

Winners & Losers: Is Failing to Report a Spill Ever Excusable?



Spill reporting requirements are one of the cornerstones of environmental protection laws. By requiring companies and individuals to report spills of contaminants, the government ensures that they're addressed as soon as possible, thus reducing the harm to the environment. So is a company's failure to report a spill ever excusable? Under some circumstances, it may be. Here are two cases involving defendants who failed to report spills in violation of environmental law. The courts in these cases took different views on the issue of strict compliance with spill reporting requirements.



FAILURE TO REPORT SPILL IS A VIOLATION

FACTS

A chemical company that makes propylene oxide accidentally emitted chlorine gas from a piping system that vented under a section of the facility's roof on which a worker happened to be working. The chlorine gas enveloped the worker, blinding and choking him. The worker managed to get off the roof but had to be hospitalized for his injuries. The company reported the incident and the worker's injuries to the workers' compensation board as required by OHS law. But it didn't report the emission to environmental authorities as required by the *Environmental Protection Act* (EPA). The company was charged with two violations of the EPA, including failing to report the discharge of a contaminant.

DECISION

Th

e Ontario Court of Appeal convicted the company of the reporting violation.

EXPLANATION

The company argued that the OHS and not the EPA reporting requirements applied to the incident because the discharge of the contaminant had an adverse effect only on a worker in the workplace. And because the company complied with the OHS reporting requirements, it wasn't liable. The court disagreed. It's not unusual

for laws to overlap, the court noted. In fact, there are many incidents in which both the OHS and environmental laws will both apply. And the officials that administer both sets of laws have a legitimate interest in knowing about such incidents. Although the only victim in this case was a worker, environmental officials still needed to know about the emission of a substantial quantity of chlorine gas into the open air, concluded the court. Thus, the company had a duty to report this incident to not only workplace safety but also environmental officials.

R. v. Dow Chemical Canada Inc., [2000] CanLII 5685 (ON C.A.), March 14, 2000

FAILURE TO REPORT SPILL NOT A VIOLATION

FACTS

A driver for a petroleum company drove his tanker truck to a barge moored on a river to fill several metal drums with diesel fuel. He ran a hose from the tanker truck onto the barge and started filling the drums, leaving the fuel valve in the drum's bung hole while he opened the bung hole on another drum. The valve came out of the drum and began spraying diesel fuel all over the barge. By the time the driver shut off the truck, the barge's deck was completely soaked with diesel fuel and a significant amount had run off the deck and into the river, which was frequented by fish. The petroleum company and barge owner were charged with two violations of the *Fisheries Act*, including failing to report the spill.

DECISION

The Yukon Territorial Court acquitted the defendants of the failure to report charge.

EXPLANATION

The court noted that the *Fisheries Act* doesn't have a "specific means of reporting." What's expected is that a report of some kind will be made to the federal Department of the Environment. In this case, the constable on the scene contacted the Department's local office but there wasn't an inspector nearby. The Department's officer-in-charge contacted a conservation officer with the territorial Department of Renewable Resources. She went to the scene to investigate and take water samples on the Department's behalf. In fact, the conservation officer told the barge owner that she was there at the Department's request. So the court said it was entirely reasonable for the defendants to conclude that the requisite authorities were well aware of the spill. Thus, their failure to report was "an entirely technical breach and not one deserving of sanction," concluded the court.

R. v. Stretch and MacKenzie Petroleums Ltd., [2002] YKTC 78 (CanLII), Sept. 25, 2002