



Recommendations

from the Yellowhead Institute Special Report, *Data Colonialism in Canada's Chemical Valley: Aamjiwnaang First Nation and the Failure of the Pollution Notification System*

Harm-Reducing Recommendations for Industry

When pollution events happen, community members deserve to know the specifics of what is happening, the potential risks involved, who or what is responsible for the alarm, and what steps are being taken to prevent it from happening again. Companies should provide transparent and timely answers to the following questions when incidents occur.

In the event of “noise” or “increased noise,” companies must disclose:

- When did the noise begin, and when is it expected to end?
- What caused the noise?
- Which processes, chemicals, risks, and releases are involved with or related to the noise?
- Is this issue a recurring event? What is being done to prevent it from happening again?

In the event of a “release,” companies must disclose:

- When did the release begin, and when is it expected to end?
- What is the cause of the release?
- Is this issue a recurring event? What is being done to prevent it from happening again?
- What are the specific chemicals involved?
- What is the potential risk to the community?

In the event of “flaring” or “elevated flaring,” companies must disclose:

- How intense is this flaring event that is leading to this reporting?
- What chemical is being burned off?
- What is the risk to the community?
- What is the duration of the flaring?
- What is the size of the flare?

- What is causing the flaring? Was there a problem? If so, what was it?
- Has this or a similar event happened before? What is being done to prevent it from happening again?
- Did the plant decide to increase flaring for employee safety purposes?
- Was a decision involved in saving wear on the plant by flaring, and therefore, put cost-saving ahead of pollution risks to the community?

Most of these questions are also applicable to other pollution events, from planned and unplanned “disruptions” to “unit upset” to “equipment failure.”

Recommendations for the Federal and Provincial Governments

- 01. Rather than allowing** multinational oil and petrochemical companies to govern the notification and air monitoring systems, ensure accountability to Aamjiwnaang First Nation by centering community expertise and governance, upholding the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP).
- 02. Include Indigenous governance** over the terms and measures of pollution notifications, monitoring, and regulation in Chemical Valley, as well as support to create community decision-making institutions and capacities to exercise their own regulatory authority over environmental matters in order to meet the terms of Canada's Action Plan for UNDRIP as outlined in sections 32 and 34.
- 03. Ensure upcoming** Federal Bill C-226, *A National Strategy to Assess, Prevent and Address Environmental Racism and to Advance Environmental Justice*, instigates a full review and reform of notifications and pollution information systems in Chemical Valley and ensures community recommendations lead this process.

04. Amend Ontario Regulation 675/98 of the *Ontario Environmental Protection Act* to specify the process by which companies can report spills and releases to the public. This process of deciding new criteria for reporting should be community-led by First Nations Nations, and all industry information must be shared.

05. Strengthen the right to a meaningful community consultation process required in environmental decisions in Ontario by enacting the **Auditor General's recommendation** to clarify the right to a public consultation period in the *Environmental Bill of Rights, 1993*.

06. Demand the Ontario government to stop tolerating spills, environmental impacts, and non-compliance, and enforce existing environmental laws and regulations through the penalties outlined in Environmental Penalties (O. Reg. 222/07). In 2022, the provincial government made 8 orders to 5 companies totaling \$292,788.50 in fines; four were to Shell and Suncor in Chemical Valley.¹⁰ Enforcing environmental laws is an obligation to respect the impacts on Indigenous land.

07. Require companies to release their plans for starting up and shutting down facilities and for high flaring in advance. Our report demonstrates higher occurrences of reported pollution events in spring when plants are “starting-up.” Companies are well aware of these pollution-causing events and should be required to share their expected disruptions with the community in advance.

08. Require companies to appoint a point person with applicable knowledge to provide community members with detailed information about a pollution event before, during, and after it occurs. This person should be able to provide answers to the suggested questions outlined above.

09. Following a pollution event, investigate the responsible facilities to ensure companies fully comply with all environmental laws and standards and share this information with impacted First Nations.

Recommendations for the Bluewater Association for Safety, Environment, and Sustainability (BASES):

- 01. Be accountable** to members of the Aamjiwnaang First Nation and the public. This includes being responsive to requests for information.
- 02. Archive, centralize, and make accessible** all past and future notifications of pollution events on their website.
- 03. Create a detailed**, descriptive, and science-backed guide that explains all of the terms and codes used in their notifications, e.g., “noise,” “elevated flaring,” “maintenance,” “startup,” and “shutdowns,” CVECO codes, and community risks.
- 04. Include the timing** of events in all future notifications.
- 05. Follow up** each notification with details:
 - How is the industry addressing this problem?
 - What actions are the industry taking to prevent future incidents?
 - What actions is the industry taking to ensure the community's safety
 - How are these issues dealt with in other jurisdictions, such as the United States Environmental Protection Agency and other state agencies?
- 06. Provide a monthly** and annual report that summarizes:
 - All incidents reported by each industry
 - What follow-up actions were taken to address the incident
 - What is being done to prevent it from recurring
 - What the risks to the community were and how community concerns are being addressed.



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¹⁰Ontario, Ministry of Environment, Conservation and Parks. “2022 Environmental Penalty Annual Report.” March 2022. <https://data.ontario.ca/en/dataset/environmental-penalty-annual-report>