

# Michael Davis' Commentary on "Leaking Waste Containers"

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Leaking Waste Containers

Scott Lewis is an engineer aware that an ABC employee is about to violate federal regulations designed to protect the environment. If he is a chemical engineer, he may know something of the history of those regulations, especially about how many seemingly safe means for disposing of waste turned out to be unsafe, how important keeping track of waste is to making sure only safe means of disposal are used, and how many of the EPA's seemingly over-technical standards are what experience has shown necessary for EPA inspectors to identify and understand a waste disposal problem relatively quickly.

The regulation forbidding return of chemical waste to its home site may be such a standard. Waste can flow in only one direction, away from the home site toward a licensed disposal site. All involved in handling a shipment of toxic waste can tell something is wrong the moment they see the flow of waste reversing. What alerted Lewis to a potential problem was precisely that Tom Treehorn proposed to reverse the flow. The regulation did what it was supposed to do. What should Lewis do?

Treehorn, head of ABC's Division of Chemical Waste, says Lewis should do nothing: "Trust me--I'm a good guy." Let's suppose that Treehorn's intentions are good. Still, he is breaking a law. He doubts the ability of those specially trained for the job, "the off-site folks," to do the job properly. He claims no authority from above. As he explains it, he alone knows what to do. He's sort of Lone Ranger of the wild wastes. The ancient Greeks had a saying, "Whom the gods would destroy, they first make mad." Treehorn is one whom the gods seem to have marked for destruction.

Lewis, though (presumably) an ABC employee and responsible for inspecting the warehouse, does not seem to be one of Treehorn's subordinates. He has a freedom of maneuver he would not have if he were under Treehorn. This makes response easier than it might otherwise be. The first thing Lewis should do is suggest that

they call in Treehorn's superior and see what he thinks. If Treehorn refuses, that would settle things. Lewis would know he was dealing with a Lone Ranger in no position to pressure him. He and Lewis could get back to their job, finding a way to dispose of the wastes legally.

If, however unlikely on the facts as given, Treehorn agrees to bring in his superior, Lewis need make no decision until the whole issue has received a good discussion. Since it is hard to know what such a discussion would reveal, let us assume hereafter that Treehorn does not take Lewis' suggestion but instead withdraws his own. Should Lewis leave matters at that?

What Treehorn suggested to Lewis he may have suggested to others before. Indeed, the confident tone in which Treehorn made his suggestion suggests he has made it before with more success. Lewis should therefore consider raising the question with someone above Treehorn. But with whom? The better organizations will have some procedure, a hotline, ombudsman, or open door. Where such a procedure exists, Lewis could use it. If ABC has no such procedure, Lewis should seek the advice of his own supervisor, putting his concern in writing and making clear both how serious the problem could be and how incomplete his evidence is. He should keep a copy for himself. If custom allows, he should send a copy to everyone in the company who might be interested, including the Legal Department. (The more people who receive the memo, the harder it will be for any particular person to ignore it.)

Lewis should take care that his memo sounds like this: "I have no real proof of a problem in Chemical Waste. But we must investigate anyway. We have been put on notice of a potential problem. If we don't investigate and it later turns out there was a problem, we will look bad and the company will suffer." There are two reasons for taking this subdued but serious tone. One is, obviously, that Lewis could be wrong. Treehorn may have made his suggestion without thinking and thought better of it as soon as he saw Lewis's reaction. Lewis should not do Treehorn more harm than necessary. The other reason Lewis should take a subdued tone is to preserve his own credibility. Speaking softly, staying within the evidence, generally carries more weight than screaming, especially in the early stages of an inquiry when sides have not yet formed. Lewis ranks low. He does not have much credit. He should take care to husband it.

If Lewis does this much, then, even if the investigation turns up nothing, he will be in the clear. He will have alerted his superiors and given them the chance to do what

they should. He need do no more because he has no knowledge that the public health, safety, or welfare is in fact threatened. He had only a well-grounded suspicion that Treehorn may be violating EPA regulations.

If the "worst" happens and years later Lewis receives a subpoena, he can dig out the memo and appear in court ready to tell what he knows. If ABC did a good investigation, those who did it will be able to tell what they know. They can testify to having done the best they could. Perhaps Treehorn lied to them and used methods they could not reasonably have anticipated. Treehorn will be to blame, no one else. He will have left ABC with a huge waste disposal problem, a dirtied reputation, and an almost unimaginable potential for litigation. But, to the degree others did their job, ABC's liability will be less and those involved will not be personally liable or morally blameworthy.

If, however, Lewis took what earlier seemed to be the easy way, doing nothing or even helping Treehorn load the truck, Lewis will now need a lawyer. He will have to be careful what he says. The truth may be used against him in a civil suit for damages. Lying would risk criminal prosecution for perjury. Keeping silent would be self-condemning. The "worst" seldom happens, but thinking about it can reveal fundamental weaknesses in a course of action that looks pretty good on the assumption that all goes well.