BRIEF SENIOR MANAGEMENT: Why You Can’t Delegate Compliance with Environmental Laws to Your Workers



A worker for an Ontario waste oil company transferred a load of oily waste water from a contractor’s truck to his own truck without getting the necessary permission from the Ministry of Environment. The worker also didn’t properly fill out the required manifest. In fact, he lied on the manifest. The government charged not only the worker but also the company with environmental offences. The worker pleaded guilty but the company denied responsibility and blamed the worker for the entire incident. The trial court acknowledged that the worker had deliberately committed the offences but still held the company liable and fined it $20,000, which was reduced to $10,000 on appeal. The company was responsible because it put the worker (and its other drivers) in a self-reporting situation and ‘had delegated to drivers a degree of trust to comply with the regulations,’ the trial court noted. And a company can’t delegate the responsibility to comply with the law to its workers and then close its eyes to their non-compliance, the trial court ruled and an appeals court confirmed [*R. v. Safety-Kleen Canada Inc.*].

THE PROBLEM

Many aspects of a company’s operations must comply with

environmental laws. And naturally, most of these operations are carried out by workers. Company officials and supervisors oversee these operations, of course. But they can't be everywhere at once. So what happens if a worker deliberately violates an environmental law' Don't assume that the company is off the hook. As the *Safety-Kleen* case demonstrates, although workers can be liable for deliberate violations they commit, the responsibility for ensuring compliance with the law ultimately falls on the company.

WHAT IT MEANS

Getting workers to obey company policies is obviously critical to a company's compliance efforts. But there's more to environmental compliance than just setting a bunch of rules, hiring good people and assuming they'll do their jobs. The company in *Safety-Kleen* tried this approach. It attempted to pin the blame for the incident on the worker. We counted on him to follow our procedures and properly complete the required paperwork, it contended. But the court didn't buy this argument. Although a company should trust its workers to some extent, such trust can't be used as an excuse to relieve the company of its duty to ensure that workers are doing what they're required to do.

However, the *Safety-Kleen* case doesn't stand for the principle that a company is *automatically* responsible any time workers make a mistake and commit a violation. What the decision *is* saying is that a company can't delegate all of its compliance responsibilities to workers. As the court explained, to prove due diligence, the company had to show that a system was in place to prevent the prohibited act from occurring and that reasonable steps had been taken to ensure that system's effective operation. But in this case, there weren't sufficient safeguards in the company's system to check for irregularities in the completion of manifests. If the company had had such a system and had actively enforced its rules and policies for completing manifests, it may have been able to

prove that the violation was the act of a rogue worker and thus avoid liability.

THE LESSON

The company's workers do have some responsibility for complying with environmental laws. Remember: Both the worker *and* the company were prosecuted in the *Safety-Kleen* case. But the company can't put all of its eggs in the workers' basket. That is, the company can't rely on workers to comply with the law as its *sole* environmental compliance mechanism. If the company places all of its trust in workers to do their jobs in compliance with company policy and the law, and fails to take additional steps to ensure that they're actually doing so, it's making the same mistake that got *Safety-Kleen* in trouble.

The moral: When it comes to environmental compliance, *the company* is ultimately responsible. That's why senior management needs to get involved. No, you don't have to personally conduct inspections of the workplace or train workers on compliance with environmental rules and laws. You can rely on managers, supervisors and the EHS coordinator to do those kinds of day-to-day tasks. But you need to oversee *how* managers, supervisors and workers carry out their responsibilities. For senior management, appropriate oversight would involve taking steps to ensure that:

- Workers are aware of and receive adequate training in their obligations under environmental laws;
- There's a system in place to ensure that supervisors provide adequate instructions to workers and that workers comply with those instructions;
- The company's environmental rules and policies are enforced'even if it means disciplining noncompliant workers; and
- Compliance with the company's environmental policies and environmental laws is considered when evaluating the performance of workers, supervisors and managers, and

determining their qualification for raises and/or promotions.

SHOW YOUR LAWYER

R. v. Safety-Kleen Canada Inc., [1997] CanLII 1285 (ON CA), Feb. 27, 1997