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Environmental Management Best Practices for Dry Cleaners

Minimizing Legal Liability and Establishing a Defence

A discharge, leak or spill of even a small quantity of perc will eventually have significant legal implications for a dry cleaner. Lawsuits from landlords and neighbours may result. Orders and prosecutions from environmental regulators may arise. Landlords will have no mercy under the lease or when attempting to renegotiate lease terms. Often one or more of these implications occur at once. Absent legal compliance and environmental management best practices, you are very broadly exposed to environmental legal liability for which you may or may not have insurance coverage (check your policies!).

Following environmental best practices in your dry cleaning operation is not optional. Compliance with all applicable federal, provincial and municipal environmental laws is essential. If you find yourself embroiled in an environmental lawsuit or action taken by an environmental regulator, you will need to show that you at least meet and perhaps exceed industry standards to successfully defend yourself.

In the September/October 2013 issue of *Fabricare Canada*, we briefly introduce you to the legal concept of civil liability. This is all about lawsuits for negligence, nuisance, trespass, strict liability and breach of statute. In the November/December 2013 issue, we reviewed new environmental enforcement tools available to Environment Canada for breaches of the *Canadian Environmental Protection Act, 1999*¹ and the *Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulation*².

Legal decisions made by judges inform us about legal requirements to meet when defending dry cleaners. In the world of regulatory prosecutions, we know that to prove a 'due diligence defence' a dry cleaning establishment must show that it had in place, at the time of the perc mishap, a robust environmental management system (EMS)³. The system must at least meet industry standards. Although the dry cleaner does not need to prove superhuman efforts in trying to prevent the perc mishap, he must show that the plant's EMS meets a very high standard. Elements of an EMS will involve implementing environmental best practices systematically.

Several EMS elements are set out below in this non-exhaustive list⁴:

- Know which laws apply to your operations and review them – federal, provincial, municipal – to understand your operating and reporting obligations, as ignorance of legal requirements is no excuse.
- Prepare and submit your Annual Report for Dry Cleaners to Environment Canada by April 30 of each year and determine if you also have provincial and/or municipal reporting obligations.
- Keep records (perc purchases, transportation of waste water and residue, on-site treatment, machinery maintenance dates) and maintain those records for at least five years.
- Develop an emergency response plan, spill response plan, waste management plan, maintenance and inspection schedule, and machinery operating procedures and policies:
 - **Emergency Response Plan:** In the case of fire and evacuation, have on hand emergency contact numbers for fire and police, spills reporting and the municipality, essential company contact information, emergency equipment and personal protective equipment, first aid measures, cleanup procedures, and keep a copy off-site.
 - **Spill Response Plan:** Have on hand information about chemical use, health effects, first aid measures, spill kit location and use, a spill reporting protocol, instructions for spill cleanup, cleanup procedures, and keep a copy off-site.
 - **Waste Management Plan:** Develop waste handling and storage procedures, implement record keeping of waste handling, storage and disposal, engage a reputable waste management company to transport waste for disposal, check that the waste hauler and receiver have all necessary environmental approvals in place before engaging them, and spot check their approvals and compliance periodically.
 - **Maintenance and Inspection Schedule:** Identify and schedule daily, weekly, monthly, semi-annual and annual maintenance and inspections for all machinery, develop records with dates and details of inspections, maintenance and repairs.
 - **Machinery Operating Procedure and Policies:** Develop standard machinery operating procedures and policies to be followed by all employees and train your employees.
- Install perc impermeable secondary containment for containers, tanks and dry cleaning machines containing perc, waste water or residue with at least 110% of the container, tank or machine capacity.
- Ensure that perc machines do not vent to the atmosphere during washing, extraction, drying and aeration cycles.
- Perform leak detection checks – both visual and using a leak detection device.
- Store perc, waste water and residue in closed containers.
- Have perc impermeable floor drain plugs readily available.
- Ensure that spotting agents do not contain perc.
- Follow all waste generator registration legal requirements.
- Understand spill reporting requirements and cleanup obligations in the event of a discharge, leak or spill.
- Train all employees. Train at least one full-time employee about

the management of contaminants and waste in dry cleaning operations.

- Meet all occupational health and safety requirements for perc and other controlled/hazardous substances:
 1. MSDS sheets must be current and readily available to all employees.
 2. Clearly label all controlled/hazardous products.

1. *Canadian Environmental Protection Act, 1999*, S.C. 1999, SC 1999, c 33.
2. *Tetrachloroethylene (Use in Dry Cleaning and Reporting Requirements) Regulation*, SOR/2003-79.
3. *R v Bata Industries Ltd.*, [1992] OJ No 236, varied [1993] OJ No 1679, varied [1995] OJ 2691; *R v Courtaulds Fibres Canada* (1992), 76 CCC (3d) 68; *R v Syncrude Canada Ltd.*, 2010 ABPC 229.
4. The EMS elements and best practices are compiled from a number of sources that include Environment Canada www.ec.gc.ca/regs-tetra/Default.asp?lang=En&n=OCC9B755-1; Federal, Provincial and Municipal laws and regulations; the Regional Source Control Program, Victoria, British Columbia www.crd.bc.ca; Ontario Ministry of the Environment www.ene.gov.on.ca; Ontario Ministry of Labour www.labour.gov.on.ca/english/hs/pubs/whmis/.

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The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.

COMING EVENTS

June 6-7
OFA/ECLDA JOINT CONFERENCE AND GOLF TOURNAMENT
Holiday Inn Yorkdale, Toronto
Info: Sid Chelsky, chelsky@sympatico.ca
or 416-573-1929

Sept. 5
CLEANERS AND LAUNDERERS ALLIED TRADES ASSOCIATION (CLATA) TOM WHITE CLASSIC GOLF TOURNAMENT
Bay of Quinte Golf Club, Belleville, Ontario

If you have an event for your association or industry organization, let us know!
Send to becca@fabricarecanada.com

NOV
IS THE TIME TO CHECK YOUR LEASE.

Major landlords now require GreenEarth® in their new and renewed leases. Hydrocarbon, perc and K-4 are no longer being allowed on the premises. If this affects you, we can help. Contact GreenEarth Cleaning to discuss our Prime Locations Program. Call 1.877.926.0895 or email info@greenearthcleaning.com.