

1998 BILL 6

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 6

DANGEROUS GOODS TRANSPORTATION AND HANDLING ACT

MR. MARZ

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 6
Mr. Marz

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1998

DANGEROUS GOODS TRANSPORTATION AND HANDLING ACT

(Assented to , 1998)

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Schedule

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

Definitions

1 In this Act,

- (a) “accidental release” means
 - (i) an unplanned or accidental discharge, emission, explosion, outgassing or other escape of dangerous goods or of any component or compound evolving from dangerous goods, or
 - (ii) an unplanned or accidental emission from dangerous goods of ionizing radiation that exceeds a level established under the *Atomic Energy Control Act* (Canada);
- (b) “Crown” means the Crown in right of Alberta;
- (c) “dangerous goods” means a product, substance or organism included by its nature or by the regulations in any of the classes listed in the Schedule;
- (d) “emergency response assistance plan” means a plan under section 21;
- (e) “federal Act” means the *Transportation of Dangerous Goods Act, 1992* (Canada);
- (f) “handling” means the loading, unloading, packing or unpacking of dangerous goods in or on a means of containment for the purposes of, in the course of or following transportation in or by a means of transport, and includes their storage in the course of such transportation;
- (g) “highway” means a highway as defined in the *Highway Traffic Act*;
- (h) “inspector” means a person or a member of a class of persons designated as an inspector under section 6(1);

- (i) “means of containment” means a container or packaging, or any part of a means of transport, that is or may be used to contain dangerous goods;
- (j) “means of transport” means
 - (i) an item of rolling stock within the meaning of the *Railway Act*, or
 - (ii) a vehicle within the meaning of the *Highway Traffic Act*;
- (k) “Minister” means the member of the Executive Council determined under section 16(1) of the *Government Organization Act* as the Minister responsible for this Act;
- (l) “offence” means an offence against this Act;
- (m) “prescribed” means prescribed or otherwise provided for by the regulations or, where so indicated, by the regulations under the federal Act;
- (n) “public safety” means the safety of human life, human health, property or the environment;
- (o) “safety mark” means a design or other thing prescribed under section 31(1)(i);
- (p) “safety requirements” means the requirements prescribed under section 31(1)(j);
- (q) “safety standards” means the standards prescribed under section 31(1)(k) or under the federal Act regulating the design, construction, equipping, functioning or performance of means of containment or facilities used or intended to be used in handling, offering for transportation or transporting dangerous goods;
- (r) “shipping record” means a record, including an electronic one, that relates to dangerous goods being handled, offered for transportation or transported and that describes or contains information about the goods;
- (s) “standardized means of containment” means a means of containment for which there is a safety standard;
- (t) “this Act” includes the regulations.

Application to Alberta Crown	2 Unless otherwise specified, this Act binds the Crown.
Prevalence over other legislation	3 In case of conflict with any other Act, except the <i>Alberta Bill of Rights</i> , the <i>Human Rights, Citizenship and Multiculturalism Act</i> or the <i>Financial Administration Act</i> , or with any regulations under any other Act, this Act prevails over that Act or those regulations unless the contrary is expressly declared in this Act or in another Act.
Intergovernmental agreements	4 Subject to the <i>Government Organization Act</i> , the Minister may enter into an agreement with the government of Canada or of a province with respect to the administration and enforcement of all or any of the provisions of this Act or the federal Act and the regulations under that Act, or both, including provision for any matters necessary for or incidental to the implementation, administration or enforcement agreed on and for the apportionment of any costs, expenses or revenues arising from the agreement.
Exemption by permit	<p>5(1) The Minister may issue a permit authorizing the conducting of an activity that would otherwise be contrary to this Act, if the Minister is satisfied that</p> <ul style="list-style-type: none"> (a) the manner in which the authorized activity will be conducted provides a level of safety at least equivalent to that provided by full compliance with this Act (other than this section), or (b) the authorized activity is necessary to deal with an emergency in which there is a danger to public safety. <p>(2) A permit issued under subsection (1)(b) may initially be given orally but must, as soon as possible afterwards, be issued in writing and in accordance with the prescribed requirements.</p> <p>(3) A permit given or issued under this section must specify</p> <ul style="list-style-type: none"> (a) the activity authorized by the permit, (b) the dangerous goods that are the subject of that activity, (c) the means of containment to be used in conducting the activity, and (d) all the persons who are permitted to conduct the activity. <p>(4) The permit may establish terms and conditions governing the authorized activity, non-compliance with any of which by any person invalidates the permit.</p>

(5) The Minister may revoke a permit issued under subsection (1)(a) only

- (a) if the Minister is not satisfied that the manner of conducting the authorized activity reaches the level of safety described in subsection (1)(a),
- (b) if this Act or the federal Act or the regulations under that Act, as the case may be, have been amended or reinterpreted since the issue of the permit so as to allow the activity regardless of the permit,
- (c) for non-compliance with any of the terms and conditions of the permit, or
- (d) if the Minister considers that public safety or other exigencies necessitate the revocation.

Inspectors -
designation,
jurisdiction
and certificate
of designation

6(1) The Minister may designate as inspectors persons or classes of persons whom the Minister considers qualified to act as such

- (a) for the purposes of this Act generally or of any of its specific provisions, and
- (b) either generally or as to specific classes of dangerous goods, places, facilities or means of containment or of transport.

(2) The Minister shall provide each inspector with a certificate of designation as an inspector in the prescribed form showing the purposes, classes of dangerous goods, places, facilities and means of containment and of transport, so far as applicable, for which the inspector is designated.

(3) Notwithstanding anything in this Act, an inspector is not authorized to act outside the restrictions in authority, if any, established in respect of that inspector under this section.

Powers of
inspectors -
generally

7(1) For the purpose of ensuring compliance with this Act, an inspector may

- (a) subject to section 8, at any reasonable time, stop, enter and inspect any means of transport and enter and inspect any facility if the inspector believes on reasonable grounds that on or in the means of transport or facility there are
 - (i) dangerous goods being handled, offered for transportation or transported,

- (ii) standardized means of containment,
 - (iii) books, shipping records, emergency response assistance plans or other documents that contain any information relevant to the administration or enforcement of this Act, or
 - (iv) computer systems that may be used to examine any information that is contained in or available to the computer systems and is relevant to the administration or enforcement of this Act,
- (b) open and inspect, or request the opening and inspection of, any means of containment if the inspector believes on reasonable grounds that it is being used to handle or transport dangerous goods or to contain dangerous goods offered for transportation,
 - (c) for the purpose of analysis, take a reasonable quantity of anything the inspector believes on reasonable grounds to be dangerous goods, and
 - (d) examine and make copies of any information contained in any books, shipping records, emergency response assistance plans or other documents, or in any computer systems, that the inspector believes on reasonable grounds contain any information relevant to the administration or enforcement of this Act.

(2) On entering any place or inspecting anything, an inspector shall show to the person in charge of the place or thing the certificate of designation issued under section 6, if the person requests proof of the inspector's designation.

Need for
warrant to
enter dwelling

8(1) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant.

(2) A justice may at any time sign and issue a warrant authorizing the inspector named in the warrant to enter a dwelling-place subject to any conditions specified in the warrant where, on an ex parte application, the justice is satisfied by information on oath that

- (a) the conditions for entry described in section 7 exist in relation to the dwelling-place,
- (b) the inspector has the requisite authorization to act under section 6, and
- (c) entry has been refused or there are reasonable grounds for believing that entry will be refused.

(3) The inspector who executes the warrant shall not use force unless the inspector is, or is accompanied by, a peace officer and the use of force has been specifically authorized in the warrant.

Detention of goods, etc., and other measures

9(1) Where an inspector believes on reasonable grounds that any dangerous goods are being handled, offered for transportation or transported in a manner that does not comply with this Act, the inspector may detain the dangerous goods until satisfied that they will be handled, offered for transportation or transported in compliance with this Act.

(2) Where an inspector believes on reasonable grounds that any standardized means of containment is being sold, offered for sale, delivered, distributed or used in a manner that does not comply with this Act, the inspector may detain the means of containment until satisfied that it will be used in compliance with this Act.

(3) The inspector may take any other measures necessary to remedy the non-compliance referred to in subsection (1) or (2), or direct any person who owns or has the charge, management or control of the dangerous goods or means of containment to take the necessary measures.

Certificate of inspection

10(1) Where an inspector opens anything for inspection, or takes a sample of anything that is sealed or closed up, the inspector shall provide the person who has the charge, management or control of the thing with a certificate in the prescribed form as proof that it was opened for that purpose.

(2) The person to whom, or for whose benefit, the certificate is provided is not liable, in any civil proceedings or in respect of any provincial offence, in respect of any act or omission of the inspector in the course of the inspection or taking of the sample, but is not otherwise exempt from compliance with this Act.

Obstruction of inspectors

11 When an inspector is exercising powers or carrying out duties under this Act, a person shall not

- (a)** fail to comply with any reasonable request of the inspector,
- (b)** knowingly make a false or misleading statement either orally or in writing to the inspector,
- (c)** except with the authorization of the inspector, remove, alter or interfere in any way with anything detained or removed by or under the direction of the inspector, or
- (d)** otherwise obstruct or hinder the inspector.

Actual or
imminent
accidental
release -
inspector's
powers

12(1) An inspector may take any measure referred to in subsection (2) where the inspector believes on reasonable grounds that it is necessary

- (a) to prevent an imminent accidental release of dangerous goods from a means of containment being used to handle or transport the dangerous goods, or
- (b) to reduce any danger to public safety resulting from an accidental release.

(2) The measures referred to in subsection (1) are

- (a) to remove or to direct a person described in subsection (3) to remove the dangerous goods or means of containment to an appropriate place,
- (b) to direct such a person to do anything else to prevent the release or to reduce any resulting danger, or to direct the person to refrain from doing anything that may impede the prevention of the release or the reduction of danger, or
- (c) to take any other measure described in section 7.

(3) A direction may be issued under subsection (2) to

- (a) any person who owns or has the charge, management or control of the dangerous goods or means of containment when or after the release occurs or becomes imminent,
- (b) any person who is responding to the occurrence or imminence of the release in accordance with an emergency response assistance plan approved under section 21, or
- (c) any person who causes or contributes to the occurrence or imminence of the release.

Actual or
imminent
accidental
release -
duties

13(1) Where an accidental release of dangerous goods in excess of a prescribed quantity or concentration occurs or is imminent from a means of containment being used to handle or transport dangerous goods, any person who at the time has the charge, management or control of the means of containment shall make a report of the occurrence or imminence of the release in the prescribed manner and containing the prescribed information to a prescribed person.

(2) A person who is required by subsection (1) to make a report shall, as soon as possible in the circumstances, take all reasonable emergency measures to reduce or eliminate any danger to public

safety that results or that may reasonably be expected to result from the release.

(3) A report under subsection (1) need not be made in such circumstances as are prescribed.

Liability where compliance with direction, etc.

14 Notwithstanding any other law, a person who is directed or required by or under section 9(3) or 12(2) to do or to refrain from doing anything is not liable in any civil proceedings nor guilty in respect of any provincial offence, in respect of any act or omission in the course of complying with the direction or requirement or doing any reasonable thing incidental to it, unless it is additionally shown that the act or omission was motivated by bad faith.

Recovery of costs and expenses

15(1) The Crown may recover costs and expenses reasonably incurred while taking any measures under section 9 or 12.

(2) The costs and expenses may be recovered on a joint and several basis from any persons who, through their fault or negligence or that of others for whom they are by law responsible, caused or contributed to the circumstances necessitating the measures.

(3) Proceedings in respect of a claim under this section may be instituted no later than 2 years after the cause of action arose.

Public inquiry in case of accidental release

16(1) Where an accidental release of dangerous goods from a means of containment being used to handle or transport dangerous goods has resulted in death of or injury to any person, danger to health or public safety or damage to any property or to the environment, the Minister may direct that a public inquiry be conducted in a manner indicated in the direction and may appoint any person the Minister considers qualified to conduct the inquiry.

(2) A person appointed under subsection (1) has, for the purposes of the inquiry, all the powers, duties and immunities of a commissioner appointed under the *Public Inquiries Act*.

Local authority bylaws

17(1) Subject to the regulations, a local authority within the meaning of the *Municipal Government Act* may make bylaws with respect to highways under its direction, control and management

(a) designating the route and time of travel of vehicles transporting dangerous goods,

(b) prohibiting the carriage of dangerous goods on those highways specified in the bylaw, and

(c) specifying restrictions or conditions to ensure the safe transportation in or by a means of transport, safe storage and controls necessary for public safety.

(2) A bylaw under subsection (1), including any amendment made to such a bylaw, does not come into force until it is approved by the Minister, and the bylaw ceases to have force 5 years after its commencement or after the effective date of a renewal of approval under this subsection, as the case may be, unless that approval has previously been renewed by the Minister.

Stop orders **18** The Minister may order a person engaged in handling, offering for transportation or transporting dangerous goods or supplying standardized means of containment to cease that activity or to conduct other activities to reduce or eliminate any danger to public safety if satisfied that the order is necessary to deal with an emergency that involves danger to the environment or to public safety and cannot be effectively dealt with under any other provision of this Act.

Prohibitions as to handling, offering or transporting goods **19** A person shall not handle, offer for transportation or transport any dangerous goods unless

- (a) the person complies with all applicable safety requirements,
- (b) the goods are accompanied by all applicable documents prescribed under section 31(1)(l), and
- (c) the means of containment and of transport comply with all applicable safety standards and display all applicable safety marks.

Prohibitions as to display of safety marks **20** A person shall not display a safety mark on a means of containment or of transport, or at a facility,

- (a) if the mark is misleading as to the presence of danger, the nature of any danger or compliance with a safety standard, or
- (b) if the mark is in conflict with the shipping record or shipping document describing or containing information relating to the goods.

Emergency response assistance plans **21(1)** Before offering for transportation any prescribed quantity or concentration of dangerous goods, a person shall have an emergency response assistance plan that is approved under this

section and that outlines what is to be done if there is an accident in transporting the dangerous goods.

(2) The Minister may approve the plan, either indefinitely or for a specified period, if the Minister believes on reasonable grounds that it is capable of being implemented and will be effective in responding to any accident in transporting the dangerous goods.

(3) The Minister may approve the plan pending an investigation of the matters to be considered under subsection (2) if the Minister has no reason to suspect that the plan is incapable of being implemented or will be ineffective.

(4) The Minister may revoke the approval if the Minister

(a) has requested changes to the plan that are believed on reasonable grounds to be needed to make it effective and the changes have been refused or have not been made, or

(b) believes on reasonable grounds that the plan is no longer capable of being implemented.

Requirement
for financial
responsibility

22(1) A person shall not handle, offer for transportation or transport dangerous goods unless the person is financially responsible to the extent and in the manner prescribed.

(2) A person who handles, offers for transportation or transports dangerous goods shall provide the prescribed proof of financial responsibility to an inspector who requests the proof.

(3) This section does not apply to the Crown.

Time limit for
prosecution

23 Proceedings under this Act may not be instituted later than 2 years after the day the offence is alleged to have been committed or, in the case of an offence of a continuing nature, after the day when the last occurrence of the offence is alleged to have happened.

Defence

24 Except where section 14 applies, it is a defence to a charge under any provision of this Act for the accused to establish that the accused took all reasonable measures to comply with that provision or with this Act generally.

Vicarious
liability of
employers and
principals

25 In any prosecution of an employer or of a principal for an offence, it is sufficient proof of the offence if it is proved to the satisfaction of the court trying the case that

- (a) the provision was contravened by an employee or agent of the accused while acting in the course of his employment or agency functions, and
- (b) the accused consented to or knew or should fairly be regarded as having consented to or having known about the circumstances giving rise to that contravention,

whether or not the employee or agent has been prosecuted for the contravention.

Liability of corporation officers, directors and agents

26 Where it is proved to the satisfaction of the court trying a case that a corporation has contravened any provision of this Act, whether or not it has been prosecuted for the contravention, an officer with executive authority or a director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the contravention by the corporation is also a party to and guilty of the offence relating to the contravention and is separately liable to the penalty provided for the offence.

Evidence - effect of certificate, report, etc.

27(1) In any prosecution for an offence, a certificate, report or other document, appearing to have been signed by the Minister or by an inspector, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

(2) In any prosecution for an offence, a copy made by an inspector under section 7 and appearing to have been certified under the inspector's signature as a true copy is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

(3) No certificate, report or copy shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced at least 7 days' notice of that intention together with a duplicate of the certificate, report or copy.

Onus of proof as to safety marks and shipping records

28 In any prosecution for an offence, evidence that a means of containment or of transport bore a safety mark or was accompanied by a shipping record is, in the absence of evidence to the contrary, proof of the information shown or indicated by the safety mark or contained in the shipping record.

Power of court
to make
orders on
conviction

29(1) Where a person is convicted of an offence, the court may make an order having any or all of the following effects:

- (a) prohibiting the person for a period of not more than one year from engaging in any activity regulated under this Act;
- (b) requiring the person to provide compensation, whether monetary or otherwise, for any remedial action taken or damage suffered by another person arising out of the commission of the offence;
- (c) requiring the person to do anything that will assist in repairing any damage to the environment arising out of the commission of the offence;
- (d) requiring the person to conduct programs of technical research and investigation into the development and improvement of safety marks, safety requirements and safety standards, or to pay an amount in the prescribed manner to be used to conduct the research.

(2) The court may make the order in addition to any other punishment imposed on the person and shall have regard to the nature and duration of the offence and the circumstances surrounding its commission.

(3) The total value of what the person may be required to do under subsection (1)(b) to (d) in relation to a single offence must not exceed \$1 000 000 or, in the case of an offence referred to in section 30(2), \$1 000 000 for the first calendar day, and the prescribed amount for each subsequent calendar day, on which the offence is held to have occurred.

(4) If the person contravenes the order, the person is guilty of an offence and liable to a fine not exceeding \$50 000 for a first offence and not exceeding \$100 000 for each subsequent offence.

Penalties

30(1) Subject to subsection (2) and section 29(4), a person who contravenes a provision of this Act is guilty of an offence and is liable

- (a) for a first offence, to a fine of not more than \$50 000 or to imprisonment for a term not exceeding 2 years, or to both the fine and imprisonment, and
- (b) for a subsequent offence, to a fine of not more than \$100 000 or to imprisonment for a term not exceeding 2 years, or to both the fine and imprisonment.

(2) Subject to subsection (3), where an offence of a continuing nature continued beyond a single calendar day, the person who committed the offence is additionally liable to the applicable penalty under subsection (1) or section 29(4) for each calendar day after the first one on which the offence is held to have continued.

(3) No one is liable to any additional term of imprisonment solely as a result of the application of subsection (2).

Regulations

31(1) The Lieutenant Governor in Council may make regulations generally for carrying out the purposes and provisions of this Act, including regulations

- (a) prescribing products, substances and organisms for the purposes of section 1(c);
- (b) establishing divisions, subdivisions and groups of dangerous goods and of the classes of dangerous goods;
- (c) specifying, for each product, substance and organism prescribed under clause (a), the class and, if applicable, the division, subdivision or group into which it falls;
- (d) determining or providing for the manner of determining the class and, if applicable, the division, subdivision or group into which any dangerous goods not prescribed under clause (a) fall;
- (e) exempting from the application of the whole or any specified portion of this Act the handling, offering for transportation or transporting of dangerous goods in any quantities or concentrations, in any circumstances, at any premises, facilities or other places, for any purposes or in any means of containment that are specified in the regulations;
- (f) providing for the manner of identifying any quantities or concentrations of dangerous goods exempted under clause (e);
- (g) exempting the Crown from any specified provision of the regulations;
- (h) declaring that another Act or regulations under it prevail over the regulations, for the purposes of section 3;
- (i) establishing designs, symbols, devices, signs, labels, placards, letters, words, numbers or abbreviations, or any combination of those things, of general or particular

application, as safety marks and requiring that they be displayed

- (i) on dangerous goods or on the means of containment or of transport used in handling, offering for transportation or transporting dangerous goods, or at facilities used in those activities, and
 - (ii) to show the presence and the nature of the danger or to indicate compliance with the applicable safety standards for the goods, means of containment or of transport or facilities;
- (j) establishing requirements of general or particular application for handling, offering for transportation or transporting dangerous goods, for reporting those activities, and for training persons engaged in those activities;
- (k) establishing standards of general or particular application regulating the matters specified in section 1(q);
- (l) establishing shipping records and other documents that must be used in handling, offering for transportation or transporting dangerous goods, the information that must be included in those documents and the persons by whom and the manner in which they must be used and kept;
- (m) prescribing forms for the purposes of this Act;
- (n) fixing the form, amount, nature, class, terms and conditions of insurance or bonds that must be provided and carried by persons handling, offering for transportation or transporting dangerous goods;
- (o) specifying circumstances in which the handling, offering for transportation or transporting of dangerous goods is prohibited;
- (p) specifying dangerous goods that must not be handled, offered for transportation or transported in any circumstances;
- (q) governing the route and time of travel of vehicles transporting dangerous goods on highways;
- (r) respecting the qualification, training and examination of inspectors and the manner in which inspectors must carry out their duties under this Act;

- (s) respecting the manner of applying for, issuing and revoking permits under section 5 or approvals of emergency response assistance plans under section 21;
- (t) providing for the appeal or review of a refusal to issue a permit or approval referred to in clause (s) or a revocation of it;
- (u) providing for the notification of persons directed or ordered to do anything under section 9, 12 or 18, for the effect, duration and appeal or review of those directions or orders of and for any other incidental matters;
- (v) prescribing any matter or thing that by this statute may or is to be prescribed by the regulations.

(2) Any regulation made under subsection (1) may adopt by reference, in whole or in part and with any changes that the Lieutenant Governor in Council considers necessary, any code or standard, or any regulation made under an Act of the Parliament of Canada, and may require compliance with any code, standard or regulation that is so adopted.

Transitional -
local authority
bylaws

32 Notwithstanding section 17, where, at the time this section comes into force, there is in force in the geographical jurisdiction of a local authority referred to in section 17 a bylaw dealing with dangerous goods routes, the bylaw continues in force for 5 years from that time and then ceases to have force unless approved for renewal under section 17(2).

Repeal

33 The *Transportation of Dangerous Goods Control Act* is repealed.

Coming into
force

34 This Act comes into force on Proclamation.

SCHEDULE (Section 1(c))

Class 1 – Explosives, including explosives within the meaning of the Explosives Act (Canada)

Class 2 – Gases: compressed, deeply refrigerated, liquefied or dissolved under pressure

Class 3 – Flammable and combustible liquids

- Class 4 – Flammable solids; substances liable to spontaneous combustion; substances that on contact with water emit flammable gases
- Class 5 – Oxidizing substances; organic peroxides
- Class 6 – Poisonous (toxic) and infectious substances
- Class 7 – Radioactive materials and radioactive prescribed substances within the meaning of the Atomic Energy Control Act (Canada)
- Class 8 – Corrosives
- Class 9 – Miscellaneous products, substances or organisms considered by the Governor in Council under the federal Act to be dangerous to life, health, property or the environment when handled, offered for transportation or transported and prescribed under the federal Act to be included in this class in the federal Act.