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TRANSPORT OF DANGEROUS GOODS ACT
[RSBC 1996] CHAPTER 458

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Schedule

Part 1 — Interpretation, Application and Exemption

Definitions

1 In this Act:

"analyst" means

- (a) a person designated under section 6 (2), or
- (b) a member of a class of persons designated under section 6 (2);

"container" includes equipment that

- (a) is carried on a chassis,
 - (b) is strong enough to be suitable for repeated use, and
 - (c) is designed to facilitate the transportation of goods without intermediate reloading,
- but does not include packaging, a road vehicle or a rail vehicle;

"dangerous goods" means any product, substance or organism included by its nature or by the regulations in any of the classes listed in the Schedule;

"facility" includes an installation, plant, factory or place where goods are or may be handled;

"federal Act" means the Transportation of Dangerous Goods Act (Canada);

"handling" means loading, packing or placing, unloading, unpacking or removing or reloading, repacking or replacing dangerous goods in or from any container, packaging, road vehicle or rail vehicle or at any facility for the purposes of, in the course of or following transportation and includes storing dangerous goods in the course of transportation;

"highway" means a highway as defined in the Motor Vehicle Act;

"inspector" means

(a) a person designated under section 6 (1), or

(b) a member of a class of persons designated under section 6 (1);

"packaging" means a receptacle or enveloping material used to contain or protect dangerous goods, but does not include a container, road vehicle or rail vehicle;

"rail vehicle" means a vehicle that is drawn, propelled or driven on rails by means other than by muscular power;

"road vehicle" means a vehicle as defined in the Motor Vehicle Act;

"safety mark" includes a design, symbol, device, sign, label, placard, letter, word, number, abbreviation or any combination of these that is to be displayed on dangerous goods or containers, packaging, road vehicles or rail vehicles used in the handling or transportation of dangerous goods;

"safety requirements" means requirements for

(a) the handling or transportation of dangerous goods,

(b) the reporting of handling or transportation of dangerous goods,

(c) the training of persons engaged in the handling or transportation of dangerous goods, and

(d) the inspection of the handling or transportation of dangerous goods;

"safety standards" means standards regulating the design, construction, equipping, functioning or performance of containers, packaging, road vehicles or rail vehicles used in the handling or transportation of dangerous goods;

"shipping document" means a document that accompanies dangerous goods being handled or transported and that describes or contains information relating to the goods and, without restricting the generality of this definition, includes a bill of lading, cargo manifest, shipping order and waybill;

"transportation" means transportation by a road vehicle or a rail vehicle or both.

Application

2 This Act does not apply to the handling or transportation of dangerous goods if the dangerous goods are deemed under the regulations to be handled or transported or both under the sole direction or control of the Minister of National Defence for Canada.

Conflicting provisions

3 (1) In the event of a conflict between

(a) a regulation made under this Act, or a permit issued under this Act, and

(b) a regulation made under another Act,

the regulation made under this Act and the terms of the permit issued under this Act prevail to the extent of the conflict.

(2) Subsection (1) does not apply to a regulation made under the Environmental Management Act.

Exemption by permit

4 (1) The minister, or a person designated by the minister, may issue a permit exempting a person or dangerous goods from one or more provisions of this Act.

(2) A permit issued under this section may contain any terms that the minister, or a person designated by the minister, considers appropriate.

Part 2 — Requirements Respecting Transportation of Dangerous Goods

Safety requirements

5 A person must not handle or transport dangerous goods unless

(a) all applicable prescribed safety requirements are complied with, and

(b) all containers, packaging, road vehicles and rail vehicles comply with the applicable prescribed safety standards and display the applicable prescribed safety marks.

Part 3 — Inspection, Detention and Removal

Inspectors and analysts

6 (1) If the minister is of the opinion that a person or the members of a class of persons are qualified to act in the capacity of dangerous goods inspector under this Act, the minister may designate the person or class.

(2) If the minister is of the opinion that a person or the members of a class of persons are qualified to act in the capacity of analyst under this Act, the minister may designate the person or class.

Inspector to show certificate of designation

7 (1) An inspector must be provided with a certificate, in the prescribed form, of his or her designation showing the purposes, classes of dangerous goods, road vehicles or rail vehicles and the buildings or places for which he or she has been designated.

(2) On entering or inspecting any building, place, container, packaging, road vehicle or rail vehicle an inspector must, if so required, produce the certificate to the person in charge of the thing or material being entered or inspected.

Powers of inspectors

8 (1) For the purpose of ensuring compliance with this Act, regulations under it or a permit under section 4 and within the scope of the inspector's certificate of designation, an inspector may, at any reasonable time,

(a) enter and inspect any building, place, road vehicle or rail vehicle where the inspector believes, on reasonable and probable grounds, that dangerous goods are being handled or transported, and

(b) request the opening and inspection of, or open and inspect any container, packaging, road vehicle or rail vehicle that the inspector believes, on reasonable and probable grounds, is being used for the handling or transportation of dangerous goods.

(2) In the course of an inspection under subsection (1), an inspector may

(a) for the purpose of analysis, take samples of anything found in the building, place, container, package, road vehicle or rail vehicle being inspected if the inspector believes, on reasonable and probable grounds, the substance or thing to be dangerous goods, and

(b) examine and remove, for the purpose of making copies and extracts of, any books, records, shipping documents or other documents or papers that the inspector believes, on reasonable and probable grounds, contain information relevant to the administration or enforcement of this Act and the regulations.

(3) If an inspector is satisfied, on reasonable and probable grounds, that any dangerous goods are being handled or transported other than in compliance with the applicable prescribed safety marks, safety requirements, safety standards and shipping documents, the inspector must, wherever possible, request the taking of, or take, any measures necessary to remedy the failure to comply.

Inspector's power to detain and remove

9 (1) An inspector may exercise the powers under this section if satisfied, on reasonable and probable grounds, that

(a) there is occurring or has occurred a discharge, emission or escape of dangerous goods from any container, packaging, road vehicle or rail vehicle by means of which the dangerous goods are being handled or transported,

(b) there exists a serious and imminent danger of a discharge, emission or escape of dangerous goods by reason of any condition occurring during the handling or transportation of the dangerous goods, or

(c) a provision of this Act or the regulations or a term of a permit is being or has been contravened.

(2) In circumstances referred to in subsection (1) the inspector may do one or more of the following:

(a) take measures that the inspector considers necessary in order to prevent or reduce any serious and imminent danger to life, health, property or the environment;

(b) detain any dangerous goods, container, packaging, road vehicle or rail vehicle that the inspector believes, on reasonable and probable grounds, to be related to the discharge, emission or escape or condition that has arisen or is related to the contravention that has occurred;

(c) remove or direct the removal of the detained goods, container, packaging, road vehicle or rail vehicle to an appropriate place.

(3) Any property detained under this section must be released after

(a) the provisions of this Act, the regulations and the terms of a permit, if any, have, in the opinion of the inspector, been complied with, or

(b) the danger to life, health, property or the environment has, in the opinion of the inspector, been prevented or adequately reduced, as the case may be, whichever occurs first.

(4) All costs and charges of the detention of a road vehicle or rail vehicle under subsection (2) are a lien on the road vehicle or rail vehicle, as the case may be, and the lien may be enforced in the manner provided under the Warehouse Lien Act.

(5) Neither the government nor any person acting under the authority of this section is liable for loss or damage arising from the detention of goods, containers, packaging, a road vehicle or a rail vehicle or the destruction or deterioration of anything detained under this section.

Assistance to inspectors

10 A person must not, while an inspector is exercising powers or carrying out duties and functions under this Act, do any of the following:

(a) fail to comply with any reasonable request of the inspector;

(b) knowingly make any false or misleading statement either verbally or in writing to the inspector;

(c) unless authorized by the inspector, remove, alter or interfere in any way with anything removed, being inspected or detained by the inspector;

(d) otherwise obstruct or hinder the inspector.

Part 4 — Certificates and Reports

Certificate of inspection, detention or sampling

11 If an inspector inspects, detains or takes a sample of anything under this Act the inspector must, on request, provide the person in charge of it with a certificate, in the prescribed form, evidencing the inspection, detention or taking of the sample, as the case may be.

Analyst's certificate or report as evidence

12 Subject to sections 14 and 15, a certificate or report appearing to have been signed by an inspector or an analyst stating that he or she has inspected, analyzed or examined any road vehicle, rail vehicle, packaging, container, shipping document, product, substance or organism and stating the results of the inspection, analysis or examination

(a) is admissible in evidence in a prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report, and

(b) in the absence of any evidence to the contrary, is proof of the statements contained in the certificate or report.

Copies or extracts of certificate or report as evidence

13 Subject to sections 14 and 15, a copy or an extract of a certificate or report made by an inspector or analyst and appearing to have been certified under an inspector's or analyst's signature as a true copy or extract

(a) is admissible in evidence in a prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the copy or extract of a certificate or report, and
(b) in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

Cross examination of inspector may be permitted by court

14 The party against whom a certificate or report is produced under section 12 or against whom a copy or extract is produced under section 13 may, with leave of the court, require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purpose of a cross-examination.

Notice of intention to introduce evidence

15 A certificate, report, copy or extract referred to in section 12 or 13 must not be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced a notice of this intention together with a duplicate of the certificate, report, copy or extract.

Part 5 — Offences and Penalties

Penalties

16 (1) A person who contravenes section 5 or the terms of a permit issued under section 4 commits an offence.

(2) A person who commits an offence under subsection (1) is liable

(a) on a first conviction, to a fine of not more than \$50 000 or to a term of imprisonment of not more than 2 years, or both, and

(b) on a subsequent conviction, to a fine of not more than \$100 000 or to a term of imprisonment of not more than 2 years, or both.

(3) A person who contravenes section 10 or 21 (1) or (2) commits an offence.

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine of not more than \$10 000 or to a term of imprisonment of not more than one year, or both.

(5) The Lieutenant Governor in Council may provide in regulations that a person, who is guilty of an offence established under the regulations to this Act, is liable to

(a) a fine of a prescribed amount not greater than \$10 000,

(b) a prescribed term of imprisonment of not longer than one year, or

(c) both a prescribed fine and term of imprisonment that does not exceed the maximum amount and term specified in paragraphs (a) and (b).

Defence of due diligence

17 Subject to section 18, in a prosecution for an offence against this Act or the regulations, it is a defence for the person charged to prove that the person took all reasonable measures to comply with this Act.

Offence by employee or agent

18 In a prosecution for an offence against this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his or her consent and that he or she took all reasonable measures to prevent its commission.

Officers, directors and agents of corporation guilty of offence by corporation

19 An officer, director or agent of a corporation, who directs, authorizes, assents to, acquiesces in or participates in the commission of an offence, is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Time limit for bringing prosecution

20 No prosecution for an offence against this Act or the regulations may be commenced more than 2 years after the day the alleged offence was committed.

Part 6 — Miscellaneous

Duty to report discharge, emission or escape of dangerous goods

21 (1) If a discharge, emission or escape of dangerous goods from any container, packaging, road vehicle or rail vehicle occurs, the person who, at that time, has the charge, management or control of the dangerous goods must, in the manner and the circumstances established by the regulations, report the discharge, emission or escape.

(2) If a person is required to make a report under subsection (1), the person must, as soon as possible, take all reasonable emergency measures consistent with public safety to repair or remedy a dangerous condition or to reduce or mitigate danger to life, health, property or the environment that results or may reasonably be expected to result from the discharge, emission or escape.

(3) If an inspector is satisfied, on reasonable and probable grounds, that

(a) a discharge, emission or escape referred to in subsection (1) has occurred or might occur, and

(b) immediate action is necessary in order to carry out any reasonable emergency measures referred to in subsection (2),

the inspector may take the emergency measures or request that the emergency measures be taken by a person the inspector considers qualified to do so.

(4) Any inspector or other person required, requested or authorized to take reasonable emergency measures under subsection (2) or (3) may enter and have access to any place or property and may do all reasonable things in order to comply with either or both of those subsections.

(5) A person requested to act under subsection (3) is not personally liable for any damage in respect of any act or omission in the course of complying with the request, unless it is shown that the person did not act reasonably in the circumstances.

Evidence of financial responsibility

22 The minister may require any person who engages in or who proposes to engage in the transportation of dangerous goods to provide evidence of financial responsibility in a form of insurance, an indemnity bond or any other form satisfactory to the minister.

Local government control of transport on highways

23 (1) A municipality may make bylaws with respect to highways under its direction, control and management

(a) designating the route and time of travel of road vehicles transporting dangerous goods, and

(b) prohibiting the carrying of dangerous goods on the highways specified in the bylaw.

(2) A bylaw under subsection (1) does not come into force until it is approved by the minister.

Agreements with Canada

24 (1) With the approval of the Lieutenant Governor in Council, the minister may enter into agreements with the government of Canada with respect to the administration and enforcement of

(a) this Act and the regulations or any provision of this Act or the regulations, and

(b) the federal Act, or any provision of that Act or the regulations made under it.

(2) An agreement entered into under subsection (1) may provide for any matters necessary for or incidental to the implementation, administration or enforcement agreed on, or for the apportionment of any costs, expenses or revenues arising from the agreement.

Power to make regulations

25 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) specifying products, substances and organisms to be included in the classes listed in the Schedule;

(b) establishing divisions, subdivisions and groups of dangerous goods and classes of dangerous goods;

(c) specifying, for each product, substance and organism prescribed under paragraph (a), the class listed in the Schedule and the division, subdivision or group into which it falls;

(d) determining or providing a manner of determining the class listed in the Schedule and the division, subdivision or group into which any dangerous goods not prescribed under paragraph (a) falls;

- (e) exempting from the application of this Act, the regulations or a provision of this Act or the regulations, the handling or transportation of dangerous goods
 - (i) in specified quantities or concentrations,
 - (ii) in specified circumstances,
 - (iii) for specified purposes, or
 - (iv) in specified containers, packaging, road vehicle or rail vehicle;
 - (f) respecting the manner of identifying the quantities or concentrations of dangerous goods exempted under paragraph (e);
 - (g) respecting the circumstances in which any dangerous goods are deemed to be under the sole direction or control of the Minister of National Defence for Canada;
 - (h) respecting the manner of applying for a permit;
 - (i) respecting circumstances in which the handling or transportation of dangerous goods is prohibited;
 - (j) specifying dangerous goods that must not be handled or transported in any circumstances;
 - (k) respecting safety marks, safety requirements and safety standards of general or particular application;
 - (l) respecting shipping and other documents to be used in the handling or transportation of dangerous goods, the information to be included in those documents and the persons by whom and the manner in which these documents are to be used and retained;
 - (m) establishing circumstances in which fees are or are not payable for inspections or permits under this Act and determining the amount of those fees;
 - (n) prescribing the forms of the certificates referred to in sections 7 and 11;
 - (o) establishing the manner of reporting and the information to be included in the report under section 21 (1) and the circumstances in which a report need not be made under that section;
 - (p) providing for the appeal of a decision to issue or a refusal to issue a permit and establishing rules and procedures respecting that appeal.
- (3) A regulation made under this section may adopt by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers necessary, any code, standard or rule, as amended from time to time.

Schedule

Class 1: Explosives, including explosives within the meaning of the Explosives Act (Canada).

Class 2: Gases; compressed, deeply refrigerated, liquefied or dissolved under pressure.

Class 3: Flammable and combustible liquids.

Class 4: Flammable solids; substances liable to spontaneous combustion and substances that on contact with water emit flammable gases.

Class 5: Oxidizing substances; organic peroxides.

Class 6: Poisonous (toxic) and infectious substances.

Class 7: Radioactive materials and prescribed substances within the meaning of the Atomic Energy Control Act (Canada).

Class 8: Corrosives.

Class 9: Miscellaneous products, substances or organisms that are considered by the Lieutenant Governor in Council to be dangerous to life, health, property or the environment when transported and are prescribed to be included in this class.

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