

# When Is Supervision Adequate to Meet Due Diligence Standards?



To prove due diligence, a company must show that it took all reasonable steps to ensure compliance with environmental laws. The required “reasonable steps” vary depending on the situation. But courts will often look at the supervision the company provides to ensure that its workers comply with environmental procedures and laws. And if that supervision is inadequate, it may undercut the company’s due diligence defence. Here are two cases in which the adequacy of a company’s supervision was a factor in its due diligence defence. (Although one case involves an OHS violation, the due diligence analysis is the same for environmental violations.)

[box]

## **SUPERVISION WAS SUFFICIENT**

### **FACTS**

A field mechanic for an earth-moving company went underneath the back of a scraper to check its hydraulic system. After asking the operator to pressurize the hydraulic system on the ejector-slider mechanism, he stood up under the scraper and got caught in a pinchpoint. The mechanic was hospitalized for two weeks. The prosecution charged the company with several safety violations.

### **DECISION**

The Alberta Provincial Court dismissed the charges, ruling that the company had exercised due diligence.

### **EXPLANATION**

The court noted that the company had processes in place for safety and training as well as encouragement and enforcement procedures. In addition, the undisputed evidence was that the very experienced mechanic was subject to supervision by the general supervisor two or three times a week, which included safety reviews. These weekly reviews were covered in his monthly worker progress reviews held with his supervisor. Thus, the court concluded that the company provided reasonable supervision of the mechanic under the circumstances.

*R. v. Kidco Construction Ltd.*, [2009] ABPC 195 (CanLII), July 2, 2009[/box]

## [box]SUPERVISION WASN'T SUFFICIENT

### FACTS

A worker was topping off a tank containing a chromium solution with water by placing the end of a hose in the chrome tank and turning the water tap fully open. She left the immediate area of the tank to write a note to a co-worker, cleaned up, turned off the lights and departed, leaving the water hose running into the tank. Over the next few hours, the tank overflowed into a large catchment pit beneath it. The external wall of the pit was the building's foundation. Some of the chromium solution escaped from the building through a crack in the foundation, flowed into a storm drain and ultimately into Kingfisher Creek and the Campbell River. The company was charged with violating the *Fisheries Act*.

### DECISION

The BC Provincial Court convicted the company, ruling that it hadn't exercised due diligence.

### EXPLANATION

The court noted that although the company had had two prior chromium spills before this incident, it didn't take adequate steps to prevent such spills. For example, the company president verbally reminded workers of safety policies, including instructions regarding the topping up procedure, but there were no signs in the chrome room to that effect. There also weren't any devices installed to warn of an imminent overflow of a tank or to shut off the water supply automatically before an overflow could occur. Lastly, there wasn't *any* supervision of workers to ensure that they were topping up the chrome tanks according to the required procedure.

*R. v. Island Industrial Chrome Co. Ltd.*, [2002] BCPC 97 (CanLII), March 26, 2002[/box]