

Ministry
of the Environment
and Climate Change

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Ministère
de l'Environnement et de l'Action
en matière de changement climatique

135, avenue St. Clair ouest
Toronto ON M4V 1P5



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ENV1180AC-2015-74

Luisette Lanteigne
700 Star Flower Avenue
Waterloo ON N2V 2L2

And

David Alexander
700 Star Flower Avenue
Waterloo ON N2V 2L2

Dear Luisette Lanteigne and David Alexander:

Re: *Environmental Bill of Rights* Application for Review – Review the need for a new policy under the EPA to standardize municipal spill responses
EBRO File Number: 15EBR004.R

Thank you for your application requesting an Environmental Bill of Rights (EBR) review for an amendment to the Environmental Protection Act (EPA) to include a policy/procedure to standardize municipal spills response. Hearing from residents of Ontario is important and I appreciate the time you have taken to provide suggestions on how we can better protect the environment from spills and improve transparency on how we share information.

As a result of your request, the ministry did a thorough review of our current legislation and procedures related to spills. Here are some of the current ways we are already protecting the environment from spills:

- ✓ Anyone who causes a spill must notify the ministry, municipalities and the owner or controller of the spilled material if not already aware
- ✓ For spills caused by unknown sources, a public authority informed or investigating a spill must notify the ministry
- ✓ Anyone not reporting a spill can be charged under ministry legislation
- ✓ The ministry's Spills Action Centre (SAC) exists as a one-window 24-7 reporting centre for environmental emergencies in Ontario. SAC assesses and ensures adequate spill response is done and liaises with others.
- ✓ Anyone owning or controlling a pollutant is required by law to do everything practicable to prevent, eliminate and ameliorate its adverse effects and to restore the natural environment

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- ✓ The ministry's Environmental Officers follow up on every spill to confirm the spill has been cleaned up and the environment remediated
- ✓ The ministry works collaboratively with other levels of government on spill clean up efforts and has notification agreements for spills and other environmental events in place
- ✓ Every municipality in Ontario is required to have an Emergency Plan in place outlining how to respond to major events, including spills
- ✓ The ministry maintains a central record of spill responses, available to all Environmental Officers
- ✓ The ministry also continually improves on our spills program and takes action, for example, by conducting mock spill exercises

As the above points illustrate, current legislation and requirements set out comprehensive and consistent spills response procedures. However, after carefully considering your application, it has been concluded that a limited review will be conducted, focusing on public transparency and access to spills response information.

The review is estimated to be complete by March 31, 2016, at which time, you will be provided with the results. In conducting the review, ministry staff will take into account various sources of information, in addition to your application.

If you have any questions regarding your application for review please contact Valerie Bowering, Manager of the Spills Action Centre at 416-314-6370 or Valerie.Bowering@ontario.ca.

Yours truly,



Nancy Matthews
Assistant Deputy Minister
Operations Division

Attachment

c: P. Lapp, Environmental Commissioner's Office (15EBR004.R)

**Environmental Bill of Rights Application for Review
Amendment to the Environmental Protection Act
Decision Summary**

EBRO File No.: 15EBR004.R

Issue: The Ministry of the Environment and Climate Change has received an Application for Review under Part IV the Environmental Bill of Rights requesting an amendment to the Environmental Protection Act to include a policy/procedure to standardize municipal spills response.

Review Decision:

The Ministry of the Environment and Climate Change (MOECC) has completed an assessment of the Application, including a thorough review of the information available and the requirements of the Environmental Bill of Rights.

Having carefully considered your application, it has been concluded that a review is warranted. However, this review will be limited to your comments regarding public transparency of and access to spills response information.

Moving forward, the ministry will be completing a review of public access to information on spills. The review is estimated to be complete by March 31, 2016, at which time, you will be provided with the results. In conducting the review, ministry staff will take into account various sources of information, in addition to your application.

In response to the other points raised in your application, it should be highlighted that the ministry has robust spills response procedures already in place. Existing legislation and current reporting requirements address the majority of points raised in your request. For example, responsibilities for reporting and clean up spills are set out in environmental legislation and the ministry works very closely with municipalities and first responders to ensure consistent responses to spills.

For these reasons we do not believe an amendment is required to the Environmental Protection Act to standardize municipal spills response. However, the ministry agrees that transparency on spills response is important and will be reviewing the issues you raised about increasing transparency on how information about spills is shared with the public.

Ministry of the Environment and Climate Change's (MOECC) Preliminary Assessment of the Application:

Applicants' Request

The applicants have requested an Environmental Bill of Rights (EBR) review to assess the need for an amendment to the Environmental Protection Act (EPA) to include a

policy/procedure to standardize municipal spills response. The applicants have cited a single spill event that involved a spill to the Humber River in the City of Toronto. The applicants assessed the response to this spill event and noted several concerns to support their request for a new policy/procedure.

1. The Province lacks consistent spills responses and lacks data to prove protocols are being implemented properly

MOECC Response

Legislation outlining the responsibilities for reporting and spill cleanup is detailed in Part X of the EPA. With respect to the spill incident cited by the applicants, the following sections apply;

- a. Section 92(1) "Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto,
 - i. the Ministry;
 - ii. any municipality within the boundaries of which the spill occurred or, if the spill occurred within the boundaries of a regional municipality, the regional municipality;
 - iii. where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
 - iv. where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant."
- b. Section 92(4) outlines the requirement for notice to MOECC by the person investigating the spill.
 - i. "A member of a police force or an employee of a municipality or other public authority who is informed of or who investigates the spill of a pollutant shall forthwith notify the Ministry of the spill of the pollutant unless he or she has reasonable grounds for believing that such notice has been given to the Ministry by another person."
- c. In the spill cited by the applicants, MOECC Spills Action Centre was notified of the spill by the Toronto Fire Department.
 - i. In cases of spills, it is the role of the Spills Action Centre (SAC) to assess the nature and impact of the reported spill, ensure adequate spill response, liaise with other agencies (e.g. municipalities, cleanup companies, conservation authorities, etc., according to pre-established procedures and agreements) and dispatch MOECC resources if required.
- d. Section 93(1) of the EPA outlines the duty of the owner and controller of the pollutant in the cleanup of the spill.
 - i. "The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment."

- e. The owner and controller have the ability to contract various clean-up companies. Environmental Officers from the local MOECC District Office may attend the spill site to assess environmental impact, take samples, monitor cleanup and ensure compliance. In this role, the local Environmental Officer will confirm the spill has been cleaned up and the environment has been remediated.
 - i. In the spill cited by the applicants, an Environmental Officer from the Toronto District Office attended the spill site on June 2, 2014 and confirmed the cleanup was complete.
- f. MOECC involvement in each incident is documented and available to the public via Freedom of Information Act applications.

2. Municipal first responder's powers trump that of provincial agencies. Fire departments can use discretionary powers to delay communications. Delay can mean a spill caused by a municipal agency could be covered up or not reasonably handled. Delay can weaken evidence as solvents are allowed to flow downstream. Too little accountability at this level.

MOECC Response

- a. MOECC works collaboratively with various federal, provincial and municipal partners to support spill cleanup efforts. With respect to municipalities, MOECC can direct cleanup work to be completed and can lay charges if necessary, in accordance to several sections in Part X of the EPA.
 - i. As outlined above in parts 1 a, b and d the duty to report and clean up a spill also applies to municipalities. If a municipality does not report or clean up a spill that they are responsible for then there are consequences to their actions such as being charged by the ministry.
 - ii. Section 100 of the EPA outlines the rights of municipalities in spill response and the right to compensation. Spill response is a shared responsibility between the municipality and the province. Often times municipalities are first on scene and immediately begin containment and clean up.
 - iii. 100.1 "Where a pollutant is spilled, a municipality and a person or a member of a class of persons designated by the regulations, or any one or more of them, may do everything practicable to prevent, eliminate and ameliorate any adverse effects and to restore the natural environment
 - iv. A municipality or a person or member of a class of persons designated by the regulations has the right to compensation from the owner of the pollutant and the person having control of the pollutant for all reasonable cost and expense incurred in acting under subsection (1).
 - v. Additionally, EPA Sect 97 allows the Minister (typically through an Environmental Officer) to make an order to enact cleanup of a spill, and these order can be directed at municipalities if required.
 - vi. Failure or delay in reporting a spill is a contravention of the EPA and can result in charges being levelled against a municipality for failing to notify forthwith of a spill.

- 3. We need to create a comprehensive communication bridge to inform these agencies of fuel/oil/solvent spills in proximity to pipelines. They include: Spills Action Centre, National Energy Board (NEB), Transportation Safety Board (TSB), Conservation Authority, Municipal Fire Dept., Water Services and downstream communities.**

MOECC Response

- a. Notification agreements regarding spills and other environmental events are already in place in Ontario. These communication plans include all parties who could be involved in various spill events such as municipalities, Conservation Authorities, provincial agencies (e.g. Ministry of Transportation, Technical Standards and Safety Authority (TSSA), etc.), Environment Canada, Canadian Coast Guard, Transportation Safety Board, National Energy Board (NEB), and parallel agencies in the United States and other provinces.
- b. The MOECC has a strong working relationship with both provincial and federal agencies with respect to pipelines. There already exists a Memorandum of Understanding (MOU) for information sharing with the TSSA (Fuel Safety Branch), which regulates fuel storage sites and intra-provincial pipelines. The NEB regulates inter-provincial pipelines and there is an established procedure for addressing incidents involving federally regulated pipelines. Spills involving pipelines are subject to the requirements outlined in Part X of the EPA with respect to notification, cleanup, remediation, etc. SAC also has a MOU for information sharing with Environment Canada for a range of spill events, including pipeline spills and this spill information is shared with our partners on a daily basis.
- c. In the case that was cited in this application, following notification to SAC by Toronto Fire Services, the City was contacted by SAC to ensure they were aware of the incident (this included Toronto Water). In this case neither the NEB nor the Transportation Safety Board were notified by SAC as the spill was not from a regulated pipeline. If it had been determined that the contaminant was from a pipeline, procedures are already in place to notify these agencies as well as the owner of the pipeline.
 - i. With respect to the spill cited by the applicants, according to an email exchange between the applicants and the NEB, the NEB was notified of the spill by the Transportation Safety Board who had been alerted by a member of the public.

- 4. Using satellite technologies all agencies can see where spills are, where booms are placed and what intake or well-head zones need protection.**

MOECC Response

- a. Although all spills reported to SAC are checked using various mapping technologies to determine if they could impact water treatment plants (WTP), source water protection zones, sensitive receptors etc., there is no available technology to access real-time satellite coverage of spills events. MOECC relies primarily on on-site assessment by Environmental Officers, municipal agencies, etc. for spill assessment and cleanup monitoring. However, there are computer programs and systems

available at SAC such as the Geographical Information System (GIS), Google Earth. Source Water Protection Mapping and Spillman (for spills to the St. Clair River).

5. Add a list of how many booms are available, of what size. How many vac trucks are in use, or are available so folks can plan response collaboratively and ensure priority of cleanup, not cover-up.

MOECC Response

- a. It is the responsibility of the spiller to clean up a spill. If the person(s) responsible do not have response capabilities then a licensed spill contractor will be hired for the spill clean-up. In the case of municipalities, it would be their responsibility to ensure they have response capabilities. If they are unable to respond effectively, they may hire a spill contractor and/or request assistance from adjacent municipalities.
- b. If the person(s) responsible for a spill does not restore the natural environment as per the EPA, then they are in violation of the Act.
- c. Every municipality in Ontario is required under the Emergency Management and Civil Protection Act to have an Emergency Plan outlining response to major events, including spills. These plans are submitted annually to the Office of the Fire Marshal and Emergency Management.

6. A unified mass notification bridge with multi-channel networks with IP based system can avoid miscommunication, assure swift response, and reduce liability and damages while supporting clarity and due diligence.

MOECC Response

- a. SAC exists as a one-window reporting centre for all environmental and drinking water events in Ontario. For example, once a spill event is reported to SAC, Environmental Officers follow various procedures (depending on the type of spill) to ensure notification and deployment of response agencies, such as Public Health Units, Municipalities Works and/or Water Departments, TSSA etc.) and monitor the progress of the cleanup.
- b. Notification is typically by voice call to ensure receipt and understanding, although email is also used, depending on pre-established agreements with the parties involved.
- c. During major spill events, SAC coordinates with the Provincial Emergency Operations Centre (PEOC) to ensure effective passage of information between emergency services, environmental responders (MOECC, Environment Canada, TSSA, etc.) and other affected parties.

7. Having an online record of responses we can build upon successful efforts and advance the safety of these systems and spills response protocols.

MOECC Response

The ministry is committed to increasing transparency and agree that a review of how spill information is shared with the public is warranted. This review is to be completed by March 31, 2016.

- a. MOECC maintains a central record of spills responses in the Integrated Divisional System (IDS) database.
- b. This database is available across the MOECC and allows Environmental Officers to review spills across the province and compare them to a specific incident that they are dealing with, and advise cleanup companies and municipalities accordingly.
- c. The ministry continuously strives to increase effective spills response through the conduct of mock spill exercises (involving the MOECC and various municipal, provincial and federal agencies), conducting reviews and sharing information within the MOECC and with external response agencies for major spill events, etc.

Preliminary Consideration of the Application

The decision on the assessment of this EBR Application for Review has been delegated by the Minister of the Environment and Climate Change to the Assistant Deputy Minister (ADM) of the Operations Division.

The assessment was based on the evidence provided in the application and information already available to the ministry.

MOECC relied on section 67 of the EBR in its assessment of whether the public interest warrants an EBR review of the matters raised in the EBR Application.

Consideration of the Application under subsection 67(2) of the EBR

The following factors from subsection 67(2) of the EBR were considered in determining whether the public interest would be served by an EBR review:

MOECC statement of environmental values

The current legislation in place, specifically Part X of the EPA, provides sufficient direction to responsible parties, municipalities, employees of the MOECC, etc. to report and respond to spills to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.

Potential harm to the environment if the review is not undertaken

There is no foreseeable potential harm to the environment if this review is not undertaken.

Other matters the Minister considers relevant

None

The fact that matters sought to be reviewed are otherwise subject to periodic review

Every spill in the province is assessed and reviewed by an Environmental Officer and the notification, cleanup and remediation requirements as outlined in Part X of the EPA are assessed and appropriate feedback is provided to the responsible parties which would include municipalities, contractors, and private companies.

Further, the MOECC continuously strives to increase effective spills response through conducting mock spill exercises and reviewing and sharing information within MOECC and with external response agencies for major spill events.

Any social, economic, scientific or other evidence that the minister considers relevant

None

Any submission from a person who received a notice under section 66;

Not Applicable

The resources required to conduct the review

Not Applicable

Extent to which public had opportunity to participate in development of policy, Act, regulation or instrument in respect of which a review is sought

Not Applicable. A new policy/procedure is being recommended by the submitter.

How recently policy, Act, regulation or instrument was made, passed or issued.

Not Applicable. A new policy/procedure is being recommended by the submitter.

NOTE:

68. (1) For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II.

Exception

- (2) Subsection (1) does not apply where it appears to the minister that,
- (a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and
 - (b) the evidence was not taken into account when the decision sought to be reviewed was made.

Conclusion:

MOECC has completed its assessment of the EBR Application for Review. After careful consideration of the information available and the requirements of the EBR, the ADM of Operations Division has concluded that an amendment to the EPA to include a policy/procedure to standardize municipal spills response is not required. However, the ADM has agreed that a review of the transparency of spill response information to the public is warranted.

Preliminary Consideration of the Application

The decision on the assessment of this EBR Application for Review has been delegated by the Minister of the Environment and Climate Change to the Assistant Deputy Minister.

The assessment was based on the evidence provided in the application already available to the ministry.

The resources required to conduct the review

MOECC relied on section 67 of the EBR in its assessment of whether the public interest warrants an EBR review of the matter raised in the EBR Application.

Extent to which public had opportunity to participate in development of policy

Act regulation of instrument in respect of which a review is sought

How recently policy, Act, regulation or instrument was made, passed or issued

Not Applicable. A new policy, Act, regulation or instrument was made, passed or issued.

MOECC, etc. to report to the Minister of the Environment and Climate Change

NOTE: For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of application for review if the decision was made in a matter that the minister considers

Exception: (a) Subsection (1) does not apply where it appears to the minister that

(a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment, and

(b) the evidence was not taken into account when the decision sought to be reviewed was made.

Minister of the Environment and Climate Change