

When Is a CEO Liable for a Company's Environmental Offence?



Corporate officers and directors aren't personally liable for every violation their company commits.

That corporate officers and directors are generally responsible for ensuring that their companies comply with environmental laws is a truism. At the same time, they're not automatically liable just because their companies commit an environmental offence. There are 3 basic theories for holding officers and directors personally liable for a company's legal violations:

- **Liability as principals**—that is, they're people who actually committed the illegal act or omission;
- **Liability as a party**—that is, they were an accomplice or otherwise actively participated in the offence committed by the company; and
- **Statutory liability**—that is, they may be liable if an environmental law specifically holds a company's officers and directors liable for the particular offence.

Applying these theories to real-life situations can be tricky. Here are two contrasting cases in which courts had to decide if corporate directors should be held personally liable for a company's environmental violations.

Corporate Director Is Personally Liable for Company's Environmental Violation

Here's a case where a court held a corporate director personally liable for the company's environmental violation.

Situation

After extinguishing a building fire, municipal fire fighters smell oil in the basement near the oil tank, as well as in and around a catch basin and a ditch that leads across a road into a brook. While they don't see any actual oil in the basement, they notice oil stains on the basement floor, oil in the ditch and a sheen on some of the water in the catch basin. The director of the company that owns the building put down absorbent pads by the catch basin and ditch.

However, the company didn't obey an environmental inspector's order to hire an environmental site professional to clean up the site. The company and director are charged with releasing a substance harmful to the environment, failing to address the adverse effects of the release and failing to comply with the inspector's order.

Ruling

The Nova Scotia Provincial Court convicts both the company and the director.

Reasoning

As the owner and occupier of a contaminated site, the company was liable for the violations under the Nova Scotia *Environment Act*. The director was acting as the company's agent when he appeared at the building after the fire. He was also personally involved in the events that formed the basis of the violations. He spoke to the inspector about the need for a professional site cleanup and indicated that he'd take appropriate steps. He was also aware that vandals had broken into the building near a collapse in the foundation near the oil tank and might cause an oil spill. Despite all of this, he didn't take measures to prevent vandals from getting in or ensure that the company took reasonable steps to prevent an oil spill. So, the court found the director liable for the violations.

1. *v. Douglas Projects International*, [2008] NSPC 76 (CanLII)

Corporate Director Isn't Personally Liable for Company's Environmental Violation

Here's a similar case where a court ruled that a CEO wasn't personally liable for a company's environmental violation.

Situation

The water in the lines of a wet scrubber system that an asphalt plant uses to reduce dust emissions freeze up overnight. The plant operator uses a propane torch to melt the ice. Once the water starts flowing again, he starts the plant without realizing that ice is partially blocking a filter, reducing the water flow to the scrubber system. Later, environmental inspectors who happen to be driving by spot a plume of dust coming from the plant. So, they order the plant to halt operations. The operator immediately shuts down the plant and fixed the problem within 10 minutes. Even so, company and a corporate director are each convicted of an environmental offence. The director appeals.

Ruling

The Newfoundland Supreme Court dismisses the case against the director.

Reasoning

The director could be liable if he was "in some manner personally involved in the commission" of the offence, such as if he exercised sufficient control over the events in question, the court explained. But in this case, there was no evidence that the director had personal knowledge of the problem of ice blocking

the filter. In fact, he couldn't have had such knowledge because the problem was a one-time, unforeseeable occurrence. The court also noted that the director met his duty to appoint a responsible person to oversee the plant's operations and ensure that a proper system was in place to remedy any problems. The plant's operator inspected the wet scrubber system on a daily basis to ensure that it was working properly before the plant started operating. A production engineer also inspected the system weekly to ensure that it was in proper working order. And the systems in place had essentially worked.

Pennecon Ltd. v. Newfoundland, 1995 CanLII 5588 (NL SC)