What Reasonable Steps Should a Company Take to Prevent a Toxic Spill?



If a company is charged with an environmental violation, it can avoid liability by proving that it exercised due diligence, that is, showing that it took all reasonable steps to prevent the violation and comply with the law. Taking reasonable steps can also result in a lesser penalty if the company is convicted of the offence. But it’s not always easy to determine what reasonable steps are needed to prevent an offence. Consider the following scenario, which is based on an actual case from Newfoundland.

Situation

Maintenance workers at a pulp and paper plant can use either aluminum or stainless steel couplings to connect a hose to a tanker trailer containing sodium hydroxide The couplings look similar and are stored in the same box. The workers choose an aluminum hose coupling. Unfortunately, they were never told that sodium hydroxide is corrosive to aluminum. Sure enough, the coupling fails, spilling 7,400 litres of sodium hydroxide that flows into the storm system and ultimately a bay containing fish. The company pleads guilty to a *Fisheries Act* violation. In deciding on a sentence, the court must consider what the company could have done to prevent the spill.

Question

Which of the following steps should the company have taken to prevent the spill?

1. Require maintenance workers to use stainless steel couplings.
2. Clearly mark the aluminum and stainless steel fittings to ensure they were easily distinguishable.
3. Train workers on the properties of sodium hydroxide and importance of using the correct coupling when dealing with the substance.
4. All of the above.

Answer

1. **The court concluded that the company should have taken all of the above steps to prevent the spill.**

Explanation

This situation, which is based on a Newfoundland case, illustrates the kinds of reasonable steps required to prevent a sodium hydroxide or other toxic spill. At sentencing, the court detailed all of the reasonable steps the company could and should have taken to prevent the spill:

- Training the workers to recognize the metals that react with sodium hydroxide to ensure they chose the proper couplings.
- Clearly marking the couplings so workers would know the metal it was made out of.
- Storing couplings of different metals separately.

Each of these steps was simple and would have cost the company very little. The court concluded that the failure to take any of these steps indicated “a troubling lack of concern for the

potential harm to the environment." So D is the correct answer.

1. *v. Corner Brook Pulp and Paper Limited*, 2010 CanLII 33018 (NL PC)