincial *Safety Standards Act* on Port of Vancouver lands, which are managed by the Port of Vancouver (established under the federal *Canada Marine Act*): <https://www.technicalafetybc.ca/blog/technical-safety-bc-oversees-technical-equipment-port-vancouver-site>.

This appears to be in response to Vancouver's attempt to remove itself from a federal/provincial jurisdictional dispute regarding safety matters on federal Port of Vancouver lands. Most recently, on October 30, 2018, the federal government introduced Bill C-86, which included a number of amendments to the *Canada Shipping Act*. Among these are provisions that would enable provinces and Indigenous groups to enter into agreements or arrangements for administering or enforcing any provision of the *Canada Shipping Act*, a potentially significant shift of responsibility.

We recommend operators in this sphere consider how to comply with both federal and provincial regulatory requirements, and seek legal advice as required.

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The authors would like to thank Aashish Kohli, articling student, for his assistance in preparing this legal update.

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