

## WHO ARE THE REGULATED PERSONS

### Slide #1 – Title Page

- Thank you for being here today. You are in the who is a regulated person session.
- The purpose of identifying regulated persons is to ensure that operations that could have a significant spill are prepared to respond effectively.
- Notionally, since we started talking in 2012 about improving spill management in BC we have signalled that the province would be requiring preparedness from people who operate oil pipelines, railways, trucks and fixed facilities that use and store large quantities of hazardous materials.
- Today, I will present to you a proposal on what thresholds could actually look like in terms of who could be a regulated person under the new regime.
- I have to stress that what you will see in this presentation is a starting point; we need your expertise in finalizing the thresholds that signal who is a regulated person.

### Slide #2 - Agenda

- First, I want to explain why we want to identify regulated persons and discuss the definition we landed in the legislation
- Then we will discuss the proposed substance and volume thresholds that make regulated persons - - outlining how we arrived at what we've proposed. This will be the content of future regulations that will make the legislation related to who has to demonstrate preparedness operational.
- The third topic is a few clarifying points that will help us have a more complete understanding of what makes a regulated person.
- And last, I'll provide an outline of what it is a regulated person will be expected to do.

### Slide #3 – Significant Spills

- A significant spill to us is one that releases a large amount of a persistent material that has a toxic effect on the environment and requires a coordinated and large-scale response to Mitigate and address impacts.
- Exactly what that looks like on the ground is going to vary from one incident to another.
- The response is also going to vary.
- But what we know is large scale spills need a sophisticated response with many simultaneous moving parts.
- We cannot wait until a spill to find out certain capabilities are not available.
- So, in identifying regulated persons our goal is to ensure that companies that can have significant spills have what it takes to launch an immediate and effective response for the risk they pose.

### Slide #4 – Regulated Person

- With that driver in mind. I want to take you to the definition of a regulated person in the legislation.
- What we say there is – A regulated person means 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.

### Slide #5 – Regulated Person

- This final piece is important. Prescribed substance in prescribed quantities.
- Because we believe it takes a hazardous substance at a large volume to pose the risk of having a 'significant spill' we think this gives us the room we need to identify operations that should be regulated.

## Slide #6 – Prescribed Substances

- We've said prescribed substances should be three things:
  - liquid,
  - toxic
  - and persistent.
- We said liquid because generally these substances are:
  - More difficult to contain than solids,
  - BUT less likely to disperse than gases.
- So, they migrate off-site relatively quickly following a spill, but have the potential to remain in the environment for a long period of time if left un-addressed.
- I'm not suggesting gases or solids don't present risks or cause damage, from our experience though; the vast majority of the spills we deal with where a significant and complex response is required are liquid spills.
- The rationale for focusing on toxic and persistent substances is that these are the materials that are most likely to cause damage to the environment if left unaddressed following a spill.
- We understand that both toxicity and persistence exist on spectrums:
- Some have greater toxic effects, either acute or chronic, and cause effects in different manners – to wildlife, water systems, air, ground, human food or drinking sources and so on
- Some have greater persistency, meaning, if left un-addressed can remain in the environment having negative impacts for a longer time - - they do not easily disperse on their own.
- We might consider adding gases and solids at a later date. Regardless, anyone who spills anything that harms the environment will be required to respond effectively in accordance with the new rules.
- We used the liquid, toxic and persistent criteria to poor over several national and international lists of hazardous substances.
- We looked at the Transportation of Dangerous Goods Regulation, the list used by the US Environmental Protection Agency, as well as the international benchmark developed by the United Nations Committee of Experts on the Transportation of Dangerous Goods.
- Once we obtained these lists of toxic substances we removed anything that was a liquid. This still left us with hundreds of entries.
- Then we moved anything that didn't meet the persistent definition used by Environment and Climate Change Canada.
- Finally, we looked at the list that was left over and made sure it met our needs. We had our Ministry experts take a look and make sure the hazardous substances used by our major sectors were in, and then we had our environmental response officers look and make sure the liquids they deal with were included too.
- After our review, we ended up with 140 substances we think should be prescribed in British Columbia
- Again, I want to emphasize this is a starting point. We want your input on the list, which is available in your copy of the intentions paper #3.
- Obviously, it includes all petroleum products, and includes chemicals used commonly in industrial operations, which meets our intent, but beyond that we do want to make sure the list includes other substances that are more likely to lead to significant impacts if spilled in the absence of an effective response.

## Slide #7 – Prescribed Substances

- We are not establishing individual volumes for each of the prescribed substances.
- Instead, we are saying there are three types of regulated persons (rail/trucking, liquid pipelines, and fixed facilities, such as chemical plants, refineries, storage areas, and temporary camps – each of the

three types has a volume threshold associated with it. If you have any one prescribed substance at or above the volume threshold for your type, then you are a regulated person.

- We decided against establishing individual volumes for each of the prescribed substances because our focus is on significant spills – those that require mobilizing a large response to get the job done.
- Of course we recognize that a small amount of one substance can have far more toxic impacts than a large amount of another.
- But we believe as a general rule, it's the larger spills where there is significant volume that will require a large scale and complex response, and so linking the need to demonstrate preparedness to volume makes sense to us.
- Also, other regulators do have requirements in place at lower thresholds, and we believe that those requirements trigger the appropriate amount of prevention and preparedness at those smaller levels.
- Finally, this approach is administratively simple. It is easy for us to explain and for our diverse regulated community and the public to understand and follow.

#### **Slide #8 – Prescribed Quantities**

- So, as starting points for engagement, we've come up with three numbers one for each type of regulated person.
- It is our perspective, that 10,000 litres or more spilling from a rail car or truck, ending up in a ditch and possibly from there into waterways or sensitive areas represents the magnitude of a spill where we would start to need to see a complex and large scale response.
- Pipelines come in varying diameters, with flow rates influenced by numerous factors, which ultimately impacts the amount of material that can spill. However, we believe that once a liquid pipeline is 1 kilometer or longer, regardless of all these other factors, should a break occur on what are typically narrow right-of-ways – a significant amount could spill before it is identified or valves are shut. So, as a starting point, we decided to propose any quantity of a prescribed substance being transported by a pipeline 1 kilometer or longer.
- Again, fixed facilities include refineries, mines, temporary camps, mills, storage facilities, and chemical plants.
- We've landed on a higher threshold for fixed facilities in recognition of the fact that they can often exist on larger property footprints in many cases with secondary containment, reducing the likelihood that spilled material will end up off property. This is why we are proposing 50,000 litres of prescribed substances for fixed facilities.
- We are also proposing an exemption for gas stations with underground tank storage. To us, while underground storage still requires careful management, we believe an incident from one of these tanks will likely be a gradual leak, requiring less of an emergency response and more likely to take the form of a contaminated site – requiring management in line with our existing expectations for these incidents.

#### **Slide #9 – Clarification #1**

- I want to flag 4 clarifying points for you to help you have a more complete understanding of what we are proposing here.
- First, we will not be combining substances to work towards a total – one substance-type on its own has to exceed the threshold at a site for you to be considered a regulated person.
- In this example we have a fixed facility with three unique prescribed substances in three separate tanks, none of which individually exceed the threshold. Because we are not counting the volumes of different substances to reach the threshold, they are not a regulated person.

### **Slide #10 – Clarification #2**

- In this next example we have a fixed facility with the same single prescribed substance spread out through multiple tanks, none of which individually exceeding the threshold, but if they were counted together would exceed it. In this example, the facility would be a regulated person.

### **Slide #11 – Clarification #3**

- Now we have a fixed facility with three tanks, but for whatever reason they only fill one tank. That tank contains a mixture made up of substance D, a non-regulated substance, but with 5% of substance A, which is regulated.
- This facility would be a regulated person, because when a mixture is comprised of at least 5% of a prescribed substance and its total volume exceeds the prescribed quantity threshold, its counted.

### **Slide #12 – Clarification #4**

- Finally, anyone who spills any amount of any substance must ensure it does not cause damage to the environment. They are responsible for responding to that spill as a responsible person and must comply with our new response requirements.
- Now, we believe our proposed thresholds for demonstrating preparedness capture those operations that could have a significant spill. So the preparedness they will have to have will ensure they can respond in accordance with the response requirements.
- Regardless of whether you are a regulated person or not, we encourage everyone to have the preparedness they need in place to ensure they can respond effectively to the risk they present.
- What we will be requiring of a response is dealt with in part in two other sessions today – one on response times and another on spill reporting.

### **Slide #13 – Regulated Person Responsibilities**

- So, if you're a regulated person what do you have to do?
- First, you have to develop, test and implement a spill contingency plan, and provide information about your operations as prescribed, this could include substance type, quantity, and location or transportation routes.
- They may be asked to develop geographic response plans with other regulated person or have an arrangement with a spill preparedness and response organization.
- I say potentially for geographic response plans because the Minister has the power to designate areas within the province where there must be a plan and then can require any regulated persons operating in that area to support its development. We don't have a list of areas yet, and even when we do, it is very likely that not all regulated persons will have geographic response plans in their areas of operation.
- For the spill preparedness and response organization it is similar. When one is certified by the Minister a regulated person would be required to join it.
- There are plenty of nuances in all this; the good news is there are sessions planned today and tomorrow for all of these topics – as the table on my powerpoint shows.

### **Slide #14 – Next Steps**

- Next steps are to learn from today's feedback and any future written feedback
- We will be hosting a technical working group on this topic, we need your feedback regarding the substance and volumes.
- Finally, in order to bring the preparedness requirements in the new legislation to life we need to have regulated persons identified. We will develop a regulation that brings the regulated person

definition in the legislation to life. Once we've done that we will communicate broadly about our changes so people know how they are affected and what they've got to do.

**Slide #15 – General Questions**

- Now I'd like to open it to general questions. Curtis will facilitate the questions. Once we've done the general questions I've got some discussion questions we can review as a group that we can put up on the screen.

**Slide #16 - Discussion**