

## Ashland Oil Inc.: Trouble at Floreffe

### Relevant Facts

Ashland Oil Incorporated, the largest oil refiner in the country at the time of this case analysis, was faced with a great dilemma when one of the tanks constructed by the company itself, ruptured while being filled. On Saturday, January 2nd of 1988, employees of Ashland Oil were filling one of their tanks at the Floreffe terminal outside of Pittsburgh, when the tank collapsed and released approximately three and a half million gallons of petroleum into nearby dikes. Of the initial spill, around three-quarters of a million gallons of petroleum poured into the Monogahela River, located in Floreffe, Pennsylvania. It contaminated drinking sources for over a million people in Pennsylvania, West Virginia, and Ohio. Ashland personnel immediately called the National Response Center as required by the Clean Water Act. By late evening, fire officials discovered that the spilled oil had crossed the Ashland property lines on the nearby highway and surrounding wetlands, as well as flowed onto the adjoining property of Duquesne Light Company. Clean up began that evening, but were halted due to swift currents and sub-zero temperatures.

Ashland's crisis management team arrived on the scene on Sunday morning. Soon after, government officials and the press arrived. Later that afternoon, the first of several joint news conferences took place. The situation continued to worsen. The slick was now nearly 33 miles long and moving downriver 10 to 20 miles per hour. The CEO, J.R. Hall then learned that the Western Pennsylvania Water Co. shut down one of its facilities whose water intake was downriver from the spill. This now meant water shortages. Hall directed Ashland to pay for a temporary pipe to be laid across the affected area to secure fresh water from the Allegheny River, which merges with the Monongahela River downriver. He also authorized flying in the Coast Guard Strike Force on the company planes.

On Monday morning, the press increased its coverage of the spill and water shortage. It also started to quiz company representatives regarding specifics about the tank, such as whether it had been tested, whether the company received a permit allowing its construction, and the age of the tank. The employees investigated and produced a permit. Other employees said that the tank was newly built. Later on, a member of the press contacted the Fire Marshall's office and found out that no request for a permit was on file and the documentation produced was actually a statement from a different agency acknowledging that construction was underway. The press began asking whether the tank had been tested using the American Petroleum Industry standard, which is the hydrostatic water method.

The company's CEO found out that Ashland did not have all of the facts when they were speaking to the press. He continued to dig and found out that the tank was not, in fact, tested by the correct standard, but was tested by an alternative method that was intended for desolate locations where water was scarce. He found out that the tank was newly constructed, but with 40-year old steel from another terminal. Lastly, he found out that an application for a permit had been made and construction started on verbal communication only, but it did not mention that it would be constructed out of used steel. On Tuesday Morning, Hall finally announced he was going to make a public statement at the accident site.

It was days before the CEO and President of the company made an appearance at the sight. This left individuals with apprehensions of the company's value on anything other than the companies financial future.

### Legal Issues

- ◆ Did Ashland violate federal and state environmental law statutes?
- ◆ Did Ashland violate the Clean Water Act?
- ◆ Did Ashland violate the Safe Water Act?
- ◆ Are the employees liable for violations or misrepresentations?
- ◆ Are the Officers personally liable for the violations?

Ashland may have violated several statutes under the Environmental Protection Agency (EPA), which is an administrative agency housed under the federal government. "The EPA is one such independent administrative agency that was created to deal with the federal government's environmental responsibilities and has enabling legislation regarding water and air pollution, solid waste disposal, water supply, pesticide and radiation control, and ocean dumping". [1]

Under the Clean Water Act of 1972, states have the primary responsibility for preventing, reducing, and eliminating water pollution. [1] The Clean Water Act also states "any person" under these rulings, the person or persons (CEO, President, plant manager, or facilities manager) directly making the decisions at the Floreffe plant (to construct the tank without a permit and to not use the appropriate testing standard), could be held civilly and criminally joint and severally liable with Ashland.

The Ashland Floreffe terminal was located on the river and the case states Ashland used an alternative method that was intended for desolate locations where water was scarce. Ashland did not use the best technology available to test its tank. There was also a problem with Ashland using the 40-year old steel to construct the tank, especially since it was not on the permit application.

There is also the Safe Drinking Water Act that was enacted to protect and enhance the quality of drinking water. Because of the pollution caused by the spill, the contamination of drinking water, and the violations of permit and standards, Ashland was liable for civil penalties by state and federal agencies. Citizens or citizen-action groups in the area, which were adversely affected could also bring a court action against Ashland for violating the standard. The Duquesne Light Company, located on the adjoining property, could have brought a claim of negligence for property damage sustained by the spill.

The employees of Ashland's Floreffe terminal would be acting in the interests of the company and would not be liable for any violations that would arise from the spill nor from misrepresentations that were made by the employees, especially since they did not know or did not have reason to know.

In this case, the CEO J.R. Hall would state that he was unaware of the circumstances that led to this catastrophe. As a corporate officer of an oil and petroleum company, it was his duty to act in the interest of the company, to be competent and knowledgeable in the rules regulations of the industry, and make sure that the company was not being placed in any undue risk. This was not done by Hall or the corporate officers that reported to him.

### **Legal Critique & Principles**

The actions taken by Ashland, including sidestepping the permit protocol and rushing through testing, have obvious legal ramifications. They were held accountable by law to do everything in their power to prevent such an accident from occurring. The main thrust of the implications of this case are that owner-operators of facilities with hazardous materials are legally bound to protect those resources from being dangerously mishandled. As a part of the oil industry, Ashland had the responsibility to ensure that the tanker with oil was properly insured against problems. Three things that came under scrutiny in the preliminary investigation were:

- ◆ Age of the oil tanker
- ◆ Testing that had been done before filling it
- ◆ Whether a permit had been filed to use the tanker

The tanker had been transported from Cleveland, and many were under the impression that it was a new tank. Upon more investigation, it was found that while the tank had been newly constructed, it was made out of 40-year-old steel. While this was a common industry practice, the application for a permit should have specifically stated that this was the case.

Adding further complications for Ashland was the fact that the permit had only been applied for and it had not been granted. Construction commenced with only a verbal commitment. Immediately after the oil spill,

Ashland had provided documentation to show proof of permit – but it had actually been a statement from a different agency to acknowledge that construction was underway.

A big area of concern was the testing on the tank before filling. The American Petroleum Industry (API) has a standard 650 for proper testing of tanks. Ashland was required to use a hydrostatic method of testing – filling the tank with water to settle the foundation and to test the strength of the tank's welds. Instead of this mandated test, Ashland personnel filled the tank with only three feet of water to settle the foundation. They had sprayed oil on the welds inside the tank and then vacuum suctioned the outside to determine whether any oil could be pulled through possible leaks in the weld. This is the testing model presented by 650 for desolate locations with scarce water supplies.

Again, Ashland was very negligent in the construction of the tank in question. "State and city law requires that a permit be obtained from the Fire Bureau for the construction of any object". [1] Ashland Oil had said in the initial press release that they had obtained the said permit. The Fire Bureau was contacted and they had no such record of the permit. Upon research from inside the company, it was established that the permit was said to have been obtained but no employee of the company had actually received the permit that would have allowed for the construction of the tank.

When the oil tanker collapsed, it caused a sequence of reactions that had a major impact outside the bounds of Ashland. It put the water supply of over a million people at risk. Because it was such a major environmental issue, putting the safety of citizens at risk, it became an issue of federal concern. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) created the Superfund for environmental cleanup. The EPA was dispatched immediately, and the federal government stepped in to coordinate the cleanup, using Ashland employees. The liability for cleanup was legally appointed to Ashland, since they were the owner-operators of the hazardous site.

Another act of negligence on behalf of the company was their first statement of the extent of the spill. When asked to determine whether the spill had reached the river, one employee merely walked to the water's edge and used a flashlight to determine whether or not there was oil on the water. The company should have had a scientific method for determining the presence of the material in question. Furthermore, they should have developed and tested a working contingency plan for this type of incident.

### **Ethical Issues**

In this case, the company's CEO, J.R. Hall promptly authorized expenditures for the cleanup, paid for a temporary pipe to be laid across the spill to get water from the Allegheny River, and flew in the Coast Guard on the company planes. Hall showed that he genuinely cared about the spill, the water shortage, and the people in the community. Also, the case seems to imply that he did not know about the permit or testing issues, which would also show his honesty in dealings. The officers who authorized or knew about this, however, would be unethical.

#### Other Issues:

- ◆ Ashland's disregard for agency laws caused a spill that brought unhappiness to the community. Its actions would be considered unethical.
- ◆ Ashland would be ethically responsible for the cleanup of the spill and for any damage to the community that may have caused.
- ◆ Ashland's behavior regarding the construction of the tank was immoral. The violation of laws that protect the environment cannot be universalized.
- ◆ Ashland's decision to make the tank without the permit and to incorrectly test it would be immoral. The reason for the permit and testing is in place in order to stop accidents and spills, such as this one, and to protect the environment and drinking water for society's welfare. Since its actions can and did cause more liabilities than benefits, Ashland acted unethically.

## **Ethical Duties**

Ashland had a duty of care to protect the environment. Ashland's actions breached that duty. Ashland also had a duty of care to the community. The company acted in accordance with this duty when it promptly authorized expenditures for the cleanup, paid for a temporary pipe to be laid across the spill to get water from the Allegheny River, and flew in the Coast Guard on the company planes.

J.R. Hall (CEO) had agency duties as a corporate officer of an oil and petroleum company. It was his duty to act in the interest of the company, to be competent and knowledgeable in the rules regulations of the industry, and make sure that the company was not being placed in any undue risk.

## **Issues to Relevant Facts & Ethical Issues**

More than 511,000 gallons of diesel fuel from the spill, one of the largest inland incidents ever to have occurred, remain unrecovered and presumed in the rivers. The known effects of the introduction of the diesel fuel into the environment include the death of at least 11,000 fish and 2,000 birds, and the contamination of dozens of miles of shoreline. Studies conducted after the crisis do not account for the emotional anguish of citizens, for personal inconveniences, unknown health risks, or for the economic losses on commercial activities.

Without argument Ashland Oil, Inc. is liable for injuries caused from the Floreffe spill to the environment and the community. Aside from the legal, the ethical liabilities remain as long as cause and effect relationships exist between the spill, environment, and the community. Ashland Oil had a great responsibility to ensure care for the surrounding community and the environment.

The company had a sketchy past in relation to its ethical conduct. In 1975, it had received its first public reprimand, when the Security and Exchange Commission fined Ashland for making \$717,000 in illegal political contributions. From 1979-1981, senior executives became divided over a series of questionable payments to Middle Eastern middlemen, some of whom were foreign government officials. This violated the Foreign Corrupt Practices Act, barring U.S. firms from bribing foreign officials. The former CEO was known as a wheeler and dealer with a loose deal making style that strained corporate resources.

A corporate structure in which its management's conduct is unethical will mirror its ethical structure accordingly. [2] The issues against Ashland concerning the spill are example of this. The company did not have a permit to construct the tank; the tank was constructed of old steel, and was tested through a shortcut method. These were all bad decisions that rang of cost cutting shortcuts and laziness. Although at this level, the management had little control over the actions of its employees, it was the trend of unethical conduct that creates a link between the two.

Whatever long-term ramifications resulting from the spill surface in time, Ashland was responsible and liable for them. The company needed to continuously take an active role in the community and conduct studies to unveil all the effects of the spill. It also needed to maintain open lines of communication with the community keeping them informed and plan ahead for any issues that may arise. Finally, the company needed to renew its commitment to the company's core ethical values and business practices and instills them in its management and employees.

The actions taken by Ashland, including sidestepping the permit protocol and rushing through testing, have obvious legal ramifications. They were held accountable by law to do everything in their power to prevent such an accident from occurring

The failure by Ashland to find the flaw and establish relevant material properties is the two most serious excursions from sound practice and code compliance by the company. Ashland, its employees, and some contractors displayed a pervasive pattern of negligence and ignorance in selecting, assigning, constructing, supervising, and inspecting the reconstruction project. Reconstruction of the tank failed to conform to industry standards or the terms of the contract for the project.

This was the first major oil pollution accident in the company's 64-year history. The company's response indicated that it had governmental guidelines to respond to an incident of this nature, but none of its own standard operating procedures for crisis response. This crisis highlights the company's lack of internal conduct and safety operating procedures for checks and balances of its industries. Finally, this incident shows the lack of policies and involvement by government agencies. These agencies should have taken active roles through continual inspections and verifications of the plants operations

### **Press Releases**

The two press releases in Appendix B of our study guide served the purpose on how to convey to the public an apology, responsibility for the action, commitment to repair, and acknowledgement to the hardship placed upon those affected. Press release A forgoes the attorney-client privilege, exposes them to legal liabilities and brings right to the forefront the issues and facts concerning the spill. Press Release A apologizes for the accident and admits fault, as well as, lists out the mistakes it made. It then lists Ashland's efforts to clean up the spill and restore water.

Press Release B thanks the workers cleaning up the spill and tells the public what they are doing to clean it up. It also states that employees may have given out inaccurate information and that the company is investigating the allegations raised. Neither press releases are bad with it merits and negative repercussions, but Press Release A publicly admits wrongdoing opening the issues for further scrutiny with potential legal and criminal repercussions. The CEO was not prepared to unleash the skeletons resulting from Press Release A, therefore, Press Release B is the proper release to use.

As far as a suitable press release, I would create a very similar one to Press Release B. This one seems to be good legally and ethically. It does not give away privileged information or give misrepresentations. I would expand more on what its efforts consisted of. I would also have those involved with the clean up along with a company spokesperson to field questions as subject matter experts. Overall, my press release would not admit to any liability.

### **Conclusion**

Ashland Oil showed a great deal of negligent in regards to the oil spill. Their negligence began with the construction of the tank and grew as the oil spill continued. The attempted to show no responsibility or blame for what had happened with the construction of the tank. Nor where they ready for an incident of this magnitude. The company showed malfeasance in dealing with the issues at hand and most of the issues could have been alleviated had they taken proper care in the construction of the failed tank.

Ashland Oil's response to the incident was very slow. The company's response indicated that it had governmental guidelines to respond to an incident of this nature, but none of its own standard operating procedures for crisis response. This crisis highlighted the company's lack of internal conduct and safety operating procedures for checks and balances of its industries. Furthermore, this incident showed a lack of policy and involvement by government agencies. These agencies should have taken active roles through continual inspections and verifications of the plants operations.

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### **BIBLIOGRAPHY**

[1] *United States v. Ashland Oil and Transportation Company*. Retrieved October 10, 2003 from the Environmental Law Reporter web site: <http://www.elr.info/litigation/vol4/4.20185.htm>

[2] Velasquez, M. (6<sup>th</sup> Edition). *Business Ethics Concepts and Cases. Ethical Principles in Business* (pp. 230-231). Upper Saddle River, NJ: Prentice Hall.