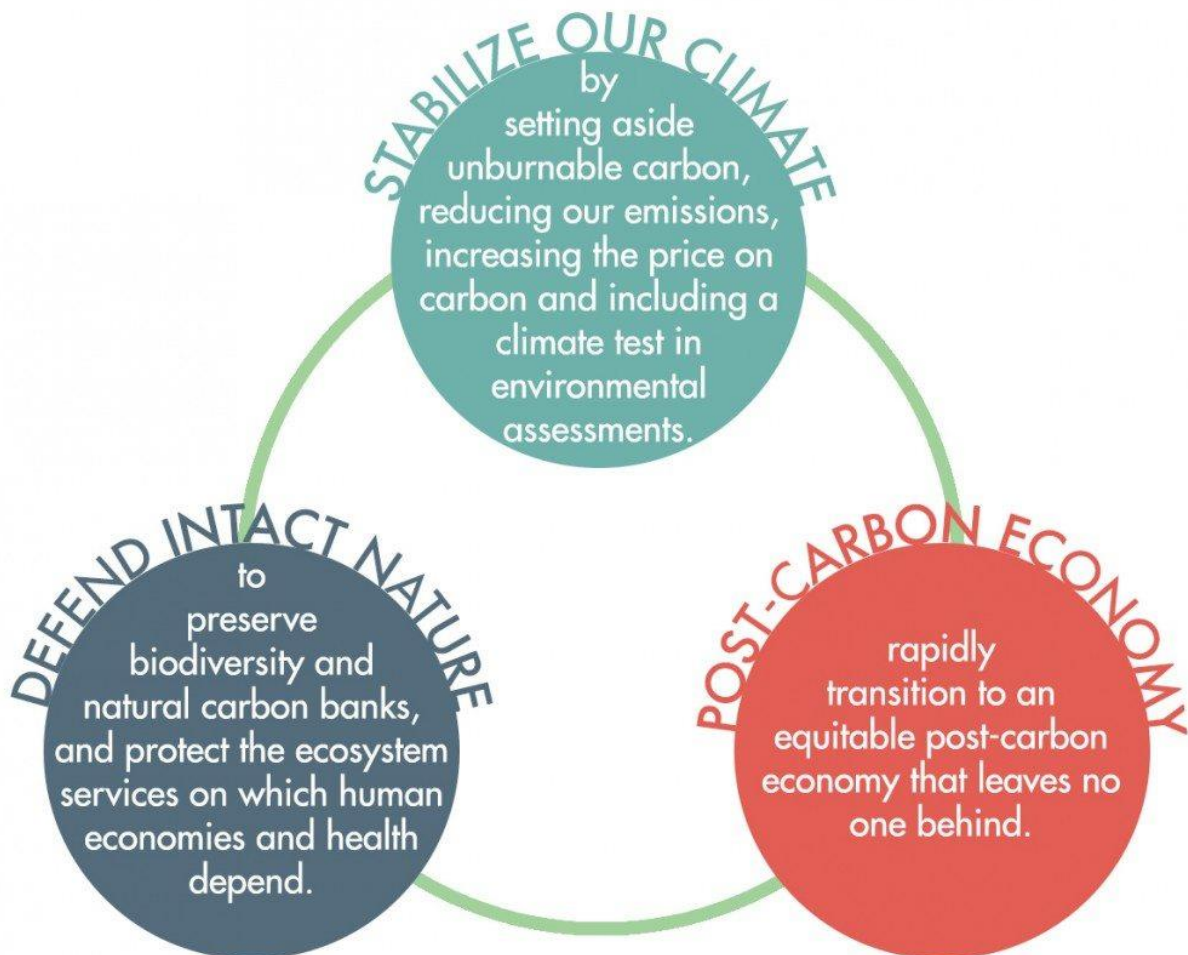


BC Spill Regulations - Phase II Policy-Protections Recommendations

May 1 2018





Introduction

“When we try to pick out anything by itself, we find it hitched to everything else in the universe.”

- John Muir

A radical transformation of British Columbia’s natural landscape and biodiversity is already underway and climate impacts will continue to accelerate if we cling to business as usual. By 2080, modelling suggests British Columbia will be almost unrecognizable, both in terms of its natural environment and its human communities. Informed by the latest climate science, Sierra Club BC advocates a three-pronged approach to prepare for these changes and to defend ourselves against worsening impacts.

We must act to:

- 1) Stabilize our climate, by leaving fossil fuels in the ground, reducing our emissions and increasing the price on carbon;
- 2) Defend intact nature to preserve biodiversity and natural carbon banks, and protect the ecosystem services on which human economies and health depend; and
- 3) Rapidly transition to an equitable post-carbon economy that leaves no one behind.

British Columbia is well placed to confront the challenge of climate change and undertake a rapid and necessary transition to a post-carbon world. The future is here and it is time for climate action.

Strengthening and modernizing BC’s oil spill readiness, regulations, and basic environmental protections is fundamental to a prosperous transition to a post-carbon economy and a healthy environment. Furthermore, sound oil spill regulations must come part and parcel with legislated enactment of the United Nations Declaration on the Rights of Indigenous Peoples.

Context and objectives: Where we are, where we’re going

“Equality feels like oppression when you run things.”

British Columbia’s regulatory regime for fossil fuel transportation is extremely lacking. Respective to regulations in Alaska and Washington, British Columbia sorely lacks fulsome management, best practices, and community involvement. Our regulations read as if they were written by or explicitly for the benefit of corporate interests at the expense of public oversight, health and safety, and adequate environmental protections. We are not ready for even a modest oil spill. We never have been. Examples of disasters that affected areas of BC that could have been avoided or mitigated include:

- Exxon-Valdez disaster, 1989.
- Goldstream gasoline & diesel spill, 2011.
- Lemon Creek tanker truck oil spill, 2013.
- MV Marathassa oil spill, 2015.



- Nathan E Stewart oil spill, 2016. (and the subsequent Jake Shearer near-disaster in the same region in 2017)
- Plumper Bay Esquimalt diesel oil spill, 2016.
- Queen of East Vancouver oil spill, 2017.
- Station Creek/Mission Creek coal-train disaster, 2018.

These examples demonstrate that our current oil spill response regime is inadequate. It was unable to provide the integrity of responsiveness and environmental protections that British Columbians expect shippers to abide by and governments to ensure.

The government's challenge will be to establish best practices, objectives, and mechanisms that should have been in place many years ago. These will likely feel oppressive to corporate interests that have become accustomed to a deregulated *wild west* for their enterprise. The challenge will be to bring about equality between the interests of businesses that benefit communities and the environmental values that are disproportionately put at risk by corporate interests.

The laudable sentiment of the current BC government to protect the coast must crystallize from sentiment to regulation. Mitigating and limiting current threats to lands and waters is vital. It will always be BC's responsibility to defend communities from increased shipments of dangerous fossil fuel products which have known or unknown effects on the environment, and which we have no effective means to clean up when there is an accident. Until there are safe and effective ways to clean up diluted bitumen, such products will never be safe to transport.

It has never been more important to have new leadership that works for ordinary people, not just those at the top.

Prevention is the best medicine: If we can't clean it, don't ship it

The presumption of an Oil Spill Response Plan is that there will in fact be an oil spill. While we support and encourage British Columbia to set a new global, never-before-achieved benchmark for oil spill preparedness, readiness, and response planning, the more humble and effective approach is a basic risk assessment. Do the risks posed by the transport of certain fossil fuel products warrant the benefits? Who bears the risks and who gains? For substances like benzene transported within close community proximity, diluted bitumen in an aquatic environment, or heavy diesel transported in dangerous weather conditions, those who have the most to lose should have the most say over how we manage threats and protect our environment, as the risks are too well known. In these instances, saying no to risks is saying yes to what matters most to us - our children, our rivers, salmon, orcas, clean air, clean water and all the jobs that depend on a healthy environment.

It is also important to address a foundational value that remains entirely ineffable with the vocabulary available to modern regulatory practices. Indigenous peoples have been on these lands and waters since time immemorial. Their level of spiritual connection to the land predates the conception of Western European governance on Turtle Island. There was no such thing as *terra nullius*. Newcomers to these lands and waters have begun to develop their own spiritual connection to the land, waters and natural wonders of this place - and while this value cannot always be written, it can be brought into



mindfulness. It can also be protected through very tangible practices and protocols. Oil spill regulations must take into account that which we cannot foresee and embrace protections that might bring about the end to certain projects, relinquishing short sighted economic urges in exchange for long term opportunities. Prosperity over time, not overnight.

Provincial jurisdiction, global leadership

Let's not only be responsive, but defensive. British Columbia has a global responsibility proportional to the immense diversity of ecosystems, values, and cultures represented here. Our responsibility to protect ecosystems and mitigate against climate impacts extends beyond the borders of our province.

Where there are multiple jurisdictions, we support the proposal to maximize the application of environmental emergency regulatory powers in marine areas. This difference of jurisdiction must be indulged to the mutual benefit of communities, not the mutual exclusivity of various levels of government acting in their own best interests.

Moving beyond the spirit of UNDRIP

Environmental protection policies are one important way to bring into action the BC government's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples and the Calls to Action of the Truth and Reconciliation Commission. Oil spill response plans must be in accordance with protocols of the Indigenous nations BC is located within. In order that we all benefit from the traditional and regional knowledge of Indigenous peoples, and to restore Indigenous and public faith in regional preparedness, First Nations must have their risk assessments and governance decisions honoured.

There are few places in the world with the portfolio of ecology, biogeoclimatic zones, unique natural phenomenon, and correlative cultural diversity than British Columbia. Environmental protections must be as unique as the people and places they seek to protect. This means that culturally appropriate plans, protocols, compensations, and restorative justice methods may be different depending on the territory and region.

Phase 2: Policy concept recommendations

Enacting strong, science-based, transparent oil spill regulations will send a signal to investors that BC is a responsible place to do business. Conversely, it sends a signal to negligent shippers that the wild west of fossil fuel shipping is no longer. Adequate funding for compliance & enforcement staffing will be needed to uphold new policies and help to build a strong, sustainable, innovative economy that works for everyone, not just the wealthy and the well connected.

Sierra Club BC recommends that a new regulatory regime include the following as basic foundations:

1. Proven ability: Results-based performance, not lofty objectives.

Demonstrated plans, proven ability to respond, and investments for compensation must be secured *prior* to operations, as opposed to a "talk-and-ship" approach. Accountability delayed is accountability denied. Industry must demonstrate its plans and prove its ability to respond.



Responsible persons must prove capability and accountability to communities' satisfaction. Unique communities require unique plans and achieving community-based approval will be highly variable, iterative, and regularly revisited.

2. Empty consultation, empty policies, and business as usual is not acceptable.

The free, prior and informed consent of Indigenous and non-Indigenous communities should be required for detailed Geographic Response Plans (GRPs) in special areas. There is no such thing as implied consent. The shipper must always be the default tortfeasor.

"Hot Spot" GRPs must include a veto clause or moratorium mechanism for communities to completely deny access to a project/shipper or, in the case of current transport through a hotspot, grant communities the ability to 'pause' shipments until adequate consultation and oil spill preparedness has achieved social licence within hotspot GRPs.

3. Anything less than 80% of spilled oil recovered is unacceptable.

Demonstrated, results based response timelines and cleanup percentages should be required, rather than comparative industry standards. Current industry standards for spill response are not acceptable. Response times must be compulsory.

4. Close the loopholes so companies can't spill and run.

With the free, prior and informed involvement of the public and First Nations communities, publicly accessible and third-party held trusts should be secured, Compensation funds should be held in the public interest and are inaccessible to bankruptcy laws. Compensatory measures must be put forward prior to operations to insure integrity of the shipper and provide security for communities.

Terms and conditions for restorative justice ought to be community-based and culturally appropriate. What is culturally appropriate for one community may extend beyond basic the civil laws of British Columbia or Canada.

5. No exceptions, no delays, and no public donations to oil companies.

Processes and plans must be mandatory and paid for by industry. Industry must understand that it is a privilege to operate in our communities and territories, not a right. In no way should public funds be used to bail out corporations after a spill.

6. We want to be part of physical responses. BC needs to defend itself on the water.

Mandatory annual taxation schematics for oil transport corporations would contribute funds for the development of a provincial taskforce to be deployed under the Emergency Program Act of 1996 and a provincial response team to engage with federal and First Nations agencies during an oil spill.

BC ought to have a lead role in response teams and response plans and be ready to coordinate directly with federal authorities, harbour authorities, the Coast Guard, Indigenous response teams, and regional authorities as needed.



Blind spots & room for growth

There are clearly limitations on how best to apply regulatory oversight, mitigation, and preparedness to certain types of transport and certain types of oil products. Some areas that need further exploration, study, or deeper policy development are:

- Aquatic and terrestrial transport of liquefied natural gas
- Articulated Tug-Barges (ATBs), pusher-tugs, and newer, under-regulated technologies of oil transport
- Coking and metallurgical coal shipments by rail and tanker (while traditionally not conceived of as an oil product, oil spill preparedness could also be relevant to a spill or accident pertaining to coal products spilling into a waterway)
- Petrochemical substances not subject to mitigation in liquid or semi-solid form, such as benzene, a volatile gas that is regularly transported throughout BC

Conclusion

The modernizing of British Columbia's oil spill regulations has huge potential and plays a key role in transitioning BC communities to a post-carbon economy.

If the BC government is willing to regulate the wild west of fossil fuel transport in this province and ensure that the basic principles of polluter pays, compulsory regulations, transparency, and bulletproof third party compensation mechanisms are at the forefront of new environmental protections, then the modernizing of these regulations will set the tone and candor for a prosperous, healthy BC in which the BC government is valuing critical ecosystems and standing up for regular British Columbians.