

Inadequate Worker Training Can Be Costly



A BC waste company was hired to drain waste oil from a transformer. Neither of the companies responsible for the transformer warned it that the oil contained high levels of PCBs. So the PCB-tainted oil contaminated other oil in the waste company's tanker truck and storage tank, all of which had to be sent to a hazardous waste facility for disposal. The waste company sued the other companies for damages of more than \$775,000; they claimed that the waste company was partially responsible for what happened. The trial court, in considering the issue of contributory negligence, criticized the company for failing to adequately train workers. It concluded that the waste company was 37.5% responsible, thus reducing its damages by more than \$29,000 [*Enviro West Inc. v. Copper Mountain Mining Corp.*].

THE PROBLEM

To ensure compliance with the OHS and environmental laws, employers must provide workers with the necessary information and training. Training can be provided in a variety of ways, including formal classes, informal toolbox talks and online lessons. But regardless of the training's format, employers have a duty to ensure that this training is adequate and addresses the hazards and issues workers are likely to encounter when doing their jobs. The *Enviro West* case is a good example of the potential cost of providing inadequate training. (This case involves environmental training but the same principles apply to safety training.)

THE EXPLANATION

Various laws require companies to provide environmental, health and safety training to their workers on topics such as complying with WHMIS requirements and transporting hazardous substances. The laws may not spell out exactly how such training must be provided. But they do require training to be adequate. For example, the *TDG Regulations* say that a person who handles, offers for transport or transports dangerous goods must be adequately trained and then spell out what constitutes adequate training [Secs. 6.1 and 6.2].

In addition, to prove due diligence, a company must show that it took all reasonable steps to ensure compliance with the OHS laws. Although the required "reasonable steps" will vary, courts will almost always look at the safety training the company provided its workers. And if that training is inadequate,

it will likely undercut the company's due diligence defence and result in liability for a safety violation.

Lastly, inadequate training can hurt the company in a civil lawsuit, such as the one in *Enviro West*. In that case, the waste company sued the other companies for negligence, arguing that they should've told it about the PCB-contaminated oil. The court agreed that these companies had been negligent. But it also concluded that the waste company had been negligent, too. For example, the waste company didn't properly train the workers managing and dispatching the trucks on how to screen the orders placed and ensure that PCB levels of the substances being picked up were established and verified before pickup.

The court also found the training of the waste company's drivers lacking. The company introduced its training manual to prove that it did train drivers on hazardous waste and the transportation of dangerous goods. It argued that it didn't have to train drivers to identify and classify all kinds of hazardous waste because the classification of such waste was the waste generator's responsibility. But the court called the driver's training "abysmal", noting that he'd never been warned about PCB-laden oil or informed of regulations on the concentration of PCBs in the oil he picked up.

Lastly, the waste company argued that it didn't have to train its drivers to identify and understand regulatory labels and warnings for hazardous waste it didn't handle. But the court didn't buy this argument. The company held itself out as the collector of waste oil, noted the court. And from time to time, it *did* pick up PCB-laden oil, the concentration of which wasn't necessarily known at the time of pick-up. Thus, the waste company had a duty to ensure the proper education and training of its workers in terms of recognizing and understanding hazardous waste labels and signage. If the driver in this case had been properly trained, said the court, he would've appreciated the significance of the warning signs near the transformer and may have, say, asked questions or requested testing reports on the oil.

Bottom line: The waste company's primary failure was not properly training and educating its staff, concluded the court. The resulting ignorance of its employees allowed both the driver and his supervisor to erroneously assume, without verification and with no proper regard for the warning signs, that the PCB level of the transformer oil was within regulatory limits. And because the waste company was partially responsible for the damages it incurred, those damages were reduced by its percentage of "contributory negligence."

THE SOLUTION

Senior management must ensure that the company provides training to all workers that's appropriate and adequately covers all OHS requirements that apply to their jobs and all safety hazards that they may encounter. In addition, you must ensure that all workers not only receive but also understand their safety training.

Insider Says: For training resources, go to SAFETY SMART, which provides tools to help companies reinforce learning and manage their safety programs, such as safety talks, quizzes, cost-of-injury worksheets, online training and injury tracking forms.

SHOW YOUR LAWYER

Enviro West Inc. v. Copper Mountain Mining Corp., [2012] BCSC 687 (CanLII), May 14, 2012