

# 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 & regulations (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



# Compliant reporting 1

- 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)



# Compliant reporting 2

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





# Compliant reporting 3

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



# Compliant reporting 4

- 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?



# Compliant reporting 5

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



# Compliant reporting 6

## ■ 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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