

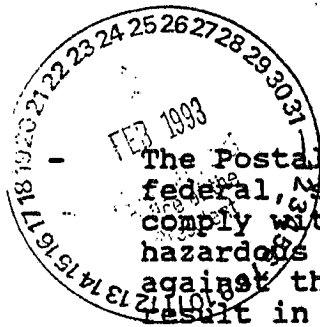
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ENVIRONMENTAL LAWS AND PERSONAL LIABILITY  
OF POSTAL MANAGERS

EXECUTIVE SUMMARY

*M. Biller*



- The Postal Service is required to comply with all applicable federal, state or local environmental laws. Failure to comply with laws dealing with air pollution or solid and hazardous wastes can result in civil fines and penalties against the Postal Service. Violations of the law can result in criminal penalties against individuals.
  
- Postal managers must ensure that facilities, operations and activities are in compliance with applicable environmental laws.
  
- Postal managers can be held personally liable for criminal violations of the environmental laws if:
  - The manager has responsibility for the operation or activity and;
  - The manager has knowledge of the problem, and;
  - The manager fails to act to correct the problem, if he or she has authority to do so, or fails to alert supervisors to the problem and to request adequate resources or budget to implement the solution.
  
- Senior managers can be held personally liable if they refuse to provide resources to correct a problem brought to their attention.
  
- The federal prosecutors will follow the chain of command to prosecute the officials who refused to correct the situation, whether a line manager or a budget manager.
  
- Mere negligence or technical or minor violations of the laws usually will not result in criminal prosecutions. There usually must be deliberate actions or refusal to correct a problem once it is brought to the attention of the manager.
  
- Except in a federal criminal prosecution, legal representation usually will be provided to postal managers for criminal or civil suits if the manager's acts were within the scope of employment.
  
- Most violations of the environmental laws will not result in personal liability for the manager but can result in liability for the Postal Service.

MAR 1993  
Vice President

**ENVIRONMENTAL LAWS AND PERSONAL LIABILITY  
OF POSTAL MANAGERS**

This memorandum discusses postal managers' and employees' liability under the environmental laws and the general circumstances when the federal government will provide legal representation when a postal employee is charged with a violation of the environmental laws.

**Personal Liability**

Any employee or manager of a federal government agency, including the Postal Service, can be criminally prosecuted for violation of the environmental laws if three basic conditions are present. The key elements are responsibility for the operation or activity with authority to remedy the problem, knowledge of the problem, and failure to act or failure to act properly to correct the problem.

The Justice Department has stated that compliance with the law is a first priority and nobody or nobody's job description authorizes breaking the law. Lack of budget to correct a problem is not a defense. The responsible manager must request the funding if it is not available in order to avoid personal criminal liability. If funding is not provided, liability then shifts to the person who did not provide the budget if that person is aware of the nature of the problem and funding is required to correct it. The manager, to avoid liability, must identify with specificity the nature of the problem in order to provide the supervisor with reasonable notice of the problem.

Justice Department prosecutors follow the chain of command until they find the responsible individual who said "no" to the correction of the problem, whether it be a operational manager or a financial official. To avoid personal liability, a manager must make a good faith effort to correct the problem or alert supervisors of the seriousness of the problem, request the budget to correct the problem and implement the corrective action.

Any manager who tries to correct a problem brought to his or her attention will probably not be held criminally liable and in fact will probably not be charged. An investigation would have been done by the prosecuting authorities to determine whether there was actual knowledge of the wrongdoing and refusal to correct the problem. A manager who tells an employee to dump hazardous waste in the creek will be held liable, while the manager of the facility who hears of the dumping and does not act to prevent it could also be held liable. This is so, because such acts go beyond the scope of employment and are not done to further the interests of the Postal Service. A manager probably would not be charged if dumping had occurred, but the manager knew nothing of it and did not deliberately try to remain unaware. A mistaken

Department of Defense. The Justice Department, upon review of these civil suits will represent the postal manager and any judgment will be satisfied by the Postal Service either for being directly responsible or under theories of respondeat superior (the employer is responsible for the actions of its employees).

Therefore, in any civil case, it can be expected that the Justice Department will provide legal counsel and the Postal Service will be responsible for any damages. A rare exception occurs if it is found that the manager's acts or omissions are so far out of line with his or her employment or duties that there is no governmental interest to protect. In that case, the manager is individually responsible and the government is not allowed to defend the actions on behalf of the manager. This situation would have to rise to almost criminal culpability or obvious misconduct such as physical assault where an agency could argue that such an action was not within the scope of duty. However, in the case of simple negligence by the manager it could be expected that legal counsel would be provided, and that the Postal Service would pay any judgment or settlement.

The same analysis would hold true for state criminal actions. A review would be done initially by the Postal Service to see if the manager's action was in the scope of employment and duties and such would be certified to Justice. Justice would review and if it agreed (which it normally does) then legal representation would be provided.

However, there can be no Justice Department representation for a federal criminal charge. This is because the Justice Department is bringing the charge and the Justice Department will not defend a manager it believes to be criminally responsible. Obviously there can be no certification that a manager was acting within the scope of his or her duties if the act is a violation of a federal law.

Despite this limitation, the Postal Service goes further in protection of its employees than other agencies, since it allows requests for reimbursement of the legal fees and judgments incurred by use of private counsel in a legal action. Reimbursement will be made if it is equitable and fair to do so; the employee acted reasonably and not recklessly, in bad faith, or with obvious indifference to instructions; and the amount requested is reasonable and payment is in the best interest of the Postal Service. Therefore, even if a federal attorney is not provided to the manager, it is possible for the manager to get his or her own attorney and have the Postal Service reimburse the costs.