Excavation Supervisor Convicted of Criminally Negligent Homicide in NY



Criminal charges for workplace safety incidents are possible but rare in both Canada and the US. But in recent years, both countries have seen more cases in which criminal charges have been brought against companies and individuals for their roles in safety incidents, usually those involving fatalities.

For example, on Nov. 4, 2016, in New York, Wilmer Cueva, an excavation supervisor, was convicted of criminally negligent homicide for the death of a 22-year-old worker in the collapse of a 14-foot deep trench. (In June 2016, the general contracting company was found guilty of manslaughter, criminally negligent homicide, and three counts of reckless endangerment for the same incident.)

According to the Manhattan District Attorney's Office, which prosecuted the case, an inspector told Cueva that no workers should be allowed to enter the trench while the sides were unfortified. But later that day, the same inspector saw four workers inside the unsupported trench, which had reached approximately 13 feet in depth.

He told Cueva that the workers needed to get out of the unshored trench immediately and suggested an alternative method of completing the task that didn't require the workers to be inside the trench. But Cueva rejected the inspector's

proposal and didn’t stop ongoing work in the trench. Nearly two hours after receiving the first warning, the trench collapsed and fatally crushed Carlos Moncayo.

And in Nova Scotia, a criminal negligence case is pending against Elie Hoyeck, the owner of an auto repair shop, in connection with the 2013 workplace fatality of licensed mechanic Peter Kempton. He died after an explosion that occurred while he was using a welding torch on a vehicle.

Hoyeck was charged with criminal negligence causing death, plus 12 regulatory offences under the province’s OHS laws. He was the first employer in Nova Scotia to be charged criminally under Bill C-45, also known as the Westray Bill.

A preliminary inquiry in Hoyeck’s case was set for Oct. 2016, but we’ve been unable to find out whether that hearing was held and, if so, its outcome. We’ll keep you posted on any updates.