

bring any deficient work into compliance with the safety provisions set out in the Act and its associated regulations.

History of Appeal

[2] The issuance of the Compliance Orders, and ultimately the Monetary Penalty, came about when the appellant commenced commercial operations in British Columbia without being fully knowledgeable about the regulatory requirements for the performance of gas and electrical work within the province. It is not disputed that the Respondent found the Appellant conducting unlicensed and unpermitted regulated gas and electrical work as well as permitting unlicensed and uncertified individuals to perform regulated gas and electrical work. To its credit, when contacted by safety officers employed by the Respondent, the Appellant admitted its error and stated that it would work with the Respondent to become well versed in the regulatory scheme in British Columbia and would do its utmost to comply with the requirements of the provincial safety legislation. Unfortunately, while the appeal record filed with the Board clearly indicates that the Appellant took some steps to bring itself into compliance, it failed to ensure that permits were secured prior to regulated work commencing and failed to ensure that regulated work was never performed by non-certified individuals. Accordingly, the Respondent issued the first two Compliance Orders on March 11, 2016. The third and final of the Compliance Orders was issued on July 8, 2016 as a result of the Appellant's failure to comply with the previously issued Compliance Orders. The Appellants took some steps to comply; however it is not disputed that that they were still not in compliance in November, 2016 when the Monetary Penalty was issued.

Issues

[3] The sole issue before the Board is whether the Monetary Penalty was appropriately levied by the Respondent.

Position of the Parties

The Appellant's Position

[4] The Appellant admits that it was not fully in compliance with the terms of the Compliance Orders when the Monetary Penalty was issued. The Appellant states that it

was however trying to comply and was working with the Respondent to solve the problem. The Appellant states that while there were delays in its compliance that these delays were caused by confusion and issues with their in-house reporting and further states that these delays in no way mean that the company does not intend to comply with the legislative requirements in the future. In support of this position, the Appellant relies on email correspondence dated November 16, 2016 from a Senior Safety Officer with the Respondent, which stated that as of November 16, 2016 there were 21 sites requiring electrical permits. The Appellant states that permits have been obtained for 16 of the 21 sites and asks that the Monetary Penalty be reduced by 80% or alternatively, waived until all permits have been applied for and submitted. The Appellant also states that the difference in process between obtaining a permit from the BC Safety Authority and the city of Kelowna resulted in additional confusion and delay. The Appellant states that it now fully understands the distinction between the two systems, but states that the different systems caused confusion as there were two different systems to manage. The Appellant further states that additional confusion was caused by the fact that permits obtained by its electrical contractors do not show up in the BC Safety Authority's online portal, making it difficult to report and track.

[5] Further, the Appellant states that as a result of conversations with the Respondent that they have changed their workplace practices in order to ensure full compliance with the legislative safety requirements in the future. In particular, the Appellant states that:

- a) All installation jobs of furnaces, air-conditioners, and tankless water heating systems will have permits pulled in advance of any work commencing;
- b) All Home Services dispatch team-members have been trained on the BC Safety permitting process; and
- c) All Home Services contractors must comply with a revised Code of conduct to ensure timely submission of all required paperwork.

The Respondent's Position

[6] The Respondent states that the Monetary Penalty was appropriately levied and that the Appeal ought to be dismissed.

[7] Counsel for the Respondent submits that the Board ought to determine this appeal on the standard of review of reasonableness not correctness and provided the Board with detailed submissions regarding the same. I will not set the Respondent's submissions on this point out in detail in this decision as the Board has recently dealt with similar submissions from the Respondent on other appeals and has dealt with the matter at length in those reasons for decision. A summary of the Respondent's position with respect to the issue of the standard of review can be found in *A Gas Contractor v. British Columbia Safety Authority*, SSAB 14(1)2016, paragraphs 12 – 17.

[8] Counsel for the Respondent states that Provincial Safety Manager duly considered the factors set out in section 3 of the Monetary Penalties Regulation and complied with section 40 of the Act when issuing the Monetary Penalty and that accordingly there is no basis in law to vary the Monetary Penalty or set it aside.

[9] Counsel for the Respondent notes that the Appellant does not deny that it failed to comply with the Compliance Orders or that failure to comply with such Compliance Orders is a legislated ground for issuance of a Monetary Penalty. The Respondent states that it met with a representative of the Appellant on March 7, 2016 to go over the legislative requirements and further set out these requirements when it issued the first two Compliance Orders. The Respondent states that despite this, by May 2016 the Appellant still had not obtained a large number of electrical permits and that by June 24, 2016 it was determined that the Appellant continued to performed regulated work in breach of the Act and regulations despite ongoing communication with the Safety Authority. The Respondent notes that this resulted in the issuance of the third Compliance Order. The Respondent submits that despite the Appellant's assertion that it is doing its best to comply, that the fact that the Appellant is not fully compliant over a year after the non-compliances were first noted suggests that the non-compliances are deliberate and continuous. The Respondent seeks to have the appeal dismissed with liberty to seek costs.

Analysis

[10] Before turning to the more substantive issues at hand, I must first determine the standard of review for this Appeal as that subject has been raised in the Respondent's submissions. For the reasons set out in *A Gas Company v. British Columbia Safety Authority*, SSAB 14(1)2016 I find that the standard of review is one of correctness. However, as stated in paragraph 25 of that case,

[w]hile the standard of review is one of correctness, in a case such as this where the Board is tasked with determining whether the Provincial Safety Manager correctly exercised the discretion given to him to levy monetary penalties by the Act, the standards of correctness and reasonableness meld as the Provincial Safety Manger would be found to have acted “correctly” if there were appropriate grounds to levy a monetary penalty and the penalty itself was reasonable in light of the evidence before the Board.

[11] Turning to the issue on appeal, section 40(1) of the Act and section 2 of the MP Regulation clearly set out that a monetary penalty may be appropriately levied for a first instance of a contravention under the Act or its associated regulations. Section 40 of the Act states:

40(1) A safety manager may, in accordance with the regulations, impose a monetary penalty on a person who fails to comply with any of the following:

...

(b) a compliance order;

....

[12] It is clear that the Safety Manager has jurisdiction to issue a Monetary Penalty for failure to comply with a compliance order. In doing so, he must comply with section 3 of the MP Regulation, which states:

3. Before a safety manager imposes a monetary penalty on a person, the safety manger 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.

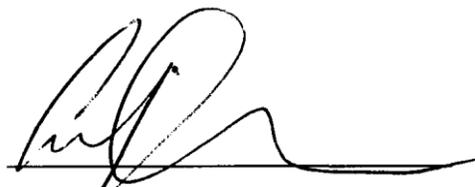
[13] In addition to complying with section 3 of the MP Regulation, a safety manager issuing a monetary penalty must also comply with the notice provisions set out in section 40(7) to 40(9) of the Act. A review of the Appeal Record filed in this appeal indicates that the Safety Manager complied with these notice provisions. I also note that the Appellant did not appeal the terms of any of the three Compliance Orders.

[14] A review of the appeal record clearly indicates that the Appellant was not in compliance with any of the three Compliance Orders when the Monetary Penalty was issued. I find that the Appellant was given significant time to comply between the initial discovery of the non-compliances, issuance of the Compliance Orders and the ultimate issuance of the Monetary Penalty. It is also apparent that the Safety Manager considered the criteria set out in section 3 of the MP Regulation. Upon review of the Monetary Penalty Checklist completed by the provincial Safety Manager in advance of the issuance of the Monetary Penalty, I find the Safety Manager's decision to issue the Monetary Penalty correct and supported by the Act and associated Regulations.

Conclusion

[15] For the reasons set out above, the appeal is dismissed.

Signed:

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long horizontal line extending to the right.