

15

McWane: A Dangerous Business

McWane Corporation has been a fixture in the Birmingham, Alabama, business community since 1921. Started by J. R. McWane and still controlled by the McWane family, McWane Corporation has become an international manufacturer of water and sewer pipes and other heavy manufacturing products. With approximately 5,000 employees and 12 plants in the United States and Canada, McWane is considered one of the largest privately held businesses in the heavy manufacturing industry. It has annual sales of approximately \$2 billion.

For the past three decades, McWane's overall corporate strategy has been to acquire older, inefficient manufacturing plants and increase the level of efficiency and profitability through its philosophy of disciplined management practices in the treatment of its workers.¹ McWane's stringent management practices were responsible, in part, for the high number of accidents that have occurred at the McWane facilities. One plant manager summarized McWane's philosophy as manufacturing time equals making pipe and making pipe equals making money.² As a result, there seems to have been a disincentive to properly review procedures after an accident. Corrections such as improving the safety features of the equipment and offering more safety training would mean a reduction in productivity. A police report after an accident at one of McWane's facilities in Alabama showed that the foundry supervisors restarted the conveyor belt to continue production before the safety inspectors for the federal government were allowed to inspect the accident site.³ The drive for production was implemented at the worker level. Each line worker was evaluated based on meeting daily quotas set by McWane. If a worker did not meet his daily quota, he would get a "D.A.," or disciplinary action, on his employment record. After a worker had accumulated a number of D.A.s, the worker was considered on "death row." For the foundry managers, bonuses and profit sharing were directly related to the production level of their foundries compared with the other McWane facilities.⁴ At some of the McWane facilities, the annual turnover rate of employees was almost 100%.

From 1996 to 2003, McWane was cited for more than 400 safety violations. The combined total of safety violations of McWane's six largest competitors over the same period was 100. In that 7-year period, 9 McWane workers were killed on the job, and

more than 4,600 workers were injured.⁵ In 2004, the death total of McWane workers went up to 10 when a maintenance worker working alone in the Elmira, New York, plant was crushed to death when he became caught in a conveyor belt used to collect sand.⁶ This was the second death to occur at the Elmira plant. In 1995, Frank Wagner died after an explosion at the plant. Wagner was responsible for disposing of a large amount of highly volatile toxic paint. He was told to put the paint in one of the industrial ovens at the plant. The paint ignited and created a huge explosion. In an investigation after the explosion, it was discovered that the oven was modified to be used as an incinerator. The oven was never designed to be used to destroy toxic fluids. McWane paid a total of \$500,000 in fines and donations and admitted guilt for violating environmental laws. The plant manager at Elmira paid a fine of \$85 and pleaded guilty to a misdemeanor charge.⁷

After McWane acquired the Texas company Tyler Pipe in 1995, McWane laid off almost two thirds of its workers while expecting increased levels of productivity from the plant.

A previous McWane plant manager, Robert Rester, who had worked for McWane for 24 years, stated that the working conditions at the plant were probably the worst possible. He stated that they were more dangerous than working in an underground coal mine. He said that the employees were just numbers who could be replaced quickly if they were not doing their jobs. If an employee complained about the working conditions or was injured during the job, management would try to find an excuse to fire him or her.⁸

The former assistant secretary of labor for Occupational Safety and Health Administration (OSHA), Charles Jeffress, highlighted the frustration in trying to change the behavior of companies that ignore OSHA requirements. He stated that the penalties available for OSHA to address these safety issues are not adequate. The penalties that OSHA can issue to a business were established in 1970 and have increased only once in more than 36 years. If a company is responsible for contributing to the death of a worker, the maximum penalty issued by OSHA is \$7,000. If the violation is willful by the company, the maximum fine is only \$70,000.⁹ The OSHA Act states that a willful violation by a company that leads to death results in a criminal violation. If a willful violation does occur, OSHA transfers the relevant information to the U.S. Attorney who represents the area where the facility is located. It is then up to the U.S. Attorney to decide whether the company will have criminal charges brought against it. The criminal violation is classified as a misdemeanor charge.¹⁰

One former plant manager at McWane summarized the impact OSHA has on its operations. He stated if OSHA comes to the plant for an inspection, the company policy is to delay the entrance of OSHA inspectors for as long as possible.¹¹

Ron Howell, a former design engineer for the McWane Tyler Pipe plant, and one of Tyler's former workers, Marcos Lopez, described the conditions at the plant. Lopez had to go on permanent disability after having a serious back injury while working at the Tyler Pipe plant. Lopez was working on a pipe-molding machine when he injured his back. His supervisors did not believe that the injury was serious and sent him to a private clinic that had a financial agreement with Tyler Pipe for evaluations. Its diagnosis was that Lopez had just a sprained back, and he was sent home with an ice pack and a prescription for pain relievers. Ten days later Lopez went back to the clinic in horrible pain and requested an X-ray. The results of the X-ray showed that Lopez had broken his back in the accident.¹²

Howell stated that a human being can push only so many buttons on a machine within a given period. As soon as the employee became quick enough on one machine, he was assigned to also operate an additional machine and was expected to be fully productive on both machines. Once full productivity was achieved, the employee became responsible for a third machine.¹³ Howell also stated that the workers were not allowed to leave their machines to go to the bathroom. Lopez stated that he worked as many as 16 hours a day, and his supervisor would tell him that he could go to the bathroom only when the supervisor said so.¹⁴ In supporting this statement, Howell stated that he saw workers who would raise their hands to go to the bathroom, but the supervisor would refuse to let them leave their work area. As a result, the workers would relieve themselves in their pants at their work area.¹⁵

On safety issues at the plant, Howell stated that management would tell the workers to be safe while asking the workers to do dangerous activities within the plant. If a worker told management that he needed additional employees to help him with the dangerous task, the response by managers was they did not care what the employees did as long as they met the production numbers for the week. It was the employee's fault if the numbers were not met.¹⁶

A former mechanic at Tyler, Ira Cofer, lost his arm at work when the sleeve of his shirt became caught on an unguarded conveyor belt. Cofer was working by himself due to employee layoffs and watched his left arm get crushed by the machinery. He remembered that the belt on the machinery had taken all the flesh off his arm and had rubbed his arm all the way down to the bone.¹⁷ The report by McWane on Cofer's accident stated that Cofer could not be located for more than 2½ hours, even though he was yelling for help during that whole time. Cofer was finally found and was standing on the top of his hard hat to try to relieve the pain and pressure of his injured arm.¹⁸ Since the accident to Cofer occurred, four additional workers have had limbs amputated due to machinery accidents at the Tyler plant.

McWane supervisors were encouraged to discipline workers who were injured on the job. The belief was that if the workers were punished, they would be hesitant to report an injury in the future. Corporate executives at McWane reviewed the disciplinary actions of the foundry managers for injured workers. Workers who cited government regulations protecting their safety or wanted a second opinion on their injuries were prime targets for dismissal.¹⁹

When McWane took over the Tyler plant, it eliminated "luxury" items such as soap, medicated skin cream, and hand towels.²⁰ In addition, workers were told to bring their own toilet paper to work. Managers were also known to limit the amount of ice that workers were allowed in their drinks. Portable heaters were taken away from the loading dock, even though the heaters were needed during the winter months. The works manager, Dick Stoker, explained that McWane does not provide heat for the comfort of its employees.²¹ McWane also replaced the workers' \$17 heat-resistant gloves with cloth gloves that cost \$2. In addition, McWane stopped ordering protective aprons, face shields, and safety boots after the inventory in the stockroom had been used.²² The results of the change in management style when McWane took over were evident in the plant's level of profitability. In 1996, the Tyler plant generated \$50 million in annual profits, which was twice the profit level for the previous 5 years.

After a review of the Tyler plant, OSHA inspectors commented that Tyler Pipe had not implemented a system to hold plant supervisors accountable for the safety issues

of the plant. Tyler Pipe, however, had done an excellent job ensuring that the same supervisors were accountable for the total level of production at the plant. OSHA argued that safety issues were in direct contradiction with production because putting up and taking down safety guards or preparing the workers before they enter dangerous situations results in a drop in the production level of the plant; safety precautions take time.²³

In its Atlantic States Cast Iron Pipe foundry, McWane faced allegations of a cover-up in an accident that killed a worker. The worker was killed by a forklift that had a number of problems with its brakes. McWane managers were involved in trying to hide the facts of the accident and told one of the employees to mislead the investigation by not presenting an accurate account of the accident.²⁴

The working conditions at the Tyler plant became so notorious that it was difficult for McWane to hire people. Tyler Pipe had to go to a pool of ex-convicts to try to get enough people to work at the plant. Howell stated that the local community knew the reputation of the working conditions at Tyler Pipe, so it was difficult to get local workers.²⁵ When asked whether management was concerned about the hiring difficulties at the Tyler plant, Howell responded by saying management was not worried because they eventually could always find another warm body to put on the production line.²⁶

When addressing the costs of the injuries to its workers, McWane wanted to get the costs of medical services under control. An e-mail from a senior plant manager to a nurse at Tyler Pipe, Michelle Sankowsky, stated Tyler Pipe was spending too much money to cover workers' compensation claims. Sankowsky stated that McWane had an unusual philosophy regarding how to resolve the medical cost issue. She said that the policy of the company was to assume that all the injuries were fake. It was up to the employee to prove that he or she had a legitimate injury because Tyler Pipe believed that employees who were on workers' compensation were getting a free ride.²⁷ The employees did not receive any support when they reported an accident. In fact, at the Tyler plant in 2000 and 2001, more than 350 were disciplined by the managers for reporting accidents. The employee handbook at Tyler stated that employees would be disciplined in any manner short of termination for reporting an accident to help teach the employee what the correct behavior should be.²⁸ As the employees recovered from their injuries, they were put on "modified duty." Modified duty would usually include menial jobs such as cleaning the toilets. One of the senior managers of the Tyler plant, John Combs, identified the benefits of having the workers on modified duty. He wrote that modified duty would accomplish one of two things: either the employees would rush back to regular work so they would not have to clean the toilets at a lower wage or the employees would quit.²⁹

When commenting on the conditions of the facilities, McWane President G. Ruffner Page, Jr. stated that McWane was committed to protecting the safety of its employees and ensuring it followed environmental regulations. He did say that the standards established by McWane have not always been met but that McWane is taking appropriate action to improve its safety and environmental record.³⁰ In addition, Page stated that McWane's operations keep manufacturing jobs in the United States while competing in a global market. Page stated that manufacturers in China and Latin America do not have the same safety and environmental standards that are in place in the United States, giving those manufacturers an unfair cost advantage. The foreign pipe manufacturers are not concerned about safety issues for their workers,

nor are they interested in addressing environmental issues as they relate to their plants' operations.³¹

In March 2005, OSHA sent letters to 14,000 businesses that incurred the highest rate of injury and illness based on data from 2003. OSHA calculated the level of danger in the workplace by the facilities' DART rate: days away from work, restricted work, or job transfer injury and illness. OSHA considered the workplace to be dangerous if the DART rate was an average of 6.5 or higher for every 100 full-time workers. The average across the U.S. facilities was 2.6. Six U.S. McWane foundries were on the OSHA's most dangerous list: Atlantic States Cast Iron, Empire Coke, M & H Value, McWane Cast Iron Pipe, Union Foundry, and Tyler Pipe. Jonathan Snare, acting assistant secretary of labor, stated that this ranking is used to highlight the high number of injuries and illnesses that are taking place in these facilities. The goal of the U.S. Department of Labor is to provide advice to the companies on this list so they can improve the working conditions.³²

In August 2005, McWane pleaded guilty to federal safety and environmental violations in its Union Foundry facility, located in Anniston, Alabama. In 2000, Reginald Elston was killed while working on an unguarded conveyor belt. Elston died when he went headfirst into the machine and was not able to shut it off in time.³³ McWane admitted that it purposely violated federal safety rules, which was a direct cause of the death of Elston. McWane agreed with the evidence that showed that there was no safety guard on the conveyor belt, which is required by law. McWane was charged with causing death to an employee by knowingly violating federal safety rules, which is a misdemeanor. With the guilty plea, McWane paid a fine of \$3.5 million and was required to spend an additional \$750,000 on a community project.³⁴

In February 2006, OSHA cited McWane for 38 safety violations at the McWane Cast Iron Pipe facility. OSHA found violations pertaining to unacceptable silica levels, machinery that did not have safety guards, and the failure to have safety latches on a ladle that transports molten metal. Of the 38 violations, OSHA had classified 28 as serious, which meant increased risk of serious injury or potential death to the employees. The 38 violations were based on an inspection that was done in August 2005.³⁵

In March 2006, OSHA had proposed a \$332,000 fine against McWane after 38 alleged health and safety violations were identified in its Birmingham foundry. During an August 2005 OSHA inspection, OSHA issued McWane 10 repeat violations with a proposed fine of \$242,700 and 28 serious violations with proposed penalties of \$90,000. The alleged violations included carrying molten metal in a ladle without safety latches, having pipes improperly stacked, and having employees work on damaged equipment that had potential electrical hazards. McWane's senior vice president of compliance and corporate affairs, Michael Keel, stated that McWane placed a strong emphasis on employee health and safety and that the company continued to work diligently to have health and safety standards that were unsurpassed in the industry.³⁶ In April 2006, a federal jury found that Atlantic States Cast Iron Pipe was found guilty of conspiring to evade workplace safety and environmental laws and had to pay a fine of \$8 million. It was alleged that managers lied to government regulators, tampered with evidence, and forced its employees to remain silent pertaining to the violations. Atlantic States Cast Iron Pipe was found guilty on 32 charges, and four managers were found guilty of multiple felony charges. It was alleged that employees at the plant tampered with smokestack tests, they dumped wastewater that was polluted away from plant facilities, and they stalled government inspectors at the front gate while

they tried to hide numerous violations.³⁷ In April 2009, one of the plant managers, John Prisque, was sentenced to 70 months in prison for making false statements to federal investigators related to three accidents at the plant.³⁸

Canadian Operations

McWane started operations in Canada as the Canada Pipe Company in 1989. At the time of this writing, McWane has three plants in Quebec, two plants in Ontario, one plant in Alberta, one plant in British Columbia, and one plant in New Brunswick. The plants in Quebec employ approximately 500 employees, and the New Brunswick plant has approximately 45 workers. Of McWane's \$2 billion in annual revenue, approximately \$100 million comes from its Canadian operations. As with its U.S. operations, McWane has had to address a number of safety violations in its Canadian plants. One plant in Quebec set a McWane record for number of injuries for 2001. In 1989, McWane contacted one of its U.S. competitors, U.S. Pipe and Foundry, to try to negotiate who would sell certain products in Canada. McWane wanted U.S. Pipe to stop any further sales of its ductile iron pipe in Canada. If U.S. Pipe refused, McWane threatened to start a price war in the northeastern market of the United States. U.S. Pipe agreed to stop selling the products in Canada.³⁹ In 1995, McWane was fined \$2.5 million by the Canadian government for its agreement with U.S. Pipe.⁴⁰

Environmental Issues

Between 1996 and 2003, McWane facilities were charged more than 450 times for pollution and emissions violations. A Birmingham environmental lawyer, Bart Slawson, has had a longstanding battle with McWane, trying to get McWane to correct its environmental policies. He stated that the philosophy at McWane was that there will not be any changes in the current operations unless they have been caught by a legal authority.⁴¹ In May 2004, McWane president Page stated that McWane was getting close to the point where the company could not continue to have multiple complaints against it and remain a successful company.⁴²

In March 2005, McWane was charged and subsequently pleaded guilty to two felony charges relating to environmental violations at the Tyler Pipe plant. It was the first federal prosecution of criminal charges against a foundry for environmental violations. McWane paid a fine of \$4.5 million and stated that it was aware its environmental control equipment for air emissions was not up to the standards required by the Clean Air Act. McWane also admitted that it did not disclose all relevant information to the Environmental Protection Agency (EPA) during its investigation.⁴³ McWane built a new cupola furnace from December 1998 to January 1999 without filing the proper request and documentation to the state environmental agency. In addition, McWane hooked up the new cupola with the existing pollution equipment that had been developed in the 1960s. McWane was required to attach current pollution equipment technology to the new cupola. Furthermore, McWane was required to apply for a new Clean Air Act Title V permit when the new cupola went online. McWane claimed in its Title V filing that the foundry had not been modified since 1971. The EPA's acting assistant administrator for enforcement and compliance assurance, Thomas Skinner, stated that Tyler Pipe willfully made the improvements to the facility without obtaining the required air permits and then attempted to hide its actions.⁴⁴

In May 2005, McWane stated that it would invest \$9.3 million in environmental upgrades at its Atlantic States Foundry to avoid fines by the New Jersey government for emissions violations that occurred in 2003.⁴⁵ The managers of the plant disposed of contaminated wastewater by releasing it into the Delaware River. In addition, McWane falsified pollution-monitoring reports and burned environmental waste in the furnace used to convert scrap metal into molten iron.⁴⁶

In June 2005, McWane was convicted of environmental violations at its McWane Cast Iron Pipe facility in Birmingham, Alabama. McWane was charged with discharging polluted water from its facility into a Birmingham creek.

In August 2005, McWane was found guilty of violating safety and environmental laws in its Union Foundry facility in Anniston, Alabama. The company admitted that dust in the facility contained lead and cadmium and had been in contact with the employees in the plant. Dust that contains these chemicals is a potential cancer hazard to the employees. McWane paid a \$3.5 million fine and spent an additional \$750,000 on a community project.

In December 2005, a federal jury convicted McWane of dumping wastewater into a Birmingham creek. McWane was fined \$5 million and was required to spend \$2.7 million on pollution mitigation in a community improvement project in Birmingham. McWane was also given 5 years of probation. James Delk, McWane former vice president and general manager, was fined \$90,000 and was given 6 months' home detention and 3 years' probation. Michael Devine, the former plant manager at McWane Cast Iron Pipe, was fined \$35,000 and was given 3 months of home detention and 2 years' probation. Charles Robison, McWane's vice president of environmental affairs, was fined \$2,500 and given 150 hours of community service and 2 years' probation.⁴⁷ The three McWane executives were convicted of polluting Avondale Creek in Birmingham and conspiring to violate the regulations in the Clean Water Act. The illegal actions occurred between 1998 and 2001, when McWane and the plant managers gave orders to the employees of the plant to release polluted water that was used in the pipe-making process into the creek. The chief of the DOJ's Environmental Crimes Section, David Uhlmann, stated that guilty verdicts in McWane's home town showed that McWane and its management are accountable for their years of wrongdoing.⁴⁸

The chairman of McWane, Phillip McWane, stated in court that he did not plan nor design for McWane Corporation to perform in a manner that would take it into a courtroom. McWane stated that he was ashamed about the failure of McWane Corporation to follow the guidelines of the Clean Water Act and that the company accepts responsibility.⁴⁹ Yet McWane's attorney, Doug Jones, stated that the company would appeal the conviction and that McWane was part of the solution instead of being solely the problem.⁵⁰

In February 2006, McWane paid \$3 million in fines for environmental violations at its Pacific States Cast Iron Pipe foundry in Utah. The indictment stated that executives at the Provo, Utah, foundry were involved in tampering with pollution-control devices and also made incorrect statements about their operations to the EPA in 2001 and 2002.⁵¹ The fine of \$3 million was the largest ever set in Utah for environmental violations. McWane also was put on 3 years' probation, and the general manager of the Pacific States foundry entered in a plea of guilty for tampering with environmental monitoring equipment that was required under the Clean Air Act. DOJ official Sue Ellen Wooldridge stated, "Today's guilty pleas by McWane and the former general