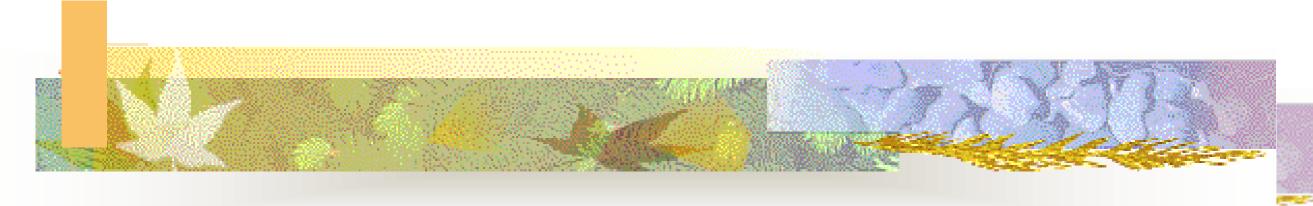
Compliance and Reporting



Environmental Compliance Essentials

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Overview

- Mandatory reporting
- Compliant reporting
- Protecting Information

Mandatory reporting

- What must be reported? Just about everything...
 - Routine air / water emissions (Fed / prov / munic)
 - Spills
 - Waste
 - Products, e.g.,
 - drinking water

Sources of reporting requirements

- Statutes & reßgulations (many!): e.g.,
- Environmental Protection Act
 - s. 13, 15, 92, 168.15
 - Airborne Contaminant Discharge Monitoring & Reporting Regulation (O.Reg. 127/01)
 - Emission Summary & Dispersion Modelling Reports (O.Reg. 419/04)
 - MISA

E.g. Reg. 419

- Must notify MOE: If air emissions *may* exceed air standard, guideline, upper risk threshold and / or *may* cause adverse effect
 - Must submit abatement plan within 30 days
 - Must submit ESDM report within 3 months of potential URT exceedence

More statutes

- Ontario Water Resources Act
- Safe Drinking Water Act
- Nutrient Management Act
- Toxics Reduction Act, 2009
- Pesticides Act
- etc.

Other sources

- By-laws
 - Toronto's Right to Know By-law
- Permits
 - Certificate of Approval, PTTW
- Orders
 - Control Orders, Provincial Officer Orders
- National Pollutant Release Inventory

Common issues

- Spill reporting
- Contaminated site reporting
- Engineer's professional obligation to report

Spill reporting

- What is a spill?
- Abnormal discharge out of a structure, vehicle or other container
 - of a pollutant
 - into the natural environment
 - that causes or is likely to cause an adverse effect

Is that a spill?

- No minimum quantity
- Need not leave property
- Odours or gas (not noise) can = spill
- Leaks
- Flyrock

Obligations

- Stop spill
- Report
 - To MOE, Municipality, owner of pollutant, AND person in control of pollutant,
 - Plus OHSA if impact on a worker
- Contain and clean up
 - Restore natural environment to the extent practicable
- Civil liability

Contaminated site reporting

- Is it a "discharge"?
- Is it a "spill"?
- Is it migrating?
- Is it a danger?

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Compliance

- A result
- Essential goal of good management
- Usually motivated by regulatory requirements
- Minimizes short and long term liability
- Can improve efficiency, save money
- Doesn't happen by accident

- Identify requirements, e.g.
 - Statute/ regulations
 - Special reporting requirements? e.g., MISA regulations apply
 - Emissions from equipment used?
 - Permits
 - CofA, other permits (e.g., PTTW, discharge permits)

- Detect what needs reporting
 - Monitoring
 - Internal reporting
 - Is someone checking the reports?
- On time

- Know how to report
- Just the facts, ma'am
- Never guess or speculate
- I don't know?

- Make it someone's job
- Do they know how to do it?
 - How do you know?
 - How can you prove it?
- Required reporting parameter(s)
 - Know all possible sources Don't be surprised!
 - Processes? (air, water, soil)
 - Suppliers?

- Keep good records
 - What did you report?
 - When?
 - Why?

- Audit
 - Is your system working?
 - Do you correct mistakes?
 - Do you learn from mistakes?

Environmental management system?

- Help make it all happen
- E.g. ISO 14001

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Report integrity

- Protected formats (e.g. locked PDF)
- Secure physical originals
- Encrypted transmission
- Controlled recipients
- Confidentiality agreements?

What can the MOE demand?

- Who's asking?
 - Provincial Officer powers
 - Inspector v. Investigator
 - Always ask who and why
- Asking for:
 - Documents?
 - Answers to questions?
 - Explanations?

MOE use of reports

- Assess compliance
- **■** Environmental Penalties
- Use in prosecution?
- Self-incrimination?
 - R. v. Soules

Solicitor / client privilege

- When to use
- What can it protect?
- How to assert?
- Instruction letter
 - "'privileged & confidential, for the advice of counsel"
 - Separate from payment
- Data / working papers / drafts / reports

Protecting privilege

- Treat as confidential
 - Control distribution and copying
- Keep the lawyer central
- Confidentiality agreements for third parties
- Buy time to fix the problem?

Public Access

- Mandatory public distribution, e.g.,
 - Toxics Reduction Act, 2009
 - Safe Drinking Water Act
 - Federal National Pollution Release Inventory (under *CEPA*, 1999)
- Legal proceedings (exhibits)
- FOI

FOI defence?

- Protected information?
 - Trade secrets?
 - Other proprietary information?
- Confidentiality claims?
 - Clearly marked?
 - Kept separate?
 - Justified?

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Questions?

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