

Some Recent Developments Affecting Major Hazard Control in Canada

- *CEPA Part 8 (esp. Section 200)*
- Bill C-45
- *Ontario Emergency Management Act*
- Security concerns

Items in italics derived from work of the former Major Industrial Accidents Council of Canada (MIACC)

Bill C-45: An Act to Amend the Criminal Code (Criminal Liability of Organizations)

- Aka the “Westray” Bill
- First introduced as private member’s bill by NDP, later adopted as government bill with support of all major parties
- Passed October 27, 2003
- Almost unnoticed by media!

Bill C-45 Highlights (from Legislative Summary July 2003)

- The criminal liability of corporations and other organizations will no longer depend on a senior member of the organization with policy-making authority (i.e., a “directing mind” of the organization) having committed the offence.
- The physical and mental elements of criminal offences attributable to corporations and other organizations will no longer need to be derived from the same individual.
- The class of personnel whose acts or omissions can supply the physical element of a crime (*actus reus*) attributable to a corporation or other organization will be expanded to include *all employees, agents and contractors*.

Bill C-45 Highlights (from Legislative Summary July 2003)

- For negligence-based crimes, the mental element of the offence (*mens rea*) will be attributable to corporations and other organizations through the aggregate fault of the organization's "senior officers" (which will include those members of management with operational, as well as policy-making, authority).
- For crimes of intent or recklessness, criminal intent will be attributable to a corporation or other organization where a senior officer is a party to the offence, or where a senior officer has knowledge of the commission of the offence by other members of the organization and fails to take all reasonable steps to prevent or stop the commission of the offence.

Bill C-45 Highlights

(from Legislative Summary July 2003)

- Sentencing principles specifically designed for corporate/organizational offenders will be adopted.
- Special rules of criminal liability for corporate executives will be rejected.
- *An explicit legal duty will be established on the part of those with responsibility for directing the work of others, requiring such individuals to take reasonable steps to prevent bodily harm arising from such work.*

Bill C-45: An Act to Amend the Criminal Code (Criminal Liability of Organizations)

- Likely to be used only for serious cases
- Enforced by police
- Key suspects could be jailed until bail arranged
- Due diligence a defence – but that implies knowledge and application of standard approaches to hazard control
- Consult your legal dept. for more info

Ontario Emergency Management Act

- Communities to have program as defined by EMO
- Progress targets:
 - Essential level: end of 2004
 - Enhanced level: end of 2005
 - Comprehensive level: end of 2006
 - NFPA 1600 compliant: end of 2007
- Implications for hazardous sites
- Other provinces watching Ontario lead