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Kenneth P. Serné

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The Key to Environmental Compliance: How to Avoid Environmental Liability, Exercise Due Diligence and Keep Out of Jail

John Tidball, Bruce McMeekin & Christine O'Donohue

Toronto: Emond Montgomery, 1993, 68 pp.

Reviewed by Kenneth P. Serné[†]

Owning and operating a business is difficult under ideal economic conditions. Environmental considerations have made matters more complicated for such business people. The authors of *The Key to Environmental Compliance* have attempted to make these matters more understandable for small businesses, particularly small businesses in Ontario. The text has some value for business persons outside of Ontario, but that value is limited to the authors' general advice.

The authors assert that the key to compliance is diligence in all areas. They have split the text into two sections to best explain this theme. The first section explains the regulatory system while the second section outlines practical advice.

The text begins with an extensive examination of the relevant environmental statutes in Ontario. It continues with a thorough examination of particular types of environmental pollution, including air and noise, water, spills, storage tanks, and waste management.

In each of these major areas the authors explain the major terms within the relevant legislation and outline the various reporting requirements, approvals needed, and powers of the provincial Ministry of Environment and Energy (MOEE). The authors effectively discuss the major topic areas of environmental compliance in terms that non-lawyers can understand.

A major concern with this book is that in a few topics, such as waste water controls, the authors make reference to upcoming

[†] B.A. (Simon Fraser), LL.B. anticipated 1996 (Dalhousie).

changes in the legislation or regulations. This text was published in 1993 and may be outdated in these matters. This flaw is typical of all areas of law because law is fluid and dynamic. The problem does not diminish, however, the value of the authors' general advice and explanations of the statutory structure.

The second portion of *The Key to Environmental Compliance* provides practical advice on how to comply with environmental laws and regulations. This discussion includes the recommendation of the establishment of a good relationship with MOEE officials. The authors also recommend the institution of an effective reporting system and a pollution prevention system.

The authors effectively explain the powers and duties of inspecting officers and provide advice for dealing with inspections and investigations. The authors recommend full cooperation with inspections but strongly recommend the consultation of legal counsel before cooperating with MOEE officials in the course of an investigation.

This distinction between investigations and inspections is important. Investigations have the potential of resulting in criminal charges. The authors advise that people should be careful to consult their own lawyer rather than corporate counsel. This advice is important because corporate counsel would have a primary duty to the company first. Corporate counsel has a duty to explain such a conflict to employees, but it is a good idea that employees know that they should consult outside counsel.

The text continues with a fairly detailed explanation of the approval process and how approvals are granted. This is a useful section because effectively explains what approvals are needed and how they may be obtained.

The authors advise that it is necessary to report discharges promptly to the proper authorities. Companies should also establish an effective reporting system so that employees know when to report, how it should be done, and who is responsible to report the event.

In their conclusion, the authors give effective advice to avoid prosecution. Companies should develop a proper system to prevent pollution. The use of an effective compliance strategy will reduce the likelihood of being charged. It is advisable that such a system includes proper training of employees, supervision, and record-

keeping. The authors also recommend the use of environmental audits in order to ensure compliance.

In summary, *The Key to Environmental Compliance* is a useful text for small business owners and operators in Ontario. There is some limited value for those residing outside of Ontario. The guide effectively achieves its goal of a simplification of the environmental legislation and general advice for compliance. The only significant flaws are the concentration on Ontario only and the 1993 publication date. The book does, however, provide a sufficient overview for those business owners that are affected by environmental legislation.