

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

Applicants: Cerescorp Inc.
Halifax, N.S. and
Halterm Limited
Halifax, N.S. and
Logistec Stevedoring Inc.
Halifax, N.S.
Represented by: Mr. Brian G. Johnston
Counsel

Respondent: Halifax Longshoremen's Association
Local 269
Represented by: Mr. Patrick Murphy
President

Mis-en-cause: Matthewhewhew Tingley and Ronald Thibault
Safety Officers
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

An oral hearing was held on June 27, 2000 in Halifax, Nova Scotia, to hear the arguments of Cerescorp Inc. and Halterm Limited. Written submissions were received in the case of Logistec Stevedoring Inc.. Mr. Johnston agreed to receive only one decision for the three cases given that the issue as well as the substance of the submissions are identical.

Background:

Safety officers Ron Thibault and Matthew Tingley jointly inspected the work places of Cerescorp Inc. (hereafter Ceres) and Halterm Limited (hereafter Halterm) on February 8 and 9, 2000 and on February 24, 2000 respectively. In each case, the officers noted numerous infractions to the Canada Labour Code, Part II (the Code) and the pursuant Canada Occupational Safety and Health Regulations (the Regulations). The safety officers issued to both employers a lengthy direction.

The direction to Ceres (APPENDIX A) identifies fifty (50) infractions¹ to the Code and the Regulations whereas the direction to Halterm (APPENDIX B) identifies thirty nine (39) infractions.

The reports of the safety officers indicate that, in both cases, a large number of the infractions noted during their inspections had previously been noted on Assurances of Voluntary Compliance² (AVC's) with a commitment from the companies to take remedial actions. In accordance with the Canada Labour Code (Part II) compliance policy, the safety officers issued the directions referred to above.

On May 10, 2000, safety officer Ron Thibault, accompanied by safety officer Mike Holland from Transport Canada, also inspected the work place of Logistec Stevedoring Inc.(hereafter Logistec). Safety officer Thibault issued a lengthy direction to Logistec (APPENDIX-C) which identifies twelve (12) infractions (see note 1 below) to the Code and the Regulations.

Mr. Johnston indicated that Ceres and Halterm were appealing only one specific item of each direction which applies strictly to trailers i.e.

Item #43 of the direction to Ceres, which reads:

43. Paragraph 125(i) of the Canada Labour Code, Part II, subsection 14.13(1) of the Canada Occupational Safety and Health Regulations.

Materials handling equipment - all vehicles including trailers are not equipped with front and rear warning lights that are visible from a distance of not less than 100 metres and such other lighting that ensures the safe operation of the equipment under all conditions of use. The following vehicles had missing or burnt-out lights: gmc van, dodge ram C-6, chev truck C-3, dodge ram C-2, gmc sierra truck, dodge ram LT, dodge ram C-7, yard tractors # 61, 63, 64 and several forklifts.

Item # 32 of the direction to Halterm, which reads:

32. Paragraph 125(i) of the Canada Labour Code, Part II, section 14.13 of the Canada Occupational Safety and Health Regulations.

Materials handling equipment - all vehicles including trailers are not equipped with front and rear warning lights that are visible from a distance of not less than 100 metres and such other lighting that ensures the safe operation of the equipment under all conditions of use. The following vehicles had missing or burnt-out lights: # 40, 34, trucks # 153, 156, 154, 162.

¹ I have chosen not to reproduce in its entirety the directions found at APPENDIX A, B and C for conciseness purposes. Rather, I have only reproduced the infraction under appeal.

² An Assurance of Voluntary Compliance (AVC) is a written promise by an employer or employee to correct a contravention within a specified period of time.

The requests for review of these directions concerned strictly the trailers and not the other vehicles mentioned in the directions. Subsequently to these requests, the request for review of item #5 of the direction issued to Logistec was added to the cases of Ceres and Halterm since the issue under review was identical.

Item #5 of the direction to Logistec reads:

5. Paragraph 125(i) of the Canada Labour Code, Part II, subsection 14.13 of the Canada Occupational Safety and Health Regulations

Materials handling equipment - most of the vehicles including trailers were not equipped with rear warning lights.

Mr. Johnston agreed that the Regional Safety Officer should render a single decision for these items since all three concern warning lights for motorized materials handling equipment.

Statement by safety officers:

The safety officers submitted at the hearing a short report indicating that a lighting survey had been conducted at the Container Terminals (Ceres and Halterm) at the Port of Halifax, on Tuesday night, May 30, 2000, long after the directions were issued. The report states that the level of lighting on the terminals were generally in compliance with section 6.5 of the Regulations. Also, the Industrial Hygienist who conducted the survey reported that:

Generally, the areas not shaded by stacked containers conform to the minimum 10 lux requirements, (assuming a low level of activity and the use of motorized materials handling equipment) however the areas in the shadow of the stacks were found to have only 1-2 lux. The latter spaces would not comply with the regulations.

The safety officers justified the directions with the following explanation:

While conducting our inspection of equipment working during the evening, we experienced difficulty seeing yard trailers from behind. The weather conditions were clear at the time. The visibility of these vehicles in their current state would be further reduced in poor weather conditions. The need for warning lights at the front and back of these vehicles as required by Subsection 14.13(1) of the COSH Regulations became evident. These lights may also assist someone approaching from the side to determine the length of the vehicle.

The volume of pedestrian and service vehicle traffic (e.g, taxis, ship agents & other service related industries) varies greatly throughout the week. The visibility of all vehicles operating on the terminal is essential.

Submission for the Employer:

Mr. Johnston first addressed the authority of the directions. He noted that the directions are purported to have been issued under the authority of subsection 14.13(1) of the Regulations. However, Mr. Johnston is of the view that, given the date of the directions, the directions ought to have instead referred to subsection 14.14(1) of the current Regulations which provides:

14.14 (1) Subject to subsection (2), where motorized materials handling equipment is used by an employee in a work place at night or at any time when the level of lighting within the work place is less than 10 lx, the materials handling equipment shall be fitted with

- (a) warning lights on the front and rear that are visible from a distance of not less than 100 m; and*
- (b) lighting that ensures the safe operation of the equipment.*

(2) No motorized materials handling equipment shall be used at night on a route that is used by other vehicles unless it is fitted with such lights as are required under the laws of the province in which the equipment is used.

Mr. Johnston described the industrial trailers used at the terminals. He explained that when in use, the trailers are attached to a tractor. The tractors are illuminated with headlights and the top of every tractor cab is equipped with a beacon light. Extremely heavy containers (up to 40 tons) are placed on the trailers and often hit the containers with considerable force. Once on the trailers, the containers are pulled by the tractor to the appropriate drop-off spot at the container terminal. The container is then lifted off the trailer, either by a yard gantry crane or front-end loader. The container may be loaded onto a ship or placed on the terminal for storage until they are loaded onto a container ship.

The submission of Mr. Johnston is divided essentially into two parts.

In the first part of his submissions, Mr. Johnston argued that trailers are not motorized. Therefore subsection 14.14(1) of the Regulations does not apply to trailers since trailers do not have an independent means of propulsion or actuation. Mr. Johnston is of the opinion that subsection 14.14(1) would however apply to the motorized materials handling equipment referred to in the direction such as vans, trucks, yard tractors and forklifts. In order for the provisions of subsection 14.14(1) to be brought into play, the materials handling equipment must be motorized. Subsection 14.14(1) specifically refers to motorized materials handling equipment. The shorthand references in that provision to “materials handling equipment” or to “equipment” are to be read as references to *motorized* materials handling equipment. The same is true for subsection 14.14(2) which uses the abbreviated descriptor “equipment” again in reference to *motorized* materials handling equipment.

In the second part of his submission, Mr. Johnston argued that it is patently obvious that subsection 14.14(1) is not to apply to trailers as it would be outside the realities in the longshoring industry. The trailers must be designed to withstand a great deal of force given the manner in

which the containers are loaded onto the rigid frame trailers with no suspension. It would be impracticable to install electrical lighting devices on them. The electrical devices could not withstand the constant abuse of heavy goods and materials being loaded onto the trailers. On a daily basis, the lights would be rendered inoperable. Nowhere else in the world are trailers of this kind equipped with electrical lighting devices. If lighting devices were installed on the trailers at these terminals, the operation of the lights and/or the lighting devices themselves would be falling off the trailers on a frequent basis, resulting in significant maintenance problems for Ceres and Halterm. Some trailers, such as maffis³, do not belong to the employer, or container terminal, who uses them and this would cause a compliance problem due to their transient nature. Also, whenever trailers are in movement, they are connected to a tractor which has its own independent lighting system which is adequate to ensure the visibility of the tractor-trailer unit as a whole.

Mr. Johnston also argued that even if subsection 14.14(1) could be interpreted as applying to trailers, I should avoid using this interpretation as it would result in absurdity or unreasonableness. I should prefer the interpretation that trailers are not motorized and therefore subsection 14.14(1) should only apply to the tractors which are motorized and not to trailers which are not. Mr Johnston relied on the decision rendered by Finnemore J. in *Holmes v. Bradfield*, [1949] K.B. where he stated:

It is, however, common practice that if there are two reasonable interpretations, so far as the grammar is concerned, of the words in an Act, the courts adopt that which is just, reasonable and sensible rather than one which is, or appears to them to be, none of those things.

In this way, said Mr. Johnston, the courts recognize that the intent of the legislation is neither to cause nor perpetrate unreasonableness, let alone absurdity. He added that it would be out of the realities of this industry to apply subsection 14.14(1) to the non-motorized trailers of the three companies.

Finally, Mr. Johnston argued that, if subsection 14.14(1) is found to apply, which he submits does not, the three companies in this case have nonetheless complied with the direction by having installed reflective tape on the trailers in question since this provision does not require that the lighting be electric. Therefore, this type of “lighting” would meet the requirement of subsection 14.14(1).

Submission for the Employees:

The Halifax Longshoremen’s Association, Local 269 took no official position in this case. Nonetheless, Mr. David Moss and Mr. John Campbell attended the hearing on behalf of Local 269 and offered some comments during the hearing. Mr. Moss stated that most of the terminal is well lit at night, almost like day time. However, Section A, which is an area of the terminal where containers are stored, is a very dark area particularly when there is no ship in the area or no yard gantry cranes providing some light. There is no lighting in that section and lighting would be

³ Maffis are a type of trailer used within the lonshoring industry to transport heavy bulk cargo. A maffi is a low flat bed designed to carry cargo on and off ships which is supported by 12 inch rubber wheels.

needed on the vehicles i.e. the tractor-trailer units. Mr. Moss opined that fluorescent tape would probably be sufficient from his perspective. He added that if lighting was provided in that area from the lighting posts, that would be sufficient because “they light up the area like in day time.” As for the maffis used on the terminal, Mr. Moss is adamant that maffis are never loaded at night. The regular schedules of the ships that use maffis are in the day time. Also, maffis never go into the lanes of stored containers.

Decision:

The issue to be decided in this case is whether the trailers identified in the directions to Ceres, Halterm and Logistec must be fitted with warning lights and lighting for their safe operation, as provided by subsection 14.14(1) of the current Regulations.

Before addressing myself to this provision, it should be noted that the safety officers cited the employers in these cases for a contravention to subsection 14.13(1) of the Regulations *SOR/88-632 7 December 1988* after considering the transitional provision at subsection 14.51(1) of the current Regulations *SOR 96-525 5 December 1996*. The safety officers felt that since the equipment used was in use prior the coming into force of the Regulations *SOR 96-525 5 December 1996*, it should probably fall on under the previous Regulations. However, Mr. Thibault acknowledged that this could be a mistake and that the current Regulations could apply. These provisions read as follow:

Subsection 14.13(1) of the Regulations *SOR/88-632 7 December 1988*

- 14.13 (1) Subject to subsection (2), where mobile equipment is used or operated by an employee in a work place at night or at any time when the level of lighting within the work place is less than one dalx, the mobile equipment shall be*
- (a) fitted on the front and rear thereof with warning lights that are visible from a distance of not less than 100 m; and*
 - (b) provided with lighting that ensures the safe operation of the equipment under all conditions of its use.*
- (2) No mobile equipment shall be operated at night on a route that is used by other vehicles unless it is equipped with such lighting facilities for the equipment as are required under the laws of the province in which the equipment is operated.*

Transitional provision: Subsection 14.51(1) of the current Regulations *SOR 96-525 5 December 1996*

- 14.51 (1) Subject to subsection (3), motorized materials handling equipment that is in use at the time this amendment comes into force, and that meets the requirements of this Part as it read immediately before the coming into force of this amendment, is exempt from having to comply with the amendment as long as the motorized materials handling equipment continues to meet those requirements.*

For the transitional provision to take effect in this case, the equipment referred to in the directions i.e. the trailers at Ceres, Halterm or Logistec, must have been in compliance with the lighting requirements of Part XIV (Materials Handling) before the Part was amended. The trailers at Ceres, Halterm or Logistec were never fitted with warning lights and other lighting for their safe operation. Therefore, given the position taken by the safety officers in these cases i.e. that trailers must be fitted with the prescribed lighting, the safety officers should have concluded that the trailers were not in compliance with subsection 14.13(1) of the (old) Regulations *SOR/88-632 7 December 1988* and that the transitional provision did not apply to the trailers. Subsection 14.51(1) above, which provides for an exemption to compliance with subsection 14.14(1) of the current Regulations *SOR 96-525 5 December 1996* if the conditions specified in the transitional provision are met, would have no effect in the instant cases. It follows that the safety officers should have cited the employers in the instant cases for a contravention of subsection 14.14(1) of the current Regulations *SOR 96-525 5 December 1996* if they felt that this provision applied and not for a contravention of subsection 14.13(1) of the previous Regulations *SOR/88-632 7 December 1988* since the trailers did not meet the conditions specified in the transitional provision. Consequently, the direction will be amended accordingly if I rule that subsection 14.14(1) of the current Regulations *SOR 96-525 5 December 1996* applies.

Mr. Johnston's argument is that subsection 14.14(1) above does not apply in the instant case because trailers are not *motorized* materials handling equipment. As noted by Mr. Johnston, the definition of "materials handling equipment" as set out in s.14.1 of the current Regulations states:

"materials handling equipment" means equipment, including its supporting structures, auxiliary equipment and rigging devices, used to transport, lift, move or position persons, materials, goods or things and includes mobile equipment used to lift, hoist or position persons, but does not include an elevating device that is permanently installed in a building;

To resolve this, I must decide whether the tractor connected to a trailer constitutes a motorized materials handling equipment or whether the term motorized materials handling equipment applies only to the tractor, thereby excluding the application of subsection 14.14(1) for the tractor. In this case, the trailers at Ceres, Halterm and Logistec cannot move on their own since they are extremely heavy and are not equipped with an independent means of propulsion or actuation. Without a tractor, they are an inert piece of equipment and, as such, are incapable of transporting or moving materials, goods or things on their own. The trailers, as used in this industry, can only move once connected to and pulled by a tractor. The tractors used by the companies referred to above are the motorized component of the unit and are specifically designed and used to attach to and pull trailers. Similarly, the trailers used by the above companies are designed to and used to attach to and be pulled by a tractor. In my opinion, once connected to a tractor, any tractor for that matter, the trailer forms an integral part of the tractor and trailer unit. The unit constitutes a motorized materials handling equipment unit. Considering the above, it is my opinion that the tractor-trailer units are, for all practicable and legal purposes, *motorized* materials handling equipment. The tractor-trailer units are therefore subject to compliance with subsection 14.14(1) of the current Regulations *SOR 96-525 5 December 1996* to the extent that they meet the conditions specified therein.

Subsection 14.14(1) of the Regulations requires that the motorized materials handling equipment i.e. the tractor-trailer units, be fitted with warning lights on the front and rear of the equipment that are visible from a distance of not less than 100 m and with lighting that ensures the safe operation of the equipment when either of the following two conditions are met i.e that the motorized materials handling equipment is used by an employee in a work place

- *at night or*
- *at any time when the level of lighting within the work place is less than 10 lx*

The safety officers testified to having observed the equipment in operation during the evening. This was done in the case of Ceres and Halterm during the month of February and in the case of Logistec during the month of May. The word “night” is defined in Black’s Law Dictionary, Seventh Edition, as “*The time from sunset to sunrise.*” Clearly, the equipment referred to in this case was being used at night, which appears to indicate that warning lights and lighting for the safe operation of the equipment would be required *ipso facto*.

For greater certainty and notwithstanding that auxiliary lighting was provided on the terminals, the safety officers had an industrial hygienist verify that the level of lighting throughout the terminals was in compliance with the 10 lx requirement under subsection 14.14(1) of the Regulations. The results of the industrial hygienist’s survey indicate that “*the areas not shaded by stacked containers conform to the minimum 10 lux requirements, ... however the areas in the shadow of the stacks were found to have only 1-2 lux.*” Thus, the safety officers confirmed that some areas on the terminal do not meet the lighting requirement of subsection 14.14(1) above. Mr. Moss also testified that some sections of the terminal, for example the container storage sections, are very dark and that no lighting is provided in those areas, a situation that is confirmed by the hygienist’s survey. Furthermore, the safety officer testified that although auxiliary lighting is provided, it was very difficult to see the equipment in operation. In my opinion, this situation only shows that lighting is required on the equipment at night because it is almost impossible to provide prescribed lighting in all areas of the terminals on the port. The situation would be even worse in poor weather conditions such as in fog, heavy rain or during a snow storm.

My interpretation of subsection 14.14(1) is that if an employee uses the equipment at night i.e. between sunset and sunrise, the requirement for warning lights and lighting for the safe operation of the equipment apply automatically notwithstanding that auxiliary lighting may be provided by the employer on the terminal to comply with other provisions of the Regulations such as those of Part VI (Levels of Lighting). If the equipment is used at other times of the day in areas where the level of lighting falls below 10 lx, such as in a large warehouse or other area of the employees’ work place where lighting may be low, subsection 14.14(1) applies and warning lights are required. To argue otherwise would mean that there was no need for the legislator to specify that subsection 14.14(1) apply “*at night*” since it could have only required the prescribed lighting by specifying that it applied “*at any time when the level of lighting within the work place is less than 10 lx*”. However, the wording of subsection 14.14(1) is clear. At night, the prescribed lighting is required.

Mr. Johnston has submitted that I should avoid using the interpretation that trailers are motorized materials handling equipment because it leads to an absurd or unreasonable conclusion. His argument is based on the fact that it would be very difficult to comply with subsection 14.14(1) given the constant abuse that the equipment has to endure. He proposes that I consider only the tractor as a motorized materials handling equipment. I do not agree with his proposition. In my opinion, the interpretation that a tractor-trailer is a unit which constitutes motorized materials handling equipment subject to the lighting requirements of subsection 14.14(1) above is a reasonable and logical approach to health and safety. Once the tractor-trailer unit is loaded with a container, it is impossible to see the lights on the tractor from the rear, particularly in some dark areas on the terminal, let alone during poor weather conditions, thereby creating a hazardous situation. The safety officers testified that "While conducting our inspection of equipment working during the evening, we experienced difficulty seeing yard trailers from behind." They also reported that "The volume of pedestrian and service vehicle traffic (e.g, taxis, ship agents & other service related industries) varies greatly throughout the week. The visibility of all vehicles operating on the terminal is essential." I fail to see the absurdity or unreasonableness in requiring the use of warning lights and lighting for the safe operation of the equipment on these units which are intended to protect the safety and health of employees and other persons working in the vicinity of the equipment.

Mr. Johnston has argued that, should I rule that subsection 14.14(1) applies, the companies cited in these cases are nonetheless in compliance with this provision since they are using reflective tape on the trailers to supply the prescribed lighting. I disagree with this proposition as well. A warning light, or its French equivalent "*feux avertisseurs*", is a source of light, although not necessarily electric, which in this case can be seen at a distance of 100 meters. This source of light, contrary to reflective tape, does not require the presence of another source of light, such as natural or artificial light, to produce the prescribed lighting. It follows that reflective tape is not an acceptable source of lighting that would meet the requirements of subsection 14.14(1) because it requires another source of light to reflect on it in order for it to reflect light. Unless the Regulations are amended to provide for this type of lighting, the companies noted above are in contravention with subsection 14.14(1) of the current Regulations.

I should also add that the fact that the employers are using trailers which are not their property, such as maffis, does not relieve them from the obligation of ensuring that the materials handling equipment is fitted with warning lights. If the employers require their employees to use this equipment at night or when the level of lighting is below 10 lx, the equipment must meet the requirements of the legislation. According to Mr. Moss from Local 269, maffis are never used at night or in areas where the level of lighting is below 10 lx. If that is the case, then maffis need not comply with subsection 14.14(1) above. The same is true for the tractor-trailer units. If the employers decide not to use them at night, or when the level of lighting is below 10 lx, then there is no requirement to comply with subsection 14.14(1) above.

For all the above reasons, I HEREBY VARY the directions issued under subsection 145(1) of the Code by safety officers Ron Thibault and Matthew Tingley to Cerescorp Inc. on February 15, 2000, to Halterm Limited on March 1, 2000 and to Logistec Stevedoring Inc. on May 15, 2000 by replacing the reference to *subsection 14.13(1) of the Canada Occupational Safety and Health Regulations* with a reference to subsection 14.14(1) of the current Canada Occupational Safety and Health Regulations.

Decision rendered on September 6, 2000

Serge Cadieux
Regional Safety Officer

IN THE MATTHEWHEWER OF THE CANADA LABOUR CODE -
PART II OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On February 8th, 2000, the undersigned safety officers conducted an inspection in the work place operated by CERESCORP. INC., being an employer subject to the Canada Labour Code, Part II, at Fairview Cove, HALIFAX, NOVA SCOTIA, the said work place being sometimes known as Fairview Cove Container Terminal.

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

43. Paragraph 125(i) of the Canada Labour Code, Part II, subsection 14.13(1) of the Canada Occupational Safety and Health Regulations.

Materials handling equipment - all vehicles including trailers are not equipped with front and rear warning lights that are visible from a distance of not less than 100 metres and such other lighting that ensures the safe operation of the equipment under all conditions of use. The following vehicles had missing or burnt-out lights: gmc van, dodge ram C-6, chev truck C-3, dodge ram C-2, gmc sierra truck, dodge ram LT, dodge ram C-7, yard tractors # 61, 63, 64 and several forklifts.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than March 15th, 2000.

Issued at Halifax, this 15th day of February 2000.

MATTHEW TINGLEY
Safety Officer
2059

RONALD THIBAUT
Safety Officer
2061

To: CERESCORP. INC.
P.O. BOX 8958
HALIFAX
NOVA SCOTIA
B3K 5M6

IN THE MATTHEWHEWER OF THE CANADA LABOUR CODE -
PART II OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On February 24th, 2000, the undersigned safety officers conducted an inspection in the work place operated by HALTERM LIMITED, being an employer subject to the Canada Labour Code, Part II, at Halterm Container Terminal, HALIFAX, NOVA SCOTIA, the said work place being sometimes known as Pier "C".

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

32. Paragraph 125(i) of the Canada Labour Code, Part II, section 14.13 of the Canada Occupational Safety and Health Regulations.

Materials handling equipment - all vehicles including trailers are not equipped with front and rear warning lights that are visible from a distance of not less than 100 metres and such other lighting that ensures the safe operation of the equipment under all conditions of use. The following vehicles had missing or burnt-out lights: # 40, 34, trucks # 153, 156, 154, 162.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than March 30th, 2000.

Issued at Halifax, this 1st day of March 2000.

R.P. Thibault
Safety Officer 2061

M.D. Tingley
Safety Officer 2059

To: HALTERM LIMITD
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IN THE MATTHEWHEWER OF THE CANADA LABOUR CODE
PART II - OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On May 10th, 2000, the undersigned safety officer conducted an inspection in the work place operated by Logistec Stevedoring INC., being an employer subject to the Canada Labour Code, Part II, at 1113 MARGINAL, HALIFAX, NOVA SCOTIA.

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

5. Paragraph 125(i) of the Canada Labour Code, Part II subsection 14.13 of the Canada Occupational Safety and Health Regulations.

Materials handling equipment - most of the vehicles including trailers were not equipped with rear warning lights.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than June 12th, 2000.

Issued at Halifax, this 15th day of May 2000.

R.P. THIBAUT
Safety Officer 2061

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Cerescorp Inc., Halterm Limited and Logistec Stevedoring Inc.
Halifax, Nova Scotia

Respondent: Halifax Longshoremen's Association, Local 269

KEYWORDS

Tractor, trailer, warning lights, motorized materials handling equipment, maffis, interpretation resulting in absurdity or unreasonableness, reflective tape, night, exemption

PROVISIONS

Code: 145(1), 125(i),
COSH Regs.: 6.5, 14.1, 14.13(1), 14.14(1), 14.14(2), 14.51(1)

SUMMARY

A safety officer gave a direction to three longshoring companies for not having their trailers fitted with warning lights in accordance with subsection 14.14(1) of the Regulations. The companies appealed the directions on the grounds that trailers, once attached to tractors, are not *motorized* materials handling equipment as stipulated by ss.14.14(1). Only the tractors should be considered motorized therefore they would not have to fit the trailers with warning lights. The companies also argued that if the tractor-trailer units are considered motorized materials handling equipment, they are in compliance with ss. 14.14(1) because the equipment is fitted with reflective tape on all sides.

Upon review, the Regional Safety Officer (RSO) ruled that, once attached to a tractor, the trailer forms an integral part of the tractor-trailer unit and must be considered *motorized* materials handling equipment. The RSO also found that warning lights are required on the equipment when it is used at night regardless that auxiliary lighting may be provided on the terminal to comply with other provisions of the Regulations such as Part VI (Levels of Lighting). The RSO also ruled that reflective tapes do not meet the requirement for warning lights that must be seen at 100m since a warning light is a source of lighting whereas reflective tape only reflects the light present. The RSO agreed with the direction but VARIED the direction to reference subsection 14.14(1) of the current Regulations rather than subsection 14.13(1) of the Regulations that were in force prior to the amendments to Part XIV (Materials Handling).