

Date: July 11, 2013
File Number: SSAB 9-12-13

Indexed as: BCSSAB 9 (1) 2012/13

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 Ltd. COMPANY Appellant

AND: BRITISH COLUMBIA SAFETY AUTHORITY Respondent

REASONS FOR DECISION
Appeal of SMR 12-25: Review of a Safety Officer's Decision
Compliance Order Number CO-2012-0074

Introduction

[1] The appeal in question seeks review of the decision of the Provincial Safety Manager, electrical (the "PSM"), dated October 26, 2012 (the "Decision") that confirmed a Compliance Order dated August 7, 2012 made by an Electrical Safety Officer. The Appellant is a Ltd Company. (the "Appellant"). The Decision requires the Appellant to procure operating permits for regulated electrical equipment. The electrical equipment at the heart of this appeal is refrigeration equipment. The Appellant submits that operating permits should not be required. The Respondent, British Columbia Safety Authority (The "BCSA") submits that the application of the *Safety Standards Act*, RSBC 2003, Chapter 39 (the "Act") and associated regulations requires operating permits to be obtained.

[2] In the event that the Board finds that operating permits are required, the Appellant takes further issue with the application fee required to obtain such operating permits. In this regard, the BCSA submits that the Board has no jurisdiction to vary the regulations and internal directives that set out such matters.

Issues

[3] The issues that must be determined in this appeal are as follows:

1. Does the Appellant require operating permits in order to operate its electrical equipment?
2. If so, does the Board have jurisdiction to determine whether the current application fee for such operating permits is reasonable?
3. If so, are the fees currently charged reasonable?

The Decision Under Appeal

[4] The Decision was issued by the PSM on October 26, 2012. The Decision confirmed the earlier Compliance Order of August 7, 2012 and required the Appellant to apply for an electrical operating permit for the electrical equipment at 38900 No. 4 Road, Abbotsford, B.C. within 45 days of receipt of the Decision.

Facts/Evidence

[5] The parties are not in dispute with respect to the facts in this Appeal. The Appellant and Respondent both agree that the primary issue is whether an operating permit is in fact required for the electrical equipment at issue. In support of its appeal, the Appellant submitted written argument and a photograph of a BC Hydro transformer as well as a written reply to the evidence presented by the BCSA. The BCSA provided the Board with an affidavit sworn by the PSM and written argument.

[6] On the evidence, there is no question that the electrical supply in question is >250 kVA. It is also clear that the usage of the electrical equipment in question appears to be <250 kVA. The Appellant submits that the equipment with the highest electrical usage uses approximately 100 kVA and that the design of the greenhouse operations is such that it is unlikely that the usage of any electrical equipment will ever exceed 250 kVA. The BCSA has not contested this assertion. Accordingly, I find as fact that the usage of the electrical equipment in question is <250 kVA.

[7] The PSM deposes in his sworn affidavit that the legislation and the BCSA's directives apply to the available electrical supply not the actual electrical usage of the electrical equipment. I have no reason not to find this as fact.

Position of the Parties

The Appellant

[8] The Appellant submits that an operating permit should not be required for its electrical equipment on the following grounds:

- a) the electrical equipment in question is rated <250 kVA;
- b) the electrical equipment in question does not require maintenance;
- c) the property in question is a farm and not a commercial property; and
- d) the granting of an operating permit would not enhance safety.

[9] The Appellant also submits that the Appeal, Decision and Compliance Order all deal with the wrong legal entity. The Appellant states that the correct entity is the Property Owner as it owns the property in question and the Appellant leases the property from them.

The Respondent

[10] The BCSA position with respect to the Appeal can be summarized as follows:

- a) the legislation expressly requires the Appellant to obtain an operating permit and any other issues raised by the Appellant do not change this fact and accordingly do not need to be addressed; and
- b) the Board does not have jurisdiction to vary or set aside Directives of the BCSA or provisions of the Fee Schedule.

Analysis

The Law

[11] The governing legislation is the *Safety Standards Act* and its associated regulations. The Act requires the Board to consider the maintenance and enhancement of public safety in all of its appeals.

[12] The *Electrical Safety Regulation*, BC Reg. 100/2004 defines “electrical equipment” for the purposes of the Act in section 1 and states that it includes “apparatus, conduits, plant, pipes, poles, works and any other regulated product that is used, designed or intended for use for or in connection with the generation, transmission, supply, distribution, or use of electrical energy for any purpose.”

[13] Section 2 of the *Electrical Safety Regulation* defines “electrical work” as “regulated work in respect of electrical equipment”.

[14] The Act defines “regulated work” as “a) the assembly, manufacture, construction, installation, operation, testing, maintenance or repair of a regulated product, and b) the alteration of a regulated product.” “Regulated Product” is itself defined to mean “a product or thing referred to in section 2(1)(b) of the Act.

[15] Section 2(1)(b) of the Act includes “electrical equipment” as it is defined in the *Electrical Safety Regulation*.

[16] Section 18 of the *Safety Standards General Regulation*, BC Reg 105/2004 requires those operating a regulated product to obtain an operating permit:

18 (1) A person must have an operating permit to do any of the following:

- a) operate a regulated product;
- b) maintain a regulated product.

(2) An operating permit may be issued to any of the following:

- a) an owner of a regulated product;
- b) the owner of a building or other premises where regulated work is to be performed.

[17] Section 30 of the Act permits a provincial safety manager to issue a directive on the interpretation, application or operation of the Act and its associated regulations.

[18] The provincial safety manager has issued a directive outlining when operating permits are in fact required pursuant to the above set out legislation. Directive No. D-E3 070801 7 (the "Directive"). The Directive clarifies the application of the legislation by limiting the requirement for obtaining operating permits to certain types of operations. Without such limitation, the clear wording of the legislation would arguably require an operating permit to be obtained for every home and/or establishment serviced by electricity. The Directive requires an operating permit where the electrical supply is >250 kVA.

Application of the Law to the Facts

[19] Upon reviewing the law and facts set out above, it appears clear to me that at issue is the Directive, which stipulates that an operating permit is required where the electrical supply is >250 kVA, regardless of the type of operation. The Appellant takes issue with the BCSA's position that the equipment in question is caught by this Directive because the parties all agree that the electrical usage of the equipment in question is clearly <250 kVA. However, as deposed by the PSM, it is the available electrical supply not the actual usage that determines whether operating permits are required.

[20] While this is understandably frustrating for the Appellant, an application of the legislation and the Directive at issue clearly requires an operating permit to be obtained. The electrical equipment at issue is a regulated product and the supply in question is >250 kVA. Accordingly, an operating permit is required.

[21] As deposed by the PSM in his sworn affidavit, operating permits are required as part of a legislated scheme to enhance public safety. They are required for operations that are higher risk than regular day-to-day electrical usage, such as the case before the Board where electrical supply is >250 kVA.

[22] The Board must at all times consider the enhancement and maintenance of public safety. While I do not have the jurisdiction to change the legislative scheme that is currently in place, I find that requiring operating permits in higher risk situations to be

reasonable. If individuals could simply operate whatever electrical equipment they wished at any time without permits, regulation or oversight, public safety would, or at least could, be compromised.

[23] The Appellant has submitted that given the nature of the Appellant's operations that the application of the legislation and the Directive to the facts is unfair in that granting an operating permit will in no way enhance public safety. The Appellant has also submitted that if an operating permit is required that the Board ought to vary the fee required to be paid for such operating permit. In this regard, the Board does not have jurisdiction to amend the legislation. Nor does it have jurisdiction to vary a Directive issued by the PSM. The Board is itself a creature of statute and only has the jurisdiction given to it directly by the legislature. Accordingly, the Board cannot entertain a review of the fees required to be paid for an operating permit.

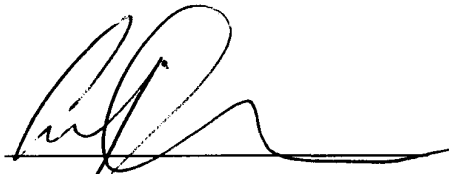
[24] With respect to the Appellant's assertion that the wrong legal entity is named in the Appeal, I note that section 18 of the *Safety Standards General Regulation* states that an operating permit may be issued to either the owner of a regulated product or the owner of the premises where regulated work is performed. While the evidence before me states that the premises themselves are owned by the Property Owner, there is insufficient evidence before the Board as to the ownership of the actual electrical equipment in question. I would expect that such specifics could be determined by looking at the Appellant's lease of the property. In any event, the PSM has indicated that it is content with either party applying for an operating permit. Accordingly, I leave this matter for the parties to determine between themselves.

[25] The Appellant's appeal is dismissed. If the Appellant has not already done so, the Appellant must forthwith comply with the terms of the August 7, 2012 Compliance Order, which was upheld by the Decision under appeal.

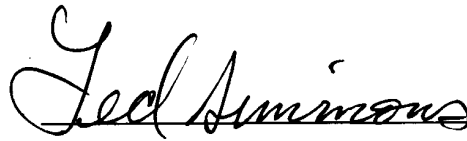
Conclusion

[26] The electrical equipment subject to this appeal is a regulated product for which an operating permit is required. The Board does not have the jurisdiction required to review the fees for such operating permits and accordingly is not reviewing the same.

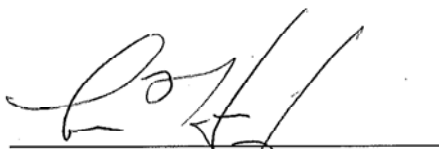
Signed:



Emily C. Drown, Vice-Chair



Ted Simmons, Panel Member



Tim Haaf