

## ***New Changes to Canada’s Environmental Emergency Regulations***

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August 28, 2019

The new *Environmental Emergency Regulations, 2019* (“New Regulations”)<sup>1</sup>, enacted under the *Canadian Environmental Protection Act, 1999*<sup>2</sup>, came into force on August 24, 2019. The New Regulations replace and repeal the existing *Environmental Emergency Regulations* (“Current Regulations”)<sup>3</sup> that have been in force since 2003.

The New Regulations are the Government of Canada’s most recent step to improve environmental emergency preparedness and management in Canada. The New Regulations are designed to help mitigate the risk hazardous substances at land-based fixed facilities pose to the environment, human life, and human health.<sup>4</sup>

### **Key Changes**

The key change in the New Regulations is the consolidation and addition of substances listed in Schedule 1. The updated Schedule 1 includes 33 additional substances. With the addition of these new substances, there are now 249 substances listed in Schedule 1.<sup>5</sup>

The chemical manufacturing sector and petroleum sector will see the largest impact from the addition of the 33 new substances.<sup>6</sup> Overall, Environment and Climate Change Canada (“Environment Canada”) expects the changes to the New Regulations to regulate 200 additional parties.<sup>7</sup> These changes to the New Regulations will raise the number of regulated parties from 4,800 to approximately 5,000.<sup>8</sup>

### **What does this mean if you are a Regulated Party?**

Whether you are an existing or newly regulated party, the New Regulations introduce new requirements.

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<sup>1</sup> SOR/2019-51 [*New Regulations*].

<sup>2</sup> SC 1999, c 33.

<sup>3</sup> SOR/2003-307.

<sup>4</sup> Regulatory Impact Analysis Statement, (2019) C Gaz II, 540 (*Environmental Emergency Regulations 2019*) [Regulatory Impact Analysis].

<sup>5</sup> *Ibid* at 520. For full list of substances listed in Schedule 1 (*ibid* at 494-508).

<sup>6</sup> *Ibid* at 540.

<sup>7</sup> *Ibid* at 526.

<sup>8</sup> *Ibid* at 526-527.

If you have ownership, control, care of, or management of any substance listed in Schedule 1 at or above the specified thresholds, you must provide Environment Canada with substance and facility information.<sup>9</sup> This requirement includes providing Environment Canada with an environmental emergency plan if both the quantity and container capacity thresholds are met.<sup>10</sup>

#### Additional requirements for environmental emergency plans

Regulated parties that are required to provide an environmental emergency plan must ensure that their environmental emergency plan adequately addresses the potential emergencies that may arise at their facility. If an emergency occurs, these regulated parties are required to activate the appropriate procedures from their environmental emergency plans.<sup>11</sup>

#### Exercising of environmental emergency plans

Regulated parties are now required to conduct an annual simulation exercise. If an environmental emergency plan is required, regulated parties must conduct an annual simulation exercise for each of the applicable hazard categories at a facility. The exercise must use an environmental emergency described in the environmental emergency plan, and allow facility personnel to practice a simulated release of a substance.<sup>12</sup>

Regulated parties are also required to conduct a full-scale simulation every five years for at least one substance.<sup>13</sup>

#### New public notification measures

The New Regulations introduce additional requirements for notifying the public about environmental emergencies. Regulated parties have increased requirements concerning how they will communicate with the public in advance of, during, and after an environmental emergency. Regulated parties must include a description of their intended communication methods in their environmental emergency plans.<sup>14</sup>

#### New reporting requirements

The New Regulations require the periodic submission of notices with substance and facility information. Regulated parties that meet the applicable quantity or container capacity thresholds must provide a notice with substance and facility information every five years.<sup>15</sup> Regulated parties required to produce an environmental emergency plan must also submit notices every five years outlining the simulation exercises they conducted.<sup>16</sup>

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<sup>9</sup> *Ibid* at 521.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid* at 523-524.

<sup>12</sup> *Ibid* at 523.

<sup>13</sup> *Ibid* at 536.

<sup>14</sup> *Ibid* at 523.

<sup>15</sup> *Ibid* at 524.

<sup>16</sup> *New Regulations, supra* note 1, s 14.

Regulated parties must also submit a written report following a qualifying environmental emergency. A written report must only be submitted if “[a] release has or may have an immediate or long-term harmful effect on the environment, constitutes or may constitute a danger to the environment on which life depends, or constitutes or may constitute a danger in Canada to human life or health”.<sup>17</sup>

### Exclusions

The New Regulations contain several exclusion provisions. Examples of exclusions include:

- ◆ exclusions relating to substances contained within pipelines,
- ◆ substances used for on-site heating and power generation purposes, and
- ◆ substances regulated under the *Transportation of Dangerous Goods Act*.<sup>18</sup>

### Updated reporting system and implementation guidelines

Reporting under the New Regulations must be done online. All reporting will be conducted through an all-electronic reporting system.

Interested parties will be able to access updated implementation guidelines that will be posted to Environment Canada’s Environmental Emergencies Program website.<sup>19</sup> These guidelines will provide helpful information on mandated timelines, reporting requirements, and preparing environmental emergency plans.

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Document #: 1584135

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<sup>17</sup> Regulatory Impact Analysis, *supra* note 4 at 524.

<sup>18</sup> For the full list of exclusions see *New Regulations*, *supra* note 1, s 2(2).

<sup>19</sup> Environment Canada planned on having the updated implementation guidelines posted on the Environment Canada website prior to the New Regulations coming into force (Regulatory Impact Analysis, *supra* note 4 at 542). At the time of publication of this article, Environment Canada’s updated implementation guidelines were not yet available online.