

Environmental Law Bulletin

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Environmental Emergency Regulation Recent Amendments

By Scott Stoll and Michael Ventresca*

Introduction

On December 8, 2011, the federal government amended the *Environmental Emergency Regulations* (the “**Regulation**”) under the *Canadian Environmental Protection Act, 1999* (the “**Act**”). The amendments expanded the scope of the Regulation and created exemptions for certain substances. The amendments also added new notice requirements for closing and decommissioning activities and modified the process for reporting environmental emergencies.

What is covered by the Regulation?

The Regulation sets out a list of substances in specified concentrations and quantities. The substances are listed primarily due to their flammability, toxicity and potential to create an environmental emergency if released. A number of organic chemicals, petrochemicals and heavy metal compounds are included in the list. The amendments expanded the list of substances subject to the Regulation and exempted certain forms of regulated substances based on specified physical or chemical properties or the applicability of other legislation to the substances.

Notice

If the substance meets the concentration and quantity or container capacity amounts set out in the Regulation, notice must be given to the federal Minister of the Environment 90 days after a person becomes the owner or has the charge, management or control of a regulated substance that is located at a place in Canada. Notice must be re-submitted within 60 days of a change to the information provided in the notice or an increase of 10% or more in the maximum expected quantity of a substance. Notice is also required within 90 days if, for 12 consecutive months, the quantity of the substance or the capacity of the container in which the substance is stored is below the listed amount.

The notice must contain the information set out in a schedule to the Regulation, including the place the substance is located, head office location, contact person(s) and particulars about the

substance such as name, CAS and/or UN number, maximum expected quantity of the substance and maximum capacity of the largest storage container for the substance. The amendments impose a requirement to include in the notice the maximum expected quantity of, and concentration of the substance within, a mixture. A signed certificate of accuracy and completeness must be included with the notice.

The amendments create a new requirement to give notice at least 30 days before the closure or decommissioning of a facility or place where a regulated substance is located for any purpose other than maintenance. This notice must include a description and location of the place or the facility, the name and quantity of each substance remaining at the place, a contact person, the date of closing or decommissioning, and a description of the measures taken to prevent and to respond to an environmental emergency when the facility or place closes or is decommissioned.

Environmental Emergency Plan

An environmental emergency plan is required if the substance covered by the notice is both (a) in a maximum expected quantity equal to or exceeding the prescribed quantity and (b) in a storage container that has a maximum capacity equal to or exceeding the quantity prescribed in the Regulation. If only one of those situations apply, then only a notice is required.

Various factors must be considered and described in the plan including the properties, characteristics and quantities of the substance; the commercial, manufacturing, processing or other activity involved; the characteristics of the place where the substance is located and of the surrounding area; and the potential consequences of an environmental emergency. The plan must identify any environmental emergency that can reasonably be expected to occur; a description of the measures to be used to prevent, prepare for, respond to and recover from any environmental emergency; a list of individuals who are to carry into effect the plan, their responsibilities and any training

required; a list of the emergency response equipment and its location; and the measures to be taken to notify members of the public who may be adversely affected.

A report containing information set out in a schedule must be submitted to the Minister within six months of the day on which the person is required to prepare an environmental emergency plan. A signed certificate of accuracy and completeness must be included with the report.

The plan must be implemented and tested. A notice, setting out the substance, location, date of testing and all local authorities, community or interest groups involved in the testing, must be submitted to the Minister within one year of the day on which the person is first required to prepare an environmental emergency plan. Annual updates and re-testing is also required. Copies of the plan must be made available to any individuals implementing the plan and at any place of work where the substance is used.

On the occurrence of an environmental emergency, notification requirements are triggered. The amendments now require notification and reporting to the Regional Director of the Environmental Enforcement Division of the Enforcement Branch of the Department of the Environment in the region where the environmental emergency occurs. Information to be included in an environmental emergency report is also now prescribed and

includes contact information of the person who owns, manages or controls the substance, particulars about the release, and the measures being taken to mitigate the release and prevent similar releases.

Non-compliance

Failure to comply with this Regulation is an offence under the Act which may result in substantial fines, imprisonment and civil liability.

More Information

For more information about this Regulation, including the full list of substances covered, consult the full text of the Regulation (available online at <http://canlii.ca/t/7xxd>) or the Environment Canada website.

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