

Indexed as: BCSSAB 19 (1) 2015

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

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

BETWEEN: A Gas Installer APPELLANT

AND: British Columbia Safety Authority RESPONDENT

Reasons For Decision

Introduction

[1] This is an appeal of Monetary Penalty No. MP-2015-0010 (the “Monetary Penalty”) in the amount of \$5000.00 issued on July 31, 2015 by the British Columbia Safety Authority (the “Respondent”) against the Appellant for failing to comply with Compliance Order No. CO-2015-0012 (the “Compliance Order”). The Compliance Order was issued on March 13, 2015 and required the Appellant to correct the instances of noncompliance noted in various certificates of inspection issued under Gas Permit #54-9-26 (the “Inspections”).

Issues

[2] The issue before the Board is whether the Monetary Penalty was appropriately issued by the Respondent.

Position of the Parties

The Appellant’s Position

[3] The Appellant provided the Board with brief written submissions in addition to the information set out in his Notice of Appeal filed with the Board. The Appellant states that he has been a qualified gas installer for 37 years and has held “A” qualifications for 19 years. He further states that he has never had an infraction found on inspection that

he has not immediately corrected and has never been the subject of a citation, monetary penalty or compliance order.

[4] With respect to the installation that is the subject of the Compliance Order, the Respondent states that the installation has operated without incident for the past two years. In particular, the Respondent states that while the inspector has stated that it is unacceptable to have the vent termination in question terminate through the roof, that the BC Natural Gas and Propane Code (the "Code") lists a roof vent as the preferred termination for the installation. Further, the Respondent states that the inspector's assertion that the installation must vent to fresh air was met by venting to the attic space as it is 18000 cubic feet and has a complete air change at a minimum of every 45 minutes and at a maximum of every 11.5 minutes.

[5] In light of this record and the fact that the installation at issue in the Compliance Order operates without incident, the Appellant states that the Monetary Penalty is an injustice and requests that the Monetary Penalty be either dismissed or reduced.

The Respondent's Position

[6] The Respondent states that while the Appellant requested a Provincial Safety Manager's review of the Inspections as contemplated by the *Safety Standards Act*, SBC 2003, c. 39 (the "Act") that the Inspections were upheld. The Respondent further states that the Appellant did not appeal the Safety Manager's review decision nor did the Appellant appeal the Compliance Order when it was subsequently issued by the Respondent. The Respondent submits that the Appellant is therefore barred from appealing any aspect of the Compliance Order, having not sought a Safety Manager Review or appeal of the Compliance Order within the 30 day time limit legislated for such reviews and appeals.

[7] With respect to the Monetary Penalty, the Respondent submits that the Monetary Penalty is authorized by section 40(1)(b) of the *Safety Standards Act* (the "Act") and that the Appellant does not deny that he failed to comply with the Compliance Order. The Respondent states that the Monetary Penalty is reasonable and that there is no basis in law for the Board to vary or set it aside.

[8] In support of this position, the Respondent submits that the applicable standard of review for appeals such as this is one of reasonableness rather than correctness. Further, the Respondent states that the Safety Manger considered the factors set out in section 3 of the Monetary Penalties Regulation when issuing the Monetary Penalty. Namely, that:

- a) The contravention was deliberate: The Respondent states that the Appellant was well aware of the requirement to correct the noted non-compliances as evidenced by the Inspections and the fact that the Provincial Safety Manager upheld the Inspections when asked to review them by the Appellant.
- b) The contravention was repeated or continuous: The Respondent states that the Compliance Order required the Appellant to correct the non-compliances and then submit a form indicating that this had been done and he failed to do so.
- c) The extent of the harm, or of the degree of risk of harm to others as a result of the contravention: The Respondent states that the contravention carries a “low” safety risk.
- d) There have been previous enforcement actions under the Act: The Respondent states that the Appellant failed to remedy the contraventions noted in the Inspections when issued the Compliance Order.
- e) The length of time during which this contravention continued: The Respondent states that it was “short-term”.
- f) Economic benefit derived from the contravention: The Respondent states that the Appellant is saving the cost of the work to be done to correct the non-compliances noted in the Compliance Order.

[9] The Respondent notes that the Appellant has not argued that the instances of non-compliance have been rectified, but rather submits that the installations are fine as installed.

[10] With respect to the Appellant's assertion that he has had a lengthy career without any previous enforcement action, the Respondent states that this was considered by the Provincial Safety Manager when assessing the amount of the Monetary Penalty and does not make the decision to issue a monetary penalty unreasonable.

[11] The Respondent seeks to have the appeal dismissed.

Analysis

[12] The Monetary Penalty was issued for failure to comply with the Compliance Order, which in turn was issued for failure to rectify instances of non-compliance with the Code noted in the Inspections.

[13] The Appellant relies on his spotless safety record and his opinion that the installations subject to the Inspections are adequately and safely installed. However, these arguments do not take into account the fact that section 40(1)(b) of the Act permits a monetary penalty to be issued when a compliance order is not complied with. While the Appellant takes issue with the instances of non-compliance set out in the Compliance Order, the fact remains that he did not seek a review or an appeal of the Compliance Order within the 30 day time frame legislated for doing so. Accordingly, the Compliance Order stands as issued to the Appellant and is not before the Board other than as evidence in the Appeal Record of this appeal.

[14] As failure to comply with a compliance order is clearly a legislated ground for issuing a monetary penalty under section 40(1) of the Act, the Board must now look at the *Monetary Penalties Regulation* (the "MP Regulation") to determine whether the Monetary Penalty was reasonably issued in all of the circumstances. Section 3 of the MP Regulation states:

3. Before a safety manager imposes a monetary penalty on a person, the safety manager must consider the following:

- a) previous enforcement actions under the Act for contraventions of a similar nature by the person;
- b) the extent of the harm, or the degree of risk of harm, to others as a result of the contravention;

- c) whether the contravention was deliberate;
- d) whether the contravention was repeated or continuous;
- e) the length of time during which the contravention continued;
- f) any economic benefit derived by the person from the contravention.

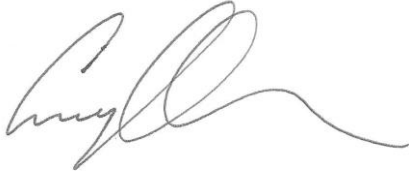
[15] In addition to complying with section 3 of the MP Regulation, a safety manager issuing a monetary penalty must also comply with the notice provisions set out in section 40(7) to 40(9) of the Act.

[16] Upon review of the appeal record filed with the Board, I find that the Respondent complied with the requirements of the Act and MP Regulation by providing the appropriate notice of intention to issue a monetary penalty and by considering the criteria set out in the MP Regulation. Each of the criteria are clearly addressed in the Monetary Penalty and as noted by the Respondent, the Appellant's safety record was addressed in the notice of Monetary Penalty with only the Compliance Order being listed as an instance of previous non-compliance. Accordingly, I see nothing that shows that the Respondent acted unreasonably in issuing the Monetary Penalty. In fact, as section 40(4) of the Act permits the issuance of monetary penalties up to \$100,000.00, the Monetary Penalty at issue here for the sum of \$5000.00 is at the very low end of the penalty range.

[17] Further, as previously held by the Board in *An Excavating Service v. BCSA*, Appeal No. BCSSAB 4-11-12, paragraph 14, a provincial safety manager's decision to impose a monetary penalty is entitled to deference by the Board. Having found that the Safety Manager acted reasonably in assessing the criteria legislated to be considered when levying a monetary penalty, I find that the Monetary Penalty was appropriately issued to the Appellant.

Conclusion

[18] The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Emily C. Drown', with a long, sweeping horizontal stroke at the end.

Emily C. Drown
Chair, Safety Standards Appeal Board