

Indexed as: BCSSAB 2 (1) 2008

**IN THE MATTER OF THE SAFETY STANDARDS ACT  
SBS 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the  
British Columbia Safety Standard Appeal Board**

**BETWEEN:**

**A vendor of HVAC control systems**

**Appellant**

**AND:**

**BC Safety Authority**

**Respondent**

---

**REASONS FOR FINAL DECISION  
Appeal of Compliance Order**

---

Board Members:

Emily C. Drown, Vice-Chair;  
Ed Bradbeer;  
Ken Harper

**Introduction**

[1] This is an appeal of a Compliance Order issued by the BC Safety Authority (the Respondent). The Compliance Order requires the Appellant (a vendor of HVAC control systems) among other things, to quit marketing and selling a controlling device that works in conjunction with general thermostat control devices, on the grounds that the Appellant has not proven that the product can safely be operated as required by the *Safety Standards Act* (the Act) and associated regulations.

[2] The Appellant appeals the Compliance Order and states that the product is safe and does meet the legislated requirements. In the event that the board finds that the product does not meet the legislated requirements the Appellant seeks a stay of the Compliance Order for 90 days to permit them time to obtain the required testing to prove that the product is safe.

### **Issues**

[3] The issue that must be determined in this appeal is whether the controlling device has been approved for its intended application under the Act. If not, the board must determine whether to stay the Compliance Order for 90 days as requested by the Appellant.

### **Facts/Evidence**

[4] The Appellant submitted numerous documents in support of its position. After a review of all of the documents submitted to the board, we are of the opinion that the majority of the documents submitted, while providing supplementary background information regarding the product in question, are not relevant to determining the actual issue at hand. In this regard, while we have reviewed the documents submitted to the board, we will not be referring to those documents directly in these reasons for decision.

[5] That being said, we have considered an Affidavit, sworn October 3, 2008 and a number of articles provided by the Appellant regarding the use of the thermostat and other similar cycling thermostat devices.

[6] The Appellant states that the controlling device is a safe product and should be sold and marketed. In this regard, the Appellant relies on a number of studies, which purport to indicate that similar cycling devices are both safe and useful, especially with respect to increasing the environmental efficiency of the furnaces to which they are attached. In addition to the various documents submitted, the Appellant relies upon an affidavit sworn October 3, 2008, in which the swearer of the affidavit deposes that representatives of various furnace manufacturers and service technicians have advised him that the product is safe or have provided empirical data, which he interprets to mean that the product is safe to operate. The swearer of the affidavit also deposes that he has "used reasonable and accurate means" to study the device and determine safety data.

[7] The Respondent does not deny that the Appellant has presented a number of documents that show potential uses for the cycling device and several studies which purport

to indicate that similar cycling devices are both safe and useful. However, the Respondent states that the Appellant has not provided the requisite proof required by the Act and associated regulations that the controlling device has been proven safe and accordingly submits that the Compliance Order be upheld.

[8] In this regard, we find that despite providing the board with numerous documents about the controlling device and studies regarding similar cycling devices, that the Appellant has not provided any independent laboratory evidence that the device meets the safety requirements of the province when operated as a controlling device nor has it provided independent proof that the device can be safely operated as a controlling device.

### **The Law**

[9] Devices for gas appliances are regulated by the Act and the Gas Safety Regulation (the Regulation) and in this regard gas systems and equipment are defined as “regulated products” under the Act. The Regulation states that regulated products, including those devices attached to appliances that convert gas to energy, are only to be installed in British Columbia if they bear a safety certification mark from a certification agency or have been approved by a Safety Manager under section 10 of the Act.

[10] With respect to the later method of certification, the legislation does not create a positive obligation on Safety Managers to approve products or grant certification. Rather, it states that Safety Managers may grant such certification. In order to exercise this discretion Safety Managers must be satisfied that the regulated product in question meets the requirements set out in the Regulation and incorporated national code. They may also enter into equivalent standards agreements upon written request. However, there is no mandatory requirement for them to do so and refusal to enter into such an agreement is not appealable to the board.

[11] There is no obligation under the legislation for a Safety Manager or the BC Safety Authority to prove that a product is not safe. The onus is on the individual in question to prove that the regulated product meets the requirements of the applicable legislation.

### **Application of Law to the Facts**

[12] We find that the device in question is a regulated product as defined in the Act. The device is “equipment” relating to a gas system and therefore is a regulated product pursuant to sections 1 and 2(1)(b) of the Act. Accordingly, in order to be marketed or sold in British

Columbia, the device must be properly certified for its intended use. There is no evidence before the board that the device is certified as a regulating/cycling device. There is also no evidence before the board that that device possesses a certification mark for its intended use. Accordingly, the only way that the device may meet the requirements of the Act and associated regulations is to be certified by a Safety Manager. Such certification can only happen if the Safety Manager is presented with proof that the product in question meets with the requirements of the Regulation and the incorporated national code or where the Safety Manager exercises his or her discretion and enters into an equivalent standards test pursuant to Part 7, Division 3 of the Act. In the case of the Appellant and its product neither of these requirements has been met.

### **Conclusion**

[13] While we recognize that the device in question may well be an efficient and safe device, the onus of proof with respect to proving that a regulated product can safely be operated rests with the Appellant. The legislated provisions concerning such matters clearly indicate that proof is required before a regulated product will be certified and permitted to be operated. It is not the job of the Respondent to prove that a regulated product is unsafe. The Act requires the board to consider the maintenance and enhancement of public safety in all of our decisions. Accordingly, while we are sympathetic to the plight of the Appellant, we have found that the Appellant has not proven that the device in question is a safe device and accordingly we must dismiss the appeal and uphold the Compliance Order.

[14] With respect to the Appellant's alternative submission that the Compliance Order be stayed for 90 days to permit testing, we find that given our mandate to consider the maintenance and enhancement of public safety in all of our decisions that we cannot stay or suspend the Compliance Order. To do so could jeopardize the safety of individuals purchasing the device in the intervening time. That being said, there is nothing in the legislation preventing the Appellant from obtaining the necessary proof of the device's safety and then applying for certification of the product while the Compliance Order is in place.