

Traps to Avoid: Letting Workers Rely on Shut-Off Technology when Refuelling Tanks



Picture this situation: A worker is refuelling his bulldozer with diesel fuel from an onsite storage tank. He locks the pump in the “on” position and goes to a nearby trailer to finish some paperwork. When the worker returns, he discovers that the pump’s automatic shut-off switch hadn’t worked. The storage tank is still pumping fuel, even though the bulldozer’s tank is full. So fuel is spilling all over the ground.

Unfortunately, this situation actually happened in Ontario. Close to 150 litres of diesel fuel overflowed onto the ground and ran into a nearby ditch leading to a storm water retention pond. The company’s staff worked quickly to contain the spill and clean it up. And, luckily, the property owner had installed oil absorbent booms that prevented the fuel from migrating into a local creek. So it could have been much worse. Still, there was substantial damage and the company ended up pleading guilty to two violations of the *Ontario Water Resources Act* (OWRA) and was fined \$25,000 [R. v.

J.C.J. Contracting].

The bad news is that despite automatic shut-off technology, spills during refuelling are all too common. The good news is that these types of spills are easy to prevent. This article will tell you how. Plus, we'll give you a Model Policy that you can adapt and use to prevent such fuel spills by your workers.

Fuel Spills & Technology

Most people think that because nearly all fuel pumps have automatic shut-off technology, spills at refuelling facilities don't happen anymore—or that at least they're rare. But unfortunately refuelling spills are more common than you might think. It's true that most fuel nozzles are designed to stop once the tank being filled is full and to shut off automatically if they should fall out of a tank. But as the *J.C.J. Contracting* case shows, these devices don't always work. And even if a device is working, workers may fail to use it properly. As a result, a company could be faced with an environmental mess and a sizable fine.

Three Examples

To drive this point home, here are three more examples of actual refuelling spill incidents:

Example #1: A worker for an Ontario trucking company placed a fuel nozzle in a truck's tank, turned on the pump and walked away to perform some other tasks. But while he was gone, the nozzle fell out of the truck's tank. When the worker returned, the nozzle was lying on the ground with diesel fuel gushing out of it. The fuel made its way into a nearby river, impairing the water quality. The company and its owner pleaded guilty to a violation of the *OWRA*. The company was fined \$20,000 and the owner \$5,000 [*R. v. Ab Murray Transport Ltd.*].

Example #2: A worker for a groundskeeping company in Ontario was filling a tank mounted on the back of a company pick-up truck from an onsite fuel tank. He walked away from the pump, which was equipped with an automatic shut-off valve. Sometime later, a second worker found the fuel overflowing from the tank and onto the truck and the ground below. He turned the fuel pump off, but approximately 50 litres of diesel fuel had already been spilled. To make matters worse, the two workers failed to report the spill and tried to clean it up themselves, washing everything into a storm-water catch basin that flowed into a nearby creek. After city officials noticed a large number of dead fish floating in the creek, they investigated and found out about the incident. As a result, the company pleaded guilty to discharging diesel fuel into a watercourse and impairing water quality and was hit with a \$40,000 fine. It also had to reimburse the city for the cost of cleaning up the spill [*R. v. Mal-Mal Enterprises Inc.*].

Example #3: A Yukon gold miner arranged for a fuel company to refill metal fuel drums on his barge. A company worker ran a hose from his tanker truck to the barge and started filling the drums with diesel fuel. He left the hose's nozzle running in one drum while trying to open another one. The nozzle fell out of the drum but didn't stop pumping fuel. The hose sprayed diesel fuel all over the barge's deck and into the river, which was inhabited by fish. The fuel company, its worker and the miner were convicted of violating the *Fisheries Act*. The court noted that refilling fuel drums on a barge is "an inherently hazardous undertaking" so steps should have been taken to prevent a spill. For example, the fuel company could have required the worker to keep his hand on the discharge valve while fuel was being pumped. The court ordered the worker and miner to pay \$750 fines and ordered the fuel company to pay a \$1,000 fine [*R. v. Stretch*].

Use Policy to End Fuel Spills at the Pump

To stop fuel spills during refuelling, set a policy barring workers from leaving an operating pump unattended. Such a policy not only protects the environment and minimizes the risk that your company will be fined for a spill, but also helps the company comply with environmental laws that prohibit workers from leaving pumps unsupervised.

A number of provinces specifically require the implementation of such measures. For example, NL regulation prohibits a person from transferring “gasoline or associated products from a storage tank system to a vehicle or from a vehicle to a storage tank system without supervising the transfer at all times” so that the person can immediately shut off the flow of fuel during the transfer [*Storage and Handling of Gasoline and Associated Products Regulations*, Sec. 10(1)]. Other provinces—such as MB, NB and NS—have similar regulations.

Your policy, like our Model Policy, should briefly explain the dangers of fuel spills and note that safe fuel handling is everyone’s responsibility. It should also list the procedures that workers should follow when refuelling tanks. In particular, make sure your policy:

- > Prohibits workers from walking away from operating fuel pumps;
- > Tells workers to refuel tanks during daylight hours when possible;
- > Bars workers from topping off tanks; and
- > Requires workers to contact their supervisor immediately if a spill, leak or other emergency occurs.

Also, warn workers that they may be disciplined for violating the policy.

Bottom Line

Relying on automatic shut-off technology to prevent spills during refuelling is a bad idea. If you don't believe us, just look at the cases described above. And those cases are just a sampling. To prevent refuelling spills and the risk of liability associated with them, you should make sure your company sets a policy that reminds workers to be diligent while filling their tanks. And make sure that you enforce that policy by disciplining workers who violate it.

Show Your Lawyer

R. v. J.C.J. Contracting, Govt. News Release, Sept. 5, 2006

R. v. Ab Murray Transport Ltd., Govt. News Release, Jan. 6, 2006

R. v. Mal-Mal Enterprises Inc., Govt. News Release, July 25, 2006

R. v. Stretch, [2002] Y.J. No. 101, Sept. 15, 2002