

Joseph Ellin's Commentary on "Leaking Waste Containers"

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Leaking Waste Containers

I

Engineer Scott Lewis objects to Tom Treehorn's method of disposing of leaking drums. It is a violation of EPA regulations, as Tom admits. EPA may have good reason for the policy of requiring that leaking drums not be returned to the home site, but in this case, Scott may well think, the policy serves no purpose and may cost ABC company money. Since the method of disposing of the waste chosen by Tom apparently is superior to that required by the EPA, we evidently have a violation that seems more a matter of regulations than of realities.

We could look at this case as an example of the conflict between act utilitarianism and rule utilitarianism. Presumably the EPA's rule is warranted and generally produces good results. But in certain cases, as in this one, this may not be true. (Many automobile traffic regulations are like this). Is it permissible to violate the rule in the given instance? Perhaps; but in any event, we can say that the case for Scott interfering with Tom or for reporting Tom's infraction to Tom's superior is weakened. What is to be said for option 1, that Scott should inform Tom that he will report Tom's infraction to the superior, is, that Tom is violating the law and putting ABC at risk and his superior ought to know this. However reporting Tom seems a rather hostile way of proceeding, especially if Scott thinks that Tom is well intentioned and committing a technical infraction in a good cause. Scott might report Tom anyway because Tom's superiors ought to know what Tom is doing. But under the circumstances Scott might be allowed to reason that if Tom's superior wants to know how Tom disposes of waste, it is his business to ask; if he doesn't inquire, it's not Scott's job to tell him what he doesn't want to know. Scott has done what's required of him by calling in Tom to dispose of the waste; other questions are internal to the operations at ABC. The situation might be different if there were a real risk to

someone from Tom's irregular procedure, but it's premised in sections I and II that there isn't. The risk is entirely secondary, a risk to ABC, Tom and Scott of prosecution, created by regulations which over-reach.

Therefore the balance falls on option 3, that Scott does not report Tom but advises him that he shouldn't do it. Whether this is the best option might depend on what is meant by 'advice.' If Scott merely goes through the motions of saying, don't do this, knowing that Tom will ignore him, this option looks less attractive. If however he makes his arguments and then lets Tom come to his own conclusions, trusting Tom to consider Scott's advice and arguments seriously, then perhaps option 3 is best.

II

Should Scott help Tom dispose of the waste illegally? It would be terribly imprudent, because he is exposing himself to legal liability. However I find no statement in the Code that engineers may not expose themselves to legal liability if they think it's justified to do so. By helping Tom, maybe Scott thinks he's protecting the environment and saving ABC money. On this last point, however, both he and Tom are apt to be mistaken, since ABC stands to get into serious legal difficulty as a result of Tom's action. So they cannot be said to have met their responsibility to ABC, even though they may have met their responsibility to the environment. The money they save now for ABC may seem like pennies later. Tom's action would be much more justified if the EPA-approved method were actually more risky to the environment than the method Tom employs, which might be true if the EPA enacted its regulations in part for its own administrative convenience, (saving the government money but costing private companies unnecessary expense). But as the case does not say this, it should not be assumed, and therefore neither Tom nor Scott are justified, even from the point of view of saving ABC money.

II

Now the premise of the case changes; it turns out that ABC has been doing harmful dumping under Tom's direction for years. Scott has been a fool to ever believe that Tom was serious about protecting the environment. Should Scott testify about the little he knows about this to the court? This question admits of only one possible answer: since Scott will be under oath he has no choice but to tell what he knows.

Evidently Tom managed to deceive him about Tom's disposal methods. Too bad for Tom and ABC. But if they engaged in a pattern of environmentally harmful violations over several years, they will have to face the consequences. As for Scott, due to his naivete he may now be guilty of concealing illegal dumping, or of being a party to it, if he acted as stated in section II. The lesson from this is that one should never be ashamed to protect one's rear and minimize your own legal exposure. Never assume that illegal actions are really harmless and can be ignored; for even if they're harmless to everyone else, the fact that they're illegal and you know about them, is itself harmful to you.