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### **Environmental Law Alert**

## **Corporate Officers *Personally* Liable for \$2.5 Million Penalty for Company's Tardy Tank Cleanup**

The California Court of Appeal upheld a \$2.5 million civil penalty for a tardy cleanup of an underground storage tank leak against two men who were officers, directors, and shareholders of a family company. *People v. Roscoe, et al.*, C055801 (2008 WL 35378254, Dec. 26, 2008). The Court's rationale could be used to impose personal liability for a company's violation of *any* environmental statute.

The Court applied the "responsible corporate officer doctrine" to find John and Ned Roscoe *personally liable*, even though the corporation owned and operated the tanks. The doctrine, which originated in a 1943 Supreme Court criminal liability case, is a common law theory of liability separate from "piercing the corporate veil" or imposing liability for direct participation in wrongful conduct. Under the doctrine, the officer, director, or shareholder can be held personally liable *even if he or she had no awareness of wrongdoing*.

In *Roscoe*, the District Attorney sought civil (rather than criminal) sanctions for violations of the underground storage tank provisions of the Health & Safety Code. After discovering a leaky underground storage tank at its facility in Galt, California, the company notified the County. The County later sent multiple violation notices to the company stating that the investigation and cleanup was not proceeding in a timely fashion. Officer John Roscoe considered them "form letters" which he passed on to an employee for handling. That employee passed them on to another, and, according to the Court, nobody "attempted to make sure the problems were addressed."

The Court found the Roscoes individually liable under the responsible corporate officer doctrine because they (1) "retained overall authority for company affairs," (2) "*could have* prevented or remedied promptly the noticed violations of the regulations," and (3) "did not exercise their responsibilities and power to use *all objectively possible means* to discover, prevent, and remedy any and all violations."

These compliance obligations are startlingly broad, especially in the context of the broad discretion environmental agencies exercise in interpreting what the law requires. The decision creates a new enforcement tool for the government and plaintiffs, as well as a new headache for entities doing business in California. It also sets a high standard to meet to show compliance—use of *all objectively possible means to prevent any and all* violations. Essentially, the Court said that strict liability will apply to corporate employees responsible for environmental compliance whenever a violation occurs, even without fault.

To discuss the ramifications of this case, contact Jon Wactor ([jonwactor@ww-envlaw.com](mailto:jonwactor@ww-envlaw.com)) or Bill Wick ([billwick@ww-envlaw.com](mailto:billwick@ww-envlaw.com)).