

Symposium on Land Based Spill Preparedness and Response in British Columbia

Preliminary Summary Report
April 27, 2016



Introduction

In 2010, the Ministry of Environment (MOE) began work on the development of a world leading spill response regime. Over the last several years, MOE engaged industry, First Nations and communities through a series of workshops, advisory groups and policy papers. The third Intentions Paper entitled *Spill Preparedness and Response in BC: Proposed Amendments to the Environmental Management Act and Proposed Regulations (IP3)* was released in April 2016. IP3 lays out the ministry's intent for legislative, regulatory and policy changes across key components of the regime. Feedback on this paper from First Nations, industry, local governments, other government agencies and the public will be used to support the development of the regulations and policies needed to implement the regime.

As one of the methods for gathering feedback and advice on the regulations, the ministry hosted a two-day symposium in Richmond on April 20 and 21, 2016. The ministry invited just under 1,800 participants and approximately 275 attended, including representatives from:

- 28 companies from the mining, forestry, oil and gas, and energy industries
- 18 First Nations bands
- 37 local governments
- 6 federal government organizations
- 7 provincial government ministries
- 34 professional associations
- 24 environmental non-governmental organizations.

The symposium was designed to provide information on the ministry's intentions for continued development and implementation of the spill response regime, to solicit feedback, to identify topics for discussion and to identify participants for upcoming technical working groups.

This report includes a summary of what was discussed during the symposium, including themes the facilitation teams noted during the session. It does not include a full analysis of all the questions and concerns raised by participants. A more comprehensive analysis will be included in the full Symposium Report to be made available in the summer.

The symposium included plenary sessions at the beginning of day one and day two and at the closing of day two. The plenaries were designed to provide an overview of why the government is pursuing world leading spill response and begin the conversation on how to get there.

Most of the symposium was dedicated to breakout sessions for seven topic areas the ministry intends to move forward on first. Over the two days, all participants had an opportunity to attend every breakout session. Each breakout included a presentation and a question and answer period on the following key components of the proposed changes in legislation:

1. Who is a Regulated Person?
2. Spill Contingency Plans
3. Drills, Exercises and Substance Reporting
4. Geographic Response Plans
5. Response Reporting and Times
6. Recovery and Restoration
7. Preparedness and Response Organization (PRO)

Day One: The session opened with a welcome to the traditional territories of the Coast Salish peoples from Debra Sparrow, Musqueam First Nation. Wes Shoemaker, Deputy Minister, Ministry of Environment, thanked Debra and provided opening remarks about the purpose of the symposium.

Anthony Danks, Executive Director, Ministry of Environment, then presented an overview of the Spill Response Regime. Next, Daphne Dolhaine, Legislation, Regulation and Policy Lead, Ministry of Environment, highlighted the key changes in the legislation and proposed regulations.

During the morning plenary, participants had table discussions about their expectations for the symposium and had an opportunity to note any questions or comments they had on post-it notes. The remainder of the day included four breakout sessions.

Day Two: Day two began with Anthony Danks responding to some of the frequently raised questions during day one, including requests for further details about the technical working groups and general queries about why the Ministry is pursuing world leading spill response.

Daphne Dolhaine and Ian Sharpe, Preparedness and Response Organization (PRO) Lead, Ministry of Environment, then led a plenary on the PRO. Following the plenary, participants went to their breakout rooms to ask questions and provide comments on what they heard about the PRO. After the PRO breakout session, participants attended two more breakout sessions and the symposium closed with the facilitation teams offering a summary of the themes in the seven topic areas.

The remainder of this report summarizes some of the questions, concerns and suggestions raised by participants for each of the topic areas.

1. Who is a Regulated Person?

Ben Vander Steen, Duncan Ferguson and Curtis Smith from the Ministry of Environment presented this session on the proposed definition of a Regulated Person. During the question and answer period, the following questions, concerns and suggestions were noted:

General Questions

There were a number of questions about how the Ministry of Environment arrived at the threshold, which was explained; the ministry is committed to exploring the threshold methodology in greater detail at the upcoming technical working group.

Topics Raised

- The focus on liquid as the way to define who is a regulated person may leave risks from gases and solids without sufficient coverage.
- While there was a recognition that volume thresholds could be one method for identifying regulated persons, there was concern the approach could have unintended consequences (i.e., a carrier moving 9,999 litres of a hazardous substance may not have to demonstrate preparedness where as a carrier with 10,000 litres would).
- There was confusion as to why the ministry would not count different substances together to work towards the threshold total for a given operation (i.e., if a facility had 40,000 litres of one prescribed substance in one tank, and 35,000 litres of another prescribed substance in another tank, it would not be counted as a regulated person even though it had 75,000 litres of prescribed substances, which exceeds the fixed facility threshold).
- There were conflicting views: some people thought the focus on prescribed substances should be limited to those that spill most often, whereas others felt we should capture more substances than the 140 listed.

Suggestions

- Participants expressed surprise the definition of a regulated person appeared to be limited to businesses, to the exclusion of local governments. A strong suggestion from the participants was local governments should be included if they meet the substance/volume criteria.
- Participants also suggested volume thresholds could be designed to differ based on the sensitivity of a receiving environment (i.e., use/transport of hazardous substances through a sensitive area or nearer to a waterway could trigger the status as a regulated person at a lower threshold than in other areas).

2. Spill Contingency Plans

Dave Maedel and Jennifer Wilson from the Ministry of Environment presented on spill contingency plans, including the rationale for the plans, who the persons responsible for producing the plans are, ideas about plan content and timing, and the process to ensure alignment with other requirements. During the question and answer period, the following questions and suggestions were shared:

General Questions

- Who would be required to prepare a spill contingency plan?
- What will be the content requirements and how will these plans be integrated with the Area Response Plans and the Geographic Response Plans?
- What is a worst case scenario and how will that be addressed by the Technical Working Group?
- Who will be involved in the Technical Working Groups?
- How will the ministry be overseeing plans and making sure they are adequate and in place?

Suggestions

- Ensure the spill contingency plans have the appropriate level of detail (i.e., not too much detail and only the information required for the first hours of a spill) and contain only relevant information (i.e., training may not be a subject required in a spill contingency plan).
- Plans should be based on risk.

3. Drills, Exercises and Substance Reporting

D'Arcy Segó and Kelli Kryzanowski from the Ministry of Environment presented a session on the requirements being considered for drills and exercises, and for substance reporting. Their presentation included information on the requirements being envisioned for drills and exercises, including the types and frequencies, meetings and evaluation, coordination and scheduling. A second discussion topic was proposed reporting requirements for substances and transporting. During the question and answer period, the following questions, concerns and suggestions were commonly shared:

Questions

- How is non-compliance with exercises and drills going to be enforced?
- How is the ministry going to deal with allowing agencies to complete exercises in different jurisdictions given the environmental response differs depending on the resources at risk which may be different in BC (terrain, weather etc.) in comparison to where the agencies are doing their exercises?
- What is the policy intent and what is considered a meaningful report when an industry transports prescribed substances that may be constantly changing in volume, composition and transport routes? How frequently does that need to be reported to the regulator?
- What is going to be required to provide those reports?

Topics Raised

- Concern was expressed about the resource requirements for local governments.
- There have been experiences where the results of the drills were different for the responsible party than they were for the municipality.
 - What is going to be the measurement tool for success?
 - Is there going to be a regulated authority to ensure things are done correctly?
 - Is it only a self-evaluation process?
- Tracking the movement of products will be challenging given truck routes can change at a moment's notice.

Suggestions

- Local government representatives noted there needs to be more communication with industry and local government Emergency Program Coordinators. More engagement with industry would allow the Coordinators to better prepare their response plans in the preparedness phase as well as the response phase itself. This doesn't include just the fire department or the environmental planners, but a fulsome engagement with the Emergency Program Coordinators.
- A list of prescribed or approved trainers should be established to provide a BC model for spill exercises. Local government wants to be involved with the exercise analysis as they are responsible for their communities and want to ensure gaps truly are identified and acted upon.

4. Geographic Response Plans

Laurie Boyle and Pader Brach from the Ministry of Environment presented on Geographic Response Plans. The presentation included information about what Geographic Response Plans are, why they are important, how they might be developed and used and proposed requirements for timelines. Some of the questions and suggestions raised included:

Questions

- What are the advisory committees being envisioned?
- How will boundaries be defined? What criteria will you use? What size will they be and what is it going to cost to do this planning?
- How do the Geographic Response Plans integrate with the other plans that are required?
- Who is responsible for completing, approving and validating the Geographic Response Plans?

Suggestions

- Use existing information to develop the Geographic Response Plans. There has already been work done that we should build on rather than duplicate.
- Be careful about releasing sensitive information.
- Consider having government own and develop the Geographic Response Plans, not the regulated persons.

5. Response Reporting and Times

Graham Knox and Sheila Richardson from the Ministry of Environment presented the Response Reporting and Times breakout group. Their presentation covered what the requirements might be for spill reporting, sampling and monitoring, and response times. Some of the questions, concerns and suggestions that emerged from the opportunity for questions and feedback were:

Questions

- What type of sampling will be required?

Topics Raised

- There may be duplication in sampling and monitoring between the qualified professionals working for industry versus government.
- The release of raw data is a concern for some.

Suggestions

- Not all spills should require a five-step reporting process. Most spills are small and should be done in fewer steps.
- Support for the idea of using a multiple approach based on substance, geographic area or sector instead of a blanket approach to defining the response times.

6. Recovery and Restoration

Carley Coccola and Leon Gaber from the Ministry of Environment presented the breakout session on Recovery and Restoration. Their presentation covered concepts and definitions, what recovery looks like in BC and in other jurisdictions, the proposed recovery process, and the work already underway. Questions and concerns raised during the questions and answer period included:

Questions

- What would happen if the responsible party was unknown or was unable to pay for environmental recovery? Who would be liable for “orphan spills” – those where the spiller is unwilling or unable to respond, or unknown?
- When do you develop a recovery plan? Several participants commented on how there is generally no seamless transition from the response/emergency phase to the environmental recovery phase and how restoration and remediation actions often take place during initial response. Does it make sense to wait until the emergency/response phase has ended to develop a recovery plan?

Topics Raised

- There was a large amount of conversation around how environmental endpoints should be determined and how it can be difficult to agree on environmental endpoints, particularly when there is typically no baseline data for impacted resources/sites.

- There is a risk of potential overlaps with the contaminated sites regime.
- Related to transparency and participation in the recovery process, there was plenty of discussion on the role of stakeholders and First Nations in the recovery process and the need to balance this input/participation with the need to quickly implement restoration actions. Concerns were raised that lengthy consultation processes could lead to delays in undertaking restoration actions.
- The appropriate sequencing of regulations needs consideration as many aspects of environmental recovery are linked to other parts of the regime. For example, baseline data could be collected during Geographic Response Plan development to aid in determining endpoints following a spill within the related area. Concerns were also raised regarding a spill that may happen prior to environmental recovery rules being in place.
- Concern was expressed that health/social impacts from spills are not being addressed through recovery and restoration in BC's spill response regime.

7. Preparedness and Response Organization (PRO)

The PRO session was presented in a plenary by Daphne Dolhaine and Ian Sharpe. Their presentation included information on what the PRO is and the functions it might deliver. Following the plenary, participants went to breakout sessions to ask questions and provide feedback. The following questions, concerns and suggestions or support were commonly expressed during these breakouts:

Questions

- Questions were raised about the rationale or need for a PRO and whether anyone would be willing to take on the costs and liability associated with becoming a PRO.
- There were also many questions of clarification about how a PRO might work, including: how many PROs would there be; what would be their roles and responsibilities; would the PRO operate on First Nations land; who would provide oversight and hold the PRO accountable; what will the fees be; and who funds it?

Topics Raised

- Some concerns were raised about industry leading the PRO instead of government.

Suggestions or Support

- Local governments expressed support for the concept of a PRO. They saw themselves as a regulated person and believed the PRO would help them with communication.
- Some suggestions were provided that the PRO should be a non-profit organization.
- Some participants thought the PRO should be responsible for ensuring appropriate information is circulated, but not responsible for the doing the work on the ground.
- Some First Nations suggested they needed to play a strong oversight role. Suggestions were provided that the ministry should do more research on how this model has worked in other jurisdictions as well as some scenario planning or pilot testing before launching the PRO.

Next Steps

The ministry is currently reviewing and analyzing all of the feedback provided during the symposium and will publish a more comprehensive report on what was heard in the fall.

All of the presentations provided at the symposium are available on the BC Spill Response Regime website under [Current Spill Regime Engagement](#). The third Intentions Paper is available on the [Spill Response Online Engagement](#) website. The ministry will continue to receive feedback on the third Intentions Paper from all parties until June 30, 2016.

- Individuals can provide input at <https://engage.gov.bc.ca/spillresponse/>.
- Organizations are invited to send their comments on letterhead as an attachment to spillresponse@gov.bc.ca. For transparency, these letters will then be posted to the discussion forum website mentioned above.

At the same time, the ministry is continuing to gather additional input through a series of engagement sessions across the province with First Nations.

Simultaneously, the ministry is also establishing technical working groups to help with the development of the regulatory framework needed to augment the spill response legislation. During the symposium, participants were encouraged to identify themselves as being interested in participating in these working groups, and many did. The ministry is working to finalize the number and topics of working groups and will select a list of participants based on those who expressed interest to ensure a diversity of perspectives are represented on each working group. These technical working groups will meet over the summer and it is expected the majority of technical working groups will provide recommendations to the Province to in late summer. However, some technical working groups may continue working into 2017 to inform regulations intended to be sequenced over a longer period of time.

For more information on the BC Spill Response Regime development process or to express interest in participating in the technical working groups, please email spillresponse@gov.bc.ca.

For further ongoing email updates on the BC Spill Response Regime, please subscribe to the BC Spill Response Regime E-Link from www.gov.bc.ca/spillresponse .