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SENTENCING REASONS JUST RELEASED IN SUNRISE PROPANE

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On January 25, 2016 Ontario Court Judge Chapin fined Sunrise Propane Energy Group - the operator, a numbered company - the holder of the lease, the insurance policy and the licence under the Technical Safety and Standards Authority, and two directors of the company, a total of $5.3 million for a propane gas explosion. The explosion killed an employee and caused the overnight evacuation of some 12,000 neighbouring residents, homes to be uninhabitable for over a year, the destruction of a car dealership business, structural damage to buildings, disruption of local work and business and the temporary closure of a child-care centre.

The original finding of guilt can be found at 2013 ONCJ 358 and my summary at http://www.foglers.com/uploads/press/file/103/Environment_Energy_Law_July_19.pdf. The $5.3 million fine consisted of the following: $2 million for each of the two companies for causing a discharge to the environment with adverse effects, a total of $820,000 for 4 four separate counts of breaching Ministry orders: 1) to confirm their willingness to comply with the order; 2) verify that qualified persons would be involved in the cleanup; 3) submit a residential cleanup plan; and 4) cleanup the residential area and $100,000 for each of the two operating directors for failing to take reasonable care to prevent the corporations from contravening the Ministry orders. Sunrise Propane was further fined an additional $250,000 for failing to provide instruction, information and supervision to a worker to protect that worker's health and safety and $30,000 for failing, as an employer to take every reasonable precaution for the protection of the worker in the workplace contrary to the *Occupational Health and Safety Act*.

- While the defendants had no previous record of conviction, Judge Chapin considered the following aggravating factors:
- widespread and catastrophic adverse effects.
- recklessness given awareness of the dangers of truck-to truck transfers.
- a desire to decrease costs in failing to access available funds in order to comply with the Order. Funds were withdrawn from the corporate account instead of being directed towards clean-up. Prompt action wasn't taken in mitigation, including action to compensate persons affected. The defendants waited for a cost order levied against them by the City of Toronto before providing compensation for loss or damage that resulted from the commission of the offence.
- The defendants had been warned by the Ministry of circumstances that subsequently became the subject of the offence.
- The defendants did not cooperate with the Ministry or other public authorities following the offence.

IS THERE ANYTHING NEW HERE?

It's tempting for businesses that find themselves in trouble to "circle the wagons" refraining from committing themselves openly in ways which might be construed later as an admission of liability. While getting timely legal advice is essential in these circumstances, that advice might be different than what was expected. The Sunrise case tells us that when there has been environmental harm - actual and/or imminent, the right response should be to make every effort to mitigate that harm and cooperate with the authorities, leaving questions of liability to be determined at a later date. Indeed provisions in Part X of Ontario's *Environmental Protection Act* dealing with spills with environmental impacts (see e.g. s.93), make it clear that businesses who own or control pollutants should not await an invitation from the Ministry to commence this work.

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