

1985 BILL 269

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 269

POLLUTANT SPILLS ACT

MR. GURNETT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 269
Mr. Gurnett

BILL 269

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POLLUTANT SPILLS ACT

(Assented to , 1985)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) “adverse effects” means the effects, or any of the effects, mentioned in section 2(1)(a) to (h);
- (b) “Board” means the Environment Compensation Board established pursuant to section 11;
- (c) “discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;
- (d) “Minister” means the Minister of Environment;
- (e) “municipality” has the meaning ascribed to it in the *Municipal Government Act* and, in the case of an improvement district, means the Minister of Municipal Affairs;
- (f) “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;

(g) “person having control of a pollutant” means the person and his 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;

(h) “pollutant” means a contaminant other than heat, sound, vibration or radiation, and includes any substance from which a pollutant is derived;

(i) “practicable” means capable of being effected or accomplished;

(j) “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;

(k) “spill”, when used with reference to a pollutant, means a discharge,

(i) into the natural environment,

(ii) from or out of a structure, vehicle or container, and

(iii) that is abnormal in quality or quantity in light of all the circumstances of the discharge,

and when used as a verb has a corresponding meaning;

(1) “substance” means any solid, liquid or gas, or any combination of any of them.

(2) A discharge of a pollutant proscribed by the regulations at a location designated by the regulations shall be deemed to be in a quantity abnormal at the location.

(3) In determining what is practicable for the purposes of this Act, regard shall be had to the technical, physical and financial resources that are or can reasonably be made available.

(4) This Act does not apply to the disposal of animal wastes in accordance with normal farming practices.

(5) A reference in this Act to an owner of a pollutant or a person having control of a pollutant includes a successor, assignee, executor or administrator of the owner of the pollutant or the person having control of the pollutant.

2(1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant that,

- (a) causes or is likely to cause impairment of the quality or the natural environment for any use that can be made of it;
- (b) causes or is likely to cause injury or damage to property or to plant or animal life;
- (c) causes or is likely to cause harm or material discomfort to any person;
- (d) adversely affects or is likely to adversely affect the health of any person;
- (e) impairs or is likely to impair the safety of any person;
- (f) renders or is likely to render any property or plant or animal life unfit for use by man;
- (g) causes or is likely to cause loss of enjoyment of normal use of property; or
- (h) interferes or is likely to interfere with the normal conduct of business,

shall forthwith notify,

- (i) the Minister;
- (j) the municipality within the boundaries of which the spill occurred;
- (k) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owners of the pollutant; and
- (l) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant,

of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto.

(2) The duty imposed by subsection (1) comes into force in respect of each of the persons having control of the pollutant and the person who spills or causes or permits the spill of the pollutant immediately he knows or ought to know that the pollutant is spilled and is causing or is likely to cause adverse effects.

(3) The person required by subsection (1) to give notice and the owner of the pollutant shall give to the Minister such additional information in respect of the pollutant, the source of the pollutant and the spill of the pollutant as may be required by the Minister.

(4) A member of a police force or an employee of a municipality or other public authority who is informed of or who investigates the spill of a pollutant shall forthwith notify the Minister of the spill of the pollutant unless he has reasonable grounds for believing that such notice has been given to the Minister by another person.

Duty to act

3(1) The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause adverse effects shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effects and to restore the natural environment.

(2) The duty imposed by subsection (1) comes into force in respect of each of the owner of the pollutant and the person having control of the pollutant immediately the owner or person, as the case may be, knows or ought to know that the pollutant is spilled and is causing or is likely to cause adverse effects.

Directions by
Minister

4(1) Where a pollutant is spilled and the Minister is of the opinion that there are or are likely to be adverse effects as a result of the spill, and

(a) the Minister is of the opinion that neither the person having control of the pollutant nor the owner of the pollutant will carry out promptly the duty imposed by section 3;

(b) the Minister is of the opinion that the person having control of the pollutant or the owner of the pollutant cannot be readily identified or located and that as a result the duty imposed by section 3 will not be carried out promptly; or

(c) the person having control of the pollutant or the owner of the pollutant requests the assistance of the Minister in order to carry out the duty imposed by section 3,

the Minister may order any action to be taken to prevent, eliminate or ameliorate the adverse effects of the spill and restore the natural environment.

(2) No other Act, regulation, by-law, order, permit, approval or licence bars the employees and agents of the Minister from acting in a reasonable manner to carry out the orders given by the Minister under this section.

(3) The Minister need not hold or afford to any person an opportunity for a hearing before giving an order under this section.

Entry and
removal

5(1) For the purpose of carrying out any duty imposed or order or direction made or given and his employees and agents, may enter and have access through or over any building, structure, vehicle, land, water or air and may construct structures and use machinery, structures, materials, and equipment therein or thereon and may remove therefrom the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant.

(2) The rights set out in subsection (1) may be enforced by application without notice to a judge of the Court of Queen's Bench by a person, employee or agent referred to in subsection (1).

(3) Where the court, on an application under subsection (2), that there is reasonable ground for believing that it is necessary,

(a) to enter and have access through or over any building, structure, vehicle, land, water or air;

(b) to construct structures or use machinery, structures, materials or equipment therein or thereon; or

(c) to remove the pollutant or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant,

for the purpose of carrying out any duty imposed or order or direction made or given under this Act, the court may issue an order authorizing the person and his employees and agents or any one or more of them to act as mentioned in clauses (a), (b) and (c), or any of them, but every such action shall be taken between sunrise and sunset unless the court authorizes them or any of them to act at another time.

Disposal of
pollutant, etc.

6(1) No person, employee or agent exercising any authority under this Act shall dispose of or use any pollutant, or any matter, thing, plant or animal or any part of the natural environment that is affected or that may reasonably be expected to be affected by the pollutant except in accordance with an order of or direction by the Minister under this or any other Act.

(2) The Minister may give to any person, employee or agent mentioned in subsection (1), for the purposes of subsection (1) and may amend or revoke it.

Orders by
Minister

7(1) Where a pollutant is spilled and the Minister is of the opinion that there are or are likely to be adverse effects and that it is in the best interest of the public to make an order under this section, the Minister may make an order directed to one or more of the following:

- (a) the owner of the pollutant;
- (b) the person having control of the pollutant;
- (c) the owner or the person having the charge, management or control of any real property or personal property that is affected or that may reasonably be expected to be affected by the pollutant;
- (d) the municipality within whose boundaries the spill occurred;
- (e) any municipality contiguous to the municipality within whose boundaries the spill occurred;
- (f) any municipality that is affected or that may reasonably be expected to be affected by the spill of the pollutant;
- (g) any public authority;
- (h) any person who is or may be adversely affected by the pollutant or whose assistance is necessary, in the opinion of the Minister, to prevent, eliminate or ameliorate the adverse effects or to restore the natural environment.

(2) In an order under this section, the Minister may require the doing of everything practicable or the taking of such action as may be specified in the order in respect of the prevention, elimination and amelioration of the adverse effects and the restoration of the natural environment within such period or periods of time as may be specified in the order.

(3) The Minister need not hold or afford to any person an opportunity for a hearing before giving an order under this section.

Action by municipality or designated persons

8 Where a pollutant is spilled and causes or is likely to cause adverse effects, a municipality may do everything practicable to prevent, eliminate or ameliorate the adverse effects of the spill and to restore the natural environment.

Effect of compliance with duty or order, etc.

9 A person who in good faith and in reasonable manner, in carrying out or attempting to carry out,

- (a) a duty or right imposed by this Act; or
- (b) an order or direction by the Minister under this Act,

takes or refrains from taking any action shall not be convicted of any offence in respect of such taking or refraining from taking action.

Right to
compensation

10(1) In this section, “loss or damage” includes personal injury, loss of life, loss of use or enjoyment of property and pecuniary loss, including loss of income.

(2) The Crown or any person has the right to compensation,

(a) for loss or damage incurred as a direct result of,

(i) the spill of a pollutant that causes or is likely to cause adverse effects,

(ii) the exercise of any authority or the carrying out of or attempting to carry out a duty imposed or an order or direction made under this Act, or

(iii) neglect or default in carrying out a duty imposed or an order or direction made under this Act;

(b) for all reasonable cost and expense incurred in respect of carrying out or attempting to carry out an order or direction under this Act,

from the owner of the pollutant and the person having control of the pollutant, whether or not the owner or person was negligent.

(3) An owner of a pollutant or a person having control of a pollutant is not liable under subsection (2) if he establishes that he took all reasonable steps to prevent the spill of the pollutant or if he establishes that the spill of the pollutant was wholly caused by,

(a) an act of war, civil war, insurrection, an act of terrorism or an act of hostility by the government of a foreign country;

(b) a natural phenomenon of an exceptional, inevitable and irresistible character, or

(c) an act or omission with intent to cause harm by a person other than a person for whose wrongful act or omission the owner of the pollutant or the person having control of the pollutant is by law responsible,

or any combination thereof.

(4) Subsection (3) does not relieve the owner of the pollutant or the person having control of the pollutant,

(a) from liability for loss or damage that is a direct result of neglect or default of the owner of the pollutant or the person having control of the pollutant in carrying out a duty imposed or an order or direction made under this Act; or

(b) from liability, under subsection (2)(a), for cost and expense incurred or, under subsection (2)(b), for all reasonable cost and expense incurred,

(i) to do everything practicable to prevent, eliminate and ameliorate the adverse effects; or

(ii) to do everything practicable to restore the natural environment,

or both.

Board established

11(1) There is hereby established the Environment Compensation Board consisting of 5 members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall name one of the members of the Board to be chairman.

(3) Three members of the Board constitute a quorum.

(4) The members of the Board shall be paid such fees and receive such reimbursement of expenses as is ordered by the Lieutenant Governor in Council.

(5) The Board shall hear and determine all claims for compensation arising under this Act.

(6) A decision of the Board may be appealed on a question of law or jurisdiction to the Court of Queen's Bench, within 60 days of the Board rendering its decision.

(7) The Board may hold the Crown or any person wholly or partly responsible for the spill or consequences and may order contribution or indemnification by the Crown to any person.

(8) No person may claim compensation under this Act unless the claim is initiated within 2 years from,

(a) where the person commencing the action incurred loss or damage as a result of the spill of a pollutant, the date when the person knew or ought to have known of the loss or damage;

(b) where the person commencing the action incurred loss or damage as a result of carrying out or attempting to carry out or neglect or default in carrying out a duty imposed or an order or direction made under this Act, the date when the person knew or ought to have known of the loss or damage; or

(c) where the person commencing the action incurred cost and expense in respect of carrying out or attempting to carry out an order or direction made under this Act, the date when the person incurred the cost and expense.

Right to
compensation
from Crown

12(1) A person, other than a person referred to in subsection (2), entitled under section 10(2)(b) to compensation for reasonable cost and expense has the right, subject to the conditions prescribed by the regulations, to payment of such compensation from the Crown.

(2) Subsection (1) does not give a right to payment of compensation to,

- (a) the owner of the pollutant;
- (b) the person having control of the pollutant;
- (c) a person liable at law other than under this Act for loss, damage, cost or expense arising from the spill of the pollutant;
- (d) a person that has a right under a contract to payment of the reasonable cost and expense referred to in subsection (1),

or an employee or agent of any of them.

(3) The provisions of this section apply notwithstanding any other law or the provisions of any contract of insurance.

(4) The Minister shall determine the amount of compensation in accordance with the regulations.

(5) The decision of the Minister on a question of compensation may be appealed within 90 days to the Court of Queen's Bench.

Transportation
and storage of
pollutants

13 No person shall transport or store any pollutant that is designated in the regulations unless he has public liability or bonding in effect in the form and in the amount prescribed in the regulations.

Regulations

14 The Lieutenant Governor in Council may make regulations necessary for the carrying out of the purposes of this Act including but not limited to

- (a) prescribing forms;
- (b) setting conditions for compensation under section 12;
- (c) prescribing pollutants in respect of which insurance or bonding is required under section 13.

Crown bound

15 The Crown is bound by this Act.

Subject to
appropriation

16 Any expenditures, compensation or liabilities chargeable to public funds under this Act are contingent upon and are to be paid out of a separate appropriation of money to the purposes of this Act by the Legislature.

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*