Are Companies Liable for Environmental Offences of a Rogue Employee?



Should a company be liable for an environmental offence committed by an individual or group of employees acting on their own, either deliberately or carelessly, and without the company's authorization or knowledge' It depends on whether the company foresaw or should have foreseen the transgression and took reasonable steps to prevent it, that is, on whether the company exercised due diligence. Here's a look at how two courts, one from Alberta and one from BC, applied these principles to decide whether to hold a company liable for an employee's violations.

COMPANY IS NOT LIABLE

SITUATION

The hired hand at a BC orchard decides on his own to store pesticides on private property next to a public athletic field in Kelowna. He has a Pesticide Applicator Certificate and understands that it's dangerous and illegal to keep pesticides on the land. So, he doesn't tell the orchard owner. Nine years later, the owner discovers the pesticides and hires the same hand to remove them. What the owner doesn't realize is that the hand's certification has long expired. The hand

inexplicably dumps the bags of pesticides in a dry gully on the property in plain view without bothering to hide them. Somebody tips off the authorities and the owner is charged with 5 violations of the BC *Waste Management Act* and *Pesticide Control Act*. I had no idea the hired hand would do something like that and would have never allowed it if I had, the owner argues.

RULING

The BC Provincial Court rules that the owner showed due diligence and dismisses all charges.

EXPLANATION

Due diligence requires companies to have safety systems in place. But ‘what is expected on a farm might be very different than what is expected in a commercial business,’ the court noted. The owner in this case shouldn’t be expected to ‘put up the bells and whistles’ that a big company would. Trusting the hired hand was clearly a mistake. But it wasn’t unreasonable. According to the court, the hired hand’s behavior was completely ‘bizarre;’ no ‘average person’ could have expected somebody with an applicator’s license, even an expired one, to dump pesticides in a gully on private property.

R. v. *Rezansoff*, 2003 B.C.P.C. 0106

COMPANY IS LIABLE

SITUATION

A recently hired truck driver is ordered to transport a shipment of isopropyl alcohol/hydrochloric acid and hypochlorite solution (bleach). The dispatcher, also a new employee, is told to warn the driver not to mix the acid and bleach but forgets to put the warning in the work order. The paperwork also misidentifies the chemicals. Luckily, the containers are clearly labeled as acid and bleach. The driver mixes the chemicals in the same tank. As a result, chlorine gas escapes from the pop valve. Undaunted, the driver delivers the chemicals to the appointed destination 30 minutes away. When he gets there, it’s decided to pump the mixture into a well. But the stuff eats through the seals on the pumping mechanism and gets sprayed on the ground. The trucking company is charged with *Environmental Protection* and *Transportation of Dangerous Goods Act* violations.

RULING

The Alberta Court of Appeal says the company didn’t use due diligence and finds it guilty of both charges.

EXPLANATION

We had a training and supervision program in place, the company argued. The mess was just the result of unavoidable human error. You could and should have done a lot more to prevent these mistakes, the Court replied. It then listed some of the reasonable steps that could have been taken such as ensuring that inexperienced dispatchers didn’t work with inexperienced drivers, especially when dangerous chemicals are involved. Unlike in the BC case, this violation was committed by a large corporation and was the result of flaws in its safety system. It was also foreseeable that such flaws would lead to an accident.

R. v. Terroco Industries Limited, 2005 ABCA 141 (CanLII)