

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: Farmers Co-op Seed Plant Limited
Rivers, Manitoba
Represented by: Don Kostaskey, General Manager

Respondent: Richard Wiebe
Employee safety and health representative

Mis en cause: Terry McKay
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case was heard by way of written submissions. Although I attempted to visit the work place named in the direction, the schedules of the parties could not be accommodated.

Background

This case began with an inspection, on April 5, 1995 by safety officer Terry McKay, of the facility owned by the Farmers Co-op Seed Plant at Rivers, Manitoba. Of particular interest in this case is the building described as the seed cleaning plant. The safety officer reported that there was no emergency lighting in the plant. He also noted that the plant would operate at certain times of the year on a day and evening production schedule. An assurance of voluntary compliance (AVC), duly signed by Mr. Kostaskey, was obtained respecting this issue. During a telephone conversation that he had on December 13, 1995, Mr. Kostaskey voiced a number of concerns with certain AVC items. The safety officer describes those concerns and the ensuing discussion with Mr. Kostaskey in the following manner:

#1. He believes that emergency lighting would be ineffective due to grain dust accumulation on the lens and feels that a better alternative would be to issue each employee a hand held flashlight.

#10. He strongly contests the classification of the seed cleaning plant as a high fire hazard area because in his opinion there is more than adequate natural ventilation which would prevent significant airborne levels of dust in the plant.

We had a lengthy discussion of the Part II Code requirements and the compliance policy. I agreed to mail the copy of a direction appeal of emergency lighting requirements in a similar seed plant, National Building Code (1990) (NBC) major occupancy classification and high hazard industrial occupancy definitions (Appendix E). As well as, the Canadian Occupational Safety and Health Regulations (COSH) definition of "Fire Hazard Area."

During a subsequent telephone conversation, Mr. Kostaskey informed the safety officer that he believed that the seed plant should be classified as a primary grain elevator and, as such, exempted (sic)¹ from the emergency lighting requirements. A direction (APPENDIX) was issued and a timely appeal was lodged.

Submission of the employer

Mr. Kostaskey claims that a seed cleaning plant is so closely related to a primary grain elevator, from both a physical and operations perspectives, that it should be exempted (sic) from the emergency lighting requirements. When comparing the functions of the two facilities, Mr. Kostaskey concludes that the two are virtually the same and gives the following examples:

"Primary grain elevators receive grain from producers, we do the same. Primary grain elevators have within their operations grain cleaning equipment, we have grain cleaning equipment also. Primary grain elevators provide storage for grain within their facilities. Our facility only holds grain during the cleaning operation, storage is provided outside of the plant itself which is inherently safer because grain is not in the plant within a confined facility. Some primary elevators operate their cleaning facilities on a twenty-four hour day preparing grain for export standard, we do the same except we are preparing seed not grain for export."

Mr. Kostaskey contends that the only reason that they do not hold a primary grain elevator licence is because they do not buy and sell grain on a commercial basis for export. However, says Mr. Kostaskey, "for a \$60.00 per year fee, we could very easily be classified as a primary grain elevator and be exempted (sic) from these regulations."

Mr. Kostaskey explains that employees are supplied with hand held lamps because they are required to see into confined areas within the plant and equipment. Also, there is no need for emergency lighting in his plant since there has never been an incident where emergency lighting would have been used. In addition to the above, employees do not believe that emergency lighting would serve a useful purpose and since they are not concerned, what is the purpose of installing emergency lighting.

Submission for the employees

The submission of Mr. Wiebe was short and to the point. He stated :

¹ Both the safety officer and Mr. Kostaskey inaccurately refer to the term "exempt" throughout the text. The proper reference should be "except" as found in subsection 6.10(2) of the Regulations. Exempt means one does not have to comply with an obligation whereas others do. "Except" means one does not have to follow the same rule as others but must still comply with the obligation in another manner.

"As the representative for Farmer's Co-op Seed Plant employees, I have spoken to the other employees regarding the installation of emergency lighting. The employees do not feel that it is necessary for emergency lighting to be installed, as they all carry hand held lighting devices and this is not an area open to the general public. Since the employees carry lighting devices they do not feel they are at risk because there is no affixed emergency lighting in the plant."

Decision

The issue to be decided in this case is whether the seed cleaning plant located at Rivers, Manitoba is, for the purpose of section 6.10 of Part VI (Levels of Lighting) of the Canada Occupational Safety and Health Regulations (hereafter the Regulations), a primary grain elevator as defined in the Regulations. The provisions of interest in this case are subsections 6.10(1) and (2) of the Regulations. They provide:

6.10 (1) Emergency lighting shall be provided to illuminate the following areas within buildings:

- (a) exits and corridors;
- (b) principal routes providing access to exits in open floor areas; and
- (c) floor areas where employees normally congregate.

(2) Except in the case of a primary grain elevator in which hand- held lamps are used for emergency lighting, all emergency lighting provided in accordance with subsection (1) shall

- (a) operate automatically in the event that the regular power supply to the building is interrupted;
- (b) provide an average level of lighting of not less than 10 lx; and
- (c) be independent of the regular power source.

A reading of subsection 6.10(1) of the Regulations informs us that, as a rule, emergency lighting is required in designated areas of all buildings. The exception provided by subsection 6.10(2) above is highly specific. Only primary grain elevators, as defined in the Regulations, where hand held lamps are used as emergency lighting, are not required to meet the requirements for emergency lighting specified by that provision. Therefore, hand held lamps are deemed to be emergency lighting and, as a result of the exception, primary grain elevators do not have to follow the same rule that is applicable to all buildings.

A primary grain elevator is defined at subsection 6.1 of the Regulations as follows:

"primary grain elevator" means a grain elevator the principal use of which is the receiving of grain directly from producers for storage or forwarding; "

Therefore, in considering the definition above, the question I need to answer is as follows: What is the principal use of Mr. Kostaskey's plant? Is it the storage [or forwarding] of grain² or is it primarily seed cleaning? The adjective "principal" is defined by the Concise Oxford Dictionary, eighth edition, to mean: 1. first in rank or importance; chief. 2. main, leading. Consequently, I interpret the expression "principal use" to mean that, while a primary grain elevator may engage in secondary operations, its most important or main purpose for existing must be the storage or forwarding of grain received directly from producers.

At the primary grain elevator, as defined in the Regulations, the grain, which may contain other types of seeds, soil and other unwanted products, was brought to the elevator by or for the producers, unloaded at ground level, weighed and finally raised mechanically to the top of the elevator where it was directed into an appropriate bin for storage or for forwarding primarily by train. The employee (not several employees) in attendance at the elevator would practically never have to enter the elevator to operate equipment or machinery since there were none. He/she would very seldomly have to access the top of the elevator, except maybe for maintenance purposes or in other exceptional circumstances. Another characteristic of the existing primary grain elevator was that, since the elevator was constructed primarily to store grain in bins, there were no exits or corridors as mentioned in the direction. There were also no routes providing access to exits in open floor areas and neither floor areas where employees normally congregate. Therefore, the principal use of the primary grain elevator, as defined in the Regulations, was truly the storage or forwarding of grain received directly from producers, and practically nothing else.

While grains are also received at the seed cleaning plant for forwarding, this is not the principal use of the plant. The principal use of the seed cleaning plant is to carry out the operation of cleaning the grains received directly from producers (I am led to believe this is the only source) and then forwarding the seeds, not the uncleaned grains, to their destination. Evidently, the principal use of a seed cleaning plant is to carry out the operation of cleaning and processing of the grain to segregate and produce usable seeds. The primary grain elevator, as described in the previous paragraph, could exist without any cleaning operation taking place whereas the seed cleaning plant could not exist without carrying out its principal activity, which is the cleaning and processing of the various grains.

I am being asked to extent the exception for emergency lighting to Mr. Kostaskey's seed cleaning plant on the basis that the activities occurring at the plant can hardly be distinguished from those occurring at a primary grain elevator. That may appear to be so by today's standards however, the specialized activities taking place within the seed cleaning plant require the use of machinery, equipment and devices which fall outside the scope of a primary grain elevator as defined in the Regulations. Mr. Kostaskey's expanded interpretation of a primary grain elevator introduces another "principal use" of a building which is not contained in the definition of primary grain elevators with the consequence that the safety and health of employees at work would be compromised, notwithstanding the submission of Mr. Wiebe or Mr. Kostaskey on this point.

Mr. Kostaskey acknowledged that his plant is not classified under the Canada Grain Act as a primary grain elevator. This, in my view, is indicative that the plant is not a primary grain

² In section 2 of the Canada Grain Act, grain is defined as follows: "grain" means any seed named in Schedule I or designated by regulation as a grain for the purpose of this Act;

elevator. That, in itself, is sufficient to justify the direction of the safety officer since the definition of primary grain elevator is taken directly from that Act³.

Other differences have emerged between a primary grain elevator and at a seed cleaning plant. For example, according to the submission of Mr. Kostaskey, if there is one thing the seed cleaning plant does not do, it is the storing of the grain inside the plant. Mr. Kostaskey stated that:

"Primary grain elevators provide storage for grain within their facilities. Our facility only holds grain during the cleaning operation, storage is provided outside of the plant itself which is inherently safer because grain is not in the plant within a confined facility."

That difference is crucial, in my opinion, because the principal use of a primary grain elevator, as defined in the Regulations, is the storage [or forwarding] of grain.

Finally, the allegation that Mr. Kostaskey could obtain a primary grain elevator license is interesting but does not convince me that the seed cleaning plant necessarily becomes a primary grain elevator as a result of that prospective classification. In any event, the seed cleaning plant is not classified as a primary grain elevator and, in the eventuality that it does, the safety officer may have to react accordingly at that point in time.

The bottom line in this case is that, in my opinion, the work place operated by Farmers Co-op Seed Plant Ltd. located at Rivers, Manitoba is not a primary grain elevator as defined in the Regulations. For all the above reasons, I HEREBY CONFIRM the direction issued under subsection 145(1) of the Canada Labour Code, Part II on January 5, 1996 by safety officer Terry McKay to Farmers Co-op Seed Plant Ltd.

Decision rendered on June 4, 1996

Serge Cadieux
Regional Safety Officer

³ In subsection 6.1(1) of the Canada Occupational Safety and Health Regulations, the expression "primary grain elevator" is used and defined whereas in the Canada Grain Act, the expression "primary elevator" is used and defined. Both definitions are essentially the same.

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On April 5, 1995, the undersigned safety officer conducted an inspection in the work place operated by Farmers Co-op Seed Plant Ltd., being an employer subject to the Canada Labour Code, Part II, at Rivers, Manitoba, the said work place being sometimes known as Farmers Co-op Seed Plant.

The safety officer is of the opinion that the following provisions of the Canada Labour Code, Part II, is (sic) being contravened:

1. Paragraphs 125(n)(o) of the Canada Labour Code, Part II, (Part II) and subsection 6.10(1)(a) of the Canada Occupational Safety and Health Regulations (COSHR).

There is no emergency lighting in the exits and corridors of the seed cleaning plant.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than January 26, 1996.

Issued at Winnipeg, this 5th day of January 1996.

Terry McKay
Safety Officer #350

To: Farmers Co-op Seed Plant Ltd.
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SUMMARY OF DECISION OF REGIONAL SAFETY OFFICER

Applicant: Farmers Co-op Seed Plant Limited

Respondent: Employee Safety and Health Representative

KEYWORDS

Primary grain elevator, seed, exception, emergency lighting, principal use, Canada Grain Act, storage.

PROVISIONS

Code: 125(n),(o)

Regs: 6.1, 6.10(1), 6.10(2)

SUMMARY

A direction was given to the above named applicant for failing to provide emergency lighting in the plant. The owner argued that since his plant was for all practical purposes a primary grain elevator, he should be excepted from the fixed emergency lighting requirements. The Regional Safety Officer found that the plant was not a primary grain elevator as defined in the Regulations and CONFIRMED the direction.