



## FACT SHEET: Reporting Contamination and Protecting Whistleblowers

This fact sheet is intended to provide information on when to report a spill or contamination and what protections are available to those people who report.

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### **When do I report a spill or contamination?**

In Alberta, a substance release that causes or may cause an “adverse effect” must be immediately reported to Alberta Environment. This is set out under Alberta’s *Environmental Protection and Enhancement Act (EPEA)*. Adverse effect means impairment or damage to the environment, human health or safety or property. Adverse effect can sometimes be difficult to determine, so it is best to report the spill or contamination to Alberta Environment so they can determine whether it may cause, is causing or has caused an adverse effect.

Alberta has a *Guide to Release Reporting*, which provides examples of some substance releases and reporting obligations. The *Guide* includes lists of substances and quantities that will trigger reporting requirements. The gray area is when you are unable to determine the quantity of the substance released and have to make a determination whether the release causes an adverse effect.

Again, if you have any doubt, you should err on the side of reporting the release to Alberta Environment.

## **Who is required to report?**

Under *EPEA*, the legal obligation to report is on:

- the person who releases, causes or permits the release of the substance;
- the person having control of the substance released; and
- a police officer or public authority who investigates the release.

However, any person who is aware of a substance release can report it to Alberta Environment if they believe the release causes an adverse effect.

## **How do I report?**

Releases must be immediately reported to Alberta Environment by phoning 1-800-222-6514 (24 hour, toll-free number). You will be asked to provide information about the release such the location and time of the release, the type and quantity of the substance released and details about any action taken at the release site. A reference number will be given to you to confirm that the report was made.

Alberta Environment may ask you to submit a more detailed written report within seven days of your initial reporting.

## **I am concerned about contamination on a neighbouring property, can I report this?**

Anonymous tips can be made to Alberta Environment on the complaint line at 1-800-222-6514 (24 hour, toll-free number). When Alberta Environment receives tips on this line, they normally investigate. However, the department has no obligation to investigate or to report back any results to you. Alberta Environment may ask you to submit a more detailed written report within seven days of your initial reporting.

If you want to be assured your complaint will be investigated and that you are advised of the results of the investigation, you can make an application to investigate under *EPEA*. Any two adult residents of Alberta, over the age of 18, can apply to Alberta Environment to investigate an alleged offence of *EPEA* such as a substance release. The application must contain a statutory declaration. This is an oath made before a commissioner and includes the names of the applicants; information about the alleged substance release and whom you allege is responsible for the release; and a statement of the facts and evidence supporting the allegation. Alberta Environment must investigate any matters arising from an application and must report to the applicants on the progress within 90 days.

## **What happens after a report is made?**

Alberta Environment will usually investigate and may take actions to ensure that the release is contained and cleaned up. A decision will also be made whether the person responsible for the substance release will be charged and prosecuted for violating *EPEA*.

## **What can happen if I don't report?**

If you have a legal obligation to report the release (which means you are the person who released the substance, had control of the substance released, or are a police officer or public authority who investigated the release) you can be charged for failing to report. Failing to report a substance release that causes an adverse effect is an offence under *EPEA*. If convicted, this offence is punishable by fines of up to \$50,000 for an individual and \$500,000 for a corporation, or even jail time.

## **Are all releases reported to Alberta Environment?**

Alberta Environment receives reports about the majority of spills and contamination within the province, but in some cases reports must also be made to another body.

For example, oil and gas releases from wells or pipelines should be reported to the Alberta Energy and Utilities Board (EUB) field centre closest to the release. Contact numbers for the EUB field centres are located on the EUB website at <http://www.eub.ca/> or by calling the EUB at 403-297-8311. The EUB requires the reporting of any release in excess of 2m<sup>3</sup> of product on the area covered by the surface lease. Any release that occurs off-lease, from a pipeline or that may cause an adverse effect must be reported regardless of the amount released.

There are some special rules for reporting substances in transport. For instance, substances regulated under the *Dangerous Goods Transportation and Handling Act* and its regulations must be reported to Alberta Transportation. Certain explosive or radioactive substances listed in the schedule to the *Transportation of Dangerous Goods Act, 1992 (Canada)* must be reported to Transport Canada.

Substances considered “toxic” which are listed under Schedule 1 of the *Canadian Environmental Protection Act, 1999 (CEPA)* must be reported to Environment Canada. This list includes toxic substances such as lead, mercury, vinyl chloride and over 80 other substances. The list of toxic substances is found on the Environment Canada website [http://www.ec.gc.ca/CEPARRegistry/subs\\_list/Toxicupdate.cfm](http://www.ec.gc.ca/CEPARRegistry/subs_list/Toxicupdate.cfm). The contact number of Environment Canada’s Alberta office is (780) 951-8600.

Certain flammable or combustible liquids identified under the *Alberta Fire Code* must be reported to the safety codes officer at the fire department. The owner must report if the quantity exceeds 50 litres or is sufficient to cause a sheen on nearby surface water. Any person must report if they are aware of a flammable or combustible liquid in a monitoring well or water well, or in soil, groundwater, surface water, sewer lines, utility lines, water supply lines, basements, crawl spaces or on the ground surface. It is important to note that certain reporting obligations under the *Alberta Fire Code* extend not only to owners, but also to any person who knows about the spill or leak.

Finally, some environmental spills or contamination can raise health concerns. The *Public Health Act* allows regional health authorities to vacate, condemn or put other controls on properties that are associated with a “nuisance” or a

condition that is or that might become injurious or dangerous to public health. Regional health authorities have an important role to play with respect to regulating properties that may be unfit for habitation, such as those associated with toxic mould. Your regional health authority should be contacted if you have health concerns arising from a spill or contamination.

## **What is a whistleblower?**

“Whistleblower” refers to a person who discloses information about something occurring in business or government that he or she believes is against the law. It usually applies to employees of a company or the government that want to report a wrongdoing on behalf of their employer.

## **What protections exist for whistleblowers?**

*EPEA* contains no specific protections for whistleblowers.

*CEPA* protects federal government employees who report releases of certain substances to Environment Canada. It provides no protection for employees outside of the federal government.

## **Can my employer fire me if I report?**

Even though you are not protected by *EPEA*, your employer is not free to fire you if you report a spill or other contamination. The main protections for whistleblowers are those that exist for anyone wrongfully dismissed from their job.

If you are a unionized employee, then your collective agreement may impose conditions for dismissal. Usually, it will require just and reasonable cause. Your union representative will be able to provide you with further information about your specific collective agreement.

Other employees may be covered by the *Canadian Labour Code*. This statute covers all employees in federally regulated sectors including navigation and

shipping, railways, airlines, banks and radio. Employees of these sectors cannot be terminated without just cause.

Various other sectors are covered by specific legislation such as the *Colleges Act* or the *School Act*. Most of these occupations will have a union or association, which will have more information on employee's rights.

If you have an employment contract that sets out conditions for dismissal, you may be able to sue for breach of contract if these conditions were not met.

If none of the above applies to you, you still have some protection under employment standards legislation. In Alberta, this is called the *Employment Standards Code*. The *Code* will set out minimum notice requirements for termination, but will not prevent an employer from terminating you without cause.

If you are considering suing your employer for wrongful dismissal, you should first speak with a lawyer to discuss your case.

## **Where can I get more information?**

For general information about spill reporting and whistleblower protection, please contact the Environmental Law Centre. Further resources are included below.

Environmental Law Centre Library Resources and Online Catalogue:

Alberta Environment. *Release Reporting Guideline* (Edmonton: Alberta Environment, 1995).

Online Articles:

Morris, Regan. "Release reporting requirements" (2002) 17:3 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=756>>.

Kruhlak, Ron. "Contaminated land: when should we tell?" (1999) 14:2 *Environmental Law Centre News Brief* 11, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=642>>.

## Additional Online Resources:

Alberta Environment, online:

<<http://www3.gov.ab.ca/env/protenf/compliance/releases/index.html>> - this website provides information on reporting spills, releases, and emergencies to Alberta Environment. It also provides a link to *A Guide to Release Reporting* as well as a Release Reporting fact sheet.

Alberta Labour Relations Board, online:

<<http://www.alrb.gov.ab.ca/>> - this website provides general information on worker's rights in unionized workplaces.

Alberta Human Resources and Employment, online:

<<http://www3.gov.ab.ca/hre/employmentstandards/>> - this website provides general information on the *Employment Standards Code* and how to contact the Employment Standards Branch.

## **A word of caution about your use of this material**

The information provided in this fact sheet is current to December 31, 2006. While every effort has been made to ensure the accuracy and timeliness of the information, the information provided is of a general nature and is not a substitute for legal advice. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this document.

## **The Environmental Law Centre**

The Environmental Law Centre (Alberta) Society is a registered charitable organization that was incorporated in 1982 to provide Albertans with an objective source of information on environmental and natural resources law. The

## **ENVIRONMENTAL LAW CENTRE**



Centre, which is staffed by four full-time lawyers, a librarian and a small support staff, provides services in environmental law education, assistance, research and law reform. The Centre maintains an extensive library of environmental law materials that is accessible by the public free of charge.

Funding for the Environmental Law Centre is provided by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Centre's objectives.

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