

Business Owners and Managers Face Liability for Environmental Violations

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Enforcement used to mean penalties for companies caught violating environmental regulations. Since the mid-1980s regulators have added personal and criminal liability to their enforcement arsenal. Agencies now back up the threat of large fines for businesses with the potential for jail time and stiff penalties for owners and operators.

Lawmakers and the courts strengthened federal and state environmental enforcement tools during the 1980s. Prosecutors may now file felony level charges against knowing violators of environmental regulations. These actions first focused on those directly involved. Agencies targeted the wastewater treatment plant operator or the plant environmental manager.

New Laws

New laws during the 1990s broadened personal liability to include management staff. Under the 1990 Clean Air Act Amendments, for example, both the owner and the operator must sign permit application forms certifying the application's accuracy. Many states also require the owner and operator to certify that the facility has adopted procedures to maintain permit compliance.

Tough Sentences

Enforcement has expanded from the "individual who opened the valve" or physically violated the law to the "individual who authorized opening the valve." Individuals high up the chain of command face stiff penalties.

For example, in 1997, Federal District Court Judge James Rosenbaum ordered Darling International to pay \$4 million in fines for violating the Clean Water Act at its Blue Earth, Minnesota rendering plant. Federal prosecutors charged the corporate vice president for environmental affairs, a former general manager, plant manager, and wastewater treatment plant operator with criminal conspiracy to violate the Clean Water Act.

During the past year, prosecutors have charged owners, officers and managers for environmental violations ranging from illegally importing CFCs, illegally storing hazardous wastes, illegally spraying insecticides, improperly removing asbestos and improperly disposing laboratory samples, to discharging raw sewage from a country club to a wetland. Fines levied against individual managers and business owners have topped \$4.5 million. Judges have sent managers to prison for up to 87 months.

Earlier this year, Pennsylvania's U.S. Attorney indicted a school superintendent for improper removal of asbestos. The superintendent faces up to 5 years in prison and \$250,000 in fines.

Avoiding Liability

These stiff fines and prison sentences emphasize an important new trend - the courts may now hold owners of a facility personally liable for actions taken by their employees. If an owner signs an environmental application form certifying a company's compliance with

environmental laws, the owner becomes personally responsible for the company's compliance. Seemingly routine activities such as filing incomplete environmental reports, dumping chemicals down the drain, tearing out old insulation, tossing out old containers, pitching old lab samples, or improperly disposing of shop towels could land not only the offending employee, but also the business owner or plant manager in jail.

These court cases emphasize the importance of good environmental management systems under the leadership of responsible people. When the systems fail or compliance is ignored, the responsibility falls squarely on the plant owner or operator.

Joe Maternowski has defended business owners and environmental managers who have been named in enforcement actions. In a recent case, the Minnesota Pollution Control Agency sought to impose personal liability against the President and former shareholder of a Minnesota tank salvage operation. Mr. Maternowski successfully defended against the personal liability claims. The Court imposed a nominal penalty for hazardous waste and water quality violations. For more information about that case, or a free copy of an article on the individual liability for environmental violations authored by Joe Maternowski in *The Hennepin Lawyer*, call (612) 746-5754 or contact him at JMaternowski@HessianMcKasy.com.

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