

## *Significant Fines Upheld in Sunrise Propane Explosion*

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June 4, 2018

The appeal decision in *R. v Sunrise Propane Energy Group Inc.*<sup>1</sup> highlights the importance of being duly diligent and having preventative systems in place when conducting inherently dangerous business operations.

On November 27, 2017, the Ontario Superior Court of Justice (ONSC) released its decision on the appeal by Sunrise Propane of the charges resulting from the explosions at the Sunrise Propane storage facility in 2008.

In 2016, the Ontario Court of Justice (OCJ) slapped Sunrise Propane and its directors with \$5.3 million in fines plus victim fine surcharges for breaches of the *Environmental Protection Act*<sup>2</sup> (EPA) and *Occupational Health and Safety Act*<sup>3</sup> (OHSA). See our previous article about the trial decision titled, [5.3M in Fines Against Sunrise Propane and Directors for Fiery Propane Explosion](#).

Sunrise Propane appealed to the ONSC to overturn the convictions and sentences. The ONSC dismissed the appeal and upheld all convictions and sentences.

### **The Explosion and Charges**

Sunrise Propane conducted truck to truck transfers of propane at its propane refill centre in Toronto. In 2006, Sunrise Propane began to upgrade its facility in response to a Technical Standards and Safety Authority (TSSA) Director's Public Safety Order prohibiting truck to truck transfers. The TSSA allowed an exception for facilities that met a certain storage capacity. In June 2007, the TSSA codified this requirement with the publication of a Code Adoption Document.

By 2008, Sunrise Propane did not meet the requirements to be exempted from the prohibition, yet Sunrise Propane continued conducting truck to truck transfers.

In August 2008, a propane leak during a truck to truck transfer caused numerous explosions resulting in the death of an employee and property damage. Numerous contaminants were released into the environment, including "heat, gas vapour, asbestos, dust, metal and other forms of discarded matter."<sup>4</sup>

The Ministry of the Environment (now the Ministry of the Environment and Climate Change) issued an Order to remediate the site. Sunrise Propane was also charged under section 14 of the

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<sup>1</sup> *R. v Sunrise Propane Energy Group Inc.*, 2017 ONSC 6954. (*Sunrise*)

<sup>2</sup> *Environmental Protection Act*, RSO 1990, c E.19.

<sup>3</sup> *Occupational Health and Safety Act*, RSO 1990, c O.1.

<sup>4</sup> *Sunrise* at para 36.

EPA for discharging a contaminant into the natural environment that caused or could cause an adverse effect.<sup>5</sup>

### **The Trial Court Decision**

The OCJ convicted Sunrise Propane and its directors under the EPA for discharging a contaminant that caused or could cause an adverse effect and for contravening a Provincial Officer's Order.<sup>6</sup> Sunrise Propane also received a conviction under the OHSA. The OCJ found that Sunrise Propane and its directors failed to establish a due diligence defence. Sunrise Propane failed to take reasonable steps to prevent the discharge of contaminants.

### **The Appellate Court Decision**

On appeal, the ONSC upheld the OCJ's conviction and fines under the EPA and OHSA.

The ONSC rejected Sunrise Propane's argument that the facility was exempt from the prohibition against truck to truck transfers. The ONSC found that the Sunrise Propane facility failed to meet such requirements, as it lacked a "permanent license storage capacity at least equal to the largest tank truck or have the capacity of truck to truck transfer specifically approved by the TSSA".<sup>7</sup>

The ONSC accepted the trial judge's findings that Sunrise Propane failed to establish a due diligence defence and could not make out the claim of officially induced error. The ONSC agreed with the OCJ that Sunrise Propane's safety procedures and training were "severely lacking", that Sunrise Propane's preventative maintenance was inadequate, and that "due diligence required more than simply responding to an inspector's orders after the fact."<sup>8</sup> The ONSC found that it was foreseeable that a "propane leak could occur during truck to truck transfers".<sup>9</sup>

The ONSC further found that while Sunrise Propane was led by a TSSA representative in 2006 to the mistaken belief that they could continue truck to truck transfers, any misconception "should have evaporated" when TSSA published its Code Adoption Document in June 2007.<sup>10</sup>

Finally, the ONSC upheld the OCJ's finding that Sunrise Propane breached the Provincial Officer's Order by failing to comply with the conditions of the Order.<sup>11</sup>

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<sup>5</sup> *Environmental Protection Act*, RSO 1990, c E.19, s 14.

<sup>6</sup> *Ontario (Ministry of Labour and Ministry of the Environment) v. Sunrise Propane Energy Group Inc. et al.*, 2013 ONCJ 358.

<sup>7</sup> *Sunrise* at para 75.

<sup>8</sup> *Ibid* at para 79.

<sup>9</sup> *Ibid* at para 86.

<sup>10</sup> *Ibid* at para 65.

<sup>11</sup> *Ibid* at para 114.

## Companies Beware

Companies must keep abreast of changes in the law and use caution when relying on statements of regulatory representatives, in particular where, as here, a new regulatory document was published and in place.

The decision further confirms the importance of having a robust, well-thought out environmental management system, safety procedures, training protocols, and preventative maintenance in place in order to prevent and respond to accidents, and establish a defence of due diligence. This is especially so where the business in question is an “inherently dangerous one” where facilities must operate “in the safest conditions to avoid potential catastrophes.”<sup>12</sup>

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Document #: 1373465

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<sup>12</sup> *Ibid* at para 83.