

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of the Canada Labour Code,
Part II, of a direction given by a safety officer

Applicant: Buckham Transport Ltd.
Represented by: Ms. C. Buckham and Mr. D. Neilson

Mis-en-cause: Safety Officers Karen Malcolm and Greg Garron

Before: Douglas Malanka
Regional Safety Officer

Background:

On April 17, 2000, safety officers Karen Malcolm and Greg Garron in the company of Fire Protection Engineer, Mark Koli, conducted an inspection of the workplace operated by Buckham Transport Ltd. (Buckham). Their inspection followed a fire in a drum that occurred at Buckham in 1998, and a series of meetings between federal, provincial and municipal officers to discuss safety issues at Buckham. Following their inspection, the safety officers issued three directions to Buckham pursuant to the Canada Labour Code, Part II (hereto referred to as the Code or Part II) and the Canada Occupational Safety and Health Regulations (COSHRs). The directions applied in respect of the hazardous waste transfer station operated by Buckham and cited the Company for failing to have an adequate water supply for fire fighting at the site, for failing to have a sprinkler system or other fire suppression system, and for storing hazardous substances at a height greater than 1.75 meters without racks or shelves. See Appendixes. Buckham requested that a Regional Safety Officer review the direction and a hearing was held in Peterborough, Ontario, on October 19, 2000. Each of the directions will be dealt with separately in my decision.

Preliminary Matter:

Jurisdiction:

In her letter requesting review of the direction, Ms. Catherine Buckham questioned why her Company was subject to Federal jurisdiction. She said that the province of Ontario approved design and construction of the hazardous waste transfer station in 1992 and the building was occupied in 1993. It was only later in 1994 that Buckham was deemed to be subject to Federal jurisdiction. Since Ms. Buckham questioned the jurisdiction of the Company, I must address the issue to satisfy myself that I have jurisdiction to review the directions.

Ms. Buckham and Mr. D. Neilson provided the following information respecting Buckham and its activities that were not disputed by safety officers Malcolm or Garron. Buckham started out 54 years ago exclusively as a for-hire trucking company. The Company currently holds an extraprovincial trucking license and continues to transport goods across provincial and international borders on a for-hire basis. In addition, the Ontario Ministry of Environment licensed Buckham to haul hazardous waste and to operate the hazardous waste transfer station. Most of its business at Buckham now centers around transporting hazardous waste material on a for-hire basis to designated disposal sites. A typical contract may specify a full or partial load of hazardous waste material. A full load is generally transported directly to the designated disposal site. A partial load of hazardous waste material is typically taken to the hazardous waste transfer station at Buckham where it is sorted, consolidated and stored. A load of the hazardous waste material is transported to the designed disposal site when a sufficient quantity is accumulated. Buckham is incorporated under Ontario law, and up to 1994, was considered to be subject to the jurisdiction of the province of Ontario.

Finding:

Based on the information provided, I am satisfied that Buckham is a federally regulated for-hire trucking company subject to federal legislation and that I have jurisdiction to review the direction. My finding is based on the following facts. Buckham has an extraprovincial trucking license and is regularly and principally engaged in transporting goods across provincial boundaries on a for-hire basis. While Buckham transports other goods, the vast majority of its operations is connected with transporting hazardous waste material for their clients to designated disposal sites. Unless a pickup involves a full load, Buckham transports the material to its hazardous waste transfer station on its site where it is sorted, accumulated and stored. Once a full load of a particular hazardous waste material is accumulated, Buckham transports it to the designated disposal location which completes the work. In the absence of evidence that the hazardous waste transfer station is incorporated separately and functions independently of Buckham's for-hire operations, I conclude that the hazardous waste transfer station is an integral part of Buckham's for-hire operation which is subject to federal jurisdiction.

As indicated previously, the safety officers issued 3 directions following their investigations. For the purpose of this decision, I will deal with each direction separately.

Direction #1:

Contravention:

Canada Labour Code, Part II, Paragraph 125(a).
Canada Occupational Safety and Health Regulations, Section 2.1.

"THERE IS AN INADEQUATE WATER SUPPLY FOR FIRE FIGHTING ."

Safety Officer:

Safety officers Malcolm and Garron testified at the hearing. I retain the following from their testimony.

Safety officer Garron testified that Buckham did not have a water supply at the hazardous waste transfer station to fight a fire. He held that this is in contravention of section 2.1 of the COSHRs and sentence 3.2.5.3. of the National Building Code of Canada (NBC), 1985. He said that, without an adequate water supply, fire fighters would have to rely on portable fire extinguishers and fire truck pumps. He acknowledged that a creek flowing across Buckham could supply water to fight a fire, but held that this does not constitute a water supply under the NBC because the local Municipal Fire Chief refuses to accept this as a permanent solution. Safety officer Garron referred me to Appendix A of the NBC entitled "Fire Assumptions" where it indicates in A3 that:

"Acceptable water supplies may be a public waterworks system where pressure and discharge capacity are adequate, automatic fire pumps, pressure tanks, manually controlled fire pumps in combination with pressure tanks, gravity tanks and manually controlled fire pumps operated by remote control devices at each hose station."

However, section 2.1 of the COSHRs requires that the design and construction of every building meet the standards set out in Parts 3 to 6 of the NBC in so far as it is "*reasonably practicable.*" The safety officers indicated that they had not considered whether it was "*reasonably practicable*" for Buckham to comply with Article 3.2.5.3. of the NBC.

Evidence Proffered on Behalf of Employer:

Ms. Buckham testified that Buckham is located in a rural location and the municipal waterworks system is not available to the site. She said that the province of Ontario approved the building plan for the hazardous waste transfer station in 1992 knowing that Buckham water was rural and that there was no water supply.

She described the building as a non-combustible structure made of metal having concrete flooring and dikes around the outside to contain spillage. The building includes an opening covered with mesh screen around three quarters of the building. This prevents the buildup of combustible vapours and enables fire fighters to fight a fire from the exterior of the building. Since the building is open on three sides, it is always at ambient external temperature. This means that the building is subject to temperatures below the freezing point of water, and that of carbon dioxide during winter. It also means that a powder system similar to the fire suppression system used in the confinement room for flammable chemicals would not work in the main storage area because of the dispersion of the powder by the airflow in the building. Finally, the hazardous waste transfer station is equipped with class 1, division 2 electrical systems throughout the building.

Buckham purchased 2800 feet of fire hose at the request of the Municipal Fire Chief for transporting water from the creek that flows across its property to fight a fire. In addition, Buckham has tankers that could be used to transport water from the creek, or any other water

source, to the site. However, Municipal officials have since clarified to Buckham that reliance on the creek as a source of water to fight a fire can only be an interim solution.

Buckham recently applied to the Municipality for a permit to construct numerous confinement rooms in the hazardous waste transfer station and to construct a fire chamber equipped with a dry fire suppression system inside the structure. The individual confinement rooms would be limited to under 100 meters² and so sentence 3.2.5.3. of the NBC would not apply. In addition, each confinement room would contain separate classes of hazardous waste materials and each room could be equipped with a fire suppressant system appropriate to the hazardous material contained therein. At the same time, Buckham applied to the Municipality for a permit to construct a water supply to fight fires. The Municipality only approved the construction of the water supply.

Ms. Buckham offered a document entitled, "Controlled Burn Option," written by Mr. E. Gulbinas, a Fire Protection Engineer at the Ontario Fire Marshals Office. The article looks at warehouse fires involving pesticides and suggests that opting for a controlled burn may be preferable to fighting the fire to reduce health and environmental impacts. Ms. Buckham also submitted a document that summarized the outcomes of several large scale chemical fires where water was used to fight fire and it resulted in significant health and environment impacts.

Since the Municipality denied permit for a fire chamber suppressant system, Buckham then applied to the Ontario Ministry of Environment to store products outside. Under the proposal, the various classes of hazardous waste material would be segregated and stored on the outside on road worthy trailers. So if there were a fire on site, certain products could be removed immediately. The fire then could be isolated and extinguished with the appropriate fire suppressant. In addition, this would render the building to a state where it does not require a sprinkler system. The Ontario Ministry of Environment had not replied to Buckham at the time of the hearing.

Buckham employs from 6-8 employees at the hazardous waste transfer station who work from approximately 6 a.m. to 8 p.m. Several fire protection measures were installed to protect the occupational health and safety of the employees employed there. For example, Buckham developed and established an emergency response plan which includes fire emergency. The Company installed explosion proof heat detectors throughout the building linked to an alarm and an explosion proof alarm system that is activated by employees if there is a fire or emergency. The alarm systems are monitored on a 24 hour basis. The hazardous waste transfer station is equipped with fire extinguishers which could be used to assist employees from escaping a fire. In addition, a fire suppression system is installed in the area where there may be open containers of flammable chemicals and the amount of flammable material brought into the containment room is limited to what can be processed in a day. The remainder is stored in trailers on site. Finally, a badge system is used for tracking who is in the hazardous waste transfer station at any time.

Evidence Proffered on Behalf of Employee(s):

Employees did not participate in the review of the direction.

Summations:

Ms. Buckham argued that the creek that flows across Buckham property constitutes a water supply in case of a fire. She said that Buckham has 2800 feet of fire hose to transport water from the creek to the hazardous waste transfer station, and the Company has tanker trucks that could transport water to the site. She held that a water sprinkler system may not be appropriate for some classes of chemicals and, because of the design of the structure, a fire suppression system without containment would not work. She insisted that she has pursued several options for complying with the Part II but complained that she cannot proceed unless the proposals are approved from the Municipality in one case and the Government of Ontario in the other. She held that the fire prevention measures in place at the hazardous waste transfer station protects the health and safety of employees employed there. She requested that the direction be rescinded.

Reason For Decision:

Issue(s):

The issue before me is whether Buckham is required under section 2.1 of the COSHRs to comply with Article 3.2.5.3. of the National Building Code of Canada (NBC), 1985.

Applicable Legislation:

The applicable Part II legislation in this case is as follows:

- Section 122.1 of the Code which reads:
“122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.”
- Paragraph 125.(a) of the Code which reads:
*125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer,
(a) ensure that all permanent and temporary buildings and structures meet the prescribed standards;”*
- Section 1.2 of the COSHRs which reads:
“1.2 “National Building Code” means the National Building Code of Canada, 1985, issued by the Associate Committee on the National Building Code, National Research Council of Canada, dated 1985.”
- Section 2.1 of the COSHRs which reads:
“2.1 The design and construction of every building shall meet the standards set out in Parts 3 to 9 of the National Building Code in so far as it is reasonably practicable.”
- Article 3.2.5.3. of the National Building Code, 1985, which reads:
“3.2.5.3. An adequate water supply for fire fighting shall be provided for every building. (See A-3, Fire Fighting Assumptions in Appendix A.)”

Rationale:

Section 122.1 of the Code establishes that the purpose of Part II is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment. For certainty, Part II does not regulate environmental or public safety issues.

Section 2.1 of the COSHRs specifies that the design and construction of every building must meet the standards set out in Parts 3 to 9 of the National Building Code "...in so far as it is reasonably practicable." Therefore, to interpret and apply section 2.1 of the COSHRs, consideration must be given to the qualifying term, "...so as far as it is reasonably practicable." But before commenting on this, it is necessary first to consider the scope of the NBC.

In this regard, article 1.2 of the NBC, states that the NBC applies to the design, construction and occupancy of new buildings, and the alterations, reconstruction, demolition, removal, relocation and occupancy of existing buildings. Appendix A of the NBC further specifies that the NBC is most often applied to existing buildings when an owner voluntarily wishes to rehabilitate a building, change its use or builds an addition; or when an enforcement authority decrees that the building be altered for reasons of public safety.

Now, strictly speaking, none of these criteria applied in respect of the hazardous waste transfer station at Buckham when the safety officers issued their directions. Buckham was not building an addition to the structure nor was it rehabilitating, renovating or changing the use of the hazardous waste transfer station. However, it would be consistent with the purpose clause of the Code to read "occupational health and safety" in place of the reference therein to "public safety." Taking this, and applying section 2.1 of the COSHRs together, I interpret from the Code that Buckham must comply with section 3.2.5.3. of the NBC to the extent that compliance is necessary to ensure employee safety, and to the extent that it is reasonably practicable to do so.

The term reasonably practicable is not defined in the Code, so one relies on the dictionary definitions for the terms, and on jurisprudence or other statutes for determining its meaning. In this regard I refer to unreported decision of Regional Safety Officer Serge (RSO) Cadieux, RSO Decision No. 92-002 between P.D. Kroli, Alberta Wheat Pool and R.G. Grundie, Safety Officer heard on February 4, 1992. Reference is made to pages 3 and 4 of the decision. In his Decision, RSO Cadieux also indicated that 4 points must be considered when assessing the "reasonably practicable" condition. These four points with some minor paraphrasing, are:

1. *A determination should be made in each case where the duty applies, as to whether it is "reasonably practicable" to comply with the duty.*
2. *In this case, the onus to demonstrate that it is not reasonably practicable to comply with the duty falls on the employer because the duty is specified under section 125 of the Code and the COSH Regulations.*
3. *The above determination should take into consideration the benefit of the duty for protecting the occupational health and safety of employees versus the cost, in time, trouble, and money to secure the duty.*
4. *A computation should be made as to whether there is a gross disproportion between the benefit of the duty for employees and the effort and cost. If such a disproportion*

*exists, then a conclusion that it is not reasonably practicable should be reached.
[My underline.]*

With regard to the effort of providing an additional water supply, Ms. Buckham indicated that it would be difficult to retrofit the building. She reiterated that the structure was originally designed with 3 of the 4 sides open to prevent the build-up of combustible vapours and to permit fire fighters to fight a fire from the exterior of the buildings. This means that the building is subject to temperatures below the freezing point of water, and that of carbon dioxide. It also means that a powder system similar to the fire suppression system used in the confinement room of flammable chemicals would not work in the main storage area because of the dispersion of the powder by the airflow in the building. She insisted that the creek that flows across Buckham is available if needed for an emergency.

On the benefit side, safety officer Garron suggested that water might be necessary to delay a fire so that an employee could be evacuated. However, Ms. Buckham and Mr. Neilson argued that using water may not be appropriate given the nature of the chemical products handled and stored at the hazardous waste transfer station and could actually make the situation worse. Moreover, they argued that it may actually be better to allow the material to burn via a “controlled burn” to avoid injury and impacts to the environment. In addition, they reiterated the fire prevention measures that Buckham instituted at the hazardous waste transfer station to protect its employees.

In my view, the objective of the Code is achieved if the health and safety of employees is protected. In this case, the safety officers had not considered whether it was reasonably practicable for Buckham to comply with section 2.1 of the COSHRs when they issued their direction. They were also unable at the hearing to challenge the employer’s contention that the occupational health and safety of employees employed at the hazardous waste transfer station was protected by other fire measures in place. On the balance of probability, I find that a case has not been made that the installation of water supply is necessary to protect the safety and health of employees at the hazardous waste transfer station, or that it is reasonably practicable to require Buckham to comply with section 2.1 of the COSHRs. Buckham has fire prevention measures in place, and the creek on Buckham property is a source of water during an emergency. Even though various jurisdictions have indicated reservations with regard to Buckham using the creek as a source of water in the case of an fire, its hard to envisage a situation where the creek would not be used in an emergency to fight a fire.

Ms. Buckham assured me that Buckham is pursuing several strategies to improve fire safety at the hazardous waste transfer station and is only awaiting approval from the Municipality and/or the Province of Ontario to act. I encourage her to continue in her resolve. However, since the outcome of the applications was uncertain at the time of the hearing, including the status of the use of the creek as a source of water, and since the amounts and types of hazardous materials changes from day to day, I encourage the safety officers to continue to monitor and assess the situation at the hazardous waste transfer station and to take whatever action they deem appropriate to ensure that the occupational health and safety of employees is being protected by Buckham. Any action taken by a safety officer should address the two criteria mentioned previously. That is, compliance with the NFC necessary for the protection of employees at the hazardous waste transfer station, and in so far as is reasonably practicable. Additionally, nothing in this decision

precludes the safety officers from reassessing the current situation and issuing a direction in this context.

Decision:

For the reasons stated, I HEREBY RESCIND this direction that safety officers Malcolm and Garron issued to Buckham Transport Ltd. on June 12, 2000, pursuant to subsection 145.(1) of the Code.

Direction #2:

Contravention:

Canada Labour Code, Part II, Section 124.

“THE TRANSFER STATION IS NOT EQUIPPED WITH A SPRINKLER SYSTEM OR OTHER FIRE SUPPRESSION SYSTEM , DESIGNED IN CONFORMANCE WITH PART 6 OF THE NATIONAL FIRE CODE (1990) AND GOOD ENGINEERING PRACTICE WITH RESPECT TO SPECIFIC DANGEROUS GOODS .”

Safety Officer:

Safety officer Garron testified that sentence 3.3.6.9.(1) of the National Fire Code of Canada (NFC) (1990) requires that buildings used for the storage of dangerous goods must be equipped with a sprinkler or other fire suppression system designed in conformity with Part 6 of the NFC and good engineering practice unless exempted by sentence 3.3.6.9.(2). Sentence 3.3.6.9.(2) specifies that a sprinkler or other fire suppression system is not required if the sum of the individual storage areas in the building used for the storage of dangerous goods does not exceed 100 m², and the dangerous goods are separated in accordance with Table 3.36.B of the NFC. He said that they issued a direction to Buckham because neither of the exemptions applied in respect of the hazardous waste transfer station.

Evidence Proffered on Behalf of Employer:

Ms. Buckham testified that a water sprinkler system was inappropriate for the hazardous waste transfer station because the building is not closed from the elements or heated, and so the pipes may freeze in winter. In addition, water may be inappropriate for some of the chemicals handled and stored at the hazardous waste transfer station. As an alternative to a water sprinkler system, Buckham engineers prepared plans to provide for the installation of a dry fire suppression system and a totally enclosed fire chamber inside the structure. Buckham applied to the Municipality for a permit to construct the suppression system and fire chamber, but the permit was not granted by the Municipality.

Because the Municipality refused to grant a permit for the fire suppression system and fire chamber in the structure, Buckham applied to the Ontario Ministry of Environment for approval to store the dangerous goods outside of the structure and to segregate them on road worthy trailers on the site. If there was fire, it could be dealt with site specific and other products could be removed

from the site immediately. Ms. Buckham said that this would eliminate the need for a water sprinkler or fire suppression system in the hazardous waste transfer station. At the time of the hearing, the approval had not been granted.

Evidence Proffered on Behalf of Employee(s):

As previously noted, employees did not participate in the review of the direction.

Summations:

Ms. Buckham referred to Article 1.1.4.1 of the NFC. This essentially states that alternatives to requirements in the NFC may be permitted if the authority having jurisdiction is satisfied that the existing fire protection measures, or measures are being taken, to provide an acceptable degree of fire safety. She held that the fire protection measures at the hazardous waste transfer station are adequate to protect the occupational health and safety of the employees.

Reason For Decision:

Issue(s):

The issue before me is whether or not Buckham is required by section 124 of the Code to equip the hazardous waste transfer station with a water sprinkler system or fire suppression system.

Applicable Legislation:

The applicable Part II legislation in this case is as follows:

- Section 124 of the Code which reads:
“124. Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.”
- Subsection 145.(1) of the Code which reads:
“145.(1) Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or employee concerned, confirm the direction in writing if the direction was given orally.”
- Article 3.3.6.9. of the National Fire Code of Canada (1990) which reads:
*“3.3.6.9. Fire Suppression Systems
(1) Except as permitted in Sentences (2) and (3), buildings used for the storage of dangerous goods regulated by this Subsection, shall be equipped throughout with a sprinkler or other fire suppression system, designed in conformance with Part 6 and good engineering practice with respect to specific dangerous goods. (See Appendix A)*

- (2) *Buildings described in Sentence (1) need not be equipped throughout with a sprinkler or other fire suppression system provided that*
- (a) *the sum of individual storage areas in the building used for the storage of dangerous goods does not exceed 100 m², and*
 - (b) *the dangerous goods are separated in conformance with the requirements of Table 3.3.6.B. and are stored in fire compartments separated from the remainder of the building by a fire separation having a fire-resistance rating of not less than 2 h.”*

Rationale:

Under subsection 145.(1) of the Code a safety officer has the discretion to issue a direction where the officer is of the opinion that a provision of Part II is being contravened. This includes the discretion not to issue a direction. One can conclude from subsection 145.(1) that Parliament expects safety officers to exercise judgment as to whether or not a direction is needed to achieve the purpose of the Code which is to prevent accidents and injury to the health and safety of employees.

The NFC (1990) essentially makes this same point in the note entitled, “Guide to Enforcement.” The Guide notes under the heading of “Application”, that:

“The application of the Code [NFC] to the upgrading of existing facilities to provide an acceptable degree of life safety should be based on the judgment of the enforcement authority, who must deal with each case on its merits.” [My underline.]

The Guide further indicates under the heading, “Authority Having Jurisdiction,” that the phrase, “authority having jurisdiction,” means the specific officer or officers who will exercise such functions and powers. [My underline.]

Finally, section 124 of the Code imposes a general duty on employers to ensure that the health and safety of employees employed by the employer is protected. However, the Code specifies in subsection 148.(6) that the defense of due diligence is available to the employer (or employee as the case may be) on prosecution for a contravention to section 124 of the Code. While it might be argued that subsection 148.(6) does not refer to issuance of a direction, surely a safety officer must take into account the “due diligence” measures that an employer has undertaken to prevent the contravention before issuing a direction for contravening section 124 of the Code. Otherwise, an employer or employee might be subjected to needless cost and effort for defending themselves should a prosecution be initiated.

Taking all of this into account, I must decide whether I am satisfied by the evidence in the case that a water sprinkler or fire suppression system is necessary for protecting the occupational health and safety of employees. For this, I must consider the fire protection measures that Buckham currently has in place to protect the occupational health and safety of employees at the hazardous waste transfer station. Since Part II deals with occupational health and safety, I must also discern between fire fighting measures to minimize environmental impacts, property damage or loss, versus fire protection measures to protect the health and safety of employees employed by the employer.

A description of the hazardous waste transfer station and the measures taken by Buckham to protect the occupational health and safety of employees employed at the hazardous waste transfer station are indicated in the first part of this decision dealing with the first direction and will not be repeated here. Based on the facts provided, I am not convinced, on the balance of probability, that fire prevention measures at the hazardous waste transfer station are inadequate to protect employees at the hazardous waste transfer station until Buckham can obtain authority to install a fire suppression system or systems, store dangerous goods outside of the structure, or effect any other equally effective measures that would further protect the occupational health and safety of employees at the hazardous waste transfer station.

The safety officers, and Ms. Buckham, both indicated at the hearing that the quantities and types of hazardous goods handled and stored at Buckham can change daily. For this reason, I encourage the safety officers or other safety officers of the Department to monitor the hazardous waste transfer station and to take any measure they deem to be necessary to ensure that the occupational health and safety of employees at the hazardous waste transfer station is protected by Buckham. Additionally, nothing in this decision precludes a safety officer from reassessing the preventative fire measures and issuing a direction if the safety officer establishes that the fire prevention measures currently in place do not ensure that the occupational health and safety of employees employed at the hazardous waste transfer station is protected.

Decision:

I HEREBY RESCIND the direction that safety officers Garron and Malcolm issued to Buckham on June 12, 2000, pursuant to subsection 145.(1) of the Code because the hazardous waste transfer station is not equipped throughout with a water sprinkler or fire suppression system in compliance with the NFC.

Direction #3:

Contravention:

Canada Labour Code, Part II, Paragraph 125.1(b).

Canada Occupational Safety and Health Regulations, Section 10.8.

“Hazardous substances which are stored to a height greater than 1.75 meters are not on racks or shelves.”

Safety Officer:

Safety officer Garron testified that dangerous goods stored in the hazardous waste transfer station are being stacked to a height greater than 1.75 meters. He held that this is in contravention of subsection 10.8 of the COSHRs and sentence 3.3.6.5. of the NFC (1995). The safety officers disagreed with Mr. Neilson that the combination of pallets and containers stacked on each other constituted a shelf or rack because a skid is not self supporting on its own.

Evidence Proffered on Behalf of Employer:

Mr. Neilson referred to article 1.2.1.2. of the NFC specifies that “rack means any combination of vertical, horizontal or diagonal members that supports stored materials on solid open shelves, including both fixed and portable units.”

Evidence Proffered on Behalf of Employee(s):

As previously noted, employees did not participate in the review of the direction.

Summations:

Mr. Neilson argued that a pallet constitutes a rack and that nothing in the aforementioned definition requires that the shelves be self supporting. He added that Buckham has different materials in the hazardous waste transfer station on any given day, and it is necessary to move rows to store material according to Code requirements to receive the material they are receiving. To have fixed shelves or racks would make it difficult for Buckham to achieve required separations.

Reason For Decision:

Issue(s):

The issue I must decide is whether Buckham was in contravention of paragraph 125.1(b) of the Code and section 10.8 of the COSHRs for staking pallets of hazardous material to a height greater than 1.74 meters instead of storing them on shelves or racks.

Applicable Legislation:

The applicable Part II legislation in this case is as follows:

- Paragraph 125.1(b) of the Code which reads:
“125.1(b) Without restricting the generality of section 124 or limiting the duties of an employer under section 125 but subject to such exceptions as may be prescribed, every employer shall, in respect of every place controlled by the employer, (b) ensure that all hazardous substances in the work place are stored and handled in the manner prescribed;”
- Section 10.8 of the Canada Occupational Safety and Health Regulations which reads:
“10.8 Every hazardous substance stored, handled or used in a work place shall be stored, handled and used in a manner whereby the hazard related to that substance is reduced to a minimum.” [My underline.]
- Section 10.9 of the Canada Occupational Safety and Health Regulations which reads:
“10.9 Where a hazardous substance is stored, handled or used in a work place, any hazard resulting from that storage, handling or use shall be confined to as small an area as is practicable.” [My underline.]

Rationale:

From my reading of section 10.8 of the COSHRs, it is my view that this section correlates the storage, handling and use of the material to the hazardous property (or properties) of the hazardous substance. That is, the storing, handling or use of a hazardous substance in the workplace must contemplate and address the hazardous property or properties of the substance. On the other hand, section 10.9 of the COSHRs appears to apply in respect of hazards created by the storage, handling and use of the material. For section 10.9 to apply in this case, there must be evidence that stacking of the material in the manner reported by the safety officers is creating a hazard to employees, and that hazard is not confined to an area as small as is practicable. The evidence in the case does not confirm this.

Decision:

For the reasons stated in the above, I HEREBY RESCIND the direction that safety officers Malcolm and Garron issued to Buckham on June 12, 2000. Nothing in this decision precludes the safety officers from reassessing the current situation and taking whatever action they deem to be necessary.

Decision rendered July 19, 2001.

D. Malanka
Regional Safety Officer

IN THE MATTER OF THE CANADA LABOUR Code
PART II - OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO BUCKHAM TRANSPORT UNDER SUBSECTION 145(1)

On April 17, 2000, the undersigned safety officer, accompanied by safety officer Greg Garron and Fire Protection Engineer Mark Koli, conducted an inspection in the work place operated by Buckham Transport Ltd., being an employer subject to the Canada Labour Code, Part II, at Lot 1, Concession 3, South Monaghan, Highway 28, South, Bailieboro, Ontario.

The said safety officers are of the opinion that the following provision of the Canada Labour Code, Part II, is being contravened:

Canada Labour Code, Part II, Paragraph 125(a)

Canada Occupational Safety and Health Regulations Section 2.1

There is an inadequate supply for fire fighting.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than September 1, 2000.

Issued at Toronto, this 12th day of June, 2000

Karen Malcolm
Safety Officer
#3293

Greg Garron
Safety Officer
#1956

IN THE MATTER OF THE CANADA LABOUR Code
PART II - OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO BUCKHAM TRANSPORT UNDER SUBSECTION 145(1)

On April 17, 2000, the undersigned safety officer, accompanied by safety officer Greg Garron and Fire Protection Engineer Mark Koli, conducted an inspection in the work place operated by Buckham Transport Ltd., being an employer subject to the Canada Labour Code, Part II, at Lot 1, Concession 3, South Monaghan, Highway 28, South, Bailieboro, Ontario.

The said safety officers are of the opinion that the following provision of the Canada Labour Code, Part II is being contravened:

Canada Labour Code, Part II, Section 124

The transfer station is not equipped throughout with a sprinkler system or other fire suppression system, designed in conformance with Part 6 of the National Fire Code (1990) and good engineering practice with respect to the specific dangerous goods.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than September 1, 2000.

Issued at Toronto, this 12th day of June, 2000.

Karen Malcolm
Safety Officer
#3293

Greg Garron
Safety Officer
#1956

IN THE MATTER OF THE CANADA LABOUR Code
PART II - OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO BUCKHAM TRANSPORT UNDER SUBSECTION 145(1)

On April 17, 2000, the undersigned safety officer, accompanied by safety officer Greg Garron and Fire Protection Engineer Mark Koli, conducted an inspection in the work place operated by Buckham Transport Ltd., being an employer subject to the Canada Labour Code, Part II, at Lot 1, Concession 3, South Monaghan, Highway 28, South, Bailieboro, Ontario.

The said safety officers are of the opinion that the following provision of the Canada Labour Code, Part II is being contravened:

Canada Labour Code, Part II, Paragraph 125.1(b)

Canada Occupational Safety and Health Regulations Section 10.8

Hazardous substances which are stored to a height grater than 1.75 meters are not on racks or shelves.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than September 1, 2000.

Issued at Toronto, this 12th day of June, 2000.

Karen Malcolm
Safety Officer
#3293

Greg Garron
Safety Officer
#1956

