

Case Name:

**R. v. Whitley**

Between

Her Majesty the Queen, and  
Morgan Whitley, Craig Dallmeyer, Aquatech Blue Ltd. and  
Ontario Company Numbered 1170611 Limited

[2000] O.J. No. 5799

**Ontario Court of Justice  
Toronto, Ontario  
Bovard J.**

Oral judgment: August 4, 2000.  
(93 paras.)

**Counsel:**

J. Herlihy, for the Crown.  
No other counsel mentioned.

¶ 1 **BOVARD J.** (orally):— This is the sentencing of Craig Dallmeyer, Robert Weddle, Morgan Whitley, Aquatech Blue Limited and an Ontario Company Numbered 1170611 Limited. The defendants were found guilty after an ex-parte trial of numerous offenses against the Ontario Water Resources Act and the Environmental Protection Act of Ontario in a case that the Crown aptly described as "a regulatory nightmare" and as "rare" because of the number and variety of offenses committed by this group of defendants.

¶ 2 The defendants operated a waste disposal site (processing/transfer) in the port land area of Toronto during 1996. The charges involve the polluting of waters in this area, giving false information to officers of the Ministry of the Environment, and repeatedly breaching the conditions of their Certificate of Approval which is the document that the Ministry of Environment issues to waste disposal companies that outlines in detail the conditions under which they will be allowed to conduct their waste disposal business.

¶ 3 There a very few mitigating factors in these offenses except that according to the expert testimony heard during the trial, the damage done to the environment was probably at the low end of the spectrum of seriousness, and none of the defendants has a record of prior offenses. However, the mitigation of not having a record of prior offenses is attenuated by the fact that they had been in business for only about two years when the offenses arose.

¶ 4 On the other hand, there was a lot of evidence of aggravating factors. At the sentencing hearing the Crown introduced financial documents that were seized at the Aquatech Blue Limited site that showed that during 1996, the year of the offenses, hundreds of thousands of dollars came into Aquatech Blue Limited. The documents show that during the period between January 1995 and September 1996, only in January and February did the total payables exceed the total receivables. In other words, the documents tendered by the crown show that they were making money.

¶ 5 Income statements for July and August 1996 were introduced which showed that Aquatech Blue Limited's net income, after taxes, for those months was \$113,074 and \$66,655.08 respectively. The cost to the Ontario taxpayer has been high with regard to the Ministry of the Environment staff resources expended in attending to the problems that Aquatech Blue Limited caused. During the period of January 1996 to March 1997, one senior supervisor spent 40 per cent of his time on Aquatech Blue Limited and one senior environmental officer spent 60 per cent of her time on this problem. As well, numerous other staff were used for shorter periods.

¶ 6 However, it did not end there. The Ministry of the Environment had to continue to expend resources between April 1997 and the present in order to deal with the consequences of the offenses which the defendants committed. These activities involved assessing the extent of the problem left behind by the defendants and devising a plan to clean it up. Currently, a new operator has been issued a Certificate of Approval to run the site and it appears that the situation is well in hand.

¶ 7 The draining of Ministry of Environment resources by Aquatech Blue Limited's continued violations of Ontario

environmental protection law is quite serious because the Ministry of the Environment was already strapped for resources.

¶ 8 Paul Nieweglowski, a Ministry of the Environment supervisor with the Toronto District office testified that he supervises the Toronto East area which included the Aquatech Blue Limited site. This area covers from Yonge Street east to the end of Scarborough. It is a huge area. It contains hundreds of industries which have to be supervised by the Ministry of the Environment.

¶ 9 Mr. Nieweglowski said that because of the extensive problems that the defendants caused and because of their reluctance to comply with Ministry of the Environment field orders and their intransigence and untrustworthiness they decided that a constant Ministry of the Environment presence was required at the site. This had never before been required in the Toronto district. He characterized the quantity of resources used to deal with Aquatech Blue Limited as substantial and more than ever before used on any other company.

¶ 10 The evidence of Michael Rumble was illustrative of the flagrant disregard for the law and the protection of the environment that took place in this case. Mr. Rumble testified that he worked for the company that operated the site before Aquatech Blue Limited took over. When Aquatech Blue Limited took over the site the company then became the plant superintendent for Aquatech Blue Limited when they took over the site. He described one situation in which the "tank high level alarm", on one of the waste containment tanks was disconnected with Mr. Weddle's knowledge so that more waste could be taken in by Aquatech Blue Limited without the alarm sounding.

¶ 11 The alarm is intended to prevent contaminated waste from flowing over the tank and onto the ground. As a result of this, one of the tanks overflowed a couple of times. On one of these occasions David Brine (ph), an employee of Aquatech Blue Limited, was working on a valve on the tank right underneath where it overflowed and he was covered head to toe in oil. He tripped a manual alarm that sounded loudly all over the plant. Mr. Weddle was on site and Mr. Rumble told him what was happening.

¶ 12 Mr. Rumble told Mr. Weddle that the tank was overflowing and that they should stop bringing in trucks with waste until they lowered the level of the tank by treating the water and discharging it to the sanitary sewer as they were suppose to do. Mr. Weddle told him that stopping to take tanker truckloads of waste was not an option and that he wanted the loads to continue and that Mr. Rumble should start treating the water and "deal with it".

¶ 13 Unfortunately, Aquatech Blue Limited's capacity to deal with it was sorely lacking so this was not a viable option. So Mr. Rumble turned off the alarm and as he put it, "after that it was business as usual, continue and the only way to do that was for anyone's peace of mind was to turn the horns off. They were everywhere." (Page 23, transcript June 14, 2000, lines 10 to 15.)

¶ 14 Mr. Rumble further explained that the reason they could not treat the incoming waste fast enough was because they were using a different chemical mixture than the previous owner used and it was not working as well. Consequently, the waste containment tank just kept getting fuller and fuller. He described how he spoke to Mr. Dallmeyer personally about the problem, but he never did anything about it. He said that the problem got so bad that the tank ... the sides of the tank could be seen bulging with the excess waste and that it was rusted and resembled a pumpkin.

¶ 15 This policy of overloading created such a storage crisis that eventually Aquatech Blue Limited started simply taking the waste from the trucks that came in and putting it directly into the sewer system without properly treating it. Mr. Rumble remembered specifically that Gerrard Lee told him to discharge improperly treated water in this way. He was also instructed by Gerrard Lee and Robert Weddle to take truckloads of waste without testing them for metals, as they were required to do. Mr. Rumble called this, "the new faster, more progressive Aquatech", (page 49, transcript June 14, 2000, line 20.)

¶ 16 He speculated that this policy was instituted because Aquatech Blue Limited could attract a lot more business if everyone knew that there was a short turnaround time there for the trucks. As he said, "If you can get it from an hour and a half down to 25 to 30 minutes, everyone's going to come here", (page 51, transcript June 14, 2000, line five to ten.)

¶ 17 Mr. Rumble tried to argue against this policy, but he was unsuccessful. At page 49 of the June 14, 2000 transcript, lines 25 to 30, he said the following:

"I raised the issue that they (the truck drivers) were waiting eight hours at the competition. Even an hour was darn good compared to the overall market. Like the service industry that we were working in, an hour, hour and a half was great. Drivers were enjoying Aquatech. They were waiting some other places for eight hours only to be told you'll have to come back tomorrow. But the thing was drivers were happy with it. We were happy with it, the management on both of the driver and our process. They weren't, you know, the owners of the hauling company, "Well, my guy's sitting in your yard too long. You've got to speed him up". So they sped it up by bypassing the metals analysis."

¶ 18 This is a disgraceful picture of greed on all sides.

¶ 19 Aquatech Blue Limited is now defunct and Dallmeyer, Whitley and Weddle all went back to their homes in the United

States of America. Gerrard Lee pleaded guilty to several of these offenses and was sentenced by another court to 90 days in jail to be served on an intermittent basis. Mr. Herlihy, the Crown, said that part of the consideration in sentencing Mr. Lee was that he was viewed by the Court as the messenger and executor of policies that were made by Dallmeyer, Whitley and Weddle.

¶ 20 The considerations that should be weighed in sentencing for the offenses committed by the defendants were set out in R. v. Bata, [1992] O.J. No. 667. In that case, Justice Ormston said, "Within the subtopic of public welfare offenses the environmental offenses have their own set ... their own special set of considerations. These considerations are comprehensively detailed by Chief Justice Stewart of the Territorial Court of the Yukon. The severity of the sentence should vary in accordance with several factors including:

- (a) the nature of the environment effected.
- (b) the extent of the damage afflicted.
- (c) the deliberateness of the offence.
- (d) the attitude of the accused.

¶ 21 In sentencing corporations which are convicted of environmental offenses, the Court should consider:

- (a) the size, wealth, nature of operations and power of the corporation.
- (b) the extent of attempts to comply.
- (c) remorse.
- (d) profits realized by the offence.
- (e) criminal record or other evidence of good character.

¶ 22 Mr. Justice Blair affirmed in R. v. Cotton Felts Limited, [1982] O.J. No. 178, that general deterrence is paramount in sentencing defendant corporations with public welfare offenses.

¶ 23 Section 187 of the Environmental Protection Act provides for jail terms of up to one year for persons convicted of an offence against sections 14.1 or 130.1, as long as notice is served on the person before he or she enters a plea that a jail penalty would be sought in the event of a conviction. Mr. Grisbrook (ph), the lead investigator in the case, testified that he duly served notices on all of the defendants by mail, which method of service is allowed under section 182.2 of the Environmental Protection Act, and I am satisfied by that evidence that notice was properly served on all of the personal defendants in this case, prior to their pleas being entered. (See sentence Exhibit 10.)

¶ 24 Now, to address the above mentioned factors as they apply to this case. I will start with the nature of the environment which was affected. The area is a high use recreational spot where many persons go sailing, picnicking, bike riding, et cetera. Also, Lake Ontario provides drinking water for the residents of Toronto. Although there was evidence that among other things the defendants released metals, arsonigants (ph) and ignitable waste into the environment the extent of damage was on the low end of the spectrum of environmental damage.

¶ 25 The offenses were committed in a deliberate and flagrant manner. There is not a shred of evidence to suggest that these offenses were committed as a result of anything but an egregious disregard for the lawful conditions under which Aquatech Blue Limited was permitted by the Ministry of the Environment to operate its waste disposal site. And by behaving in this way the defendants blatantly breached the environment protection laws of Ontario.

¶ 26 The evidence is clear that the attitude of the defendants in committing these offenses showed a gross disregard for the law and for the environment. They further showed their disrespect for the environmental protection laws of Ontario and the Canadian justice system by not bothering to appear for their trials and by doing nothing to repair the harm they have caused.

¶ 27 The evidence to which I referred above shows that the defendant company was receiving substantial amounts of money. The defendants' efforts to comply with the law while operating their business were minimal at best the few times that they tried to fulfil the requirements of the law. Their behaviour can be categorized for the most part as not only not making genuine efforts to comply with the law, but just the opposite, being dishonest and obdurate in their relationship with the Ministry of the Environment.

¶ 28 Therefore, it is obvious that there is no remorse on their part for having committed these offenses. In these circumstances it is important that strict penalties be levied for the purpose of general deterrence and to denounce the defendant's conduct. Therefore, I have decided that high fines and incarceration are the appropriate penalties.

¶ 29 The sentences of the Court are as follows.

¶ 30 Craig Dallmeyer is the most culpable because he was the brains behind the operation and the evidence showed that everyone took orders from him.

- ¶ 31 On count one, discharge of contaminated liquid, petroleum hydrocarbons into the Keating Channel of the Don River: four months in jail.
- ¶ 32 Count 14, discharge of volatile organic compounds into the environment: two months jail consecutive.
- ¶ 33 Count 16, mixing non-oily waste in tank ST-4: \$25,000 fine.
- ¶ 34 Count 17, fail to install a Setko (ph) unit as required by the Certificate of Approval: \$25,000 fine.
- ¶ 35 Count 21, discharge trucks with liquid industrial waste directly into the API: \$20,000 fine.
- ¶ 36 Count 22, fail to screen and test incoming waste for a five week period: \$5,000 fine.
- ¶ 37 Count 23, fail to monitor incoming oily waste for a two and a half month period: \$10,000 fine.
- ¶ 38 Count 24, fail to monitor incoming oily waste for a six month period: \$25,000 fine.
- ¶ 39 Count 25, exceed permitted on site waste classes for a three week period: \$3,000 fine.
- ¶ 40 Count 26, exceed permitted on site waste classes for a two and a half month period: \$10,000 fine.
- ¶ 41 Count 27, exceed maximum site storage of six million litres for a six month period: \$20,000 fine.
- ¶ 42 Count 28, enlarge waste disposal site by using uncertified tanks for a six month period: \$50,000 fine.
- ¶ 43 This is a total of \$193,000 fines, payable forthwith, plus six months in jail.

Mr. Whitely

- ¶ 44 Mr. Whitely was primarily involved at the executive level but for whom the evidence showed that he was the prime economic partner and supplied most of the money to operate the business. He was a director/officer and president of Aquatech Blue Limited since December 22nd, 1994 and remained as such during the time period of the charges.
- ¶ 45 Count one, discharge contaminated liquid petroleum hydrocarbons into the Keating Channel of the Don River: \$50,000 fine.
- ¶ 46 Count five, fail to take reasonable care to prevent the discharge of liquid petroleum hydrocarbons into the Keating Channel of the Don River. This count involved hazardous waste discharge: two months in jail.
- ¶ 47 Count 14, discharge volatile organic compounds into the environment. This involved the discharge of volatile substances into the sewers and posed an actual danger to persons: \$50,000 fine.
- ¶ 48 Count 15, fail to take reasonable care to prevent discharge of volatile organic compounds. This involved failure to take reasonable steps to prevent count fourteen: two months in jail consecutive.
- ¶ 49 Count 16, mixing non-oily waste in tank ST-4: \$5,000 fine.
- ¶ 50 Count 17, failing to install a Setco unit as required by the Certificate of Approval: \$5,000 fine.
- ¶ 51 Count 21, discharge of trucks with liquid industrial waste directly into the API: \$4,000 fine.
- ¶ 52 Count 22, fail to screen and test incoming waste for a five week period: \$1,000 fine.
- ¶ 53 Count 23, fail to monitor incoming oily waste for a two and a half month period: \$2,000 fine.
- ¶ 54 Count 24, fail to monitor incoming oily waste for a six month period: \$5,000 fine.
- ¶ 55 Count 25, exceed permitted on site waste classes for a three week period: \$1,000 fine.
- ¶ 56 Count 26, exceed permitted on site waste classes for a two and half month period: \$2,000 fine.
- ¶ 57 Count 27, exceed maximum site storage of six million litres for a six month period: \$5,000 fine.
- ¶ 58 This is a total of \$130,000 in fines, payable forthwith plus four months in jail.

## Robert Weddle

¶ 59 Robert Weddle was on site during most of the offenses, but apparently under the direction of Craig Dallmeyer and Morgan Whitley in the decision making structure. However, he was the Daily Operations General Manager of Aquatech Blue Limited during the time period of the charges.

¶ 60 Count one, discharge of contaminated liquid petroleum hydrocarbons into the Keating Channel of the Don River: four months in jail.

¶ 61 Count 14, discharge of volatile organic compounds into the environment: two months consecutive. This involved the discharge of volatile substances into the sewers and posed an actual danger to persons.

¶ 62 Count 16, mixing non-oily waste in tank ST-4: \$5,000 fine.

¶ 63 Count 17, fail to install a Setco (ph) Unit as required by the Certificate of Approval: \$5,000 fine.

¶ 64 Count 21, discharge trucks with liquid industrial waste directly into the API: \$4,000 fine.

¶ 65 Count 22, fail to screen and test incoming waste for a five week period: \$1,000 fine.

¶ 66 Count 23, fail to monitor incoming oily waste for a two and a half month, period: \$2,000 fine.

¶ 67 Count 24, fail to monitor incoming oily waste for a six month-period: \$5,000 fine.

¶ 68 Count 25, exceed permitted on site waste classes for a three week period: \$1,000 fine.

¶ 69 Count 26, exceed on site permitted waste classes for a two and a half month period: \$2,000 fine.

¶ 70 Count 27, exceed maximum site storage of six million litres for a six month period: \$5,000 fine.

¶ 71 This is a total of \$30,000 in fines, payable forthwith, plus six months in jail.

## Aquatech Blue Limited

¶ 72 Count one, discharge of contaminated liquid petroleum hydrocarbons into the Keating Channel of the Don River: \$200,000 fine.

¶ 73 Count 13, the providing of false information, the Uniflow (ph) Report: \$10,000 fine.

¶ 74 Count 14, the discharge of the volatile organic compounds into the environment which endangered persons: \$40,000 fine.

¶ 75 Count 16, mixing non-oily waste in tank ST4: \$60,000 fine.

¶ 76 Count 17, failing to install a Setco (ph) unit as required by the Certificate of Approval: \$25,000 fine.

¶ 77 Count 19, providing false information, namely, saying that a Daf (ph) Unit was a Setco (ph) Unit in violation therefore of the Certificate of Approval: \$7,500 fine.

¶ 78 Count 21, discharging trucks with liquid industrial waste directly into the API: \$10,000 fine.

¶ 79 Count 22, failing to screen and test incoming waste: \$15,000 fine.

¶ 80 Count 23, failing to monitor incoming oily waste: \$30,000 fine.

¶ 81 Count 24, failing to monitor incoming oily waste: \$50,000 fine.

¶ 82 Count 25, exceed permitted on site waste classes: \$15,000 fine.

¶ 83 Count 26, exceed permitted on site waste classes: \$30,000 fine.

¶ 84 Count 27, exceed maximum site storage of six million litres: \$50,000 fine.

¶ 85 Count 28, enlarge waste disposal site, this was the most serious of the fail to comply with the Certificate of Approval offenses because it involved use of an uncertified tank to store waste after the certified tank was filled to excess and this was done strictly for monetary gain: \$100,000 fine.

¶ 86 Count 29, providing false information, namely, that an uncertified tank ST3 had not been used: \$10,000 fine.

¶ 87 Count 30, providing false information that only 1000 litres had been transferred into the uncertified tank ST3 in 1996: \$25,000 fine.

¶ 88 Count 31, providing false information that the level of tank ST3 remained the same between April 1996 and August 1996. This involved a calculated falsification of inventory sheets in which a worker was ordered to come in over the weekend and spend the whole weekend reviewing all of the computerized information in order to produce these false inventory sheets: \$50,000 fine.

¶ 88 This is a total of \$720,000 fines payable forthwith.

Ontario Company Number 1170611

¶ 89 The last defendant, Ontario Company Number 1170611 Limited, is the company that held the land on which Aquatech Blue Limited operated and was designed to do this and in this way was part of the whole operation.

¶ 90 Count one, the discharge of contaminated liquid petroleum hydrocarbons into the Keating Channel of the Don River: \$50,000 fine, payable forthwith.

¶ 91 It is hoped that the Ontario Government will do everything possible to enforce these fines in order to bolster their general deterrent effect. Unfortunately, the Crown advised me that although reciprocal enforcement procedures exist they are rarely invoked by the government. I was also informed that a deposit system exists under the Environmental Protection Act, whereby persons such as the defendants that come from other jurisdictions to conduct waste disposal businesses in Ontario, have to put down a deposit that is considered as insurance against them not complying with Ontario's environmental laws.

¶ 92 In a case like this one where the defendants have all left the country and gone back home it would have been useful to have that deposit to satisfy some of the fines levied. I would have ordered this, but unfortunately I was advised that the Environmental Protection Act requires that the deposit be returned to the company when a new company is issued a Certificate of Approval to operate the site. Evidently this occurred in February of this year.

¶ 93 The deposit was in the hundreds of thousands of dollars and now the defendants have it and the people of Ontario have nothing from them to compensate for the damage that they caused to the environment. I would urge the government to change this legislation to prevent this from happening in the future. Thank you.

QL UPDATE: 20030912 qp/s/np/qw/qlhcc/qltl/qlhcs

## PROSECUTION DISPOSITION REPORT

**File Name:** R. v. Aquatech Blue Ltd.  
**LSB File #:** 97-0483  
**IEB File #:** 07-301-96-0024  
**Date of Report:** August 30, 2000

### Persons charged:

- |                       |                            |
|-----------------------|----------------------------|
| 1. Aquatech Blue Ltd. | 5. Gerrard Lee             |
| 2. Craig Dallmeyer    | 6. 1109586 Ontario Limited |
| 3. Morgan Whitely     | 7. 1170611 Ontario Limited |
| 4. Robert Weddle      |                            |

**Jurisdiction:** Toronto Region

### Offences:

#### Information #1

- |                                      |   |
|--------------------------------------|---|
| Counts 1 to 4                        | Discharge contaminated liquid petroleum hydrocarbons which may impair water quality (all defendants).   |
| Counts 5 to 11                       | Director or Officer fail to take all reasonable care to prevent impairing discharge (Whitely and Lee only on counts 5 to 7; Whitely only on count 8; and Lee only on counts 9 to 11). |
| Counts 12, 13, 18, 19 and 29 to 31   | Provide false information to Provincial Officer (Dallmeyer, Weddle and ATB on count 12; Gerrard Lee and ATB on counts 13, 18, 19 and 29; ATB only on counts 30 and 31).               |
| Count 14                             | Discharging waste effluent containing volatile organic compounds (Dallmeyer, Whitely, Lee, Weddle and ATB).   |
| Count 15                             | Director or Officer fail to take all reasonable care to prevent impairing discharge (Whitely and Lee).  |
| Counts 16, 17, 20 to 28 and 32 to 34 | Fail to comply with Certificate of Approval (Dallmeyer, Whitely, Lee, Weddle and ATB on counts 16, 17, 20 to 27 and 32 to 34; Dallmeyer, Lee, Weddle and ATB on count 28).            |

Information #2 (Gerrard Lee only)

Count 1	Discharge contaminated liquid petroleum hydrocarbons which may impair water quality.
Counts 2 and 4	Provide false information to Provincial Officer.
Count 3	Fail to comply with Certificate of Approval.

**Legislation:**

Information #1

Counts 1 to 4	Section 30(1), Ontario Water Resources Act, R.S.O. 1990, c. 0.40, as amended
Counts 5 to 11	Section 116(2), Ontario Water Resources Act
Counts 12, 13, 18, 19 and 29 to 31	Section 167, Environmental Protection Act, c. E.19, R.S.O. 1990, as amended
Count 14	Section 14(1), Environmental Protection Act
Count 15	Section 194(2), Environmental Protection Act
Counts 16, 17, 20 to 28 and 32 to 34	Section 186(3), Environmental Protection Act

Information #2

Count 1	Section 30(1), Ontario Water Resources Act
Counts 2 and 4	Section 167, Environmental Protection Act
Count 3	Section 186(3), Environmental Protection Act

<b>Date of offences:</b>	Various dates between September 6, 1996 and March 11, 1997
<b>Investigator:</b>	Dave Grisbrook, Chris Williams
<b>Court:</b>	Ontario Court of Justice
<b>Location of Court:</b>	Old City Hall, Toronto
<b>Crown:</b>	Jerry Herlihy, Peter Poly

**Defence Counsel:**



1. Aquatech Blue Ltd.: initially Dianne Saxe, later Daniel Kirby, unrepresented at trial
2. Craig Dallmeyer: initially Brian Heller, later Doug Hamilton, unrepresented at trial
3. Morgan Whitely: initially David Porter, later Daniel Kirby, unrepresented at trial
4. Robert Weddle: unrepresented throughout
5. Gerard Lee: David Crocker
6. 1109586 Ontario Limited: initially Dianne Saxe, later Daniel Kirby, unrepresented at trial
7. 1170611 Ontario Limited: initially Dianne Saxe, later Daniel Kirby, unrepresented at trial

**Date of charges:** Information #1 - August 22, 1997  
Information #2 - June 1, 2000

**Adjournment Date:** Numerous dates between August 1997 and June 2000

**Date of trial/plea:**

Information #1

June 12 to 15, 19 to 21, 26 and 27, 29; July 10; and August 4, 2000

Information #2

June 8, 2000 (Guilty Plea)

**Judge:** Information #1 - His Honour Joseph Bovard  
Information #2 - His Honour Ted Ormston

**Plea(s):**

Information #1

Not Guilty pleas entered by Court on behalf of all defendants (Crown withdrawing all counts against Gerard Lee, and also withdrawing count 12 as against all defendants named therein)

Information #2

Guilty to all counts

**Disposition:**

Information #1

1. ATB convicted on counts 1, 13, 14, 16, 17, 19 and 21 to 31; acquitted on counts 18, 20 and 32 to 34
2. Craig Dallmeyer: convicted on counts 1, 14, 16, 17 and 21 to 28; acquitted on counts 20 and 32 to 34
3. Morgan Whitely: convicted on counts 1, 5, 14 to 17 and 21 to 27; acquitted on counts 20 and 32 to 34
4. Robert Weddle: convicted on counts 1, 14, 16, 17, 21 to 28; acquitted on counts 20, 32 to 34
5. 1109586 Ontario Limited: acquitted on count 1 at request of the Crown
6. 1170611 Ontario Limited: convicted on count 1

Information #2

1. Defendant convicted on all counts

**Date of Sentence:**

Information #1: August 4, 2000

Information #2: June 8, 2000

**Detailed reasons given/copy obtained:**

	Given	Copy Ordered
1. Judgment	yes	yes
2. Sentencing	yes	yes
3. Askov Motion	yes	yes

**Date of Decision:**

Askov Motion - May 8, 2000

Trial (Information #1) - July 10, 2000

Plea (Information #2) - June 8, 2000

**Notice of Increased Penalty:** (Both Informations)

Served - yes      Pursued - yes

**Jail Notice:** (Both Informations)

Served - yes      Pursued - yes

**Prior Conviction:** No

**Sentence:** Total Fines: \$1,133,000.00 (plus Victim Fine Surcharge of \$226,600.00)  
Total Imprisonment: 19 months  
See Chart at page 16 for details

**Facts in support of disposition:**

### Background

The defendant Aquatech Blue Limited (formerly known as Shannon Aqua-Tech Ltd.) operated a waste processing site at 309 Cherry Street in the City of Toronto.

The land on which the operation was carried out was owned by the defendant 1170611 Ontario Limited, which had acquired the site from the defendant 1109586 Ontario Limited.

The defendants Morgan Whitely and Gerrard Lee were Officers and Directors of all three companies. Evidence at trial indicated that Whitely was the "financial engine" of the corporations but took little part in actual operations.

*De facto* control of all three corporations was exercised by the defendant Craig Dallmeyer, despite the fact that he was merely a minority shareholder, and neither an Officer nor a Director of any of the corporations.

The defendant Robert Weddle was the General Manager of the site. Neither an Officer, Director or shareholder of any of the corporations, he took direction, according to the evidence, from the defendant Dallmeyer and was in charge of day-to-day operations at the site.

The defendant Lee, who held the title Operations Manager, reported to the defendant Weddle. Lee's duties included day-to-day operations of the facility including the supervision of laboratory staff and plant operators.

The defendant Aquatech Blue Limited ("ATB") operated the site pursuant to Certificate of Approval no. A280276 issued by the Ministry of the Environment, originally allowing the company to receive and process only liquid industrial wastes Classes 251 - 254, being various types of waste oils. The Certificate of Approval was amended from time to time and, in April of 1996 was amended to permit the receipt, processing and transfer of a broad range of hazardous and liquid industrial wastes.

The Certificate of Approval defined the activities which the company was permitted to carry out, including the type of processing equipment which was to be used. The Certificate of Approval furthermore contained a number of requirements to maintain records including log books of the types and quantities of wastes received or shipped from the site, summaries of continual monitoring required in the Approval, descriptions of any spills, records of regular inspections, and detailed descriptions of recommendations for remedial action and maintenance activities.

### The Askov Motion

The charges were laid in August 1997, following a year-long investigation which included the execution of Search Warrants resulting in the seizure of an enormous volume of documents. The defence pressed for further and ever greater disclosure and refused to set a date for trial until, on the fifteenth Court appearance, the presiding Justice of the Peace directed a pre-trial in front of a Provincial Court Judge. The pre-trial was held in November 1999 and resulted in the setting of trial dates in June 2000, with any preliminary motions to be brought in February.

The defendants (aside from the defendant Weddle, who never appeared in the proceedings) brought a motion alleging unreasonable delay, contrary to s. 11(b) of the *Charter*. The matter was argued for several days in February 2000 before His Honour Justice Bovard of the Ontario Court of Justice who on March 8, 2000 dismissed the *Askov* motion, holding that the 35-month delay in reaching trial had been the result of good faith efforts on the part of both Crown and defence to achieve an appropriate balance of disclosure. A copy of His Honour's Reasons on the *Askov* Application have been ordered, but have not yet been received as of the date of preparation of this PDR.

The Crown also brought a preliminary motion seeking an amendment of the Information, but that motion was not reached. Following the ruling in the *Askov* motion, defence counsel agreed that the motion could be dealt with at the outset of the trial.

#### The Discharge of Counsel

With the trial scheduled to commence on June 5, 2000, a further pre-trial was held before His Honour Judge Ormston on May 28<sup>th</sup>. At that time counsel for all defendants except Lee indicated that they had not been retained for trial, and did not expect to be. Accordingly, on the day set for the commencement of the trial, counsel for all defendants except Lee appeared and were removed from the record. The trial was adjourned for a period of a week as other counsel who had been "contacted" by the defendant Dallmeyer sought adjournments on the grounds of lack of preparation and/or purported ill health on Mr. Dallmeyer's part. However, these counsel were never formally retained, and the trial commenced on an *ex parte* basis on June 12<sup>th</sup>, 2000.

#### Amendments to the Information

At the outset of the trial, the Crown argued its motion to amend the Information. Two amendments were sought.

First, the Crown sought to combine counts 1 through 4, which alleged discharges on four separate dates, into a single Count 1 spanning the period of time covered in the existing counts 1 to 4.

Likewise, counts 5 through 11 alleged breaches of Officers' and Directors' liability provisions in respect of those discharges. Again the Crown sought to roll the seven counts into a single Count 5 reflecting a span of time.

Both motions were granted, and the trial proceeded on the Information as amended.

#### Crown Withdrawal of Certain Charges

At the outset of the trial, the Crown withdrew all charges against the defendant Gerrard Lee on Information #1, because Lee had by that time pleaded guilty, before a different Judge, and been sentenced on the charges contained in Information #2. Counts 1, 2, 3 and 4 of the "Lee" Information correspond to counts 1, 13, 16 and 18, respectively, of the original Information, as amended.

Also at the outset of the trial, the Crown withdrew count 12, which alleged the supplying of false information to the Ministry, to wit that a certain individual had been "contacted" to provide an engineering report on behalf of ATB. Investigations undertaken at the Crown's request just prior to trial had confirmed that the named individual had in fact been spoken to by the company, even though he had never been hired to actually perform any work. Although the Ministry had probably been misled by the wording of the defendant ATB's letter into believing that the named individual had been retained to perform the work, the Crown felt it did not have a reasonable prospect of conviction on a count alleging merely that the individual had been "contacted" (as opposed, perhaps, to "contracted").

At the end of the trial in the course of final argument, the Crown conceded that the evidence did not show that the defendant 1109586 Ontario Limited had exercised any control or management over the site during the offence period, but had merely been a predecessor in title. Accordingly, the Crown did not seek conviction on the sole count (count 1) involving this defendant.

#### Discharge of Contaminated Petroleum Hydrocarbons (Count 1 as Amended)

Inspections and sampling conducted by Ministry personnel on September 6 and 17, 1996; November 8, 1996; and March 11, 1997 revealed that waste oils from the Aquatech Blue site had made their way into a storm sewer along Cherry Street which discharged into the Keating Channel which in turn leads into Lake Ontario.

Cherry Street runs along the western boundary of the Aquatech property and there were no potential sources other than Aquatech for the types and mixtures of materials found in the Cherry Street storm sewer.

Gas chromatograph analysis and other analyses of the samples from the storm sewer revealed that the samples matched samples of material taken from Aquatech Blue's storage and/or mixing tanks, indicating that spillage from the company's operations had migrated through the soils of the site and entered the storm sewer through joints or other fissures in its brick construction.

The testing further revealed that the oily material in the sewers exhibited a flashpoint of less than 61° C, and therefore constituted a hazardous waste as defined in Ontario Regulation 347, the Province's General Waste Management Regulation.

Hydrogeologic and rainfall data further indicated that any pollutants in the storm sewer would be quickly flushed into the Keating Channel and thence Lake Ontario.

Due to the dilution accompanying these discharges, however, the resulting impairment would have been limited to essentially aesthetic affects (oily sheen, unappealing appearance, potential for dirtying the hulls of pleasure craft, *etc.*). The Keating Channel forms the outlet into Lake Ontario for the Don River which by that point has already accumulated a significant pollution load from traversing the Metro Toronto/GTA watershed. Nonetheless, the Aquatech discharges added oils, solvents and persistent metals to the loading which Lake Ontario received.

The evidence was that the defendants Dallmeyer and Whitely controlled operations at the site sufficiently as to have direct liability for the discharges. Furthermore, the defendants Lee and Weddle as on-site representatives of ATB had actually been advised of the presence of oil in the storm sewers both by Ministry Abatement Officers and by consultants' reports, but had failed to take any actions to stem the migration of oil or prevent its entry into the sewer. Finally, the defendant 1170611 Ontario Limited as the owner of the site had far more than the average landlord's ability to control the activities of the defendant ATB, since the numbered company had the same Officers, Directors and shareholders as ATB and therefore both actual and imputed knowledge of ATB's activities and the site's condition.

#### Officer's and Director's Liability (Count 5 as Amended)

As previously mentioned, the defendant Morgan Whitely was an Officer and Director of both ATB (the site operator) and 1170611 Ontario Limited (the site owner). Once the discharges reflected by count 1 had been proven, conviction under s. 116(2) OWRA followed, because proof of any reasonable care to prevent such discharges lies upon the defendant: *R. v. Matachewan Consolidated Mines Ltd. and McCloskey* (1994), 13 C.E.L.R. (N.S.) 156 and *R. v. Leaver Mushroom Company Limited and Potter* (O.C.P.D., May 4, 1995, Robinson P.C.J.), unreported, both of which follow *R. v. Bata Industries Limited et al.* (1992), 7 C.E.L.R. (N.S.) 245 in preference to *R. v. Commander Business* (1992), 9 C.E.L.R. (N.S.) 185.

In any event, as the defendant Whitely had been only remotely involved with business operations at the site, there was little or no evidence of any reasonable care on his part to prevent unlawful discharges.

False Information (Counts 13, 18, 19, 29, 30 and 31)

The defendant ATB was charged with providing false information to the Ministry on a number of occasions and in a number of ways.

Count 13 alleged that the company, through its Director the defendant Lee, had prevailed upon a consultant to rewrite an engineering assessment it had done on the subsurface drains at the site. The revised report omitted all reference to oil in catch basins and underground sewer lines, thereby suggesting that there was no leakage, spill residue, or intentional sewerage of wastes taking place at the site. In fact the opposite was the case.

The defendant Lee forwarded the altered report to the Ministry on behalf of the defendant ATB.

Count 18 related to an allegation that, during an inspection of the ATB site, Ministry Abatement Officer Pearl Shore had been told by the defendant Lee that a certain piece of blue equipment sitting on the site (although not yet hooked up) was the Colloid Environmental Technologies Company ("CETCO") waste processing equipment required by the terms and conditions of ATB's Certificate of Approval. In fact, the blue equipment was another type of treatment technology not authorized by ATB's C. of A., but which the company was about to install because it was cheaper.

This charge wound up being dismissed when the Trial Court could not find reference in its notes to the Crown having led evidence on this point.

Count 19 dealt with the allegation that, on another occasion, the defendant Lee had misrepresented to Abatement Officer Shore that the blue equipment (known as a diffused air flotation ["DAF"] unit) was the same as a CETCO unit in its operation, contaminant removal efficiency, *etc.* Evidence was led at trial from former company employees as well as CETCO personnel that this was just not so.

Count 29 alleged the supplying of false information, namely the verbal representation by the defendant Lee that a particular storage tank (known as Tank ST-3) was not in use. This was a significant misrepresentation, because Tank ST-3 had not been inspected or certified for use by the appropriate authorities, meaning that there was no assurance whatsoever that the tank was integral and would not leak or even collapse if it was asked to hold liquids. Evidence from company personnel, as well as documentary evidence seized during the Search Warrant, indicated that Tank ST-3 in

fact had been used to receive in excess of 4 million litres of highly contaminated liquid industrial wastes during the very time when the defendant Lee was representing on behalf of the company that the tank was not in use.

Count 30: Upon being pressed with respect to what use, if any, was made of Tank ST-3, the defendant ATB sent a letter to the Ministry saying that only 1,000 litres of material had been transferred into the tank during the year 1996; a subsequent letter "corrected" that figure to no transfers at all. Both statements were totally false, a fact confirmed by the company's own Inventory Sheets for the period.

Count 31: Subsequently, the defendant ATB sent a letter to the Ministry assuring it that the contents of Tank ST-3 had remained constant from April to August 1996, and even attached Inventory Sheets to confirm the point. However, evidence led at the trial was that an ATB employee had been called in on the weekend to create falsified Inventory Sheets showing a constant level for Tank ST-3, so that these Sheets could be enclosed with the letter sent to the Ministry by the defendant ATB. The truth was that volumes in Tank ST-3 had increased from 787,000 to 4,200,000 litres.

#### Discharge of Volatile-Bearing Effluent to Sewers (Count 14)

Former employees testified that, due to lack of pre-testing of incoming materials and the inadequacy of treatment methods being used by the company, the sheer volumes of oily wastes in storage tanks became a problem. Lack of available tankage would mean that the company could not accept further wastes. This, in turn, would mean that the company's revenue stream would be compromised. Accordingly, testified the witnesses, they would routinely be told to dump untreated or partially treated tank contents into the City sewer system.

On October 10, 1996 City and Ministry personnel responded to complaints of explosive vapour levels in the sanitary sewer beneath Commissioners Street, which runs along the south boundary of the Aquatech property. Measuring devices utilized by City sewer inspectors confirmed the explosive/toxic vapour levels. City and Ministry personnel traced the source to the Aquatech property, where they found a hose hooked up to a fire hydrant still discharging into an on-site sewer line connected to the sanitary sewer, in an apparent attempt to provide dilution of the materials which had been discharged into the sewer system. Again, there were no relevant inputs into the sanitary sewer line upstream of the Aquatech property.

Section 2 EPA provides that a discharge from one structure into another structure is deemed to be a discharge into the natural environment. Accordingly, this sewer-to-sewer discharge creating risk not only to the integrity of the City sewer system but also to downstream buildings and persons, constituted an offence under s. 14(1) EPA.



Director's and Officer's Liability (Count 15)

As with count 5 above, the evidence indicated that the defendant Morgan Whitely was a Director of both ATB and 1170611 Ontario Limited at the time of the discharge. In the absence of any evidence whatsoever as to reasonable efforts to prevent this discharge, Mr. Whitely was convicted under s. 194(2) EPA.

Fail to Comply with Certificate of Approval (Counts 16, 17, 20 to 28 and 32 to 34)

ATB's Certificate of Approval required that it test all incoming loads of waste in order to satisfy itself as to the material's treatability, as well as its compatibility with other tank contents; for the same reasons, the C. of A. specified which types of waste could be placed in which storage tanks on site.

Evidence of former ATB Lab employees, supported by Lab records themselves and other documentation obtained *via* the Search Warrant, demonstrated that the company's practice had been either to perform a quick and simple "pre-screen" test or to perform no tests at all on incoming waste loads. Indeed, the company continued to accept wastes even at times when its testing equipment was out of service.

Witnesses testified that taking the time to do the full testing required by the C. of A. would have meant that delivery trucks had to wait at Aquatech's gate for up to eight hours, and this was standard throughout the industry; but by doing little or no testing of incoming loads, Aquatech created a market niche for itself by getting tankers back on the road more quickly, thereby making life more profitable for its customers; furthermore, the customers did not risk having a truck wait in line for eight hours only to have its load rejected for failing to meet compatibility or treatability criteria. From Aquatech's point of view, the limited or non-existent pre-testing maximized incoming revenues but of course compromised the company's ability to know what was being placed into its storage tanks. Ultimately, testified the witnesses, tanks wound up containing a virtually untreatable mixture of all sorts of incompatible liquid industrial wastes.

The foregoing evidence resulted in convictions on counts 16 and 22 to 24.

Because the defendants Dallmeyer, Whitely and Weddle were in a position to either cause or prevent the company from complying with its C. of A., they, too, were convicted pursuant to the principle enunciated in *R. v. Domtar Inc.* (O.C.J.P.D., October 23, 1992, S. Hunter P.C.J.), unreported.

To complicate matters further, ATB did not purchase the treatment equipment called for in its C. of A. This equipment (the CETCO unit previously referred to) had the

capability of treating both oils and metals. Instead, the defendant Dallmeyer purchased a used DAF unit (the aforementioned piece of blue equipment) and had it brought to the site; the evidence was that the DAF works adequately enough for oils but is not useful for removing metals from liquid industrial wastes. This was a significant deficiency for a facility which was accepting everything from cutting oils to plating wastes, and probably explained the company's efforts (reflected in the false information charges previously discussed) to misrepresent the equipment it had on site. Accordingly, a conviction was entered against the company and the responsible individuals on count 17.

As previously mentioned, the fact that the waste mixtures which the company's practices created could not be treated (or else had to be treated numerous times, creating further delays in the company's ability to accept fresh wastes) led to decisions to discharge untreated or partially treated wastes directly into the City's sanitary sewers. Not surprisingly, such a practice was forbidden by the company's C. of A., which permitted the discharge only of effluent which had been treated sufficiently as not to infringe the City's Sewer Use By-law.

City sewer inspectors testified that on numerous occasions samples taken in the Commissioners Street sanitary sewer by auto-sampling devices had proven to exceed the limits set in the City's Sewer Use By-law for contaminants such as nickel, phenols and zinc. Again, the evidence was that there were no relevant inputs into the sanitary sewer system upstream of the Aquatech facility. However, because the samples were taken by an automatic sampling device and later transported to the City's Lab for analysis, but without stringent safeguards and tracking procedures such as those contained in the Ministry's protocols for "legal" samples, the Court was not satisfied that continuity had been proven beyond a reasonable doubt. Accordingly, counts 32 to 34 were dismissed.

However, there was also evidence that the company had in some cases simply allowed tanker trucks to drive onto the property, hook up, and discharge their contents directly into the on-site sewer line leading to the City's sanitary sewer. This clearly would be untreated waste material. Accordingly, convictions were entered on counts 20 and 21 against not only the company but also those individuals who were in a position to control its activities.

Finally the evidence was that, in its desire to accept as much waste as possible, the company had not only exceeded the limits placed on lawful storage by its C. of A., but had also used Tank ST-3, which was not a tank which the C. of A. allowed waste to be put into at all, and endeavoured to conceal this fact from the Ministry. Accordingly convictions were entered against the company and the other responsible individuals on counts 25 to 28.

### Sentencing

On sentencing the Crown led evidence in the form of financial documents seized during the execution of the Search Warrant which indicated that the company had a net income in excess of \$60,000.00 in some months and as much as \$113,000.00 in another month. As well, the Crown led evidence from Abatement District Supervisor Paul Nieweglowski about the disproportionate dedication of resources which had been required for this single site, to the detriment of the Ministry's ability to maintain the desired level of supervision over the innumerable remaining industries in the Toronto East abatement area.

In imposing sentence His Honour Judge Bovard observed that there were very few mitigating factors except that the damage to the environment had been localized and that the defendants had no past record for environmental offences (although the latter factor, otherwise mitigating, had to be balanced, he said, against the fact that all of the offences for which Aquatech and its personnel had been convicted occurred in the first two years following the company's commencement of business). As against these mitigating factors, His Honour found that there was ample evidence of aggravating factors, including the profits made and the cost to Ontario taxpayers. He remarked that the draining of MOE resources was to be weighed as quite a serious aggravating factor, considering the way in which the Ministry was already strapped by financial and personnel cutbacks over the past number of years.

His Honour remarked upon the defendants' "intransigence and untrustworthiness" which had been documented throughout the trial. He referred to the fact that the company had disconnected high level alarms on tanks in order to be able to exceed recommended storage capacities and, despite experiencing at least two tank overflows as a result, nonetheless considered that holding off on further waste receipts was "not an option" - - all of which led to the eventual decision to simply sewer liquid industrial waste, much of which (purely for the purpose of increasing business) had been taken in with little or no testing as to its chemical characteristics. His Honour condemned this entire scenario as a "disgraceful picture of greed".

He went on to characterize the offences as "deliberate and flagrant", and an "egregious disregard for the [C. of A.] conditions under which the company was permitted to operate". He said that the defendants, through their actions, had exhibited a "gross disregard for both the law and the environment" and, in discharging their counsel immediately prior to trial and failing to appear for the trial, a gross disregard "also for the Canadian justice system". This was not, he said, a case of a company which fell short of the mark while making genuine attempts to comply; rather, it was a case of defendants making every attempt at being dishonest.

Given this picture, His Honour concluded that only high fines and jail sentences would adequately sanction this conduct, while also serving the ends of general deterrence.

The fines and jail sentences imposed are set out in the Chart at page 16 of this PDR.

In terms of sentence, His Honour indicated that he regarded Mr. Dallmeyer as the most culpable of the individuals. The two discharging counts (counts 1 and 14) merited imprisonment, he said, and as a result he imposed jail sentences of four months on the first count and two months consecutive on the second. The remaining offences were dealt with by way of fines ranging from \$3,000.00 to \$50,000.00 per count reflecting the seriousness and/or duration of the offence in the overall scheme of things. [For Mr. Dallmeyer, as well as for the other defendants, counts 22 to 24 (failing to test incoming wastes) reflected the same offence at three different periods of time, depending upon the C. of A. which was in force at the time; the same was true of counts 25 to 27 (excess storage of waste). The varying fines reflected varying lengths of the offence periods.] Of the offences for which jail was not imposed, His Honor said the most serious was count 28 (using the uncertified Tank ST-3), an offence which not only put the environment at risk but also was committed for no reason other than pure profit motive. In the end, Mr. Dallmeyer's sentences totalled six months' imprisonment and \$193,000.00 in fines.

The defendant Morgan Whitely was seen as functioning primarily at the executive level, the financier of the companies. Although not jailed for the discharging offences (presumably because of his lack of day-to-day involvement with the site), Mr. Whitely was sentenced to a total of four months' imprisonment for his convictions as an Officer and Director who failed to prevent those discharges. Fines of \$50,000.00 each were imposed for the discharges themselves. In all, Mr. Whitely's sentences totalled four months' imprisonment and \$130,000.00 in fines.

The defendant Weddle was sentenced on the basis that he was active in terms of on-site operations but not at the executive level and took direction from both Mr. Dallmeyer and Mr. Whitely. Mr. Weddle was sentenced to a total of six months' imprisonment on the two discharging counts and fined a total of \$40,000.00 on the remaining offences, with the highest fine again being reserved for the use of the uncertified Tank ST-3.

Aquatech Blue Limited was fined \$200,000.00 for count 1 relating to discharges to the storm sewers; \$100,000.00 for count 28 relating to the use of Tank ST-3; and a total of \$85,000.00 for three counts (counts 29 to 31) relating to the submitting of false information regarding the use of Tank ST-3. As well, the company was fined a total of \$95,000.00 for three counts (counts 22 to 24) relating to failing to test

incoming waste loads and \$60,000.00 for putting non-oily wastes into Tank ST-4 (Count 16). Further fines totalling \$95,000.00 were imposed on three counts (counts 25 to 27) of storing excess volumes of waste in Tank ST-4.

In all the fines on Aquatech Blue Limited totalled \$720,000.00.

The defendant 1170611 Ontario Limited was charged in Count 1 only and was convicted as owner of the site in respect of the discharges to storm sewers. It was fined \$50,000.00, essentially for failure to exercise adequate supervision over the activities of its tenant.

The defendant Gerrard Lee, who had pleaded guilty before His Honor Judge Ormston in separate proceedings on a new Information sworn just before trial, had been sentenced on a joint submission to ninety days' imprisonment, to be served intermittently. He was convicted of one count for the discharge to the Cherry Street storm sewer, two counts of providing false information to the Ministry, and one count of putting non-oily wastes into Tank ST-4. Mr. Lee's rather lenient sentence reflected his plea of guilty and the fact that, despite his nominal directorship, he in fact exercised no authority whatsoever within the corporate structure but rather took instructions from the defendants Dallmeyer, Whitely and even the non-Director Weddle.

In total, the jail sentences imposed were nineteen months and the fines were \$1,133,000.00, to which will be added a Victim Fine Surcharge of \$226,600.00 reflecting the 20% tariff in force at the time of the commission of the offences.

His Honor Judge Bovard expressed his wish that the Ontario Government make genuine efforts, whether through reciprocal enforcement of judgments legislation or otherwise, to collect the fines imposed.

He also expressed his dismay that approximately \$250,000.00 in Financial Assurance which had been posted by ATB was simply returned to them when they quit the site in favour of a new (unrelated) operator three or four months before the commencement of the trial. The result, he observed, is that the people of Ontario now have none of this money to apply against the fines imposed by the Court. His Honor expressed the hope that s. 134(2) EPA will be amended at least to say that Financial Assurance may be retained by the Ministry pending the outcome of Court cases against a C. of A. holder in which fines may be imposed.

cc: Hard copies to: Canada Law Book  
Emond Montgomery Publications

Email to: John Steele, Communications Branch  
Iris Biggar, Investigations and Enforcement Branch  
Investigator

***R. v. Aquatech Blue Ltd. et al.***  
**Sentences Imposed**

Count	ATB	CD	MW	RW	GL	1170611 Ontario Ltd.
1	\$200,000	4 months	\$ 50,000	4 months	90 days	\$ 50,000
5			2 months			
13	\$ 10,000				suspended sentence	
14	\$ 40,000	2 months	\$ 50,000	2 months		
15			2 months			
16	\$ 60,000	\$ 25,000	\$ 5,000	\$ 5,000	suspended sentence	
17	\$ 25,000	\$ 25,000	\$ 5,000	\$ 5,000		
18					suspended sentence	
19	\$ 7,500 [sic]					
21	\$ 10,000	\$ 20,000	\$ 4,000	\$ 4,000		
22	\$ 15,000	\$ 5,000	\$ 1,000	\$ 1,000		
23	\$ 30,000	\$ 10,000	\$ 2,000	\$ 2,000		
24	\$ 50,000	\$ 25,000	\$ 5,000	\$ 5,000		
25	\$ 15,000	\$ 3,000	\$ 1,000	\$ 1,000		
26	\$ 30,000	\$ 10,000	\$ 2,000	\$ 2,000		
27	\$ 50,000	\$ 20,000	\$ 5,000	\$ 5,000		
28	\$100,000	\$ 50,000		\$ 10,000		
29	\$ 10,000					
30	\$ 25,000					
31	\$ 50,000					
<b>Total</b>	<b>\$720,000</b>	<b>\$193,000 plus 6 months</b>	<b>\$130,000 plus 4 months</b>	<b>\$ 40,000 plus 6 months</b>	<b>90 days</b>	<b>\$ 50,000</b>



## DEP INSPECTION RECORD

**License Number:** PA-1004 **TYPE:** Decommissioning

**Licensee** (name and address): Strube, Inc Aircraft Parts  
629 Market St.  
Marietta, Pa 17547

**Location(s) inspected:** 637 West Market Street, Marietta, Pa; 693 West Market Street, Marietta, Pa;  
1280 Franklin Street, Columbia, Pa; 172 South Second Street, Columbia, Pa;  
224-228 Locust Street, Columbia, Pa; 240 West Main Street, Mt. Joy, Pa; 131  
East High Street, Maytown, Pa

**RSO:** Brian Trostle Phone No: 717-426-1906

**Licensee Contact:** Brian Trostle Phone No: 717-426-1906

**Last Inspection:** Initial License Inspection This Inspection: 10/30 & 31/2007

**Type of Inspection:** (X) Initial (X) Announced ( ) Unannounced ( ) Routine

**Next Inspection Date:** TBD ( ) Normal ( ) Reduced  
Justification for reducing the routine inspection interval:

### **Summary of Findings and Actions:**

- |                                      |                         |
|--------------------------------------|-------------------------|
| ( ) No violations cited              | ( 3 ) Recommendation(s) |
| ( ) Follow-up on previous violations | ( 7 ) Violations        |

### **List of Non-Compliant Items Identified:**

1. 10 CFR 20.1101 Radiation protection programs. Licensee failed to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part as evidenced by non-compliance items 2 through 7 listed below.
2. 10 CFR 20.1302(a) Dose limits for individual members of the public may be exceeded (0.1 rem in a year total effective dose equivalent). Licensee failed to perform evaluation to determine dose equivalent to members of the public from licensed operations. Inspectors measured dose rates exceeding 0.05 mrem/hr in unrestricted areas outside of licensed storage locations.
3. 10 CFR 20.1301(a)(2) Dose limits for individual members of the public exceeds 0.002 rem (0.02 millisievert) in any one hour. Measured dose rate exceeded 0.002 rem/hr at the 172 S. Second St. site in Columbia. This item was corrected immediately upon request of the inspection team.
4. 10 CFR 20.1501 (a) Licensee failed to make or cause to be made, surveys that may be necessary for the licensee to comply with the regulations in this part; and are reasonable under the circumstances to evaluate (i) the magnitude and extent of radiation levels; and (ii) concentrations or quantities of radioactive material; and (iii) The potential radiological hazards. Licensee could not produce records of surveys. Licensee stated that surveys were performed by a consultant >6 months earlier.
5. 10 CFR 20.1501 (b) The licensee failed to ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the



radiation measured. Licensee instrument used by employees was not calibrated within 1 year. No record of calibration was available.

6. 10 CFR 20.1204(a) Determination of internal exposure. Licensee failed to take suitable and timely measurements of (1) Concentrations of radioactive materials in air in work areas; or (2) Quantities of radionuclides in the body; or (3) Quantities of radionuclides excreted from the body; or (4) Combinations of these measurements, for purposes of assessing dose to determine compliance with occupational dose equivalent limits. No record of air sampling could be produced. No evaluation of potential intake could be produced.
7. 10 CFR 20.1902 Posting requirements.
  - a. Licensee failed to post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."
  - b. Licensee failed to post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in appendix C to part 20 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

Licensed material storage areas were not posted in a conspicuous manner. Radiation Area(s) were identified by inspectors in the storage locations listed on the license, however, none were posted as required.

#### **Safety Issues Identified:**

- a. Inspectors identified a broken instrument leaking mercury on the floor in the large warehouse on 693 W. Market St. The RSO and General Counsel were immediately notified.
- b. Inspectors identified containers of hazardous materials stored in one of the licensee warehouses. The container was labeled NAPTHA.

#### **Recommendations:**

Recommend that the licensee hire a qualified health physics consultant to assist in bringing their program into regulatory compliance.

Recommend that the licensee contact a qualified hazardous materials cleanup crew to handle the mercury spill and other hazardous materials.

Recommend that prior to preparing licensed materials for delivery to a shipper for disposal that program management ensure the adequate training is provided to employees in accordance with 49 CFR 172.700 and that materials are packaged in accordance with all applicable regulations.

#### **Inspector(s):**

Day 1: Scott Wilson, Gerald Dworsak, Bryan Werner Date: 10/30/2007

Day 2: Scott Wilson, Frank Pepper, Roy Kitzer, Jeff Whitehead Date: 10/31/2007

Inspector Signature:

*Gerald R. Dworsak / Scott Wilson*

11/16/07

Approved:

*Steve Williams*

Date: 11-16-07

## **LICENSE; INSPECTION; INCIDENT/EVENT; ENFORCEMENT HISTORY**

1. Amendments and Program Changes:  
(Amendments since last inspection; program changes noted in license)  
  
No amendments. New license issued August 2007.
2. Inspection and Enforcement History:  
(Unresolved issues; previous/repeat violations)  
  
NONE
3. Incident/Event History:  
(List any incidents or events report to DEP since last inspection)  
  
NONE

## **INSPECTION AND DOCUMENTATION**

### **Organization and Scope of Program:**

The facility consists of seven physical licensed radioactive material storage sites and a total of eight storage buildings containing an undetermined number of aircraft parts and other military items. Of the parts known to exist in storage, the licensee estimated that 70,000 contain radium-226 luminescent paint, however, the licensee is currently in the process of identifying the items containing licensed material. The Department issued Strube, Inc. a radioactive material license to possess and decommission the site in August of 2007 following an investigation into the use and storage of radioluminescent aircraft parts at the facility. A health physics consultant performed an initial investigation and characterization of the radioactive material at the facilities, however, the licensee no longer employs the consultant and records of the initial surveys performed were not available at the time of inspection. This was the initial inspection and consisted of staff members from CO Decommissioning Section and SCRO Inspectors. The licensee is in the process of performing inventories of all its licensed storage locations in support of producing a decommissioning plan. No radioactive material has been packaged or shipped for disposal as of this inspection.

The License authorizes seven (7) material storage locations:

637 West Market Street, Marietta, Pa  
1280 Franklin Street, Columbia, Pa  
172 South Second Street, Columbia, Pa  
224-228 Locust Street, Columbia, Pa  
240 West Main Street, Mt. Joy, Pa  
131 East High Street, Maytown, Pa  
693 West Market Street, Marietta, Pa

The RSO and the General Counsel perform oversight of the decommissioning. The RSO recently attended training to qualify as RSO and his duties include General Manager. Two field technicians that report to the RSO are performing the decommissioning and site material inventory. Field technicians have received minimal training in radiation safety and have no previous experience performing radioactive site decommissioning activities. A NVLAP approved vendor provides personnel monitoring and workers are monitored.

### **Scope of Inspection:**

(Inspection procedure(s) used and focus areas evaluated. Indicate records reviewed)

This inspection was limited to the radiation protection program. Decommissioning plan requirements were not reviewed. The licensee has not submitted a Decommissioning Plan to Central Office's Radiation Control Licensing Section for approval as of this date.

**Focus Areas Evaluated:** Focus Elements {FE} noted when applicable.

**{FE 02.01} Radiation Protection Program.**

The licensee provided one draft operating procedure for review by the inspection team. No radiation protection plan or procedures were available for review. Implementation of the radiation protection program is inadequate and does not ensure compliance with regulations (20.1101 Radiation protection programs).

**{FE 2.02} Radiation Protection Procedures.** Licensee has no active written procedures.

**{FE 2.03} Instruments and Equipment**

- a. Ludlum Model 193-6 with detector Model 44132. The instrument was not calibrated. Workers were using the instrument to detect radioactive packages for segregation and to unconditionally release items from the RMA. This instrument was also used as a personnel contamination monitor for workers exiting the work area.
- b. Ludlum Model 3 w/HP210 probe. Instrument was calibrated. No daily source check or operational check procedure is performed.
- c. RAD\*SCANNER Electronic dosimeters are used. No calibration records available. Electronic dosimeters worn by workers were not calibrated. Workers stated that they turned off the audible function because it caused distraction while working.
- d. Licensee utilizes an electronic resource tracking system that identifies instruments and when they are due for calibration or functional testing.
- e. Survey instruments available may not be appropriate for the type and intensity of radiation measured. Sensitivity for Ra-226 detection was not available.

**{FE 2.04} Exposure Controls**

a. External Exposure

1. Licensee issued TLD personnel dosimetry to technicians and ordered TLD's for the RSO and General Counsel during the inspection. The dosimetry processor is accredited by NVLAP.
2. Exposure reports were reviewed for the previous period. Electronic dosimeter readings were reported weekly by workers and a correction factor used to determine dose. All dose records reviewed were within the regulations.

b. Internal Exposure

1. Licensee does not have a program to assess internal exposure.
2. Licensee does not perform air sampling or bioassay.
3. Licensee engineering controls are limited to employee training and use of a HEPA filtered vacuum for RAM area housekeeping.

c. Respiratory Protection

- Licensee stated that the facility does not have a respiratory program.

**{FE 2.05} Posting, Labeling, and Control**

- a. Posting and Labeling. All licensed material storage areas were inspected. Licensee failed to post areas adequately. Inspection team identified areas that require Radiation Area postings that were not posted as well as Radioactive Materials Areas that were not posted. Storage building access can be gained by multiple personnel entry doors as well as vehicle entry (garage) doors. Many of the access locations were not posted.
  - b. Containers in work or storage areas were not labeled (§ 20.1904 Labeling containers).
  - c. Control
    - All identified radioactive materials storage areas were inspected. All radioactive material storage areas were controlled by locked doors or a controlled area fence was employed and the fence was locked. One controlled area storage-building door was not lockable, the RSO and General Counsel were made aware of this and stated that a lock would be installed. Keys to locked areas are issued to authorized workers. Office staff issues additional keys with RSO approval.
- c. Posting of Notices. Notices to Employee postings were available for employee review in work areas and storage areas.

**{FE 2.06} Surveys**

- a. Requirements. Licensee has not established schedules for periodic surveys. Written survey procedures are not established.
- b. Leak Tests. Licensee does not have sealed sources that require leak test.

**{FE 2.07} Notifications and Reports.**

No reports have been made. Licensee stated that dose records for individuals would be provided.

**{FE 2.08} ALARA**

1. No written program available for inspection. Employees trained to reduce exposure through distance, surveys, engineering controls (when emptying vacuum) by the health physics consultant. The consultant is no longer employed. The RSO stated that he would provide training in the future.
2. Radiation workers were interviewed regarding their work practices and ALARA. Workers stated that they use the Model 193-6 with detector Model 44132 to determine if boxes contain radioactive parts. Workers stated that they use the same instrument to check themselves for radioactive contamination at the end of the day. Workers stated that they check the vacuum, used for housekeeping, using the instrument and if indication of contamination, engineering controls are employed when emptying the vacuum. Workers stated that they understood the concept of employing distance as a means to reduce exposure. Workers stated that they ensure control of the work area and storage buildings when working and ensure the storage locations are locked. Workers were not aware that uncontrolled areas were affected by their work as evidenced by the concentration of radioactive material near the exterior wall of the building, causing the dose rate to exceed 2 mrem/hr in the unrestricted area outside of the building.

3. Radiation protection equipment and supplies were reviewed and found to be inadequate. One instrument to perform dose rate surveys was available but not calibrated. One instrument to perform contamination surveys was available and calibrated, however, the instrument was not in use. Licensee does not have protective clothing, ventilation systems, air sampling equipment, supplies used for posting areas, such as radiation areas, postings, labels, containment devices.

### **Records Reviewed:**

- Reviewed Occupational Dose Records - Electronic dosimeter logs for 5/17/06 – 10/17/07. All exposures <10 mrem/week.
- Reviewed instrument tracking system. Licensee owns two radiation detection instruments, one was in the system.
- Reviewed training records for radiation workers. General Counsel has not attended radiation worker training. General Counsel is responsible to assist in oversight of the work at licensee's facilities.

### **Independent and Confirmatory Measurements:**

Areas surveyed include restricted and unrestricted. Comparison could not be made with Licensee's data as no data was provided. Independent measurements were compared to regulations.

Measurements made of the licensee's storage areas using the Victoreen Model 450P #3640 calibration due date 12/2007- are as follows:

<b>Location</b>	<b>Restricted Area - General Area Dose Rate (mrem/hr @ 30cm)</b>	<b>Restricted Area - Contact Dose Rate on Parts (mrem/hr)</b>	<b>Unrestricted area Dose Rate (mrem/hr)</b>
637 West Market Street, Marietta, Pa	0.1 to 5.0	6.0	1.4
1280 Franklin Street, Columbia, Pa	0.1 to 3.0	-	0.09
172 South Second Street, Columbia, Pa	0.1 to 3.0	6.0	0.3
224-228 Locust Street, Columbia, Pa	0.1 to 15.0	-	0.2*
240 West Main Street, Mt. Joy, Pa	0.1 to 19.0	190 (19 mrem/hr @ 30cm)	0.08
131 East High Street, Maytown, Pa	0.01 to 0.05	-	0.05
693 West Market Street, Marietta, Pa	0.06 to 5.0	10	0.02** (0.3 @ 30 cm from storage building in controlled area)

\* Areas adjacent to building inaccessible from east and west side. Neighboring buildings adjoined. Neighboring buildings not surveyed.

\*\* Area enclosed by chain link fencing ~7 ft high. Gate locked. Distance to storage buildings >100 ft. from fence.

### **Violations, Non-Cited Violations and Other Safety Issues:**

Seven (7) items of non-compliance with State or NRC Regulations were observed.

Two (2) safety issues were observed.

#### **Non-Compliant Items Identified:**

1. 10 CFR 20.1101 Radiation protection programs. Licensee failed to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part as evidenced by non-compliance items 2 through 7 listed below.
8. 10 CFR 20.1302(a) Dose limits for individual members of the public may be exceeded (0.1 rem in a year total effective dose equivalent). Licensee failed to perform evaluation to determine dose equivalent to members of the public from licensed operations. Inspectors measured dose rates exceeding 0.05 mrem/hr in unrestricted areas outside of licensed storage locations.
2. 10 CFR 20.1301(a)(2) Dose limits for individual members of the public exceeds 0.002 rem (0.02 millisievert) in any one hour. Measured dose rate exceeded 0.002 rem/hr at the 172 S. Second St. site in Columbia.
3. 10 CFR 20.1501 (a) Licensee failed to make or cause to be made, surveys that may be necessary for the licensee to comply with the regulations in this part; and are reasonable under the circumstances to evaluate (i) the magnitude and extent of radiation levels; and (ii) concentrations or quantities of radioactive material; and (iii) The potential radiological hazards. Licensee could not produce records of surveys. Licensee stated that surveys were performed by a consultant >6 months earlier.
4. 10 CFR 20.1501 (b) The licensee failed to ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the radiation measured. Licensee instrument used by employees was not calibrated within 1 year. No record of calibration was available.
5. 10 CFR 20.1204(a) Determination of internal exposure. Licensee failed to take suitable and timely measurements of (1) Concentrations of radioactive materials in air in work areas; or (2) Quantities of radionuclides in the body; or (3) Quantities of radionuclides excreted from the body; or (4) Combinations of these measurements, for purposes of assessing dose to determine compliance with occupational dose equivalent limits. No record of air sampling could be produced. No evaluation of potential intake could be produced.
6. 10 CFR 20.1902 Posting requirements.
  - a. Licensee failed to post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."
  - b. Licensee failed to post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in appendix C to part 20 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

Licensed material storage areas were not posted in a conspicuous manner. Radiation Area(s) were identified by inspectors in the storage locations listed on the license, however, none were posted as required.

**Safety Issues Identified:**

- a. Inspectors identified a broken instrument leaking mercury on the floor in the large warehouse on 693 W. Market St. The RSO and General Counsel were immediately notified.
- b. Inspectors identified containers of hazardous materials stored in one of the licensee warehouses. The container was labeled NAPTHA.

**Recommendations:**

Recommend that the licensee hire a qualified health physics consultant to assist in bringing their program into regulatory compliance.

Recommend that the licensee contact a qualified hazardous materials cleanup crew to handle the mercury spill and other hazardous materials.

Recommend that prior to preparing licensed materials for delivery to a shipper for disposal that program management ensure the adequate training is provided to employees in accordance with 49 CFR 172.700 and that materials are packaged in accordance with all applicable regulations.

**Personnel Contacted:**

Brian Trostle, GM, RSO #\*+  
Robert B. Burns, General Counsel #\*+  
Craig Dulmeir, Owner\*  
Fran Long  
Vince Rice, Technician  
Paul Ruby, Maintenance  
Yamil Rodriquez, Technician

(#Present at entrance meeting; \* Present at exit meeting; + Present during inspection)



Pennsylvania Department of Environmental Protection

909 Elmerton Avenue  
Harrisburg, PA 17110-8200  
November 16, 2007

Southcentral Regional Office

717-705-4703  
FAX - 717-705-4930

**VIA FIRST CLASS MAIL &  
CERTIFIED MAIL NO. 7002 2030 0007 9115 3321**

Mr. Brian Trostle, General Manager and RSO  
Strube Inc.  
629 West Market Street  
Marietta, PA 17547-1011

Re: License ID No. PA-1004  
Marietta, Lancaster County

Dear Mr. Trostle:

On October 30 and 31, 2007, members of my staff inspected your radioactive materials and facilities covered by your Pennsylvania radioactive materials license. During this inspection, certain measurements and observations were made, and the results are discussed below. Whenever appropriate, the applicable sections of Title 10 of the Code of Federal Regulations (CFR), incorporated by reference in Title 25 Chapter 219 of the Pennsylvania Regulations for Radiological Health, have been referenced. The regulations are available, along with additional radiation protection information at [www.dep.state.pa.us/brp](http://www.dep.state.pa.us/brp) and [www.nrc.gov](http://www.nrc.gov).

The following items of noncompliance were observed:

1. Title 10 CFR 20.1101 regarding Radiation Protection Programs states in part that licensees are required to develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part.

Contrary to the above stated regulation, a documented radiation protection program was not available for review at the time of inspection.

2. Title 10 CFR 20.1302(a) regarding Dose Limits for individual members of the public states in part that the licensee shall make or cause to be made, as appropriate, surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public in §20.1301.

Contrary to the above stated regulation, records of surveys were not available for review at the time of inspection. Measurements performed by our inspection team revealed radiation levels that may exceed the dose limits for individual members of the public in §20.1301(not to exceed 0.1 rem (1 mSv) in a year) in unrestricted areas.



- b. Post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in appendix C to part 20 with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

Contrary to the above stated regulation, licensee material storage areas were not posted in a conspicuous manner. Inspector measurements identified areas that are required to be posted as Radiation Area(s) in the storage locations listed on the license, however, none were posted.

In addition to the noncompliance items above, the inspection team identified a broken instrument leaking mercury on the floor in the large warehouse on 693 W. Market St., and containers labeled NAPTHA in another storage location. These items present potential health and safety issues. The RSO and General Counsel were immediately notified.

As discussed in the exit meeting with you and your staff, and in addition to the items above, the following recommendations are presented for your review and consideration:

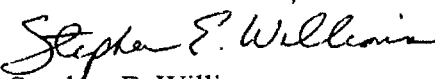
1. It is recommended that you consider seeking the advice of a qualified health physics consultant to assist in bringing your program into regulatory compliance.
2. It is recommended that you ensure that any hazardous materials stored at your facilities are identified, any personnel with access are aware of the hazardous materials and that qualified personnel perform cleanup and handling of the identified mercury spill and other hazardous materials.
3. It is recommended that, prior to preparing licensed materials for delivery to a shipper for disposal, you ensure that adequate training is provided to employees in accordance with 49 CFR 172.700, and that materials are packaged in accordance with all applicable regulations.

With the exception of the above, but within the scope of this inspection, no other departures from the requirements of the regulations were observed.

Within 20 days of the receipt of this letter, please notify this office, in writing, as to the actions taken by you regarding the results of this inspection.

Thank you for your cooperation.

Sincerely,

  
Stephen E. Williams  
Program Manager  
Radiation Protection Program

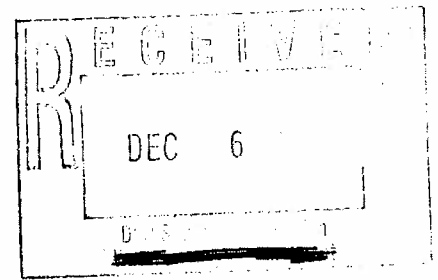
bcc: CO Files

SCRO Area Files

20-Day Prompt

Robert Maiers, BRP Decommissioning and Surveillance Section Chief, RCSOB 13 FL RAD

Martin Siegel, Regional Counsel, SCRO



December 5, 2007

Mr. Stephen E. Williams  
Program Manager  
Pennsylvania Department of Environmental Protection  
909 Elmerton Ave  
Harrisburg PA 17110-8200

RE: License ID no. PA-I004  
Marietta, Lancaster County

Dear Mr. Williams:

Your letter of 11/16/07 requested that Strube Inc. reply within 20 days as to the actions being taken in response to the findings of non-compliance noted in your letter. This letter will document the actions being taken by Strube Inc. in response to that visit.

1. Radiation Program not available for inspection. Strube Inc. disagrees with this statement. During the inspection the inspectors mentioned, on a number of occasions, that the Strube Radiation Protection file was not able to be located in the Pennsylvania Department of Environmental Protection (PADEP). Apparently the entire file for Strube was missing. During the inspection the Strube representatives offered to provide the inspectors another copy of the Radiation Program files maintained at Strube. This offer was declined. Please note Strube has attached a copy of the Radiation Program to this letter. Strube believes that no further action is necessary to correct this alleged area of non-compliance.
2. Records of Surveys not available for review. Initial Records of Surveys are included in the Radiation Program files attached to the letter. A draft copy of the Radiation process and procedures guidelines, which we are currently developing, was provided to the inspectors at the time of the visit. Strube has continued to work on the survey process and has begun to maintain the records necessary to ensure compliance with 10 CFR 20.1302(a).
3. Records of Surveys not available for review and radiation exposure in excess of 0.002 rem in an unrestricted area. Please see the answer for #2 (above) and note that the non-compliance item was corrected during the visit. As your letter indicates, Strube corrected this deficiency during the visit and was surprised that it was noted in the non-compliance letter. As demonstrated by the immediate corrective action, Strube is extending considerable effort and resources to comply with not only the letter of the law but the spirit of the law. Strube believes that no further action is necessary to correct this alleged area of non-compliance.



**STRUBE INC.**



4. Records of Survey not available for review. Initial Records of Surveys are included in the Radiation Program files attached to the letter. A draft copy of the Radiation process and procedures guidelines, which we are currently developing, was provided to the inspectors at the time of the visit. Strube has continued to work on the survey process and has begun to maintain the records necessary to ensure compliance with 10 CFR 20.1501
5. Instrument not calibrated. A purchase order has been submitted to obtain operable equipment. Strube believes that no further action is necessary to correct this alleged area of non-compliance.
6. Records of radiation exposure measurement not maintained for Employee exposure. As was explained to the inspectors, the radiation survey process and procedures guidelines were being developed during the time of the inspection. A draft copy of the Radiation process and procedures guidelines was provided to the inspectors at the time of the visit. At the time of the inspection Strube was using electronic dosimeters and data reports for the period 5/07- 10/07 were given to Mr. Scott Wilson. Since the electronic dosimeter is not NAVLAP accredited, Strube instituted a TLD badge program, as requested by PADEP. Strube will continue to work on the monitoring process and continue to maintain the records necessary to ensure compliance with 10 CFR 20.1204(a).
7. Material storage areas not properly posted. The inspection reports neglects to mention that this area of non-compliance was corrected during the time of the inspection. Strube upon learning of the concern immediately took corrective action and all areas are posted. The inspectors commented that the corrective action taken fulfilled the requirements of 10 CFR 20.1902. Strube believes that no further action is necessary to correct this alleged area of non-compliance.

Your letter also makes reference to a mercury spill which was cleaned up with a "mercury spill clean up kit" within 24 hours. Strube will consider the recommendations discussed in the exit meeting. Strube trusts that this letter sufficiently addresses your concerns and looks forward to working with PADEP in the future.

Robert B. Burns. Esq.

  
General Counsel

Brian S. Trostle

  
General Manager / RSO