

**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

Order in Council No. 392 , Approved and Ordered October 13, 2017

  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective October 30, 2017,

- (a) the *Environmental Management Amendment Act, 2016*, S.B.C. 2016, c. 20, except section 3 insofar as it repeals section 79 of the *Environmental Management Act*, is brought into force,
- (b) the Spill Cost Recovery Regulation, B.C. Reg. 250/98, is repealed,
- (c) section 38 of the Administrative Penalties (Environmental Management Act) Regulation, B.C. Reg. 133/2014, is repealed, and
- (c) the attached Spill Preparedness, Response and Recovery Regulation is made.

  
Minister of Environment and Climate Change Strategy

  
Presiding Member of the Executive Council

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*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: *Environmental Management Amendment Act, 2016*, S.B.C. 2016, c. 20, s. 11,  
*Environmental Management Act*, S.B.C. 2003, c. 53, ss. 92, 138 and 139

Other: OIC 845/98

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R10163114

# SPILL PREPAREDNESS, RESPONSE AND RECOVERY REGULATION

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### **SCHEDULE**

## **PART 1 – INTERPRETATION**

### **Definitions**

- 1 In this regulation:
  - “**Act**” means the *Environmental Management Act*;
  - “**highway**” has the same meaning as in the *Transportation Act*;
  - “**Indian reserve**” has the same meaning as “reserve” in the *Indian Act* (Canada);
  - “**listed substance**” means a substance identified by a standard set out in Column 2 of the Schedule, or any combination of those substances, but does not include hazardous waste;
  - “**national park**” has the same meaning as “park” in the *Canada National Parks Act*;
  - “**national park reserve**” has the same meaning as “park reserve” in the *Canada National Parks Act*;
  - “**pipeline**” includes a facility used to
    - (a) transport a substance through a pipeline, or
    - (b) store a substance incidentally to its transportation through a pipeline;
  - “**spill response equipment**” means equipment used directly in responding to a spill, including, without limitation,

- (a) personal protective equipment, and
- (b) equipment used to stabilize, contain, remove or clean up a spill or waste resulting from the spill or spill response actions.

### **Regulated person**

- 2 (1) For the purposes of the definition of “regulated person” in section 91.1 [*definitions*] of the Act, the following substances in the following quantities are prescribed:
- (a) a listed substance in any quantity, in the case of a person who transports the substance through a pipeline;
  - (b) a listed substance in a quantity of 10 000 litres or more, in the case of
    - (i) a person who transports the substance by railway, or
    - (ii) a person who transports the substance on a highway.
- (2) Despite subsection (1), a person is not a regulated person in respect of the transportation of a substance in the following circumstances:
- (a) the substance is being transported through a pipeline at a facility that
    - (i) uses, produces or refines the substance, or
    - (ii) stores the substance other than incidentally to its transportation through a pipeline;
  - (b) the substance is in a fuel tank of a train or motor vehicle and is being used, or intended to be used, to propel the train or motor vehicle;
  - (c) the substance is being transported only within the area of an airport, Indian reserve, military installation, national park or national park reserve;
  - (d) the substance is being transported by a railway that is operated only within an area of land on which is located industrial infrastructure, including, without limitation,
    - (i) facilities for manufacturing or processing, and
    - (ii) mines, well sites, equipment yards and other facilities for or ancillary to energy production or resource extraction.

## **PART 2 – SPILL PREPAREDNESS**

### **Deadline to prepare spill contingency plan**

- 3 (1) For the purposes of section 91.11 (1) (a) [*regulated persons – spill contingency planning*] of the Act, a regulated person must have a spill contingency plan by the following date:
- (a) for a regulated person referred to in section 2 (1) (a) or (b) (i), April 30, 2018;
  - (b) for a regulated person referred to in section 2 (b) (ii), October 30, 2018.
- (2) On application by a person referred to in subsection (1), the minister may specify a later date, that is not more than 6 months later than the applicable date under subsection (1) (a) or (b), by which the regulated person must have a spill contingency plan.

#### **Exemption in relation to oil and gas permits**

- 4 A person who holds a permit to carry out an oil and gas activity to which the Emergency Management Regulation, B.C. Reg. 204/2013, applies is exempt from section 91.11 [*regulated persons – spill contingency planning*] of the Act.

### **PART 3 – SPILL RESPONSE**

#### **Recovery of costs of government spill response**

- 5 (1) If the government incurs costs referred to in section 91.4 (3) [*government spill response*] of the Act that total less than \$175, those costs are deemed to be \$175.
- (2) For the purposes of section 91.4 (4) (b) of the Act, the prescribed percentage is 25% of the costs referred to in section 91.4 (3) of the Act.

### **PART 4 – SPILL RECOVERY**

#### **Contents of recovery plan**

- 6 (1) A responsible person who is ordered under section 91.2 (4) [*responsible persons – spill response*] of the Act to prepare a recovery plan in relation to a spill must include all of the following information in the plan:
- (a) the substance spilled;
  - (b) the amount of the substance spilled;
  - (c) a description of the properties of the substance spilled that are relevant to its potential to cause adverse effects to the environment, human health or infrastructure;
  - (d) an assessment, prepared in accordance with subsection (2), of the potential impacts on the environment of the spill and the spill response actions carried out in relation to the spill;
  - (e) an assessment, prepared in accordance with subsection (2), of the actual impacts on the environment of the spill and the spill response actions carried out in relation to the spill;
  - (f) a description of the environment in the area affected by the spill, as that environment was before the spill;
  - (g) a description of the environment in the area affected by the spill, as that environment will be after the recovery plan is implemented, that identifies, in accordance with subsection (3), quantifiable targets for recovery;
  - (h) a description of the recovery actions proposed to meet the targets referred to in paragraph (g) and an analysis, prepared in accordance with subsection (3), in support of those recovery actions that identifies and weighs alternatives;
  - (i) a summary of engagement and consultation with any of the following that might be directly affected by the proposed recovery actions or have knowledge about that area:
    - (i) a local government;
    - (ii) a first nation government;

- (iii) a resident;
  - (iv) a business;
  - (v) a recreational organization;
  - (j) a description of the process for communicating with the persons referred to in paragraph (i) during the implementation of the plan;
  - (k) a schedule for the implementation of the plan.
- (2) An assessment under subsection (1) (d) or (e) must
- (a) describe and quantify the severity and geographical extent of the impacts on the environment of the spill and the spill response actions carried out in relation to the spill, and
  - (b) identify all of the following:
    - (i) the contaminants introduced into or created in the environment by the spill or the spill response actions carried out in relation to the spill;
    - (ii) the flora, fauna and human populations that could be adversely affected by those contaminants;
    - (iii) the pathways by which those contaminants could move through the environment to cause adverse effects to those flora, fauna and human populations.
- (3) The identification of quantifiable targets for recovery referred to in subsection (1) (g) and the proposal of recovery actions and analysis of alternatives referred to in subsection (1) (h) must be based on the principle that the impacts of a spill on the environment are to be restored to the greatest extent that is consistent with the limits set out in section 91.21 (1) (a) (i), (ii) and (iii) [*when restoration not reasonably achievable*] of the Act.
- (4) For the purposes of subsection (1) (i) and without limiting that subsection,
- (a) a first nation government must be considered to be directly affected if the proposed recovery actions are likely to affect a culturally sensitive site or a site used for food gathering,
  - (b) a resident must be considered to be directly affected if the proposed recovery actions are likely to affect the health or livelihood or require the relocation of the resident, and
  - (c) a business must be considered to be directly affected if the proposed recovery actions are likely to affect the profitability or require the relocation of the business.

**Report on conclusion of recovery process**

- 7 A responsible person who is required by section 91.2 (6) (c) [*responsible persons – spill response*] of the Act to submit a report at the conclusion of a recovery process must include all of the following information in the report:
- (a) a declaration that the recovery plan has been carried out;
  - (b) the date on which carrying out of the recovery plan was completed;
  - (c) a description of the recovery actions carried out;
  - (d) a description of the environment at the conclusion of the recovery process;

- (e) a record of sampling, testing, monitoring and assessing carried out, the data generated that demonstrates that the recovery plan has been carried out and a summary of that data.

## **PART 5 – GENERAL**

### **Records relating to hazard assessments**

- 8** For the purposes of section 91.11 (3) (a) [*regulated persons – spill contingency planning*] of the Act, the period during which a regulated person must ensure that records respecting investigations, tests and surveys referred to in section 91.11 (2) of the Act are kept is the period during which the person has a spill contingency plan to which the records relate.

### **Records relating to spill contingency plans**

- 9** (1) A regulated person who has a spill contingency plan must maintain the following records:
- (a) a record of changes to the plan that shows, for each change, the date the change was made and the reason for the change;
  - (b) a record in relation to the spill response equipment listed in the plan that shows
    - (i) the dates on which each item on the list was inspected and whether the item was ready for use on each date, and
    - (ii) the dates on which each item on the list was maintained or repaired;
  - (c) a record of the training referred to in section 13 (1) [*training*] of the Spill Contingency Planning Regulation that includes the following for each course of training provided:
    - (i) the dates of the training;
    - (ii) a description of the training;
    - (iii) the person who provided the training;
    - (iv) the roles and procedures, as applicable, on which the training was provided;
    - (v) the names and job titles of the individuals to whom the training was provided;
  - (d) a record of the tests conducted by the regulated person for the purposes of section 15 [*testing spill contingency plans*] of the Spill Contingency Planning Regulation that shows the following for each test:
    - (i) the date of the test;
    - (ii) a description of the test;
    - (iii) whether the test is a discussion-based test, an operations-based test or a worst-case-scenario test;
    - (iv) the components of the spill contingency plan tested;
    - (v) the records generated by the individuals who participated in the test;

- (vi) an evaluation of the components tested that identifies any deficiencies in the components revealed by the test or changes to the components suggested by the test;
  - (vii) if applicable, the changes made to the spill contingency plan in response to the test and the dates on which those changes were made.
- (2) The regulated person must keep each record referred to in subsection (1) for at least 5 years.

**Records relating to service arrangements**

**10** If a regulated person enters into an arrangement with another person respecting the use of the other person’s services to meet obligations of the regulated person under Division 2.1 [*Spill Preparedness, Response and Recovery*] of Part 7 of the Act in relation to spill contingency planning or spill response actions, the regulated person must keep any records relating to the arrangement for at least 5 years after that arrangement comes to an end.

**Requirement to produce records to minister**

**11** A regulated person who is required by section 91.11 (3) (a) [*regulated persons – spill contingency planning*] of the Act or this regulation to keep a record must produce the record to the minister on request.

**Report to the Legislative Assembly**

**12** A report under section 91.7 [*report to the Legislative Assembly*] of the Act is to be laid before the Legislative Assembly

- (a) for the period beginning on the date section 91.7 of the Act comes into force, on or before October 30, 2019, and
- (b) thereafter, annually.

**SCHEDULE**

**Interpretation**

**1** A reference in this Schedule to a standard is a reference to that standard as amended from time to time.

Item	Column 1 Common Name	Column 2 Classification
1	aviation fuel	CAN/CGSB-3.23-2012 Aviation Turbine Fuel (Grades JET A and Jet A-1)
		CAN/CGSB-3.22-2012 Wide-Cut Type Aviation Turbine Fuel (Grade JET B)
		CGSB-3.24-2012 Aviation Turbine Fuel (Military Grades F-34 and F-44)
2	bunker fuel	CGSB-3.11-2010 Naval Distillate Fuel
		ISO 8217:2012 Petroleum products – Fuels (class F) – Specifications of marine fuels

Item	Column 1 Common Name	Column 2 Classification
3	crude oil or diluted bitumen	TDG UN 1267
		TDG UN 3494
4	diesel fuel	CAN/CGSB-3.517-2015 Diesel fuel
		CAN/CGSB-3.522-2015 Diesel fuel containing biodiesel (B6-B20)
		CAN/CGSB-3.18-2010 (R2016) Diesel Fuel for Locomotive-Type Medium-Speed Diesel Engines
		CAN/CGSB-3.520-2015 Diesel fuel containing low levels of biodiesel (B1-B5)
		CAN/CGSB-3.524-2011 Biodiesel (B100) for Blending in Middle Distillate Fuels
5	gasoline	CAN/CGSB-3.5-2016 Automotive gasoline
		CAN/CGSB-3.511-2016 Oxygenated automotive gasoline containing ethanol (E1-E10)
		CAN/CGSB-3.512-2013 Automotive ethanol fuel (E50-E85)
6	heating fuel	CAN/CGSB-3.2-2015 Heating fuel oil
7	kerosene	CAN/CGSB-3.3-2014 Kerosene
8	petroleum distillates	CAN/CGSB-3.27-2012 Naphtha Fuel