



Regulations, the Law and Your Business

Reflections on plant safety and the culture of litigation

By Sam Garofalo

Caution: Do not stick your hands in the whirling blades of a lawn mower!

Seriously! Look around. The hard reality today is that we live in a society where labels of this sort are commonplace. Why is that? You already know the answer, but do you know how to manage the risk that implies? Read on for ideas that can help you move beyond routine safety training and other steps you've likely already taken in your plant.

Legal problems

By now, everyone who isn't living in a Himalayan monastery knows about the fatality that happened earlier this year at a U.S.

commercial laundry—and the consequence ... a \$2.7 million-plus fine from OSHA!

What makes this situation even more of a concern for operators is that the fine hardly signals the conclusion of this matter. An attorney could use the fact that the fine was imposed as evidence of wrongdoing in an effort to decimate the defendant—right or wrong. The fact that this incident led to a fatality means that whatever the victim did wrong will pale in comparison to the price he paid.

As plant operators, this could happen to any of you. The facts in this case are so well known that I can reference it without exposing you to the legal point known as "Notification of a Dangerous Condition." That term, in effect, states that if you've been warned or knew of a dangerous condition and ignored it or didn't take accepted corrective action, your liability increases exponentially.

Many of us have labeled the tort (civil) legal system as crazy or out of control because the present system suffers from a distortion of the original process. The problems stem from political pressure,

outside organizations with hidden agendas and people who disagree with your business practices. All are lined up and more than willing to attack commercial launderers.

Foolproof illusion

The first personal involvement I had with the incident noted above came in the form of a call from a *Wall Street Journal* reporter asking my opinion about the defendant's procedures regarding the safe operation of a particular piece of machinery that was involved in the death of an employee. According to the reporter, the company's procedure was written with words to the effect that, "An employee could get onto a moving conveyer as long as another employee was standing by and ready to hit an emergency stop button if something happened." I responded that I doubted any company would write a procedure like that, or condone that activity. I said I would have to see it in writing before I would believe it or respond to it. I never received anything to confirm this claim.

If you've ever been in litigation as a witness, you know that it isn't a nice experience. Attorneys are trained to get the truth out, or the truth that fits their needs. Much of their time and effort is spent making someone look good or bad, depending on who their client is. Caution: Don't stick your hands in the whirling blades. Sounds ridiculous doesn't it? Who would do it? Caution: steaming hot coffee could cause injury if it spills on your body. The list of cautions could fill volumes. But understand this: If someone somewhere didn't do these foolish things and capitalize on them, there would be no caution label. Every time you see a label stating the obvious, you can bet that somewhere a law firm was involved in a legal proceeding.

But this isn't about lawyers, per se. They're doing the job that they were trained to do. You as operators must protect yourselves against a legal system that demands that you "idiot proof" your plants. The term "idiot proof" (hereafter "foolproof") is actually incorrect. In fact, it's probably physically impossible to make a plant safe beyond any possible risk. Of course, that doesn't mean we can't do more to make plants safer and at the same time protect textile service companies from undue liability.

Acid test

In plant operations, there actually are no "idiots." Mostly what we see is complacency and a sense of "It can't happen to me."

About 10 years ago while visiting a plant, I noticed a man with a piece of flexible poly tubing about 6 feet long as he was placing one end of the tube into a black drum. At the distance I couldn't see the contents, so I literally started running toward him yelling his name. The drum was 66% sulfuric acid. He stopped what he was doing and looked at me like I was crazy. I asked him what he was doing, and he told me that he was going to siphon some of the contents into a gallon bottle that he had. The drum was labeled correctly, it had the skull and crossbones, etc., so what went wrong? What would possess a person to do such a dangerous thing as to siphon 66% sulfuric acid?

Out of fear for this person's life, the words I uttered to him were highly unprofessional. However, I do remember him promising that he'd never do that again. The reality is the man in question was

prone to this kind of behavior! I did him no favor in not reporting him. In retrospect, I probably should have tried to have him disciplined according to that company's policies. He, as a person working in any plant and not following established procedures, is more of a hazard than probably any one piece of machinery. He's literally a "whirling blade" everywhere he goes.

The sad reality is that no matter how many warning labels and verbal warnings you give, there'll always be someone who'll ignore them because they think they're either too smart or too macho to get hurt.

There are "whirling blades" in almost every laundry. You can't "foolproof" a machine; any more than you can "foolproof" an employee. To some people, warning signs and verbal warnings mean: Don't get caught. As an operator, you should be as diligent in your efforts to foolproof unsafe acts as you are in addressing unsafe conditions.

Survival tips

This subject is so legally hazardous and complicated that I can't be any more specific regarding safety and equipment issues for fear that this article will be placed under your nose in a deposition or trial. The plaintiff attorney will ask you or one of your employees, or both of you, "Were you aware of the dangers involved? Didn't you read the manufacturer's manual? What specifically, if anything did you do about it?" Or "Why didn't you read the manual?" Trust me, whatever you answer, you'll be attacked.

I can't tell you how to foolproof your plant. However, there are some steps you can take to reduce your potential liability in case of litigation. Consider the following:

- *Take disciplinary action on employees* who don't or won't follow safety rules. If you see an employee putting himself or another employee at risk, do something about it. That person is risking not only his own life, but your family's future as well.
- *Watch out what you put or accept in writing.* Vendors' reports can be problematic. They can be well-meaning or overzealous as service people, telling you about problems in your plant. If you accept reports from service people, and you get one that cites any safety concerns, make sure you follow up immediately and that you document what was done.
- *Be wary of photography and videotape.* In the wrong hands, these can be used against you later.

The bottom line in today's litigious culture is that you must spare no reasonable effort to manage risks. Training employees in safety procedures and striving to create a culture of safety is critical. But it's not enough. Additional steps like the ones noted above could help you survive in the scary world we live in today. **TR**



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