

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Bell Canada
483 Bay Street, Floor 4 South Tower
Toronto, Ontario
represented by: André L. Paiement, Senior Counsel

Respondent: Joel Carr
National Representative
Communications, Energy and Paperworkers Union of
Canada

Mis en cause: Rod J. Noel
Safety Officer #1768
Human Resources Development Canada

Before: Bertrand Southière
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Toronto on September 14, 1995 and on November 22, 1995. In attendance were:

- Joel Carr C.E.P.
- Paul Lochner C.E.P.
- Kevin Marlow
- Larry Watson
- Gary Lloyd C.E.P.
- Al Thompson Mgr Bell
- Dave James C.E.P.
- Paul Danton
- Rod Noel
- Mary Gawrylash Engineering, Bell Canada
- W. G. Valcour Bell
- Ward Saunders Bell
- T. J. Maiden Bell
- J. D. Allan Bell

- M. Parent Bell
- A. Paiement Bell
- P. Wright HRDC
- Jim Locke C.E.P. Local 26
- Steve Cole C.E.P. Local 42

Background

The particular event leading to this direction is described in the LAO ASSIGNMENT NARRATIVE FORM prepared by safety officer Rod Noel and dated January 30, 1995.

"On July 28, 1994 at approx. 5:15 PM Bell Canada technician Kevin Marlow entered a confined space, an in ground manhole, at the Ford Motor Plant, Royal Windsor Drive, Oakville, Ontario for the purpose of performing work. At approximately 5:30 PM Kevin Marlow was taken by Co-Worker Larry Watson to Oakville General Hospital where he was treated for nausea and respiratory problems related to possible exposure to toxic fumers, suspected to be xylene. He was released after several hours observation. He was advised his blood had shown elevated acidic levels. This would be consistent with certain chemical exposures, including Xylene." (page 3 of Rod Noel's report)

During the previous week, Bell Canada had been trying to solve a problem with a communication cable, which problem appeared to be located in the manhole in question (manhole MHA1 which, incidentally, belongs to Ford). Because the manhole was contaminated, the cable repair manager, Terry Maiden, did not want anyone to go into the manhole and he had decided to repair the damage by laying a length of cable around the manhole and splicing into the cable on each side of the manhole. On Thursday, July 28, after having explained the work to the two technicians, Kevin Marlow and Larry Watson, he left at about 1500 hours for the week end. However, the manager was not aware that, in the conduit where the junction had to be made, there was a power line. When the employees were informed of the presence of the power line, they attempted to reach the manager but could not do so. Eventually, they got in touch with the duty manager, Al Thompson, and with Dave James who was the duty manager for the night.

According to the two managers, Al Thompson and Dave James, there ensued a discussion on how to tackle the situation. It was mentioned during the conversation that Terry Maiden did not want anyone to go into this particular manhole. Al Thompson then suggested that the manhole be treated as a designated manhole and that an employee should go down with a rope tied around his waist with the other standing guard outside. However, after further discussion, it was decided that there should be no entry into the manhole at this time; the situation would be reviewed early the next morning with a manager on site to assess the situation. Shortly after the call, Kevin Marlow went down in the manhole using a rope tied to his waist while Larry Watson and another person stood by outside; after being down 15 minutes or so, Kevin Marlow informed Larry Watson that he did not feel well. Larry Watson then told him to get out immediately and shortly afterwards, took him to the hospital.

I did not hear from the employees (see observation below). However, in the statement prepared by Larry Watson on October 31, 1994, he says that Al Thompson told them: "Treat the manhole as a designated manhole, with one man staying at the top and the other man going down with a rope on him. It's only going to take 15 or 20 minutes to knock off the lead sleeve and dry out the splice". Nothing is said about waiting for a manager to reevaluate the situation early the next day before proceeding further. Also, at tab 3 of Mr. Noel's report, there is a "Report - occupational disease or injury", form BC 976, signed by Kevin Marlow, undated, where no mention is made of an instruction not to go down in the manhole. In conclusion, although it is not confirmed that they were told not to go down the manhole, it is not denied either.

It is readily evident that Terry Maiden had no intention either of going down the manhole or of sending somebody else down: the repair solution he selected vouches for that. Also, Al Thompson and Dave James say that, during their conversation with Kevin Marlow and Larry Watson, the two employees were told not to go in the manhole, but to wait until the next morning when a manager would go and reassess the situation. But, Al Thompson admits having at first suggested to go down with a rope tied to one employee while the other kept watch above. There was certainly possibility for confusion in the employees' minds regarding the task at hand. Considering that:

- the manhole had been pumped out;
- it had been power washed and pumped out twice;
- the Passport monitor was not giving an alarm, although there was a strong odour;
- the manhole had been ventilated;
- it was to be a short job;
- as far as they were aware, there had been no atmospheric problems in Bell manholes;
- the job had been dragging long enough and it was time to put a close to it.

I can understand that, in these circumstances, they decided to go ahead and complete the job immediately.

The next day, July 29, 1994, Dave James went to the worksite with two technicians, Larry Watson and Gary Skelton. During the day, he went down very briefly into the manhole in question without following any safety precautions. Toward the middle of the afternoon that same day, Wm. Valcour, the General Manager, Access Network Maintenance, visited the worksite and stopped all work.

The safety officer became involved in the investigation of this accident when Paul Lochner, a member of the Bell Canada health and safety committee sent a complaint to Human Resources Development Canada. The complaint, which was received on August 31, 1994, identified three

concerns: the Passport alarm used by Bell to analyze the atmosphere; the failure, by Bell, to involve the safety and health committee in the investigation of the accident; the inaccuracies contained in the accident report. The safety officer was assigned to investigate the complaint on September 23, 1994, and started his investigation on October 11, 1994.

On December 1, 1994, a direction was issued to Bell Ontario as a result of the safety officer's investigation into the afore-mentioned incident. On December 22, 1994, a second direction was issued to Bell Ontario, again as a consequence of this same event. This second direction (appendix 1) is the subject of this review.

Employer's submission

The employer's argument is based essentially on the fact that the two employees were told not to go into the manhole. Three witnesses, Terry Maiden, Al Thompson and Dave James have stated that the employees were told a number of times not to enter the manhole. It is noted however that Al Thompson did suggest in the course of his conversation with the two employees that one of them should go down with a rope tied around him for safety purposes as it was going to be a short job. As explained below under "Observations", I did not hear the employees' s version of the event.

Also, the work done in the pit, next to the manhole, does not appear to have been an issue at the time, nor was it mentioned at the investigation on August 10, 1994. Apparently, the employer was not informed at the time of possible contamination in the excavation; Larry Watson's report of occupational disease or injury is dated October 6, 1994.

Regarding the issue of whether the employer was aware of possible contamination at this site, the safety officer has attached to his report, at tab 15, three documents to demonstrate that the employer was aware of contamination of manhole MHA1. The first document is a "Report of service hazard", form BC 212A, dated 89/10/3. This document says, in Description: "Manhole system owned by Ford - Is full hazard chemicals that pose a health hazard to employees who work in manholes." However, in his testimony, Mr. Valcour has stated that this report does not deal with manhole MHA1. He discussed this report with engineering and was informed that it applied to other manholes.

Employees' submission

The respondent pointed out that in fact, Al Thompson did suggest during the conversation with Kevin Marlow and Larry Watson that an employee should go down with a rope tied around him while the other employee would monitor the situation from above. Also, on the day following the incident, Dave James, the manager, went down into this same manhole, for a very short time it must be said, but without following any of the usual precautions.

Observations

The alleged infraction for which the direction was issued occurred on July 28, 1994. A direction was then issued on December 1, 1994, which direction was not appealed; a second direction was also issued on December 22, 1994. This second direction is the one being reviewed here. The hearing had originally been set for June 1995, however, due to the parties' conflicting schedules, it had to be postponed until September 14, 1995 and was concluded on November 22, 1995. By that time, a prosecution had been instigated on this same issue against the employer. This skewed the hearing and complicated an already difficult situation. As a result of this prosecution, an agreement was reached between the employer's and the employees' representatives. A consequence of this agreement was that, at the hearing, the regional safety officer heard only the witnesses summoned by the employer; neither the employees involved in the original incident nor the safety and health committee representative were heard.

Another observation has to do with the format of the direction. In his direction, the safety officer has gone to great lengths to detail all the provisions of the Code and Regulations which, in his opinion, have been contravened. However, a number of the provisions identified are conditional on compliance with a previous provision; if the governing provision was contravened, then it is evident that the secondary provision was not met and issuing a direction pertaining to the secondary provision is redundant. For instance, section 3 of the direction states that the employer failed to assess the hazards of a confined space in contravention to subsection 11.2(1)(a). Section 5 of the direction then goes on to say that the employer failed to record, in a signed and dated report, the findings of a hazard assessment for the confined space. If, as stated in sections 3 of the direction, the employer did not assess the hazards of the confined space, it is evident that there was no signed and dated report of the assessment and section 5 of the direction is therefore redundant.

Decision

After reviewing the documentation in my possession along with the testimony from the hearing, I note the following salient points:

- Ford, the owner of the grounds and of the manhole, was aware of the soil contamination and should have informed Bell Canada of the situation;
- the pit excavated to reach the cable, next to the manhole, could have been a confined space, depending on factors such as ease of egress, depth of excavation and so on; whether it was a confined space and should have been treated as such or not is a matter of judgment which I cannot address with the information at my disposal;
- Terry Maiden correctly recognized the manhole as contaminated and instructed his technicians not to enter it; he failed however to inform his employer of this finding as he should have;
- Al Thompson did suggest at some point in his conversation with the two technicians that one should go down with a rope tied around him; however, the conversation was concluded by advising the technicians to wait until the following day when a manager would be on site to reassess the situation;

- Kevin Marlow went down in spite of directions from Terry Maiden and Al Thompson, although Al Thompson appears to have given confusing advice; it must also be remembered that the two technicians had been trained in confined space entry procedures little more than a month before;
- The entry by Dave James into this same manhole the following day, without any of the usual precautions, is inexcusable.

I will now examine the detailed explanations given by the safety officer in his report and discuss the direction section by section.

1. Paragraph 124 of the Canada Labour Code - Part II

The safety officer has included in his report, under tab 15, information which, in his opinion, shows that the employer was aware that manhole MHA1 was contaminated. The first document, form BC 212A, talks about "Manhole system at Ford". Mr. Valcour has stated that this report was in fact dealing with other manholes, not MHA1. With no evidence to the contrary, I must accept his statement. The second document under this tab, dated 1990/04/19, is vague and only mentions that some of the manholes have a hazardous content: this is insufficient evidence. Finally, the last document under this tab is a poor copy of a site plan showing the location of manholes on the Ford property. On this drawing, three manholes are identified as contaminated: as far as I can make out, one is MH2, another one is MH3 and the last one is within the truck plant, but I cannot make out its identification. MHA1 is not in the truck plant; it is near MH2 and it is not identified on this plan as contaminated. Therefore, I am not convinced that the employer knew that this particular manhole was contaminated. However, the manager, Terry Maiden, was aware of the contamination and he did instruct the technicians not to go in, although he failed to report it to the employer. Afterwards, the duty manager, Al Thompson, did suggest during his conversation with the two technicians, that one could go down in the manhole with a rope tied around him. However, it appears that the final instruction to the two technicians was to wait until the following morning when a manager would visit the site and reassess the situation. If one also considers that the two technicians had received, little more than a month before, training on manhole entry and exit and manhole testing and ventilation, I think the employer took reasonable precautions to ensure the safety and health at work of his employees. As far as the entry into the manhole by Dave James on the next day, he had not been asked to go down into manhole: this was his decision. Given his knowledge of the employer's procedures (as a manager), his awareness of the incident which had occurred to Kevin Marlow a few hours earlier in this same manhole, I think this was a poor decision, but I do not think the employer should be blamed for Mr. James' decision. Dave James did not consult anyone else before entering the manhole and, consequently, he is the only one responsible. When Wm. Valcour visited the site a short while later, he shut it down. Consequently, I do not think the employer was in contravention of section 124 of the Code when Dave James went down in manhole MHA1. Finally, the safety officer has noted that "the Bell Canada confined space work procedures and assessment program does not appear to recognize excavations (pits) as confined spaces" as one of the reasons for issuing this particular section of his direction. In his submission, the employer has noted that the direction was issued as a result of the incident which occurred in the manhole and that the excavation was never discussed before. As a result, no representations were made regarding this question.

In conclusion, Terry Maiden failed to report the contaminated manhole to the employer; Al Thompson, by suggesting to use a rope tied around the employee as a safety precaution before going down in the manhole, induced a degree of confusion in the employees' minds. To this extent, I believe that the actions of the two managers, acting on behalf of the employer, contravened section 124 of the Canada Labour Code. Dave James was extremely imprudent when he went down without taking any safety measures on Friday, July 29, 1994, but I do not believe he was acting on behalf of the employer at this time.

2. Paragraph 125(q) of the Canada Labour Code - Part II

Paragraph 125(q) reads: "...every employer shall, in respect of every workplace controlled by the employer,

(q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure the safety and health at work of that employee;" I have underlined "in the prescribed manner", because this is an essential element of the paragraph referenced by the safety officer. The regulations contain requirements regarding information, instruction and training, but no requirements are prescribed concerning supervision. It is acknowledged that Terry Maiden failed to recognize that the excavation was hazardous and should be treated as a confined space; also, he did not register the manhole as a designated manhole; for his part, Al Thompson did suggest early in the discussion with the two employees to go down in the manhole using a rope tied around the chest. Failing to recognize that the excavation should be treated as a confined space has nothing to do with supervision: it is a question of experience. If he failed to recognize this fact, the same can be also said for the two technicians. He did not register the manhole as designated because he did not want anyone going down in it. This did not meet the employer's procedures, but it was satisfactory from a regulatory viewpoint.

The suggestion made by Al Thompson has already been covered in section 1 of the direction and there is no need to harp on this subject again. Finally, Dave James' actions on the following day were ill-advised, but they were his decision, not the employer's.

3. Paragraphs 125(p) and 125.1(a) of the Canada Labour Code - Part II; subsection 11.2(1)(a) of the Canada Occupational Safety and Health Regulations.

The employer has over 50,000 manholes in Quebec and Ontario. As allowed by Part 11 of the Canada Occupational Safety and Health Regulations, Confined Spaces, the employer has classified these manholes into classes and an assessment was then carried out for each of these classes. This assessment is detailed in the "Report on the assessment of hazards in Bell Canada's confined spaces" dated July 1994, located under tab 17 in the safety officer's report. The assessment involved, among other things, a detailed evaluation of 79 manholes in Ontario and Quebec; manhole MHA1 located on Ford's property in Oakville was not one of the selected manholes. An assessment of some designated confined spaces considered as a class was done as is permitted by the regulations. It is not required that each confined space be individually assessed. Incidentally, the incident to Kevin Marlow is the only intoxication in the records of the employer.

4. Paragraphs 125 (p) and 125.1(a) of the Canada Labour Code - Part II; subsection 11.2(1)(b) of the Canada Occupational Safety and Health Regulations.

I have read the "Report on the assessment of hazards in Bell Canada's confined spaces" dated July 1994, located under tab 17 in the safety officer's report. The purpose of the report was, among other things, to validate the existing procedures and to formulate additional recommendations as needed. The existing procedures require that, before entry in a confined space, a verification be made for oxygen concentration, carbon monoxide concentration, hydrogen sulfide concentration and explosive vapours concentration. The report recommends that, in the case of contaminated manholes, the manholes not be entered if they show visible signs of pollutants or if suspicious odours are released from them (recommendation #3). I believe the requirements outlined in subsection 11.2(1)(b) of the regulations are satisfied along with paragraphs 125(p) and 125.1(a) of the Canada Labour Code.

5. Paragraph 125(c) and (p) of the Canada Labour Code - Part II and subsection 11.2(2) of the Canada Occupational Safety and Health Regulations

If, as stated in section 3 of the direction, there was no assessment of the confined space, then it is irrelevant to issue a direction to the effect that there was no written report of the assessment and I would rescind this section of the direction based on this sole argument. It is agreed that this particular manhole was not assessed, however, as allowed by the regulations, an assessment of this class of confined spaces was made, a written report of this assessment was prepared and the regulatory requirements are therefore satisfied.

6. Paragraph 125(j) of the Canada Labour Code - Part II; subsection 11.2(3) of the Canada Occupational Safety and Health Regulations.

I would again use the same argument as in section 5, that is, if no assessment was made, then there was no written report and again it is irrelevant to direct the employer to send a copy of an inexistent report pertaining to an assessment which was not carried out. However, in Michele Parent's letter to Serge Cadieux dated March 16, 1995, she states that the assessment report (tab 17 of the safety officer's report) was transmitted to the union and to the Corporate Safety and Health Committee in August 1994. In fact, the report was given shortly after the incident, but before the direction was issued. There is therefore no object to this section of the direction.

7. Paragraphs 125(p) and 125.1(a) of the Canada Labour Code - Part II; subsection 11.4(1)(a) of the Canada Occupational safety and Health Regulations.

The employer's procedure prior to entry into a manhole calls for testing with a Passport monitor for oxygen, carbon monoxide, hydrogen sulfide and explosive vapours. Additionally, employees are instructed not to enter a manhole if there is a strong odour from the manhole. In this particular case, a strong odour was detected and employees were told by Terry Maiden and by Al Thompson not to enter the manhole until the next day when a manager would be present.

8. Paragraph 125(p) of the Canada Labour Code - Part II and subsection 11.4(1)(b)(iii) of the Canada Occupational Safety and Health Regulations.

The information submitted to the regional safety officer indicates that the manhole was pumped out on July 26, 1994; it was then pressure washed and pumped out twice the day after. There is no indication in the various testimonies that there was water in the manhole when Kevin Marlow went down. The employer's procedures require that any liquid in a manhole be pumped out before entry and specifically say: "It is illegal to enter or work in a manhole with liquid in it" (section 243.06 of the "Accident Prevention Process").

9. Paragraph 125(e) of the Canada Labour Code - Part II and subsection 11.5(1)(a) of the Canada Occupational Safety and Health Regulations.

The employees were told not to go down in the manhole. The employer's procedures are predicated on establishing and maintaining acceptable conditions in a manhole before an employee goes down. If conditions are not acceptable, the employees are instructed not to go down. In other words, entry into manhole is done under the requirements of section 11.4 of the regulations; no entry is done under section 11.5. Under the circumstances, the emergency procedures required by section 11.5 are irrelevant.

10. Paragraph 125(e) of the Canada Labour Code - Part II and subsection 11.5(3) of the Canada Occupational Safety and Health Regulations.

Although during the conversation between Al Thompson, Dave James, Kevin Marlow and Larry Watson, a suggestion was made to go down with a rope tied around the employee, the conclusion of that conversation was not to go down, but to wait for a manager to assess the situation the following day. I agree that the suggestion might have caused some confusion, but the insistence of the manager, Terry Maiden, that no one go down into the manhole and the employees' training into manhole entry and exit and manhole testing and ventilation, received little more than a month before, mitigate this suggestion. As mentioned in the previous section, the employer's procedure for entry into manholes is based on section 11.4 of the regulations, not section 11.5; hence, no safety harness or safety line is called for.

11. Paragraph 125(e) of the Canada Labour Code - Part II and subsection 11.6(1) of the Canada Occupational Safety and Health Regulations.

As mentioned previously, the employer's procedure for entry into manholes is based on section 11.4 of the regulations; hence, the requirements of section 11.6 which apply under circumstances such that paragraph 11.4(1)(a) cannot be complied with find no application here.

12. Paragraph 125(e) of the Canada Labour Code - Part II and subsection 11.6(2) of the Canada Occupational Safety and Health Regulations.

As mentioned in section 11, the employer's procedure for entry into manholes is based on section 11.4 of the regulations; hence, the requirements of section 11.6 which apply under circumstances such that paragraph 11.4(1)(a) cannot be complied with find no application here.

13. Paragraphs 125(p) and (v) of the Canada Labour Code - Part II and subsection 11.7(2) of the Canada Occupational Safety and Health Regulations.

Considering the employees were told not to enter the manhole by their supervisor, Terry Maiden, and by the duty manager, Al Thompson (although Al Thompson appears to have given confusing information), I believe that the employer fulfilled his responsibilities. It must be remembered also that the employees had been trained, very recently, in safety procedures respecting manholes.

For all the above reasons, I hereby rescind sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the direction issued by safety officer R. Noel to Bell Canada on December 22, 1994; I hereby confirm section 1 of the direction issued by safety officer R. Noel to Bell Canada on December 22, 1994.

Decision given on February 9, 1996.

Bertrand Southière
Regional Safety Officer

IN THE MATTER OF THE CANADA LABOUR CODE - PART II
(OCCUPATIONAL SAFETY AND HEALTH)

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On various dates during October and November 1994, including a site inspection on November 10, 1994, the undersigned Safety Officer conducted an investigation into a confined space hazardous occurrence which occurred on July 28, 1994, involving employees of Bell Ontario, a Division of Bell Canada, 483 Bay Street, Toronto, Ontario, being an employer subject to the Canada Labour Code - Part II. The said confined space workplace is located at the Ford Assembly Plant in Oakville, Ontario.

The said Safety Officer is of the opinion that the following provisions of the Canada Labour Code - Part II are being contravened:

1. Paragraph 124 of the Canada Labour Code - Part II

The employer, by failing to ensure coordinated assignment and monitoring of confined space work, and by failing to ensure a prompt investigation of hazardous occurrence of suspected exposure of an employee to a toxic substance, allowed other employees to subsequently be assigned to work in this location without ensuring their safety and health was protected.

2. Paragraph 125 (q) of the Canada Labour Code - Part II

The employer failed to provide the supervision necessary to ensure the safety and health of the employees at this workplace.

3. Paragraphs 125 (p) and 125.1 (a) of the Canada Labour Code - Part II and Subsection 11.2 (1) (a) of the Canada Occupational Safety and Health Regulations.

The employer failed to assess the hazards of this confined space, namely Ford - Bell Manhole A.1 (MH A-1)

4. Paragraphs 125 (p) and 125.1 (a) of the Canada Labour Code - Part II Subsection 11.2 (1)(b) of the Canada Occupational Safety and Health Regulations.

The employer failed to specify the tests necessary to determine the hazards.

5. Paragraphs 125 (c) and (p) of the Canada Labour Code - Part II and Subsection 11.2 (2) of the Canada Occupational Safety and Health Regulations.

The employer failed to record, in a signed and dated report, the findings of a hazard assessment for this confined space manhole (MH A-1).

6. Paragraphs 125 (j) of the Canada Labour Code - Part II Subsection 11.2 (3) of the Canada Occupational Safety and Health Regulations.

The employer failed to make a copy of the Hazard Assessment Report available to the Safety and Health Committee.

7. Paragraphs 125 (p) and 125.1 (a) of the Canada Labour Code - Part II Subsection 11.4 (1) (a) of the Canada Occupational Safety and Health Regulations.

The employer failed to ensure that tests were in place to verify that airborne hazardous concentrations would not endanger an employee working in confined space MH A-1.

8. Paragraph 125 (p) of the Canada Labour Code - Part II and Subsection 11.4 (1) (b)(iii) of the Canada Occupational Safety and Health Regulations.

The employer failed to appoint a qualified person to verify that the entry of contaminated ground - water was prevented, by a secure means, from entering the confined space MH A-1.

9. Paragraph 125 (e) of the Canada Labour Code - Part II and Subsection 11.5 (1) (a) of the Canada Occupational Safety and Health Regulations.

The employer failed to establish emergency procedures.

10. Paragraph 125 (e) of the Canada Labour Code - Part II and Subsection 11.5 (3) of the Canada Occupational Safety and Health Regulations.

The employer failed to ensure that employee wore an appropriate safety harness. A rope tied around an employee's waist is not acceptable as a safety harness.

11. Paragraph 125 (e) of the Canada Labour Code - Part II and Subsection 11.6 (1) of the Canada Occupational Safety and Health Regulations.

The employer failed to specify the procedures to be followed and the equipment to be used in the event of an emergency in this confined space.

12. Paragraph 125 (e) of the Canada Labour Code - Part II and Subsection 11.6 (2) of the Canada Occupational Safety and Health Regulations.

The employer failed to explain emergency procedures and maintain a signed and dated report as was required.

13. Paragraphs 125 (p) and (v) of the Canada Labour Code - Part II and Subsection 11.7 (2) of the Canada Occupational Safety and Health Regulations.

The employer failed to ensure that every person entering, exiting or occupying a confined space followed safe, established procedures and used the required protection equipment.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code Part II, to terminate the contraventions from the date the present direction is issued.

Issued at Toronto, Ontario, this 22nd day of December 1994.

Rod J. Noel
Safety Officer
Certificate #1768

To: Bell Ontario
Division of Bell Canada
483 Bay Street
Toronto, Ontario

c.c. Joint Health and Safety Committee

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Bell Canada
483 Bay Street, Floor 4 South Tower
Toronto, Ontario
represented by: André L. Paiement, Senior Counsel

KEYWORDS

Manhole; contaminated manhole; intoxication; class of confined spaces.

PROVISIONS

Code: 124; 125(c); 125(e); 125(j); 125(q); 125(p); 125(v); 125.1(a)
Regulations: 11.2(1)(a); 11.2(1)(b); 11.2(2); 11.2(3); 11.4(1); 11.4(1)(b)(iii); 11.5(1)(a);
11.5(3); 11.6(1); 11.6(2); 11.7(2)

SUMMARY

During the course of their work on a customer's premises, Bell Canada's technicians had to access a manhole situated in contaminated soil. After ventilating the manhole and verifying for atmospheric contaminants with a Passport monitor, one of the employees went down into the manhole with a rope tied around his chest as a safety measure while a co-worker monitored from outside the manhole. After fifteen minutes or so in the manhole, the employee felt sick and had to come out of the manhole, at which time his companion took him to the hospital from which he was released a few hours later. During the previous days, the employees had also worked in a pit dug nearby in contaminated soil without following any safety measure other than ventilating the pit.

The employer's representative claimed that, during prior discussions with their supervisors, the employees had been told not to enter the manhole, but to wait until the following day when a manager would visit the site and reassess the situation. The employees' representative highlighted that a suggestion had been made to use a rope tied around the chest as a safety measure while an employee was going down in the manhole. The direction was rescinded except that a contravention to section 124 of the Code was confirmed.