

**Spills Reporting -
A Guide to Reporting Spills and Discharges**

As required by the

**(Ontario) Environmental Protection Act
(s.92 and s.15)**

and

**Ontario Regulation 675/98
Classification and Exemption of Spills and Reporting
of Discharges**

May, 2007



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Spills Action Centre

Ontario Ministry of the Environment

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SPILLS AND DISCHARGES REPORTING

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(Ontario) Environmental Protection Act
(s.92 and s.15)

and

Ontario Regulation 675/98

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OTHER RELEVANT MINISTRY OF THE ENVIRONMENT DOCUMENTS:

- PLANNING FOR SPILL CONTINGENCIES - suggestions for industry and municipalities
- MOE's EMERGENCY RESPONSE PLAN
- ONTARIO REGULATION 224/07 – SPILL PREVENTION AND CONTINGENCY PLANS
- GUIDELINE FOR IMPLEMENTING SPILL PREVENTION AND CONTINGENCY PLANS

IN ONTARIO

REPORT

SPILLS (S.92 EPA) AND DISCHARGES (S.15 EPA)

TO THE

MINISTRY OF THE ENVIRONMENT'S

SPILLS ACTION CENTRE

1 - 800 - 268 - 6060

(TOLL-FREE, PROVINCE-WIDE, 24/7)

416 - 325 - 3000

(TORONTO AREA)

SPILLS MUST ALSO BE REPORTED TO THE

MUNICIPALITY IN WHICH A SPILL OCCURS

Spills and Discharges Reporting

1. INTRODUCTION

The Ministry of the Environment (“Ministry”) is responsible for achieving and maintaining environmental quality that will protect human health and the ecosystem, and will contribute to the well-being of the people of Ontario.

When a spill or a discharge of contaminants into the natural environment occurs, Canadian federal and provincial agencies that administer safety, transportation and environmental legislation and related programs generally hold the discharger responsible for dealing with problems created by the discharge. In Ontario, specific notification, cleanup and liability provisions for spills of pollutants are addressed in Part X of the (Ontario) *Environmental Protection Act*, R.S.O. 1990, Chapter E.19 (“EPA”).

Ontario Regulation 675/98 Classification and Exemption of Spills and Reporting of Discharges was amended to prescribe specific reporting details for both Part X spills and discharges that must be reported under s.15(1) of the EPA. Examples of such discharges would be pollutants seeping from a river bank caused by historical contamination or discharges such as sewage treatment plant bypasses occurring during storm events which may cause adverse effects.

The primary purpose of this Guide is to offer practical guidance of the reporting provisions for spills that must be reported under s. 92 of the EPA, discharges that must be reported under s.15(1) of the EPA and O. Reg. 675/98. Chapters 4 through 10 of this Guide discuss the various discharge reporting requirements and spill classification and exemptions for Part X spills.

2. THE ENVIRONMENTAL PROTECTION ACT, PART X, SPILLS

Part X was added to the EPA during the 1970s after the costs for the cleanup of a series of significant spills were left to the taxpayer. Subsequent litigation was based, in large part, on common law principles, because then-available environmental legislation did not definitively address duties and responsibilities for spills. The current Act devotes an entire segment to spills, Part X, and assigns clear reporting and cleanup duties. Part X also addresses other related topics including the rights of municipalities to respond, and rights of other parties affected by spills. The cornerstone of Part X is the definition of a spill and the reporting and cleanup duties of involved parties.

Part X of the EPA establishes three basic elements: the duty to report a spill, the duty to clean up, and accountability.

More specifically, s. 92 of the EPA requires the discharger to **report** a spill to the Ministry, to the municipality, where the discharger is not the owner, to the owner of the spilled pollutant, and under some circumstances to others. O. Reg. 675/98 further requires that the discharge telephone the Spills Action Centre (“SAC”) and provide information to the person who answers the call. In general terms, s. 92 of the EPA sets out that those who spill, those who cause or

permit a spill, and those who had control of the pollutant that spills, are made responsible for reporting the event to SAC as quickly as possible. Similarly, s. 92 of the EPA states that spills must also be reported as quickly as possible to the municipality in which the spill occurred.

Furthermore, under s. 93 of the EPA, there is a duty to contain and **clean up** the pollutant, and to restore the spill site to essentially pre-spill conditions where this can reasonably be expected. Those who had control of the spilled pollutant, and the owner of the pollutant, are both given responsibility for containment and cleanup where the spill causes or is likely to cause the adverse effects (as defined in s.1 of the EPA), regardless of contributing circumstances.

Section 99 addresses **accountability** by extending rights to third parties for the recovery of costs and expenses, as well as loss and damages, from the person who had control of the spilled pollutant and the owner of the pollutant spilled without having to prove fault or negligence. Another aspect of accountability, is that municipalities, under ss.100 and 100.1 of the EPA, are given the authority to respond to spills, the right to enter property for the purpose of response, and the right and a mechanism, the Municipality's Order, to recover costs from those the Act holds accountable for the spill. Finally, there is a mechanism (see ss. 94 and 97 of the EPA) that allows the Crown to intervene or pre-empt inadequate response efforts at the expense of those held accountable.

Other sections of Part X enhance, or rely on, the three basic elements: reporting, cleanup, and accountability.

3. DEFINITIONS

Several terms are defined specifically for the purpose of Part X. This Chapter will set out some of the most commonly used defined terms. Other Part X terms, as well as terms defined elsewhere in the EPA on which Part X relies, are reproduced in Annex I of this Guide. Terms that apply to other discharges reportable under s. 15(1) of the EPA are also included in Annex I.

A “spill” is defined in Part X to be a specific subset of discharges. A “spill” is a discharge into the natural environment, from or out of a structure, vehicle or other container, that is abnormal in quality or quantity in light of all the circumstances of the discharge. In more general terms, a spill is essentially any accidental, abnormal or inadvertent release of a pollutant discharged into the natural environment from or out of a man-made container. It is important to note that the definition of a spill itself does not include small quantity exemptions. Rather, these exemptions are found in O. Reg. 675/98.

Part X defines a “pollutant” to be a subset of the term “contaminant”. A “pollutant” is a contaminant other than heat, sound, vibration or radiation. A contaminant is defined in s. 1 of the EPA as any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect. Note that “adverse effect” is also defined in s.1 of the EPA (see Annex I for this and other relevant definitions).

4. SPILLS AND EPA SUBSECTION 15(1) DISCHARGES THAT MUST BE REPORTED

Part 2 of O. Reg. 675/98 is entitled Reporting of Discharges and prescribes the notification requirements for both ss. 15 and 92 of the EPA.

Section 92 of the EPA was amended by the *Environmental Enforcement Statute Law Amendment Act, 2005* (commonly referred to as Bill 133). Prior to the amendment, the obligation to report spills under s. 92 only applied to a spill of a pollutant that causes or is likely to cause an adverse effect. The amendment broadened the application of s. 92 by removing the reference to causes or is likely to cause an adverse effect. The section now applies to every spill of a pollutant. However, O. Reg. 675/98, discussed in Chapters 9 and 10 of this Guide, provides a number of exemptions to section 92. An important exemption provided in Ontario Regulation 675/98 permits a person, through the development of a spill prevention and contingency plan, to identify those spills that are not subject to 92 because they satisfy the regulation's requirements for "non-reportable" spills. The purpose of the exemption in combination with the amendment to section 92 is to encourage persons to develop spill prevention and contingency plans.

In the case of s.15 (1) of the EPA, a discharge must be reported if it is out of the normal course of events and it causes or is likely to cause an adverse effect (and the person is not otherwise required to notify the Ministry under s. 92 of the EPA). The discharger must determine whether the potential risks that arise from events such as storm related sewage bypasses (e.g. potential health impacts to downstream water users) meet the criteria in s.15(1) and need to be reported.

Cleanup requirements established under Part X arise for spills of pollutants that cause or are likely to cause adverse effects as defined by the EPA. Therefore, awareness of the potential adverse effects for substances that spill is important with respect to response. For instance, spills of oils into a creek may impact wildlife, vegetation and limit potential uses by the public.

5. WHO MUST REPORT SPILLS (s.92) AND DISCHARGES (s.15(1))

The reporting provisions of Part X of the EPA are found in Section 92 of the EPA. Section 92 imposes reporting duties on:

- a) the person that spills or who causes or permits the spill,
- b) the person who had control of the pollutant immediately prior to the spill, and
- c) police officers and employees of a municipality or other public authorities who may have been informed of or who are investigating a spill unless they have reasonable grounds for believing that such notice to the Ministry has been made (s. 92(4)).

The reporting provisions for s. 15(1) of the EPA place the reporting duties on the person who discharges or causes or permits the discharge of a contaminant. This person and persons described in a) and b) above are collectively referred to as the discharger in this Guide. The reporting details required of the discharger are found in Chapter 8 of this Guide.

Persons addressed in c) above are collectively referred to as persons in the public service in this Guide. Section 13 of O. Reg. 675/98 requires that these persons provide their name and telephone number and should attempt to provide the name and telephone number of the discharger. The only other details required of persons in the public service are the date and time of the spill or discovery of the spill and its location although it would be helpful if these persons also provided their best assessment of the consequences of the spill.

Chapter 6 of this Guide outlines in more detail who must report to whom, and uses examples to illustrate the circumstances under which these notification requirements apply.

6. WHO MUST BE NOTIFIED

Notification to the Ministry (ss. 15(1) and 92(1)(a) of the EPA),

Subsection 13(2) of O. Reg. 675/98 requires that reports must be made to the Ministry by speaking with a person at the Ministry's SAC. SAC operates 24 hours per day, every day of the year and is responsible for:

- receiving reports of spills and other events that require immediate reporting to the Ministry,
- determining the adequacy of reported spills response activities,
- facilitating or triggering a response where it appears the response is inadequate, and
- activating an Ministry field response (on-site assessment), as required.

A Province-wide, toll-free telephone number is available to industry and the public for the reporting of spills and other events that require the Ministry to be notified immediately, and for reporting other urgent environmental matters. The Centre's province-wide telephone number **800-268-6060** is widely advertised, as is its Toronto number **416-325-3000**.

Notification to the municipality (s. 92(1)(b) of the EPA)

In addition to notifying the Ministry, Part X of the EPA also requires every spill to be reported to the municipality in which the spill occurs. Larger municipalities advertise a telephone number for such reporting duties in local telephone directories. Smaller municipalities may direct such calls to their respective works or engineering department, while some municipalities may not have formalized a mechanism for receiving such reports. The responsibility for locating an appropriate municipal contact point in the event of a spill rests with the parties given notification responsibilities under Part X, namely, the person who spills or causes or permits the spill, and the person who had control of the pollutant immediately prior to the spill.

Notification to the owner (s. 92(1)(c) of the EPA)

Part X of the EPA requires that the person report the spill to the owner of the spilled pollutant if the person required to report is not the owner of the pollutant spilled. This reporting requirement would apply to the person who spills or who causes or permits the spill, and the person who had control of the pollutant immediately prior to the spill. Similar to other reporting provisions of Part X, the owner must be notified "forthwith". The reason for this notification requirement (notifying the owner) is that s. 93 of the EPA (the section that establishes response

and cleanup duties) holds both the owner and the person who had control of the pollutant immediately prior to the spill jointly responsible for cleanup.

An example of where the person in control of the pollutant that was spilled may be a different party to the owner is readily found in the transportation industry. By way of illustration, Part X holds both the transport operator involved in an accident in which something is spilled and the owner of the pollutant spilled as a result of that accident responsible for an appropriate and timely response and cleanup. In transportation accidents, the owner of any spilled cargo is most probably located far away from the spill site, while the transport operator involved is on-site. In this example, the requirement imposed on the transporter to notify the owner of the spilled pollutant ensures that the owner is given fair opportunity to become involved in response decisions as the owner of the spilled pollutant may be required to share the costs associated with any spill response.

Notification to the person in control (s. 92(1)(d) of the EPA)

For spills where the person who is required to report is not the person who had control of the pollutant immediately prior to the spill, Part X requires the person who spills, or causes or permits the spill, to notify the person who has control of the pollutant if he knows or is able to ascertain readily the identity of the person having control of the pollutant. This requirement is intended to ensure that the response required to be undertaken under Part X can be triggered by the parties given that responsibility, namely the person in control and the owner of the pollutant spilled.

For instance, if a subcontractor's equipment ruptures a tank or cracks a pipe at a facility, such as a bulk terminal, which then discharges a pollutant, Part X requires the equipment operator to notify forthwith the person in charge of the facility.

The above example also highlights that Part X addresses "persons". The reader should note that Part X addresses individuals, as well as municipalities, corporations and other organizations, and holds every person involved in a spill accountable for their actions.

7. WHEN TO REPORT SPILLS AND DISCHARGES

Both ss.15 (1) and 92 of the EPA, requires that notification be made "forthwith". Courts have interpreted this term to mean as quickly as possible under the circumstances.

In the case of Part X spills, the duties for the persons required to notify SAC and others come into force "immediately when the person knows or ought to know that the pollutant is spilled" (s. 92(2) of the EPA) but this does not mean that the spill needs to be reported immediately. Forthwith should be taken to mean without undue delay, that is, as soon as possible. Reasonable delay may include setting in motion mitigative measures such as initial efforts to stop or contain the spill, the notification of first responders and potentially affected parties, and the gathering, without pause, of information critical to the Ministry's understanding and assessment of the event.

It should be noted that there have been successful convictions for the failure to report spills “forthwith” where notifications were made a couple of hours after the spill. As such, it is generally recommended that notification be made as soon as possible, and in most cases, no later than a couple of hours after the duty to notify becomes effective.

It is strongly suggested that a first call to the Ministry, made as quickly as possible under the circumstances, is appropriate and satisfies the intent of Part X reporting requirements, even if only preliminary or sketchy details are initially available. Section 13(4) of O. Reg. 675/98 requires that the information listed in that section be provided “to the best of the person’s knowledge”. Additional information about the spill then must be reported as more details of the event become available (see ss. 13(5) and 13(6) of O. Reg. 675/98).

8. REPORTING

Part 2 of O. Reg. 675/98 sets out the information that must be provided when notifying the Ministry under ss 15(1) and 92 of the EPA. All information listed in s. 13(3) of the regulation must be provided to the Ministry. The information in s. 13(4) also must be provided, unless it qualifies under s. 13(6) as not being relevant under the circumstances of the discharge. Note that the onus is on the person reporting to demonstrate that information is not relevant.

The person notifying SAC should exercise judgement in determining the amount of information sufficient to make the first call to SAC. Note that not all of the information listed in ss. 13(3) and (4) of O. Reg. 675/98 need be provided at the time of the initial call. Subsection 13(5) allows for further information to be provided at a later time in order to satisfy the requirements of the regulation. The initial notification is intended to provide the Ministry and others with information to assess the Ministry’s role and the necessity of a response to the discharge; the information requirements are not intended to delay notification by the person reporting or to take away from the response to a discharge.

In the case of a spill, circumstances may dictate that additional information is required by the Ministry beyond what is provided for in the regulation. Section 92(3) of the EPA allows the Ministry to require this information to be provided at any time. The request for additional information may deal with more specific information regarding the pollutants or the circumstances of the spill beyond what is required by the regulation.

Persons who report spills under s.92 of the EPA and discharges under s. 15(1) of the EPA must fulfill the prescribed reporting requirements stipulated in Part 2 of O. Reg. 675/98, described in detail below. If the reporting party becomes aware of missing information that is required under O. Reg. 675/98 then the information must be provided forthwith (s.13(5) of O. Reg. 675/98). If initial information provided to SAC changes significantly then updated information must be reported forthwith upon this new information becoming known to the discharger (s.13(7) of O. Reg. 675/98). For example if a spill is initially reported as contained on-site but later information becomes available that some pollutants have escaped containment and entered a water course then this new information must be reported to SAC or as directed forthwith.

Mandatory Reporting Details

- The caller's name and telephone number and position within corporation or municipality if applicable.
- The location of the discharge.
- The date and time the discharge was discovered and, if known, occurred.
- The name, telephone number and role of each person contacted and/or responsible for coordinating a response to the discharge. (Not intended to include every crew member).
- The duration of the discharge and whether the discharge is continuing.
- The identity and quantity of the pollutants discharged and any known hazards of the pollutant or its constituents. Hazards may typically be found on the Material Safety Data Sheet (MSDS) for the pollutant.
- If the person required to notify is a "regulated person" under the EPA (i.e. is subject to O. Reg. 222/07 - Environmental Penalties), the person must identify whether the pollutant spilled is a "toxic substance" under that regulation.
- The location of the source of the pollutant and the best available information regarding the cause of the discharge. It is understood that information regarding cause may change and any significant revision should be reported as per s.13 (7) of O. Reg. 675/98. If the cause is not known when the spill is reported, then a description of the steps that are being taken or will be taken to determine the cause.
- A description of any adverse effects that occurred or may occur. These effects may include but not be limited to any personal or public safety or health threats, potential impacts to well or water intakes, impacts to private property offsite from the spill location, impacts to fish and wildlife habitat or flood plain areas, other environmental impacts, or any other of the adverse effects described in the EPA.

Reportable Details if Relevant

- A description of any conditions that aggravated or mitigated the adverse effects, or that may do so, including weather, surface water and groundwater conditions. Windspeed and direction may be particularly relevant to spills to air and precipitation may aggravate spills to land.
- If the discharge of the pollutant is to other properties, whether the owners or occupants of the properties affected by the discharge will provide access to a person who is required under the EPA or by an order to take steps to prevent, eliminate or ameliorate any adverse effects that are caused or may be caused by the discharge. For example If a spill of a liquid pollutant flows offsite from Company A to Company B property then Company A, the discharger, should be allowed access to Company B property to carry out their s. 93 EPA cleanup responsibility.
- Any other pollutants that were or may be discharged into the natural environment as a result of the circumstances that gave rise to the notification and any adverse effects that resulted or may result from the discharge of such pollutants. Examples would be a chemical reaction between a spilled pollutant and other stored materials or creating an unsafe environment for workers who are in care and control of hazardous materials or processes.
- Any actions that were taken or will be taken to prevent, eliminate or ameliorate any adverse effects, and if the discharge is a spill, any actions taken to satisfy the person's

duty under section 93 of the EPA and the name and telephone number of every person responsible for carrying out these actions. Where one person is coordinating the action of others only the name of the coordinator is required. As well, any circumstances, including weather or traffic conditions that may interfere with these actions.

9. CLASSIFICATION OF SPILLS O. Reg. 675/98

O. Reg. 675/98 classifies eleven types of spills, circumstances, industry type or activities, and exempts these, under specified conditions, from all or part of Part X duties and responsibilities.

Of the eleven classes of spills, three are exempted from Part X entirely, including reporting and cleanup requirements. Two additional classes of spills are exempted from all reporting requirements of Part X while other Part X duties and responsibilities remain for these two classes. The remaining six classes of spills are exempted from most Part X reporting requirements, and retain other Part X duties and responsibilities.

All eleven classes of spills created by O. Reg. 675/98 remove the requirement for police officers and all other public service or public sector employees to notify the Ministry.

All but two classes of spills created by the O. Reg. 675/98 carry a variety of conditions that must be met for the applicable exemption to apply.

O. Reg. 675/98 also encourages those who manage substances that may spill to evaluate potential risks within their operations and to develop appropriate spill contingency plans. A “Class X Spill” under O. Reg. 675/98 is one addressed in a spill contingency plan that meets certain standards for relatively small and manageable spills. The requirement for immediate reporting is waived for such spills. This encourages the development of acceptable spill contingency plans that establish reportable threshold quantities for some substances that might spill under certain conditions and where the impact of such a spill is minimized, for instance, by backup containment or secondary containment and other restraint mechanisms. Such contingency plans should facilitate decision-making processes for employees and others when spills occur. The development of these plans also offers those who may experience spills the opportunity to review the risks of their activities, to organize an effective response structure, and to train staff. All of this has the overall beneficial effect of facilitating spill prevention.

As of September 1, 2008, all Class X exemptions must comply with the requirement prescribed in the Spill Prevention and Contingency Plan regulation (“O. Reg. 224/07”). Prior to September 1, 2008, as part of the transition to O. Reg. 224/07, facilities have the option of seeking a Class X exemption using either the Canadian Standards Association standard CAN/CSA-Z731-03 (Emergency Planning for Industry), an equivalent standard approved by a Director as appropriate for the industry or by adhering to all the elements of O. Reg. 224/07, including s. 6(2).

A Part X reporting requirement summary, and a summary of the classification and exemption of spills introduced by O. Reg. 675/98, is offered in Annex II of this Guide.

10. REGULATION 675/98 CLASSIFICATION AND EXEMPTIONS

Class I: Approved Discharges

A Class I spill is a discharge of a pollutant that is approved by any Ministry approvals instrument, such as a certificate of approval, license or permit. Approved discharges are exempt from all of Part X of the EPA if all requirements in conjunction with the applicable approvals instrument are met, and the discharge does not contravene any other part of the EPA, other provincial or federal legislation, or municipal by-laws.

Assuming that no other regulatory mechanisms are contravened, Class I spills include such discharges as treated wastewaters in accordance with applicable approvals instruments, and the normal application of approved pesticides in an approved manner.

Class II: Discharge of Water

A Class II spill is a discharge of water caused by natural events from a man-made reservoir, or potable water released from municipal water mains. Discharges of water are exempt from all of Part X. This exemption removes all duties and liabilities associated with Part X for events such as the accidental release of water from reservoirs that might fail, and for accidental failures of municipal water mains.

The exemption from Part X of the EPA for a discharge of water from a reservoir applies to events where the resultant is an increase in the quantity of water downstream of the release, but the exemption does not apply to things or pollutants, such as silt, that may be carried by the released water. The release of water from municipal water mains is limited to potable water. Super-chlorinated water from water mains that may be released in disinfection efforts, and other maintenance, repair or testing practices that result in the release of water other than drinkable water, would not qualify for this exemption.

Class III: Household Fires

A Class III spill is a discharge of combustion products from fires of household materials. Class III spills apply to pollutants from fires where materials involved in the fire are of a quantity and quality that would normally be found in 10 or fewer households. Class III spills are exempt from all of Part X. This exemption is intended to remove the duties and responsibilities of Part X from events such as house fires and other relatively small fires, while maintaining these duties for fires (and really large fires) at industrial or chemical facilities, including fires that may occur in accidents within the transportation sector.

Class IV: Planned Spills

A Class IV spill is a discharge of a pollutant that has been pre-approved by the Ministry for one of two possible purposes. One type of pre-approved spill involves the unavoidable result of planned and essential maintenance of water systems as well as wastewater systems or pollution

REGULATION 675/98 CLASSIFICATION AND EXEMPTIONS (Continued)

abatement equipment. The other type of planned spill is a pre-authorized discharge for research or for training purposes.

Once the Ministry's consent has been obtained in advance of the planned release, these types of spills are exempt from all immediate reporting requirements under Part X of the EPA. All other Part X duties and responsibilities remain unaltered by the exemption.

An example of planned spill for water systems may involve routine and systematic cleaning of water mains. This is achieved by flushing and/or swabbing selected sections of water mains; a process that releases accumulated sediments and (normally) directs these to nearby storm drains. Of course, if the swabbing efforts result in the release of significant quantities of silt that threaten the receiving watercourse, the notification exemption would not apply. Examples of the second type of Class IV spill may involve the planned release of controlled and relatively small quantities of materials for research purposes, and where small quantities of substances such as coloured vegetable oils may be used in spill response training efforts or for periodic spill response exercises.

Class V: Refrigerants

A Class V spill involves refrigerants that are already regulated by the Ministry under O. Reg. 189/94. A Class V spill of less than 100 kilograms of a substance to which O. Reg. 189/94 applies is exempt from the reporting provisions of Part X of the EPA if there are no side effects at the site where the discharge takes place. Records of Class V spills must be maintained which, in combination with other regulated inventory controls, allows the Ministry to monitor these refrigerants.

Class VI: Motor Vehicles

Fluids under 100 litres, other than fluids transported as cargo, that may be released from the operating systems of motor vehicles, such as fuels or radiator fluids in motor vehicle accidents, are defined as Class VI spills. Since existing response systems to motor vehicle accidents take care to minimize the potential effect of such spills, it is not necessary for the Ministry to track these spills as well. Subject to three conditions, Class VI spills, therefore, are not required to be reported to the Ministry by the persons who own the vehicles involved nor by the police officers or other public servants who may investigate the event. The three conditions that must be met for the reporting exemption to apply are:

- the spill of operating system fluids does not enter and is not likely to enter directly or indirectly water or a watercourse, as defined by the *Ontario Water Resources Act*,
- the spill does not cause and is not likely to cause adverse effects other than those that are readily remediated through cleanup and restoration of surfaces prepared for vehicular traffic or adjacent paved, gravelled and sodded areas, and
- arrangements for remediation are made immediately.

REGULATION 675/98 CLASSIFICATION AND EXEMPTIONS (Continued)

The duty to notify the municipality, the owner and the person in control remain, as these requirements may apply to the circumstances of a Class VI spill. However, the municipality is

probably already notified if the spill is the result of a traffic accident. The requirement to notify the owner and person in control remains for events where the person who spills or caused the spill is a party other than the owner or person in control. All other Part X duties and responsibilities remain unaltered as well by the exemption.

Class VII: Electrical Utilities

A spill of mineral oil, other than a PCB liquid, of less than 100 litres from electrical transformers or capacitors owned by a municipal or provincial utility is classified as a Class VII spill. Subject to four conditions, Class VII spills need not be reported to the Ministry. Police officers or other public servants who may investigate or are otherwise aware of the spill also do not have to notify the Ministry. The four conditions that must be met for the reporting exemption to apply are:

- the spill of mineral oil does not enter and is not likely to enter directly or indirectly water or a watercourse, as defined by the *Ontario Water Resources Act*,
- the spill does not cause adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces,
- arrangements for remediation are made immediately, and
- records of the spill are maintained.

All other Part X duties and responsibilities remain unaltered by the exemption, including the duty to notify the municipality, the owner and the person in control as these requirements may apply to the circumstances of a Class VII spill.

Class VIII: Petroleum Sector

The spill of gasoline or an associated product of not more than 100 litres in areas restricted to the public, or not more than 25 litres in areas with public access, at a location defined as a bulk plant, marina, private outlet or retail outlet in O. Reg. 217/01 Liquid Fuels under the Technical Standards and Safety Act 2000, is classified as a Class VIII spill. Subject to four conditions, Class VIII spills need not be reported to the Ministry or to the municipality. Police officers or other public servants who may investigate or are aware of the spill also do not have to notify the Ministry. The four conditions that must be met for the reporting exemption to apply are:

- the spill of the gasoline or an associated product does not enter and is not likely to enter directly or indirectly water or a watercourse, as defined by the *Ontario Water Resources Act*,
- the spill does not cause adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces,
- arrangements for remediation are made immediately, and
- records of the spill are maintained.

REGULATION 675/98 CLASSIFICATION AND EXEMPTIONS (Continued)

All other Part X duties and responsibilities remain unaltered by the exemption, including the duty to notify the owner and the person in control as these requirements may apply to the circumstances of a Class VIII spill.

Class IX: Transportation of dangerous Goods

Spills of goods and materials regulated as “dangerous goods” by the federal *Transportation of Dangerous Goods Act* and parallel provincial legislation, where the spill is below the minimum quantity for immediate reporting according to applicable transportation rules, are classified as Class IX spills. Subject to four conditions, Class IX spills are exempted from the Part X reporting requirements as these duties apply to notifying the Ministry and the municipality. Police officers or other public servants who may investigate a Class IX spill also do not have to notify the Ministry. The four conditions that must be met for the Part X reporting exemptions to apply are:

- the spill of dangerous goods does not enter and is not likely to enter directly or indirectly water or a watercourse, as defined by the *Ontario Water Resources Act*,
- the spill does not cause adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces,
- arrangements for remediation are made immediately, and
- records of the spill are maintained.

All other Part X duties and responsibilities remain unaltered by the exemption, including the duty to notify the owner and the person in control as these requirements may apply to the circumstances of a Class IX spill.

Class X: Contingency Plans

A Class X spill is an accidental spill described as “non reportable” in an acceptable spill contingency plan. For Class X spills, spill contingency plans are currently acceptable if they adhere to the Canadian Standards Association standard CAN/CSA-Z731, Emergency Planning for Industry, an equivalent standard approved by a Director as appropriate for the industry or by adhering to all the elements of O. Reg. 224/07, including s. 6(2). As of September 1, 2008 Class X Contingency Plans must meet the requirements of the Ministry’s Spill Prevention Spill Contingency Regulation O. Reg. 224/07. Subject to several conditions, Class X spills need not be reported to the Ministry or to the municipality, and police officers or other public servants who may investigate the spill also do not have to notify the Ministry.

The conditions that must be met for the reporting exemption to apply are:

- the contingency plan is in effect before the spill,
- the spill is of a pollutant, and its associated quantity less than the reportable quantity, specified in the plan,
- the spill is not entering or likely to enter any waters (surface or groundwater)

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- the plan describes the spill as not likely to cause adverse effects, based on experience, other than adverse effects that can be readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces,
- the spill was not deliberate on the part of the owner or person in control,
- any concerns of the Ministry regarding the plan have been withdrawn by the Ministry before the spill,
- the plan will result in preventing adverse effects, other than those readily remedied through cleanup and restoration of paved, gravelled or sodded surfaces,
- arrangements for remediation are made and carried out immediately, and
- records of the spill are maintained for five years (commencing September 1, 2008).

All other Part X duties and responsibilities remain unaltered by the exemption, including the duty to notify the owner and the person in control as these requirements may apply to the circumstances of a Class X spill.

If adverse effects result and planned remediation is not effective or is not arranged and carried out forthwith as stipulated in the spill contingency plan, the reporting exemptions for Class X spills do not apply, and spills that would otherwise “not be reportable” must be then reported in accordance with s. 92 of the EPA requirements. In such eventualities, the Ministry must also be notified in writing within 30 days of the spill of corrective measures taken or the revisions made to the spill contingency plan to prevent the failure of the plan from recurring.

Class XI: One-Window Reporting

A Class XI spill is one that is reportable to more than one provincial or federal agency. Subject to three conditions, Class XI spills need not be reported to the Ministry, and police officers or other public servants who are aware of or may investigate the spill also do not have to notify the Ministry. The conditions that must be met for the reporting exemption to apply are:

- a memorandum of understanding exists between the Ministry and the other agency with respect to resolving duplicate reporting,
- the spill meets all conditions specified in the memorandum of understanding, and
- records of the spilled pollutant are maintained.

All other Part X EPA duties and responsibilities remain unaltered by the exemption, including the duty to notify the owner and the person in control, as well as the duty to notify the municipality, as these requirements may apply to the circumstances of the spill.

As of the date of this document, SAC serves as the contractual reporting desk for Environment Canada for events reportable to Environment Canada under the *Fisheries Act* and for matters subject to immediate reporting requirements under the *Canadian Environmental Protection Act*. The primary purpose of the arrangements between the Ministry and Environment Canada is to minimize duplicate reporting for similar types of events addressed by provincial as well as federal statutes. Thus, the notification of a spill, as defined in the EPA, made forthwith to SAC that is also an event within the reporting requirements of the *Fisheries Act* satisfies the reporting requirements of both statutes. SAC also takes reports on behalf of Environment Canada for

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matters reportable within Ontario under the *Canadian Environmental Protection Act*, thus notifications made to SAC effectively satisfies the reporting requirements applicable to all three statutes (within Ontario).

SAC also serves as the contractual reporting desk for Ontario's Technical Standards and Safety Authority ("TSSA") for a variety of events and mishaps reportable to TSSA. This includes spills that may occur at bulk terminals, service stations, etc., and that might otherwise be reportable to both agencies. The arrangements between SAC and TSSA effectively means that an event reportable to TSSA that is also a spill reportable to the Ministry would have been reported to both agencies with a single report made forthwith to SAC.

Annex I

Definitions of terms related to the EPA - Part X, Spills

Several words and terms are defined specifically for the purpose of Part X of the EPA. The following definitions are reproduced as presented in Part X, s, 91(1) of the EPA:

Section 91(1):

"municipality" means an upper-tier municipality, a lower-tier municipality or a single-tier municipality;

"owner of the pollutant" means the owner of the pollutant immediately before the first discharge of the pollutant, whether into the, natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "owner of a pollutant" has a corresponding meaning;

"person having control of a pollutant" means the person and the person's employee or agent, if any, having the charge, management or control of a pollutant immediately before the first discharge of the pollutant, whether into the natural environment or not, in a quantity or with a quality abnormal at the location where the discharge occurs, and "person having control of the pollutant" has a corresponding meaning;

"pollutant" means a contaminant other than heat, sound, vibration or radiation, and includes any substance from which a pollutant is derived ["contaminant" is defined in s. 1(1) of the EPA, see also page 15 of this Guide);

"practicable" means capable of being effected or accomplished;

"regional municipality" means the corporation of a metropolitan area, regional area or district area;

"restore the natural environment", when used with reference to a spill of a pollutant, means restore all forms of life, physical conditions, the natural environment and things existing immediately before the spill of the pollutant that are affected or that may reasonably be expected to be affected by the pollutant, and "restoration of the natural environment", when used with reference to a spill of a pollutant, has a corresponding meaning;

"**spill**", when used with reference to a pollutant, means a discharge,

into the natural environment,

from or out of a structure, vehicle or other container, and

that is abnormal in quality or quantity in light of all the circumstances of the discharge, and where used as a verb has a corresponding meaning;

"**substance**" means any solid, liquid or gas, or any combination of any of them.

Section 91(3):

"**Practicable**" In determining what is practicable for the purposes of this Part [Part X of the EPA], regard shall be had to the technical, physical and financial resources that are or can reasonably be made available.

Part X of the EPA also relies on several other words and terms which are defined in the general provisions of the EPA, namely in s. 1, and which apply to the entire EPA. Some of these words and terms are of particular importance to the spills component of the Act and are highlighted here for the benefit of the reader.

Section 1:

(1) In this Act,

"**adverse effect**" means one or more of,

- a) impairment of the quality of the natural environment for any use that can be made of it,
- b) injury or damage to property or to plant or animal life,
- c) harm or material discomfort to any person,
- d) an adverse effect on the health of any person,
- e) impairment of the safety of any person,
- f) rendering any property or plant or animal life unfit for use by man,
- g) loss of enjoyment of normal use of property, and
- h) interference with the normal conduct of business.

"**contaminant**" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

"**discharge**", when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak;

"inspection" includes an audit, examination, survey, test and inquiry;

"local municipality" means a city, town, village or township;

"Minister" means the Minister of the Environment;

"Ministry" means the Ministry of the Environment;

"municipality" means the corporation of a county, metropolitan area, regional area, district area, city, town, village, township or improved district and includes a local board thereof and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

"natural environment" means the air, land and water, or any combination or part thereof, of the Province of Ontario;

"person" includes a municipality as defined in this subsection;

Section 2

"Secondary discharge within building"

A contaminant that is discharged into the air within a building or structure as a result of the discharge of the same or another contaminant in another building or structure shall be deemed to be discharged into the natural environment by the owner or the person who has the charge, management or control of the contaminant discharged in the other building or structure.

ONTARIO MINISTRY OF THE ENVIRONMENT

SPILLS ACTION CENTRE

1 - 800 - 268 - 6060
(TOLL-FREE, PROVINCE-WIDE, 24/7)

416 - 325 - 3000
(TORONTO AREA)

Annex II

Ontario Regulation 675/98 - Classification and Exemption of Spills - Summary

| Class of spill | Nature or type of discharge, and circumstances or activity where Part X-related exemptions apply | Exemptions | Conditions that must be met for exemption to apply |
|----------------|---|---|---|
| I | <u>Approved discharge</u> ; authorized by and in accordance with a C of A, a provisional C of A., order, license, etc. | Exempted from all of Part X of the EPA** including reporting and cleanup. | ⇒ must have been in compliance with all orders or other requirements made under Ministry legislation; and ⇒ the spill does not contravene any other part of the EPA and other legislation including municipal by-laws. |
| II | <u>Discharge of water</u> ; water from reservoirs formed by dams where the discharge is caused by natural events, and potable water from water mains. | Exempted from all of Part X of the EPA** including reporting and cleanup. | ⇒ none |
| III | <u>Household fires</u> ; combustion products from a fire of materials in quantity not greater than normally found in residential properties of 10 or fewer households. | Exempted from all of Part X of the EPA** including reporting and cleanup. | ⇒ none |
| IV | <u>Planned spills</u> ; pre-authorized and unavoidable discharges involving planned maintenance procedures to water or waste systems, or pre-authorized discharges for research or training purposes. | Exempted from all reporting requirements of Part X of the EPA**. | ⇒ application for Ministry consent is made at least 15 days prior to the release or spill, and ⇒ adverse effects must be monitored and a report must be filed with the Ministry within 5 days of the spill. • With regard to obtaining prior Ministry consent: ◇ Ministry is required to give consent if potential risks and adverse effects are deemed acceptable, and ◇ Ministry may stipulate additional conditions. |
| V | <u>Refrigerants</u> ; a spill of less than 100 Kg of a substance to which O. Reg. 189/94 applies. | Exempted from all reporting requirements of Part X of the EPA**. | ⇒ no adverse effect to take place at location of discharge, ⇒ keep records. *** |

| Class of spill | Nature or type of discharge, and circumstances or activity where Part X-related exemptions apply | Exemptions | Conditions that must be met for exemption to apply |
|----------------|--|---|---|
| VI | <u>Motor Vehicles</u> ; spills of 100 litres or less of fluid, other than fluids transported as cargo, from fuel or other operating systems of motor vehicles. | Exempted from the requirement to notify the Ministry and from having to provide additional information to the Ministry. Police and other public servants need not notify the Ministry. The duty to notify the municipality in which the spill occurs as well as the owner and the person in control of the pollutant spilled remains. | ⇒ the spill does not enter and is not likely to enter directly or indirectly water or a watercourse, ⇒ the spill does not cause and is not likely to cause any adverse effects other than those that are readily remediated through cleanup and restoration of surfaces prepared for vehicular traffic or adjacent paved, gravelled or sodded areas, and ⇒ arrangements for remediation are made immediately. |
| VII | <u>Electrical utilities</u> ; spills of 100 litres or less of mineral oil, excluding PCB liquid, from transformers or capacitors owned by municipal or provincial utilities. | Exempted from the requirement to notify the Ministry. Also exempted from having to provide additional information to the Ministry. Police and other public servants need not notify the Ministry. The duty to notify the municipality, the owner and the person in control of the pollutant spilled, as applicable, remains. | ⇒ the spill does not enter and is not likely to enter directly or indirectly water or a watercourse, ⇒ the spill does not cause and is not likely to cause any adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces, ⇒ arrangements for remediation are made immediately, and ⇒ keep records. *** |
| VIII | <u>Petroleum sector</u> ; gasoline or associated product spills at a bulk plant, marina, and private or retail outlet of 100 litres or less in areas restricted from public access, and 25 litres or less in areas with public access. | Exempted from the requirement to notify the Ministry and the municipality in which the spill occurs. Also exempted from having to provide additional information to the Ministry. Police and other public servants need not notify the Ministry. The duty to notify the owner and the person in control of the pollutant spilled, as applicable, remains. | ⇒ the spill does not enter and is not likely to enter directly or indirectly water or a watercourse, ⇒ the spill does not cause and is not likely to cause any adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces, ⇒ arrangements for remediation are made immediately, and ⇒ keep records. *** |
| IX | <u>Transportation of dangerous goods</u> ; spilled goods or materials, otherwise regulated by the federal TDG Act and Regulations and the parallel provincial act and regulations, at a quantity below the minimum reportable as stipulated by the federal transportation rules. | Exempted from the requirement to notify the Ministry and the municipality in which the spill occurs. Also exempted from having to provide additional information to the Ministry. Police and other public servants need not notify the Ministry. The duty to notify the owner and the person in control of the pollutant spilled, as applicable, remains. | ⇒ the spill does not enter and is not likely to enter directly or indirectly water or a watercourse, ⇒ the spill does not cause and is not likely to cause any adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces, ⇒ arrangements for remediation are made immediately, and ⇒ keep records. *** |

| Class of spill | Nature or type of discharge, and circumstances or activity where Part X-related exemptions apply | Exemptions | Conditions that must be met for exemption to apply |
|----------------|--|---|---|
| X | <u>Contingency plans</u> ; accidental spills of materials below reportable quantities as specified in a contingency plan that meets CSA or other acceptable standards. (As of September 1, 2008 all Contingency plans must meet the requirements of the Ministry's Spill Prevention Spill Contingency Regulation). | Exempted from the requirement to notify the Ministry and the municipality in which the spill occurs. Also exempted from having to provide additional information to the Ministry. Police and other public servants need not notify the Ministry. The duty to notify the owner and the person in control of the pollutant spilled, as applicable, remains. | ⇒ the contingency plan is in effect before the spill, ⇒ the spill involves a material, and its associated quantity less than the reportable quantity, specified in the plan, ⇒ the spill is not entering or likely to enter any waters (surface or groundwater) ⇒ the plan describes the spill as not likely to cause any adverse effects based on experience, ⇒ the spill was not deliberate on the part of the owner or person in control, ⇒ any concerns of the Ministry regarding the plan have been withdrawn by the Ministry before the spill, ⇒ the plan will result in preventing adverse effects other than those that are readily remediated through cleanup and restoration of paved, gravelled or sodded surfaces, ⇒ arrangements for remediation are made immediately, and ⇒ keep records. *** |
| XI | <u>One-window reporting</u> ; spills reportable to more than one provincial or federal agency. | Exempted from the requirement to notify the Ministry immediately, but the Ministry retains the right to request information. Police and other public servants need not notify the Ministry. The duty to notify the municipality in which the spill occurs as well as the owner and the person in control of the pollutant spilled remains. | ⇒ the spill meets all conditions of the memorandum of understanding that exists between the Ministry and another agency with respect to resolving duplicate reporting of spills, and ⇒ keep records. *** |

Note: * The summary cannot reflect all details of O. Reg. 675/98. The reader is urged to review O. Reg. 675/98 in detail

** The term EPA in this summary refers to the *Environmental Protection Act*, R.S.O. 1990, c. E. 19.

*** Details of records to be prepared and kept for two years (5 years in the case of Class X spills as of September, 2008) as specified in s. 12 of O. Reg. 675/98 and include: date, time, location and duration of the release; identity and quantity of the pollutant; circumstances of the spill; containment and clean-up efforts utilized; disposal and re-use method used within compliance of s. 96 of the EP; and specifics of any adverse effect observed. Records for Class 5 spills, refrigerants, need only include: date, time, location and duration of the release; identity and quantity of the pollutant; and the circumstances of the spill. Spills not captured by O. Reg. 675/98 must be reported to the Ministry, to the municipality in which it occurred, and to others (s. 92 of the EPA).