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**TO:** CITY MANAGER **DATE:** 2016 June 20

**FROM:** DIRECTOR ENGINEERING **FILE:** 33200 04

**SUBJECT:** **SPILL PREPAREDNESS AND RESPONSE IN BC: PROPOSED AMENDMENTS TO THE *ENVIRONMENTAL MANAGEMENT ACT* AND PROPOSED REGULATIONS (IP3)**

**PURPOSE:** To provide Council with comments on the BC Spill Preparedness and Response Third Intentions Paper.

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**RECOMMENDATION:**

1. **THAT** a copy of this report be forwarded to:
  - a) Mr. Anthony Danks, Executive Director, Spill Response Regime Project, Ministry of Environment, PO Box 9342 Stn Prov Govt, Victoria, BC, V8W 9M1; and
  - b) the Environment Committee.

**REPORT****1.0 INTRODUCTION**

The Province released its third intentions paper on Spill Preparedness and Response in BC: Proposed Amendments to the *Environmental Management Act* and Proposed Regulations (see *Attachment #1*), and is seeking feedback from the public on specific considerations required in developing future regulations and policies in implementing the regime.

The purpose of this report is to provide Council with comments on the Province's third intentions paper, and upon receiving Council concurrence, submit the comments to the Ministry of Environment prior to its deadline of 2016 June 30.

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## **2.0 SPILL PREPAREDNESS AND RESPONSE IN BC: PROPOSED AMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT ACT AND PROPOSED REGULATIONS (IP3)**

Overall, staff generally support many of the elements of the proposed spill response regime outlined in IP3, including the ongoing emphasis on the polluter pay principle, the requirement of a responsible person to have spill response plans and restore the environment following a spill. However, several areas of concerns have been identified which requires further consideration by the Province as part of its ongoing efforts to establish a new spill preparedness and response regime in British Columbia.

### **2.1 World Leading Regime**

The Province has stated a number of times that the proposed spill response regime will be “world leading”. However, it is not clear how this will be the case as the proposed regime lacks critical details and has not been evaluated and compared to requirements of other spill response regimes around the world to demonstrate this to be the case.

### **2.2 Spill Reporting**

The intentions paper proposes standardization of type of information required in the spill report including setting of timelines for subsequent reporting and related updates. However, within these proposed requirements there is noted absence on requiring the polluter to provide the following information to the regulator:

- a) The total volume spilled. In absence of this critical information, subsequent claim of recovery by the polluter becomes highly questionable. This information, which should be provided within reasonable time as a requirement, must also be verified by the regulator or an independent third party for accuracy and be made available to the public; and
- b) Impacts to public lands and third party properties. Subsequent update should provide information on status of notification to the owners of public lands and/or third party properties regarding the spill and proposed mitigation measures which are proposed to be employed on impacted sites.

### **2.3 Response Times**

The intention paper identifies the need to have prescribed response times that a responsible person must meet in event of a spill.

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In reviewing some of the key milestones in Appendix B, it is staffs view that the Province should provide consideration on having prescribed response timelines for at least the following milestones: initial response, initiation of containment activities, assessment of shoreline and wildlife impacts, initiation of sampling and monitoring, and initiation of restoration.

#### 2.4 Sampling and Monitoring

The proposed framework intends to require sampling and monitoring as part of routine spill response actions but has yet to determine the best mechanism for circumstances in which these provisions would be required as sampling and monitoring depends on type of substance spilled, quantity of substance and/or location of the spill.

The proposed framework further identifies requirements for “large” events which include the requirement of the responsible person to retain a qualified professional to inform longer term spill response actions and decisions about potential recovery requirements. However, there is a lack of information on how these “large” incidents are defined. In addition, it is unclear as to the degree of oversight which would be provided by the regulator to ensure that sampling and monitoring program being proposed is sufficient to protect public health and the receiving environment.

#### 2.5 Preparedness

The Ministry, in its proposed framework, states that it will set a threshold (based on transportation, use or storage of prescribed substance at prescribed quantities) in determining a “regulated” person who will be required to meet the new preparedness requirements.

One of the prescribed quantities includes “any quantity of a prescribed substance being transported between two facilities by a pipeline a kilometre or more in length”. It is unclear as to how the facilities are defined from an ownership perspective (i.e. Should one interpret the facilities to be under one ownership or that each facility could also be owned by different owners in application of the threshold? In the latter case, would both of the facility owners be “regulated” persons?).

#### 2.6 Spill Contingency Plans

The intentions paper notes that the Ministry proposes to require regulated persons to develop spill contingency plans and have the plans reviewed and updated according to the frequency set in the regulation. However, in reviewing the circumstances under which the responsible person will be required to update the plan, it is noted that there is no requirement to update the plan if there is a reduction in assigned resources to implement the plan within the facility or when there is a change in ownership of the facility.

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## 2.7 Geographic Response Plans (GRP's)

Geographic Response Plans are currently not required or regulated in BC. As opposed to the Spill Response Plans which are more focused on operations a particular company, GRP's would focus on planning for spill response in a larger geographic area. The proposed framework would allow the Province to order the preparation of GRP's for designated areas to improve spill response efficiency or decrease spill risk. The GRP's which would contain specific tactics to guide response in the first 48-72 hours would be developed, reviewed, tested and updated collectively by regulated persons in the defined area. It is anticipated that the regulated persons would pool their resources to develop GRP through a third party such as a Preparedness and Response Organization. Due to the number of GRP's anticipated, the Ministry anticipates prioritizing areas for GRP based on: spill hazards; environmental sensitivities; cultural importance and critical infrastructure.

While the need for GRP's is recognized, it is noted that the process to develop, review and update the GRP's is industry driven. Without a strong oversight by the regulator there is concern on how public interest is protected.

Furthermore, discussion is required regarding the proposed establishment of the advisory committee (i.e. membership, composition, role, responsibility, accountability) to ensure meaningful, integrated and timely response to a spill event.

At this time, it is unclear as to how the provincially established GRP's will integrate with the federal GRP's and how the advisory committees in both cases could work together to achieve a real benefit. It appears that both the federal and provincial governments are working to establish area response plans but these processes are not convergent.

## 2.8 Preparedness and Response Organization (PRO)

The proposed framework would allow the Province to require all regulated persons to have an arrangement with a provincially certified Preparedness and Response Organization (PRO). A PRO would be responsible for creating an Area Response Plan. From the Provincial perspective, PRO would serve to be an integrator ensuring that preparedness and response activities meet the Provincial requirements through arrangements with contractors, industry, First Nations, local governments and other regulators. The framework proposes regulating various aspects of the establishment and operation of a PRO including: certification; qualifications and mandated services; planning; complaint mechanism to address issues relating to fee; and a regulated persons arrangement with a PRO. However, how PRO is structured or operated would be left to the organization to determine.

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PRO is central to the proposed framework. However, details regarding the governance of PRO are lacking. In addition given that the structure and operation of PRO is to be left to the organization to determine, it is imperative that there is a good oversight by the regulator to protect public interest.

Elsewhere in the intentions paper, it is noted that a Preparedness and Response Organization could not, amongst other things, replace the Ministry's Environmental Emergency Program or other provincial authorities with roles in spill response.

This requirement should be extended to local governments and the PRO should also not be able to replace local government roles and responsibilities in emergency response.

## 2.9 Recovery

The framework allows for the regulator to order the responsible person to prepare a recovery plan to resolve or mitigate the impacts of a spill after the initial clean-up effort has been completed. The framework also allows the issuance of a "certificate of recovery" to indicate that a recovery plan, where ordered, has been carried out. However, the framework does not elaborate on the process which would be used by the regulator to:

- a) Validate the claim from a responsible person that recovery actions are not feasible at the site of the spill as it would result in greater damage to the environment and may not support the best conservation outcome;
- b) Determine how compensation is derived for the residuals left on site;
- c) Determine the location of compensation area should it be at another location; and
- d) Determine "end points" for recovery efforts at which spill recovery and restoration efforts are determined to be effective and completed.

Furthermore, the framework needs to require a responsible person to provide compensation to the local government for loss of any use of local government resources such as, but not limited to, parks, roads and beaches as a result of the spill event.

## 2.10 Funding and Capacity

The framework notes that local governments are often the first parties on the scene when a spill occurs while at the same time are "lacking a sustainable financial incentive to support this role". The City requests the Ministry to remedy this situation and ensure that adequate funding is made available to compensate local governments for local resources used during response and restoration activities.

In addition to funding the local governments, the Ministry is requested to consider establishing a Liability Trust Fund to provide funding for spill event and related remediation when the responsible person cannot be identified or held accountable.

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### 3.0 CONCLUSION

Staff generally support many of the elements of the proposed spill response regime outlined in IP3, including the ongoing emphasis on the polluter pay principle, the requirement of a responsible person to have spill response plans and restore the environment following a spill. However, there are several key areas of concerns which have been identified in this report which requires further consideration by the Province as part of its ongoing efforts to establish a new spill preparedness and response regime in British Columbia.

*D. Dattani*

*L* - Leon A. Gous, P. Eng., MBA  
DIRECTOR ENGINEERING

Copied to: Deputy City Manager  
Supervisor Risk Management & Emergency Planning (C. Pflugrath)

DD:ac

Attachment