

4 Legal Requirements and Performance Standards

4.1 What Legal Requirements Apply to My Works?

In addition to the commitment of the MoT to environmental protection and the public expectation that the Ministry and its Maintenance Contractors will do their part in protecting environmental values, all work must be compliant with (i.e., meet the requirements of) applicable environmental legislation (federal, provincial, and local). This legislation may regulate where, when and how highway maintenance operational activities can be carried out. A table summarizing the primary legal requirements applicable to highway maintenance activities is provided on the following page (Table 5).

Due Diligence

To ensure that highway maintenance work is undertaken in a manner that demonstrates environmental due diligence, there is a responsibility to:

1. Be familiar with the municipal, provincial, and federal legal requirements;
2. Recognize and address the potential environmental impacts of works to the physical, chemical, and biological components of the environment;
3. Avoid, mitigate or lessen those impacts or risks in the planning of work;
4. Ensure the protection of properties and human health;
5. Obtain the appropriate permits and authorizations from all regulatory agencies before proceeding with activities; and
6. Conduct works in a manner that complies with the law and avoids, mitigates or lessens potential impacts to aquatic and riparian habitats, water quality and quantity, fish and wildlife populations, and public safety and property.

Note:

Some of the information provided in this document is referenced from legislation. However, this document should not be considered an official copy of legislation. If a discrepancy arises between this document and legislation, the legislation takes precedence. The Province of British Columbia does not guarantee the accuracy or completeness of the information referenced here from legislation, and in no event is the Province liable or responsible for damages of any kind arising out of its use.

Table 5. Summary of Key Environmental Legislation, Regulations and Policy Applicable to Highway Maintenance Activities.

Statute	Section(s) / Regulations	Regulating Agency	Area of Regulation	Potential Approval or Permit Requirements	Maximum Penalties
<i>Fisheries Act</i>	Section 35(1)	Fisheries and Oceans Canada	Prohibits harmful alteration, disruption or destruction (HADD) of fish habitat	Application to DFO for an Authorization for a HADD of fish habitat may be required	Summary convictions – fines up to \$100,000 per offence per day or up to 1 year of imprisonment. Indictable offences – fines up to \$500,000 per offence per day or up to 2 years of imprisonment, or both. Court orders may require the restoration of impacted areas
	Sections 34(1), 36(3)	Fisheries and Oceans Canada; Environment Canada	Prohibits the deposit of deleterious substances into waters frequented by fish	Deposit of deleterious substance not permitted	Summary convictions – fines up to \$100,000 per offence per day or up to 1 year of imprisonment. Indictable offences – fines up to \$500,000 per offence per day or up to 2 years of imprisonment, or both. Court orders may require the restoration of impacted areas
<i>Migratory Bird Convention Act</i>	Section 12	Environment Canada	Prohibits the injury, molestation, and destruction of migratory birds and their nests	A permit must be issued for all activities affecting migratory birds	Summary convictions – fines up to \$100,000 for a corporation, up to \$50,000 and/or 6months imprisonment for individuals. Indictable offences – fines up to \$250,000 for a corporation, up to \$100,000 and/or up to 5 years imprisonment for individuals.
<i>Navigable Waters Protection Act</i>	Sections 5(1), 6(1), 6(4), 10(1), 10(2)	Transport Canada	Prohibits the construction of marine projects and projects on navigable freshwater without approval under the act	Application may be required for an Approval under the Act	Summary convictions - fines not more than \$5000. Costs may also be assessed for the removal of works.
<i>Species at Risk Act (SARA)</i>	Sections 32(1), 33	Environment Canada	Prohibits the injury, possession, or destruction of any species protected under the Act, or alteration or destruction of a protected species' residence	Application to Ministry of Environment for permit approval under the Act	Maximum penalties ranging up to \$1,000,000.
<i>Environmental Management Act</i>	Special Wastes Regulation	BC Ministry of Environment, Environmental Protection Division	Regulates the disposal and storage of hazardous materials and hazardous materials spill reporting	Application may be required for permits for the disposal and storage of special wastes	Fines ranging in value up to \$1,000,000 or imprisonment for up to six months, or both.
<i>Fish Protection Act</i>	Section 40.1(1)	BC Ministry of Environment, Water Stewardship Division	Regulates activities that affect flow, fish habitat, and riparian areas. Requires the maintenance of flows, the establishment of setbacks, and the designation and protection of sensitive streams.	Approval for works in sensitive streams must be obtained from the controller or regional water manager.	No direct fines under the <i>Fish Protection Act</i> . Fines may be levied under associated acts.

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Statute	Section(s) / Regulations	Regulating Agency	Area of Regulation	Potential Approval or Permit Requirements	Maximum Penalties
<i>Health Act</i>	Sewage Disposal Regulations	BC Ministry of Health Services	Regulates the installation, construction and maintenance of sewage disposal facilities	A permit for the installation of a sewage system may be required under the act, provided the works meet the requirements of the Regulation.	Fines up to \$200,000 for each day an offence continues and/or 12 months imprisonment.
<i>Water Act</i>	Section 9, <i>Water Act</i> Regulation, Part 7	BC Ministry of Environment, Water Stewardship Division	Prohibits large works in or about a stream, and short-term use, storage and diversion of water unless an Approval has been obtained under the act. Protects water quality, habitat, and water users by regulating changes in and about a stream.	Application may be required to LWBC for a Section 9 <i>Water Act</i> Approval. Certain works are permitted under a notification process to MOE.	Fine of up to \$200,000 per offence per day or to imprisonment not exceeding 12 months, or to both.
<i>Weed Control Act</i>	Weed Control Regulations	BC Ministry of Agriculture and Lands	Regulates the management of noxious weeds and prohibits the dispersal of weeds and their seed.	A permit and/or a Pest Management Plan is required for the chemical treatment of noxious weed and invasive plants on public land	Costs related to weed control activities.
<i>Wildlife Act</i>	Section 9, Section 34, Section 35	BC Ministry of Environment, Fish and Wildlife Branch	Regulates works having impact on wildlife including the damage or removal of beaver dams; the possession, disturbance or destruction of birds, their eggs and nests; and the transportation and possession of carcasses	A permit must be obtained from WLAP to allow activities under the act including beaver dam and bird nest removal, and carcass possession and transportation.	Convictions under the <i>Wildlife Act</i> may lead to a fine of between \$1,000 and \$100,000, or a term of imprisonment not exceeding one year, or both.

Legal Requirements and Performance Standards

4.2 What is a Performance Standard?

A performance standard identifies the desired result for work that is carried out. It must be met to ensure compliance with applicable environmental legislation. In some cases, it may be defined by scientifically-supported maximum permissible disposal or impact thresholds (e.g., the concentration of a particular chemical in wastewater discharge). At other times, it may be a simple general statement such as the requirement to cause no harmful alteration, disruption or destruction of fish habitat.

Most of the performance standards that apply to routine highway maintenance activities are general statements rather than specific thresholds. In many cases, impact thresholds are site-specific, and may vary between regions and regulatory agencies. Staff from local MOE and DFO offices may be able to provide more information on specific impact thresholds related to a particular activity.

SMART Objectives:

Specific

Measurable

Achievable

Realistic

Time Specific

An Example Performance Standard: Deleterious Substance Discharge

The general performance standard identified is simply a restatement of a section of the *Fisheries Act*: **No release of any substance that could be deleterious (toxic) to fish or fish habitat** (*Fisheries Act*, Sections 34(1) and 36(3)).

Many highway maintenance works involve the disturbance of sediment and soil or the use of potentially hazardous or harmful materials. Without proper containment measures and careful use, these materials may be released to the environment as deleterious substances. A deleterious substance is any compound or material which, when introduced into the environment, causes a harmful effect. A substance may be considered deleterious because of its concentration or chemical or physical effects on the water quality and organisms within the watercourse or water body receiving the discharged substance.

Examples of deleterious (or potentially deleterious) substances resulting from highway maintenance activities include, but are not limited to:

- Runoff from patching and sealing compounds, tar, asphalt, and chemical surface treatments used in highway surface management activities
- Sediment in runoff from bridge deck cleaning activities, disturbed soils, newly applied gravel or riprap materials, and materials stockpiles
- Leachate and raw product from concrete and cement-based products used to repair concrete structures
- Runoff or overspray containing de-icing compounds and dust control palliatives
- Equipment oils and fuels

The Sediment Question

Studies have shown that the introduction of fine sediments generated directly from digging activity in the stream and indirectly from run-off from exposed soils has severe negative impacts on all life stages of fish and other aquatic life and their habitats. While no amount of a deleterious substance is permitted to be discharged, DFO uses the following threshold value to identify the level at which sediment becomes deleterious. Sediment becomes a deleterious substance when a water sample taken from the discharging water source has a total suspended solids (TSS) value more than **25mg/l** above the background TSS value of the receiving watercourse. During storm events, sediment-laden waters are considered deleterious when the TSS value of the discharging water source is more than **75mg/l** above the background TSS value for the receiving watercourse.