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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:	Mobile Home Park Ltd. and the Appellant	**APPELLANTS**
AND:	British Columbia Safety Authority	**RESPONDENT**

Reasons for Decision

Introduction

[1] This appeal is about Compliance Order CO-2011-0148-A01 issued October 18, 2011 (the "Compliance Order") and Monetary Penalty No. 2012-0010 as amended by Monetary Penalty No. 2013-0010-A01 issued March 8, 2013 (the "Monetary Penalty"). Both the Compliance Order and the Monetary Penalty were issued to the Mobile Home Park Ltd. and the Appellant (the "Appellants") by the British Columbia Safety Authority (the "Respondent").

[2] The Compliance Order was issued to the Appellants when an electrical inspection indicated that unsafe and deteriorating wooden power poles were located in the mobile home park operated by the Appellants. The Compliance Order required the Appellants to have a licensed electrical contractor repair the poles and subsequently have the repaired poles inspected to ensure compliance. The Appellants failed to comply with the Compliance Order and accordingly, the Monetary Penalty was issued against the Appellants in the sum of $2500.00.

[3] The Appellants seek an order quashing the Compliance Order and/or quashing the Monetary Penalty. Their reasons for seeking such an outcome will be set out in more detail below. The Respondent says that the Appellants are out of time for

appealing the Compliance Order and that the Monetary Penalty was properly issued and assessed against the Appellants and that accordingly the appeal ought to be dismissed.

History of Appeal

[4] An Appeal Management Conference was held on April 11, 2013 via teleconference. At that time, I discussed with the parties the Respondent's contention that the Board only had jurisdiction to deal with the Monetary Penalty as the Appellants were out of time for bringing an appeal regarding the Compliance Order. After hearing submissions from both parties in this regard, I ruled that the Appellants' appeal of the Compliance Order was out of time and indicated that written reasons for this decision would follow in due course. My reasons in this regard will be set out below. The parties and I also discussed the Respondent's interim application for a Board order ordering the Appellants to comply with the Compliance Order. As the Appellants had not had a chance to respond to the Respondent's application for the requested order, I gave the Appellants time to file a written response to the Respondent's application for enforcement of the Compliance Order and adjourned the matter to a second Appeal Management Conference.

[5] This second Appeal Management Conference was held on April 26, 2013. After reviewing the Respondent's application and the Appellants' response to the same and hearing further submissions from both parties, I held that the Board had no jurisdiction to grant the Respondent's application for enforcement of the compliance order as the Compliance Order was not properly before the Board in the Appeal and indicated that written reasons would be given to this effect in due course. My reasons in this regard are set out below. I also confirmed that as a result of my lack of jurisdiction the Compliance Order remained in effect as issued and informed the Appellant that the legislation required the Appellant to comply with the terms of the Compliance Order.

[6] The second Appeal Management Conference concluded with my determination that the Appeal of the Monetary Penalty would proceed by way of written submissions and that the parties would exchange evidence and submissions as ordered by the Board. The parties have now exchanged evidence and submissions and the Board is ready to review the evidence and make a decision regarding the merits of the Appellants' appeal.

[7] With its final evidence and submissions, the Respondent filed an Application for An Order for Costs with supporting affidavits from the legal counsel for the Respondent, and a forensic examiner. At the time of writing this decision, the Board has not heard submissions with respect to this application, preferring to deal with the issue of Costs once a decision on the merits of the appeal has been made.

Reasons for Preliminary Decision re: Jurisdiction to Hear Appeal of Compliance Order as decided at Appeal Management Conference

[8] With respect to the preliminary issue of whether the Board has jurisdiction to hear an appeal of the Compliance Order, the Appellants state that upon receipt of the Compliance Order they let representatives of the Safety Authority know that they disagreed with the terms of the Compliance Order and then did not hear anything for nine months. The Appellant stated that he believed that the Safety Authority had reconsidered its position and determined that no further action was required. In light of this belief, the Appellants sought, at the Appeal Management Conference, to have timelines extended so that they could bring an appeal of the Compliance Order properly before the Board. When questioned, the Appellant admitted that he never filed a formal request for a Safety Manager's review or an appeal with the Board as required by the legislation. Counsel for the Respondent submitted that the Appellants were barred from appealing the merits or any aspect of the Compliance Order, having not sought a Safety Manager Review or appeal of same within 30 days. The Respondents further oppose any extension of time regarding an appeal of the Compliance Order.

[9] Section 24 of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 (the "ATA") sets out the time limits for filing an appeal:

> 24 (1) A notice of appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the tribunal's enabling Act provides otherwise.
>
> (2) Despite subsection (1), the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist.

[10] For the purposes of this appeal, the Board's enabling Act is the *Safety Standards Act*, SBC 2003, c. 39 (the "SSA"). With respect to bringing an appeal, the SSA also

stipulates that an Appellant has 30 days to request a review of a Safety Officer's decision by a Safety Manager and then a further 30 days to appeal a decision of the Safety Manager to the Board. The Board's rules of practice and procedure also clearly indicate the 30 day time limit for bringing an appeal before the Board.

[11] Given the fact that the Appellant admitted to failing to file either a request for review or an appeal, the only way that the Compliance Order could properly come before the Board is if there are special circumstances existing that would permit the Board to extend the time to file a notice of appeal pursuant to section 24(2) of the *ATA*.

[12] As stated above, the Appellant advised that upon receipt of the Compliance Order he contacted the Safety Authority and advised them that he disagreed with the Compliance Order. He states that he then heard nothing further until the Monetary Penalty was issued some full nine months later and had assumed that the matter had been taken care of to his satisfaction. The Appellant stated this information over the telephone at the Appeal Management Conference and also deposed it out clearly in an affidavit dated March 4, 2013. There is no evidence before the Board that the Appellants made any attempts to follow up with the Safety Authority, rather the evidence presented to the Board suggests that the Appellants let it be known that they disagreed with the decision and then did nothing about it. They did not file a request for review and they did not file an appeal although in the evidence filed with the Board there is no question that the Appellant knew that he had a right of appeal. It was only when the Monetary Penalty was served on the Appellants that they took action. I also note that section 38(5) of the SSA stipulates that when the circumstances giving rise to a compliance order are no longer present that a safety officer may terminate the order by providing the person to whom the order is addressed with written permission to resume the work or activity detailed in the order. There is no evidence that such written notice was provided. Accordingly, based on the above, I ordered at the Appeal Management Conference that the timeline for an extension would not be granted with respect to the Compliance Order. Consequently the Appellants' appeal of the Compliance Order is out of time leaving the board with no jurisdiction to deal with the merits of an appeal of the Compliance Order.

Reasons for Preliminary Decision re: Enforcement of Compliance Order as decided at Appeal Management Conference

[13] With respect to the preliminary issue of the Respondent's application for enforcement of the Compliance Order, the Respondent applied for an order that:

1. The Appellants comply with the Compliance Order by no later than April 22, 2013;
2. The Appellants will cause to be submitted proof of compliance with the Compliance Order to the Safety Authority by means of an *Electrical Contractor's Authorization and Declaration of Compliance* by no later than April 22, 2013; and
3. In the event the Appellants fail to comply with (a) or (b) above, this appeal will be automatically stayed pending further order of the Appeal Board.

[14] In support of its application, the Respondent states that the Appellants have had ample opportunity to either comply with the Compliance Order or challenge it as provided for in the *SSA* and that to raise an objection to the Compliance Order now is a collateral attack that should not be permitted. The Respondent states that the Board ought to grant its request for such order in order to maintain and enhance public safety as required by section 50 of the *SSA*.

[15] In support of its position, the Respondent cited four cases. The first two dealt with the issue of collateral attack. The first was *R. v. Consolidated Maybrun Mines Ltd.,* [1998] 1 S.C.R. 706 ("Mayburn"), a case where the appellants elected to disregard a ministerial order to remediate an abandoned mine site and did not file an appeal to the tribunal constituted for that purpose. Eventually, when criminal charges were laid, the appellants challenged the validity of the original order as a defense to the charges. The court held "that to permit the appellants to collaterally attack the order at the stage of penal proceedings would encourage conduct contrary to the Act's objectives and would tend to undermine its effectiveness". The court also noted that "there is no indication that the Act's appeal process was inadequate or that the Board was powerless to remedy the deficiency that they now raise against the order."

[16] The second case cited is *WCAT-2009-02954*, a case where a worker was denied a referral to a specialist and appealed to the Workers' Compensation Appeal Tribunal.

The worker also sought a review of his disability entitlement in the same proceeding, notwithstanding that such entitlement had been determined in an earlier proceeding. While the worker had since filed for a reconsideration of the entitlement issue before the original decision-making body, he had not appealed the decision within the time allotted. WCAT determined that it lacked jurisdiction to hear the entitlement issue and further that it should not hear the appeal even if it had jurisdiction as the appellant had failed to bring the request for review in a timely manner.

[17] The Respondent submits that the common law prohibition on collateral attack reflects the obvious need for expediency and finality in administrative actions, balanced with the need for regulatory actions to be scrutinized in an appropriate forum to ensure the rights of regulated parties and states that this balance is achieved through the creation of the Board and a requirement that the parties avail themselves of the appropriate procedures if they wish to challenge an underlying decision.

[18] The other two cases cited by the Board deal with the Board's jurisdiction to hear an appeal of the Compliance Order. I will not deal with the Appellant's position regarding these cases as the issue of jurisdiction with respect to the merits of the Compliance Order was dealt with at the first Appeal Management Conference and the Board's reasons for declining jurisdiction are set out above.

[19] To summarize the Respondent's position, they submit that the Appellants are barred from appealing the Compliance Order due to either the doctrine of collateral attack, the limits on the Board's jurisdiction, or both and that accordingly, the Respondent's interim application requesting a Board order that the Appellants' comply with the Compliance Order ought to be granted.

[20] In opposition to the Respondent's application, the Appellants reiterated their submissions regarding the Compliance Order set out above in relation to the first preliminary issue regarding jurisdiction of the Board to hear an appeal of the Compliance Order.

[21] The Board is a creature of statute and only has the jurisdiction given it by the *ATA* and its enabling statues, which as set out above, for the purpose of this appeal is

the *SSA.* The legislation governing the issuance of compliance orders is set out in section 38 of the SSA. As set out above, there is a 30 day appeal period to the Board upon issuance of a compliance order. If an appeal is made to the Board, the Board then has jurisdiction to consider the merits of the issuance of the compliance order. Alternatively, a provincial Safety Manager may refer a decision directly to the Board pursuant to section 49(5) of the SSA. Without such appeal or referral the Board lacks jurisdiction to deal with any aspect of a compliance order.

[22] The Respondent has asked the Board to deny jurisdiction on one hand (which the Board has done) and assume jurisdiction on the other hand to order that the Appellants comply with the Compliance Order. Section 39 of the SSA specifically contemplates orders for compliance with compliance orders issued under section 38 of the SSA and gives jurisdiction for making such orders to the Supreme Court:

> 39 (1) If a person refuses or fails to comply with…a compliance order under section 38, a safety manager may apply to the Supreme Court for an order to direct compliance with the…compliance order.
>
> (2) The court may order that the…compliance order be complied with, on any conditions the court considers necessary, and the order takes precedence over any decision of a safety manger or the appeal board.

[23] Accordingly, the jurisdiction for making the order the Respondent requests rests with the Supreme Court. As a result, the Board does not have jurisdiction to make the order sought by the Respondent. That being said, absent an order to the contrary from the board, which will not be forthcoming as an appeal was not brought in time, the Compliance Order remains in force and is to be complied with.

Issues

[24] With the preliminary issues relating to the Compliance Order dealt with at the Appeal Management Conferences, the only remaining issue to be dealt with by the Board is whether the Monetary Penalty should be set aside, varied or confirmed.

Position of the Parties

The Appellants

[25] In support of their appeal, in addition to the material set out in the Appellants' Notice of Appeal, the Appellants have provided the Board with the following evidence and submissions:

1. Affidavit of the Appellant, sworn March 4, 2013; and
2. Letter from the Appellant to the Acting Provincial Safety Manager - Electrical, dated February 24, 2013.

[26] The Appellant made several submissions as to why the Monetary Penalty should not be upheld. First, he submits that a ¾ year delay between the issuance of the Compliance Order and the issuance of the Monetary Penalty is unreasonably dilatory and is outside any reasonable time periods. In this regard, the Appellant states that the provisions of the *Offence Act*, RSBC 1996, c. 338 (the "Offence Act") apply to this type of action and that accordingly the Respondent had only six months to impose a monetary penalty. In particular, the Appellants rely on sections 3, 4 and 5 of the Offence Act, which read as follows:

> Application to Proceedings
>
> 3(1) Except where otherwise provided by law, this Act applies to proceedings as defined in section 1.
>
> (2) If not time is specially limited for making a compliant or laying an information in the Act or law relating to the particular case, proceedings must not be instituted more than 6 months after the time when the subject matter of the proceedings arose.
>
> (3) An action or suit must not be brought for a penalty or forfeiture under an Act except within 6 months after the cause of action arises, unless the time is otherwise limited by the Act.
>
> General Penalty
>
> 4. Unless otherwise specifically provided in an enactment, a person who is convicted of an offence is liable to a fine of not more than $2000 or to imprisonment for not more than 6 months, or to both.

General Offence

5. A person who contravenes an enactment by doing an act that it forbids, or omitting to do an act that it requires to be done, commits an offence against the enactment.

[27] The Appellants state that any action that imposes penalties upon the Appellants requires the Respondent to do so in a reasonable and timely manner.

[28] Second, the Appellants state that the Respondent failed to comply with the legislated requirements for issuing a monetary penalty. In particular, the Appellants state that the Respondent failed to comply with section 3 of the *Monetary Penalties Regulation,* B.C. Reg. 129/2005 (the "Monetary Penalty Regulation"), which 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 of 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.

[29] The Appellants submit that the criteria enumerated in the Monetary Penalties Regulation cannot be properly considered by the Respondent without the Respondent contacting the Appellant to obtain his position with respect to each criterion. The Appellants also note that the Respondent failed to state in the Monetary Penalty Notice that the criteria were actually considered. The Appellants submit that such failures are contrary to the Appellant's constitutional rights of natural justice and procedural fairness and the doctrine of *audi alteram partem.* As a result, the Appellants submit that the Monetary Penalty is not legally valid.

[30] Third, the Appellants submit that there were issues with the service of both the Monetary Penalty and the required notice of intention to issue a monetary penalty. The Appellant states that he was served with the Monetary Penalty on February 12, 2013 and that the Monetary Penalty notice required payment of the Monetary Penalty by January 31, 2013 despite section 40(13)(a) of the SSA stipulating that an individual has 30 days from the date the notice is served on them to pay a penalty. The Appellants also state that contrary to section 40(5) of the SSA that they were never served with notice that a monetary penalty had been recommended by a safety officer.

[31] Fourth, the Appellants state that the Monetary Penalty should not be personally issued to the Appellant and should only be issued to the Mobile Home Park Ltd. as the Appellant is not an owner of the property affected and cannot be personally liable for any fine. In this regard, the Appellants admit that the Act does specify that directors can be held liable for any corporate debt. However, they submit that this does not mean that they can be directly fined.

[32] For the reasons set out above, the Appellants submit that the Monetary Penalty ought to be rescinded.

The Respondent

[33] The Respondent opposes the Appellants' submissions and submits that the Monetary Penalty is authorized by section 40(1)(b) of the *SSA* and is therefore reasonable and should not be varied or set aside by the Board.

[34] In support of this position, the Respondent has filed four affidavits with the Board:

a) Affidavit of the Acting Senior Safety Officer, sworn March 21, 2013;
b) Affidavit of the Acting Provincial Safety Manager, sworn March 20, 2013;
c) Affidavit of the Electrical Safety Officer, sworn March 20, 2013; and
d) Affidavit of a Forensic Document Examiner, sworn June 3, 2013.

[35] The Respondent submits that the standard of review on this Appeal is reasonableness and states that the Monetary Penalty complies with section 40(1)(b) of the SSA, which authorizes imposition of a monetary penalty for breach of a compliance order. The Respondent states that at no time have the Appellants denied failing to

comply with the Compliance Order and that the submissions before the board clearly show that the Compliance Order has not been complied with.

[36] With respect to the Appellants' submissions regarding delay in issuing a Monetary Penalty, the Respondent submits that the SSA does not impose any time limit for imposing a monetary penalty and states that this is because non-compliant behaviour can persist for extended periods of time and enforcement tools must be available in such situations. The Respondent agrees with the Appellants that a monetary penalty should not be imposed where the contravention occurred long ago, was known at the time and there has been no repeated contravention. However, the Respondent states that this is not the case with respect to the Monetary Penalty at issue. Here, the Respondent submits that the Appellants' contravention has been persistent and repeated, even in the face of having caused the identified safety risk to materialize through knocking down one of the rotten poles while energized.

[37] With respect to the Appellants' reliance on section 3 of the Offence Act, the Respondent submits that the section applies only to "proceedings" as defined in section 1 of the Offence Act and therefore does not apply to the issuance of a monetary penalty. Further, the Respondent submits that the offences created by the SSA are set out in Part 10, Division 2 of the SSA and do not include monetary penalties, which are under the administrative enforcement provisions of Part 6, Division 5 of the SSA. The Respondent also submits that sections 4 and 5 of the Offence Act are not relevant to the issuance of monetary penalties and that section 76 of the SSA specifically excludes the application of section 5 to the SSA. Further, the Respondent states that section 77 of the SSA prescribes a limitation period for prosecuting offences created under the SSA and that the fact that a limitation period is provided for in relation to offences clearly indicates a conscious decision by the legislature not to apply a limitation period to administrative sanctions such as monetary penalties. The Respondent states that the interpretation sought by the Appellants offends the express purposes of the legislation and would hinder the promotion of public safety and the efficient administration of the SSA. Finally, with respect to the issue of delay, the Respondent submits that there is no evidence whatsoever of prejudice to the Appellants resulting from any delay in issuing the Monetary Penalty.

[38] With respect to the Appellants' argument that the criteria set out in the Monetary Penalties Regulation cannot be properly considered by the Respondent without the Respondent contacting the Appellant to obtain his position with respect to each criterion, the Respondent submits that it did comply with the requirements of the legislation. The Respondent submits that the Safety Manager's obligation under the SSA is to consider the criteria enumerated in the Monetary Penalty Regulation regardless of whether a potential recipient provides its position in response to a recommendation that a fine be levied. The Respondent states that this is exactly what the Safety Manager did when he determined that a monetary penalty in the amount of $2500.00 was appropriate. The Respondent submits that the Monetary Penalty is modest given that the SSA authorizes penalties of up to $100,000.00 and the Appellants' non-compliance has been sustained and egregious.

[39] With respect to the Appellants' submission that the Appellant is improperly named in the Monetary Penalty, the Respondent submits that there is ample evidence before the Board to justify the determination that the Appellant be personally liable for the Monetary Penalty as permitted by section 40(12) of the SSA. The Respondent states that the Safety Authority never dealt with anyone other than the Appellant on behalf of the corporate appellant.

[40] With respect to the issue of whether the Appellants were served with the recommendation to proceed with a monetary penalty, the Respondent submits that the Appellant was served with the safety officer's recommendation and that Canada Post obtained the Appellant's signature with respect to his acknowledgement of receipt for such service. In support of this position, the Respondent refers to the Affidavit of a Forensic Document Examiner, sworn June 3, 2013 (the "Forensic Document Examiner"). In the Forensic Document Examiner's Affidavit, he deposes that he has prepared a Forensic Report dated May 24, 2013, in which he compared a reproduction of a Canada Post receipt dated 2012/11/13 and several specimen signatures reportedly written by the Appellant and found that the disputed signature on the Canada Post receipt was probably the Appellant's. The Respondent submits that the Appellants have not provided any explanation as to how Canada Post could have obtained the Appellant's signature on the acknowledgment of receipt for service of the recommendation and state that there is no plausible explanation for this other than the Appellant having received

and signed for the recommendation. The Respondent submits that it has established at least on the balance of probabilities, if not to an absolute certainty, that the recommendation was properly served on the Appellants and states that the Appellants' failure to respond to the recommendation does not prevent the provincial Safety Manager from issuing a monetary penalty. The Respondent submits that to find otherwise would lead to an absurd result whereby any potential recipient of a monetary penalty could avoid enforcement action simply by not responding to the recommendation.

[41] Based on the above, the Respondent states that the longstanding and flagrant disregard for public safety demonstrated by the Appellants more than justifies the modest enforcement actions taken to date and seeks to have the Appeal dismissed. The Respondent submits that any other outcome would be inconsistent with the promotion and enhancement of public safety mandated in section 52 of the SSA.

Analysis

[42] The Appellants have raised several arguments in this Appeal. I will deal with each in turn.

DELAY

[43] In instances of non-compliance with the SSA, the SSA sets out two methods for enforcement. The first is through the issuance of administrative penalties, which are set out in Part 7 of the Act. The second is through the prosecution of offences, which are set out in Part 10 of the Act. Pursuant to section 72(1) of the SSA, it is an offence to fail to comply with a compliance order. Failure to comply with a compliance order is also legislated to be grounds for the issuance of a monetary penalty pursuant to section 40(1)(b) of the SSA. Accordingly, the Safety Authority is permitted to proceed with either administrative penalties, such as the issuance of a monetary penalties, or with prosecutorial proceedings under the Offence Act. Either is permitted. In this case, the Safety Authority chose to proceed with the issuance of a Monetary Penalty, an administrative penalty governed by section 40 of the SSA.

[44] The SSA does not set out a limitation period for the issuance of a monetary penalty. However, it is clear that the legislature considered the issue of limitation

periods because section 77 of the SSA lengthens the general six month limitation period found in the Offence Act to a full year for any offences brought under the SSA.

[45] I agree with the Appellant that unduly dilatory enforcement should not be permitted under the rules of natural justice. I note that the Respondent's counsel also agrees with this statement in instances where the contravention took place long ago, was known at the time and there has been no repeat contravention. However, I cannot find that a nine month delay between the issuance of a compliance order and the issuance of a monetary penalty constitutes undue delay in the circumstances of this Appeal. If this were the prosecution of an Offence under Part 10 of the SSA and the Offence Act, the Safety Authority would be permitted a full year to prosecute the Offence. For an administrative penalty, I find that the Safety Authority should be given at least that much time, if not more. The contravention has been persistent throughout the nine month period. In fact, as set out in the Affidavit material filed with the Board, the hazard attempted to be prevented by the issuance of the Compliance Order did in fact come to pass with at least one of the power poles in question.

[46] I also note that the SSA requires the Board to consider the maintenance and enhancement of public safety when rendering decisions. Curtailing the Safety Authority's ability to attempt to ensure compliance with safety orders, especially where there is ongoing non-compliance, would not serve this mandate.

LEGISLATED REQUIREMENTS

[47] A review of the material filed with the Board shows that it is clear that the Safety Manager considered the legislated criteria when issuing the Monetary Penalty. As set out in the Acting Safety Manager's Affidavit (the "Acting Safety Manager's), each criteria set out in section 3 of the Regulations was considered. Nowhere in the legislation is it specified that the Safety Manager must discuss his assessment of the criteria with the prospective recipients of a monetary penalty. Further, as set out below, it is clear that the Appellants were given the opportunity to provide feedback when given notice of the safety officer's recommendation that a monetary penalty be issued. However, I find that the Appellants chose not to exercise that option. Having done so, they cannot now rely on such failure to state that the legislated criteria have not been appropriately considered.

[48] The standard of review in this regard is one of reasonableness. The Board is not determining whether it would apply the required criteria in the same way, but rather whether the Respondent was reasonable in its assessment of the monetary penalty based on the evidence before the Board. In any event, the Appellants have not submitted any evidence to the Board that suggests that the criteria were improperly applied. They simply rely on the argument that they were not contacted to discuss the application of such criteria.

PROPER PARTIES

[49] Section 40 of the SSA states that "if a corporation is liable to pay a monetary penalty imposed under this section, every director, officer, or other person who authorizes, permits or acquiesces in the contravention is personally liable for penalty." The Appellant has admitted that he is a director of the corporate appellant and has held himself out to be the sole decision maker of the corporate appellant with respect to the matters arising with the Safety Authority. Further, sections 38 and 40 of the SSA clearly state that the Safety Authority may issue both compliance orders and monetary penalties to persons where they fail to comply with the requirements of the SSA or safety orders issued by the Safety Authority. Accordingly, there is no doubt that the Appellant is liable to pay the Monetary Penalty if it is upheld by the Board in this Appeal and it is appropriate that the Appellant be personally named on the Monetary Penalty.

SERVICE OF RECOMMENDATION

[50] With respect to the issue of whether the Recommendation was served on the Appellant, I accept the evidence set out in the Affidavit of the Forensic Document Examiner, sworn June 3, 2013, particularly that the signature on the Canada Post receipt showing service of the recommendation was probably written by the Appellant and that the Forensic Document Examiner's level of certainty in this regard is the highest possible when dealing with electronic signatures of this quality rather than original handwritten signatures. Accordingly, I find that the Appellant was served with the Recommendation and that the requirement to provide notice of the intent to proceed with a monetary penalty was met by the Respondent.

[51] I also find that the Appellant did not respond to the Recommendation. His failure to respond to the recommendation cannot now be used to successfully argue that the

Safety Authority failed to consider his point of view and cannot issue a Monetary Penalty. As submitted by the Respondent, if such argument were successful the absurd result would be that any individual facing the issuance of a monetary penalty could avoid being fined by simply failing to respond to the recommendation delivered to them.

Decision

[52] Upon review of all of the evidence and submissions filed with the Board, I find that the Safety Manager was reasonable when he issued the Monetary Penalty against the Appellants. Monetary Penalties up to $100,000.00 are permitted under the SSA. Given the public safety risk that the Safety Authority is attempting to curtail with the issuance of the Monetary Penalty, the sum of $2500.00 is more than reasonable. I can see no reason why the Monetary Penalty should be set aside or varied. All legislated requirements for the issuance of a Monetary Penalty were met and there is a significant public safety risk that the Safety Authority is attempting to rectify through the issuance of the Monetary Penalty.

[53] For the reasons set out above, the Appellants' appeal is dismissed.

[54] The Respondent's application for costs has not been dealt with in these reasons for decision. The Board's Registrar shall contact the parties to arrange a further Appeal Management Conference for the purpose of coordinating the parties' responses and submissions with respect to the issue of costs.

Signed: