



Hazardous Spills 2020/21 Audit

Why We Did This Audit

- The responsibility for protecting Ontario's air, land and water falls to the Environment Ministry.
- Under the *Environmental Protection Act* and related regulations, the Environment Ministry is responsible for ensuring that companies have plans in place to prevent and respond to hazardous spills, reduce their risk of spilling and comply with related legislation and rules.
- Our Office has never audited the Environment Ministry's oversight of the prevention and response to hazardous spills.

Why It Matters

- A hazardous spill is a discharge of a substance to air, land or water. Spills of hazardous substances continue to occur in Ontario, risking the health and safety of Ontarians and the environment (air, water and land).
- Between 2016 and 2020, there were 40,349 reported spills in Ontario, over 90% of which were assessed by the Ministry of the Environment, Conservation and Parks (Environment Ministry) as having potentially negative impacts on human health and/or the environment.

What we found

Inadequate Information and Timeliness in Public Spills Reporting

- The Environment Ministry does not disclose sufficient information to the public about the quantity of hazardous spills and the harm they cause. Further, the information that is disclosed is not reported in a timely manner.
- The Environment Ministry does not have a performance measurement framework for its spills program, which means that decision makers and the public do not know the effectiveness of efforts to reduce the frequency and impact of spills.

RECOMMENDATIONS 1, 2

Spillers Not Paying for Spill Response and Related Costs

- The Environment Ministry is not recovering its costs from responding to spills, resulting in taxpayers and not the spillers paying for Ministry costs associated with spill response.
- When looking at just 30 of the 73,000 spills (0.04%) that were reported in Ontario between 2011 and 2020, we estimated that polluters had cost Ontarians over \$4.5 million in Ministry spill response resources such as staff time, laboratory tests and other expenses. The total amount of unrecovered costs incurred by the Environment Ministry responding to spills is potentially tens of millions of dollars more.
- The Environment Ministry's current cost recovery threshold of \$10,000 does not have a documented rationale and the Ministry has not attempted to estimate the labour and costs associated with spill cost recovery. Furthermore, laboratory costs are not made available to staff because of confidentiality reasons, and the Environment Ministry has never estimated the cost of using specialized equipment that may be needed during spills response.
- Even when the Environment Ministry attempts to recover costs, not all costs can be requested as reasonable to be recovered because the Ministry's laboratory costs are much higher than private-sector costs.
- For the three spills since 2005 for which the Environment Ministry pursued recovering costs from spillers, the Ministry did not attempt to recover 47% of our estimated total incurred cost of \$1.3 million, as some costs were unreasonable or not documented.

RECOMMENDATION 3

Environment Ministry Not Overseeing or Ensuring Adequate Spill Response

- Rather than conduct its own testing of soil and water samples to confirm that a spill has been properly remediated, the Environment Ministry instead relies on spillers to perform these activities and provide confirmation. This means spillers are left to police themselves and ensure effective spills remediation, with little risk of enforcement.
- The Environment Ministry has only used its legislative powers under the *Environmental Protection Act* to step in and remediate spills to prevent further environmental and/or health damages three times, despite other instances we identified where the spiller did not remediate the spill in a timely manner.
- The *Environmental Protection Act* requires spillers to report spills immediately to the Environment Ministry. However, our review of spills reporting timelines showed that, between 2016 and 2020, 16% of spills were not reported until the following day, and 1% took over 10 days to report. Furthermore, our review of a sample of 110 spills that had the potential for medium to major environmental and/or health impacts showed that 41% of these spills were never reported by the spiller.

RECOMMENDATIONS 4, 5

Spill Prevention Requirements Do Not Cover More than 90% of Spills

- Thousands of hazardous spills are caused by entities not subject to spill prevention and contingency planning requirements. Between 2016 and 2020, facilities required to have spill prevention and contingency plans were responsible for only 7% of the 40,349 reported spills. Without the most frequent sources of spills, particularly pipelines, requiring this form of planning, the Environment Ministry cannot effectively protect the environment from spills.
- For those entities required to have spill prevention and contingency plans, the Environment Ministry does not approve spills plans or assess the effectiveness of the plans for even the highest risk facilities. The Environment Ministry relies solely on the spiller to ensure that the plan is effective.

RECOMMENDATIONS 6, 7

Ministry's Enforcement is Lax, Legislation Covers Few Industrial Spillers

- The Environment Ministry's approach to enforcement was lenient and relied mostly on asking violators of environmental laws and regulations to comply, instead of using its powers to ensure full compliance.
- The Environment Ministry decreased its proactive inspections and enforcement of environmental requirements, such as for spill prevention, by 25% from 2016-2019 because of staffing reductions.
- Environmental penalties can only be issued to approximately 106 industrial facilities in Ontario, meaning that the Environment Ministry was unable to penalize spillers responsible for 94% of the spills reported between 2016 and 2020.
- The Environment Ministry has referred less than 1% of the 40,349 reported spills that occurred between 2016 and 2020 for further investigations.
- Because of its ineffective compliance strategy, the Environment Ministry allows repeat offenders to continue operating and even expand their operations.

RECOMMENDATIONS 8, 9, 10, 11, 12, 13

Conclusions

- The Environment Ministry does not have effective systems and processes in place to prevent or reduce the risks of negative impacts from hazardous spills on the environment and human health. Specifically, it does not require prevention and response planning for the most common causes of hazardous spills, such as pipelines, nor does it ensure this type of planning is being effectively performed by the companies required to do so.
- The Environment Ministry does not report to the public on hazardous spill events in a timely manner nor recover all reasonable costs it incurs from responding to spill events, which not only burdens taxpayers but reduces the motivation for spillers to prevent spills.
- The Environment Ministry's enforcement regime is not strong enough to bring entities into compliance in a timely manner or deter repeat violations.

Read the report at www.auditor.on.ca