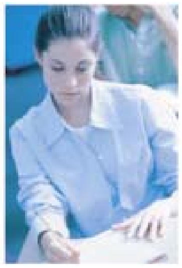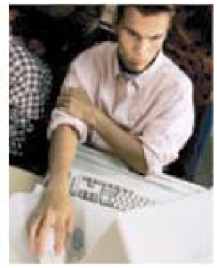

The Kaplan eGuide to Ethics and the Legal Environment

Chapter 4

This mandatory weekly reading assignment is designed to supplement your online coursework and help you to understand the basic concepts behind ethics and philosophical arguments.

In This Chapter

eGuide to Ethics and the Legal Environment

The environment—and the way businesses treat it—affects every living thing on the planet. Generations ago, managers were typically not concerned about the environment. This started to change with the publication of Rachel Carson's *Silent Spring* in 1962, which warned about the use of pesticides and the impact of environmentally unsound business practices. Increasing public awareness led to the enactment of the Clean Air Act in 1970 and the Clean Water Act in 1972.

The environment as a stakeholder casts a broad net; it includes the earth itself and everything on it, including human beings. All humans can be considered environmental stakeholders because of our reliance on the environment for our continued existence. Therefore, the environmental issues managers face are not simply about trees and water and birds. These issues affect all people, including the managers themselves.

Case Study: Dellario Corporation

Sheryl was concerned about her new position as operations manager for Dellario Corporation, an oil refinery in the upper Midwest. During the interview process, she learned that Dellario had twice been found in violation of EPA standards for ground water and soil contamination. However, Dellario executives informed her that new procedures and equipment had eliminated the spills and reduced the likelihood of further contamination. During her first few months on the job, she ordered inspections of all procedures and was assured by the inspection team that leakage and subsequent contamination had been stopped. She had signed the final inspections report even though she had not had time to read it. In fact, she never accompanied the inspectors in any of their evaluations because she was too busy attending to other tasks.

A few weeks after the completion of the inspections, she approached her vice president's office to discuss a personnel matter regarding one of her employees. As she entered the office, she noticed several vice presidents and an employee of hers looking alarmed and uncomfortable with her arrival. She noticed Don, the employee in charge of process operations, tuck a file under the folder in front of him on the table, obviously trying to conceal the file.

While reviewing the final inspections report that evening, she realized that it was well after 7 p.m. and all the other employees had long since left the office. She had been troubled all day with the encounter in her vice president's office. She knew Don was hiding something, and she felt that Don and the vice presidents were lying to her or excluding her from hearing about some major problems. Also, while reading the final inspections report she noticed that the inspection team, originally comprised of environmental scientists both inside and outside the company, had been reduced to only Dellario employees without her approval. Although she knew it was wrong, she decided to enter Don's locked office and search for the file she knew he had tried to hide from her.

She found the file under a large stack of outdated procedure manuals in an unlocked file drawer. The file contained memos about the composition of the inspection team, as well as their actual findings, which differed from the official report. In addition, the file outlined the corporation's plan to conceal the truth—that contamination was at an all-time high and the toxins were lethal to humans and wildlife. At the bottom of the file, she found copies of letters from three different families alleging that contaminated groundwater runoff from Dellario had reached a children's playground, resulting in the death of three children.

Sheryl closed the file and felt physically ill. She had been lied to and now she was part of the deception. Children were dying, and her signature was on the inspections report that stated that Dellario had ceased all contamination.

WHY MUST A MANAGER BE CONCERNED WITH THE ENVIRONMENT?


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The environment is a unique stakeholder of every business because it is a stakeholder that is utilized and consumed by business, and although it cannot defend or advocate for itself, life on Earth depends on appropriate management of this stakeholder. Environmentally friendly behavior is no longer considered unusual or a fad. Because of increasing awareness of environmental issues, other stakeholders, especially consumers, may demand that businesses respond to the needs of the environmental stakeholder.

Environmental issues not only affect the Earth, its vegetation, wildlife, and atmosphere, but also every inhabitant of the planet. The largest challenge comes from difficult choices regarding the handling, containment, and disposal of dangerous or toxic substances. Effective managers must be knowledgeable about the laws that govern environmental issues, and they must also use ethical principles and standards to guide their decision-making. Unethical choices in this area can lead to consequences far more damaging than poor quarterly returns or legal difficulties; they can lead to death.

WHAT MUST A MANAGER KNOW?

Every effective manager must know the laws that regulate the relationship between the business and its environmental stakeholders. An employer's knowledge of the laws is important to protect the business from legal liability and to protect the environment. These laws include legislation that defines and regulates clean water and clean air.

Clean Water Act

For centuries, commercial organizations in the United States viewed water as a renewable resource without limitation. Historically, businesses have dumped toxins and waste into streams, rivers, lakes, the ocean, and groundwater near their facilities. In the middle of the last century, public concern over water pollution led to the enactment of the law commonly known as the Clean Water Act.

WHAT DOES THE CLEAN WATER ACT MEAN TO THE STAKEHOLDER?

The Clean Water Act seeks to protect not only the water as a resource, but those life forms that rely on water for survival. This includes the protection of vegetation, marine life, the ecosystem, wildlife, and humans. Because marine life cannot bring its own claim for damages against a corporation, the government, through its rules and regulations, seeks to protect the environmental stakeholder. The Clean Water Act limits the amount of pollutants a company can discharge into a waterway to safeguard the stakeholder. The act also contains provisions to clean up damage from earlier pollution.

WHAT DOES THE CLEAN WATER ACT MEAN TO THE MANAGER?

The Clean Water Act requires owners and operators of pollution sources to maintain records, use monitoring equipment, and sample pollutants on an ongoing basis. Regulations determine how much of what type of pollutant a business can emit. The EPA has the authority to inspect the premises of any pollution source. If the EPA finds a violation of any of its standards or programs, the agency has the authority to notify the offending party and the interested state. If the state fails to take enforcement action, the EPA may either issue an order requiring the business to comply with the EPA's rules or it may sue the business in court. The EPA has the authority to levy fines and criminal penalties against the business.

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In addition, managers must be aware that private citizens have a right to sue any business that has violated the provisions of the Clean Water Act or its implementing rules and regulations. Citizens may also bring suit against the EPA if it fails to do its job. Similarly, the governor of a state may sue the EPA for its failure to use its enforcement powers to prevent or punish violations occurring in another state that are causing an adverse effect on the public health or welfare in the governor's state. For example, if water pollution in a Wisconsin river flows downstream into Illinois and the EPA does not prevent or punish the violations of the Wisconsin business responsible for the pollution, the governor of Illinois can sue the EPA.

Ethics Application: Clean Water Act

Example: Pools and Company operates a chlorine processing plant in the southeastern United States. The company regularly "dumps" certain chemical by-products into a local stream, for which they receive annual fines from the EPA. Managers at the company conducted a cost-benefit analysis and found that it is cheaper to dump and pay the fines than it would be to hire a toxic waste hauler to properly dispose of the waste.

Activity: Ask yourself the following questions:

1. Who are the stakeholders in this case? What are their needs?

2. Is the action of Pools and Company ethical based on your gut reaction?

3. How does the answer to the above question change if you apply a rights approach to the case? A justice approach? A categorical imperative approach? A utilitarian approach?

4. Where would you rank Pools and Company in Kohlberg's Levels of Moral Development?

Clean Air Act

Businesses began polluting the air early in this nation's history, but it was not until the Industrial Revolution that the government decided to protect the public's health by controlling the amount and type of toxins released in the air. A century later, the government was still battling air pollution and looking to regulate fuel emissions to protect the ozone layer and control acid rain.

WHAT DOES THE CLEAN AIR ACT MEAN TO THE STAKEHOLDER?

The Clean Air Act, enacted in 1970, protects the public's health by regulating air pollution in the United States. Stakeholders of this environmental concern include any living thing that either breathes air or is affected by air quality, including ozone depletion and acid rain. The Clean Air Act protects stakeholders from harms that are rarely visible to the naked eye. Individuals typically do not know when they are breathing polluted air, nor can an individual easily monitor such things as ozone depletion and acid rain. Therefore, the government attempts to monitor environmental issues for the stakeholders.

WHAT DOES THE CLEAN AIR ACT MEAN TO THE MANAGER?

The Clean Air Act requires businesses that pollute to apply for permits. These permits are intended to limit the kinds and amounts of pollutants being released. They also require that businesses identify steps to reduce pollution.

The EPA may enforce the provisions of the Act by bringing lawsuits against violators. Since 1990, the agency has also been authorized to fine violators without having to go to court. Like the Clean Water Act, the Clean Air Act provides for lawsuits to be brought by private citizens.

Ethics Application: Clean Air Act

Example: Radfar Industries operates a manufacturing facility in the Midwest. Each year, the company applies for permits from the EPA that allow a certain amount of toxins to be released from the smokestacks at the plant. Twice a year, the EPA monitors emissions during an announced visit. Radfar reduces emissions prior to the EPA visits and also releases more from the stacks during windy evenings, when the weather helps dissipate the toxins into the atmosphere. The Board of Directors believes that since the emissions have not been proven to be harmful, the EPA is over-regulating and should not be allowed to fine companies for tasks and products necessary to this nation's economy.

Activity: Ask yourself the following questions:

1. Who are the stakeholders in this case? What are their needs?

2. Is the action of Radfar Industries ethical based on your gut reaction?

3. How does the answer to the above question change if you apply a rights approach to the case? A justice approach? A categorical imperative approach? A utilitarian approach?

4. Where would you put Radfar Industries in Kohlberg's Levels of Moral Development?

Although this chapter has identified two laws, the Clean Water Act and the Clean Air Act, that seek to protect environmental stakeholders, there is an additional legal concept that managers must be familiar with because of its implications for the business and all stakeholders. That area of law is commonly referred to as toxic tort law.

Toxic Torts

A toxic tort is the legal term for an act by a business that involves contact with a toxic substance and causes injury to an environmental stakeholder. The growth of industry has resulted in an enormous increase in the number of toxic substances in the environment. A few of the toxic substances that have been shown to cause injury are: lead-based paint, asbestos, solvents, pesticides, electromagnetic fields, landfill waste, pharmaceuticals, and industrial chemicals.

One difference between the above water and air acts and toxic tort law is that under toxic tort law, an individual may sue in court for damages without proving that the business violated a law or a pollution permit. Another major difference for managers to consider is that under toxic tort law, the jury can decide the penalty to the company, and if the act is egregious, that penalty can be in the millions.

WHAT DO TOXIC TORTS MEAN TO THE STAKEHOLDER?

The availability of toxic tort lawsuits allows stakeholders to proceed directly against a business and sue if they feel the business has caused injury by placing the person in contact with the toxic substance.

Probably the most famous toxic tort case to date was the California case of *Anderson v. PG&E*, a case that was given the Hollywood treatment in *Erin Brockovich*. For over fifty years, the people who lived in and around the desert town of Hinkley, California were exposed to hexavalent chromium (Chromium 6), which had leaked into the groundwater from a nearby PG&E compressor station. Chrominum 6 had been known as a cancer-causing chemical since the 1920s, and it had been linked to the kinds of respiratory ailments suffered by the Hinkley residents. During the preliminary fact finding and evidence gathering portion of the case, the number of plaintiffs swelled to over 600, making the case the largest direct class action suit in the nation's history. To avoid a jury finding, PG&E moved the case to arbitration. The arbitration resulted in PG&E's payment of $333 million in damages—the largest legal settlement in U.S. history.

WHAT DO TOXIC TORTS MEAN TO THE MANAGER?

First and foremost, toxic torts tell the manager that the business is always subject to liability should it cause injury with toxic substances. The damages, as seen in the PG&E case above, can force the organization out of business. The manager, and indeed every employee in the business, has the duty to inform the environmental stakeholder of the potential for exposure to toxic substances and to protect all stakeholders from the tragedies toxic substances can cause.

Ethics Application: Toxic Torts

Example: Kelvin Industries operates a manufacturing plant in a facility that was once owned by a chemical company. Kelvin's board of directors is aware of toxins that were released and the damage these toxins caused neighboring communities. If Kelvin reports the toxin release, the plant will be closed pending cleanup and restoration efforts. Kelvin is not responsible for the damaging toxins and will not be forced to pay for the cleanup. However, it will lose substantial business were the plant to be shut down indefinitely. The previous owner, the chemical company, is no longer in business, so Kelvin cannot sue to recover money damages for the shutdown. Kelvin's board decides to keep quiet and do nothing about it.

Activity: Ask yourself the following questions:

1. Who are the stakeholders in this case? What are their needs?

2. Is the action of Kelvin Industries ethical based on your gut reaction?

3. How does the answer to the above question change if you apply a rights approach to the case? A justice approach? A categorical imperative approach? A utilitarian approach?

4. Where would you put Kelvin Industries in Kohlberg's Levels of Moral Development?

Chapter Summary

Recall the Dellario Corporation case study at the beginning of this chapter. There are both legal and ethical issues that must be addressed by Sheryl, the manager.

In the case, Sheryl is confronted with the fact that not only has the company contributed to pollution and contamination of groundwater and soil, but that she has also played a part in it by failing to be diligent in her oversight of the inspections team. Furthermore, she becomes aware that children are dying, possibly as a result of the corporation's contamination of a children's playground.

Aside from potential EPA sanctions against the company, the company faces an enormous problem with respect to lawsuits under toxic tort law. Liability continues to grow in this area as juries attempt to send clear messages to corporations about their actions that affect the environment.

Under toxic tort law, the survivors of the children who have died can file a lawsuit naming Dellario as the defendant. The families could try to prove that Dellario was negligent in its attempt to contain contaminants and that Dellario was aware of the lethal damage they were causing.

As a defense, Dellario would probably try to escape liability by casting doubt over whether Dellario is actually the responsible party in the childrens' deaths. Dellario would likely have teams of engineers and scientists testify that it is impossible to link Dellario with the contamination leading to the childrens' deaths.

In a jury trial, it is anyone's guess how the case would be decided. However, whatever the legal issues are in this case, it should be clear to the student that even if a jury were to find Dellario not legally liable, there are still major ethical issues involved. In this analysis, the student should ask the following questions.

1. Who are the stakeholders?
2. What are their interests?

Then the prudent manager will begin to apply the ethical theories first identified in chapter 1. For example, how does Sheryl's breaking into Don's office look at first glance? Perhaps her entry into his office without permission was an ethical violation. However, under utilitarian theory, her acquired knowledge of Dellario's threat to the surrounding environmental stakeholders and her willingness to do something about it (if that were her decision) might allow the end (cleaning up the environment and stopping the contamination) to justify the means (breaking into Don's office).

In addition, even if Dellario cannot be found legally liable in a court of law, managers and executives were aware of the contamination and they did nothing to stop it. Even in the absence of legal liability under toxic tort law, how does the case appear when viewed from a rights approach? In this case, the environmental stakeholders' rights to life were clearly trampled upon by Dellario. Although the company might not be legally liable, there is a clear violation of the stakeholder rights that renders Dellario's actions unethical.

In conclusion, every effective manager must monitor the interests of the environmental stakeholder as well as the impact of the business's actions on the stakeholder. All managers should be aware of laws that regulate the relationship between the environmental stakeholder and the business, yet the effective manger must also apply ethical decision-making processes to all actions and decisions. Even in the absence of legal liability, the ethical manager makes decisions that can stand up to the ethical theories.

References and Recommended Readings

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