When Is Environmental Training Adequate to Meet Due Diligence Standards?

To prove due diligence, a company must show that it took all reasonable steps to ensure compliance with the environmental laws. Although the required “reasonable steps” vary depending on the situation, courts generally look at the environmental training the company provided its workers. And if that training is inadequate, it undercuts the company’s due diligence defence. Here are two cases in which the adequacy of a company’s environmental training.

Environmental Training Meets Due Diligence Standards

Providing the right training was a key factor in this company’s due diligence defence.

Situation

An oil company installed an underground separator system at its unmanned refueling facility to prevent fuel and oil from vehicles from spilling and leeching into the ground. The company’s environmental certificate of approval (C of A) required the effluent discharged from the filtering system to be below 15 ppm. But tests showed it was 28 ppm. So, the government charged the company with failing to comply with its

C of A.

Ruling

The Ontario Court of Justice ruled that the company exercised due diligence and dismissed the charges.

Reasoning

The company had a reasonable system to ensure compliance with its C of A, the court reasoned, noting that it trained workers on how to:

- Keep the facility clean
- Visually inspect the site
- Manage minor spills
- Check oil levels
- Take oil samples from the separator, and
- Record sample testing results in a log book.

In addition, a supervisor regularly visited the site to check the log book, inspect the site, and ensure workers were properly following procedures.

v. Petro-Canada, 2009 ONCJ 179 (CanLII).

Environmental Training Doesn’t Meet Due Diligence Standards

Here’s a case where inadequate training undermined a company’s due diligence defence.

Situation

Environmental inspectors observed over 4,000 bar refrigerators at a tire retail outlet containing Freon (aka R12), a form of chlorofluorocarbons (CFCs) that are illegal to import into Canada. So, they charged the company with three violations of the *Canadian Environmental Protection Act* (CEPA). The company claimed it used due diligence to comply with the CFC import ban.

Ruling

The Ontario Superior Court of Justice rejected the due diligence defence and convicted the company.

Reasoning

The company took “no meaningful steps” to avoid violating the CEPA’s *Ozone Depleting Substance Regulations.* Among other things, it didn’t adequately train outlet workers on the CFC rules. Thus, one worker testified about being told of the no-CFC rule but not trained on what to do if he saw R12 labelling on a box. The company should’ve trained workers to look for bar fridge products with labels indicating the presence of CFCs to ensure that only CFC-free products complying with federal environmental law were imported and distributed for sale, the court concluded.

v. Canadian Tire Corp. Ltd., 2004 CanLII 4462 (ON SC).