

Chapter 1

Section 1.21

Ministry of the Environment, Conservation and Parks

Follow-Up on 2021 Value-for-Money Audit:

Hazardous Spills

RECOMMENDATION STATUS OVERVIEW

	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1			1		
Recommendation 2	1			1		
Recommendation 3	7	1	1	5		
Recommendation 4	1		1			
Recommendation 5	1			1		
Recommendation 6	1			1		
Recommendation 7	3			3		
Recommendation 8	2			2		
Recommendation 9	3		3			
Recommendation 10	1			1		
Recommendation 11	1			1		
Recommendation 12	3	1	2			
Recommendation 13	4		3	1		
Total	29	2	10	17	0	0
%	100	7	34	59	0	0

Overall Conclusion

The Ministry of the Environment, Conservation and Parks (Ministry), as of October 13, 2023, has fully implemented 7% of the actions we recommended in our *2021 Annual Report*. The Ministry has made progress in implementing an additional 34% of the recommended actions.

The Ministry has fully implemented recommendations to formally document the rationale when recovery of costs associated with the Province's response to spills is not pursued, and to review the documented response actions to spills on a risk basis to ensure all steps are completed.

However, the Ministry has made little progress on 59% of the recommended actions, including to publicly report the cause, location, impact, responsible party

and status of spills; to train Environmental Officers to critically review spill prevention plans on a risk basis; and to provide consolidated information on the Ministry's website on prosecutions, penalties, tickets, orders and details of violations.

The status of actions taken on each of our recommendations is described in this report.

Background

There are about 8,000 hazardous spills per year in Ontario, some of which injure workers, kill wildlife and pollute the air, land and water. Added to the short-term effects of these spills are unknown long-term and cumulative effects.

Spills can occur due to malfunctioning equipment, human error and/or external factors, such as poor weather, that contribute to vehicle accidents and damage to buildings and infrastructure. In some cases, spilling substances may be a normal part of industrial operations; however, these contained spills were not part of our audit.

We assessed whether the Ministry of the Environment, Conservation and Parks (Ministry), which is mandated to protect Ontario's air, land and water, had sufficient measures in place to reduce the risk of hazardous spills harming human health and/or the environment. These measures involved regulatory and compliance activities, such as ensuring that companies properly planned to prevent and respond to spills; regulating their operating activities to ensure they reduce the risk of spilling hazardous substances; and ensuring companies complied with rules about spills, through inspections and enforcement.

Overall, our audit found that the Ministry did not conduct adequate regulatory activities to reduce the risk of occurrence of the most common sources of spills—natural gas transmission and distribution pipelines, electricity transmission and distribution transformers, and residential fuel tanks. The Ministry's enforcement regime did not effectively ensure compliance with the existing regulations. Other provincial

government regulators, such as the Technical Standards and Safety Authority, did not have a mandate to protect the environment by preventing spills.

The Ministry also was not disclosing sufficient information to the public about the number of hazardous spills and the harm they caused. The specific locations where spills occurred, who caused the spills, and the specific impacts the spills had or may have on human health and/or the environment was not reported. The limited information that was made public was not brought forward in a timely manner. Despite timely public reporting requirements under Ontario's Open Data Directive, 2015 (Digital and Data Directive as of February 2021), the Ministry waited until May 31, 2021, while we were conducting our audit, before publicly reporting information on spills that occurred between 2013 and 2020.

Our audit revealed as well that the Ministry was not recovering its costs from responding to spills, which resulted in taxpayers rather than spillers paying for spills. Of the over 73,000 spills that occurred in the province between 2011 and 2020, the Ministry attempted to recover response costs from a spiller on only three occasions.

We analyzed 30 (0.04%) of the 73,000 spills in which the Ministry did not attempt to recover any costs from the spiller and estimated that these 30 spills alone had cost Ontarians \$4.5 million in staff time, laboratory tests and other expenses during spills response. Therefore, the total amount of unrecovered costs incurred by the Ministry to respond to spills was potentially tens of millions. A precise total unrecovered amount could not be estimated because the Ministry did not track all of its costs.

Some of our findings were:

- Thousands of spills were caused by entities not subject to spill prevention and contingency planning requirements under O. Reg. 224/07 of the *Environmental Protection Act* (Act). The requirements to provide spill prevention and contingency plans, under the regulation, applied only to industrial facilities in prescribed sectors. The Ministry did not require spill prevention and

contingency plans for high-risk sources such as oil and natural gas transmission and distribution pipelines, electricity transmission substations, fuel delivery trucks and bulk fuel storage facilities.

- The Ministry was not being informed of spills by spillers in a timely manner, even though this is required by the Act. Between 2016 and 2020, 3,746 (or 9%) of the 40,349 reported spills were not reported until the following day, and 505 spills took more than 10 days to report. We reviewed a sample of 110 spills that occurred during the period 2010–20, and discovered that 45 (or 41%) were never reported at all to the Spills Action Centre by the spiller. The Ministry learned of the spills either from first responders, the municipality or members of the public.
- The Ministry did not independently confirm that spillers had remediated the environment after a spill. Instead, the Ministry relied on the spiller to perform its own analysis of soil and water samples, and submit proof the natural environment had been sufficiently restored. Spillers were left to police themselves and ensure effective environmental remediation, with little risk of Ministry enforcement action.
- The Ministry did not use its powers to ensure that spills were promptly remediated. Under the Act, the Ministry is empowered to clean up spills and recover the clean-up costs from the spiller. However, we identified five “medium- to high-risk” spills where the spiller initially refused, could not be found, or was unprepared to remediate the spill, delaying timely clean-up. In these cases, the Ministry did not step in to ensure remediation occurred quickly, resulting in further risks to the environment and to human health.
- Environmental penalties were not used to hold polluters accountable for spills. Financial penalties are intended to encourage quick and effective compliance. Through the Act, they can be applied for failing to report spills. However, between 2016 and 2020, the parties responsible for over

94% (38,124 of 40,349) of reported spills could not be penalized for the spills themselves. This was because penalties applied only to facilities in nine prescribed industrial sectors (for example, petroleum, iron and steel, and metal mining). For example, the only penalties that applied to spills to air were for specific petroleum facilities in Sarnia that discharged sulphur dioxide. Further, the penalty amounts were much lower in Ontario than for similar spills elsewhere. For instance, the 21 sulphur dioxide-related penalties the Ministry issued in 2019 and 2020 amounted to \$1.6 million, far less than the nearly \$14.7 million in fines that would have been issued if those spills had occurred in California.

- The Ministry allowed repeat offenders to continue operating because of an ineffective compliance strategy. Ministry policy allows it to revoke the environmental approvals of entities that repeatedly violate environmental laws and regulations. Yet the Ministry has only ever revoked two companies’ environmental approvals. The Ministry identified to our Office 54 companies it considered repeat offenders. As of October 2021, 41 of these companies continued to operate without being brought into compliance.

We made 13 recommendations, consisting of 29 action items, to address our audit findings. We received commitment from the Ministry that it would take action to address our recommendations.

Status of Actions Taken on Recommendations

We conducted assurance work between April 2023 and August 2023. We obtained written representation from the Ministry of the Environment, Conservation and Parks (Environment Ministry) that effective November 9, 2023, it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

Public Unaware of Hazardous Spills Impacting Their Local Area

Recommendation 1

To improve public transparency about the quantity, location and impact of spills, we recommend that the Ministry of the Environment, Conservation and Parks improve its recording and timeliness over its public reporting of key information on spills while providing data and information in an accessible format that allows the public to easily identify the cause, location, impact, responsible party and status of the spills.

Status: Little or no progress.

Details

In our 2021 audit, we found that despite the Digital and Data Directive requirement to do so, the Environment Ministry had not published information on spills in a timely and accessible manner, and sufficient information on the spills was not disclosed. Information was not disclosed on the specific locations where spills occurred, who caused the spills, or the specific impacts the spills had or may have on human health and/or the environment. Despite the Directive requiring timely public reporting, the Environment Ministry did not publicly report on spills that occurred between 2013 and 2020 until May 31, 2021, while we were conducting our audit.

In our follow-up, we found that on December 16, 2022, the Environment Ministry posted an updated Environmental Occurrences and Spills dataset to the Ontario Data Catalogue, which is accessible to the public. The dataset contains information on spills up to December 21, 2021, and the Ministry informed our Office that it intends to update this information on an annual basis. However, the information on spills made public does not contain key information such as the specific locations where spills occur, who caused the spills, or the specific impacts the spills have had or may have on human health and/or the environment. The Ministry informed us that it would further consider the release of additional data as recommended in our 2021 audit. This would apply to 2023 datasets onward.

Environment Ministry Lacks Performance Measurement for Spills Program

Recommendation 2

To assess the effectiveness of its spills management program at achieving intended objectives, improve public transparency about the quantity and impact of spills, and drive continuous improvement, we recommend that the Ministry of the Environment, Conservation and Parks establish and publicly report performance measures and targets to reduce spills and any short-term and long-term impacts on human health and the environment.

Status: Little or no progress.

Details

In our 2021 audit, we found that the Environment Ministry had not developed a performance measurement framework for its spills program. As a result, decision-makers and the public did not know the effectiveness of efforts to reduce the frequency and negative impacts of hazardous spills.

In our follow-up, we found that the Environment Ministry is in the process of developing a plan to report on performance measures and targets for its spills program. The Ministry plans to develop these measures by November 2023. Following this, the Ministry expects to begin collecting and analyzing the information. However, to date no decision has been made regarding the public reporting of these measures.

Polluters Have Not Paid for at Least \$5.6 Million in Spills Response between 2016 and 2020

Recommendation 3

To hold polluters accountable for the Province's costs of responding to spills, and reduce the costs that must be borne by taxpayers, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry):

- *reassess its threshold for recovering spill response costs, so that all reasonable costs are covered by the spiller;*

Status: Little or no progress.

Details

We found in our 2021 audit that, in 2016, the Environment Ministry decided not to attempt to pursue cost recovery for spills expected to cost the Province less than \$10,000 in response costs. The Ministry did not have a basis for this \$10,000 cost-recovery threshold. This threshold was based on input from directors within the Ministry at that time, and there is no documented rationale for how this threshold was selected. In contrast, we found that the threshold was significantly higher than that used by other provinces and Ontario municipalities. For example, British Columbia has a \$175 minimum for spills cost recovery.

In our follow-up, the Environment Ministry informed us that it considered the available data on spills costs and determined that it does not have adequate data to reassess its threshold at this time. The Ministry plans on gathering more data to then reassess its threshold in early 2026.

The Environment Ministry developed a reference guide that indicates spills with estimated costs below \$10,000 can be pursued for cost recovery, and describes factors to consider when determining whether to pursue cost recovery, including whether:

- specialized equipment was used;
- more than eight hours were spent on the response in the first two days; and
- samples were collected and analyzed.
- *formally document the Ministry's rationale when cost recovery is not pursued;*

Status: Fully implemented.

Details

Our 2021 audit found that between 2016 and 2020, 40,000 spills were reported in the province. Of these, the Environment Ministry documented responding to at least 27,000, but recovered costs in only one instance during this time. When we assessed a sample of 30 spills, we found that 87% would have surpassed the

Ministry's \$10,000 cost-recovery threshold, yet no cost recovery was pursued for any of these spills. We also found that, in response to a 2016 review by the Ontario Internal Audit Division, the Ministry stated it would develop a procedure to document the rationale for decisions not to pursue cost recovery. However, at the time of our audit in 2021 the Ministry had not yet done so.

In our follow-up, we found that the Environment Ministry has developed a mandatory field in its information system requiring an explanation for why spill cost recovery was not pursued.

- *track all relevant costs associated with its spill response;*
- *fully and accurately calculate the costs of its spill response;*
- *include all costs incurred in responding to spills when recovering the costs from the spiller;*

Status: Little or no progress.

Details

We found in our 2021 audit that, although identified as a best practice by the Environment Ministry, staff were not recording their time and activities associated with responding to spills. This limited the ability of the Ministry to understand its costs associated with spill response and recover these costs from spillers. We also found that the Ministry did not consistently track or calculate its costs of collecting and testing water and soil samples. When samples were tracked, they were not always tracked in association with specific spills. For example, the Ministry did not include \$45,000 in sampling costs when recovering costs associated with two train derailments because it accidentally did not categorize the samples as relating to a spill and they were therefore missed when estimating the spills' response costs.

In our follow-up, we found that in October 2022 the Environment Ministry had developed a spill cost recovery tracking form for tracking all relevant costs associated with each spill. These costs include:

- staff hourly wages and travel expenses;
- use of specialized vehicles; and
- laboratory samples.

This tracking form is intended to be used to ensure that the full and accurate cost of the Ministry's spills responses is calculated. However, the Ministry does not require this form to be used for all spills—only where cost recovery is being pursued.

- *ensure its costs to respond to spills are reasonable and recoverable;*

Status: In the process of being implemented by November 2024.

Details

Our 2021 audit found that Ministry documentation indicated that it cost the Ministry more than twice the cost of a private-sector company to analyze samples. The *Environmental Protection Act* states that, in order to recover costs from a spiller, costs must be reasonable. For this reason, when recovering costs relating to two train derailments, the Ministry instead calculated its costs using private-sector laboratory costs. We found that the Ministry did not recover about 72% of its \$696,000 in sampling costs for three spills because of this.

In our follow-up, we found that the Environment Ministry is currently reassessing its laboratory costing, and plans to complete this analysis by November 2024.

- *recover costs that meet its threshold from the spiller.*

Status: Little or no progress.

Details

Our 2021 audit found that the Environment Ministry rarely tracked the costs of responding to spills and was not aware of the costs of its spills response. Senior staff at the Ministry informed our Office that, aside from the three spills where the Environment Ministry recovered some of its costs, there had not been any other spills where the responses' costs exceeded the \$10,000 threshold. However, when we did our testing we found that this was not the case. The Ministry had not prepared the information it needs to assess whether costs surpassed its threshold, given that it had not calculated its spills response costs for nearly all individual spills.

In our follow-up, we found that the Environment Ministry had not yet begun tracking all costs relating to

its spills response and therefore could not provide evidence that all spills with response costs surpassing its current threshold have been or will be pursued for cost recovery. However, the Ministry informed us that it recently began reviewing spills responses that included an after-hours response and has so far identified six spills where data is being collected and reviewed for consideration of cost recovery.

Environment Ministry Rarely Confirms Independently that Spillers Have Sufficiently Remediated the Environment

Recommendation 4

To confirm that spill sites have been effectively restored, we recommend that the Ministry of the Environment, Conservation and Parks develop and implement a risk-based process for independently verifying the sufficient remediation of significant spill sites.

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that for a majority of spills, the Environment Ministry relied on the spiller to perform its own analysis of soil and water samples, and submit proof to the Ministry that the natural environment had been sufficiently restored after the spill. This means that spillers were left to police themselves and ensure effective environmental remediation, with little risk of Ministry enforcement action. Our audit identified instances where the Ministry did not conduct its own testing, and subsequently the spill was discovered to have not been remediated properly, and to have had a negative impact on the environment.

In our follow-up, we found that the Environment Ministry is currently evaluating its guidance to ensure that the Ministry has a consistent approach for independently verifying spill remediation for significant spill sites. The Ministry plans to complete its evaluation and have necessary changes approved by November 2023.

Environment Ministry Is Not Using Its Powers to Enforce Prompt Spills Remediation

Recommendation 5

To better protect human health and the environment from the impacts of delayed remediation, we recommend that the Ministry of the Environment, Conservation and Parks remediate spills and recover the costs from spillers in situations where the Ministry knows that a spiller is not remediating the area immediately and that additional harm to the environment or human health will result from this delay.

Status: Little or no progress.

Details

In our 2021 audit, we found that despite instances of spillers refusing, or being unprepared, to remediate spills in a timely manner, the Environment Ministry had not used its powers to step in and remediate to prevent further damage to the environment and/or human health.

In our follow-up, we found that in January 2023, the Environment Ministry had developed internal guidance regarding when it would be appropriate to issue a Minister's Direction to have Ministry staff take action to prevent, eliminate or ameliorate the adverse effects of a spill. There have yet to be any instances where the Ministry has used these powers.

Thousands of Spills Are Caused by Entities Not Subject to Spill Prevention Planning Requirements

Recommendation 6

To reduce the risk of hazardous spills occurrences and of hazardous spills from all sources not being properly cleaned up or remediated, we recommend that the Ministry of the Environment, Conservation and Parks review and expand its spill prevention and contingency plan requirements to include additional sources of the most frequent and environmentally harmful spills.

Status: Little or no progress.

Details

In our 2021 audit, we found that thousands of spills were caused by entities not subject to spill prevention and contingency planning requirements under O. Reg. 224/07 (Spill Prevention and Contingency Plans) of the *Environmental Protection Act*. The requirements for having spill prevention and contingency plans in place under O. Reg. 224/07 applied only to a group of prescribed industrial facilities. Between 2016 and 2020, these industrial facilities were responsible for a minority (7%, or 2,842) of the 40,349 reported spills. The Environment Ministry did not require spill prevention and contingency plans for high-risk sources of spills, such as oil and natural gas transmission and distribution pipelines, electricity transmission substations, fuel delivery trucks and bulk fuel storage facilities.

In our follow-up, we found that the Ministry has formed a working group to review O. Reg. 224/07 documentation and data on spills, and conduct a jurisdictional scan. The Ministry then plans to develop potential options regarding the expansion of the regulation to cover additional high-risk sources of spills. The Ministry estimates that a decision regarding alternative approaches and regulatory oversight will be made by November 2025.

Environment Ministry Does Not Verify that Required Spill Plans Are Developed and Effective in Preventing Spills

Recommendation 7

To confirm entities' compliance with the provincial requirement for them to develop effective plans to prevent and respond to spills, we recommend the Ministry of the Environment, Conservation and Parks:

- *request and receive all spill prevention plans and review them for completeness;*

Status: Little or no progress.

Details

In our 2021 audit, we found that, where entities are required to have plans in place to prevent and respond

to spills, the Environment Ministry did not routinely confirm that plans had been developed. When the Environment Ministry inspected facilities or reviewed spill plans for completeness, it had found that some facilities did not have the required plans.

In our follow-up, we found that in June 2022 the Ministry began to inspect spill prevention and contingency plans of industrial facilities whose plans had not recently been inspected. The Ministry stated it had completed all in-scope reviews as of June 2023, after completing 76 inspections. However, the July 2023 inspection records indicated that nine facilities were still under inspection, and two inspections were on hold due to an ongoing investigation. Additionally, the Ministry had not committed to request and review all other spill prevention plans, namely those required by environmental approval conditions.

- *require professional engineers to approve plans for high-risk facilities;*

Status: Little or no progress.

Details

In our 2021 audit, we found that the Environment Ministry relied solely on spillers to ensure the effectiveness of spill plans. This includes a requirement to review and revise plans annually, as well as after spills, to ensure the plans' effectiveness. Unlike the US Environmental Protection Agency, the Environment Ministry did not require the spiller to have the plan certified by a professional engineer. Analyses of the root causes of spills, which inform updates to spill plans, were also conducted solely by the spiller.

In our follow-up, we found that the Ministry was reviewing past policies the government had developed relating to the use of "qualified persons" for relevant information. The Ministry was also surveying internal staff regarding Environmental Activity and Sector Registry requirements that state that reports and planning documents are to be developed by a "qualified person." The Ministry expects the information will be used to provide a recommendation by early 2024 regarding the feasibility and/or necessity to require a "qualified person" to create spill prevention and

contingency plans. However, the Ministry has not committed to implement the requirement.

- *train Environmental Officers to critically review these plans on a risk basis, including after spills.*

Status: Little or no progress.

Details

In our 2021 audit, we found that the Environment Ministry did not train its Environmental Officers, who are responsible for reviewing spill plans during inspections, in spill prevention, root cause analysis of spills, or (with few exceptions) in the particular industries they inspect. In contrast, the California Department of Fish and Wildlife's Office of Spill Prevention and Response employs Oil Spill Prevention Specialists as part of its spill response teams. These specialists investigate spills, participate in testing spill plans, review spill plans and submit recommendations. They also analyze and consider the feasibility of requiring new spill prevention technologies.

In our follow-up, we found that the Ministry is awaiting the completion of its desktop inspections of spill prevention and contingency plans before implementing this recommendation. The Ministry expects to define learning objectives, develop training materials and deliver training to Environmental Officers by March 2024.

Environment Ministry Lacks Complete Data to Perform Risk-Based Enforcement of High-Risk Entities

Recommendation 8

So that the Ministry of the Environment, Conservation and Parks (Ministry) has accurate, reliable and historical data to inform policy and enforcement to protect human health and the environment, we recommend that the Ministry:

- *consistently review and ensure the accuracy of its data;*

Status: Little or no progress.

Details

In our 2021 audit, we found that the Environment Ministry did not properly record or analyze data to identify the highest risk sources and causes of spills that can have negative impacts to human health and/or the environment. This means that it could not target its limited inspection resources to the areas that are likely to provide the most benefit or adjust its regulations and policies to more effectively reduce the impacts of spills.

In our follow-up, we found that the Ministry had created a permanent quality assurance team to review data in its new information system, the Environmental Compliance Hub of Ontario (ECHO). The team has a mandate to provide a verified foundation of tombstone data (that is, legal names and addresses) to support compliance and enforcement. However, the Ministry had not tasked the team with ensuring the accuracy of information beyond tombstone data, such as historical information on environmental non-compliance (for example, spills).

- *migrate validated data into its new information system.*

Status: Little or no progress.

Details

In our 2021 audit, we found that the Environment Ministry recognized that ongoing compliance efforts required access to historical information. However, when proposing the new information system, it decided to limit data migration for the project to basic information (for example, company and owner name, location). We noted that the lag in acquiring new data in the system would hinder the Environment Ministry's ability to effectively assess and respond to risk, delaying the Environment Ministry from realizing the full capacity and primary purpose of its new information system.

In our follow-up, we found that the Ministry had migrated tombstone data to the new information system. While historical data remains accessible in Ministry legacy systems, the Ministry is also working toward establishing a centralized data repository to store legacy data. However, at the time of our

follow-up, the Ministry did not yet have plans to migrate or validate this data.

Environment Ministry Decreasing Proactive Inspection and Enforcement of Environmental Requirements Despite High Rates of Non-compliance

Recommendation 9

To optimize inspection resources used to identify instances of non-compliance with environmental regulations (that are intended to deter and reduce the frequency and environmental impact of spills), we recommend that the Ministry of the Environment, Conservation and Parks:

- *regularly analyze collected data on key risks and sources of spills to determine the inspection frequency and approach needed to effectively address non-compliance;*

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that, while the Environment Ministry attempts to target its proactive inspections on higher risk areas, it had no centralized quantitative analysis of risk. Rather, proactive inspections were based on the judgment of Environmental Officers and other staff.

In our follow-up, we found that in summer and fall 2022, the Ministry had analyzed data on spills that have occurred since 2016. The Ministry analyzed spills by regions/districts, by media type (that is, air, land and/or water), by sector and by contaminant. The Ministry expects to update the analysis by November 2023 and annually afterwards.

- *reassess assigned inspection resources to ensure that the intent of the Environmental Protection Act is being met;*

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that the Environment Ministry had decreased its proactive inspection and enforcement of environmental requirements, such as for spill prevention, by 25% from 2016 to 2019. We found that the decrease was due to a reduction in compliance and enforcement staff by 9% during this same time frame.

In our follow-up, we found that in fall 2022 the Ministry had formed a working group to inform the creation of an annual planning guidance document for “proactive spills compliance activities.” The guidance document provides information on spills to help regional and district offices focus their resources. The Ministry expects the guidance document to be updated by November 2023.

- *undertake inspections with the frequency, resources and approach needed to identify and effectively address non-compliance.*

Status: In the process of being implemented by March 2025.

Details

In our 2021 audit, we found that the Environment Ministry’s decrease in proactive inspections had led to a decrease in the instances of non-compliance identified, from 3,980 in 2016 to 3,264 in 2019.

In our follow-up, we found that the Ministry had formed a working group in fall 2022 to inform the creation of an annual planning guidance document for “proactive spills compliance activities.” The guidance focused initially on creating awareness of occurrences of spills for 2023/24. The Ministry expects the guidance to more proactively focus inspection plans and resource allocations on higher-risk sectors and spillers in 2024/25. The Ministry expects to complete field work for the 2024/25 inspections by March 2025.

Environmental Penalties Cannot Be Issued to All Spillers

Recommendation 10

To hold polluters accountable and encourage preventing spills that have potential impacts on human health and the environment, we recommend that the Ministry of the Environment, Conservation and Parks expand the application of its environmental penalties to enable it to penalize all spills.

Status: Little or no progress.

Details

In our 2021 audit, we found that environmental penalties could not be used to hold polluters accountable for the most common causes of spills. Environmental penalties are financial penalties used to protect air, water and land, by holding polluters accountable for environmental harm. They are intended to encourage quick and effective compliance, and can be applied for not reporting spills. However, between 2016 and 2020, those responsible for over 94% (38,124 of 40,349) of reported spills could not be penalized. This is because penalties only applied to certain facilities in nine industrial sectors (for example, petroleum, iron and steel, and metal mining). The only penalties that applied to spills to air were for specific petroleum facilities in Sarnia that discharge sulphur dioxide.

In our follow-up, we found that the Ministry had proposed in January 2022 to expand environmental penalties, and to include all spills within their scope. The Ministry posted a regulation proposal notice and consulted the public for 60 days through the Environmental Registry of Ontario (Registry #019-4108), and has not yet posted a decision notice. The Ministry also held engagement sessions with over 500 participants and met with several industry associations. However, the Ministry has not received direction on how to proceed with the proposal.

New Penalty Limits May Reduce the Incentive to Prevent and Promptly Remediate Spills

Recommendation 11

To compel spill prevention and timely spill remediation, we recommend that the Ministry of the Environment, Conservation and Parks reassess its pending environmental enforcement regime to be consistent with the approach used throughout Canada to impose daily financial penalties at amounts significant enough to encourage spill prevention and deter delayed remediation.

Status: Little or no progress.

Details

In our 2021 audit, we found that proposed changes to Ontario's penalty regime may further weaken Ontario's environmental enforcement regime, reducing the incentive for spillers to prevent and remediate the impacts of spills in a timely manner. The proposed changes would put a cap on the maximum penalties per spill, limiting the Environment Ministry's ability to compel timely remediation through cumulative daily penalties.

In our follow-up, we found the Ministry had not yet implemented its planned cap on the maximum penalties per spill. We also found, as mentioned in our discussion of **Recommendation 10**, that the Ministry in January 2022 had proposed to expand the use of environmental penalties, and had consulted the public on this proposal through the Environmental Registry. Consultation documents proposed that penalties be calculated for each day the contravention occurs. However, the Ministry's proposal would still limit daily penalties to a maximum amount.

Environment Ministry Rarely Investigates and Fines Spillers for Failing to Report a Spill

Recommendation 12

To protect the environment through an effective enforcement regime, we recommend that the Ministry of the Environment, Conservation and Parks senior

management verify that spill incidents are investigated, appropriately prosecuted and fines are sought for spillers who fail to report in a timely manner and in doing so:

- *provide clear direction to Environmental Officers on all significant steps to be taken and documented;*

Status: In the process of being implemented by March 2024.

Details

In our 2021 audit, we found that the Environment Ministry rarely investigated spillers. Out of the over 40,000 spills known to have occurred between 2016 and 2020, Environmental Officers had referred only 153 spills to the Ministry's Investigations and Enforcement Branch to be investigated.

In our follow-up, we found that the Ministry had assessed and prioritized investigative operational policies for review/update in November 2022. The Ministry was also reviewing its Investigations Manual, and finalizing its multi-year plan to update investigative operational procedures. The Ministry expects to develop guidance documentation for spill response and supports by March 2024.

- *review the documented spills response actions on a risk basis to ensure all steps are completed;*

Status: Fully implemented.

Details

In our 2021 audit, we conducted further analysis of 54 cases the Ministry's Environmental Officers had referred to the Ministry's Investigations and Enforcement Branch between 2016 and 2020 for failing to report a spill. These were the 54 spills (of the 153 we discuss in the first action item of **Recommendation 12**) that had been referred to be investigated for possible prosecution. Of these referred spills, only eight were prosecuted, and 17 were closed following investigation. Reasons for not further pursuing these cases include the Environmental Officer not taking necessary photographs or not taking sufficient samples that could be used as evidence.

In our follow-up, we found that the Ministry had reviewed all investigative files relating to spill incidents

that closed without charges between 2017 and 2022. The review found that over 50% of these investigative files that closed without charges between 2017 and 2022 were because insufficient evidence, such as environmental samples to establish impact to the environment, was available to recommend proceeding with a prosecution.

- *use the reviews to identify prevalent issues that limit the Ministry's ability to effectively penalize and prosecute spillers and take corrective action as needed.*

Status: In the process of being implemented by March 2024.

Details

In our 2021 audit, in addition to the findings we discuss in the second action item of **Recommendation 12**, we also found that the Environment Ministry's Investigations and Enforcement Branch had not prosecuted cases when Environmental Officers had not made a timely response to a spill, or had delayed referring a case to the Investigations and Enforcement Branch.

In our follow-up, we found that the Ministry had solicited feedback from Environmental Officers in December 2022 and found that barriers to submitting requests for investigations included the transition to a new information system (as discussed in **Recommendation 8**), the level of effort required, and poor communication from the Enforcement Branch. We also found that in February 2023, the Ministry solicited internal feedback on recommendations regarding, among other things, raising divisional awareness of why investigations may be closed, modernizing training for Environmental Officers, and conducting regular reviews of closed investigations for continuous improvement. The Ministry expects to develop its strategy to improve the quality of its investigations by March 2024, and it updated the training it provides to environmental officers on sampling in September 2023.

Environment Ministry Does Not Stop Repeat Offenders

Recommendation 13

To reduce repeated violations of environmental laws and regulations by the same offenders, we recommend that the Ministry of the Environment, Conservation and Parks (Ministry) revise its repeat offender strategy to ensure chronic repeat violators are:

- *penalized or prosecuted considering violations on all company operations within Ontario;*

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that the Environment Ministry allowed repeat offenders to continue operating because of an ineffective compliance strategy. Despite the Environment Ministry's policy that allowed it to revoke the environmental approvals of entities that repeatedly violate environmental laws and regulations, the Environment Ministry had only ever revoked two companies' environmental approvals. The Environment Ministry identified to our Office 54 companies as repeat offenders, with 41 of the 54 continuing to operate without being brought into compliance as of October 2021. The Environment Ministry had consulted staff and found its repeat violator strategy to be "very onerous and time consuming" and with little added value, which may have discouraged staff from identifying repeat violators.

In our follow-up, we found that the Ministry was in the process of updating its Repeat Non-compliant Violators Strategy. The Ministry plans to finalize the updated strategy and train staff by November 2023.

- *publicly identified with consolidated information published on the Ministry's website on prosecutions, penalties, tickets, orders and details of violations;*

Status: Little or no progress.

Details

In our 2021 audit, we found that the Technical Standards and Safety Authority had advised the Environment Ministry in 2017 that large companies can be motivated to protect their reputation. In response to our 2016 audit report on Environmental Approvals, the Environment Ministry stated in an internal communication that it would publish convictions as part of a repeat violator strategy. However, we found that publishing convictions was not part of the Environment Ministry's strategy in 2021. While there were 378 Environment Ministry charges that led to convictions from 2016 to 2020, only 288 Environment Ministry court bulletins were published online. The Environment Ministry also does not publish information on repeat violators.

In our follow-up, we found that the Ministry had prioritized the finalization of its Repeat Non-compliant Violators Strategy and had not yet made progress on this recommendation. The Ministry plans to review data and develop options to consolidate and publicly post information on repeat non-compliant violators by the first quarter of 2023/24.

- *provided with written communication of the risk of the cancellation of their environmental approvals with repeat offences;*

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that the Environment Ministry did not inform all repeat violators themselves that they had been identified as such.

In our follow-up, we found that the Ministry had drafted a letter template that it plans to use to inform entities of their Repeat Non-compliant Violators designation and of the tools available to the Ministry if compliance is not achieved, including the revocation of approvals. The Ministry expects the letter to be

finalized with its updated Repeat Non-compliant Violators strategy by November 2023.

- *denied additional environmental approvals regardless of site location or company name.*

Status: In the process of being implemented by November 2023.

Details

In our 2021 audit, we found that the Environment Ministry had issued new environmental approvals to repeat offenders, including for the expansion of a landfill where non-compliance was occurring. This was in part because the Environment Ministry's Environmental Permissions Branch relied on staff judgment and did not yet have a policy to ensure consistency when considering non-compliance prior to issuing environmental approvals. The Environment Ministry's 2021 review of its repeat violator strategy also found a lack of a process to co-ordinate among district offices to address repeat violators with sites in multiple districts.

In our follow-up, we found that the Ministry had developed a standard operating procedure on Suspension, Revocation and Refusal: Decisions for Environmental Compliance Approvals and Permits to Take Water. In this standard operating procedure, reasons for suspending, revoking or refusing an approval include repeated non-compliance over time. The Ministry plans to incorporate this procedure into the training and implementation plan for its updated Repeat Non-compliant Violators strategy by November 2023.