

IN THE MATTER OF THE *SAFETY STANDARDS ACT*, SBC 2003, Chapter 39
AND IN THE MATTER OF
an Appeal to the British Columbia Safety Standard Appeal Board

BETWEEN: **A Farming Company Ltd.** **APPELLANTS**

AND: **British Columbia Safety Authority** **RESPONDENT**

REASONS FOR DECISION

INTRODUCTION

[1] This is an Appeal under the *Safety Standards Act*, SBC 2003 C39 (the "Act") concerning a monetary penalty in the amount of \$2,500 (the "Monetary Penalty") issued by a Provincial Safety Manager (the "Safety Manager") on July 21, 2015 on behalf of the British Columbia Safety Authority. The Monetary Penalty was levied against the Appellant for failing to comply with a Compliance Order No. CO-2015-0004 issued on January 16, 2015 (the "Compliance Order").

[2] The Compliance Order required the Appellant to obtain an Electrical Operating Permit for a private high voltage power line.

[3] The Appellant has filed this Appeal with the Board asking that the Monetary Penalty be set aside, or alternatively, reduced to \$200.00.

[4] This Appeal proceeded by way of written submissions.

ISSUE

[5] The sole issue before me is whether the Monetary Penalty should be upheld, varied, or set aside.

FACTS

[6] The Appellant owns a farm property located in Chilliwack, British Columbia, (the "Property"). The Property was purchased in 2010 from the previous owner who also operated a farm on the site.

[7] The Property has for some time had electrical service from a private high voltage powerline. The Appellant has been farming since 1970 on various properties in British Columbia all utilizing private high voltage powerlines. The Appellant has never previously been told to obtain an Electrical Operating Permit for any of its operations.

[8] Beginning in or about 2014 a Safety Officer attended at the Property to perform a series of electrical inspections which identified various violations of the BC Electrical Code. The Appellant was directed to correct these deficiencies and did so over the following months.

[9] The Safety Officer also noted the high voltage powerline servicing the property. The Safety Officer's Inspection Report dated October 30, 2014 advised the Appellant of the requirement to obtain an Electrical Operating Permit for the powerline within 30 days.

[10] The Safety Officer subsequently extended the deadline for submitting the permit to December 14, 2014, and further still to January 6, 2015 to allow the Appellant sufficient time to secure the necessary permit. When the requested electrical operating permit was not submitted the Safety Authority issued a Compliance Order dated January 16, 2015 ordering the Appellant to obtain the necessary Permit within 30 days.

[11] The Appellant took some steps in early 2015 to begin the process of obtaining the necessary Permit, which included hiring a suitably qualified electrical contractor, who in turn made some inquiries with the Safety Authority.

[12] The Appellant determined that obtaining such a permit, and maintaining it annually, would entail yearly expenses of approximately \$5,000. The Appellant did not proceed with having the necessary work done but instead sought clarification from the Safety Authority on May 7, 2015 out of concern that the permit was not previously required. To the Appellant's belief, no other farm properties with private powerlines were required to hold such a permit.

[13] In July, 2015 the Appellant wrote to the Safety Manager questioning the need for the permit and indicating that the cost of obtaining and maintaining the permit was financially unfeasible. As an alternative the Appellant suggested they could cease farming operations and turn off the power. There is no evidence, however, that the Appellant ever did so.

[14] The Safety Manager agreed to conduct a Safety Manager Review and he asked for submissions from the Appellant.

[15] In his review, the Safety Manager concluded that contrary to the Appellant's assertion, farm properties are not exempt from the regulations. The Safety Authority records show any number of properties owned by entities with the name "farm" in their title as holding electrical operating permits.

[16] On July 21, 2015 the Safety Manager issued Monetary Penalty Notice No. MP-2015-0007 ("Monetary Penalty") which levied a \$2,500 penalty on the Appellant for its failure to comply with the January 16, 2015 Compliance Order.

[17] The Appellant filed this Appeal on August 4, 2015 asking that the Monetary Penalty be set aside.

Summary of Appellant's Position

[18] The Appellant brings this Appeal on two basis:

1. Is the penalty reasonable?
2. Is it fair to require only the Appellant's farming operation to obtain an Electrical Operating Permit.

[19] On the reasonableness of the penalty, the Appellant submits that "farming is a tough business". Implicit in this submission is the suggestion that it is financially unfeasible for the Appellant's farming operation to bear the expense associated with maintaining the electrical permit in question or, presumably, that the amount of the Monetary Penalty is disproportionate to the financial benefit that the Appellant obtains by not incurring the cost of the permit.

[20] However, the Appellant put forward no evidence on which to assess the impact of the Monetary Penalty on the financial operation of the Appellant's farm.

[21] The second ground of Appeal, being unfairness, figures predominately in the Appellant's submissions and for that matter in the dialogue had between the Appellant and the Safety Authority since the time the requirement for the permit was first identified.

[22] The Appellant asserts that it should not now be required to obtain a permit when it was never previously asked to do so. The Appellant also submits that they are the only farming operation in the Province that is required to obtain this permit, and accordingly, the regulations are being unfairly applied to them alone.

Summary of the Respondent's Position

[23] The Respondent says that the electrical permit is required under section 18 of the Safety Standards General Regulation and there is no exemption for farm properties.

[24] The Respondent further says that the Monetary Penalty is authorized as Section 40 of the Act and by Section 2 of the Monetary Penalty's regulation.

[25] The Safety Authority further says the Appellant has not provided any evidence to find that the Operating Permit requirements of Section 18 do not apply in this instance. They say that the fact that other farm operations may not have complied with this requirement does not exempt the Appellant from operation of the regulations.

[26] The Safety Authority says that the Safety Manager properly exercised his discretion to levy the Monetary Penalty in the amount of \$2,500 and that absent demonstrated unreasonableness, this Board should not overturn that decision.

ANALYSIS

[27] I accept that an Electrical Operating Permit is required under Section 18 of the Safety Standards General Regulation for the high voltage powerline servicing the Appellant's Property.

[28] The Appellant has not submitted any evidence that the requirements of the regulation do not apply in this instance, nor does it argue that the regulations do not apply. Rather the Appellant submits that the provisions of the regulation should not be enforced because the Appellant had never previously been asked to obtain such a permit and other farm properties may be operating high voltage powerlines without the required permit.

[29] I do not accept either of these assertions as providing a defence to the Appellant in the circumstances. The fact that the Appellant operated for many number of years without obtaining the required operating permit does not, and cannot, negate the clear requirement in the regulations that such a permit be obtained. Until an inspection of the Property was performed the Respondent was not aware of the powerline in question. Once they were, the Safety Authority brought the permit requirement to the Appellant's attention and properly enforced the requirements of the regulation.

[30] In terms of the Appellant's assertion that other farm properties with private high voltage powerlines are operating without such a permit I make two observations. Firstly, the Appellant has not brought forward any evidence that the Safety Authority is knowingly permitting those operations or otherwise waiving the requirements of the regulation. To the contrary, the Affidavit of the Safety Manager provides evidence that indeed other farm operations do maintain such a permit. Secondly, even if the evidence did disclose that other farms are operating high voltage powerlines without the necessary permit, this would still not be a valid basis to exclude the Appellant from the requirements of the regulation.

[31] The evidence discloses that the Appellant was given ample opportunity to submit the required Electrical Operating Permit as required by the Compliance Order. The Appellant failed to abide by the Compliance Order and accordingly, the Safety Manager was entitled to impose a Monetary Penalty in accordance with the provisions of the Act.

[32] Turning then to the amount of the Monetary Penalty, the Appellant submits that it is unreasonable either because it is unfair in the circumstances or because it is in an amount that

is disproportionate to the financial operation of the farm. I have already dealt with the alleged unfairness issue as set out above, having found that imposing a penalty is not an unfair operation of the applicable legislation. The Appellant has not submitted any evidence of the consequences of such a penalty on the financial operation of its farming operation and so I also reject this submission.

[33] The evidence before me confirms that the Safety Manager reviewed the criteria for the imposition of a Monetary Penalty set out in the regulation, being, and consideration of:

- a. whether the contravention was deliberate;
- b. whether the contravention was repeated or continuous;
- c. the extent of harm or degree of risk of harm;
- d. any previous enforcement actions against the Appellant;
- e. the length of time during which the contravention continued; and
- f. any economic benefit derived by the Appellant from the contravention.

[34] I find the Safety Manager correctly applied these criteria in exercising his discretion to arrive at a Monetary Penalty of \$2,500. There is no basis in my view to set aside this penalty.

[35] Accordingly, the Appeal is dismissed.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

Jeffrey A. Hand
Vice-Chair, Safety Standards Appeal Board