



SPILLS UNDER THE ONTARIO ENVIRONMENTAL PROTECTION ACT

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In order to properly understand the regime of spill reporting and requirements for immediate abatement, it is necessary to understand the concepts and definitions contained in section 91 of the *Environmental Protection Act* including:

1. owner of the pollutant
2. person having control of the pollutant
3. pollutant

It is important to note that not every discharge constitutes a spill. The defining characteristic of a spill is that it constitutes an abnormal discharge out of a structure, vehicle or other container. A discharge is broadly defined and includes concepts such as “add, deposit, leak or emit” and may occur by way of noise, vibration, odor or any other impact caused by a human activity.

The Act’s treatments of spills are completely different from discharges. A spill is very narrowly defined as a sub-class of discharge, being one that occurs from a vehicle, structure or other container and that is abnormal in quantity or quality.

Section 92 of the Act requires every person having control of a pollutant that is spilled and every person who causes or permits a spill that causes or is likely to cause an adverse effect to forthwith notify certain individuals, most noteworthy being the Ministry of the Environment. The concept of the consequences for not reporting a spill or a discharge were graphically laid out in the recent of *Castonguey* heard by the Supreme Court of Canada in 2013. A copy of the Court’s decision is appended to this paper. Once a spill is reported a number of provisions under section 94, 95 and 97 permit the Director or Court to issue orders for immediate abatement of spills.

In addition to the reporting requirements, both the owner of the pollutant and the person in control of the pollutant are required to forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect of the spill and to restore the natural environment. The Act provides penalties for failure to comply with the requirements of the Act and failure to comply with orders or directions.