

Date issued: February 19, 2021  
File no. SSAB 38-2021

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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:**

**A Ltd. Company**

**Appellant**

**AND:**

**Technical Safety BC**

**Respondent**

<b>Safety Standards Appeal Board:</b>	<b>Jeffrey Hand</b>
<b>Representing the Appellant:</b>	<b>The Appellant</b>
<b>Representing Technical Safety BC:</b>	<b>Audrey Yang</b>

**REASONS FOR DECISION**

**Introduction**

[1] The Appellant brings this appeal in respect of a Monetary Penalty No.2020-0016 dated October 9, 2020, issued by the Provincial Safety Manager in the amount of \$3000 (“Monetary Penalty”).

[2] The Monetary Penalty was issued because the Appellant allegedly performed regulated gas work at two residential properties without first obtaining the necessary gas installation permits.

[3] The Appellant says the circumstances of these alleged infractions do not warrant a Monetary Penalty and that the amount of the penalty is too large and will impose financial hardship on the Appellant. The Appellant seeks to have the Monetary Penalty set aside or

alternatively reduced in amount.

[4] The Respondent says the imposition of the Monetary Penalty was appropriate in the circumstances and that the amount was reasonable and/or correct and should not be altered.

[5] This appeal proceeded by way of written submissions alone.

[6] This appeal is brought pursuant to section 40(9)(v) the Safety Standards Act. (the "Act").

[7] The Board is authorized pursuant to section 59 of the Act to confirm, vary or set aside the Monetary Penalty.

### **Issue on appeal**

[8] Should the Monetary Penalty be confirmed, varied, or set aside?

### **Facts**

[9] The Appellant carries on business as a gas installation contractor in the Lower Mainland. The company has performed approximately 450 gas appliance installations over the past three years.

[10] The appeal record discloses that that on July 26, 2018, the Appellant received a warning letter from the Respondent for performing regulated gas work without the necessary permit at a property located in Delta, BC. The Appellant was asked to perform a review of its records to determine that permits had been obtained at all work recently performed by the Appellant.

[11] The following year, on April 12, 2019, an inspection performed by a safety officer found another instance of regulated gas work performed by the Appellant without a permit at a residential property located in Merritt, British Columbia. The Respondent issued a Compliance Order No. CC- 2019-0087, dated May 17, 2019. The Compliance Order required the Appellant to:

-stop performing regulated gas work unless that work is first authorized under a gas installation permit

-conduct a review of all work performed in the past two years, submit a list of that work to the Respondent, and obtain any necessary permits

[12] In September 2019 the Appellant was performing regulated gas work for a general contractor at a new subdivision in Surrey, British Columbia. The Appellant worked at four separate homes within that subdivision.

[13] On September 3, 2019, a safety officer performed an inspection at a property in Surrey, British Columbia ("16611") and found that regulated gas work performed by the Appellant had been done without the necessary permit. The inspection also found a number of installation deficiencies. The Appellant was notified and secured the necessary permit for this work on September 12, 2019.

[14] The Appellant says that while performing work at 16611 he was asked by the contractor to suspend work during a concrete delivery and instead move to an adjacent property, believed to be 16659 ("16659") and to commence work at that location. The Appellant says he performed some work, mostly planning and cutting of pipes for work he intended to continue in the following days. There was no gas permit for this property and the Appellant says he did not want to send his crew home for the day, after work had been stopped at the adjacent home.

[15] That evening, the Appellant says he intended to secure an online permit for 16659 but had difficulty obtaining the correct civic address from the builder. There is no evidence before me as to what date this work is said to have been performed.

[16] A certificate of inspection performed at 16659 by a safety officer on September 19, 2019 found that regulated work at been performed and that no permit had yet been obtained. The Appellant obtained the necessary gas installation permit for 16659 on September 24, 2019.

[17] Thereafter the Respondent appears to have opened a compliance and enforcement investigation regarding the Appellant's work at 16611 and 16659 although due to the onset of the COVID-19 pandemic in 2020, enforcement steps were suspended temporarily.

[18] On August 7, 2020 the Safety Manager wrote to the Appellant to advise that a Monetary Penalty was under consideration for the unpermitted work performed at 16611. The amount of

Monetary Penalty under consideration was \$3000 and the Appellant was invited to provide a response for the Safety Manager's consideration.

[19] The Appellant responded on August 10, 2020, suggesting that the Safety Manager was in error because a gas installation permit was in fact obtained for 16611. I pause here to note that the Appeal Record confirms that this permit was not obtained until September 12, some nine days after the certificate of inspection on September 3, revealed the lack of permit and the presence of installation deficiencies.

[20] On October 9, 2020 the Safety Manager issued the Monetary Penalty to the Appellant in the amount of \$3000.

[21] On October 19, 2020 a safety officer. had a telephone conversation with the Appellant and advised him that should he wish to challenge the Monetary Penalty he could file an appeal with the Board.

[22] On November 28, 2020 the Appellant filed this appeal.

## **Analysis**

### **Standard of Review**

[23] Counsel for the Respondent submits that the Monetary Penalty can only be set aside or varied if the Board finds that the decision to issue it was unreasonable. She further submits that in making that determination this Board owes deference to the Safety Manager's analysis of the circumstances giving rise to the Monetary Penalty and its amount. In effect, she is asking the Board to apply a reasonableness as opposed to a correctness, standard of review to this appeal.

[24] These submissions run contrary to the recent decisions of the British Columbia Supreme Court in *Technical Safety BC vs BC Frozen Foods Ltd.* 2019 BCSC 716 and *Technical Safety BC vs Simply Green* 2020 BCSC 2157. Both of these decisions found that this Board has exclusive jurisdiction in making determinations of fact, law, and discretion and that no deference is owed to the Safety Manager. Moreover, those decisions confirm that the standard of review this board is to utilize is correctness.

[25] The Board will be guided by those authorities and use a correctness standard of review.

### **Monetary Penalty**

[26] Section 40 of the Act authorizes the Safety Manager to issue monetary penalties where there has been a failure to comply with the Act or a failure to comply with a compliance order.

[27] The Appellant received the Compliance Order in 2019 as a result of performing regulated work without a permit. In September 2019, the Appellant performed regulated work at these properties prior to obtaining the necessary gas installation permit. This is clearly a contravention of the Compliance Order.

[28] The Appellant does not challenge the evidence that it was performing regulated work in contravention of the Compliance Order.

[29] I find the work done at 16611 and 16659 was in contravention of both the Act and the Compliance Order and accordingly a Monetary Penalty was authorized under the Act.

[30] Turning then to the Appellant's submission that the circumstances are such that a penalty should not have been levied, the main thrust of the Appellant's submissions are that they have performed hundreds of installations of regulated gas products over several years and that only in a few instances have they failed to obtain the necessary permit. They further suggest that it is not always possible to obtain permits in a timely way before work is performed and that they should be allowed to obtain permits after the fact.

[31] Such a practice however is clearly in contravention of the provisions of section 12 of the Safety Standards General Regulation BC Reg. 105/2004, which requires a permit be obtained before regulated work is performed. This provision does not allow permits to be obtained at a time that is convenient to the contractor and after work is performed.

[32] The Appellant's suggestion that a Monetary Penalty should not have been levied because the Appellant took care to obtain permits in advance on other jobs is no answer to what occurred in its instance.

[33] It is noteworthy in my view, that the Appellant received a warning letter, without penalty, for failing to obtain an installation permit in 2018. So too, in 2019 a similar infraction was committed, and this resulted in the Compliance Order but no financial penalty. The two infractions in 2020 occurred at a time when the Appellant ought to have known there could be consequences to performing regulated work without first obtaining a permit.

[34] The Board rejects the Appellant's request that these infractions should be excused.

### **Amount of Penalty**

[35] The Appellant says the penalty is too large and will cause financial hardship to the Appellant. It is said that employees of the Appellant may have to be laid off.

[36] The Appellant has not provided any specific evidence to demonstrate how a penalty of \$3000 will impact the overall finances of the Appellant. The Appellant says they pay permit fees of approximately \$20,000 per year and they perform hundreds of installations. Without a more fulsome explanation it is hard to imagine how a penalty of this amount could adversely impact the Appellant's business.

[37] The Monetary Penalties Regulation BC Reg 129/2005 sets out the factors the Safety Manager must consider in determining the amount of the penalty and these are:

- a) Previous enforcement actions for contraventions of a similar nature;
- b) The extent of harm or degree of risk of harm;
- c) Whether the contravention was deliberate;
- d) Whether the contravention was repeated or continuous;
- e) The length of time the contravention continued;
- f) The economic benefit obtained from the contravention

[38] The Safety Manager has also developed an internal guideline to assist in determining penalty amounts. Using the Monetary Penalty Calculator the Safety Manager arrived at the amount of \$4500 but decided to impose a lesser amount, being \$3000, purportedly on account of the financial impact of COVID-19.

[39] While this Calculator may be of assistance in trying to achieve some level of consistently

in penalty assessment, the guideline is not part of the legislation and the Board must assess the penalty based on the factors set out in the Regulation alone.

[40] Of the criteria set out in the Regulation, I find that factors (a) and (b) have the most application. This was the third and fourth instance of the Appellant performing work without a permit and there was a previous enforcement action, being, the Compliance Order. There is some evidence of installation deficiencies in relation to the 11699 property which give rise to a risk of harm to the public.

[41] The contraventions appear to be more inadvertent than deliberate. The contravention did not persist for more than a few days, and there was no economic benefit obtained by the Appellant. Accordingly, factors (c), (d), (e), and (f) of the Regulation do not apply.

[42] A Monetary Penalty is a method of enforcement that is not intended to punish but rather to encourage better behavior and ensure the Appellant adopts business practices and procedures that will ensure permits are always obtained in advance, at least for non-emergency regulated work.

[43] Considering all of the foregoing and the circumstances of the contraventions committed by the Appellant, the Board confirms the Monetary penalty in the amount of \$3000.

[44] The appeal is dismissed.

A handwritten signature in black ink, appearing to be 'JMS' or similar, written in a cursive style.