

Date Issued: May 28, 2008

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**IN THE MATTER OF THE SAFETY STANDARDS ACT
SBS 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the
British Columbia Safety Standard Appeal Board**

BETWEEN:

A Boiler Manufacturer

Appellant

AND:

BC Safety Authority

Respondent

**REASONS FOR FINAL DECISION
Appeal of Compliance Order**

Board Members:

Abigail Fulton, Vice-Chair;

Introduction

[1] This is an appeal of a Compliance Order issued under section 38 of the *Safety Standards Act*, SBC 2003, c.39 (the Act) by the BC Safety Authority (the Respondent) which removed the operating certification and CRN number for a type of biomass boiler.

Preliminary issue to be decided

[2] The question of the Board's jurisdiction to hear the appeal arose because the Notice of Appeal was filed late, pursuant to section 24 of the *Administrative Tribunals Act*, SBC 2004 c.45 and the Board's rules, which require an appeal to be filed within 30 days of the decision being appealed.

Appellant's position

[3] The Appellant stated that the appeal was filed approximately eleven months after the issuance of the Compliance Order because, during that period, the Appellant had attempted to bring the boiler into compliance with the Act and associated regulations.

The law

[4] Appeals under section 51 of the Act must be filed within 30 days of the decision being appealed in accordance with section 24 of the *Administrative Tribunals Act (ATA)*. Pursuant to section 24(2) of the ATA, Board may extend the time to file a notice of appeal if satisfied that special circumstances exist.

[5] A period of some eleven months passed between the issuance of the compliance order and the date the Appellant's Notice of Appeal was filed with the Board.

[6] The Board found that the time period specified by the Act is intended to provide direction and that any extension of the time period must take into account the purpose of the Act which is reflected by the board's jurisdiction. The Board obtains its jurisdiction from section 52 of the Act which states that when hearing appeals the board must consider the maintenance and enhancement of public safety.

[7] It was not stated or evident in the information the Appellant provided that an unsafe condition existed as a result of the decision made by the BCSA.

[8] In the absence of evidence of an ongoing unsafe condition which the Board had jurisdiction to remedy it would extend the 30 day time period only in extenuating circumstances, such as when a person is prevented from filing an appeal within the specified period by circumstances beyond his or her control. No such circumstances were stated by the appellant.

Decision

[9] On the basis of the reasons stated above the board is satisfied that it did not have jurisdiction in this matter and the application to appeal the decision was denied