

# Diary of an OHS Inspector: The Case of the Vanishing Cylinder



## NOVEMBER 6

As a kid, I didn't care much for hide-and-seek. Let 'em hide. Ol' Nick wasn't about to go looking for them.

When I became an OHS inspector, I learned to play the game. Now, I open drawers, poke around in cleaning closets and check fuse boxes. In fact, I've gotten good at finding hiding places. Real good.

Then one day, some smart aleck up and changed the rules of the game. Or at least he tried to. He learned a hard lesson, one I want to share with you.

## The Trouble Begins

I was investigating the Sheikh Well & Poor (SWP) oil refinery. A worker had just been killed in a machine incident. I'll spare you the grizzly details. Suffice it to say that I suspected that a leveling cylinder from a man lift was the cause. I removed the cylinder, locked it in a plastic tote box and was about to take it to a machine shop off the site for testing.

That cylinder was now no longer just an ordinary machine part;

it was a piece of crucial evidence. What we'd learn from the cylinder would affect the fate of a lot of people. It would determine whether SWP would face OHS charges for the worker's death and what kind of benefits the victim's family would get from workers' comp. The cylinder was also Exhibit A in the wrongful death lawsuit the family had filed against the man lift manufacturer.

So, as I was taking away the cylinder, Haydn Seeck, the SWP refinery general manager practically ran up to me. "Where are you going with that'," he asked breathlessly.

"I'm taking it to a lab for testing," I replied.

"Do you think that's a good idea, Mr. O'Shay'" The voice came from behind me. It belonged to Allie Katz, the site manager.

"Yes, Ms. Katz. I think it's a very good idea."

The sarcasm didn't back her off. "Mr. O'Shay, I don't need to remind you that that cylinder is a very sensitive piece of evidence and needs to be looked after carefully."

Now I started getting hot. I got my faults like everybody else. But being stupid isn't one of them. I've been around long enough where I don't need the Ms. Katzes of the world telling me how to do my job. But I bit my tongue and decided to let it go.

## **The Cylinder Vanishes**

Looking back, I almost wish I had given in to temptation and delivered that tongue lashing. Maybe if I had, it would have prevented what happened next.

A week later, I came back from vacation rested and in a good mood. One of my first stops was the machine shop to check on that cylinder. But when I got there I was in for a shock. The cylinder was gone! I looked everywhere, but couldn't find a

trace of the bloody thing!

I was frantic. I went right to the office of Donna Tellow, my Assistant Regional Director and explained what happened.

There was nothing left to do but notify SPW that their precious cylinder was missing. Donna and I called Seeck and delivered the bad news. He just chuckled.

"Mr. O'Shay, let me reassure you that the cylinder is perfectly safe."

"I'm sorry, Mr. Seeck. I don't understand. . ."

"The cylinder is right here in my office vault."

Donna and I were completely flabbergasted!

"You see," Seeck explained, "Ms. Katz and I were concerned that you might mishandle the cylinder or let somebody steal it. And that would be a disaster. So, we removed the cylinder from the machine shop while you were on vacation and brought it back here just to be safe. So, you see, everything's under control."

I was seething. It's not just that the creep took the cylinder; it's the fact that he thought that he was actually doing us a favor by doing so!

To make a long story short, we referred the case to the provincial justice department and SPW was indicted for one count of obstructing an investigation. The SPW officers were shocked. They thought they had done a good deed. But they soon learned the errors of their ways. They ended up pleading guilty to one count of obstruction and were fined \$125,000.

## **Can You Say `Obstruction`**

Ladies and gentlemen, I hope you all realize that it's a crime, not an OHS violation, but a crime, to obstruct an OHS

inspection. "Obstruction" is serious business.

And that's the problem. Most people associate the word "obstruction" with crooks who shred documents and destroy other evidence so they won't get caught. The SWP people weren't in that class. I know they weren't trying to cover their tracks. In fact, they were actually trying to *protect* evidence and make sure it wasn't destroyed. Since they didn't trust us to do it right, they simply decided to look after it themselves. They had no idea that by doing this they'd be committing obstruction.

But that's exactly what they ended up doing. You folks need to understand what SPW did not: that unilaterally removing a piece of evidence in an OHS investigation is an act of obstruction, even if your motive is to preserve the evidence.

## The Moral

You may come across an OHS inspector who you think is playing fast and loose with a sensitive piece of evidence, the way the SWP officials felt about me. Your recourse in that situation is to call your OHS office and state your concerns. Yes, you are allowed to go over the inspector's head and talk to a senior official. Just understand that this can backfire because it's not likely to sit well with the inspector you complain about. You can also consult your lawyer about challenging the conduct of the inspection in court.

But the one thing you *cannot* do under any circumstances is take the law into your own hands and take back physical possession of evidence once it has been removed by an OHS official. Do that and you're looking at obstruction charges. If you don't believe me, just ask the folks at SWP.

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Be careful out there and remember, I'll be watching you.

Nick O'Shay

OHS Inspector