

Final Report, October 2016

Regulated Person Technical Working Group

B.C. Spill Response Regime, Environmental Protection Division, Ministry of Environment

Context

It is the ministry's intention to complete priority regulations in early 2017. Other regulations will be developed and implemented over time. Some regulatory development will require the support of a technical working group. Between July and September 2016, the ministry received input through technical working groups on three selected topics:

1. Defining regulated persons
2. Determining spill contingency plan content
3. Reviewing spill response times.

The purpose of the technical working groups was to receive policy recommendations and comments on proposed policy from a range of experts involved in the use, storage and transport of hazardous materials, as well as those with expertise in spill preparedness and response and those who are impacted by spills when they occur.

Approximately 60 people participated in one or more of the technical working groups listed above. Participants in the three technical working groups met in two formations – as sector specific groups (rail, oil and gas, chemical, pipelines, trucking, environmental non-government organizations, local governments, response contractors) that discussed all three topics at once and as multi-stakeholder groups that focused on one topic at a time. This report summarizes participant comments, recommendations related to the identification of regulated persons and a discussion of how these comments might influence ministry policy updates.

Topic Overview

In May 2016, the *Environmental Management Amendment Act, 2016* passed, allowing the ministry to define a set of regulated persons and require those persons to meet new spill preparedness requirements. A regulated person, as described in new legislation, means:

- a) a person who, in the course of operating an industry, trade or business, has possession, charge or control of a prescribed substance in prescribed quantities, or
- b) a person referred to in paragraph “(a)” whose employee, under the person's direction, has possession, charge or control of a prescribed substance in prescribed quantities.

This definition allows the ministry to require those companies that use large quantities of hazardous substances in their operations to engage in specific preparedness activities in order to minimize their threat to the environment, should a spill occur.

The ministry recognizes that many industries, trades or businesses captured in this definition already have preparedness measures in place, either on a voluntary basis or as a requirement of another regulator. However, not all operations are prepared to the same standard, particularly for response actions that minimize negative impacts to the environment. The new requirements are designed to ensure the ministry that, if a spill occurs, spill response is fast, effective and efficient – across all relevant sectors and business operations.

To define the prescribed substances, the ministry proposed a list of approximately 140 liquid, toxic and persistent substances as well as three classes of volumes:

1. 10,000 litres or more of a prescribed substance being transported by rail or truck;
2. any quantity of a prescribed substance being transported by a pipeline 1,000 meters or more in length; or,
3. 50,000 litres or more of a prescribed substance being stored or used at a fixed facility (with an exemption for gas stations with underground storage).

Once a prescribed substance is contained at or above the volume threshold by industries, trades or businesses, the ministry believes the potential for a significant spill requiring a sophisticated spill response is present, and therefore preparedness must be demonstrated.

The following examples further clarify this definition.

- If the same substance is stored in multiple means of containment at a single fixed facility, the owner of that fixed facility would be a regulated person if the aggregate total exceeded the fixed facility threshold.
- Alternatively, different substances stored separately in multiple means of containment would not be counted together towards the threshold.
- Last, a mixture with a total volume that exceeds the threshold would only be captured if a component of the mixture was a prescribed substance and it accounted for five percent or more of the total volume of the mixture.

The initial list of 140 substances was generated by:

- Identifying national and international lists of hazardous substances;
- Removing all gas and solid entries from those lists;
- Removing all liquids that did not meet the definition of persistence found in the *Canadian Environmental Protection Act*; and,
- Having experts in the Ministry of Environment review the list to add any additional substances they felt were missed by the preceding three steps.

Both the list of initial substances and proposed volumes served as starting points for discussion with potential regulated persons, local governments, First Nations, other regulators and stakeholders.

Consultative Process

Ministry staff developed background materials for participants to review and then facilitated discussions in face to face meetings and conference calls. In response to technical working group input, the ministry provided clarifications and some adjustments to the initial policy direction; both the input and the ministry response as of October 2016 are provided in the report below. This content was offered to all technical working group members for review and final comments were incorporated.

Moving forward, the content in all policy areas is still under review and subject to change. Final decisions on all content will be presented in a fourth Intentions Paper due out before the end of the year. Further public input is welcome at this time.

As development of the new Regime continues, ministry staff will continue to provide intentions papers on each set of new regulations so that public review can occur before regulations are finalized.

Key Input Themes

Volume and Thresholds

Clarify definitions

- Participants requested clarification about whether or not local governments would be captured as regulated persons; some felt it should so that it applies fairly to all those entities that pose a risk.
- Related to the trucking industry, there were differing views on where the onus should be placed. Some felt that a regulated person should be those that have care and control of the substances, others felt it should be the owner or facility offering the substance for transport, and still others felt it was joint responsibility between those that have care and control of the substance and the owner of the substance.
- On a related note, participants emphasized the importance of ensuring a level playing field for provincial and non-provincial companies to ensure competitiveness.
- It was cautioned that without more careful consideration of the volume threshold for fixed facilities the ministry could inadvertently be including a large number of small businesses across rural British Columbia (including farms). Alternatively, the ministry heard that if the thresholds are set too high it may exclude the majority of potential spillers (e.g., spills from operations that are not large enough to be regulated persons).

Key Input Themes

- [Align the list more closely with products in B.C.](#)
- [Assess unintended consequences](#)
- [Clarify definitions](#)
- [Consider a phased in implementation](#)
[Seek alignment with other regulators](#)

Assess unintended consequences

- Participants expressed concern with the current method of determining the threshold volume because certain operators might deliberately keep their volume below the threshold to avoid being included as a regulated person.
- As trucks deliver product from one location to another, they might only be a regulated person until the product volume is transferred, leading to confusion around whether they must comply with the new requirements or not.
- Participants suggested that when there are multiple means of containment, it is unlikely that they will all spill at the same time; therefore, being defined as a regulated person for having a total volume of a single substance stored in different means of containment might be unnecessary; it was suggested that the volume threshold could be based on the capacity of the largest individual multiple means of containment, not the sum of the volume in all of them.
- Several participants expressed concern about the financial implications of becoming a regulated person. Other participants discussed having to weigh the costs of high insurance levels coupled with higher preparedness planning costs with the potential costs of spill response.

Discussion

The intent in the legislation was not to include local governments as regulated persons. This decision was made in recognition of existing requirements that local governments prepare for emergencies, which should include, where applicable, hazardous material spills to the environment. The definition of a regulated person would only include those local governments that are operating an industry, trade or business that has possession, charge or control of prescribed substances in prescribed volumes; expectations are that this may only be the case in a few isolated instances.

The legislation states that the regulated person is the industry, trade or business with possession, charge or control. The ministry is aware that other regulators put the onus of preparedness on owners or consignors; it remains the ministry's perspective that the onus of preparedness is best placed on those industries, trades or businesses that are actually handling the substance that could spill.

The ministry is aware of the potential for an industry, trade or business to occur just below the threshold in order to avoid being regulated. For the vast majority of operations that will be included as regulated persons, the ministry believes that the threshold is significantly lower than their current means of containment sizes and, therefore it would likely not make economic sense for those industries, trades or businesses to only partially fill to avoid regulation. As the Regime is implemented over the coming years, the ministry determine whether this is an issue.

The Regulated Person – Substances and Sectors

There was an interest in having a more in-depth understanding of the criteria that led to the list, how the five percent threshold was set and what the criteria will be for adding new substances. Generally, it was felt that the list should more closely reflect the types of substances that are used, stored and have a history of being spilled in British Columbia. Suggestions and alternative approaches were provided:

Align the list more closely with products in B.C.

- Ask product experts to review the list and remove any substances they do not recognize. Participants suggested that experts could include product suppliers, manufacturers and associations for paints, coatings or other formulas.
- Add to the list so that it includes food oil, wet gas, produced water, hazardous waste mixes, mining concentrates, water soluble asphalt products, gas, chlorinated water and a clearly defined range of petroleum and fuel derived products.
- Continue with the current the liquid, toxic and persistent criteria. However, some of the feedback received called for the list to be broadened to include:
 - (i) gasses and solids;
 - (ii) substances based on their human and environmental health impacts; or
 - (iii) specific individual substances, like wastewater or chlorinated water.
- Consider basing the list on hazard types as opposed to specific individual substances.

Seek alignment with other regulators

- Use United Nations (UN) numbers rather than Canadian Standards Association classifications to identify the substances, in alignment with Transport Canada's ERAP system.
- Adopt prioritized risk-based criteria that consider impacts to the environment but also to human health and the community and provide clear explanations for the environmental criteria. The B.C. Emergency Response Management System was provided as an example. The Toxic Inhalation Factor (THF) was recommended as a health risk-assessment tool.
- Adopt the lists from the Transportation of Dangerous Goods Regulation as the formal basis for its list of substances. In fact, representatives from the railway sector highlighted that a railway cannot reconcile what they carry on behalf of their customers with the list of substances presented in the third discussion paper. Railways are offered goods by shippers in accordance with the UN-based numbering system referenced in the Transportation of Dangerous Goods Regulation.
- Exclude fuel used to power trucks and locomotives being counted towards a threshold, just as they are excluded under the federal regulations.

Consider a phase in approach

- Ensure that if the Regime is initially and primarily based around petroleum products, that it is still appropriate for bringing other chemical products under it; a petroleum product focus may not work for the chemical sector.

- Consider phasing in regulated persons, focusing initially on those substances and/or sectors where there is a more immediate need for greater preparedness.
- Clearly link the approach to a risk based assessment and factor in whether there is secondary containment at a fixed facility.

Discussion

The ministry agrees that more deliberation on liquids, solids and gases is needed. Therefore we are developing a phase-in plan, starting with petroleum products in the first phase of the Regulated Person Regulation as these are the most often spilled in BC. Other non-petroleum based substances would follow and fixed facilities after that. Fixed facilities generally pose less of a hazard when spilled (unless via a slow undetected leak. Typically, where large quantities of hazardous materials are stored, there is secondary – and sometimes tertiary – containment available. Transportation of hazardous materials is a key concern for the ministry.

A phase in approach will give ministry staff time for a more thorough analysis of what additional substances to include in future amendments to the regulation. The intention is that future phases of the list will include additional liquids, as well as some solids and gases.

Through the engagement process it became clear to the ministry that phasing in regulated persons by substance-type and sector would lead to better design. The ministry recognizes that the proposal it has set out to date is based primarily around oil spill response. So, it is now proposing to first implement the system for petroleum products and transporters and then carefully consider how to adapt it for fixed facilities and other substance-types for future phases of the Regulated Person Regulation.

The concept of phasing in regulated persons was always recognized as a possibility by the ministry. The benefit of having the more inclusive approach was that the ministry was able to obtain broad feedback from all potential regulated persons, which helped ensure that those who may be included as regulated persons in future phases had input on the initial design of the Regime.

New rules from other regulators are changing the regulatory context for pipelines and railroads, in particular. The ministry is not aware of additional changes being developed for trucks, but understands changes are being explored by Environment and Climate Change Canada for the fixed facilities it regulates as well as by the BC Ministry of Energy and Mines for mine sites. A phase in approach will allow the ministry to review both new and existing regulations to identify opportunities for alignment, collaboration and avoiding unnecessary duplication.

In summary, updates to October 2016 to the proposed ministry policy include:

- Using a phased approach to defining regulated persons that will begin with petroleum products being transported by rail, truck and pipelines.
- Seeking further alignment with other regulators
- Adding clarifying definitions that could include:

- Exempting any pipeline or rail line less than 1,000 meters in length to ensure that fixed facilities that operate small rail lines or pipelines to move product off major lines and into facilities are not inadvertently brought into the first phase of the regulation.
- Not counting petroleum products used to power trucks and locomotives towards the total (e.g., the fuel in a saddle tank of a truck would not contribute towards the 10,000 litre total).

Next Steps

A follow up intentions paper due out before the end of 2016 will outline ministry response to this input.

Appendix One: Regulated Person Technical Working Group Members

Name	Organization
Audrey Wagenaar	Golder Associates
Barbara Parker	Shell Canada
Brett Pequin	SWAT
Josh van Loon	UBCM
Kai Horsfield	Canadian Energy Pipeline Association (CEPA)
Kara Edwards	TRANSCAER
Kristen Dangelmaier	Domtar
Louie Maione	CCC Group
Anne Mauch	Council of Forest Industries (COFI)
Michael Gullo	Rail Association of Canada
Patricia Squires	Kitselas First Nations
Russ Simpson	Zorbie Response Products
Saleh Haidar	City of Burnaby
Shawn Garvey	Berry and Smith Trucking
Linda Clarke	Canadian Association of Petroleum Producers (CAPP)
Valerie Calderwood	Ministry of Environment
Daphne Dolhaine	Ministry of Environment
Julia Ratcliffe	Ministry of Environment
Ian Sharpe	Ministry of Environment